LET RIGHT PREVAIL

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

**June 25, 2015**
**9:00 a.m.**

# CONVOCATION MATERIAL

*PUBLIC COPY*

*THIS PAGE CONTAINS*

*IN CAMERA MATERIAL*

**CONVOCATION AGENDA**
**June 25, 2015**

**Convocation Room – 9:00 a.m.**

**Election of Treasurer**

**Treasurer's Remarks**

**Consent Agenda** - Motion [Tab 1]
- **Confirmation of Draft Minutes of Convocation** – May 28, 2015
- **Motions**
  - Committee Appointments
  - In Camera Appointments
- **Report of the Director of Professional Development and Competence** – Deemed Call Candidates

**Professional Development & Competence** *(H. Goldblatt)* [Tab 2]
- Competence Enhancement – Law Student Experiential Learning By-Law Amendments

**Professional Regulation Committee Report** *(M. Mercer)* [Tab 3]
- Amendments to the *Rules of Professional Conduct*

**Paralegal Standing Committee Report** *(M. Haigh)* [Tab 4]
- Amendments to the *Paralegal Rules of Conduct*

*For Information*
- Report on Paralegals Changing Status
- Paralegal Professional Conduct Guidelines
- Information on Proposed Amendments to the *Rules of Professional Conduct*

**Treasurer's Report** *(J. Leiper, C. Hartman)* [Tab 5]
- Proposed Task Forces

**Secretary's Report** *(P. Wardle)* [Tab 6]
- Transparency and Accessibility of Convocation

**Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report** *(P. Schabas, J. Falconer)* [Tab 7]
- In Camera Item
- Human Rights Monitoring Group Requests for Intervention

*For Information*
- Career Choices Study

**Report of the Chief Executive Officer** *(R. Lapper)* [Tab 8]

**Audit & Finance Committee Report** *(C. Bredt, P. Wardle)* [Tab 9]
- In Camera Item

*For Information*
- LibraryCo Inc. Financial Statements for the Three Months ended March 31, 2015
- Other Committee Work

**Government Relations and Public Affairs Committee Report** *(M. Boyd)* (in camera) [Tab 10]

*REPORTS FOR INFORMATION ONLY*

**Priority Planning Committee Report** [Tab 11]
- Convocation's Priority Planning - Status of Work on Convocation's Priorities

**Report from The Action Group on Access to Justice (TAG)** [Tab 12]

Lunch – Benchers' Dining Room

**Tab 1**

## THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 25, 2015

MOVED BY:

SECONDED BY:

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

**Tab 1.1**

D R A F T

MINUTES OF CONVOCATION

Thursday, 28th May, 2015
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Banack, Beach, Bickford, Boyd, Braithwaite, Bredt, Burd (by telephone), Callaghan, Clement (by telephone), Cooper, Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Elliott, Epstein, Evans, Falconer, Ferrier, Finkelstein (by telephone), Furlong, Galati, Go, Goldblatt, Gottlieb, Groia, Haigh, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem, Lerner, Lippa, MacLean (by telephone), Manes (by telephone), McDowell, McGrath, Merali, Mercer, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza, Potter, Richardson (by telephone), Richer, Rosenthal, Ross, Ruby (by telephone), Schabas, Sharda, Sheff, Sikand, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg (by telephone), Swaye, Troister, Udell, Vespry, Wardle, Wright and Yachetti (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed viewers joining by webcast.

MOTION – ELECTION OF BENCHER

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that, –

WHEREAS Janet E. Minor was elected as a bencher from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by electors residing in that electoral region.

WHEREAS upon being elected Treasurer on June 26, 2014, Janet E. Minor ceased to hold office as an elected bencher in accordance with subsection 25 (2) of the *Law Society Act*, thereby creating a vacancy in the office of bencher elected from the Province of Ontario "A"

Electoral Region (City of Toronto) on the basis of the votes cast by electors residing in that electoral region.
THAT under the authority contained in By-Law 3, Janet Leiper, having satisfied the requirements contained in subsections 42 (2) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the office of bencher elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region.

AND WHEREAS Janet Leiper's election to fill a vacancy in the office of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region has created a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by all electors;

THAT under the authority contained in By-Law 3, Isfahan Merali, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by all electors.

Carried

TREASURER'S REMARKS

The Treasurer welcomed all newly elected benchers to Convocation and congratulated incumbents who were re-elected.

The Treasurer also advised of the appointment of two new lay benchers, Suzanne Clément and Gisèle Chrétien, and congratulated them on their appointments.

The Treasurer acknowledged the work of the following former bencher colleagues:
Constance Backhouse
John A. Campion
Mary Louise Dickson
Lawrence Alexander Eustace
Peter Festeryga
Alan D. Gold
Jennifer A. Halajian
Susan M. Hare
Nicholas John Pustina
Linda Rothstein
Mark Sandler
James A. Scarfone
Alan G. Silverstein
Joseph J. Sullivan
Beth Symes

The Treasurer explained the purpose of the eagle feathers on the Convocation table.

The Treasurer announced the six recipients of the honorary LL.D. at calls to the bar in June:

- Janet E. Stewart, Q. C. – June 18 London
- The Honourable Peter A. S. Milliken – June 22 Ottawa
- Julian Porter Q.C. – June 23
- Sheila Block – June 24
- Jean Teillet – June 26 in the morning
- James Stewart –June 26 in the afternoon

The Treasurer advised Convocation that an LL.D. degree was conferred on The Honourable Marc Rosenberg on May 22, 2015 in a special ceremony due to health issues. The Treasurer advised that Priscilla Platt, Justice Rosenberg's partner, and his children, Daniel and Debra, were joining by telephone today, as the Treasurer requested that Mark Sandler, who read the citation at the ceremony, read the citation. Mr. Sandler read the citation.

The Treasurer congratulated Mr. Sandler on being awarded the G. Arthur Martin Criminal Justice Medal to be bestowed by the Criminal Lawyers' Association in October.

The Treasurer advised that issues arising from the bencher election process will be reviewed by the Governance Issues Working Group of the Priority Planning Committee which will bring forward appropriate proposals.

The Treasurer expressed condolences to the family of The Honourable W. Dan Chilcott, Q.C., former Treasurer of the Law Society, who passed away on April 28, 2015.

The Treasurer expressed condolences to the family of Alan Borovoy, who was a champion of civil liberties in Canada, who passed away on May 11, 2015.

The Treasurer congratulated the recipients of the Law Society Awards who received their awards at a ceremony on May 27, 2015:

<u>Law Society Medalists:</u>
Craig Carter
Professor Adam Dodek
Susan Eng
Faisal Joseph
John B. Laskin
H. J. Stewart Lavigueur
S. Patrick Shea
Chantal Tie

W. Paul Dray - William J. Simpson Distinguished Paralegal Award
Paul Le Vay – The Lincoln Alexander Award
Kim Murray – The Laura Legge Award

The Treasurer thanked former bencher William J. Simpson for bestowing the Paralegal Award.

The Treasurer advised that she was honoured to give greetings on behalf of the Law Society at the swearing in ceremony for new Chief Justice of the Ontario Court of Justice, The Honourable Lise Maisonneuve, and congratulated her on her appointment.

The Treasurer advised that in her absence for the swearing in, Robert Lapper extended Law Society greetings to the County & District Law Presidents' Association plenary in Thunder Bay.

The Treasurer advised of her attendance at the mental health event on May 6, 2015, "Fostering Wellness: A Discussion of Mental Health and the Legal Profession", and that she expects to announce a Law Society task force on a mental health strategy at the June Convocation.

The Treasurer noted the Targeted Legal Services event through The Action Group on Access to Justice on May 12, 2015.

The Treasurer reported on her meeting, together with Julian Falconer, and staff Marisha Roman and Grant Wedge, with Chief Ava Hill and the Justice Committee at the Six Nations of the Grand River as part of the Law Society Aboriginal outreach strategy.

The Treasurer noted the upcoming public events sponsored by the Equity Initiatives department and encouraged benchers to attend.

The Treasurer advised that the luncheon guests for today are:

- The Honourable Heather J. Forster Smith, Chief Justice of the Superior Court of Justice
- The Honourable Frank N. Marrocco, Associate Chief Justice of the Superior Court of Justice
- The Honourable Faith M. Finnestad, Associate Chief Justice of the Ontario Court of Justice

MOTION – CONSENT AGENDA

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

Carried

DRAFT MINUTES OF CONVOCATION – Tab 2.1

The draft minutes of Convocation of April 23 and May 19, 2015 were confirmed.

MOTION – Tab 2.2

Motion – Appointments

THAT Joseph Groia be appointed to the Compensation Fund Committee.

THAT Jeffrey Lem be appointed a Vice-Chair of the Professional Development and Competence Committee.

THAT the following be appointed to the Proceedings Authorization Committee:

Paul Schabas, Chair
Jacqueline Horvat
Brian Lawrie
Jeffrey Lem
Jonathan Rosenthal
Gerald Sheff

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE – Tab 2.3

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

Carried

AUDIT & FINANCE COMMITTEE REPORT – Tab 2.4

Re: Errors & Omissions Insurance Fund Banking Resolution

THAT Convocation approve a new banking resolution in respect of the bank account for the Law Society's Errors and Omissions Insurance Fund, approving Lisa Weinstein, Vice President, TitlePLUS as an additional signatory.

Carried

MOTION – APPOINTMENTS TO THE LAW SOCIETY TRIBUNAL

Mr. Anand presented the Report.

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that Convocation approve the appointments to the Law Society Tribunal as set out in the motion at Tab 3.4 of the Convocation Materials.

Carried

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Competence Enhancement – Law Student Experiential Learning

It was moved by Mr. Goldblatt, seconded by Ms. Haigh, that Convocation approve the amendment of relevant Law Society By-Laws to ensure they enable law student experiential learning, provided law students are adequately supervised, and that by-law amendments be provided for Convocation's consideration in June 2015.

Carried

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

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Request for Interventions

It was moved by Mr. Schabas, seconded by Ms. Donnelly, that Convocation approve the letters and public statements in the following cases:

a. Lawyer Intigam Aliyev – Azerbaijan – letters of intervention presented at Tab 5.1.1;
b. Lawyers Azza Soliman – Egypt– letters of intervention and public statement presented at Tab 5.1.2;
c. Lawyer Samiullah Afridi – Pakistan – letters of intervention and public statement presented at Tab 5.1.3.

Carried

Mr. Falconer and Ms. Leiper spoke to the Report of the Director, Equity on Equity Initiatives at the Law Society for information, the information report on the reappointment of Equity Advisory Group members and the Equity Legal Education and Rule of Law Series Calendar 2015.

*For Information*

- Report of the Director, Equity
- Reappointment of Equity Advisory Group Members
- Equity Legal Education and Rule of Law Series Calendar 2015

TRIBUNAL COMMITTEE REPORT

Mr. Anand presented the Report.

Re: Practice Direction – Tribunal Book of Authorities

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the Practice Direction respecting a Tribunal Book of Authorities, set out at Tab 6.1.1: Practice Direction - English and Tab 6.1.2 Practice Direction - French, to be effective September 4, 2015.

Carried

PARALEGAL STANDING COMMITTEE REPORT

Ms. Haigh presented the Report.

Re: William J. Simpson Award Selection Committee

It was moved by Ms. Haigh, seconded by Ms. McGrath, that the Selection Committee for the William J. Simpson Paralegal Award be expanded to include two additional members: one justice, or retired justice, of the Ontario Court of Justice and one Justice of the Peace or member of a judicial tribunal.

Carried

Ms. Haigh spoke to the information report on the update on competence initiatives.

*For Information*
- Update on Competence Initiatives
- Update on Law Society Referral Service

AUDIT AND FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: Law Society First Quarter Financial Statements

Mr. Bredt presented the report for information.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Professional Regulation Division Quarterly Report

Mr. Mercer spoke to the report for information.

DOORS OPEN 2015

The Treasurer paid tribute to Elise Brunet, the Law Society's curator, and her staff for their work in making Doors Open 2015 a great success.

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*IN CAMERA MATERIAL*

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IN PUBLIC

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*REPORTS FOR INFORMATION ONLY*

AUDIT & FINANCE COMMITTEE REPORT

- Law Society of Upper Canada Financial Statements for the three months ended March 31, 2015
- Investment Compliance Reports

PROFESSIONAL REGULATION COMMITTEE REPORT

- Professional Regulation Division Quarterly Report

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE

CONVOCATION ROSE AT 12:16 P.M.

# MATERIALS TO FOLLOW
# WHEN AVAILABLE

# MATERIALS TO FOLLOW
# WHEN AVAILABLE

# MATERIALS TO FOLLOW
# WHEN AVAILABLE

**Tab 1.3**

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

The Executive Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, June 25th, 2015

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 2015

# CANDIDATES FOR CALL TO THE BAR
## June 25th, 2015

### Transfer from another province (Mobility)

David Arthur Andrews
Jeremie Doron Beitel
Jennifer Lee Boyle
Hillary Robb Bullock
Andrea Camilletti
Benjamin Roy Heath
Gregory James Neal Jarvis
Jeffrey James Knowles
Veronica Rose Manski
Alanna Rebecca Mayne
Bradley W Tyler Vermeersch
Maxine Vincelette
Stephen Douglas Wortley

### L3

Carl Dholandas
Panagiotis Karavoulias
Jean-Pierre Hugh L'Olive
Simon Gérard Julien Pelletier

### Licensing Process

Thomas James Hamilton
Patrick David Hamm
Rachel Elizabeth Lenaghan

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

**TAB 2**

## Report to Convocation
## June 25, 2015

# Professional Development & Competence Committee

**Committee Members**
Howard Goldblatt (Chair)
Barbara Murchie (Vice-Chair)
Jeffrey Lem (Vice-Chair)
Raj Anand
Jack Braithwaite
Robert Burd
Ross Earnshaw
Vern Krishna
Michael Lerner
Marian Lippa
Virginia MacLean
Judith Potter
Gerald Swaye
Peter Wardle

**Purpose of Report: Decision**

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

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### Decision

## COMMITTEE PROCESS

1. The Committee met on June 11, 2015. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Raj Anand, Jack Braithwaite, Robert Burd, Ross Earnshaw, Michael Lerner, Marian Lippa, Virginia MacLean, Judith Potter and Gerry Swaye attended. The following additional members of the Access to Justice Committee also attended part of the meeting: Cathy Corsetti (Co-Chair), Paul Schabas (Co-Chair), Brian Lawrie, and Marion Boyd. The following additional members of the Paralegal Standing Committee also attended part of the meeting: Michelle Haigh (Chair). Benchers Fred Bickford, Dianne Corbiere, Teresa Donnelly, Sandra Nishikawa, Jonathan Rosenthal, Andrew Spurgeon, Joanne St. Lewis, Sid Troister, Jerry Udell and Anne Vespry also attended. Staff member Sophia Sperdakos also attended. Staff members Julia Bass and Marisha Roman attended part of the meeting.

**TAB 2.1**

**FOR DECISION**

# COMPETENCE ENHANCEMENT – LAW STUDENT EXPERIENTIAL LEARNING – BY-LAW AMENDMENTS

## Motion

2. **That Convocation approve amendments to By-Law 4 and By-law 7.1 in accordance with the bilingual motion set out at TAB 2.1.1: Motion to Amend By-laws 4 and 7.1.**

## Matter For Consideration

3. Law students have been engaged in experiential learning under the direct supervision of lawyer licensees across law schools in Ontario for many years. The nature of their learning has changed, as the types of programs offered have grown and diversified. Supervision by lawyers is a key feature of these programs.

4. Over the last few decades, experiential learning has been increasing in law school curricula, with programs placing greater emphasis on coherent learning approaches that include teaching best practices, providing exposure to real-life legal issues, ensuring academic rigour in the programs and appropriate student supervision and inculcating appreciation for access to justice issues, client and public interest and competent and ethical behaviour.

5. The learning takes place through a number of programs, including clinical placements, student legal aid services societies (SLASSes), Pro Bono Students Canada and Legal Aid Ontario law student programs/initiatives.

6. Recently, law schools became concerned that aspects of some of these programs and initiatives might not be compliant with or may be prohibited by current provisions in Law Society by-laws, in particular By-law 4 and By-law 7.1.

7. Convocation considered the policy issue in May 2015 and approved the following motion:

> **That Convocation approve the amendment of relevant Law Society By-laws to ensure they enable law student experiential learning, provided law students are adequately supervised.**
>
> **That by-law amendments be provided for Convocation's consideration in June 2015.**

8. By-law amendments have now been prepared and were considered at a joint meeting of the Professional Development & Competence Committee, the Paralegal Standing Committee and the Access to Justice Committee on June 11, 2015. The Committees recommend the by-law amendments set out in the motion to Convocation.

## Rationale

9. The Law Society's strategic plan for 2011-2015 includes, as one of the priority areas, the following:

> **Competency and Professional Standards:**
> The work plan includes "considering developments at the front end of legal education to enhance competence," and "focussing on competency in specific practice areas, including exploration of practice standards in those areas."

10. The importance of experiential learning for law students as an early means of developing competence is recognized and has become a priority for law schools, law societies and law firms that hire newly-called lawyers. Experiential learning has the ability to inculcate important skills and values that will assist in competent and ethical post-call behaviours. Those who hire newly-called lawyers have often identified the need for more of such training to be undertaken in law schools. To be effective, such learning must also be properly supervised with licensee accountability for student activities and supervision.

11. The proposed by-law amendments put into effect Convocation's May 2015 policy decision to ensure that By-laws 4 and 7.1 are amended where necessary to enable law student experiential learning, with adequate supervision.

## Key Issues and Considerations

12. In developing the by-law amendments, the following considerations consistent with Convocation's policy decision in May 2015 were applied:

    a. Experiential programs play a part in advancing the Law Society's strategic priority respecting "developments at the front end of legal education to enhance competence."

    b. With sufficient safeguards in place to ensure competent and supervised student representation of clients in appropriate matters, such initiatives may further the public interest. The programs in which the students are engaged in experiential learning assist in providing useful and accessible legal services to the public, within the limited context that guides the programs.

    c. Law student experiential learning can entail a number of activities, including but not limited to, shadowing lawyers and judges and other professionals doing work relevant to law, assisting lawyer licensees with preliminary drafting of documents and obtaining client information, under a lawyer's supervision and for matters in which the lawyer has carriage of the file, including in-court programs for unrepresented litigants, providing legal services without a licence within the provisions of By-law 4's current subsection 30(1), paragraphs 2, 3 and 4, and providing clinic assistance to clients under the supervision of clinic supervisory counsel who are lawyer licensees.

d. To the extent any court appearances and client assistance with document preparation are permitted within experiential learning, direct supervision of students, in keeping with the program's nature, is an essential component.

e. The issue addresses the development of lawyer competence at an early stage and in the context of law school education, under supervision of lawyer licensees and with a focus on experiential learning. The concept of supervised practice activities has been in place across law schools for many years, existed prior to the legislative changes to the *Law Society Act* in 2006, and is already addressed in large part in current By-law 7.1.

f. Convocation had already recognized the importance of law students having exposure to experiential learning at various stages of their legal education, including,

   i. when the *Law Society Act* was amended to include all aspects of the provision of legal services, continuing the ability of law students to do certain types of work in legal clinics, Pro Bono Students Canada and Student Legal Aid Services Societies within the provisions of Part V of By-law 4, "Providing Legal Services Without a Licence;"

   ii. allowing students in service under articles of clerkship or an LPP work placement to provide services under the supervision of a licensee;[1]

   iii. allowing law students to be employed by paralegal or lawyer licensees and provide legal services under certain specified provisions;[2] and

   iv. the By-law 7.1 provisions respecting supervision of assigned tasks and functions include a broad range of tasks that can be assigned to non-licensees, including law students, provided the licensee assumes responsibility for the matter and directly supervises any non-licensee to whom tasks are assigned.

**Proposed By-Law Amendments**

13. Proposed By-law 4 amendments now locate all the student-related provisions in one section of the By-law at sections 34.1 to 34.4. Aspects of By-law 7.1 have been amended to reference these sections within the supervision provisions. The balance of By-law 7.1 remains unchanged. A track changes version of By-laws 4 and 7.1 setting out the amendments is at **TAB 2.1.2: By-law 4 Track Changes** and **TAB 2.1.3: By-law 7.1 Track Changes**.

[1] Section 34(1) of current By-law 4.
[2] Sections 34(2), (3) and (4) of current By-law 4.

14. Section 34.3 of amended By-law 4, which focuses on experiential settings, specifies that the students provide the services under the direct supervision of a licensee who holds a Class L1 licence. Section 4 of By-law 7.1 applies to the supervision of students in accordance with section 2 of By-law 7.1.

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 25, 2015

MOVED BY

SECONDED BY

THAT the By-Laws made under subsection 62 (0.1) and (1) of the *Law Society Act* on May 1, 2007 and in force on June 24, 2015 be amended as follows:

**BY-LAW 4**
**[LICENSING]**

**1. Section 29 of the English version of By-Law 4 is revoked and the following substituted:**

**Interpretation**

29. In section 30,

"Canadian law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

"licensee firm" means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

**2. Section 29 of the French version of By-Law 4 is revoked and the following substituted:**

**Interprétation**

29. Aux fins de l'article 30 :

« étudiant canadien en droit » S'entend d'une personne inscrite à une faculté de droit canadienne agréée par le Barreau.

« cabinet de titulaires de permis » S'entend d'une société de personnes ou d'un autre type d'association de titulaires de permis, d'une société de personnes ou d'une autre association visée à la partie III du Règlement administratif n$^{o}$ 7 [Entreprises] ou d'une société professionnelle.

**3. Section 30 of the English version of By-Law 4 is revoked and the following substituted:**

**Providing Class P1 legal services without a licence**

30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

**In-house legal services provider**

1. An individual who,

   i. is employed by a single employer that is not a licensee or a licensee firm,

   ii. provides the legal services only for and on behalf of the employer, and

   iii. does not provide any legal services to any person other than the employer.

**Legal clinics**

2. An individual, other than a Canadian law student, who,

   i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998,* that is funded by Legal Aid Ontario,

   ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

   iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

**Not-for-profit organizations**

3. An individual who,

   i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,

ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and

iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

**Acting for friend or neighbour**

4. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only for and on behalf of a friend or a neighbour,

iii. who provides the legal services in respect of not more than three matters per year, and

iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

**Acting for family**

5. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and

iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

**Member of Provincial Parliament**

6. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who is a member of Provincial Parliament or his or her designated staff, and

iii. who provides the legal services for and on behalf of a constituent of the member.

**Other profession or occupation**

7. An individual,

i. whose profession or occupation is not the provision of legal services or the practice of law,

ii. who provides the legal services only occasionally,

iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and

iv. who is a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category.

**4. Section 30 of the French version of By-Law 4 is revoked and the following substituted:**

**Fournir des services juridiques de catégorie P1 sans permis**

30. Les personnes suivantes peuvent, sans permis, fournir en Ontario des services juridiques identiques à ceux que les titulaires d'un permis de catégorie P1 sont autorisés à fournir :

**Fournisseurs de services juridiques internes**

1. Toute personne qui :

i. est au service d'un seul employeur, lequel n'est pas un titulaire d'un permis ni un cabinet de titulaires de permis;

ii. fournit des services juridiques uniquement pour l'employeur ou au nom de celui-ci;

iii. ne fournit des services juridiques à nul autre que son employeur.

**Cliniques d'aide juridique**

2. Toute personne, à part un étudiant canadien en droit ou une étudiante canadienne en droit, qui :

i. travaille pour une clinique, au sens de la *Loi de 1998 sur les services d'aide juridique*, qui est financée par Aide juridique Ontario;

ii. fournit, par l'intermédiaire de la clinique, des services juridiques à la collectivité que sert la clinique, mais ne fournit pas d'autres services juridiques;

iii. est protégée par une assurance responsabilité civile professionnelle pour la prestation de services juridiques en Ontario, assurance dont la protection et les limites sont comparables à celles de l'assurance responsabilité civile professionnelle exigée des titulaires d'un permis de catégorie L1.

**Organismes sans but lucratif**

3. Toute personne qui répond aux critères suivants :

i. Elle est au service d'un organisme sans but lucratif qui a été mis sur pied pour fournir des services juridiques et est financé par le gouvernement ontarien, le gouvernement canadien ou une administration municipale de l'Ontario.

ii. Elle fournit, par l'intermédiaire de l'organisme, des services juridiques à la collectivité que sert l'organisme, mais ne fournit pas d'autres services juridiques.

iii. Elle est protégée par une assurance responsabilité civile professionnelle pour la prestation de services juridiques en Ontario, assurance dont la protection et les limites sont comparables à celles de l'assurance responsabilité civile professionnelle exigée des titulaires d'un permis de catégorie L1.

**Services offerts à des amis ou à des voisins**

4. Toute personne qui répond aux critères suivants :

i. Sa profession ou son occupation ne consiste pas à fournir des services juridiques ou à exercer le droit et ne comporte pas la prestation de services juridiques ou l'exercice du droit.

ii. Elle fournit des services juridiques uniquement pour et au nom d'un ami ou d'une amie ou d'un voisin ou d'une voisine.

iii. Elle ne fournit les services juridiques qu'à l'égard d'au plus trois affaires par an.

iv. Elle ne reçoit ni n'attend aucune rétribution directe ou indirecte — honoraires, gain ou récompense — pour la prestation des services juridiques.

**Services offerts à des membres de la famille**

5. Toute personne qui répond aux critères suivants :

i. Sa profession ou son occupation ne consiste pas à fournir des services juridiques ou à exercer le droit et ne comporte pas la prestation de services juridiques ou l'exercice du droit.

ii. Elle fournit des services juridiques uniquement pour et au nom d'une personne liée, au sens de la *Loi de l'impôt sur le revenu* (Canada).

iii. Elle ne reçoit ni n'attend aucune rétribution directe ou indirecte — honoraires, gain ou récompense — pour la prestation des services juridiques.

**Députés provinciaux**

6. Toute personne qui répond aux critères suivants :

i. Sa profession ou son occupation ne consiste pas à fournir des services juridiques ou à exercer le droit et ne comporte pas la prestation de services juridiques ou l'exercice du droit.

ii. Elle est députée provinciale ou député provincial ou un membre désigné de son personnel.

iii. Elle fournit des services juridiques pour et au nom d'un mandant du député ou de la députée.

**Autre profession ou emploi**

7. Toute personne :

i. dont la profession ou l'emploi ne consiste pas à fournir des services juridiques ni à exercer le droit;

ii. qui fournit des services juridiques à l'occasion seulement;

iii. qui fournit des services juridiques à titre d'auxiliaire dans le cadre de sa profession ou de son emploi;

iv. qui est membre de la Human Resources Professionals Association of Ontario, dans la catégorie des professionnels en ressources humaines agréés.

**5. Section 33 of By-Law 4 is revoked.**

**6. Sections 34 and 34.1 of the English version of By-Law 4 are revoked and the following substituted:**

**Interpretation**

34. In this section and in sections 34.1 to 34.4,

"accredited program" means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

"Canadian law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

"law firm" means,

(a) a partnership or other association of licensees each of whom holds a Class L1 licence,

(b) a professional corporation described in clause 61.0.1 (a) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;

"legal services firm" means,

(a) a partnership or other association of licensees each of whom holds a Class P1 licence,

(b) a professional corporation described in clause 61.0.1 (b) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence;

"Ontario law student" means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society.

**Provision of legal services by student**

34.1 A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society while,

(a) in service under articles of clerkship; or

(b) completing a work placement in the law practice program.

**Provision of legal services by Canadian law student**

34.2 (1) A Canadian law student may, without a licence, provide legal services in Ontario if the Canadian law student,

(a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the Canadian law student is employed by a licensee, through the licensee's professional business,

(ii) where the Canadian law student is employed by a law firm, through the law firm,

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or

(iv) where the Canadian law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the Canadian law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the Canadian law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or

(iv) where the Canadian law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

**Same**

(2) A Canadian law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the Canadian law student,

(a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;

(b) provides the legal services,

(i) where the Canadian law student is employed by a licensee, through the licensee's professional business,

(ii) where the Canadian law student is employed by a legal services firm, through the legal services firm, or

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and

(c) provides the legal services,

(i) where the Canadian law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the Canadian law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.

**Provision of legal services by Ontario law student: experiential settings**

**Student legal aid services societies**

34.3 (1) An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

(a) volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the Legal Aid Services Act, 1998;

(b) provides the legal services through the student legal aid services society to the community that the society serves and does not otherwise provide legal services; and

(c) provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.

**Legal clinics**

(2) An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

(a) volunteers in, is employed by or is completing a clinical education course at a clinic, within the meaning of the Legal Aid Services Act, 1998, that is funded by Legal Aid Ontario;

(b) provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services; and

(c) provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the clinic.

**Student pro bono programs**

(3) An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

(a) provides the legal services through a program established by Pro Bono Students Canada; and

(b) provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.

**Provision of legal services by paralegal student completing a field placement**

34.4 A student enrolled in an accredited program and completing a field placement approved by the educational institution offering the program may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the student,

(a) is completing the field placement with a licensee who holds a Class P1 licence or a Class L1 licence, a legal services firm, a law firm, a professional corporation described in clause 61.0.1 (1) (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the student is employed by a licensee, through the licensee's professional business,

(ii) where the student is employed by a legal services firm or a law firm, through the legal services firm or the law firm,

(iii) where the student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation, or

(iv) where the student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the field placement is with a licensee, under the direct supervision of the licensee,

(ii) where the field placement is with a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm,

(iii) where the field placement is with a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iv) where the field placement is with a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or

(v) where the field placement is with the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the

direct supervision of a licensee who holds a Class L1 licence or a Class P1 licence and who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

**7. Sections 34 and 34.1 of the French version of By-Law 4 are revoked and the following substituted:**

**Interprétation**

34. Aux fins du présent article et des articles 34.1 à 34.4 :

« programme agréé » S'entend d'un programme de services juridiques en Ontario approuvé par le ministre de la Formation et des Collèges et Universités et agréé par le Barreau.

« étudiant canadien en droit » S'entend d'une personne inscrite à une faculté de droit canadienne agréée par le Barreau.

« cabinet d'avocats » S'entend :

a) d'une société de personnes ou d'un autre type d'association de titulaires de permis qui possèdent chacun ou chacune un permis de catégorie L1;

b) d'une société professionnelle visée à l'alinéa 61.0.1 *a*) de la *Loi*;

c) d'un cabinet multidisciplinaire ou d'une société de personnes visés à l'article 17 du Règlement administratif n$^{o}$ 7 [Entreprises] où le titulaire de permis visé à cet article est titulaire d'un permis de catégorie L1.

« cabinet de services juridiques » S'entend :

a) d'une société de personnes ou d'un autre type d'association de titulaires de permis qui possèdent chacun ou chacune un permis de catégorie P1;

b) d'une société professionnelle visée à l'alinéa 61.0.1 *b*) de la *Loi*;

c) d'un cabinet multidisciplinaire ou d'une société de personnes visés à l'article 17 du Règlement administratif n$^{o}$ 7 [Entreprises] où le titulaire de permis visé à cet article est titulaire d'un permis de catégorie P1.

« étudiant en droit en Ontario » S'entend d'une personne inscrite à une faculté de droit en Ontario agréée par le Barreau.

**Prestation de services juridiques par un stagiaire**

34.1 Sans permis, un étudiant ou une étudiante peut fournir des services juridiques en Ontario sous la surveillance immédiate d'un ou d'une titulaire de permis de catégorie L1 agréé(e) par le Barreau s'il ou elle se trouve dans l'une ou l'autre des situations suivantes :

a) l'étudiant ou l'étudiante est en service en vertu de la convention de stage;

b) l'étudiant ou l'étudiante est en période de placement professionnel dans le cadre du programme de pratique du droit.

**Prestation de services juridiques par d'autres étudiants canadiens en droit**

34.2 (1) Sans permis, une étudiante ou un étudiant canadien en droit peut fournir des services juridiques en Ontario s'il ou elle :

a) est engagé par un ou une titulaire de permis de catégorie L1, un cabinet d'avocats, une société professionnelle visée à l'alinéa 61.0.1 *c*) de la *Loi*, le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale de l'Ontario;

b) fournit des services juridiques :

(i) lorsqu'il ou elle est engagé par un ou une titulaire de permis, par l'intermédiaire de l'entreprise du ou de la titulaire de permis,

(ii) lorsqu'il ou elle est engagé par un cabinet d'avocats, par l'intermédiaire du cabinet,

(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 *c*) de la *Loi*, par l'intermédiaire de la société professionnelle;,

(iv) lorsqu'il ou elle est engagé par le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, et ce, seulement pour et au nom du gouvernement du Canada, du gouvernement de l'Ontario ou d'une administration municipale en Ontario, respectivement;

c) fournit des services juridiques :

(i) lorsqu'il ou elle est engagé par un ou une titulaire de permis, sous la surveillance directe de celui-ci ou de celle-ci,

(ii) lorsqu'il ou elle est engagé par un cabinet d'avocats, sous la surveillance directe d'un ou d'une titulaire de permis de catégorie L1 qui fait partie du cabinet,

(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 (1) *c*) de la *Loi*, sous la surveillance directe d'un ou d'une titulaire de permis de catégorie L1 qui exerce le droit en qualité d'avocat ou d'avocate par l'intermédiaire de la société professionnelle,

(iv) lorsqu'il ou elle est engagé par le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, sous la surveillance directe d'un ou d'une titulaire de permis de catégorie L1 qui travaille pour le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, respectivement.

**Idem**

(2) Une étudiante canadienne en droit ou un étudiant canadien en droit peut, sans permis, fournir les mêmes services juridiques en Ontario que les titulaires de permis de catégorie P1 sont autorisés à fournir s'il ou elle :

a) est engagé par un titulaire de permis de catégorie P1, un cabinet de services juridiques ou une société professionnelle visée à l'alinéa 61.0.1 (1) *c*) de la *Loi*;

b) fournit des services juridiques :

(i) lorsqu'il ou elle est engagé par un ou une titulaire de permis, par l'intermédiaire de l'entreprise du titulaire de permis,

(ii) lorsqu'il ou elle est engagé par un cabinet de services juridiques, par l'intermédiaire du cabinet,

(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 *c*) de la *Loi*, par l'intermédiaire de la société professionnelle;

c) fournit des services juridiques :

(i) lorsqu'il ou elle est engagé par un ou une titulaire de permis, sous la surveillance directe de celui-ci ou de celle-ci,

(ii) lorsqu'il ou elle est engagé par un cabinet de services juridiques, sous la surveillance directe d'un ou d'une titulaire de permis de catégorie P1 qui fait partie du cabinet,

(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 (1) *c*) de la *Loi*, sous la surveillance directe :

(A) d'un ou d'une titulaire de permis de catégorie P1 qui fournit des services juridiques par l'intermédiaire d'une société professionnelle,

(B) d'un ou d'une titulaire de permis de catégorie L1 qui exerce le droit en qualité d'avocat ou d'avocate par l'intermédiaire d'une société professionnelle.

**Prestation de services juridiques par un étudiant en droit en Ontario : cadre expérientiel**

**Sociétés étudiantes de services d'aide juridique**

34.3 (1) Un étudiant ou une étudiante en droit en Ontario peut, sans permis, fournir en Ontario des services juridiques s'il ou elle :

a) fait du bénévolat auprès d'une société étudiante de services d'aide juridique ou encore est employé par une telle société ou y fait un stage de formation clinique, au sens de la *Loi de 1998 sur les services d'aide juridique*;

b) fournit, par l'intermédiaire de la clinique, des services juridiques à la collectivité que sert la clinique, mais ne fournit pas d'autres services juridiques;

c) fournit des services juridiques sous la surveillance immédiate d'un ou d'une titulaire de permis de catégorie L1 qui travaille pour la société étudiante de services d'aide juridique.

**Cliniques d'aide juridique**

(2) Un étudiant ou une étudiante en droit en Ontario peut, sans permis, fournir en Ontario des services juridiques s'il ou elle :

a) fait du bénévolat auprès d'une clinique d'aide juridique financée par Aide juridique Ontario ou encore est employé par une telle clinique ou y fait un stage de formation clinique, au sens de la *Loi de 1998 sur les services d'aide juridique*;

b) fournit, par l'intermédiaire de la clinique, des services juridiques à la collectivité que sert la clinique, mais ne fournit pas d'autres services juridiques;

c) fournit des services juridiques sous la surveillance directe d'un ou d'une titulaire de permis de catégorie L1 qui travaille pour la clinique.

**Étudiants et étudiantes de programmes *pro bono***

(3) Un étudiant ou une étudiante en droit en Ontario peut, sans permis, fournir en Ontario des services juridiques s'il ou elle :

a) fournit des services juridiques par l'intermédiaire de programmes créés par le Réseau national d'étudiant(e)s pro bono;

b) fournit des services juridiques sous la surveillance immédiate d'un ou d'une titulaire de permis de catégorie L1.

**Prestation de services juridiques par un étudiant parajuriste en stage pratique**

34.4 Sans permis, une étudiante ou un étudiant inscrit dans un programme agréé et effectuant un stage pratique approuvé par l'établissement d'enseignement qui offre le programme peut fournir les services juridiques en Ontario que les titulaires de permis de catégorie P1 sont autorisés à fournir s'il ou elle :

a) effectue le stage pratique auprès d'un ou d'une titulaire de permis de catégorie P1 ou L1, d'un cabinet de services juridiques, d'un cabinet d'avocats, d'une société professionnelle visée à l'alinéa 61.0.1 (1) *c*) de la *Loi*, du gouvernement du Canada, du gouvernement de l'Ontario ou d'une administration municipale en Ontario;

b) fournit des services juridiques :

(i) lorsqu'il ou elle est engagé par un ou une titulaire de permis, par l'intermédiaire de l'entreprise du ou de la titulaire de permis,

(ii) lorsqu'il ou elle est engagé par un cabinet de services juridiques ou par un cabinet d'avocats, par l'intermédiaire du cabinet,

(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 (1) *c*) de la *Loi*, par l'intermédiaire de la société professionnelle,

(iv) lorsqu'il ou elle est engagé par le gouvernement du Canada, le gouvernement de l'Ontario ou par une administration municipale en Ontario, seulement pour et au nom du gouvernement du Canada, du gouvernement de l'Ontario ou d'une administration municipale en Ontario, respectivement;

c) fournit des services juridiques :

(i) lorsqu'il ou elle effectue le stage auprès d'un ou d'une titulaire de permis, sous la surveillance directe de celui-ci ou de celle-ci,

(ii) lorsqu'il ou elle effectue le stage auprès d'un cabinet de services juridiques, sous la surveillance directe d'un ou d'une titulaire de permis qui détient un permis de catégorie P1 et qui fait partie du cabinet,

(iii) lorsqu'il ou elle effectue le stage auprès d'un cabinet d'avocats, sous la surveillance directe d'un ou d'une titulaire de permis qui détient un permis de catégorie L1 et qui fait partie du cabinet,

(iv) lorsqu'il ou elle effectue le stage auprès d'une société professionnelle visée à l'alinéa 61.0.1 (1) *c*) de la *Loi*, sous la surveillance directe :

(A) soit d'un ou d'une titulaire de permis de catégorie P1 qui fournit des services juridiques par l'intermédiaire d'une société professionnelle,

(B) soit d'un ou d'une titulaire de permis de catégorie L1 qui exerce le droit en qualité d'avocat ou d'avocate par l'intermédiaire d'une société professionnelle;

(v) lorsqu'il ou elle effectue le stage auprès du gouvernement du Canada, du gouvernement de l'Ontario ou d'une administration municipale en Ontario, sous la surveillance directe d'un ou d'une titulaire de permis de catégorie L1 ou P1 et qui travaille pour le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, respectivement.

## BY-LAW 7.1
## [OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

**8. The definition of "law firm" in subsection 1 (1) of the English version of By-Law 7.1 is revoked and the following substituted:**

"law firm means,

(a) a partnership or other association of licensees each of whom holds a Class L1 licence,

(b) a professional corporation described in clause 61.0.1 (a) or (c) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;

**9. The definition of "cabinet d'avocats" in subsection 1 (1) of the French version of By-Law 7.1 is revoked and the following substituted:**

« cabinet d'avocats » S'entend :

a) d'une société de personnes ou d'un autre type d'association de titulaires de permis, dans laquelle chaque titulaire de permis détient un permis de catégorie L1;

b) d'une société professionnelle visée à l'alinéa 61.0.1 *a*) ou *c*) de la *Loi*;

c) d'un cabinet multidisciplinaire ou une société de personnes correspondant à la description à l'article 17 du Règlement administratif n$^{o}$ 7 [Entreprises] et où chaque titulaire de permis détient un permis de catégorie L1.

**10. Subsection 2 (1) of the English version of By-Law 7.1 is amended by,**

**(a) adding "direct" before "supervision"; and**

**(b) deleting "subsection 34 (1)" and substituting "section 34.1".**

**11. Subsection 2 (1) of the French version of By-Law 7.1 is amended by,**

**(a) adding "directe" after "surveillance"; and**

**(b) deleting "au paragraphe 34 (1)" and substituting "à l'article 34.1".**

**12. Subsection 2 (2) of the English version of By-Law 7.1 is amended by deleting paragraphs 1 to 3 and substituting the following:**

1. The provision of legal services by an Ontario law student under the direct supervision of a licensee pursuant to section 34.3 of By-Law 4.

2. The provision of legal services by a Canadian law student under the direct supervision of a licensee pursuant to section 34.2 of By-Law 4.

**13. Subsection 2 (2) of the French version of By-Law 7.1 is amended by deleting paragraphs 1 to 3 and substituting the following:**

1. La prestation de services juridiques par un étudiant ou une étudiante en droit en Ontario sous la surveillance directe d'un ou d'une titulaire de permis conformément à l'article 34.3 du Règlement administratif n$^{o}$ 4.

2. La prestation de services juridiques par une étudiante canadienne en droit ou un étudiant canadien en droit sous la surveillance directe d'un ou d'une titulaire de permis conformément à l'article 34.2 du Règlement administratif n$^{o}$ 4.

**14. Subsection 2 (3) of the English version of By-Law 7.1 is amended by deleting paragraphs 1 and 2 and substituting the following:**

1. Section 1 does not apply.

2. "Non-licensee" means an individual who, in the case of the provision of legal services under the direct supervision of a licensee pursuant to section 34.2 of By-Law 4, is a Canadian law student and, in the case of the provision of legal services under the direct supervision of a licensee pursuant to section 34.3 of By-Law 4, is an Ontario law student.

3. "Canadian law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society.

4. "Ontario law student" means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society.

5. Subsection 3 (2) does not apply.

6. Clause 4 (2) (h) does not apply.

7. Section 5.1 does not apply.

8. The licensee shall give the non-licensee express instruction and authorization prior to permitting the non-licensee to act on behalf of a person in a proceeding before an adjudicative body.

**15. Subsection 2 (3) of the French version of By-Law 7.1 is amended by deleting paragraphs 1 and 2 and substituting the following:**

1. L'article 1 ne s'applique pas.

2. « non-titulaire de permis » S'entend d'un particulier qui, dans le cas de la prestation de services juridiques sous la surveillance directe d'un titulaire de permis conformément à l'article 34.2 du Règlement administratif n$^{o}$ 4, est un étudiant canadien en droit et, dans le cas de la prestation de services juridiques sous la surveillance directe d'un titulaire de

permis conformément à l'article 34.3 du Règlement administratif n$^{o}$ 4, est un étudiant en droit en Ontario.

3. « étudiant canadien en droit » S'entend d'une personne inscrite à une faculté de droit canadienne agréée par le Barreau.

4. « étudiant en droit en Ontario » S'entend d'une personne inscrite à une faculté de droit en Ontario agréée par le Barreau.

5. Le paragraphe 3 (2) ne s'applique pas.

6. L'alinéa 4 (2) *h*) ne s'applique pas.

7. L'article 5.1 ne s'applique pas.

8. Le titulaire de permis donne des autorisations et des instructions expresses au non-titulaire de permis avant de lui permettre d'agir au nom d'un particulier dans une instance dont est saisi un organisme juridictionnel.

# BY-LAW 4

# LICENSING

. . . .

## PART V

## PROVIDING LEGAL SERVICES WITHOUT A LICENCE

### Interpretation

29. In ~~this Part~~section 30,

~~"accredited law school" means a law school in Ontario that is accredited by the Society;~~

~~"accredited program" means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;~~

~~"law firm" means,~~

~~(a) a partnership or other association of licensees each of whom holds a Class L1 licence,~~

~~(b) a professional corporation described in clause 61.0.1 (a) of the Act, or~~

~~(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;~~

~~"legal services firm" means,~~

~~(a) a partnership or other association of licensees each of whom holds a Class P1 licence,~~

~~(b) a professional corporation described in clause 61.0.1 (b) of the Act, or~~

~~(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence;~~

"Canadian law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

"licensee firm" means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

**Providing Class P1 legal services without a licence**

30. ~~(1) Subject to subsection (2), t~~The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

**In-house legal services provider**

1. An individual who,

   i. is employed by a single employer that is not a licensee or a licensee firm,

   ii. provides the legal services only for and on behalf of the employer, and

   iii. does not provide any legal services to any person other than the employer.

**Legal clinics**

2. An individual, other than a Canadian law student, who,

   i. ~~is any one of the following:~~

   ~~A. An individual who is enrolled in a degree program at an accredited law school and volunteers in or is completing a clinical education course at a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,~~

   ~~B. An individual who~~ is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,

   ~~C. An individual who is enrolled in an accredited program and is completing a field placement approved by the educational institution offering the program at a clinic, within the meaning of the Legal Aid Services Act, 1998, that is funded by Legal Aid Ontario,~~

   ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

   iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to

professional liability insurance that is required of a licensee who holds a Class L1 licence.

~~**Student legal aid services societies**~~

~~3. An individual who,~~

~~i. is enrolled in a degree program at an accredited law school,~~

~~ii. volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*,~~

~~iii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and~~

~~iv. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.~~

~~**Student *pro bono* programs**~~

~~3.1 An individual who,~~

~~i. is enrolled in a degree program at an accredited law school,~~

~~ii. provides the legal services through programs established by Pro Bono Students Canada, and~~

~~iii. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.~~

**Not-for-profit organizations**

~~4~~3. An individual who,

i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,

ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and

iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to

professional liability insurance that is required of a licensee who holds a Class L1 licence.

**Acting for friend or neighbour**

~~5~~4. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only for and on behalf of a friend or a neighbour,

iii. who provides the legal services in respect of not more than three matters per year, and

iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

**Acting for family**

5.~~1.~~ An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and

iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

**Member of Provincial Parliament**

6. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who is a member of Provincial Parliament or his or her designated staff, and

iii. who provides the legal services for and on behalf of a constituent of the member.

**Other profession or occupation**

7. An individual,

i. whose profession or occupation is not the provision of legal services or the practice of law,

ii. who provides the legal services only occasionally,

iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and

iv. who is a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category.

~~**Individuals intending to apply or who have applied for a Class P1 licence**~~[ES1]

~~8. An individual,~~

~~i. whose profession or occupation, prior to May 1, 2007, was or included the provision of such legal services,~~

~~ii. who will apply, or has applied, by not later than October 31, 2007, to the Society for a Class P1 licence,~~

~~iii. who has professional liability insurance for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a holder of a Class L1 licence, and~~

~~iv. who complies with the Society's rules of professional conduct for licensees who hold a Class P1 licence.~~

~~**Time limit on providing Class P1 legal services without a licence**~~[ES2]

~~(2) The individual mentioned in paragraph 8 of subsection (1) may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide only until,~~

~~(a) if the individual is granted a licence prior to May 1, 2008, the day the individual is granted a licence; or~~

~~(b) if the individual is not granted a licence prior to May 1, 2008, the later of,~~

~~(i) April 30, 2008,~~

~~(ii) the day the individual is granted a licence, and~~

~~(iii) the effective date of the final decision and order, with respect to the individual's application for a Class P1 licence,~~

~~(A) of the Hearing Division, or~~

~~(B) of the Appeal Division, if there is an appeal from the decision and order of the Hearing Division.~~

**Interpretation**

31. (1) In this section,

"employer" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

"injured workers' group" means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

"public servant" has the meaning given it in the *Public Service of Ontario Act, 2006*;

"survivor" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

"worker" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

**Office of the Worker Adviser**

(2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:

1. Advise a worker, who is not a member of a trade union, or the worker's survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.

2. Act on behalf of a worker, who is not a member of a trade union, or the worker's survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

**Office of the Employer Adviser**

(3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:

1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.

2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

**Injured workers' groups**

(4) An individual who volunteers in an injured workers' group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.

2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

**Interpretation**

32. (1) In this section,

"dependants" means each of the following persons who were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member's death or who, but for the member's incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.

2. Sibling or half-sibling.

3. Grandparent.

4. Grandchild;

"survivor" means a spouse, child or dependant of a deceased member of a trade union;

"workplace" means,

(a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and

(b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

**Trade unions**

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.

2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.

3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.

~~**Review**~~[ES3]

~~33. Not later than May 1, 2009, the Society shall assess the extent to which permitting the individuals mentioned in sections 30, 31 and 32 to provide legal services without a licence is consistent with the function of the Society set out in section 4.1 of the Act and the principles set out in section 4.2 of the Act and determine whether the sections, in whole or in part, should be maintained or revoked.~~

**Interpretation**

34. In this section and in sections 34.1 to 34.4,

"accredited program" means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

"Canadian law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

"law firm" means,

(a) a partnership or other association of licensees each of whom holds a Class L1 licence,

(b) a professional corporation described in clause 61.0.1 (a) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;

"legal services firm" means,

(a) a partnership or other association of licensees each of whom holds a Class P1 licence,

(b) a professional corporation described in clause 61.0.1 (b) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence;

"Ontario law student" means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society.

**Provision of legal services by student**

34.134. ~~(1)~~ A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society while,

(a) in service under articles of clerkship; or

(b) completing a work placement in the law practice program.

**Provision of legal services by Canadian~~Other~~ law student**

34.2 (1~~2~~) A Canadian law student may, without a licence, provide legal services in Ontario if the Canadian law student,

(a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the Canadian law student is employed by a licensee, through the licensee's professional business,

(ii) where the Canadian law student is employed by a law firm, through the law firm,

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or

(iv) where the Canadian law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the Canadian law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the Canadian law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or

(iv) where the Canadian law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

**Same**

(~~3~~2) A Canadian law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the Canadian law student,

(a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;

(b) provides the legal services,

(i) where the Canadian law student is employed by a licensee, through the licensee's professional business,

(ii) where the Canadian law student is employed by a legal services firm, through the legal services firm, or

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and

(c) provides the legal services,

(i) where the Canadian law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the Canadian law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or

(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.

~~**Interpretation: "law student"**~~

~~(4) For the purposes of subsections (2) and (3), "law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society.~~

**Provision of legal services by Ontario law student: experiential settings**

**Student legal aid services societies**

34.3 (1) An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

(a) volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*;

(b) provides the legal services through the student legal aid services society to the community that the society serves and does not otherwise provide legal services; and

(c) provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.

**Legal clinics**

(2) An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

(a) volunteers in, is employed by or is completing a clinical education course at a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario;

(b) provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services; and

(c) provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the clinic.

**Student *pro bono* programs**

(3) An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

(a) provides the legal services through a program established by Pro Bono Students Canada; and

(b) provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.

**Provision of legal services by p~~P~~aralegal student completing a field placement**

34.~~1~~4 A student enrolled in an accredited program and completing a field placement approved by the educational institution offering the program may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the student,

(a) is completing the field placement with a licensee who holds a Class P1 licence or a Class L1 licence, a legal services firm, a law firm, a professional corporation described in clause 61.0.1 (1) (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the student is employed by a licensee, through the licensee's professional business,

(ii) where the student is employed by a legal services firm or a law firm, through the legal services firm or the law firm,

(iii) where the student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation, or

(iv) where the student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for

and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the field placement is with a licensee, under the direct supervision of the licensee,

(ii) where the field placement is with a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm,

(iii) where the field placement is with a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iv) where the field placement is with a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or

(v) where the field placement is with the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence or a Class P1 licence and who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

# BY-LAW 7.1

## OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

## PART I

## SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

### Interpretation

1. (1) In this Part,

"non-licensee" means an individual who,

(a) in the case of the assignment of tasks and functions by a person licensed to practise law in Ontario as a barrister and solicitor, is not a person licensed to practise law in Ontario as a barrister and solicitor and, in the case of the assignment of tasks and functions by a person licensed to provide legal services in Ontario, is not a licensee,

(b) is engaged by a licensee to provide her or his services to the licensee, and

(c) expressly agrees with the licensee that the licensee shall have effective control over the individual's provision of services to the licensee;

"catastrophic impairment" means a catastrophic impairment within the meaning of the *Statutory Accident Benefits Schedule*;

"claim" means a claim for statutory accident benefits within the meaning of the *Insurance Act*;

"impairment" means an impairment within the meaning of the *Statutory Accident Benefits Schedule*;

"law firm" means,

(a) a partnership or other association of licensees each of whom holds a Class L1 licence,

(b) a professional corporation described in clause 61.0.1 (a) or (c) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence; ~~a law firm within the meaning of section 29 of By-Law 4~~

~~[Licensing], except the reference to clause 61.0.1 (a) in that definition shall be read as a reference to clauses 61.0.1 (a) and (c);~~

"*Statutory Accident Benefits Schedule*" means the *Statutory Accident Benefits Schedule* within the meaning of the *Insurance Act.*

**Interpretation: "effective control"**

(2) For the purposes of subsection (1), a licensee has effective control over an individual's provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society's rules of professional conduct and the Society's policies and guidelines.

**Application: provision of legal services by student**

2. (1) This Part does not apply to the provision of legal services by a student under the direct supervision of a licensee pursuant to ~~sub~~section 34.1 ~~(1)~~ of By-Law 4.

**Application: provision of legal services under direct supervision of licensee pursuant to By-Law 4**

(2) This Part applies to the following, subject to the modifications set out in subsection (3) and any other necessary modifications:

1. The provision of legal services by ~~an individual under the direct supervision of a licensee pursuant to paragraph 3 of subsection 30 (1) of By-Law 4.~~

~~2. The provision of legal services by an individual under the direct supervision of a licensee pursuant to paragraph 3.1 of subsection 30 (1) of By-Law 4~~an Ontario law student under the direct supervision of a licensee pursuant to section 34.3 of By-Law 4.

~~3~~2. The provision of legal services by a Canadian law student under the direct supervision of a licensee pursuant to ~~sub~~section 34.2 ~~(2) or (3)~~ of By-Law 4.

**Same**

(3) The following modifications of this Part apply with respect to the direct supervision by a licensee of the provision of legal services by a non-licensee mentioned in subsection (2):

1. Section 1 does not apply.

2. "Non-licensee" means an individual who, in the case of the provision of legal services under the direct supervision of a licensee pursuant to section 34.2 of By-

Law 4, is a Canadian law student and, in the case of the provision of legal services under the direct supervision of a licensee pursuant to section 34.3 of By-Law 4, is an Ontario law student.

3. "Canadian law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society.

4. "Ontario law student" means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society.

5. Subsection 3 (2) does not apply.

6. Clause 4 (2) (h) does not apply.

7. Section 5.1 does not apply.

~~2~~8. The licensee shall give the non-licensee express instruction and authorization prior to permitting the non-licensee to act on behalf of a person in a proceeding before an adjudicative body.

**Assignment of tasks, functions: general**

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client.

**Assignment of tasks, functions: affiliation**

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

**Assignment of tasks, function: direct supervision required**

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of each client.

(2) Without limiting the generality of subsection (1),

(a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;

(b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;

(c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;

(d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;

(e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;

(f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;

(g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and

(h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

**Assignment of tasks, functions: prior express instruction and authorization required**

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,

(a) to give or accept an undertaking on behalf of the licensee;

(b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or

(c) to take instructions from the licensee's client.

**Assignment of tasks, functions: prior consent and approval**

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

**Assignment of tasks, functions: mediation of ancillary issues relating to catastrophic impairment claims**

5.1 (1) Despite clause 6 (1) (c), a licensee who holds a Class L1 licence may permit a non-licensee who holds a Class P1 licence to participate in mediation of ancillary issues relating to a claim of an individual who has or appears to have a catastrophic impairment, but only if the non-licensee is employed by the licensee or by the law firm of which the licensee is a member.

(2) For the purposes of subsection (1), ancillary issues do not include issues relating to the determination of whether an impairment is a catastrophic impairment.

**Tasks and functions that may not be assigned: general**

6. (1) A licensee shall not permit a non-licensee,

(a) to give the licensee's client legal advice;

(b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;

(c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);

(d) to sign correspondence, other than correspondence of a routine administrative nature; or

(e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee.

**Tasks and functions that may not be assigned by Class L1 licensee**

(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

**Collection letters**

7. A licensee shall not permit a collection letter to be sent to any person unless,

(a) the letter is in relation to the affairs of the licensee's client;

(b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;

(c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;

(d) the letter is on the licensee's business letterhead; and

(e) the letter is signed by the licensee.

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

**TAB 3**

# Report to Convocation
# June 25, 2015

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## Professional Regulation Committee

**Committee Members**
Malcolm Mercer (Chair)
Susan Richer (Vice-Chair)
Paul Schabas (Vice-Chair)
Robert Armstrong
John Callaghan
Cathy Corsetti
Seymour Epstein
Robert Evans
Julian Falconer
Patrick Furlong
Carol Hartman
Jacqueline Horvat
Brian Lawrie
Jeffrey Lem
William C. McDowell
Ross Murray
Jan Richardson
Heather Ross

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat**
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### For Decision

## COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on June 11, 2015. In attendance were Malcolm Mercer (Chair), Susan Richer (Vice-Chair), Cathy Corsetti, Seymour Epstein, Robert F. Evans, Patrick Furlong, Carol Hartman (by telephone), Jacqueline Horvat, Brian Lawrie, and Ross Murray. Benchers Suzanne Clement, Raj Sharda and Janis Criger also attended the meeting. Staff members attending were Zeynep Onen, Grant Wedge, Jim Varro, Naomi Bussin, and Margaret Drent.

**Tab 3.1**

**FOR DECISION**

## PROPOSED AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

### MOTION

**2. That Convocation approve the amendments to the *Rules of Professional Conduct* as set out at Tabs 3.1.1, 3.1.3 and 3.1.5.**

### INTRODUCTION

3. The Committee recommends amendments to the Rules, based on the Model Code of Professional Conduct of the Federation of Law Societies of Canada, with respect to language rights and transferring lawyers. A blackline version of the amendments to the Rules and the Rules incorporating these changes are appended to this document.

4. The Committee is also proposing amendments to the Commentary to the Rules on Limited Scope Retainers, based on the work of the Limited Scope Retainer Working Group.

### DISCUSSION

#### Language Rights

5. The Rules of Professional Conduct currently include guidance regarding a lawyer's obligation to advise a client about their French-language rights in paragraph 4.2 of the Commentary to Rule 2.1-2.

6. Convocation adopted amendments to the Rules of Professional Conduct in 2013 to implement the Model Code. At that time, the Model Code did not address a lawyer's ethical obligations to advise a client of their French language rights. The Commentary, referred to above, which appeared in the previous Rules of Professional Conduct, was retained for this purpose.

7. In October, 2014 Council of the Federation of Law Societies of Canada adopted amendments to the Model Code of Professional Conduct, including new Rules in this area.

8. The Committee is now recommending to Convocation that a new Rule 3.2-2A addressing language rights be incorporated into the Law Society's Rules of Professional

Conduct. New Rule 3.2-2B would provide that a lawyer must not undertake to represent a client in the official language of the client's choice unless the lawyer is competent to provide services in that official language.

9. Paragraph [2] of the Commentary to Rules 3.2-2A and B advises that a lawyer should take into consideration whether provincial legislation may provide the client additional language rights, including rights in relation to aboriginal languages.

10. The Committee agrees with these amendments and recommends their adoption.

11. A blackline, showing changes that would be made to the Rules of Professional Conduct, is attached as **Tab 3.1.1**. A clean version is shown at **3.1.2**.

**Transferring Lawyers**

12. Rules 3.4-17 to 3.4-26 of the Rules of Professional Conduct provide guidance on the subject of conflicts of interest resulting from lawyers transferring between law firms. In October 2014, the Standing Committee on the Model Code of the Federation of Law Societies of Canada made changes in this area to enhance guidance to lawyers.

13. The Committee has reviewed these amendments and is proposing changes to the Rules of Professional Conduct on both conflicts and confidentiality. Some of the changes are intended to simplify the language of these provisions. The Committee is grateful to Don Revell for his assistance in this regard.

14. The amendments include

a. a new rule 3.3-7 and commentary which provides that when a lawyer transfers from one law firm to another, the lawyer may disclose confidential client information;
b. new commentary to rule 3.4-18 to provide that knowledge of confidential information is not imputed to the lawyer;
c. new commentary to Rule 3.4-20 regarding reasonable measures to be implemented by the new law firm;
d. a reference to disclosures of confidential information in paragraph [5] of Commentary 3.4-20;
e. a redrafted Rule 3.4-23 which provides guidance on lawyer due diligence for non-lawyer staff.

<u>Disclosure of Confidential Information</u>

15. With respect to confidentiality of client information, new Rule 3.3-7 and Commentary

clarifies that when a lawyer transfers from one law firm to another, the lawyer may disclose confidential client information, but only "to the extent reasonably necessary to detect and resolve conflicts of interest" that may arise as a result of the transfer. Further, the information may be disclosed only if it does not compromise solicitor-client privilege or otherwise prejudice the client.

16. Rule 3.4-18 is also amended to refer to the possibility that the transferring lawyer may have confidential information relevant to the new law firm's matter for its client.

17. The possibility of a limited disclosure of confidential information to detect and resolve conflicts of interest is also referred to in paragraph [5] of the commentary to Rule 3.4-20. The transferring lawyer and the new law firm are cautioned against disclosing client confidences when discussing whether the transferring lawyer actually possesses confidential information.

Imputed Knowledge

18. The Committee proposes to amend the Commentary to Rule 3.4-18 to clarify that actual, rather than imputed, knowledge is the subject of the Rule. It is assumed that lawyers working together in the same firm will share confidential information with one another regarding the matters on which they work. However, this presumption can be rebutted if it can be shown that the firm has implemented specific measures, described in the commentary to Rule 3.4-20.

19. The Commentary to Rule 3.4-20 includes a list of guidelines in paragraph [3]. Paragraphs [4] and [5] of the Commentary provides guidance intended to assist law firms in determining if a conflict of interest exists when hiring a lawyer from another firm. These matters were previously addressed in the Commentary to Rule 3.4-23.

20. The Committee proposes that Convocation adopt these amendments. A blackline, showing changes that would be made to the Rules of Professional Conduct, is attached as **Tab 3.1.3.** A clean version is shown at **Tab 3.1.4.**

**Limited Scope Retainer**

21. Limited scope retainers, or "unbundling", involve a lawyer or paralegal taking on all or part of a legal matter without the expectation that the lawyer represent the client generally, or become the solicitor of record for the client.

22. In September 2011, Convocation amended the Rules of Professional Conduct and Paralegal Rules of Conduct, based on the work of the Limited Scope Retainer Working

Group, to provide an ethical framework in this area.[1] Several areas in the rules relating to advocacy were set aside for further consideration, as they required coordination with the civil and family rules committees. These areas were withdrawal from a limited scope retainer and the disclosure of a limited scope retainer to a tribunal (the definition of which includes a court).

23. Amendments to the Rules of Civil Procedure and the Family Law Rules regarding limited scope retainers came into force on January 1, 2014. A definition of "limited scope retainer" has been incorporated into both sets of Rules.

24. The Rules of Civil Procedure and the Family Law Rules now provide that a party may be represented under a limited scope retainer, but this does not make the lawyer the lawyer of record for the party.

25. Following the coming into force of these changes, the Limited Scope Retainer Working Group met to consider further amendments to the Rules and made several recommendations to the Professional Regulation Committee which the Committee adopted and which are described below.

26. The Committee concluded that because the Rules now contain new guidance regarding withdrawal Rule, (Rule 3.7-9)(a) now provides that a lawyer is required to notify a client in writing of the withdrawal), no further guidance in this area is necessary. However, to provide additional guidance on the remaining issues, the Committee recommends the following amendments to the Commentary to Rule 3.2-1A1.1:

    a. a new paragraph [5.1] would provide that a lawyer should consider confirming with a client in writing when the limited scope retainer is complete, and may also consider providing notice to the tribunal of the completion;
    b. commentary from Rule 3.2-9, which addresses the obligations of a lawyer who represents a client with diminished capacity on a limited scope retainer basis, would be moved, and would appear below Rule 3.2-1A1 (as proposed new [5.2]);
    c. New paragraph [3] of Commentary would provide that when the limited retainer services include an appearance before a tribunal, the lawyer is cautioned against misleading the tribunal regarding the scope of the retainer. Further, disclosure of the limited nature of the retainer to the tribunal may be required either by rules of

[1] The Limited Scope Retainer Working Group was originally constituted in 2010 and is chaired by Paul Schabas. The members of the Limited Scope Retainer Working Group are Raj Anand, Cathy Corsetti, Susan McGrath, and Will McDowell. James Scarfone also served on the Group.

practice or by the circumstances; [2]and

d. New paragraph [5.4] advises that a lawyer consider whether the existence of a limited scope retainer should be disclosed to a tribunal, an opposing party, or counsel for the opposing party; further, the lawyer may consider obtaining instructions from their client on this point.

27. A blackline, showing changes to the Rules of Professional Conduct, is attached as **Tab 3.1.5.** A clean version is shown at **Tab 3.1.6**.

[2] This paragraph of Commentary is identical to the Model Code; therefore, it does not have a numerical suffix after it.

**TAB 3.1.1**

## LANGUAGE RIGHTS – BLACKLINE SHOWING PROPOSED CHANGES

## SECTION 2.1 INTEGRITY

**2.1-1** A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

**Commentary**

**[1]** Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about their lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

**[2]** Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

**[3]** Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Law Society may be justified in taking disciplinary action.

**[4]** Generally, however, the Law Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

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

~~**[4.2]** A lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter, including where applicable~~

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

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

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

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

## Honesty and Candour

**3.2-2** When advising clients, a lawyer shall be honest and candid.

**Commentary**

**[1]** [FLSC – not in use]

**[1.1]** A lawyer has a duty of candour with the client on matters relevant to the retainer. This arises out of the rules and the lawyer's fiduciary obligations to the client. The duty of candour requires a lawyer to inform the client of information known to the lawyer that may affect the interests of the client in the matter.

**[1.2]** In some limited circumstances, it may be appropriate to withhold information from a client. For example, with client consent, a lawyer may act where the lawyer receives information on a "for counsel's eyes only" basis. However, it would not be appropriate to act for a client where the lawyer has relevant material information about that client received through a different retainer. In those circumstances the lawyer cannot be honest and candid with the client and should not act.

**[2]** The lawyer's duty to the client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law, and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

**[2.1]** A lawyer who is acting for both the borrower and the lender in a mortgage or loan transaction should also refer to rule 3.4-15 regarding the lawyer's duty of disclosure to their clients.

**[3]** [FLSC – not in use]

*[Amended – October 2014]*

## Language Rights

**3.2-2A** A lawyer shall, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

**3.2-2B** When a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer shall not undertake the matter unless the lawyer is competent to provide the required services in that language.

**Commentary**

[1] The lawyer should advise the client of the client's language rights as soon as possible.

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and constitutional law relating to language rights including the *Canadian Charter of Rights and Freedoms*, s. 19(1) and Part XVII of the *Criminal Code* regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.

[3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.

**TAB 3.1.2**

## LANGUAGE RIGHTS – CLEAN VERSION SHOWING PROPOSED CHANGES TO THE RULES OF PROFESSIONAL CONDUCT

## SECTION 2.1 INTEGRITY

**2.1-1** A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

**Commentary**

**[1]** Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about their lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

**[2]** Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

**[3]** Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Law Society may be justified in taking disciplinary action.

**[4]** Generally, however, the Law Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

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

### Honesty and Candour

**3.2-2** When advising clients, a lawyer shall be honest and candid.

**Commentary**

**[1]** [FLSC – not in use]

**[1.1]** A lawyer has a duty of candour with the client on matters relevant to the retainer. This arises out of the rules and the lawyer's fiduciary obligations to the client. The duty of candour requires a lawyer to inform the client of information known to the lawyer that may affect the interests of the client in the matter.

**[1.2]** In some limited circumstances, it may be appropriate to withhold information from a client. For example, with client consent, a lawyer may act where the lawyer receives information on a "for counsel's eyes only" basis. However, it would not be appropriate to act for a client where the lawyer has relevant material information about that client received through a different retainer. In those circumstances the lawyer cannot be honest and candid with the client and should not act.

**[2]** The lawyer's duty to the client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law, and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

**[2.1]** A lawyer who is acting for both the borrower and the lender in a mortgage or loan transaction should also refer to rule 3.4-15 regarding the lawyer's duty of disclosure to their clients.

**[3]** [FLSC – not in use]

*[Amended – October 2014]*

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**3.2-2A** A lawyer shall, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

**3.2-2B** When a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer shall not undertake the matter unless the lawyer is competent to provide the required services in that language.

**Commentary**

**[1]** The lawyer should advise the client of the client's language rights as soon as possible.

**[2]** The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and constitutional law relating to language rights including the *Canadian Charter of Rights and Freedoms*, s. 19(1) and Part XVII of the *Criminal Code* regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial

or territorial legislation may provide additional language rights, including in relation to aboriginal languages.

**[3]** When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.

**TAB 3.1.3**

## BLACKLINE SHOWING CHANGES TO THE RULES REGARDING TRANSFERRING LAWYERS

## SECTION 3.3 CONFIDENTIALITY

### Confidential Information

…

3.3-7 A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.

Commentary

[1] As a matter related to clients' interests in maintaining a relationship with counsel of choice and protecting client confidences, lawyers in different firms may need to disclose information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

[2] In these situations (see Rules 3.4-17 to 3.4-23 on Conflicts From Transfer Between Law Firms), rule 3.3-7 permits lawyers and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred.

[3] This exchange of information between the firms needs to be done in a manner consistent with the transferring lawyer's and new firm's obligations to protect client confidentiality and privileged information and avoid any prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

[4] The disclosure should be made to as few lawyers at the new law firm as possible, ideally to one lawyer of the new firm, such as a designated conflicts lawyer. The information should always be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship.

[5] As the disclosure is made on the basis that it is solely for the use of checking conflicts where lawyers are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new law firm to the former law firm that it will:

(a) limit access to the disclosed information;

(b) not use the information for any purpose other than detecting and resolving conflicts; and

(c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

[6] The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the lawyer and client. In some circumstances, however, because of the nature of the retainer, the transferring lawyer and the new law firm may be required to obtain the consent of clients to such disclosure or to the disclosure of any further information about the clients. This is especially the case where disclosure would compromise solicitor-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).

## SECTION 3.4 CONFLICTS

### Conflicts From Transfer Between Law Firms

### Interpretation and Application of Rule

**3.4-17** In rules 3.4-17 to 3.4-26

~~"client", includes anyone to whom a lawyer owes a duty of confidentiality, whether or not a solicitor-client relationship exists between them, and those defined as a client in the definitions part of this Code;~~

~~"confidential information" means information that is not generally known to the public obtained from a client; and~~

"matter" means a case, a transaction, or other ~~or~~ other client representation, ~~file,~~ but within such representation does not include offering general "know-how" and, in the case of a government lawyer, ~~does not include~~ providing policy advice unless the advice relates to a particular client representation ~~case~~.

~~**Commentary**~~

~~**[1]** The duties imposed by rules 3.4-18 to 3.4-26 concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.~~

**3.4-18** Rules 3.4-17 to 3.4-~~26~~23 apply when a lawyer transfers from one law firm ("former law firm") to another ("new law firm"), and ~~either the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that~~

~~(a)~~ (a) the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers it is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm's matter for its client; or

(b) the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that

(i) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents or represented its client ("former client");

(ii) the interests of those clients in that matter conflict; and

(iii) the transferring lawyer actually possesses relevant information respecting that matter.

Commentary

~~(b)~~ [1] The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification. As stated by the Supreme Court of Canada in *Macdonald Estate* v. *Martin*, [1990] 3 SCR 1235, with respect to the partners or associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the area of the mega-firm. Notwithstanding the foregoing, the interference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

[2] The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

[3] Law firms with multiple offices - This rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments and an interjurisdictional law firm.

**3.4-19** Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government ~~attorney general or department of justice~~ who, after transferring from one department, ministry or agency to another, continues to be employed by that government. ~~attorney general or department of justice~~ .

**Commentary**

**[1]** ~~The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification.~~

**[2]** ~~**Lawyers and support staff** — This rule is intended to regulate lawyers and articling law students who transfer between law firms. It also imposes a general duty on lawyers to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked~~.

**[1] Government employees and in-house counsel —** The definition of "law firm" includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

**[4]** ~~**Law firms with multiple offices** — This rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm and a legal aid program with many community law offices. The more autonomous each unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client's consent or to establish that it is in the public interest that it continue to represent its client in the matter.~~

**Law Firm Disqualification**

**3.4-20** If the transferring lawyer actually possesses confidential information relevant to a matter ~~referred to in rule 3.4-18(a)~~ respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm shall cease its representation of its client in that matter unless

(a) the former client consents to the new law firm's continued representation of its client; or

(b) the new law firm has

(i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm; and

~~(a)~~ (ii) advised the lawyer's former client, if requested by the client, of the measures taken.

~~(b) the new law firm establishes that it is in the interests of justice that it act in the matter, having regard to all relevant circumstances, including~~

~~(i) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to any member of the new law firm will occur,~~

~~(ii) the extent of prejudice to any party,~~

~~(iii) the good faith of the parties,~~

~~(iv) the availability of suitable alternative counsel, and~~

~~(v) issues affecting the public interest.~~

**Commentary**

[1] It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information". Such measures may include timely and properly constructed confidentiality screens.

[2] For example, the various legal services units of a government, a corporation with separate regional legal departments, an interjurisdictional law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or department do not "work together" with other lawyer in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable".

[3] The guidelines that follow are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

Guidelines: How to Screen/Measures to be taken

1. The screened lawyer should have no involvement in the new law firm's representation of its client in the matter.
2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.
3. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.
4. The firm should take steps to preclude the screened lawyer from having access to any part of the file.
5. The new law firm should document the measures taken to screen the transferring lawyer, the time when these measures were put in place (the sooner the better), and should advise all affected lawyers and support staff of the measures taken.
6. These Guidelines apply with necessary modifications to situations in which non-lawyer staff employees leave one law firm to work for another and a determination is made, before hiring the individual, on whether any conflicts of interest will be created and whether the potential new hire actually possesses relevant confidential information.

How to Determine If a Conflict Exists Before Hiring a Potential Transferee

[4] When a law firm considers hiring a lawyer from another law firm, the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring lawyer is leaving and with respect to clients of a firm in which the transferring lawyer worked at some earlier time.

[5] After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether any conflicts exist. In determining whether the transferring lawyer actually possesses relevant confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to ensure that they do not disclose client confidences. See Rule 3.3-7 which provides that a lawyer may disclose confidential information to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest where lawyers transfer between firms.

[6] A lawyer's duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

**[1]** ~~The circumstances enumerated in rule 3.4-20(b) are drafted in broad terms to ensure that all relevant facts will be taken into account. While subparagraphs (ii) to (iv) are self-explanatory, subparagraph (v) includes governmental concerns respecting issues of national security, cabinet confidences and obligations incumbent on Attorneys General and their agents in the administration of justice~~.

**3.4-21** ~~For greater certainty, rule 3.4-20 is not intended to interfere with the discharge by an Attorney General or their counsel or agent (including those occupying the offices of Crown Attorney, Assistant Crown Attorney or part-time Assistant Crown Attorney) of their constitutional and statutory duties and responsibilities.~~

**3.4-22** ~~If the transferring lawyer actually possesses information relevant to a matter referred to in rule 3.4-18(a) respecting the former client that is not confidential information but that may prejudice the former client if disclosed to a member of the new law firm~~

~~(a) the lawyer must execute an affidavit or solemn declaration to that effect; and~~

~~(b) the new law firm must~~

~~(i) notify its client and the former client or, if the former client is represented in the matter, the former client's lawyer, of the relevant circumstances and the firm's intended action under rules 3.4-17 to 3.4-26, and~~

~~(ii) deliver to the persons notified under subparagraph (i) a copy of any affidavit or solemn declaration executed under paragraph (a).~~

**Transferring Lawyer Disqualification**

**3.4-21** ~~**3.4-23**~~ Unless the former client consents, a transferring lawyer referred to in rule 3.4-20 ~~or 3.4-22~~ shall not

(a) participate in any manner in the new law firm's representation of its current client in the matter; or

(b) disclose any confidential information respecting the former client except as permitted by rule 3.3-7.

3.4-22**3.4-24** Unless the former client consents, members of the new law firm shall not discuss the new law firm's representation of its current client or the former law firm's representation of the former client in that matter with a transferring lawyer referred to in rule 3.4-20 ~~or 3.4-22~~except as permitted by rule 3.3-7.

~~**Determination of Compliance**~~

~~**3.4-25** Anyone who has an interest in, or who represents a party in, a matter referred to in rules 3.4-17 to 3.4-26 may apply to a tribunal of competent jurisdiction for a determination of any aspect of those rules~~.

**Lawyer Due Diligence for non-lawyer staff**

**3.4-23~~26~~** A transferring lawyer and the members of the new law firm shall exercise due diligence in ensuring that each member and employee of the lawyer's law firm, and all ~~each~~ other persons whose services the lawyer or the law firm has retained

(a) comply with rules 3.4-17 to 3.4-23~~3.4-26~~; and

(b) do not disclose confidential information of

(i) clients of the firm, or ~~and~~

(ii) any other law firm in which the person has worked.

**Commentary**

[1] This rule is intended to regulate lawyers who transfer between law firms. It also imposes a general duty on lawyers and law firms to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked.

[2] Certain non-lawyer staff in a law firm routinely have full access to and work extensively on client files. As such, they may possess confidential information about the client. If these staff move from one law firm to another and the new firm acts for a client opposed in interest to the client on whose files the staff worked, unless measures are taken to screen the staff, it is reasonable to conclude that confidential information may be shared. It is the responsibility of the transferring lawyer and the members of the new law firm to ensure that staff who may have confidential information that if disclosed, may prejudice the interest of a client of the former firm, have no involvement with and no access to information relating to the relevant client of the new firm.

**MATTERS TO CONSIDER**

**[1]** When a law firm ("new law firm") considers hiring a lawyer or an articling student ("transferring lawyer") from another law firm ("former law firm"), the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring lawyer is leaving and with respect to clients of a firm in which the transferring lawyer worked at some earlier time. The transferring lawyer and the new law firm need to identify, first, all cases in which

(a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client;

(b) the interests of the clients of the two law firms conflict; and

(c) the transferring lawyer actually possesses relevant information.

**[2]** The new law firm must then determine whether, in each such case, the transferring lawyer actually possesses relevant information respecting the client of the former law firm ("former client") that is confidential and that may prejudice the former client if disclosed to a member of the new law firm. If this element exists, the new law firm is disqualified unless the former client consents or the new law firm establishes that its continued representation is in the interests of justice, based on relevant circumstances.

**[3]** In determining whether the transferring lawyer possesses confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to ensure that they do not disclose client confidences.

**MATTERS TO CONSIDER BEFORE HIRING A POTENTIAL TRANSFEREE**

**[4]** After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether a conflict exists.

**A. If a conflict exists**

**[5]** If the transferring lawyer actually possesses relevant information respecting a former client that is confidential and that may prejudice the former client if disclosed to a member of the new law firm, the new law firm will be prohibited from continuing to represent its client in the matter if the transferring lawyer is hired, unless

(a) the new law firm obtains the former client's consent to its continued representation of its client in that matter; or

(b) the new law firm complies with rule 3.4-20(b) and, in determining whether continued representation is in the interests of justice, both clients' interests are the paramount consideration.

**[6]** If the new law firm seeks the former client's consent to the new law firm continuing to act, it will in all likelihood be required to satisfy the former client that it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur. The former client's consent must be obtained before the transferring lawyer is hired.

**[7]** Alternatively, if the new law firm applies under rule 3.4-25 for a determination that it may continue to act, it bears the onus of establishing that it has met the requirements of rule 3.4-20(b). Ideally, this process should be completed before the transferring person is hired.

**B. If no conflict exists**

**[8]** Although the notice required by rule 3.4-22 need not necessarily be made in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute about whether notice has been given or its timeliness and content.

**[9]** The new law firm might, for example, seek the former client's consent to the transferring lawyer acting for the new law firm's client because, in the absence of such consent, the transferring lawyer may not act.

**[10]** If the former client does not consent to the transferring lawyer acting, it would be prudent for the new law firm to take reasonable measures to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information. If such measures are taken, it will strengthen the new law firm's position if it is later determined that the transferring lawyer did in fact possess confidential information that may prejudice the former client if disclosed.

**[11]** A transferring lawyer who possesses no such confidential information puts the former client on notice by executing an affidavit or solemn declaration and delivering it to the former client. A former client who disputes the allegation of no such confidential information may apply under rule 3.4-25 for a determination of that issue.

**C. If the new law firm is not sure whether a conflict exists**

**[12]** There may be some cases in which the new law firm is not sure whether the transferring lawyer actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new law firm. In such circumstances, it would be prudent for the new law firm to seek guidance from the Law Society before hiring the transferring lawyer.

**REASONABLE MEASURES TO ENSURE NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

**[13]** As noted above, there are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that no disclosure of the former client's confidential information will occur to any member of the new law firm:

(a) when the transferring lawyer actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new law firm, and

(b) when the new law firm is not sure whether the transferring lawyer actually possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring lawyer did in fact possess such confidential information.

**[14]** It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information."

**[15]** In the case of law firms with multiple offices, the degree of autonomy possessed by each office will be an important factor in determining what constitutes "reasonable measures." For example, the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or departments do not "work together" with other lawyers in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable."

**[16]** The guidelines at the end of this Commentary, adapted from the Canadian Bar Association's Task Force report entitled "Conflict of Interest Disqualification: Martin v. Gray and Screening Methods" (February 1993), are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

**[17]** When a transferring lawyer joining a government legal services unit or the legal department of a corporation actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new "law firm", the interests of the new client or the corporation must continue to be represented. Normally, this will be effected by instituting satisfactory screening measures, which could include referring the conduct of the matter to counsel in a different department, office or legal services unit. As each factual situation will be unique, flexibility will be required in the application of rule 3.4-20(b), particularly subparagraph (v). Only when the entire firm must be disqualified under rule 3.4-20 will it be necessary to refer conduct of the matter to outside counsel.

**[18] GUIDELINES**

(a) The screened lawyer should have no involvement in the new law firm's representation of its client.

(b) The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.

(c) No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.

(d) The current matter should be discussed only within the limited group that is working on the matter.

(e) The files of the current client, including computer files, should be physically segregated from the new law firm's regular filing system, specifically identified, and accessible only to those lawyers and support staff in the new law firm who are working on the matter or who require access for other specifically identified and approved reasons.

~~(f) No member of the new law firm should show the screened lawyer any documents relating to the current representation.~~

~~(g) The measures taken by the new law firm to screen the transferring lawyer should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an admonition that violation of the policy will result in sanctions, up to and including dismissal.~~

~~(h) Appropriate law firm members should provide undertakings setting out that they have adhered to and will continue to adhere to all elements of the screen.~~

~~(i) The former client, or if the former client is represented in that matter by a lawyer, that lawyer, should be advised~~

~~(i) that the screened lawyer is now with the new law firm, which represents the current client; and~~

~~(ii) of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.~~

~~(j) The screened lawyer's office or work station and that of the lawyer's support staff should be located away from the offices or work stations of lawyers and support staff working on the matter.~~

~~(k) The screened lawyer should use associates and support staff different from those working on the current matter.~~

~~(l) In the case of law firms with multiple offices, consideration should be given to referring conduct of the matter to counsel in another office~~.

**TAB 3.1.4**

## CLEAN VERSION SHOWING CHANGES TO THE RULES OF PROFESSIONAL CONDUCT TO RULES REGARDING TRANSFERRING LAWYERS

## SECTION 3.3 CONFIDENTIALITY

### Confidential Information

…

**3.3-7** A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.

**Commentary**

**[1]** As a matter related to clients' interests in maintaining a relationship with counsel of choice and protecting client confidences, lawyers in different firms may need to disclose information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

**[2]** In these situations (see Rules 3.4-17 to 3.4-23 on Conflicts From Transfer Between Law Firms), rule 3.3-7 permits lawyers and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred.

**[3]** This exchange of information between the firms needs to be done in a manner consistent with the transferring lawyer's and new firm's obligations to protect client confidentiality and privileged information and avoid any prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

**[4]** The disclosure should be made to as few lawyers at the new law firm as possible, ideally to one lawyer of the new firm, such as a designated conflicts lawyer. The information should always be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship.

**[5]** As the disclosure is made on the basis that it is solely for the use of checking conflicts where lawyers are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new law firm to the former law firm that it will:

(a) limit access to the disclosed information;

(b) not use the information for any purpose other than detecting and resolving conflicts; and

(c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

**[6]** The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the lawyer and client. In some circumstances, however, because of the nature of the retainer, the transferring lawyer and the new law firm may be required to obtain the consent of clients to such disclosure or to the disclosure of any further information about the clients. This is especially the case where disclosure would compromise solicitor-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).

## SECTION 3.4 CONFLICTS

### Conflicts From Transfer Between Law Firms

### Interpretation and Application of Rule

**3.4-17** In rules 3.4-17 to 3.4-26

"matter" means a case, a transaction, or other other client representation, but within such representation does not include offering general "know-how" and, in the case of a government lawyer, providing policy advice unless the advice relates to a particular client representation .

**3.4-18** Rules 3.4-17 to 3.4-23 apply when a lawyer transfers from one law firm ("former law firm") to another ("new law firm"), and

(a) the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers it is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm's matter for its client; or

(b) the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that

(i) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents or represented its client ("former client");

(ii) the interests of those clients in that matter conflict; and

(iii) the transferring lawyer actually possesses relevant information respecting that matter.

**Commentary**

**[1]** The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to

disqualification. As stated by the Supreme Court of Canada in *Macdonald Estate* v. *Martin*, [1990] 3 SCR 1235, with respect to the partners or associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the area of the mega-firm. Notwithstanding the foregoing, the interference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

**[2]** The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

**[3]** Law firms with multiple offices - This rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments and an interjurisdictional law firm.

**3.4-19** Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government who, after transferring from one department, ministry or agency to another, continues to be employed by that government.

**Commentary**

**[1] Government employees and in-house counsel —** The definition of "law firm" includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

**Law Firm Disqualification**

**3.4-20** If the transferring lawyer actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm shall cease its representation of its client in that matter unless

(a) the former client consents to the new law firm's continued representation of its client; or

(b) the new law firm has

(i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm; and

(ii) advised the lawyer's former client, if requested by the client, of the measures taken.

**Commentary**

**[1]** It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information". Such measures may include timely and properly constructed confidentiality screens.

**[2]** For example, the various legal services units of a government, a corporation with separate regional legal departments, an interjurisdictional law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or department do not "work together" with other lawyer in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable".

**[3]** The guidelines that follow are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

**Guidelines: How to Screen/Measures to be taken**

1. The screened lawyer should have no involvement in the new law firm's representation of its client in the matter.
2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.
3. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.
4. The firm should take steps to preclude the screened lawyer from having access to any part of the file.
5. The new law firm should document the measures taken to screen the transferring lawyer, the time when these measures were put in place (the sooner the better), and should advise all affected lawyers and support staff of the measures taken.
6. These Guidelines apply with necessary modifications to situations in which non-lawyer staff employees leave one law firm to work for another and a determination is made, before hiring the individual, on whether any conflicts of interest will be created and whether the potential new hire actually possesses relevant confidential information.

**How to Determine If a Conflict Exists Before Hiring a Potential Transferee**

**[4]** When a law firm considers hiring a lawyer from another law firm, the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring lawyer is leaving and with respect to clients of a firm in which the transferring lawyer worked at some earlier time.

**[5]** After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether any conflicts exist. In determining whether the transferring lawyer actually possesses relevant confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to

ensure that they do not disclose client confidences. See Rule 3.3-7 which provides that a lawyer may disclose confidential information to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest where lawyers transfer between firms.

**[6]** A lawyer's duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

**Transferring Lawyer Disqualification**

**3.4-21** Unless the former client consents, a transferring lawyer referred to in rule 3.4-20 shall not

(a) participate in any manner in the new law firm's representation of its current client in the matter; or

(b) disclose any confidential information respecting the former client except as permitted by rule 3.3-7.

**3.4-22** Unless the former client consents, members of the new law firm shall not discuss the new law firm's representation of its current client or the former law firm's representation of the former client in that matter with a transferring lawyer referred to in rule 3.4-20 except as permitted by rule 3.3-7.

**Lawyer Due Diligence for non-lawyer staff**

**3.4-23** A transferring lawyer and the members of the new law firm shall exercise due diligence in ensuring that each member and employee of the lawyer's law firm, and all other persons whose services the lawyer or the law firm has retained

(a) comply with rules 3.4-17 to 3.4-23; and

(b) do not disclose confidential information of

(i) clients of the firm, or

(ii) any other law firm in which the person has worked.

**Commentary**

**[1]** This rule is intended to regulate lawyers who transfer between law firms. It also imposes a general duty on lawyers and law firms to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked.

**[2]** Certain non-lawyer staff in a law firm routinely have full access to and work extensively on client

files. As such, they may possess confidential information about the client. If these staff move from one law firm to another and the new firm acts for a client opposed in interest to the client on whose files the staff worked, unless measures are taken to screen the staff, it is reasonable to conclude that confidential information may be shared. It is the responsibility of the transferring lawyer and the members of the new law firm to ensure that staff who may have confidential information that if disclosed, may prejudice the interest of a client of the former firm, have no involvement with and no access to information relating to the relevant client of the new firm.

**Tab 3.1.5**

## LEGAL SERVICES UNDER A LIMITED SCOPE RETAINER - BLACKLINE SHOWING REVISIONS TO THE COMMENTARY

**3.2-1A** Before providing legal services under a limited scope retainer, a lawyer shall advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide, and, where appropriate, whether the services can be provided within the financial means of the client.

**3.2-1A.1** When providing legal services under a limited scope retainer, a lawyer shall confirm the services in writing and give the client a copy of the written document when practicable to do so.

**Commentary**

**[1]** Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

**[1.1]** In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client.

**[2]** A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.

**[3]** [FLSC – not in use]

**[4]** A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See rule 7.2-6A and rules 7.2-8 to 7.2-8.2.

**[5]** [FLSC – not in use]

[5.1] A lawyer should ordinarily confirm with the client in writing when the limited scope retainer is complete. Where appropriate under the rules of the tribunal, the lawyer may consider providing notice to the tribunal that the retainer is complete.

[5.2] In addition to the requirements of Rule 3.2-9, a lawyer who is asked to provide legal services under a limited scope retainer to a client who has diminished capacity to make decisions should carefully consider and assess in each case if, under the circumstances, it is possible to render those services in a competent manner.

[5.3] Where the limited services being provided include an appearance before a tribunal, a lawyer must be careful not to mislead the tribunal as to the scope of the retainer, and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[5.4] A lawyer should also consider whether the existence of a limited scope retainer should be disclosed to the tribunal or to an opposing party or, if represented, to an opposing party's counsel and whether the lawyer should obtain instructions from the client to make the disclosure.

**3.2-1A.2** Rule 3.2-1A.1 does not apply to a lawyer if the legal services are

(a) legal services or summary advice provided as a duty counsel under the *Legal Aid Services Act, 1998* or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline operated by a community-based or government funded program;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

*[New – September 2011]*

**Commentary**

**[1]** The consultation referred to in rule 3.2-1A.2(d) may include advice on preventative, protective, pro-active or procedural measures relating to the client's legal matter, after which the client may agree to retain the lawyer.

*[New – September 2011]*

**TAB 3.1.6**

## CLEAN VERSION - REVISIONS TO THE COMMENTARY RESPECTING LEGAL SERVICES UNDER A LIMITED SCOPE RETAINER

**3.2-1A** Before providing legal services under a limited scope retainer, a lawyer shall advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide, and, where appropriate, whether the services can be provided within the financial means of the client.

**3.2-1A.1** When providing legal services under a limited scope retainer, a lawyer shall confirm the services in writing and give the client a copy of the written document when practicable to do so.

**Commentary**

**[1]** Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

**[1.1]** In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client.

**[2]** A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.

**[3]** Where the limited services being provided include an appearance before a tribunal, a lawyer must be careful not to mislead the tribunal as to the scope of the retainer, and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

**[4]** A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See rule 7.2-6A and rules 7.2-8 to 7.2-8.2.

**[5]** [FLSC – not in use]

[5.1] A lawyer should ordinarily confirm with the client in writing when the limited scope retainer is complete. Where appropriate under the rules of the tribunal, the lawyer may consider providing notice to the tribunal that the retainer is complete.

[5.2] In addition to the requirements of Rule 3.2-9, a lawyer who is asked to provide legal services under a limited scope retainer to a client who has diminished capacity to make decisions should carefully consider and assess in each case if, under the circumstances, it is possible to render those services in a competent manner.

[5.3] Where the limited services being provided include an appearance before a tribunal, a lawyer must be careful not to mislead the tribunal as to the scope of the retainer, and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[5.4] A lawyer should also consider whether the existence of a limited scope retainer should be disclosed to the tribunal or to an opposing party or, if represented, to an opposing party's counsel and whether the lawyer should obtain instructions from the client to make the disclosure.

**3.2-1A.2** Rule 3.2-1A.1 does not apply to a lawyer if the legal services are

(a) legal services or summary advice provided as a duty counsel under the *Legal Aid Services Act, 1998* or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline operated by a community-based or government funded program;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

*[New – September 2011]*

**Commentary**

**[1]** The consultation referred to in rule 3.2-1A.2(d) may include advice on preventative, protective, pro-active or procedural measures relating to the client's legal matter, after which the client may agree to retain the lawyer.

*[New – September 2011]*

**Tab 3.2**

**FOR DECISION**

# CALL FOR INPUT ON PROPOSED AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

## MOTION

**28. That Convocation approve a call for input on proposed amendments to the Rules of Professional Conduct, as set out in this report.**

## INTRODUCTION

29. The Committee is proposing amendments to the Rules of Professional Conduct in five areas. Input, based on a draft document referred to in this report, would be sought regarding the following:

    a. conflicts of interest;
    b. doing business with a client;
    c. short-term legal services;
    d. incriminating physical evidence; and
    e. advertising.

30. A Call for Input notice, including materials, would be posted on the Law Society's web site and in the Ontario Reports. Participants would be invited to submit comments by October 16, 2015. An executive summary of all of the changes that are being proposed will be drafted for the website.

31. In addition to posting materials on the Law Society website, legal organizations with which the Law Society typically engages in consultation efforts, would be contacted and offered an opportunity to respond.

## DISCUSSION

### Conflicts of Interest

32. In 2014, the Rules of Professional Conduct on conflicts of interest were amended when the Model Code of the Federation of Law Societies of Canada was implemented. In 2013, when Convocation considered the amendments, the Supreme Court of Canada had not yet released its decision in *Canadian National Railway Co*. v. *McKercher LLP*

(McKercher).[1]

33. Based on the principles discussed in this case, the Committee has drafted new commentary to Rule 3.4-1 to reflect *McKercher* and other developments in the law. The Committee is also proposing amendments to Rule 3.4-2 on consent to conflicts and the commentary.

34. A blackline, showing amendments that would be made to the Rules of Professional Conduct if these changes were to be adopted, is attached as **Tab 3.2.2**. A clean version is at **Tab 3.2.3**.

35. The Call for Input materials regarding Conflict of Interest may be accessed at **Tab 3.2.1**.

**Doing Business With A Client**

36. The Rules of Professional Conduct on this subject were amended as a result of the implementation of the Model Code in 2014. The Society has received feedback from lawyers regarding these amendment and is proposing changes in this area in response. In drafting these amendments, the Committee has taken into consideration further changes made to the Model Code on this subject. The Committee wishes to ensure that the framework in this area is as clear as possible.

37. A blackline, showing changes in this area, is attached as **Tab 3.2.4**. A clean version is shown at **Tab 3.2.5**.

38. The Call for Input materials regarding Doing Business With a Client may be accessed at **Tab 3.2.1**.

**Short-Term Legal Services**

39. In 2010, Convocation approved amendments to the Rules to provide guidance to lawyers providing short-term legal services, which have also been described as “brief services” and which at the time referred to court-based programs provided by a non-profit legal service provider on a *pro bono* basis.

40. Since 2010, there has been a significant expansion in the scope of services being provided.

41. The Committee wishes to ensure that the regulatory framework in place is consistent with these developments. In response to requests from stakeholders as well as changes approved to the Model Code, the Committee is proposing amendments to the Rules in

[1] 2013 SCC 39.

this area.

42. A blackline is attached as **Tab 3.2.6**. A clean version is shown at **Tab 3.2.7**.

43. The Call for Input materials regarding Short-Term Legal Services may be accessed at **Tab 3.2.1**.

### Incriminating Physical Evidence

44. The Committee is proposing that a new Rule be added to the Rules of Professional Conduct. Rule 3.5-7 currently provides "if a lawyer is unsure of the proper person to receive a client's property, the lawyer shall apply to a tribunal of competent jurisdiction for direction". The Commentary to this Rule addresses some privilege issues.

45. The Standing Committee on the Model Code has adopted a new Rule and Commentary in this area. The Committee proposes to adopt it, with some modifications. New Rule 5.1-2A would provide that "a lawyer shall not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice". New Commentary would provide additional guidance, including options to be considered by a lawyer in possession of incriminating physical evidence.

46. A blackline has been prepared and is attached as **Tab 3.2.8**. A clean version is at Tab **3.2.9**.

47. The Call for Input materials regarding Incriminating Physical Evidence may be accessed at **Tab 3.2.1**.

### Advertising

48. The Committee is proposing changes to the Rules of Professional Conduct in this area. These changes are intended to reflect developments in the legal services marketplace that the Committee has been monitoring. The Committee is of the view that the Rules regarding advertising should be amended to provide additional guidance to lawyers.

49. A blackline, showing changes to the Rules, is attached as **Tab 3.2.10**. A clean version is at **Tab 3.2.11**.

50. The Call for Input materials regarding Advertising may be accessed at **Tab 3.2.1**.

### Next Steps

51. As noted, responses to the call for input are requested by October 16, 2015. The Committee will then carefully consider all input it receives and report back to

Convocation.

52. The issue of whether related amendments to the Paralegal Rules of Conduct and Guidelines are appropriate will be considered later by the Paralegal Standing Committee.

**Tab 3.2.1**

**LAW SOCIETY OF UPPER CANADA**

**PROFESSIONAL REGULATION COMMITTEE**

**CALL FOR INPUT**

The Professional Regulation Committee is seeking input from the profession on a number of proposed amendments to the Rules of Professional Conduct, described in this document. The proposed changes relate to the following subjects:

- Conflicts of interest
- Doing business with a client
- Short-term legal services
- Incriminating physical evidence
- Advertising

This document includes an explanation of the proposed amendments and a blackline version of the rules showing the proposed amendments.

Comments should be submitted in writing to the Law Society by October 16, 2015 to the following address:

Call for Input on the Rules of Professional Conduct
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6
Or by email to mdrent@lsuc.on.ca

## PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT REGARDING CONFLICTS OF INTEREST

### Introduction

Convocation approved changes to the Rules of Professional Conduct to implement the Model Code of the Federation of Law Societies of Canada in October 2013. These changes came into force on October 1, 2014.

The amendments to the commentary to Rule 3.4-1 approved by Convocation did not take into consideration the Supreme Court of Canada's decision in *Canadian National Railway Co*. v. *McKercher* LLP (*McKercher*).[1] Based on the principles discussed in this case, the Professional Regulation Committee has drafted new commentary to Rule 3.4-1 which the Committee believes provides appropriate guidance to lawyers in this area based on the *McKercher* decision and other developments in the law in this area. A blackline, showing changes that would be made to Rules 3.4-1 and 3.4-2, is attached to this report as Appendix 1.

### Overview of Proposed Amendments

As a result of the changes approved by Convocation in 2013, the Rules and Commentary on conflicts of interest were substantially revised. Rule 3.4-1 (Duty to Avoid Conflicts of Interest) of the Rules of Professional Conduct currently provides that "a lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section".

The *McKercher* decision, referred to earlier, considered the "bright line" rule, established by the Supreme Court of Canada in 2002 in *R*. v. *Neil*.[2] According to *McKercher* a lawyer, and by extension, a law firm, cannot act for a client whose immediate legal interests are adverse to those of another existing client, unless both clients consent. The "bright line" rule applies regardless of whether the matters are related or unrelated.[3]

The Committee has carefully reviewed *McKercher,* the Model Code changes in this area, and other developments in the law and is proposing various changes to the Commentary to Rule 3.4-1, Rule 3.4-2 (Consent), and the Commentary to 3.4-2 that are discussed in this report.

### Proposed Changes

### Rule 3.4-1 – Duty to Avoid Conflicts of Interest

[1] *Canadian National Railway Co*. v. *McKercher LLP*, 2013 SCC 39, online at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13154/index.do, 2013 S.C.C. 39.
[2] *R*. v. *Neil* [2002] 3 S.C.R. 631, online at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2012/index.do.
[3] *McKercher*, *supra* note 1 at paragraph 31.

The changes proposed to the Commentary to Rule 3.4-1 (Duty to Avoid Conflicts of Interest) are intended to provide guidance to lawyers regarding their ethical obligations in this area.

Paragraph [1] of the Commentary explains that a conflict of interest may arise for a lawyer as a result of the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

These potentially conflicting duties and interests are further explained in paragraphs [4] through [8] of the commentary, as follows:

(a) paragraph [4] describes conflicts of interest resulting from a lawyer's personal interest;
(b) paragraphs [5] and [6] describes conflicts of interest that may arise because of a lawyer's duty to a current client;
(c) paragraph [7] discusses conflicts arising from a lawyer's duty to a former client; and
(d) paragraph [8] conflicts that may arise as a result of a duty to anyone else.

Examples of circumstances that may give rise to a conflict of interest are included in paragraphs [4] to [8]. These examples are not intended to be exhaustive but rather to illustrate how these duties and interests can give rise to a conflict of interest.

Paragraph [2] of the Commentary explains that the duty of confidentiality, the duty of candour, and the duty of commitment to the client's cause are all aspects of the duty of loyalty. This paragraph provides that "this rule protects of all of these duties from impairment by a conflicting duty or interest". The recent decision of the Supreme Court of Canada in *Attorney General of Canada* v. *Federation of Law Societies of Canada*.[4] has underscored that the duty of commitment to the client's cause, as well as the lawyer's duty to protect a client's confidences, are central to the lawyer's role in the administration of justice.[5]

Paragraph [3] provides additional guidance regarding the threshold to be established in order for a conflict of interest to be established, as follows:

> The rule addresses the risk of impairment rather than actual impairment. The risk contemplated by the rule is more than a mere possibility, there must be a genuine, serious risk to the duty of loyalty or to client representation. However, the risk need not be likely or probable. Except as otherwise provided by Rule 3.4-2, it is for the client and not the lawyer to decide whether to accept this risk.

The Commentary to the definition of "conflict of interest", advises that "in this context, 'substantial risk' means that the risk is significant and plausible, even if it is not certain or even probable that the material adverse effect will occur".

[4] *Attorney General of Canada* v. *Federation of Law Societies of Canada*, 2015 S.C.C.7.
[5] Ibid., paragraph 91.

The "Bright Line" Rule

As noted earlier, the "bright line" rule was first developed by the Supreme Court of Canada in *Neil*.[6] The changes that are now being proposed to the Commentary to reflect *McKercher* are intended to draw lawyers' attention to the application of the bright line rule, which would apply to a circumstance in which a lawyer representing a current client became involved in a matter against that client. In that decision, the Supreme Court of Canada notes that the bright line rule applies regardless of whether the client matters are related or unrelated.[7]

Paragraph [6] of the Commentary explains the scope of application of the bright line rule. The scope of the bright line rule as stated by the Supreme Court of Canada in *McKercher* is reflected in the second sentence of the paragraph: "the main area of application of the bright line rule is in civil and criminal proceedings. However, the bright line rule does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters". [8]

Paragraph [6] Commentary also emphasizes that even if the bright line rule does not apply, there may still be a conflict of interest that arises from a lawyer's duties towards a current client. The Commentary notes that "in matters involving another current client, lawyers should take care to consider not only whether the bright line rule applies, but whether there is a substantial risk of impairment. In either case, there is a conflict of interest".

Paragraph [7] indicates that a conflict of interest may arise because of a lawyer's duty to a former client, noting that "as the duty of confidentiality continues after the retainer is completed, the duty of confidentiality owed to a former client may conflict with the duty of candour owed to a current client if information from the former matter would be relevant to the current matter". The law of conflicts is intended to address the prejudice that may arise as a result of a lawyer's misuse of confidential information obtained from current and former clients.[9]

A conflict of interest that may arise as the result of a lawyer's duty to another person is also mentioned in paragraph [8]. The Commentary provides several examples of this, including the situation in which a lawyer acts as a director of a corporation and then acts against the corporation.

The balance of the commentary addresses other issues that must be taken into consideration, including the lawyer's duty of commitment to a client's cause, the duty of candour, the duty of confidentiality, and consent (also addressed in Rule 3.4-2, discussed in greater detail below). Paragraph [14] refers to the relationship between the Law Society and the courts with respect to court proceedings regarding lawyers' relationships with their clients.

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[6] *R*. v. *Neil*, *supra* note 2.
[7] *McKercher*, *supra* note 2 at paragraph 31.
[8] *McKercher*, *supra* note 2, paragraphs 23 and 24.
[9] Ibid., paragraph 23.

**Rule 3.4-2 – Consent**

The Committee is also proposing amendments to the Rule 3.4-2 and Commentary which are intended to enhance guidance to lawyers in this area. The Rule currently provides that consent may be express or implied. Rule 3.4-2, paragraph (a) provides that express consent must be fully informed and voluntary after disclosure. Currently, Rule 3.4-2, paragraph (b) provides that consent may be implied and need not be in writing in the following circumstances:

(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;
(ii) the matters are unrelated;
(iii) the lawyer has no relevant confidential information from one client that might reasonably affect the representation of the other client, and
(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

The Committee proposes to amend the rule by eliminating the distinction between express and implied consent and has reformulated the rule as follows:

> **3.4-2** A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

The jurisprudence in this area has evolved since the Supreme Court of Canada's decision in *Neil*, in which Justice Binnie referred to the category of "professional litigants" whose consent to concurrent representation of adverse legal interests could be inferred. [10] In *McKercher*, the Court observes that "in some cases, it is simply not reasonable for a client to claim that it expected a law firm to owe it exclusive loyalty and to refrain from acting against it in unrelated matters." Further, according to the Court, "factors such as the nature of the relationship between the law firm and the client, the terms of the retainer, as well as the types of matters involved, may be relevant to consider when determining whether there was a reasonable expectation that the law firm would not act against the client in unrelated matters".[11]

The emergence of a "reasonableness" limitation to the scope of the "bright line" rule, as opposed to the notion of implied consent in certain circumstances, is reflected in the proposed amendment to Rule 3.4-2.

The Committee also proposes to amend paragraphs [1] and [2] of the Commentary to elaborate upon the reference to disclosure in Rule 3.4-2 itself. Paragraph [1] is amended to provide that

[10] *Neil*, *supra* note 2, paragraph 28.
[11] *McKercher*, *supra* note 1, paragraph 37.

the duty of a client to disclose a conflict of interest arises from the lawyer's duty of candour to the client. Paragraph [2] is amended to provide that "disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed". Paragraph [2A] provides that a lawyer advise a client to obtain independent legal advice about the conflict of interest and explains that the purpose of this is to ensure that the client's consent is informed, genuine and uncoerced.

Paragraph [3] also provides that a client can decide whether to give consent after the lawyer makes the required full and fair disclosure of all information relevant to the decision. The Commentary acknowledges that the client may take other factors into consideration in deciding whether to give consent. These factors include 'the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs".

Paragraph [3] further provides that a lawyer may request that a client consent in advance to conflicts that might arise in the future. However,

> a general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

Advance consent must be recorded, for example, in a retainer letter (see paragraph [5]).

Paragraph [6] of the Commentary would also amended to reflect developments in the law since *R.* v. *Neil* and *Strother* v. *3464920 Canada Inc*.[12] Consistent with the changes described earlier to Rule 3.4-1, the revised Commentary provides that

> The bright line rule, referred to in the Commentary to Rule 3.4-1, does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. No issue of consent arises in such circumstances absent a substantial risk of material and adverse effect on the lawyer's loyalty to, or representation of, a client. Where such a risk exists, consent is required even though the bright line rule does not apply.

[12] *Strother* v. *3464920 Canada Inc*., 2007 SCC 24, online at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do.

## Next Steps

The Professional Regulation Committee will carefully consider all responses it receives to the call for input regarding the conflicts rules in formulating amendments for Convocation's consideration in the fall of 2015.

## PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT ON DOING BUSINESS WITH A CLIENT

### Introduction

Convocation approved changes to the Rules of Professional Conduct to implement the Model Code of the Federation of Law Societies of Canada in October 2013. These changes came into force on October 1, 2014.

The provisions regarding Doing Business With a Client were substantially amended as a result of the implementation of the Model Code. The Law Society of Upper Canada has received feedback regarding these changes. In October, 2014, Federation Council approved additional changes to the Model Code Rules in this area. The Professional Regulation Committee has reviewed these developments as well as comments from lawyers regarding the amended rules and is proposing revisions to the Law Society of Upper Canada's Rules of Professional Conduct in this area. These changes are described in greater detail in this report. A blackline is attached to this report as Appendix 2.

### Overview of Proposed Amendments

The rules in this area govern lawyer's conduct when doing business with their clients. Given the complexity of these issues, the risk of conflict of interest, and the need to protect the public, the Committee considers that guidance in the Rules should be as clear as possible.

The Committee has reviewed the 2014 Model Code amendments and feedback received from lawyers and proposes changes to the Rules of Professional Conduct, described in greater detail in this document. These changes are intended to make the Rules consistent, logical and clearer.

Following an interpretive section, Rule 3.4-28 would provide a general substantive obligation ("a lawyer shall not enter into a transaction with a client unless the transaction is fair and reasonable to the client"). Rule 3.4-29 describes specific requirements that apply if a lawyer enters into a transaction with a client. Rule 3.4-30 describes circumstances in which 3.4-29 does not apply. The Commentary to Rule 3.4-30 provides guidance on conflict of interest issues, among other things.

Borrowing from clients is addressed in Rule 3.4-31 and 3.4-32. Lending to clients is addressed in Rules 3.4-33 to 33.3, including rules regarding syndicated mortgages. Guarantees by a lawyer are addressed in 3.4-34 and 35. Payment for legal services is the subject of 3.4-35. The remaining Rules address testamentary instruments and gifts and judicial interim release.

**Definitions and Interpretation**

The definitions of "independent legal advice" (ILA) and "independent legal representation" (ILR) are set out in section 1.1 of the Rules.

To provide clarity on the subject of related persons, the Committee is proposing a new interpretive provision which would appear in Rule 3.4-27 and which is reproduced below:

> For the purposes of rules 3.4-29 to 3.4-36, a lawyer is related to a person if the person and the lawyer are related persons as set out in subsections 251(1) to (6) of the Income Tax Act (Canada) and includes
>
> (a) associates and partners of the lawyer; and
> (b) trusts and estates in which the lawyer has a beneficial interest or for which the lawyer acts as a trustee or in a similar capacity.[13]

**Rule 3.4-28 and 28.1 – Doing Business with a Client**

Rule 3.4-28 currently provides that "a lawyer shall not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction".

The Committee is proposing the amendment of 3.4-28 to provide "a lawyer shall not enter into a transaction with a client unless the transaction is fair and reasonable to the client".

This amendment removes the invariable requirement of independent legal representation (ILR). This change is consistent with amendments proposed by the Standing Committee on the Model Code, and with feedback received by the Law Society of Upper Canada. It has been suggested that the requirement that a lawyer ensure that a client receive ILR in each instance in which a lawyer proposes to do business with a client in Rule 3.4-28 is overly onerous. As set out below, an amendment to Rule 3.4-29 is proposed requiring the lawyer to consider whether independent legal representation is reasonably required.
The current Commentary to Rule 3.4-28 is as follows.

| Commentary |
| --- |
| [1] This provision applies to any transaction with a client, including<br><br>(a) lending or borrowing money;<br>(b) buying or selling property; |

[13]The Model Code proposes a definition of the term "lawyer" which would apply to these Rules, and provides that "'lawyer' includes an associate or partner of the lawyer, related persons as defined by the Income Tax Act (Canada), and a trust or estate in which the lawyer has a beneficial interest or for which the lawyer acts as a trustee or in a similar capacity".

(c) accepting a gift, including a testamentary gift;
(d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;
(e) recommending an investment; and
(f) entering into a common business venture.

[2] The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

The proposal is to change paragraph [1] of the Commentary to Rule 3.4-28 into a revised Rule 3.4-29, discussed below. Parts of paragraph [2] of the Commentary would move to Commentary following Rule 3.4-30 and Rule 3.4-36, also discussed below.

To ensure that lawyers are not able to use an associate, related person, or trust/estate to enter into otherwise prohibited transactions with clients, the Committee proposes two new subrules (3.4-28.1(1) and 3.4-28.1(2)), as follows:

> **3.4-28.1(1)** A lawyer shall not, through a person related to the lawyer do indirectly what the lawyer is prohibited from doing directly under Rules 3.4-29 to 3.4-36.
>
> **(2)** If a lawyer is or becomes aware that a client of the lawyer, through a person who is related to the lawyer, proposes to enter a transaction described in Rules 3.4-29 to 3.4-26, the lawyer shall take the same steps as the lawyer is required to take under those rules with respect to conflicts of interest as if the transaction were between the lawyer and the client.

**Rule 3.4-29 and 30 – Transactions with Clients**

Rule 3.4-29, set out below, currently provides that a lawyer who intends to enter into a transaction with a client must "recommend and require" that the client receive independent legal advice. This requirement also applies in the event that a lawyer holds an interest in a corporation or other entity whose securities are publicly traded, and intends to enter into a transaction with a client.

> **3.4-29** Subject to rule 3.4-30 [which deals with payment for legal work], if a client intends to enter into a transaction with their lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, before accepting any retainer, the lawyer must
>
> (a) disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later;

(b) recommend and require that the client receive independent legal advice; and
(c) if the client requests the lawyer to act, obtain the client's consent.

Commentary

[1] If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.

[2] A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

[3] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained.

[4] If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-31.

The Committee is mindful of the need to protect clients who enter into transactions with their lawyers. However, in the Committee's view, in the case of the transactions that are specifically mentioned in Rule 3.4-29, it is sufficient that a lawyer be required to recommend independent legal advice; further, the lawyer should consider whether the circumstances reasonably require independent legal representation.

The Committee proposes to amend 3.4-29 to read as follows:

**3.4-29** Subject to Rule 3.4-30, where a transaction involves lending or borrowing money, buying or selling property or services having other than nominal value, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment or entering into a common business venture, a lawyer shall in sequence,

(a) disclose the nature of any conflicting interest or how and why it might develop later;
(b) recommend that the client receive Independent Legal Advice and consider whether the circumstances reasonably require independent legal representation with respect to the transaction; and
(c) obtain the client's consent to the transaction if the client receives such disclosure and legal advice or legal representation.

The reference to "nominal value" is consistent with amendments proposed by the Standing Committee. This change intended to permit, for example, a lawyer in a small community to enter into a nominal transaction with a client who operates a snow plowing business for a small amount of snow removal (assuming that both the client and the lawyer would consider this contract nominal, depending on their circumstances).

Rule 3.4-30 is new, based on the Model Code rule. It would provide that Rule 3.4-29 does not apply where

(a) a client intends to enter into a transaction with a corporation or other entity whose securities are publicly traded in which the lawyer has an interest, or

(b) a lawyer borrows money from a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business.

The Commentary would also be amended as described below.

First, the first part of the current paragraph [1] of commentary appearing after this Rule (currently now following Rule 3.4-29) would be moved to a new paragraph [3], and new language would be added as paragraph [1] to remind lawyers of the fiduciary nature of the lawyer-client relationship, as follows:

> The relationship between lawyer and client is a fiduciary one. The lawyer has a duty to act in good faith. A lawyer should be able to demonstrate that the transaction with the client is fair and reasonable to the client.

Second, the Committee proposes to amend paragraph [2] of the Rule 3.4-30 Commentary (currently following Rule 3.4-29 as noted) to provide additional guidance. After the sentence "if the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined", the Committee proposes that the following new commentary be added:

> This is because the lawyer cannot act in a transaction with a client where there is a substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's own interest, unless the client consents and the lawyer reasonably believes that he or she is able to act for the client without having a material adverse effect on loyalty or representation.

Third, the Committee is proposing an amendment to require a lawyer retained to give independent legal advice (ILA) with respect to a transaction to document that the ILA was provided, by

> a) providing the client with a written certificate that the client has received ILA;
> b) obtaining the client's signature on a copy of the certificate of ILA and;

c) sending the signed copy to the client with whom the client proposes to transact business.

Fourth, the Committee proposes to amend the Commentary to require a lawyer to document a client's decision not to accept ILA (see proposed new paragraph [6]). Additional protection is provided to vulnerable clients, as follows:

> If the client is vulnerable and declines independent legal advice, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**Rule 3.4-31 and 3.4-32 – Borrowing from Clients**

The changes proposed are intended to make the rule on borrowing from clients easier to understand. If amended as proposed, Rule 3.4-31 would provide that a lawyer shall not borrow money from a client unless

(a) the client is a lending institution, financial institution, insurance company, trust company, or any similar corporation whose business includes lending money to members of the public; or
(b) the client is a person related to the lawyer, and the lawyer complies with certain requirements described in the Rule.

The Committee also proposes to add commentary to Rule 3.4-31 regarding the documentation of a client's decision to decline independent legal advice, as well as protections for the vulnerable client, as described earlier in this document. The proposed new commentary paragraph [2] is consistent with the Model Code.

Amendments are proposed to Rule 3.4-32, which would provide as follows:

> Subject to Rule 3.4-31, if a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrows money from a client, the lawyer shall
>
> (a) disclose to the client the nature of the conflicting interest; and
> (b) require that the client receive independent legal representation.

The Committee is also proposing substantial revision of the Commentary to provide additional guidance. The first paragraph would provide

> Whether a person is considered a client within rule 3.4-32 and 3.4-33 when lending money to a lawyer on that person's own account or investing

> money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

The Committee proposes the addition of two paragraphs of Commentary regarding the documentation of a client's decision to decline independent legal representation.

**Rule 3.4-33 – Lending to Clients**

The Committee is proposing substantial revision of this Rule, consistent with the Model Code, on the subject of lending to clients. As amended, the Rule would require a lawyer to fulfill three conditions before lending money to a client, as follows:

(a) disclosure of the nature of the conflicting interest to the client;
(b) the client must receive ILR; and
(c) the lawyer must obtain the client's consent to the loan.

If the client is related to the lawyer, they would be required to receive ILA and to consent to the loan.

The Committee further proposes amendments to the Commentary which would remind lawyers of best practices regarding documenting a client's decision to decline ILA as well as regarding vulnerable clients. These amendments are consistent with earlier recommendations.

**Rules 3.4-33.1 – Rule 3.4-33.3 – Syndicated Mortgages**

These Rules on syndicated mortgages would remain unchanged. The Committee proposes however that the definition of "related persons" be removed, as guidance on this point is now provided in Rule 3.4-27, as discussed earlier in this document.

The definition of "syndicated mortgage" (a mortgage having more than one investor) remains in its current position.

**Rule 3.4-34 and 3.4-35 – Guarantees by a Lawyer**

The Committee proposes to amend the Rule regarding the circumstances in which a lawyer may give a personal guarantee. Currently, the Rule provides "except as provided by rule 3.4-26, a lawyer must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender".

The Committee is proposing to narrow the scope of application of the Rule. It would provide that a lawyer may give a personal guarantee if the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business. In the alternative, the lawyer may give a personal guarantee if the transaction is for the benefit of a non-profit or charitable institution, and other circumstances outlined in Rule 3.4-36(b) are described. Finally, a lawyer may give a personal guarantee if the lawyer has entered into a business venture with a client, and a lender requires personal guarantees from all participants as a matter of course; other conditions that must be fulfilled are described in Rule 3.4-35(c).

**Rule 3.4-36 – Payment for Legal Services**

This rule on the subject of payment for legal services, which previously appeared as Rule 3.4-30, is unchanged.

The Committee proposes the adoption of the commentary for this rule included in the Model Code rule: "The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest", which previously appeared in the Law Society's commentary following Rule 3.4-28.

**Rules 3.4-37- 3.4-41 - Testamentary Instruments and Gifts and Judicial Interim Release**

In 2013, when Convocation amended the Rules to adopt the Model Code, Model Code Rule 3.4-37 was not adopted. It provides that "a lawyer must not accept a gift that is more than nominal from a client unless the client has received independent legal advice". The Committee is not proposing any change in this regard.

The Standing Committee has amended the rules governing the drafting of testamentary instruments. The amended version of Rule 3.4-38 provides that "unless the client is a family member of the lawyer, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer or an associate a gift or benefit from the client, including a testamentary gift". The Committee proposes that this change be adopted by the Law Society.

No changes are proposed to Rules 3.4-40 or 41.

**Next Steps**

The Professional Regulation Committee will carefully consider all responses it receives to the call for input regarding the conflicts rules in formulating amendments for Convocation's consideration in the fall of 2015.

## PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT REGARDING SHORT-TERM LEGAL SERVICES

### Introduction

Convocation approved changes to the Rules of Professional Conduct to implement the Model Code of the Federation of Law Societies of Canada in October 2013. These changes came into force on October 1, 2014.

In October 2014 the Council of the Federation of Law Societies of Canada, based on recommendations of the Standing Committee, approved changes to the Model Code in the area of conflicts of interest – short-term summary legal services. The 2014 amendments are intended to "facilitate the important access to legal services work of a wide range of non-for-profit legal service providers". [14]

The following material explains changes to the Rules of Professional Conduct being proposed by the Professional Regulation Committee for Convocation's consideration. A blackline is attached to this report as Appendix 3.

The amendments being proposed by the Committee are intended to respond to requests from *pro bono* legal services providers for amendment to the Rules of Professional Conduct in this area. They are also consistent with the Model Code changes in this area.

### Overview of Proposed Amendments

The purpose of Rules on conflicts of interest regarding the provision of short-term limited legal services is to facilitate access to legal services by a wide range of non-for-profit legal service providers. "Short-term limited legal services" are also described as 'brief services", and generally refer to court-based programs provided by non-profit legal services providers on a pro bono basis.

In 2010, the Rules of Professional Conduct were amended to provide a modified standard for conflicts of interest for lawyers participating in Pro Bono Law Ontario's court-based brief services program by permitting a lawyer to provide brief services to a person in such programs unless the lawyer knows of a conflict of interest that would prevent him or her from acting.

Pro Bono Law Ontario (PBLO) launched the Small Claims Duty Counsel Project to provide brief services including legal merit assessments, form-completion assistance and duty counsel to low-income unrepresented litigants appearing before Small Claims Court in Toronto.

[14] Federation of Law Societies of Canada, "Federation Model Code of Professional Conduct", online at http://flsc.ca/national-initiatives/model-code-of-professional-conduct/federation-model-code-of-professional-conduct/.

PBLO's Law Help Centre at the Superior Court of Ontario in Toronto was opened as a two-year pilot project, developed in partnership with the Ministry of the Attorney General and the Advocates Society, assists low-income unrepresented litigants with civil matters for which a legal aid certificate was not available. The program permits members of the public to obtain basic procedural information, form completion assistance, summary advice, and duty counsel services.

These PBLO projects were established pursuant to PBLO's Best Practices Manual for Pro Bono Programs. The Manual included a number of requirements for the programs covering communication to volunteers about their professional and ethical duties, policies and procedures to identify and address conflicts of interest, and intake and coordination systems.

PBLO's activities have expanded to include a variety of programs at various levels of Courts, as well as non court-based programs. The Rules of Professional Conduct have not been amended since these developments, the Committee wishes to ensure that the ethical framework in place is current.

**Proposed Amendments and Expansion of the Programming Eligible for Modified Conflicts Standard**

Prior to the 2010 amendments to the Rules of Professional Conduct, the Rules provided that a conflicts check be performed before a lawyer could provide short-term limited legal services. Some walk-in applicants were required to wait up to three hours to find out whether they could speak with a volunteer lawyer.

The amendments provided for a modified conflicts of interest standard for lawyers in this setting, which was narrowly construed to apply to brief services for PBLO's court-based programs. Where the legal services provided were of limited scope and brief duration, a different conflicts screening standard, where lawyers and firms would not need to screen for conflicts before participating in the limited legal services provided by the Law Help Centre, was established.

The amendments currently being considered would extend this approach to a broader range of programming.

Rule 3.4-16.2 of the Rules of Professional Conduct currently provides:

> 'short term limited legal services' means *pro bono* summary legal services provided by a lawyer to a client under the auspices of Pro Bono Law Ontario's Law Help Ontario program for matters in the Superior Court of Justice or in Small Claims Court, with the expectation by the lawyer and the client that the lawyer will not provide continuing legal representation in the matter.

The Committee's proposes to amend this definition of, as follows:

> 3.4-2A In rules 3.4-2A to 3.4-2D, 'short term legal services' means advice or representation to a client under the auspices of a *pro bono* or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

This amendment, which is consistent with the approach in the Model Code, is intended to remove impediments to the provision of short-term legal services and to improve access to these services by members of the public. It is also consistent with requests made by *pro bono* service providers of short term legal services to the Law Society of Upper Canada, described below.

Requests for expanded scope of programming qualifying for the modified conflicts standard

During the 2012 Call for Input on the Model Code of the Federation of Law Societies of Canada, Legal Aid Ontario asked that LAO lawyers providing "brief service" and criminal and duty counsel be included in the definition of "short term limited legal services". "Brief service" may include assisting a client by requesting a brief adjournment from the court to allow a client time to file documents, assisting a client by providing basic procedural information about how the client might address his or her legal concerns, and explaining the differences between negotiation, mediation, and court process. [15]

In addition, in 2014, PBLO asked that the definition of "short-term limited legal services" in the Rules of Professional Conduct be expanded to include all programs fulfilling the following criteria:

(a) *pro bono* summary legal services are being provided;

(b) there is no expectation either by the lawyer or the client that the lawyer will provide continuing legal representation in the matter.

In the event that the regulatory framework in this area is amended, the expanded definition of "short term legal services" in the Rules of Professional Conduct would include family, criminal, and human rights law advice.

Waiver

The Model Code provisions in the area of short-term summary legal services differ from the Law Society of Upper Canada's Rules of Professional Conduct by permitting a

[15] Legal Aid Ontario submission to the Law Society of Upper Canada Call for Input on the Model Code of the Federation of Law Societies of Canada, August 30, 2012.

lawyer to seek the consent of a client to act where the lawyer becomes aware of a conflict of interest. The Professional Regulation Committee has carefully considered this issue, and believes, consistent with its decision in 2010, that the Rules should not permit the lawyer to seek consent in these circumstances.

Amendments to the Competence Commentary

The Committee is proposing to delete the following Rule:

3.4-16.6 In providing short-term limited legal services, a lawyer shall

(a) ensure, before providing the legal services, that the appropriate disclosure of the nature of the legal services has been made to the client; and
(b) determine whether the client may require additional legal services beyond the short-term limited legal services and if additional services are required or advisable, encourage the client to seek further legal assistance.

The content of this Rule would be moved to the commentary to Rule 3.1.2 (Competence). New paragraph [7B] of Commentary would provide

> In providing short-term legal services under Rules 3.4-16.2 to 16.5, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term legal services may be required or are advisable, and encourage the client to seek such further assistance.

Use of the Phrase "Limited"

The Committee is recommending that this phrase be removed from the Rules and Commentary. In the Committee's view, the phrase "short term legal services" adequately conveys the nature of the programming being offered to which the modified conflicts of interest standard applies.

**Next Steps**

The changes discussed in this report would significantly expand the range of short-term legal services to which the modified conflicts of interest standard applies. The Professional Regulation Committee will carefully consider the input it receives in response to this call for input in formulating proposals for Convocation's consideration.

## PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT REGARDING INCRIMINATING PHYSICAL EVIDENCE

### Introduction

In October 2013, Convocation approved changes to the Rules of Professional Conduct to implement the Model Code. These changes came into force on October 1, 2014.

The Federation's Standing Committee on the Model Code ("Model Code") monitors changes in the law of professional responsibility and legal ethics, receives and considers feedback from the Law Societies and other interested parties regarding the Model Code, and makes recommendations to the Federation's Council with respect to any changes to the Model Code.

In October 2014, the Standing Committee proposed amendments to the Code to include a new Rule 5.1-2A which provides specific guidance for lawyers on the subject of incriminating physical evidence. These changes were approved by Federation Council. The Commentary following the Rule provides guidance on the scope and application of the Rule. A blackline showing changes to be made to the Rules of Professional Conduct is attached to this document as Appendix 4.

### Overview of Proposed Amendments

Rule 3.5-7 of the Rules of Professional Conduct of the Law Society of Upper Canada currently provide "if a lawyer is unsure of the proper person to receive a client's property, the lawyer shall apply to a tribunal of competent jurisdiction for direction". Rule 2.07(6), previously in force until the amendments of October 1, 2014, contained identical wording. The Commentary to the Rule is reproduced below:

> The lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client's common law privilege and with relevant constitutional and statutory provisions such as those found in the Income Tax Act (Canada) and the Criminal Code.

New rule 5.1-2A prohibits the concealment, destruction or alteration of incriminating physical evidence. The commentary following the Rule provides detailed guidance on the scope and application of the Rule. It elaborates on the types of evidence covered by the Rule, addresses the tension between the lawyer's duties to the client and the administration of justice in these circumstances, and provides options drawn from the case-law (specifically those described in *R.* v. *Murray*[16]) regarding the manner in which a lawyer might deal with such evidence. The

[16] Mr. Murray was charged with the criminal offence of wilfully attempting to obstruct justice for concealing videotapes that contained evidence against his client, Paul Bernardo, who was charged with murder and

Commentary also discusses issues relating to the protection of client confidentiality and privilege.

In addition to review of applicable case law, the Standing Committee also reviewed relevant rules on the subject, including ABA Model Rule 3.4(1), which in its commentary provides that applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes to conduct a limited examination that will not alter or destroy material characteristics of the evidence. The law may also require that the lawyer turn over the evidence to the authorities.[17]

The Commentary to new rule 5.1-2A contains language concerning the non-destructive testing of evidence. The Commentary advises lawyers to proceed with caution to ensure that there is no concealment, destruction, or alternation of the evidence. Paragraph [6] of Commentary notes that the act or opening or copying electronic materials can alter them.

**Ethical Guidance Regarding Lawyers' Duties With Respect to Incriminating Physical Evidence**

Gavin McKenzie in his book on lawyers and ethics summarizes Canadian lawyers' duties with respect to physical evidence as follows:

1. The duty of confidentiality provides no justification for taking or keeping possession of incriminating physical evidence.
2. Lawyers should avoid taking possession of such evidence.
3. Lawyers' duty of confidentiality requires them not to disclose the existence of evidence that is not in their possession.
4. Lawyers have no duty to assist the Crown by producing physical evidence.
5. Where incriminating physical evidence comes into their possession, however, lawyers have a duty not to destroy, alter or conceal it.

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other related offences. Mr. Murray was acquitted. In *R*. v. *Murray*, Justice Gravely held that a lawyer who came into possession of inculpatory evidence had three legally justifiable options:

(a) to immediately turn over the incriminating physical evidence to the authorities;
(b) to deposit it with the presiding trial judge;
(c) to notify the authorities about the existence of the videotapes, and then litigate this matter if required.

[2000] O.J. No. 2182, paragraph 125, online at https://www.canlii.org/en/on/onsc/doc/2000/2000canlii22378/2000canlii22378.html?autocompleteStr=R.%20v.%20Murray&autocompletePos=4.

[17] American Bar Association, Model Rules of Professional Conduct, Rule 3.4: Fairness to Opposing Party and Counsel, online at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_4_fairness_to_opposing_party_counsel.html.

6. Their duty not to conceal physical evidence requires lawyers to turn over to law enforcement authorities physical evidence that consists of the instrumentalities or proceeds of crime.
7. In other cases, it is permissible for lawyers to return the evidence to its source, provided that they advise the source of the legal consequences that may follow if the evidence is destroyed, altered, or concealed, but provided that they do not have reasonable grounds to believe that the evidence will not be destroyed, altered, or concealed if it is returned.[18]

David Layton and Michael Proulx, writing in *Ethics and Criminal Law*, express the view that the current Rules in this area as "cryptic". In their view, the new Model Code Rule and Commentary represent a "welcome trend of providing Canadian lawyers with better and more comprehensive guidance regarding the proper approach to take when confronted with physical evidence of a crime". [19]

**Additional Amendments Proposed by the Professional Regulation Committee**

Retaining Independent Legal Counsel

Paragraph [3] of the Model Code describes three options to be considered by a lawyer in possession of incriminating physical evidence. Paragraph [4] of the Model Code refers to the possibility that the lawyer may retain independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence.

The Committee is of the view that the retaining of independent legal counsel should be given greater prominence in the Commentary than is the case in the Model Code.

In an article published in 2009, Austin Cooper, Q.C., suggested that

> …one might ask, how should counsel guide themselves when faced with the problem of evidence that may be incriminating of their clients without placing themselves at risk of prosecution? I suggest that if a serious issue arises in this area counsel would be wise to consult promptly with senior counsel in confidence for independent advice as to how to deal with the matter.[20]

The Committee therefore proposes to amend the commentary to the Rules of Professional Conduct by moving the reference to the retaining of independent counsel from paragraph [4] (where it appears in the Model Code) to paragraph [3], of the Rules of Professional Conduct,

[18] Gavin McKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, (Toronto: Carswell, 2014), 5th edition, pp. 7-11 and 7-12.
[19] David Layton and Michael Proulx, *Ethics and Criminal Law*, 2nd ed., (Toronto, Irwin Law, 2015), p. 492.
[20] "The Ken Murray Case: Defence Counsel's Dilemma", Criminal Law Quarterly, Vol, 47, online at http://www.criminal-lawyers.ca/criminal-defence-news/the-ken-murray-case-defence-counsel-s-dilemma.

where it would become the first option to be considered by a lawyer in possession of incriminating physical evidence. Paragraph [3] would therefore provide

> A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options. These options include, as soon as reasonably possible:
>
> (a) retaining independent legal counsel who
>
> (i) is not to be informed of the identity of the client,
> (ii) is to be instructed not to disclose the identity of the instructing lawyer, and
> (iii) is to advise the lawyer and is to disclose or deliver the evidence, if necessary;
>
> (b) delivering the evidence to law enforcement authorities or to the prosecution, either directly or anonymously;
>
> (c) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination; or
>
> (d) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

Other Amendments

The Committee also suggested the following other amendments to the Model Code, reflected in the Blackline:

(a) The word “physical” should be inserted in front of “evidence” in the first paragraph of Commentary to Rule 5.1-2A, to ensure consistent drafting of the Rule and Commentary.
(b) The word “mere” should be removed in the first paragraph of Commentary paragraph [3] (the Model Code provides “a lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its mere existence”.

**Next Steps**

Amendments to the Rules of Professional Conduct must be approved by Convocation. The Professional Regulation Committee will carefully consider the input it receives in formulating proposals for Convocation’s consideration.

## CHANGES TO THE RULES ON ADVERTISING

### Introduction

The Law Society of Upper Canada's Professional Regulation Committee is responsible for developing policy options for Convocation's consideration regarding rules of professional conduct for Ontario lawyers. The Committee is proposing changes to the Rules of Professional Conduct provisions regarding marketing, including advertising.

In 2008, the Rules of Professional Conduct were amended to provide a less prescribed and a more principles-based approach to guidance on this subject. The context of these changes were recommendations made by the Competition Bureau in 2007, in which the Bureau suggested that Law Societies lift any unnecessary restrictions on advertising. Since that time, there appears to have been a significant increase in the incidence and scope of lawyer advertising and regulatory concerns have prompted a review of these Rules. A blackline, showing changes that would be made to the Rules of Professional Conduct if these changes were to be adopted by Convocation, is attached as Appendix 5.

The Committee's view is that advertising serves a public purpose in creating awareness of available legal service providers, but must be in the best interests of the public and must maintain the integrity of the profession. With these considerations in mind, the Committee is seeking input on these changes.

### Current Regulatory Framework

The current regulatory framework, in place since 2007, provides guidance on lawyer advertising and marketing and includes the following:

(a) Section 4.2 of the Rules of Professional Conduct addresses marketing. Rule 4-2-0 provides "in this rule, 'marketing' includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos".

(b) Rule 4-2-1 provides that a lawyer may market legal services if the marketing is demonstrably true, accurate and verifiable, is neither misleading, confusing, or deceptive, nor likely to mislead, confuse, or deceive, and is in the best interests of the public and consistent with a high standard of professionalism.

(c) The Commentary to Rule 4.2-1 includes a list of marketing practices that may contravene the Rule. These examples include

    (i) stating an amount of money that the lawyer has recovered for a client, or referring to the lawyer's degree of success in past cases, unless mention is also made that past results are not necessarily indicative of future results, and that the amount recovered and other litigation outcomes will depend on the facts in individual cases;

(ii) suggesting qualitative superiority to other lawyers;

(iii) raising expectations unjustifiably;

(iv) suggesting or implying the lawyer is aggressive;

(v) disparaging or demeaning other persons, groups, organizations or institutions;

(vi) taking advantage of a vulnerable person or group; and

(vii) using testimonials or endorsements which contain emotional appeals.

(d) Rule 4.1-1 provides "A lawyer shall make legal services available to the public in an efficient and convenient way". The Commentary provides additional guidance to lawyers participating in the Legal Aid Plan.

(e) Rule 4.2-2 provides that a lawyer may advertise fees charged for legal services if

(i) the advertising is reasonably precise as to the services offered for each fee quoted;

(ii) the advertising states whether other amounts, such as disbursements, and taxes will be charged in addition to the fee; and

(iii) the lawyer strictly adheres to the advertised fee in each applicable case.

**Issues Raised About Advertising**

The Law Society of Upper Canada has been made aware of the following issues:

(a) Lawyers sometimes use endorsements and awards in their advertising. This advertising may refer to professional publications and awards conferred by consumer organizations. The advertisements often contain insufficient detail about the award which means that it is difficult for members of the public to determine whether the lawyer paid to receive the award (either directly or indirectly through advertising); nor is it clear whether the lawyer received the award based on merit or any selection criteria.

(b) Some advertisements contain exaggerated comparisons to other lawyers and statements or suggestions that the lawyer is aggressive.

(c) Some advertisements contain statements about fee arrangements, such as contingency fees, without a disclaimer. The advertising contains no reference to the client's responsibility to pay the lawyer's disbursements. For example, the client may well be required to cover the costs incurred by the lawyer such as photocopying, even if the litigation is unsuccessful.

(d) Some advertising may contain misleading information about the size of the firm, the number of offices or the areas of practice. The fact that the lawyer will likely refer the work to others is not indicated in the advertisement. The nature of the service provided to the client is in fact a referral for legal services, and not legal representation.

(e) In some cases the location and context of lawyer advertising may indicate a lack of professionalism.

**Proposed Amendments**

The proposals described below are intended to provide a strengthened regulatory framework and more detailed guidance to lawyers on advertising and marketing.

The Committee recommends that a new Rule 4.2-1.1 be added to the Rules which would generally incorporate the current commentary to Rule 4.2-1. The Committee is also proposing new commentary to Rule 4.2-1.1. Key features of the proposed new framework are as follows:

(a) Paragraph [1] explains that Rule 4.2-1 contains general requirements for the marketing of legal services. Rule 4.2-1.1 provides a list of marketing practices which would contravene 4.2-1, but is not an exhaustive list.

(b) Paragraph [2] provides examples of marketing practices which may contravene these requirements.

(c) Paragraph [3] emphasizes that marketing must be consistent with a high standard of professionalism. Unprofessional marketing is not in the best interests of the public and has a negative impact on the reputation of lawyers, the legal profession, and the administration of justice. In light of the role of the profession to recognize and protect the dignity of individuals and the diversity of the Ontario community, marketing practices should conform to the requirements of human rights laws in force in Ontario.

(d) Paragraph [4] provides some examples of marketing practices that may be inconsistent with a high degree of professionalism. These include images, language or statements that are violent, racist, or sexually offensive, that take advantage of a vulnerable person or group, or refer negatively to other lawyers, the legal profession, or the administration of justice.

(e) The Committee is also proposing new Commentary. Paragraph [2] would provide guidance regarding marketing practices that may contravene Rule 4.2-1. The following examples are included:

(i) failing to disclose that the legal work is routinely referred to other lawyers for a fee rather than being performed by the lawyer;
(ii) misleading about the size of the lawyer's practice or the areas of law in which the lawyer provides services;
(iii) referring to fee arrangements offered to clients without qualifications; and
(iv) advertising, awards and endorsements from third parties without disclaimers or qualifications.

## Next Steps

The Professional Regulation Committee will carefully consider all responses it receives to the call for input regarding the advertising rules in formulating amendments for Convocation's consideration in the fall of 2015.

**TAB 3.2.2**

## BLACKLINE SHOWING AMENDMENTS PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE

## SECTION 3.4 CONFLICTS

### Duty to Avoid Conflicts of Interest

**3.4-1** A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.

**Commentary**

**[1]** As defined in rule 1.1-1, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. Rule 3.4-1 protects the duties owed by lawyers to their clients and the lawyer-client relationship from impairment as a result of a conflicting duty or interest~~In this context, "substantial risk" means that the risk is significant and plausible, even if it is not certain or even probable that the material adverse effect will occur. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer~~. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

[2] In addition to the duty of representation arising from a retainer, the law imposes other duties on the lawyer, particularly the duty of loyalty. The duty of confidentiality, the duty of candour and the duty of commitment to the client's cause are aspects of the duty of loyalty. This rule protects all of these duties from impairment by a conflicting duty or interest.

[3] A client may be unable to judge whether the lawyer's duties have actually been compromised. Even a well-intentioned lawyer may not realize that performance of his or her duties has been compromised. Accordingly, the rule addresses the risk of impairment rather than actual impairment. The risk contemplated by the rule is more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation. However, the risk need not be likely or probable. Except as otherwise provided in Rule 3.4-2, it is for the client and not the lawyer to decide whether to accept this risk.

Personal Interest Conflicts

[4] A lawyer's own interests can impair client representation and loyalty. This can be reasonably obvious, for example, where a lawyer is asked to advise the client in respect of a matter in which the lawyer, the lawyer's partner or associate or a family member has a material direct or indirect financial interest. But other situations may not be so obvious.

For example, the judgment of a lawyer who has a close personal relationship, sexual or otherwise, with a client who is in a family law dispute is likely to be compromised. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. Lawyers should carefully consider their relationships with their clients and the subject matter of the retainer in order to determine whether a conflicting personal interest exists. If the lawyer is a member of a firm and concludes that a conflicting personal interest exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work without the involvement of the conflicted lawyer.

**[2]** ~~A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest~~.

**[3]** ~~In order to assess whether there is a conflict of interest, the lawyer is required to consider the lawyer's duties to current, former and joint clients, third persons, as well as the lawyer's own interests~~.

**Representation**

**[4]** ~~Representation means acting for a client and includes the lawyer's advice to and judgment on behalf of the client~~.

~~**The Fiduciary Relationship, the Duty of Loyalty and Conflicting Interests**~~

~~**[5]** The value of an independent bar is diminished unless the lawyer is free from conflicts of interest. The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Aspects of the duty of loyalty owed to a current client are the duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty to avoid conflicting interests. Current clients must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship~~.

Current Client Conflicts

[5] Duties owed to another current client can also impair client representation and loyalty. Representing opposing parties in a dispute provides a particularly stark example of a current client conflict. Conflicts may also arise in a joint retainer where the jointly represented clients' interests diverge. Acting for more than one client in separate but related matters may risk impairment because of the nature of the retainers. The duty of confidentiality owed to one client may be inconsistent with the duty of candour owed to another client depending on whether information obtained by the lawyer during either retainer would be relevant to both retainers. These are examples of situations where conflicts of interest involving other current clients may arise.

[6] A bright line rule has been developed by the courts to protect the representation of and loyalty to current clients. The bright line rule holds that a lawyer cannot act directly adverse to the immediate legal interests of a current client, whether the client matters are related or unrelated, without the clients' consent. The main area of application of the bright line rule is in civil and criminal proceedings. However, the bright line rule does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. The bright line recognizes that the lawyer-client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. This type of conflict may also arise outside a law partnership, in situations where sole practitioners, who are in space-sharing associations and who otherwise have separate practices, hold themselves out as a law firm and lawyers in the association represent opposite parties to a dispute.

A lawyer should understand that there may be a conflict of interest arising from the duties owed to another current client even if the bright line rule does not apply. In matters involving another current client, lawyers should take care to consider not only whether the bright line rule applies but whether there is a substantial risk of impairment. In either case, there is a conflict of interest.

Former Client Conflicts

[7] Duties owed to a former client, as reflected in Rule 3.4-10, can impair client representation and loyalty. As the duty of confidentiality continues after the retainer is completed, the duty of confidentiality owed to a former client may conflict with the duty of candour owed to a current client if information from the former matter would be relevant to the current matter. Lawyers also have a duty not to act against a former client in the same or a related matter even where the former client's confidential information is not at risk. In order to determine the existence of a conflict of interest, a lawyer should consider whether the representation of the current client in a matter includes acting against a former client.

Conflicts arising from Duties to Other Persons

[8] Duties owed to other persons can impair client representation and loyalty. For example, a lawyer may act as a director of a corporation as well as a trustee. If the lawyer acts against such a corporation or trust, there may be a conflict of interest. But even acting for such a corporation or trust may affect the lawyer's independent judgment and fiduciary obligations in either or both roles, make it difficult if not impossible to distinguish between legal advice from business and practical advice, or jeopardize the protection of lawyer and client privilege. Lawyers should carefully consider the propriety, and the wisdom of wearing "more than one hat" at the same time.

Other Issues To Consider

[9] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. For example, the addition of new parties in litigation or in a transaction can give rise to new conflicts of interest that must be addressed.

[10] Addressing conflicts may require that other rules be considered, for example

(a). the lawyer's duty of commitment to the client's cause, reflected in Rule 3.7-1, prevents the lawyer from withdrawing from representation of a current client, especially summarily and unexpectedly, in order to circumvent the conflict of interest rules;

(b) the lawyer's duty of candour, reflected in Rule 3.2-2, requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer. Even where a lawyer concludes that there is no conflict of interest in acting against a current client, the duty of candour may require that the client be advised of the adverse retainer in order to determine whether to continue the retainer;

(c) the lawyer's duty of confidentiality, reflected in Rule 3.3-1 and owed to current and former clients, may limit the lawyer's ability to obtain client consent as permitted by Rule 3.4-2 because the lawyer may not be able to disclose the information required for proper consent. Where there is a conflict of interest and consent cannot be obtained for this reason, the lawyer must not act; and

(d) rule 3.4-2 permits a lawyer to act in a conflict in certain circumstances with consent. It is the client, not the lawyer, who is entitled to decide whether to accept risk of impairment of client representation and loyalty. However, Rule 3.4-2 provides that client consent does not permit a lawyer to act where there would be impairment rather than merely the risk of impairment.

[11] These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary and other principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by the Law Society even where a court dealing with the case may decline to order disqualification as a remedy.

~~**[6]** [FLSC - not in use]~~

~~**[7]** Accordingly, factors for the lawyer's consideration in determining whether a conflict of interest exists include~~

~~(a) the immediacy of the legal interests;~~

~~(b) whether the legal interests are directly adverse;~~

~~(c) whether the issue is substantive or procedural;~~

~~(d) the temporal relationship between the matters;~~

~~(e) the significance of the issue to the immediate and long-term interests of the clients involved; and~~

~~(f) the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.~~

~~**Examples of Conflicts of Interest**~~

**[8]** Conflicts of interest can arise in many different circumstances. The following are examples of situations in which conflicts of interest commonly arise requiring a lawyer to take particular care to determine whether a conflict of interest exists:

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

(b) A lawyer provides legal advice on a series of commercial transactions to the owner of a small business and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

(c) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

(i) A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

(d) A lawyer has a sexual or close personal relationship with a client.

(i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning their affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by their lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

(e) A lawyer or their law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.

These two roles may result in a conflict of interest or other problems because they may

(i) affect the lawyer's independent judgment and fiduciary obligations in either or both roles,

(ii) obscure legal advice from business and practical advice,

(iii) jeopardize the protection of lawyer and client privilege, and

(iv) disqualify the lawyer or the law firm from acting for the organization.

(f) Sole practitioners who practise with other licensees in cost-sharing or other arrangements represent clients on opposite sides of a dispute. See rule 3.3-1, Commentary [7]

*[New and amended – October 2014]*

## Consent

**3.4-2** A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is ~~express or implied~~ consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes ~~it is reasonable for the lawyer to conclude~~ that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

~~(a) Express consent must be fully informed and voluntary after disclosure.~~

~~(b) Consent may be implied and need not be in writing where all of the following apply:~~

~~(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel,~~

~~(ii) the matters are unrelated,~~

~~(iii) the lawyer has no relevant confidential information from one client that might reasonably affect the representation of the other client, and~~

~~(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.~~

**Commentary**

**[0.1]** ~~Rule 3.4-2 permits a client to accept the risk of material impairment of representation or loyalty. However, the lawyer would be unable to act where it is reasonable to conclude that representation or loyalty will be materially impaired even with client consent. Possible material impairment may be waived but actual material impairment cannot be waived~~.

**Disclosure and consent**

**[1]** Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

**[2]** Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2A] While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable and not sophisticated.

**[3]** Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

**Consent in advance**

**[4]** A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

**[5]** While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

~~**Implied consent**~~ **Consent and the Bright Line Rule**

**[6]** The bright line rule, referred to in the Commentary to Rule 3.4-1, does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. No issue of consent arises in such circumstances absent a substantial risk of material and adverse effect on the lawyer's loyalty to or representation of a client. Where such a risk exists, consent is required even though the bright line rule does not apply. ~~In some cases consent may be implied, rather than expressly granted. As the Supreme Court held in *R. v. Neil* and in *Strother v. 3464920 Canada Inc*, however, the concept of implied consent is applicable in exceptional cases only. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the representation of the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.~~

*[New – October 2014~~]~~*

**TAB 3.2.3**

## CLEAN VERSION SHOWING AMENDMENTS PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE

## SECTION 3.4 CONFLICTS

### Duty to Avoid Conflicts of Interest

**3.4-1** A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.

**Commentary**

**[1]** As defined in rule 1.1-1, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. Rule 3.4-1 protects the duties owed by lawyers to their clients and the lawyer-client relationship from impairment as a result of a conflicting duty or interest. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

**[2]** In addition to the duty of representation arising from a retainer, the law imposes other duties on the lawyer, particularly the duty of loyalty. The duty of confidentiality, the duty of candour and the duty of commitment to the client's cause are aspects of the duty of loyalty. This rule protects all of these duties from impairment by a conflicting duty or interest.

**[3]** A client may be unable to judge whether the lawyer's duties have actually been compromised. Even a well-intentioned lawyer may not realize that performance of his or her duties has been compromised. Accordingly, the rule addresses the risk of impairment rather than actual impairment. The risk contemplated by the rule is more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation. However, the risk need not be likely or probable. Except as otherwise provided in Rule 3.4-2, it is for the client and not the lawyer to decide whether to accept this risk.

**Personal Interest Conflicts**

**[4]** A lawyer's own interests can impair client representation and loyalty. This can be reasonably obvious, for example, where a lawyer is asked to advise the client in respect of a matter in which the lawyer, the lawyer's partner or associate or a family member has a material direct or indirect financial interest. But other situations may not be so obvious.

For example, the judgment of a lawyer who has a close personal relationship, sexual or otherwise, with a client who is in a family law dispute is likely to be compromised. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict

confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. Lawyers should carefully consider their relationships with their clients and the subject matter of the retainer in order to determine whether a conflicting personal interest exists. If the lawyer is a member of a firm and concludes that a conflicting personal interest exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work without the involvement of the conflicted lawyer.

**Current Client Conflicts**

**[5]** Duties owed to another current client can also impair client representation and loyalty. Representing opposing parties in a dispute provides a particularly stark example of a current client conflict. Conflicts may also arise in a joint retainer where the jointly represented clients' interests diverge. Acting for more than one client in separate but related matters may risk impairment because of the nature of the retainers. The duty of confidentiality owed to one client may be inconsistent with the duty of candour owed to another client depending on whether information obtained by the lawyer during either retainer would be relevant to both retainers. These are examples of situations where conflicts of interest involving other current clients may arise.

**[6]** A bright line rule has been developed by the courts to protect the representation of and loyalty to current clients. The bright line rule holds that a lawyer cannot act directly adverse to the immediate legal interests of a current client, whether the client matters are related or unrelated, without the clients' consent. The main area of application of the bright line rule is in civil and criminal proceedings. However, the bright line rule does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. The bright line recognizes that the lawyer-client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. This type of conflict may also arise outside a law partnership, in situations where sole practitioners, who are in space-sharing associations and who otherwise have separate practices, hold themselves out as a law firm and lawyers in the association represent opposite parties to a dispute.

A lawyer should understand that there may be a conflict of interest arising from the duties owed to another current client even if the bright line rule does not apply. In matters involving another current client, lawyers should take care to consider not only whether the bright line rule applies but whether there is a substantial risk of impairment. In either case, there is a conflict of interest.

**Former Client Conflicts**

**[7]** Duties owed to a former client, as reflected in Rule 3.4-10, can impair client representation and loyalty. As the duty of confidentiality continues after the retainer is completed, the duty of confidentiality owed to a former client may conflict with the duty of candour owed to a current client if information from the former matter would be relevant to the current matter. Lawyers also have a duty not to act against a former client in the same or a related matter even where the former client's confidential information is not at risk. In order to determine the existence of a conflict of interest, a lawyer should consider whether the representation of the current client in a matter includes acting against a former client.

**Conflicts arising from Duties to Other Persons**

**[8]** Duties owed to other persons can impair client representation and loyalty. For example, a lawyer

may act as a director of a corporation as well as a trustee. If the lawyer acts against such a corporation or trust, there may be a conflict of interest. But even acting for such a corporation or trust may affect the lawyer's independent judgment and fiduciary obligations in either or both roles, make it difficult if not impossible to distinguish between legal advice from business and practical advice, or jeopardize the protection of lawyer and client privilege. Lawyers should carefully consider the propriety, and the wisdom of wearing "more than one hat" at the same time.

**Other Issues To Consider**

**[9]** A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. For example, the addition of new parties in litigation or in a transaction can give rise to new conflicts of interest that must be addressed.

**[10]** Addressing conflicts may require that other rules be considered, for example

(a) the lawyer's duty of commitment to the client's cause, reflected in Rule 3.7-1, prevents the lawyer from withdrawing from representation of a current client, especially summarily and unexpectedly, in order to circumvent the conflict of interest rules;

(b) the lawyer's duty of candour, reflected in Rule 3.2-2, requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer. Even where a lawyer concludes that there is no conflict of interest in acting against a current client, the duty of candour may require that the client be advised of the adverse retainer in order to determine whether to continue the retainer;

(c) the lawyer's duty of confidentiality, reflected in Rule 3.3-1 and owed to current and former clients, may limit the lawyer's ability to obtain client consent as permitted by Rule 3.4-2 because the lawyer may not be able to disclose the information required for proper consent. Where there is a conflict of interest and consent cannot be obtained for this reason, the lawyer must not act; and

(d) rule 3.4-2 permits a lawyer to act in a conflict in certain circumstances with consent. It is the client, not the lawyer, who is entitled to decide whether to accept risk of impairment of client representation and loyalty. However, Rule 3.4-2 provides that client consent does not permit a lawyer to act where there would be impairment rather than merely the risk of impairment.

**[11]** These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary and other principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by the Law Society even where a court dealing with the case may decline to order disqualification as a remedy.

*[New and amended – October 2014]*

## Consent

**3.4-2** A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

**Commentary**

**Disclosure and consent**

**[1]** Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

**[2]** Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

**[2A]** While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable and not sophisticated.

**[3]** Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

**Consent in advance**

**[4]** A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

**[5]** While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent.

Advance consent must be recorded, for example in a retainer letter.

**Consent and the Bright Line Rule**

**[6]** The bright line rule, referred to in the Commentary to Rule 3.4-1, does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. No issue of consent arises in such circumstances absent a substantial risk of material and adverse effect on the lawyer's loyalty to or representation of a client. Where such a risk exists, consent is required even though the bright line rule does not apply.

*[New – October 2014]*

**TAB 3.2.4**

# PROPOSED AMENDMENTS PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE TO THE DOING BUSINESS WITH A CLIENT RULES IN THE RULES - BLACKLINE

## Doing Business with a Client

**3.4-27** ~~[FLSC – not in use]~~

For the purposes of rules 3.4-29 to 3.4-36, a lawyer is related to a person if the person and the lawyer are related persons as set out in subsections 251(2) to (6) of the *Income Tax Act* (Canada) and includes

(a) associates and partners of the lawyer; and
(b) trusts and estates in which the lawyer has a beneficial interest or for which the lawyer acts as a trustee or in a similar capacity.

**3.4-28** A lawyer ~~must~~shall ~~-~~not enter into a transaction with a client unless the transaction is fair and reasonable to the client.~~, the client consents to the transaction and the client has independent legal representation with respect to the transaction~~.

**Commentary**

**[1]** ~~This provision applies to any transaction with a client, including~~

~~(a) lending or borrowing money;~~

~~(b) buying or selling property;~~

~~(c) accepting a gift, including a testamentary gift;~~

~~(d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;~~

~~(e) recommending an investment; and~~

~~(f) entering into a common business venture.~~

~~**[2]** The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest~~.

3.4-28.1(1) A lawyer shall not, through a person related to the lawyer, do indirectly what the lawyer is prohibited from doing directly under Rules 3.4-29 to 3.4-36.

(2) If a lawyer is or becomes aware that a client of the lawyer, through a person who is related to the lawyer, proposes to enter a transaction described in Rules 3.4-29 to 3.4-36, the lawyer shall take the same steps as the lawyer is required to take under those rules with respect to conflicts of interest as if the transaction were between the lawyer and the client.

**Transactions with Clients**

**3.4-29** Subject to rule 3.4-30-36, where a transaction with a client of a lawyer involves lending or borrowing money, buying or selling property or services having other than nominal value, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment, or entering into a common business venture, the lawyer shall in sequence, ~~if a client intends to enter into a transaction with their lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, before accepting any retainer, the lawyer must~~

(a) disclose ~~and explain~~ the nature of ~~the~~ any conflicting interest ~~to the client or, in the case of a potential conflict,~~ or how and why it might develop later;

(b) recommend ~~and require~~ that the client receives independent legal advice and consider whether the circumstances reasonably require independent legal representation with respect to the transaction; and

(c) obtain the client's consent to the transaction ~~after~~ if the client receives such disclosure and independent legal advice or independent legal representation. ~~if the client requests the lawyer to act, obtain the client's consent.~~

~~Commentary~~

~~[1] If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.~~

~~[2] A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.~~

~~[3] Generally, in disciplinary proceedings under this rule, the burden will rest on the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained.~~

~~[4] If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-31.~~ [moved]

3.4-30 Rule 3.4-29 does not apply where

(a) a client intends to enter into a transaction with a corporation or other entity whose securities are publicly traded in which the lawyer has an interest; or

(b) a lawyer borrows money from a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business.

**Commentary**

**[1]** ~~If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.~~ The relationship between lawyer and client is a fiduciary one. The lawyer has a duty to act in good faith. A lawyer should be able to demonstrate that the transaction with the client is fair and reasonable to the client.

**[2]** In some circumstances, a lawyer may be retained to provide legal services for a transaction in which the lawyer and a client participate. The ~~A~~ lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined. This is because the lawyer cannot act in a transaction with a client where there is a substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's own interest, unless the client consents and the lawyer reasonably believes that he or she is able to act for the client without having a material adverse effect on loyalty or the representation.

[3] If the lawyer chooses not to disclose the conflicting interest or cannot disclose without breaching confidence, the lawyer must decline the retainer.

**[~~3~~4]** Generally, in disciplinary proceedings under ~~this r~~Rules 3.4-29 to 3.4-36, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, that independent legal advice was received by the client, where required, and that the client's consent was obtained.

Documenting Independent Legal Advice

[5] A lawyer retained to give independent legal advice relating to a transaction should document the independent legal advice by:

(a) providing the client with a written certificate that the client has received independent legal advice;

(b) obtaining the client's signature on a copy of the certificate of independent legal advice; and

(c) sending the signed copy to the lawyer with whom the client proposes to transact business.

Documenting a Client's Decision to Decline Independent Legal Advice

[6] If the client declines the opportunity to obtain independent legal advice, the lawyer should obtain the client's signature on a document indicating that the client has declined the advice.

[7] If the client is vulnerable and declines independent legal advice, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**[4]** ~~If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-31~~.

**~~Payment for Legal Services – moved~~**

~~**3.4-301** When a client intends to pay for legal services by transferring to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must shall require recommend but need not require that the client receive independent legal advice before accepting a retainer.~~

~~Commentary~~

~~[1] The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.~~

**Borrowing from Clients**

**3.4-312** A lawyer ~~must~~ shall not borrow money from a client unless

(a) the client is a lending institution, financial institution, insurance company, trust company, or any similar corporation whose business includes lending money to members of the public; or

(a) the client is a person related to the lawyer and the lawyer ~~lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, or~~

~~(b)~~

(i) discloses to the client the nature of the conflicting interest; and

(ii) requires that the client receive independent legal advice or, where the circumstances reasonably require, independent legal representation.

~~the client is a related person as defined in section 251 of the *Income Tax Act* (Canada) and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the matter and by independent legal advice or independent legal representation~~.

**Commentary**

**[1]** Whether a person is considered a client within this rule when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

Documenting Independent Legal Advice

[2] A lawyer retained to give independent legal advice relating to a transaction should document the independent legal advice by:

(a) providing the client with a written certificate that the client has received independent legal advice;

(b) obtaining the client's signature on a copy of the certificate of independent legal advice; and

(c) sending the signed copy to the lawyer with whom the client proposes to transact business.

Documenting a Client's Decision to Decline Independent Legal Advice or Independent Legal Representation

[1] If the client declines the opportunity to obtain independent legal advice or independent legal representation, the lawyer should obtain the client's signature on a document indicating that the client has declined the advice or representation.

[2] If the client is vulnerable and declines independent legal advice, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**3.4-32** Subject to Rule 3.4-31**,** if a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest proposes to borrow money from a client of the lawyer, the lawyer shall:

(a) disclose to the client the nature of the conflicting interest; and

(b) require that the client receive independent legal representation.

**Commentary**

**[1]** Whether a person is considered a client within rules 3.4-32 and 3.4-33 when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

**[2]** Rule 3.4-33 addresses situations where a conflicting interest may not be immediately apparent to a potential lender. As such, in the transactions described in the rule, the lawyer should make disclosure and require that the client from whom the entity in which the lawyer or the lawyer's spouse has a direct or indirect substantial interest in borrowing has independent legal representation**.**

Documenting a Client's Decision to Decline Independent Legal Representation

[3] If the client declines the opportunity to obtain independent legal representation, the lawyer should obtain the client's signature on a document indicating that the client has declined the representation.

[4] If the client is vulnerable and declines independent legal representation, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**Certificate of Independent Legal Advice**

**3.4-3**2**3** A lawyer retained to give independent legal advice relating to a transaction in which funds are to be advanced by the client to another lawyer must do the following before the client advances any funds:

(a) provide the client with a written certificate that the client has received independent legal advice, and

(b) obtain the client's signature on a copy of the certificate of independent legal advice and send the signed copy to the lawyer with whom the client proposes to transact business.

**3.4-3**3**4** Subject to rule 3.4-32, if a lawyer's spouse or a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrow money from a client, the lawyer shall must ensure that the client's interests are fully protected by the nature of the case and by independent legal representation.

**Lawyers in Loan or Mortgage Transactions**

**3.4-3**4**5** **Subject to Rule 3.4-31,** iIf a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrows money from a client, the lawyer shall:lends money to a client, before agreeing to make the loan, the lawyer must:

(a) disclose and explain to the client the nature of the conflicting interest to the client;

(b) require that the client receive independent legal representation; and

(c) obtain the client's consent.

Lending to Clients

3.4-33 6A lawyer shall not lend money to a client unless, before making the loan, the lawyer

(a) discloses to the client the nature of the conflicting interest; and

(b) requires that the client

(i) receive independent legal representation; or

(ii) if the client is a person related to the lawyer, receives independent legal advice; and

(c) obtains the client's consent to the loan.

**Commentary**

Documenting a Client's Decision to Decline Independent Legal Representation

[1] If the client declines the opportunity to obtain independent legal representation, the lawyer should obtain the client's signature on a document indicating that the client has declined the representation.

[2] If the client is vulnerable and declines independent legal representation, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**In Rules 3.4-334.1 and 3.4-334.3**

~~"related persons" means related persons as defined in section 251 of the *Income Tax Act* (Canada); and~~

"syndicated mortgage" means a mortgage having more than one investor.

**3.4-334.1** A lawyer engaged in the private practice of law in Ontario shall not directly, or indirectly through a corporation, syndicate, partnership, trust, or other entity in which the lawyer or a related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities

(a) hold a syndicated mortgage or loan in trust for investor clients unless each investor client receives

(i) a complete reporting letter on the transaction,

(ii) a trust declaration signed by the person in whose name the mortgage or any security instrument is registered, and

(iii) a copy of the duplicate registered mortgage or security instrument;~~,~~

(b) arrange or recommend the participation of a client or other person as an investor in a syndicated mortgage or loan where the lawyer is an investor unless the lawyer can demonstrate that the client or other person had independent legal advice in making the investment;~~,~~ or

(c) sell mortgages or loans to, or arrange mortgages or loans for, clients or other persons except in accordance with the skill, competence, and integrity usually expected of a lawyer in dealing with clients.

**Commentary**

**ACCEPTABLE MORTGAGE OR LOAN TRANSACTIONS**

**[1]** A lawyer may engage in the following mortgage or loan transactions in connection with the practice of law

(a) a lawyer may invest in mortgages or loans personally or on behalf of a related person or a combination thereof;

(b) a lawyer may deal in mortgages or loans as an executor, administrator, committee, trustee of a testamentary or *inter vivos* trust established for purposes other than mortgage or loan investment or under a power of attorney given for purposes other than exclusively for mortgage or loan investment; and

(c) a lawyer may collect, on behalf of clients, mortgage or loan payments that are made payable in the name of the lawyer under a written direction to that effect given by the client to the mortgagor or borrower provided that such payments are deposited into the lawyer's trust account.

**[2]** A lawyer may introduce a borrower (whether or not a client) to a lender (whether or not a client) and the lawyer may then act for either, and when rule 3.4-14 applies, the lawyer may act for both.

**Disclosure**

**3.4-3~~4~~.2** Where a lawyer sells or arranges mortgages for clients or other persons, the lawyer shall disclose in writing to each client or other person the priority of the mortgage and all other information relevant to the transaction that is known to the lawyer that would be of concern to a proposed investor.

**No Advertising**

**3.4-3~~4~~.3** A lawyer shall not promote, by advertising or otherwise, individual or joint investment by clients or other persons who have money to lend, in any mortgage in which a financial interest is held by the lawyer, a related person, or a corporation, syndicate, partnership, trust or other entity in which the lawyer or related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities.

**Guarantees by a Lawyer**

**3.4-3~~4~~75** Except as provided by rule 3.4-36, a lawyer shall ~~must~~ not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

**3.4-3~~5~~6** A lawyer may give a personal guarantee in the following circumstances

(a) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business ~~lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public~~, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

(c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and

(i) the lawyer has complied with rules 3.4-28 to 3.4-36 ~~the rules in Section 3.4 (Conflicts), in particular, rules 3.4-27 to 3.4-36 (Doing Business with a Client),~~ and

(ii) the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

**Payment for Legal Services**

**3.4-36** When a client intends to pay for legal services by transferring to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer shall recommend but need not require that the client receive independent legal advice before accepting a retainer.

**Commentary**

[1] The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

**Testamentary Instruments and Gifts**

3.4-37 [FLSC – not in use].

**3.4-3~~8~~7** If a will contains a clause directing that the lawyer who drafted the will be retained to provide services in the administration of the client's estate, the lawyer should, before accepting that retainer, provide the trustees with advice, in writing, that the clause is a non-binding direction and the trustees can decide to retain other counsel.

**3.4-3938** Unless the client is a family member of the lawyer ~~or the lawyer's partner or associate~~, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer or an associate a gift or benefit from the client, including a testamentary gift.

*[New – October 2014]*

~~3.4-39 [FLSC - not in use]~~

**Judicial Interim Release**

**3.4-40** Subject to Rule 3.4-41, a lawyer shall not in respect of any accused person for whom the lawyer acts

(a) act as a surety for the accused;

(b) deposit with a court the lawyer's own money or that of any firm in which the lawyer is a partner to secure the accused's release;

(c) deposit with any court other valuable security to secure the accused's release; or

(d) act in a supervisory capacity to the accused.

**3.4-41** A lawyer may do any of the things referred to in rule 3.4-40 if the accused is in a family relationship with the lawyer and the accused is represented by the lawyer's partner or associate.

*[New – October 2014]*

**TAB 3.2.5**

## CLEAN VERSION SHOWING PROPOSED AMENDMENTS TO THE DOING BUSINESS WITH A CLIENT RULES IN THE RULES OF PROFESSIONAL CONDUCT

### Doing Business with a Client

For the purposes of rules 3.4-29 to 3.4-36, a lawyer is related to a person if the person and the lawyer are related persons as set out in subsections in 251(2) to (6) of the *Income Tax Act* (Canada) and includes

(a) associates and partners of the lawyer; and
(b) trusts and estates in which the lawyer has a beneficial interest or for which the lawyer acts as a trustee or in a similar capacity.

**3.4-28** A lawyer shall not enter into a transaction with a client unless the transaction is fair and reasonable to the client.

**3.4-28.1(1)** A lawyer shall not, through a person related to the lawyer, do indirectly what the lawyer is prohibited from doing directly under Rules 3.4-29 to 3.4-36.

**(2)** If a lawyer is or becomes aware that a client of the lawyer, through a person who is related to the lawyer, proposes to enter a transaction described in Rules 3.4-29 to 3.4-36, the lawyer shall take the same steps as the lawyer is required to take under those rules with respect to conflicts of interest as if the transaction were between the lawyer and the client.

### Transactions with Clients

**3.4-29** Subject to rule 3.4-30-36, where a transaction with a client of a lawyer involves lending or borrowing money, buying or selling property or services having other than nominal value, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment, or entering into a common business venture, the lawyer shall in sequence,

(a) disclose the nature of any conflicting interest or how and why it might develop later;

(b) recommend that the client receives independent legal advice and consider whether the circumstances reasonably require independent legal representation with respect to the transaction; and

(c) obtain the client's consent to the transaction if the client receives such disclosure and independent legal advice or independent legal representation.

**3.4-30** Rule 3.4-29 does not apply where

(a) a client intends to enter into a transaction with a corporation or other entity whose securities are publicly traded in which the lawyer has an interest; or

(b) a lawyer borrows money from a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business.

**Commentary**

**[1]** The relationship between lawyer and client is a fiduciary one. The lawyer has a duty to act in good faith. A lawyer should be able to demonstrate that the transaction with the client is fair and reasonable to the client.

**[2]** In some circumstances, a lawyer may be retained to provide legal services for a transaction in which the lawyer and a client participate. The lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined. This is because the lawyer cannot act in a transaction with a client where there is a substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's own interest, unless the client consents and the lawyer reasonably believes that he or she is able to act for the client without having a material adverse effect on loyalty or the representation.

**[3]** If the lawyer chooses not to disclose the conflicting interest or cannot disclose without breaching confidence, the lawyer must decline the retainer.

**[4]** Generally, in disciplinary proceedings under Rules 3.4-29-3.4-36, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, that independent legal advice was received by the client, where required, and that the client's consent was obtained.

**Documenting Independent Legal Advice**

**[5]** A lawyer retained to give independent legal advice relating to a transaction should document the independent legal advice by:

(a) providing the client with a written certificate that the client has received independent legal advice;

(b) obtaining the client's signature on a copy of the certificate of independent legal advice; and

(c) sending the signed copy to the lawyer with whom the client proposes to transact business.

**Documenting a Client's Decision to Decline Independent Legal Advice**

**[6]** If the client declines the opportunity to obtain independent legal advice, the lawyer should obtain the client's signature on a document indicating that the client has declined the advice.

**[7]** If the client is vulnerable and declines independent legal advice, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

## Borrowing from Clients

**3.4-31** A lawyer shall not borrow money from a client unless

(a) the client is a lending institution, financial institution, insurance company, trust company, or any similar corporation whose business includes lending money to members of the public; or

(b) the client is a person related to the lawyer and the lawyer

(i) discloses to the client the nature of the conflicting interest; and

(ii) requires that the client receive independent legal advice or, where the circumstances reasonably require, independent legal representation.

**Commentary**

**[1]** Whether a person is considered a client within this rule when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

**Documenting Independent Legal Advice**

**[2]** A lawyer retained to give independent legal advice relating to a transaction should document the independent legal advice by:

(a) providing the client with a written certificate that the client has received independent legal advice;

(b) obtaining the client's signature on a copy of the certificate of independent legal advice; and

(c) sending the signed copy to the lawyer with whom the client proposes to transact business.

**Documenting a Client's Decision to Decline Independent Legal Advice or Independent Legal Representation**

**[3]** If the client declines the opportunity to obtain independent legal advice or independent legal representation, the lawyer should obtain the client's signature on a document indicating that the client has declined the advice or representation.

**[4]** If the client is vulnerable and declines independent legal advice, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**3.4-32** Subject to Rule 3.4-31, if a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest proposes to borrow money from a client of the lawyer, the lawyer shall:

(a) disclose to the client the nature of the conflicting interest; and

(b) require that the client receive independent legal representation.

**Commentary**

**[1]** Whether a person is considered a client within rules 3.4-32 and 3.4-33 when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

**[2]** Rule 3.4-33 addresses situations where a conflicting interest may not be immediately apparent to a potential lender. As such, in the transactions described in the rule, the lawyer should make disclosure and require that the client from whom the entity in which the lawyer or the lawyer's spouse has a direct or indirect substantial interest in borrowing has independent legal representation**.**

**Documenting a Client's Decision to Decline Independent Legal Representation**

**[3]** If the client declines the opportunity to obtain independent legal representation, the lawyer should obtain the client's signature on a document indicating that the client has declined the representation.

**[4]** If the client is vulnerable and declines independent legal representation, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

## Lending to Clients

**3.4-33** A lawyer shall not lend money to a client unless, before making the loan, the lawyer

(a) discloses to the client the nature of the conflicting interest; and

(b) requires that the client

(i) receive independent legal representation; or

(ii) if the client is a person related to the lawyer, receives independent legal advice; and

(c) obtains the client's consent to the loan**.**

**Commentary**

**Documenting a Client's Decision to Decline Independent Legal Representation**

**[1]** If the client declines the opportunity to obtain independent legal representation, the lawyer should obtain the client's signature on a document indicating that the client has declined the representation.

**[2]** If the client is vulnerable and declines independent legal representation, the lawyer should not enter into the transaction. Some signs that the client may be vulnerable include cognitive decline, disabilities such as impaired vision and hearing, financial insecurity, and major changes in life circumstances that may make the client more susceptible to being unduly influenced.

**In Rules 3.4-33.1 and 3.4-33.3**

"syndicated mortgage" means a mortgage having more than one investor.

**3.4-33.1** A lawyer engaged in the private practice of law in Ontario shall not directly, or indirectly through a corporation, syndicate, partnership, trust, or other entity in which the lawyer or a related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities

(a) hold a syndicated mortgage or loan in trust for investor clients unless each investor client receives

(i) a complete reporting letter on the transaction,

(ii) a trust declaration signed by the person in whose name the mortgage or any security instrument is registered, and

(iii) a copy of the duplicate registered mortgage or security instrument;

(b) arrange or recommend the participation of a client or other person as an investor in a syndicated mortgage or loan where the lawyer is an investor unless the lawyer can demonstrate that the client or other person had independent legal advice in making the investment; or

(c) sell mortgages or loans to, or arrange mortgages or loans for, clients or other persons except in accordance with the skill, competence, and integrity usually expected of a lawyer in dealing with clients.

**Commentary**

**ACCEPTABLE MORTGAGE OR LOAN TRANSACTIONS**

**[1]** A lawyer may engage in the following mortgage or loan transactions in connection with the practice of law

(a) a lawyer may invest in mortgages or loans personally or on behalf of a related person or a combination thereof;

(b) a lawyer may deal in mortgages or loans as an executor, administrator, committee, trustee of a testamentary or *inter vivos* trust established for purposes other than mortgage or loan investment or under a power of attorney given for purposes other than exclusively for mortgage or loan investment; and

(c) a lawyer may collect, on behalf of clients, mortgage or loan payments that are made payable in the name of the lawyer under a written direction to that effect given by the client to the mortgagor or borrower provided that such payments are deposited into the lawyer's trust account.

**[2]** A lawyer may introduce a borrower (whether or not a client) to a lender (whether or not a client) and the lawyer may then act for either, and when rule 3.4-14 applies, the lawyer may act for both.

**Disclosure**

**3.4-33.2** Where a lawyer sells or arranges mortgages for clients or other persons, the lawyer shall disclose in writing to each client or other person the priority of the mortgage and all other information relevant to the transaction that is known to the lawyer that would be of concern to a proposed investor.

**No Advertising**

**3.4-33.3** A lawyer shall not promote, by advertising or otherwise, individual or joint investment by clients or other persons who have money to lend, in any mortgage in which a financial interest is held by the lawyer, a related person, or a corporation, syndicate, partnership, trust or other entity in which the lawyer or related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities.

**Guarantees by a Lawyer**

**3.4-34** Except as provided by rule 3.4-36, a lawyer shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

**3.4-35** A lawyer may give a personal guarantee in the following circumstances

(a) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer’s spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

(c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and

(i) the lawyer has complied with rules 3.4-28 to 3.4-36 and

(ii) the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

**Payment for Legal Services**

**3.4-36** When a client intends to pay for legal services by transferring to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer shall recommend but need not require that the client receive independent legal advice before accepting a retainer.

**Commentary**

[1] The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

**Testamentary Instruments and Gifts**

**3.4-37** [FLSC – not in use].

**3.4-38** If a will contains a clause directing that the lawyer who drafted the will be retained to provide services in the administration of the client's estate, the lawyer should, before accepting that retainer, provide the trustees with advice, in writing, that the clause is a non-binding direction and the trustees can decide to retain other counsel.

**3.4-39** Unless the client is a family member of the lawyer, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer or an associate a gift or benefit from the client, including a testamentary gift.

*[New – October 2014]*

**Judicial Interim Release**

**3.4-40** Subject to Rule 3.4-41, a lawyer shall not in respect of any accused person for whom the lawyer acts

(a) act as a surety for the accused;

(b) deposit with a court the lawyer's own money or that of any firm in which the lawyer is a partner to secure the accused's release;

(c) deposit with any court other valuable security to secure the accused's release; or

(d) act in a supervisory capacity to the accused.

**3.4-41** A lawyer may do any of the things referred to in rule 3.4-40 if the accused is in a family relationship with the lawyer and the accused is represented by the lawyer's partner or associate.

*[New – October 2014]*

**TAB 3.2.6**

## SHORT-TERM LEGAL SERVICES - BLACKLINE SHOWING AMENDMENTS PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE

### Competence

**3.1-2** A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.

**Commentary**

**[1]** As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

**[2]** Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

**[3]** In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a licensee of established competence in the field in question.

**[4]** In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

**[5]** A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

**[6]** A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should

(a) decline to act;

(b) obtain the client's instructions to retain, consult, or collaborate with a licensee who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

**[7]** The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, in such a situation, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

**[7A]** When a lawyer considers whether to provide legal services under a limited scope retainer, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement to provide such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rules 3.2-1A to 3.2-1A.2.

[7B] In providing short-term legal services under Rules 3.4-16.2-16.5, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term legal services may be required or are advisable, and encourage the client to seek such further assistance.

**[8]** A lawyer should clearly specify the facts, circumstances, and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

**Short-term ~~Limited~~ Legal Services**

**3.4-16.2** In this rule and rules 3.4-16.3 to 3.4-16.6,

"*pro bono* client" means a client to whom a lawyer provides short-term ~~limited~~ legal services;

"short-term ~~limited~~ legal services" means advice or representation to a client under the auspices of a *pro bono* or not-for-profit legal services provider ~~*pro bono* summary legal services provided by a lawyer to a client under the auspices of Pro Bono Law Ontario's Law Help Ontario program for matters in the Superior Court of Justice or in Small Claims Court~~, with the expectation by the lawyer and the client that the lawyer will not provide continuing legal representation in the matter.

3,4-16.3 A lawyer may provide short-term legal services without taking steps to determine whether there is a conflict of interest.

3.4-16.3 A lawyer must not provide or must cease providing short-term legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

~~**3.4-16.3** A lawyer engaged in the provision of short-term limited legal services may provide legal services to a *pro bono* client unless~~

~~(a) the lawyer knows or becomes aware that the interests of the *pro bono* client are directly adverse to the immediate interests of another current client of the lawyer, the lawyer's firm or Pro Bono Law Ontario; or~~

~~(b) the lawyer has or, while providing the short-term limited legal services, obtains confidential information relevant to a matter involving a current or former client of the lawyer, the lawyer's firm or Pro Bono Law Ontario whose interests are adverse to those of the *pro bono* client.~~

**3.4-16.4** ~~A lawyer who is a partner, an associate, an employee or an employer of a lawyer providing short-term limited legal services to a *pro bono* client may act for other clients of the law firm whose interests are adverse to the *pro bono* client so long as adequate and timely measures are in place to ensure that no disclosure of the *pro bono* client's confidential information is made to the lawyer acting for the other clients.~~

3.4-16.4 A lawyer who provides short-term ~~limited~~ legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

**3.4-16.5** A lawyer who is unable to provide short-term ~~limited~~ legal services to a *pro bono* client because of the operation of rules 3.4-16.2 to 3.4-16.5 ~~3.4-16.3(a) or 3.4-16.3(b)~~ shall cease to provide short term ~~limited~~ legal services to the *pro bono* client as soon as the lawyer actually becomes aware of the adverse interest or as soon as he or she has or obtains the confidential information referred to in rule 3.4-16.4~~3~~ and the lawyer shall not seek the *pro bono* client's waiver of the conflict.

**3.4-16.6** ~~In providing short-term limited legal services, a lawyer shall~~

~~(a) ensure, before providing the legal services, that the appropriate disclosure of the nature of the legal services has been made to the client; and~~

~~(b) determine whether the client may require additional legal services beyond the short-term limited legal services and if additional services are required or advisable, encourage the client to seek further legal assistance.~~

**Commentary**

**[1]** Short term ~~limited~~ legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider ~~Pro Bono Law Ontario (PBLO)~~ and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term legal ~~*pro bono*~~ services described in rule 3.4-16.2 are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

**[2]** ~~Rules 3.4-16.2 to 3.4-16.6 apply in circumstances in which the limited nature of the legal services being provided by a lawyer~~ The limited nature of short-term legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term ~~limited~~ legal services only if the lawyer has actual knowledge of a conflict of interest between the *pro bono* client or between the lawyer and the client receiving short-term ~~limited~~ legal servicesand an existing or former client of the lawyer, the lawyer's firm or the *pro bono* or not for profit legal services provider~~PBLO~~. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer's membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term ~~limited~~ legal services.

**[3]** The lawyer's knowledge would be based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of the consultation and in the client's application to the *pro bono* or not for profit legal services provider ~~PBLO~~ for legal assistance.

**[4]** The personal disqualification of a lawyer participating in ~~PBLO's~~ a short term legal services program does not create a conflict for the other lawyers participating in the program, as the conflict is not imputed to them.

**[5]** Confidential information obtained by a lawyer representing a *pro bono* client, as defined in rule 3.4-16.2, will not be imputed to the lawyer's licensee partners, associates and employees or non-licensee partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term ~~limited~~ legal services, and may act in future for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term ~~limited~~ legal services.

[6] In the provision of short-term legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

**[7~~6~~]** Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the client to the lawyer's partners, associates, employees or employer (in the practice of law). Rule 3.4-16.4 extends, with necessary modifications, the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rules 3.4-17 to 3.4-26) to the situation of a law firm acting against a current client of the firm in providing short term ~~limited~~ legal services. Measures that the lawyer providing the short-term ~~limited~~ legal services should take to ensure the confidentiality of information of the client's information include

(a) having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the *pro bono* client;

(b) identifying relevant files, if any, of the *pro bono* client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and

(c) ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

**[8~~7~~]** Rule 3.4-16.5 precludes a lawyer from obtaining a waiver in respect of conflicts of interest that arise in providing short-term legal services.

*[New – April 22, 2010]*

**TAB 3.2.7**

## CLEAN VERSION – SHORT TERM LIMITED LEGAL SERVICES SHOWING AMENDMENTS PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE

### Competence

**3.1-2** A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.

**Commentary**

**[1]** As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

**[2]** Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

**[3]** In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a licensee of established competence in the field in question.

**[4]** In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

**[5]** A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

**[6]** A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should

(a) decline to act;

(b) obtain the client's instructions to retain, consult, or collaborate with a licensee who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

**[7]** The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, in such a situation, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

**[7A]** When a lawyer considers whether to provide legal services under a limited scope retainer, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement to provide such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rules 3.2-1A to 3.2-1A.2.

**[7B]** In providing short-term legal services under Rules 3.4-16.2-16.5, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term legal services may be required or are advisable, and encourage the client to seek such further assistance.

**[8]** A lawyer should clearly specify the facts, circumstances, and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

**Short-term Legal Services**

**3.4-16.2** In this rule and rules 3.4-16.3 to 3.4-16.6,

"*pro bono* client" means a client to whom a lawyer provides short-term legal services;

"short-term legal services" means advice or representation to a client under the auspices of a *pro bono* or not-for-profit legal services provider, with the expectation by the lawyer and the client that the lawyer will not provide continuing legal representation in the matter.

**3.4-16.3** A lawyer may provide short-term legal services without taking steps to determine whether there is a conflict of interest.

**3.4-16.4** A lawyer must not provide or must cease providing short-term legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

1**3.4-16.5** 3.4-16.4 A lawyer who provides short-term legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

**3.4-16.6** A lawyer who is unable to provide short-term legal services to a *pro bono* client because of the operation of rules 3.4-16.2 to 3.4-16.5 shall cease to provide short term legal services to the *pro bono* client as soon as the lawyer actually becomes aware of the adverse interest or as soon as he or she has or obtains the confidential information referred to in rule 3.4-16.4 and the lawyer shall not seek the *pro bono* client's waiver of the conflict.

**Commentary**

**[1]** Short term legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term legal services described in rule 3.4-16.2 are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

**[2]** The limited nature of short-term legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term legal services only if the lawyer has actual knowledge of a conflict of interest between the *pro bono* client or between the lawyer and the client receiving short-term legal services and an existing or former client of the lawyer, the lawyer's firm or the *pro bono* or not for profit legal services provider. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer's membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term legal services.

**[3]** The lawyer's knowledge would be based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of the consultation and in the client's application to the *pro bono* or not for profit legal services provider for legal assistance.

**[4]** The personal disqualification of a lawyer participating in a short term legal services program does not create a conflict for the other lawyers participating in the program, as the conflict is not imputed to them.

**[5]** Confidential information obtained by a lawyer representing a *pro bono* client, as defined in rule 3.4-16.2, will not be imputed to the lawyer's licensee partners, associates and employees or non-licensee partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term legal services, and may act in future for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term legal services.

**[6]** In the provision of short-term legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

**[7]** Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the client to the lawyer's partners, associates, employees or employer (in the practice of law). Rule 3.4-16.4 extends, with necessary modifications, the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rules 3.4-17 to 3.4-26) to the situation of a law firm acting against a current client of the firm in providing short term legal services. Measures that the lawyer providing the short-term legal services should take to ensure the confidentiality of information of the client's information include

(a) having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the *pro bono* client;

(b) identifying relevant files, if any, of the *pro bono* client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and

(c) ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

**[8]** Rule 3.4-16.5 precludes a lawyer from obtaining a waiver in respect of conflicts of interest that arise in providing short-term legal services.

*[New – April 22, 2010]*

**TAB 3.2.8**

## INCRIMINATING PHYSICAL EVIDENCEBLACKLINE SHOWING CHANGES TO THE RULES OF PROFESSIONAL CONDUCT

**3.5-7** If a lawyer is unsure of the proper person to receive a client's property, the lawyer shall apply to a tribunal of competent jurisdiction for direction.

**Commentary**

**[1]** The lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client's common law privilege and with relevant constitutional and statutory provisions such as those found in the *Income Tax Act (Canada)* and the *Criminal Code.*

~~**[2], [3] and [4]** [FLSC – not in use]~~

*[Amended – October 2014]*

[. . . ]

**5.1-2** 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, unless all parties consent and it is in the interests of justice,

(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) make suggestions to a witness recklessly or knowing them to be false;

(i) 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,

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent,

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another,

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation;

(m) needlessly abuse, hector, or harass a witness,

(n) 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,

(o) needlessly inconvenience a witness; or

(p) appear before a court or tribunal while under the influence of alcohol or a drug.

*[Amended – October 2014]*

**Commentary**

**[1]** In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

**[2]** A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

**[3]** It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to secure a civil advantage for the client. See also rules 3.2-5 and 3.2-5.1 and accompanying commentary.

**[4]** When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

*[Amended – October 2014]*

## Incriminating Physical Evidence

**5.1-2A** A lawyer ~~must~~ shall not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice.

### Commentary

[1] In this rule, "physical evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is in fact exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its ~~mere~~ existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options. These options include, as soon as reasonably possible:

(a) retaining independent legal counsel who

(i) is not to be informed of the identity of the client,

ii) is to be instructed not to disclose the identity of the instructing lawyer, and

iii) is to advise the lawyer and is to disclose or deliver the evidence, if necessary;

(b) delivering the evidence to law enforcement authorities or to the prosecution, either directly or anonymously;

(c) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination; or

(d) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or to the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege. ~~This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence~~. (moved)

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A lawyer should ensure that there is no concealment, destruction or alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

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**TAB 3.2.9**

## INCRIMINATING PHYSICAL EVIDENCE - CLEAN VERSION SHOWING CHANGES TO THE RULES OF PROFESSIONAL CONDUCT

**3.5-7** If a lawyer is unsure of the proper person to receive a client's property, the lawyer shall apply to a tribunal of competent jurisdiction for direction.

**Commentary**

**[1]** The lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client's common law privilege and with relevant constitutional and statutory provisions such as those found in the *Income Tax Act (Canada)* and the *Criminal Code.*

*[Amended – October 2014]*

[. . . ]

**5.1-2** 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, unless all parties consent and it is in the interests of justice,

(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) make suggestions to a witness recklessly or knowing them to be false;

(i) 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,

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent,

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another,

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation;

(m) needlessly abuse, hector, or harass a witness,

(n) 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,

(o) needlessly inconvenience a witness; or

(p) appear before a court or tribunal while under the influence of alcohol or a drug.

*[Amended – October 2014]*

**Commentary**

**[1]** In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

**[2]** A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

**[3]** It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to secure a civil advantage for the client. See also rules 3.2-5 and 3.2-5.1 and accompanying commentary.

**[4]** When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

*[Amended – October 2014]*

**Incriminating Physical Evidence**

**5.1-2A** A lawyer shall not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice.

**Commentary**

**[1]** In this rule, "physical evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

**[2]** This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is in fact exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

**[3]** A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options. These options include, as soon as reasonably possible:

(a) retaining independent legal counsel who

(i) is not to be informed of the identity of the client,

ii) is to be instructed not to disclose the identity of the instructing lawyer, and

iii) is to advise the lawyer and is to disclose or deliver the evidence, if necessary;

(b) delivering the evidence to law enforcement authorities or to the prosecution, either directly or anonymously;

(c) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination;

or

(d) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

**[4]** A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or to the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege.

**[5]** A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

**[6]** A lawyer may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A lawyer should ensure that there is no concealment, destruction or alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

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**TAB 3.2.10**

**BLACKLINE – ADVERSTING CHANGES PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE**

## SECTION 4.2 MARKETING

### Marketing of Professional Services

**4.2-0** In this rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

**4.2-1** A lawyer may market legal services if the marketing

(a) is demonstrably true, accurate and verifiable;

(b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive; and

(c) is in the best interests of the public and is consistent with a high standard of professionalism.

**4.2-1.1** For greater certainty, the following marketing practices would contravene the requirements of Rule 4.2-1:

(a) stating an amount of money that the lawyer has recovered for a client or refer to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;

(b) suggesting qualitative superiority to other lawyers;

(c) suggesting or imply the lawyer is aggressive;

(d) disparaging or demeaning other persons, groups, organizations or institutions;

(e) taking advantage of a vulnerable person or group;

(f) referring to awards or endorsements unless accompanied by information sufficient for the public to make an informed assessment of the award including: the source of the award, the nomination process and any fees paid by the lawyer, directly or indirectly;

(g) using testimonials which contain emotional appeals.

**Commentary**

[1] Rule 4.2-1 contains general requirements for marketing of legal services and Rule 4.2-1.1 sets out a list of marketing practices which would contravene Rule 4.2-1. Rule 4.2-1.1 is not an exhaustive list of marketing practices which may contravene Rule 4.2-1.

[2] Rule 4.2-1 establishes, among other things, requirements for communication in the marketing of legal services. Examples of marketing practices which may contravene these requirements include:

(a) failing to disclose that the legal work is routinely referred to other lawyers for a fee rather than being performed by the lawyer

(b) misleading about the size of the lawyer's practice or the areas of law in which the lawyer provides services

(c) referring to fee arrangements offered to clients without qualifications

(d) advertising awards and endorsements from third parties without disclaimers or qualifications.

[3] Rule 4.2-1 also requires marketing to be consistent with a high standard of professionalism. Unprofessional marketing is not in the best interests of the public. It has a negative impact on the reputation of lawyers, the legal profession and the administration of justice. The Law Society has acknowledged in the Rules the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario. Marketing practices must conform to the requirements of human rights laws in force in Ontario.

[4] Examples of marketing practices which may be inconsistent with a high degree of professionalism would be images, language or statements that are violent, racist or sexually offensive, take advantage of a vulnerable person or group or refer negatively to other lawyers, the legal profession or the administration of justice.

~~Examples of marketing that may contravene this rule include~~

~~(a) stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;~~

~~(b) suggesting qualitative superiority to other lawyers;~~

~~(c) raising expectations unjustifiably;~~

~~(d) suggesting or implying the lawyer is aggressive;~~

~~(e) disparaging or demeaning other persons, groups, organizations or institutions;~~

~~(f) taking advantage of a vulnerable person or group;~~

~~(g) using testimonials or endorsements which contain emotional appeals.~~

**Advertising of Fees**

**4.2-2** A lawyer may advertise fees charged by the lawyer for legal services if

(a) the advertising is reasonably precise as to the services offered for each fee quoted;

(b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee; and

(c) the lawyer strictly adheres to the advertised fee in every applicable case.

*[Amended – October 2014]*

**TAB 3.2.11**

## ADVERTISING RULE AMENDMENTS – CLEAN VERSION

## SECTION 4.2 MARKETING

### Marketing of Professional Services

**4.2-0** In this rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

**4.2-1** A lawyer may market legal services if the marketing

(a) is demonstrably true, accurate and verifiable;

(b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive; and

(c) is in the best interests of the public and is consistent with a high standard of professionalism.

**4.2-1.1** For greater certainty, the following marketing practices would contravene the requirements of Rule 4.2-1:

(a) stating an amount of money that the lawyer has recovered for a client or refer to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;

(b) suggesting qualitative superiority to other lawyers;

(c) suggesting or imply the lawyer is aggressive;

(d) disparaging or demeaning other persons, groups, organizations or institutions;

(e) taking advantage of a vulnerable person or group;

(f) referring to awards or endorsements unless accompanied by information sufficient for the public to make an informed assessment of the award including: the source of the award, the nomination process and any fees paid by the lawyer, directly or indirectly;

(g) using testimonials which contain emotional appeals.

**Commentary**

[1] Rule 4.2-1 contains general requirements for marketing of legal services and Rule 4.2-1.1 sets out a list of marketing practices which would contravene Rule 4.2-1. Rule 4.2-1.1 is not an exhaustive list of marketing practices which may contravene Rule 4.2-1.

[2] Rule 4.2-1 establishes, among other things, requirements for communication in the marketing of legal services. Examples of marketing practices which may contravene these requirements include:

(a) failing to disclose that the legal work is routinely referred to other lawyers for a fee rather than being performed by the lawyer

(b) misleading about the size of the lawyer's practice or the areas of law in which the lawyer provides services

(c) referring to fee arrangements offered to clients without qualifications

(d) advertising awards and endorsements from third parties without disclaimers or qualifications.

[3] Rule 4.2-1 also requires marketing to be consistent with a high standard of professionalism. Unprofessional marketing is not in the best interests of the public. It has a negative impact on the reputation of lawyers, the legal profession and the administration of justice. The Law Society has acknowledged in the Rules the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario. Marketing practices must conform to the requirements of human rights laws in force in Ontario.

[4] Examples of marketing practices which may be inconsistent with a high degree of professionalism would be images, language or statements that are violent, racist or sexually offensive, take advantage of a vulnerable person or group or refer negatively to other lawyers, the legal profession or the administration of justice.

## Advertising of Fees

**4.2-2** A lawyer may advertise fees charged by the lawyer for legal services if

(a) the advertising is reasonably precise as to the services offered for each fee quoted;

(b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee; and

(c) the lawyer strictly adheres to the advertised fee in every applicable case.

*[Amended – October 2014]*

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

**TAB 4**

## Report to Convocation
## June 25th, 2015

# Paralegal Standing Committee

**Committee Members**
**Michelle Haigh, Chair**
**Susan McGrath, Vice-Chair**
**Marion Boyd**
**Robert Burd**
**Cathy Corsetti**
**Ross Earnshaw**
**Robert Evans**
**Brian Lawrie**
**Marian Lippa**
**Malcolm M. Mercer**
**Barbara Murchie**
**Baljit Sikand**
**Catherine Strosberg**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat**
**Julia Bass 416 947 5228**

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### For Decision



### For Information

## COMMITTEE PROCESS

1. The Committee met on June 10th, 2015. Committee members present were: Michelle Haigh (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd, Cathy Corsetti, Ross Earnshaw, Robert Evans, Brian Lawrie, Marian Lippa, Malcolm Mercer and Catherine Strosberg. The meeting was joined by bencher Anne Vespry.

2. Staff in attendance were: Zeynep Onen, Josée Bouchard, Margaret Drent and Julia Bass.

3. For the presentation on statistics, the meeting was joined by Anne Kilpatrick and Evelina Lou of Navigator Limited.

**Tab 4.1**

**FOR DECISION**

# *PARALEGAL RULES OF CONDUCT* - LANGUAGE RIGHTS

## Motion

4. **That Convocation approve the amendments to Rule 3.02 of the *Paralegal Rules of Conduct* set out in this Report.**

## Background

5. In October 2014, the Model Code of the Federation of Law Societies of Canada was amended to provide guidance regarding a lawyer's ethical obligation to advise clients on their language rights, an issue that had not previously been addressed in the Model Code. The Professional Regulation Committee approved corresponding changes to the lawyers Rules in May, to follow the wording of the Model Code on this issue, and will be recommending them to Convocation under a separate Tab.

6. The Paralegal Standing Committee has now approved a parallel amendment to the *Paralegal Rules of Conduct*, requiring paralegals to advise clients of their right to proceed in the official language of their choice. Josée Bouchard, the Law Society's Director of Equity and Aboriginal Affairs, has reviewed the proposed amendments and is in agreement with this approach.

7. It is recommended that the wording of Rule 3.02 of the Paralegal Rules be amended as follows:

**Official Language Rights**

(22) A paralegal shall, ~~where~~when appropriate, advise a client ~~who speaks French~~ of the client's language rights, including the right to proceed in the official language of the client's choice. ~~of the client to be served by a paralegal who is competent to provide legal services in the French language~~.

(23) When a client wishes to retain a paralegal for representation in the official language of the client's choice, the paralegal shall not undertake the matter unless the paralegal is competent to provide the required services in that language.

8. This amendment would clarify that clients have the right to be served in the official language of their choice, and that a paralegal should decline to take a file if the paralegal cannot competently provide service in the client's preferred language.

**Tab 4.2**

**FOR INFORMATION**

# PARALEGAL GUIDELINES - LANGUAGE RIGHTS

## Issue

9. In connection with the changes to the *Paralegal Rules of Conduct* recommended above at **TAB 4.1**, the Committee regarded it as appropriate to amend the wording of the *Paralegal Guidelines* to follow the approach of the Model Code.

10. The *Paralegal Rules* must be approved by Convocation, while the *Paralegal Guidelines* may be amended by the Paralegal Standing Committee.

11. The previous wording of the *Guidelines* is as follows:

> 16. When advising French-speaking clients, a paralegal should advise a client of his or her French language rights under each of the following (where appropriate):
>
> - Subsection 19(1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament,
> - Section 530 of the *Criminal Code* (Canada) on an accused's right to a trial before a court that speaks the official language of Canada that is the language of the accused,
> - Section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and

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

12. The revised wording of the *Guidelines* is as follows:

> 16. When appropriate, a paralegal should advise a client of his or her official language rights under each of the following:
>
> - Subsection 19(1) of the *Constitution Act, 1982* on the use of official languages in any court established by Parliament,
> - Section 530 of the *Criminal Code* (Canada) on an accused's right to a trial before a court that speaks the official language of Canada that is the language of the accused,
> - Section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and

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

**Tab 4.3**

**FOR INFORMATION**

# REPORT ON PARALEGALS CHANGING STATUS

13. The Equity and Aboriginal Affairs Department of the Law Society commissioned a report on paralegal licensees whose annual report to the Law Society showed that they had changed their status, (e.g. from employed to sole practitioner). The report, prepared by Anne Kilpatrick of Navigator Ltd, is shown at **TAB 4.3.1.** A slide deck with a summary of the findings is shown at **TAB 4.3.2.**

14. This report arises from the work of the Working Group on the Retention of Women. Ms Kilpatrick attended to present a summary of the main findings of the report and to answer questions.

NAVIGATOR

# Paralegal Change of Status Research

## 2012-2014

| | |
|---|---|
| Law Society of Upper Canada | May 2015 |

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# Background and Research Methodology

## A. Background

In 2008, the Retention of Women in Private Practice Working Group of The Law Society of Upper Canada ("the Law Society") conducted a series of consultations to better understand movements within the legal profession in Ontario among women.

The Final Consultation Report of the Working Group put forth a series of recommendations to promote the advancement of women in the private practice of law.

In order to better understand and begin benchmarking movements and changes within the paralegal profession among women, The Law Society commissioned Navigator to undertake an analysis of paralegals who had filed a change of status.

Three waves of research data (2012-2014) have been collected and combined in order to inform the Society about gender-related trends paralegals in addition to informing the development of initiatives to support and retain women and men in the paralegal profession.

## B. Research Methodology

This report presents results from a survey conducted online among a sample of paralegal members who changed status in 2012, 2013 and 2014.

Paralegal members are required to inform the Law Society immediately when their work or practice status changes. At the end of each month, a file of those who provided The Law Society with a change of status notification was produced. The file was then "cleaned", removing duplicate records and those records for which an email address was not supplied. Once the cleaning process was complete, the remaining paralegal members were sent email invitations requesting participation in the Paralegal Change of Status Survey.

In 2014, 1516 paralegal members filed a change of status with the Law Society. This is higher than the previous two years: 1,088 filed a change of status in 2012 and 1,273 did so in 2013.

In 2014 the number of paralegal members of the Law Society was 6,071. Based on the 1516 paralegal change of status records that were submitted, it suggest that approximately 15%-20% of paralegal members submitted a change of status in the past year (1,516 records – an estimated 15%-18% duplicate records ÷ 6071 paralegal members).

Among the paralegal members who filed a change of status in 2014 (minus duplicates), 1,410 had provided the Law Society with an active email address. This represents an increase over 2012 (974) and 2013 (797).

A total of 410 paralegals completed the online survey in 2014. In 2012 and 2013, the numbers were 252 and 274, respectively.

The response rates for the three waves of this study have been strong – 32% in 2012, 28% in 2013 and 27% in 2014.

**Overview of Survey Population, Survey Sample and Response Rates**

| | 2012 | 2013 | 2014 |
|---|---|---|---|
| **Paralegal Change of Status Population**: Number of records sent by The Law Society to The Strategic Counsel | 1,088 | 1,273 | 1,516 |
| **Survey Population**: Number of email invitations sent after removing duplicate email addresses and those with no email addresses | 797 | 974 | 1410 |
| **Survey Sample**: Number of members who completed the questionnaire | 252 | 274 | 410 |
| **Response rate**: Survey Sample ÷ Survey Population | 32% | 28% | 27% |

## C. Areas of Investigation

The survey instrument was designed to obtain information from each change of status survey respondent about:

- Their previous status (i.e., their status prior to filing a change of status); and
- Their current status (i.e., their status after filing a change of status).

Respondents were asked a number of detailed questions related to their previous and current positions including:

- Practice or work setting;
- Main areas of practice;
- Benefits and policies provided in the workplace;
- The importance of specific reasons in driving a change of status; and,
- Attitudes concerning their workplace environment.

## D. Key to Reading Statistical Significance

In order to show significant differences between groups, the following symbols are used. Unless otherwise noted, all differences reported are significant at the 95% confidence interval.

- ↑ = Significantly greater proportion relative to the previous status or position results OR the group(s) being compared
- ↓ = Significantly lower proportion relative to the previous status or position OR the group(s) being compared

## E. Caution Regarding Sample Sizes

The sample sizes for some of the groups examined in this research are quite small. When this is the case, it is noted in the report. While only significant changes are reported, these results should nonetheless be considered directional.

# Executive Summary

## A. Background

Over the three year period from 2012 to 2014, 3877 change of status notifications were submitted to the Law Society by paralegal members. The average each year is 1292 submissions annually.

### Focus of Analysis in 2012-2014 Report

Among the total sample of members who responded, 5% and 3%, respectively, filed a change of status notice because they were leaving for or returning from parental leave. As the primary objective of this research is to examine changes of status related to practice setting, the data for members whose change of status relates to parental leave has been excluded from most of the analysis in this report.

A small proportion of respondents report that they are moving into retirement (3% in 2012-2014). This group has also been excluded from much of the analysis as they show a very weak tendency (1%) of returning to practice.

## B. Respondent Characteristics

**Overall, those changing status are disproportionately women.**

Women represent fully two-thirds (67%) of the survey sample.

- This proportion is slightly higher than the representation of women in Law Society's paralegal base of members in 2014 (60%).

### Age characteristics of survey respondents are consistent with those of the paralegal membership

Overall, the age characteristics of survey respondents appear to be similar to that of the Law Society's overall paralegal membership.

Almost half (49%) of survey respondents in 2012-2014 are under 40 years of age compared to 47% of Law Society paralegal members (based on 2013 Law Society paralegal statistics).

While about half of the respondent group is under 40 years, it is noteworthy that female respondents are relatively younger (59% are under 40 years of age) compared to male respondents (32%).

### Survey respondents are less likely to self-identify as belonging to a "racialized equity-seeking" group as defined by the Law Society.

- Based on 2013 Law Society statistics, 33% of its paralegal members self-identify as "racialized". Among survey respondents, the proportion is only 17%.

## C. Work Setting – Previous Versus Current Status Among the Total Sample

**The majority of respondents do not hold a position in a paralegal or law firm.**

Just less than one-half (47%) of survey respondents were practising as paralegals either in a paralegal firm or law prior to changing status.

The proportion in a paralegal or law firm does not change significantly after a change of status (43%).

As such, after a change in status, the majority (57%) of survey respondents report they are not working in a paralegal or law firm.

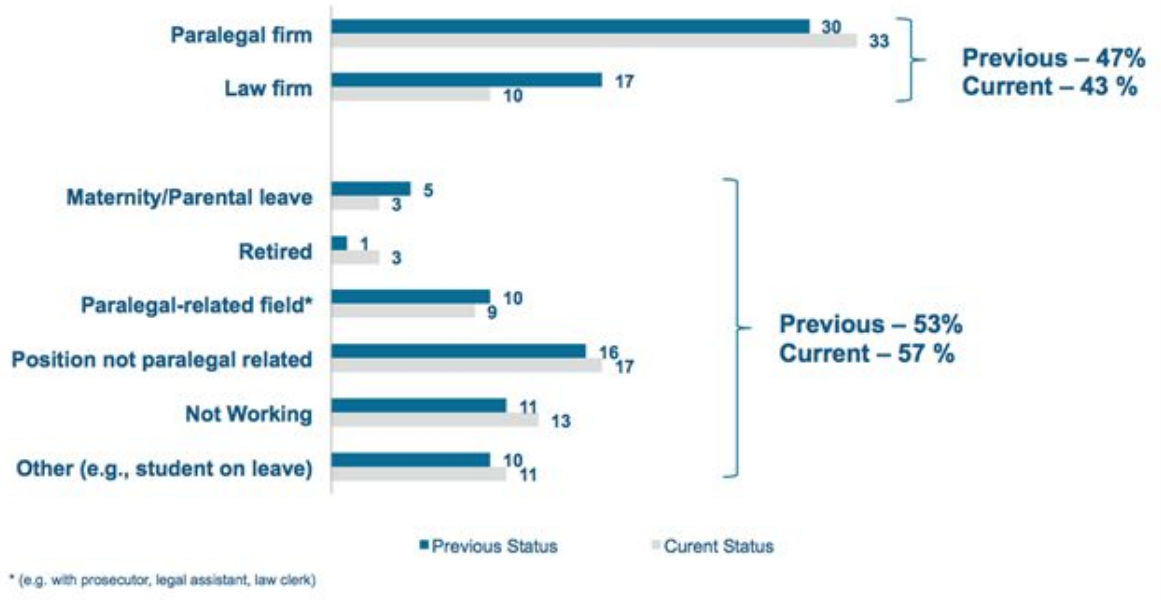
**There is a decline in those holding a paralegal position in a law office after their change of status.**

A high level overview of the characteristics of those who have changed status shows that in their prior status or position:

- 30% were working as paralegals in a paralegal firm setting;
- 17% were working as paralegals in a law firm setting;
- 53% were in a position or work setting other than those mentioned above.

The proportion in practice in a paralegal firm setting does not change significantly after the change of status (33%). However, there is a significant decrease in the proportion reporting that they conduct paralegal work in a law firm (down 7 points to 10% from previous to current position).

**Incidence of Those in Paralegal Practice in Paralegal Firms and Law Firms Previous and Current Positions Among Total Sample**



**There is an increase in the proportion who are in sole practice as a paralegal and a decline in those holding positions in paralegal firms with two or more paralegals.**

Overall, those who have changed status were as likely to report that prior to their change they practised as a sole paralegal (15%) as they were to report practising in a paralegal firm of 2 or more paralegals (15%).

After a change of status, the trend is toward a position in sole paralegal practice. The proportion in this setting has risen 9 points to reach 24%. Practice in a paralegal firm of 2 or more paralegals declines 6 points with the result that less than one-in-ten (9%) report they are practising in a multi-paralegal firm after a change.

**Incidence of Those in Paralegal Firm in Previous and Current Position Among Total Sample**

| | All Survey Respondents 2012-2014 | |
|---|---|---|
| | PREVIOUS % | CURRENT % |
| **IN PARALEGAL FIRM** | **30** | **33** |
| In sole practice as paralegal | 15 | 24↑ |
| In a paralegal firm with 2 or more paralegals | 15 | 9↓ |

**There are declines in the proportions of those who are undertaking paralegal work both in sole practitioner legal firms and multi-lawyer law practices.**

Those undertaking paralegal work in a law firm in their previous position were more likely to be in a law firm of two or more lawyers (11%) than a sole legal practice (6%). While this trend continues after a change of status, those in a firm of two more lawyers declines to 8% and only 2% report practising within a sole practitioner lawyer after the change.

**Incidence of Those in Law Firm in Previous and Current Position Among Total Sample of Paralegal Change of Status Respondents**

| | All Survey Respondents 2012-2014 | |
|---|---|---|
| | PREVIOUS % | CURRENT % |
| **IN LAW FIRM** | **17** | **10↓** |
| With a lawyer in sole practice | 6 | 2↓ |
| In a law firm of 2 or more lawyers | 11 | 8↓ |

**The composition of those paralegals who are practising within paralegal firm or law firms is dynamic.**

While significant proportions of respondents have remained in the same type of setting or status after a change, there are also many respondents who have moved from practice in a paralegal or law firm to other types of positions, or have moved into paralegal or law firms from other types of settings.

The 43% of those who are undertaking paralegal work within a paralegal or law firm in their current position is almost equally made up of those who were practising in one of these settings prior to a change (21%) and those whose status/position was NOT in a paralegal or law firm prior to a change (22%).

**Those moving into and returning from parental leave represent a small group of change of status submissions. Yet, for most, maternity/parental leave does not immediately appear to be a trigger for a change.**

Just 8% of all respondents report that that they are either returning from maternity/parental leave (5%) or moving into maternity/parental leave (3%). Those groups are comprised almost completely of women (96%).

An examination of the women returning from maternity leave (n=41) suggests that the majority (61%) return to their original position. This result should be considered to be directional only due to the very small sample size. The sample size mitigates any further analysis among this group.

**Note: The remainder of the analysis undertaken in the report focuses on those whose change of status was not due to maternity/parental leave OR retirement.**

**Women are leaving practice within paralegal or law firm whereas men are increasing their representation within these settings (excluding those whose change is due to maternity/parental leave or retirement).**

A comparison of the previous and current practice settings of women and men shows that, prior to a change of status, similar proportions were practising in a paralegal or law firm (48% and 49%, respectively).

After a change, however, women are less likely (40%) than men (55%) to be practising in one of these two settings.

Thus, the majority of women who submit a change of status unrelated to parental leave or retirement are not working in a paralegal or law firm after their change of status (60%).

| | EXCLUDING THOSE WHOSE CHANGE RELATED TO MATERNITY/PARENTAL LEAVE OR RETIREMENT (2012-2014 results combined) | | | |
|---|---|---|---|---|
| | Women (n=513) | | Men (n=280) | |
| | PREVIOUS % | CURRENT % | PREVIOUS % | CURRENT % |
| NET: Position in paralegal or law firm | 48 | 40↓ | 49 | 55↑ |
| NET: Not practising in a paralegal or law firm | 52 | 60↑ | 51 | 45 |

**The decline in the representation of women in a paralegal or law firm setting is a result of a decline in the proportion of women working in a law firm setting.**

Women were more likely to conduct paralegal work in a law firm in their previous position than were men (20% and 13%, respectively). Both genders experienced a decline in their representation within a law firm setting after a status change (down 7 points among women; down 8 points among men). Despite this decline, women remain more likely to have a current position with a law firm (13%) than do men (5%).

The decline in a law firm practice setting among men is offset by a strong increase in the proportion who are practising in a paralegal firm after a change in status (up 14 points to reach 50% after a change of status).

By contrast, women do not see a rise in their representation within paralegal firms. After a change in status, the proportion of women practising in a paralegal firm does not change significantly.

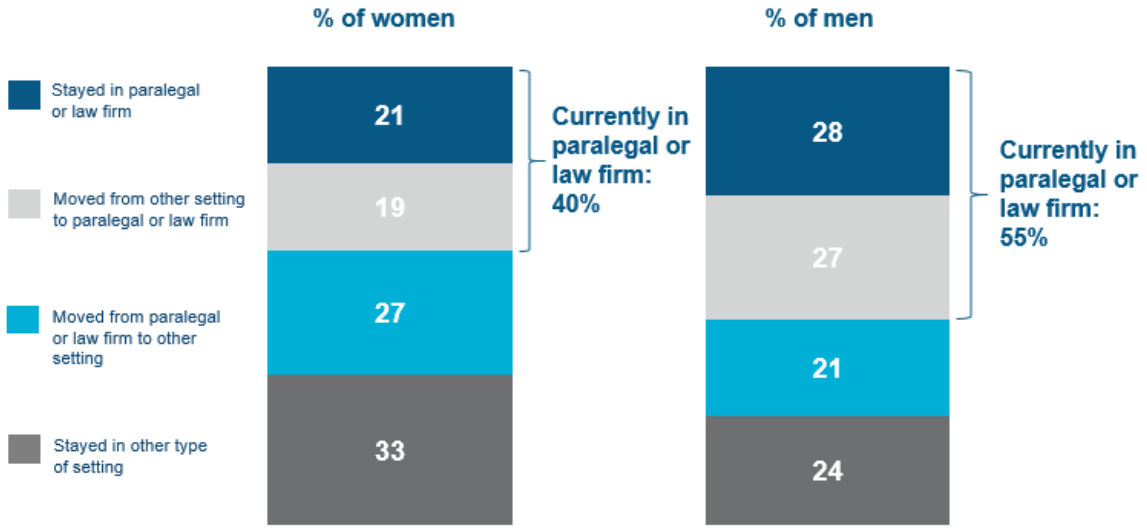
As a result, the gap between women and men practising in a paralegal firm increases after a change of status. Nearly twice the proportion of men (50%) report that their current position is at a paralegal firm compared with women (27%).

| | EXCLUDING THOSE WHOSE CHANGE RELATED TO MATERNITY/PARENTAL LEAVE OR RETIREMENT (2012-2014 results combined) | | | |
|---|---|---|---|---|
| | Women (n=513) | | Men (n=280) | |
| | PREVIOUS % | CURRENT % | PREVIOUS % | CURRENT % |
| In a paralegal firm | 28 | 27 | 36 | 50↑ |
| In a legal firm | 20 | 13↓ | 13 | 5↓ |

The following chart provides a holistic picture of the movement across the different types of status. It clearly illustrates that in the end, a greater proportion of women (33%) then men (24%) in a position or status outside of a paralegal or law firm both prior to and after their change of status.

By contrast, men are more likely to have remained in a paralegal or law firm setting after a change in status (28%), or to have moved into this setting as a result of that change (27%), than are women (21% and 19%, respectively).

**Movement Between Practice in Paralegal or Law Firm and Other Types of Settings**




In analysing factors that are driving a change of status, much of the analysis focuses on those who are moving in or out of a position in a paralegal or law firm:

- Those who have left a paralegal or law firm setting to move to another setting/status;
- Those who have remained in a paralegal or law firm; and,
- Those who have moved into a paralegal or law firm setting from another setting/status.

Overall, the gender composition of those who have moved from a paralegal or law firm to another setting/status and those who have stayed within a paralegal or law firm settings differs significantly:

- Women are more likely to be represented among the group moving out of a paralegal or law firm setting to another setting or status (70%) than men (30%).
- By comparison, the group which has remained in practice within a paralegal or law firm has a smaller representation of women (58%). Over four-in-ten of this group are men (42%).
- Men are most likely to be represented among the group that has moved into a paralegal or law firm setting from another setting/status (44%).

## D. Benefits and Employment Policies as Potential Influencers of a Change of Status

An investigation into which benefits or employment policies were available to respondents in their previous position compared with those that are available in their new position has been undertaken to explore whether these benefits/policies are potential drivers of a change of status. An increase in the incidence of these benefits/policies from previous to current position may suggest that they, in some measure, played a role in the decision to change positions. While an analysis of this nature cannot determine a direct relationship, these incidences do provide a perspective as to the types of workplace benefits/policies that are valued by paralegals.

### 1. Differences based on an originating position within a paralegal or law firm

Examining solely those who started out in a paralegal or law firm, the results suggest there are differences in the availability of specific benefits/policies to those who remained in one of these settings, as compared with those who moved to another setting or status (not in a paralegal or law firm).

Among those remaining in a paralegal or law firm setting, access to enhanced professional development opportunities and more flexible full-time work increased from previous to current position. This suggests that these characteristics may play a contributing role in the decision to continue practising within one of these settings.

Among those who have moved from practice in a paralegal or law firm to another setting, the incidence of access to a variety of benefits (including financial and health benefits, flexible work benefits, parental benefits and other offering and policies) increases significantly from previous to current status. This suggests that those who moved to a position outside of paralegal or law firms were seeking a more comprehensive suite of benefits than they felt they were receiving in their previous setting.

### 2. Differences based on gender (among those who moved into or out of practice within a paralegal or law firm)

A direct comparison of women and men who have moved in or out of a paralegal or law firm setting does suggest some gender-based differences in what may be driving the direction of a change of status.

A number of benefits/policies may have more influence on a change of status among women because women are more likely than men to report increased availability of these benefits/policies in their current position relative to their previous position. These benefits are:

- A pension plan (up 8 points to 20%)
- Part-time work (up 10 points to 27%)
- Leave of absence or sabbatical (up 13 points to 25%)
- Continuing professional development (up 11 points to 50%)
- Harassment and discrimination policy (up 10 points to 42%)
- Accommodation for special needs policy (up 11 points to 30%)
- Formal mentoring policy (up 6 points to 20%)

Among men, there is only a single benefit for which the incidence of availability increases from previous to current position: flexible full-time work hours (up 15 points to reach 44% among those who have it in their current position). Women also report that this benefit is available in their current versus previous position (up 16 points to 46%).

This suggests that women are more likely to be seeking positions that offer a broad array of benefits/policies, whereas the drivers for men seeking a change of status may not reside strictly in the realm of benefits or employment policies, but perhaps in another set of factors.

## E. Stated Importance of Specific Issues in Driving Change of Status

Respondents were also asked directly to indicate the extent to which certain factors were important to their decision to change status. In total, 18 factors were explored, including practice opportunity-related factors (e.g., use of skills, availability of mentorship programs), culture or work-management options that contribute to work-life balance (e.g., flexible hours, availability of part-time hours or leaves), and benefits-related offerings (e.g., pensions).

On a prompted basis, the factor most likely to be driving a change in status is that the new position allows respondents to use their talents and paralegal skills (57% deem it to be an important in their decision to make a change).

A second tier of factors based on relative importance includes the perception that the new position allows balance between career and family (50%), that the pay is better (49%), that there is freedom to decide what one wants to do in one's job (49%) and that the current position provides flexible full-time work hours (46%).

### 1. Differences based on movement into or out of practice within a paralegal or law firm

When the ranking of top drivers are directly compared, key differences in the importance of factors driving a decision to change status between those who remain in and those who leave practice in a paralegal or law firm become evident.

As the table below illustrates, those who have moved out of a position in a paralegal or law firm to another setting or status place the greatest emphasis on remuneration and benefits, job security and opportunities for promotion as factors contributing to their change of status. By contrast, those who have remained within a paralegal or law firm setting are more likely to identify the ability to use their paralegal skills as a key driver, along with factors that relate to control and flexibility over work hours and scheduling.

Both groups place strong emphasis on a position that allows a balance of career and family.

**Ranking Based on Importance Among Those Whose Originating Position was Practising in a Paralegal or Law Firm**

| Moved from paralegal or law firm to other position/ status | | | Moved from paralegal or law firm to paralegal or law firm | | |
|---|---|---|---|---|---|
| RANKING BASED ON IMPORTANCE | | % IMPORTANT | RANKING BASED ON IMPORTANCE | | % IMPORTANT |
| 1 | The pay is better | 52 | 1 | The job allows me to use my talents and paralegal skills | 62 |
| 2 | Job security is good | 47 | 2 | The job allows me to balance career and family | 54 |
| 3 | The job allows me to balance career and family | 40 | 3 | My current position offers flexible full-time work hours | 48 |
| | The opportunities for promotion are excellent | | | | |
| 4 | The benefits are better | 39 | 4 | I control the scheduling | 46 |

### 2. Differences based on Gender

Both women and men place relatively high importance on the ability to use their paralegal skills and the opportunity to balance career and family in their decision to make a status change. However, the other top ranked issues considered important in driving a change differ between men and women.

Men place greater importance on controlling the nature and scheduling of work within their new setting.

Women are more likely to consider remuneration and job security as important factors.

**Ranking Based on Importance Among Women And Men**

| Among Those Who Have Moved Out of Into a Paralegal of Law Firm | | | | | |
|---|---|---|---|---|---|
| **WOMEN** (n=315) | | | **MEN** (n=201) | | |
| **RANKING BASED ON IMPORTANCE** | | **% IMPORTANT** | **RANKING BASED ON IMPORTANCE** | | **% IMPORTANT** |
| **1** | The job allows me to use my talents and paralegal skills | 59 | **1** | The job allows me to use my talents and paralegal skills | 53 |
| **2** | The pay is better | 55 | **2** | I have the freedom to decide what I do in my job | 51 |
| **3** | The job allows me to balance career and family | 54 | **3** | I control the scheduling | 45 |
| **4** | Job security is good | 50 | **4** | The job allows me to balance career and family | 44 |

Beyond the issues noted above, women are significantly more likely than men to identify financial and other types of benefits (including pension and paid maternity/parental leave) as important in driving their change of status.

## F. Conclusions

Women represent a greater proportion of member paralegals than do men. Further, among those who have submitted a change of status, women are even more strongly represented.

Women are more likely to be moving out of practice in a paralegal or law firm than are men. They appear to be leaving to a greater extent than are men in order to find work environments that offer not only a greater ability to balance their career and family, but also provide them with job stability and benefits, both financial and other (e.g., remuneration, pension, paid parental leave).

Men who are changing status are more likely to be moving into a paralegal or law firm or staying within these two settings. Further, there seems to be a trend among men to be moving into sole paralegal practice. While men are similar to women in that they are seeking positions that allow them to use their paralegal skills and to balance career and family, the key driving factors in their change of status appear more strongly associated with greater control over work content, environment and scheduling.

# Demographic Characteristics of Survey Respondents

The section illustrates the demographic characteristics of those who have participated in the Paralegal Change of Status survey in the past three years. These respondent characteristics are contrasted with the characteristics of the paralegal member base as determined by the Law Society in 2013 (or 2014 when available).

## Gender of Members Compared with Survey Respondents

- The paralegal membership of Law Society in 2014 was composed of 58% women and 42% men.
- By comparison, women are much more strongly represented among those who have made a change of status submission from 2012 to 2014. Among the survey sample base, 67% are women.

**Gender of Law Society Paralegal Members**
**Compared to Change of Status Survey Respondents**

| | All Paralegal Survey Respondents 2012-2014 | |
|---|---|---|
| | Law Society Membership Statistics (2014) | Survey Respondents |
| n= | 6711 | 894 |
| | % | % |
| Women | 58 | 67 |
| Men | 42 | 33 |

## Age of Members Compared with Survey Respondents

The ages of those who completed the change of status survey are similar to those paralegal members overall according to the Law Society's 2013 member statistics. Fully one-quarter (25%) of respondents are under the age of 30. Almost half (48%) are between the ages of 30 and 49.

On average, women who have changed status from 2012-2014 are younger than men who have changed their status (38 years of age compared to 47 years). Women who have submitted a change of status are almost three times more likely than men who have made a change of status to be under the age of 30 (32% and 12%, respectively).

**Age of Law Society Paralegal Members**
**Compared to Change of Status Survey Respondents**

| | Law Society Membership Statistics 2013 | Survey Respondents | Men | Women |
|---|---|---|---|---|
| n= | 5428 | 894 | 298 | 596 |
| | % | % | % | % |
| <30 years of age | 24 | 25 | 12 | 32 |
| 30-39 years | 23 | 24 | 20 | 27 |
| 40 to 49 years | 22 | 24 | 26 | 24 |
| 50 to 65 years | 30 | 23 | 35 | 17 |
| Over 65 years | | 3 | 7 | 1 |
| **AVERAGE AGE** | **NOT AVAILABLE** | **41** | **47** | **38** |

## Year of Paralegal License and Length of Time as Paralegal

About one-quarter of respondents (27%) report that they were licensed as a paralegal in Ontario in 2007 or 2008. The largest group (40%) of respondents were licensed in 2009-2011.

Over one-in-ten respondents (13%) report that they have not yet practised as a paralegal. Nearly three-quarters (61%) of respondents have been working as a paralegal in Ontario for less than five years. Close to one-in-ten have worked for 5 to 9 years, 10 to 19 years, or 20 or more years (11%, 8%, and 7%, respectively).

**Year of Paralegal License and Length of Time as Paralegal:**
**Law Society Paralegal Members Compared to Change of Status Survey Respondents**

| | Law Society Membership Statistics 2014 | Survey Respondents |
|---|---|---|
| n= | 558 | 894 |
| | % | % |
| **YEAR OF PARALEGAL LICENSE** | | |
| 2007-2008 | n/a | 27 |
| 2009-2011 | 36 | 40 |
| 2012-2014 | 64 | 33 |
| **LENGTH OF TIME AS PARALEGAL** | | |
| Have not yet practiced (0 years) | 71 | 13 |
| Less than 5 years | | 61 |
| 5 to 9 years | 29 | 11 |
| 10 to 19 years | | 8 |
| 20+ years | | 7 |

## Membership in Equity-Seeking Communities

The 2013 Law Society paralegal membership data indicates that 2% of its paralegal members were from Aboriginal communities and 33% were racialized.

While the proportion who self-identify as belonging to an Aboriginal community within the Change of Status respondent group is consistent with the Law Society's membership statistics, the proportion who self-identify as racialized is significantly lower.

- Only 17% of respondents self-identify as a member of a racialized equity-seeking community.

**Membership in an Equity-Seeking Community**

| | Law Society Paralegal Membership Statistics (2013) | All Survey Respondents (2012-2014) |
|---|---|---|
| n= | 4456 | 894 |
| | % | % |
| **RACIALIZED EQUITY-SEEKING*** | **33*** | **17*** |
| Arab | 1 | n/a |
| African Canadian/Black | 7 | 6 |
| Chinese | 5 | 3 |
| East Asian | 1 | 1 |
| Latin Hispanic | 4 | 1 |
| South Asian | 9 | 5 |
| South East Asian | 2 | 2 |
| Other | 4 | 4 |
| **NON-RACIALIZED EQUITY-SEEKING** | **n/a** | **14*** |
| Aboriginal communities | 2 | 2 |
| Francophone | n/a | 2 |
| Gay/Lesbian/Bisexual | 2 | 2 |
| Person with disabilities | 5 | 6 |
| Other* | n/a | 5 |
| **DO NOT IDENTIFY WITH EQUITY-SEEKING COMMUNITY** | **65**** | **69** |

* Note: Multiple mentions accepted.
** Note: In Law Society paralegal member statistics, this group is defined as "white".
Change of Status Q.4: Please check any of the following characteristics with which you self-identify.
Change of Status Q.5: If you have self-identified as being Aboriginal or racialized/person of colour, please specify how you identify yourself.

# Change of Status – Overall Trends

## A. Previous Position versus Current Position – A Decline in Practice Within Law Firms

The analysis provides an overview of the type of position held by respondents prior to their change of status and the type of position they currently hold. Results are presented to illustrate the degree to which there has been movement to or from paralegal practice in a paralegal firm, paralegal practice in a law firm, or a setting or situation in which an individual is not currently practising as a paralegal ("non-paralegal"). This latter category includes working in a corporate, government or educational position, other types of employment, retirement, maternity/parental leave, and unemployment.

Over a three year period (2012-2014), almost one-half of those who submitted a change of status report that they worked in a paralegal firm or law firm prior to the change (i.e., previous position).

- Almost twice the proportion report they were working in a paralegal firm (30%) as report working in a law firm (17%).

That ratio changes significantly after the change of status. The proportion working in a paralegal firm (33%) is three times that of the group working in a law firm (10%). This is due to the overall decline in the proportion of those working in a law firm (down 7 points from previous to current position).

**Incidence of Those in Paralegal Practice in Paralegal Firms and Law Firms in Previous and Current Positions Among Total Sample**

| | Paralegal Practice In PARALEGAL Firm: PREVIOUS Position | Paralegal Practice In PARALEGAL Firm: CURRENT Position | GAP |
|---|---|---|---|
| **COMBINED 2012-2014 (n=894)** | 30 | 33 | **+3** |
| | **Paralegal Practice In LAW Firm: PREVIOUS Position** | **Paralegal Practice In LAW Firm: CURRENT Position** | **GAP** |
| **COMBINED 2012-2014 (n=894)** | 17 | 10 | **- 7** |

## B. A Large Group of Paralegal Licensees are Not Practising in a Paralegal or Law Firm

The majority of those whose who submitted a change of status report from 2012-2014 report that they are not currently practising as a paralegal in a paralegal or law firm.

- One-in-ten (9%) indicate that they are currently working in a field in which they are using their paralegal skills (e.g., with the prosecutor, as a legal assistant or law clerk).
- Over one-in-ten (13%) currently hold a position outside a paralegal or law firm setting (e.g., are working in a corporation, in government, or in an educational setting) and report that they are not practicing as a paralegal in that position. A small proportion (4%) reporting working in one of these settings as a paralegal.
- Over one-in-ten (13%) are not currently working for pay.

Noted previously, one-third of respondents (33%) report that they are currently working as a paralegal within a paralegal firm. Another 10% are working as paralegals within a law firm.

**Incidence of Those in Paralegal Practice in Previous and Current Positions Among Total Sample**

| | All Survey Respondents 2012-2014 (n= 894) | |
|---|---|---|
| | PREVIOUS % | CURRENT % |
| **PARALEGAL PRACTICE IN PARALEGAL FIRM** | **30** | **33** |
| **PARALEGAL PRACTICE IN LAW FIRM** | **17** | **10↓** |
| **NOT PRACTISING OR NOT PRACTISING IN PARALEGAL/LAW FIRM** | **53** | **57** |
| Maternity/parental leave | 5 | 3 |
| Retired | 1 | 3↑ |
| Position in paralegal-related field (e.g., prosecutor, legal assistant, law clerk, opening firm) | 10 | 9 |
| Position not in paralegal-related field (e.g., corporate, government, education) | 16 | 17 |
| Not working (e.g., not working for pay, unemployed) | 11 | 13 |
| Other (e.g., student, never worked as paralegal, on leave) | 10 | 11 |

## C. An Increase in Paralegals Practising As Sole Practitioners and Overall Decrease in Practice Within Law Firms

The incidence of those who are in sole paralegal practice increases after a change of status. Only 15% of respondents report that they were in sole practice in their previous position. After a change in status, fully 24% are in sole practice, a 9-point increase.

There is a decline in the proportion who report that they are in a paralegal firm with two or more paralegals (down 7 points from 16% in their previous position to 9% in their current position).

Further, there has also been a decline in the incidence of those holding a position in a law firm. Only 10% of respondents report that their current position is in a law firm, compared to 17% in a previous position.

The decrease is evident across both sole practitioner law firms (single lawyer) and law firms with two or more lawyers.

- There is a 4-point decline in paralegals who report working in a law firm with a sole practitioner in their previous position (6%) compared to their current position (2%).
- Similarly, there is a 3-point decline in paralegals who report working in a multi-lawyer law firm in their previous position (11%) compared to their current position (8%).

**Incidence of Those in Paralegal or Law Firm in Previous and Current Position Among Total Sample**

| | All Survey Respondents 2012-2014 (n= 894) | |
|---|---|---|
| | PREVIOUS % | CURRENT % |
| **IN PARALEGAL FIRM** | **30** | **33** |
| In sole practice as paralegal | 15 | 24↑ |
| In a paralegal firm with 2 or more paralegals | 15 | 9↓ |
| **IN LAW FIRM** | **17** | **10↓** |
| With a lawyer in sole practice | 6 | 2↓ |
| In a law firm of 2 or more lawyers | 11 | 8↓ |

## D. Less than One-in-Ten of Those Changing Status are Moving into or Returning from Maternity/Parental Leave

An average of 8% of respondents over three years (2012, 2013 or 2014) report that they were either returning from or going into a period of parental leave:

- 5% report that their change of status involves a return from maternity/parental leave;
- 3% report that they are moving into maternity/parental leave.

Women comprise the vast majority of the group whose change of status involves moving into or returning from maternity/parental leave. Over one-in-ten women (68 of all 596 female survey respondents) compared to only one percent of men (3 of all 298 male survey respondents) report parental leave is a factor in their change of status.

**Change of Status Related to Parental Leave**

| | All Survey Respondents 2012-2014 | |
|---|---|---|
| | WOMEN | MEN |
| | n=596 | n=298 |
| | % | % |
| Changed status and parental leave was a factor | 11 | 1 |
| Changed status and parental leave was not a factor | 89 | 99 |

Those who indicated they are returning from a parental/maternity leave were asked a set of detailed questions to determine if they had returned to their previous position or status after their leave or whether they had changed their position/status upon their return from leave. ***Due to the small sample size of these respondents, any analysis of this group should be considered directional only.***

Among the group of women returning from a maternity leave (n=41), a majority (61%) returned to their previous position or status after their leave.

The sample of women who have changed their position/status after returning from maternity leave is too small to allow further analysis (n=16).

## E. The Group Undertaking Paralegal Work in a Paralegal Firm or Law Firm Appears to be Fluid

The results discussed to this point do not provide a clear picture of the movement to and from paralegal practice within paralegal and law firms. While significant proportions of Change of Status survey respondents have remained in the same type of position, there are also many respondents who have moved from practice in a paralegal or law firm to other types of positions, or have moved into paralegal or law firms from other types of positions after their change of status.

The 43% who report that they are practising in a paralegal firm or law firm after a change of status is composed of:

- 11% who were in a paralegal firm and stayed in a paralegal firm after their change;
- 4% who began in a law firm and moved to a paralegal firm;
- 2% who began in a paralegal firm and moved to a law firm; and,
- 4% who began in a law firm and stayed in a law firm;

21%

- 18% who were not practising in a paralegal or law firm and transitioned to a paralegal firm;
- 4% who were not practising in a paralegal or law firm and transitioned to a law firm.

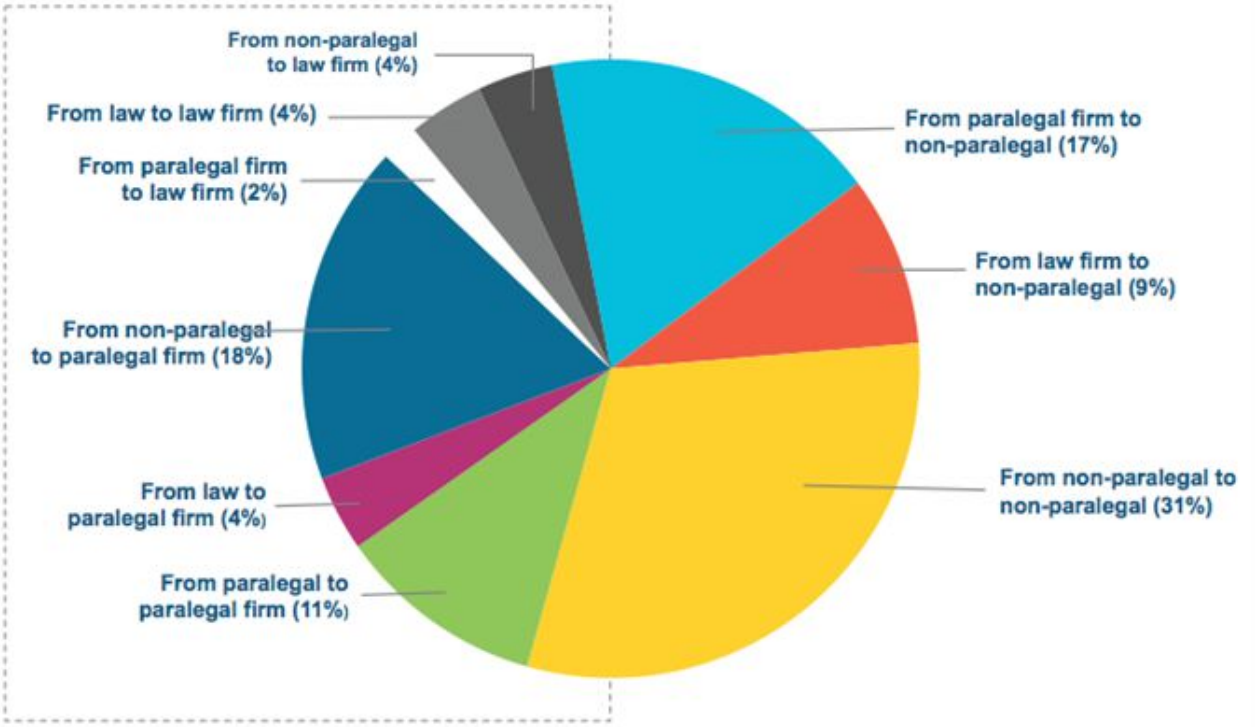
22%

Thus, 21% of all respondents who were practising in a paralegal or law firm prior to their change of status remained in one of these two types of practice settings. The remainder (22%) moved into a paralegal or law firm from another type of position or status.

As the graph on the following page illustrates, there is a substantial proportion of respondents (53%) who are not practising in a paralegal or law firm after a change of status. This group is composed of:

- 17% who held a position in a paralegal firm and moved to a position outside of a paralegal or law firm;
- 9% who held a position in a law firm and moved to a position outside of a paralegal or law firm; and,
- 31% who were not practising in a paralegal or law firm and remained outside of these two practice settings.

**Overview of Incidence of Those in Paralegal Practice in Previous and Current Positions**



# Characteristics of Status Change

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

## A. Status Characteristics of Sample in Which Parental Leave and Retirement are Not Factors

**The remainder of the analysis provided in this report is undertaken among survey respondents excluding those who have changed status for maternity/parental leave or retirement.**

The table below provides a detailed overview of the type of position held by these respondents prior to their change of status and the type of position they currently hold. It illustrates the same trends that were evident among the total sample of respondents:

Among those whose change excludes one related to maternity/parental leave or retirement, no significant change in the proportion of those who practise in a paralegal firm is found.

However, there is a significant decline in the proportions of those working in a law firm after a change of status:

- A decline of 7 points among the total sample (from 17% previous position to 10% current position);
- A decline of 6 points among the group excluding retirees and those whose change involved maternity/parental leave (from 17% previous position to 11% current position).

The proportion who are not currently practising in a paralegal or law firm is directionally greater (51% in previous position and 55% in current position).

## Practice Type or Work Setting – Previous Versus Current Position
**(Excluding Those Whose Change is Due to Maternity/Parental Leave and Retired)**

| | All Survey Respondents 2012-2014 | |
|---|---|---|
| | **PREVIOUS** (n=793) | **CURRENT** (n=793) |
| | % | % |
| **TOTAL IN PARALEGAL FIRM** | **31** | **35** |
| **NET: SOLE PRACTITIONER PARALEGAL FIRM** | **16** | **26↑** |
| Sole paralegal practice in Toronto | 8 | 13↑ |
| Sole paralegal practice outside Toronto | 8 | 13↑ |
| **NET: PARALEGAL FIRM WITH 2+ PARALEGALS** | **15** | **9↓** |
| Paralegal practice with 2 paralegals in Toronto | 4 | 1↓ |
| Paralegal with 3 or more paralegals practice in Toronto | 3 | 2 |
| Paralegal practice with 2 paralegals outside Toronto | 5 | 3↓ |
| Paralegal practice with 3 or more paralegals outside Toronto | 3 | 3 |
| **TOTAL: IN LAW FIRM** | **17** | **11↓** |
| **NET: SOLE PRACTITIONER FIRM** | **6** | **2↓** |
| Sole lawyer practice in Toronto | 3 | 1↓ |
| Sole lawyer practice outside Toronto | 3 | 1↓ |
| **NET: LAW FIRM WITH 2+ LAWYERS** | **12** | **8↓** |
| Lawyer firm with 2 or more lawyers in Toronto | 7 | 5 |
| Lawyer firm with 2 or more lawyers outside Toronto | 5 | 3↓ |
| **TOTAL: NOT PRACTISING IN PARALEGAL/LAW FIRM** | **51** | **55** |
| Position in paralegal-related field (e.g., position with prosecutor, legal assistant, law clerk) | 11 | 10 |
| Employed outside paralegal or law firm (i.e., position in private corporation, educational institution or government) | 17 | 18 |
| Not working for pay/ unemployed | 13 | 15 |
| Other (e.g., student, never worked, on leave) | 11 | 12 |

Q.6 Your previous status or position means the position you were in immediately prior to notifying the Law Society. Your current status or position means the position you are in now. From among the following, please indicate your practice or work setting while you were in your previous status category or position as well as your current practice or work setting.

Base: All respondents excluding those whose change is due to maternity/parental leave or those who have retired

## B. Overall Change of Status Characteristics Based on Gender

A comparison of the previous and current practice settings of women and men shows that, prior to a change of status, similar proportions were practising in a paralegal or law firm (48% and 49%, respectively). After a change, however, women are less likely than men to be practising in one of these two settings (40% and 55%, respectively).

Women were less likely to have held a position in a paralegal firm prior to their change in status (28%) than were men (36%), but were more likely to have practised in a law firm (20%) than men (13%).

After a change in status, the proportion of men practising in a paralegal firm increases substantially (up 14 points). The proportion of women practising in a paralegal firm does not change significantly.

Thus, the gap between women and men practising in a paralegal firm increases after a change of status. Nearly twice the proportion of men (50%) report that their current position is at a paralegal firm compared with women (27%).

Among both women and men, the proportion holding a position in a law firm after a status change drops significantly (down 7 points among women; down 8 points among men). However, women remain more likely to have a current position with a law firm (13%) than do men (5%).

**Previous and Current Positions of Change of Status Respondents**

| TOTAL SAMPLE (2012-2014 results combined) | Women (n=596) | | Men (n=298) | |
|---|---|---|---|---|
| | Previous | Current | Previous | Current |
| In a paralegal firm | 27 | 26 | 38 | 47↑ |
| In a legal firm | 19 | 13↓ | 12 | 5↓ |
| Not practising in a paralegal or law firm (including maternity/parental leave and retired) | 54 | 61↑ | 50 | 48 |
| **EXCLUDING THOSE WHOSE CHANGE RELATED TO MATERNITY/PARENTAL LEAVE OR RETIREMENT (2012-2014 results combined)** | **Women (n=513)** | | **Men (n=280)** | |
| | Previous | Current | Previous | Current |
| In a paralegal firm | 28 | 27 | 36 | 50↑ |
| In a legal firm | 20 | 13↓ | 13 | 5↓ |
| Not practising in a paralegal or law firm | 52 | 60↑ | 51 | 45 |

Q.6 Your previous status or position means the position you were in immediately prior to notifying the Law Society. Your current status or position means the position you are in now. From among the following, please indicate your practice or work setting while you were in your previous status category or position as well as your current practice or work setting.

## C. Practice Type into Which Women and Men Have Transitioned

The research provides other insights into gender differences among those who have made a change of status submission.

Women who practised in a paralegal firm in their previous status were as likely to have been in sole practice (14%) as they were to have held a position in a firm of 2 or more paralegals (14%). This was also the case for men, with no statistically significant difference in the proportion in sole practice (20%) compared to practice in a paralegal firm of 2 or more paralegals (16%).

After their change of status, both women and men are more likely to hold positions in sole practice than they are to be practising in a firm of 2 or more paralegals, although the proportion of women in sole practice is considerably lower (20%) than the proportion of men (38%).

Finally, while there are no significant gaps between men and women in the characteristics of their previous position outside of paralegal practice in a paralegal or law firm, differences emerge after a status change:

- In particular, women are more likely than men (11% and 6%, respectively) to report that although they are not currently practising within a paralegal or law firm, they are practising in a position with a prosecutor, legal assistant or law clerk or holding a legal assistant position.
- Further, women are more likely (20%) than men (15%) to hold a position which is not paralegal-related (e.g., a corporate position, one in government or education).
- About one-in-ten women report that they are not working for pay (16%) in their current position, a slightly greater proportion than is found among men (12%).

## Previous Versus Current Position Among Women and Men in 2012-2014
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | WOMEN | | MEN | |
|---|---|---|---|---|
| | Previous Status | Current Status | Previous Status | Current Status |
| | n=513 | n=513 | n=280 | n=280 |
| **NET: PARALEGAL FIRM (BOTH OUTSIDE AND IN TORONTO)** | **28** | **27** | **36** | **50** |
| Sole paralegal firm | 14 | 20 | 20 | 38 |
| Paralegal firm with 2 or more paralegals | 14 | 7 | 16 | 12 |
| **NET: LAW FIRM (BOTH OUTSIDE AND IN TORONTO)** | **20** | **13** | **13** | **5** |
| Law firm with sole lawyer | 6 | 3 | 5 | 1 |
| Law firm with 2 or more lawyers | 14 | 10 | 8 | 4 |
| **NOT PRACTISING IN A PARALEGAL OR LAW FIRM** | **52** | **60** | **51** | **45** |
| Position as paralegal in other type of setting (e.g., prosecutor, legal assistant, law clerk, opening firm) | 12 | 11 | 8 | 6 |
| Employed outside paralegal or law firm (i.e., position in private corporation, educational institution or government) | 17 | 20 | 16 | 15 |
| Not working (not working for pay, unemployed) | 13 | 16 | 13 | 12 |
| Other (e.g., student, never worked, on leave) | 10 | 13 | 13 | 12 |

Q.6 Your previous status or position means the position you were in immediately prior to notifying the Law Society. Your current status or position means the position you are in now. From among the following, please indicate your practice or work setting while you were in your previous status category or position as well as your current practice or work setting.
Base: Those who have changed status in 2012-2014, excluding those whose change was due to parental leave

# Characteristics of Those Whose Change of Status Originated in a Paralegal or Law firm

## (Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)

What are the characteristics of those who have changed status with an originating position in practice as a paralegal either within a paralegal firm or law firm?

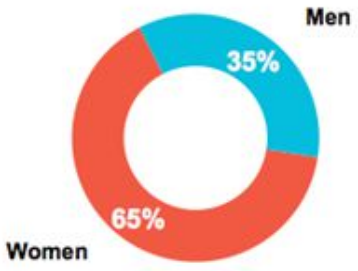
The representation of women among those who submitted a change of status with an originating position in paralegal practice (within a paralegal or law firm) is greater (64%) than the representation of women in the Law Society's current paralegal membership (58%).

However, the proportion who are in paralegal practice after a change of status declines to 57%, down 7 points.

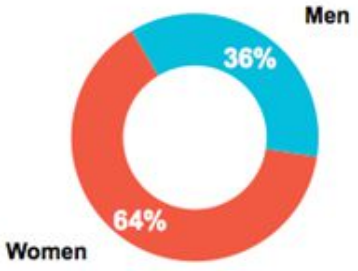
**Representation of Men and Women in Total Sample, and Based on Previous and Current Position**

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

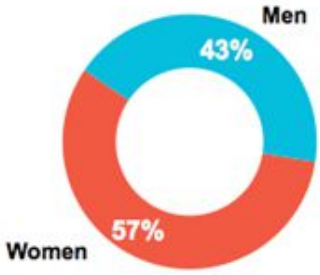
Representation of Men and Women in Change of Status Sample 2012-2014




Representation of Women and Men: Practised as Paralegal in **Previous Position** 2012-2014




Representation of Women and Men: Practise as Paralegal in **Current Position** 2012-2014



Among those whose previous practice setting was a paralegal firm, about one-half (47%) have remained in paralegal practice either in a paralegal firm (40%) or in a law firm (7%).

However, just over one-half of these respondents are no longer practisng within a paralegal firm – with the largest proportions moving into a corporate, government or education position (19%) or finding themselves not working for pay or unemployed (13%).

There are significant differences between men and women who have made a change of status originating in a paralegal firm. Men are significantly more likely to report that they have remained in practice within a paralegal firm or that they have moved to law firm after their change of status (58%) than are women (38%).

By contrast, women are more likely than men to report that they are currently employed in a position as paralegal in a setting other than a paralegal or law firm (6% and 2%, respectively). Women (24%) are also twice as likely as men (12%) to have moved into a position in corporate, educational or government setting. Finally, among those who previous position involved practice in a paralegal firm, women are more likely to report that they are currently unemployed or not working for pay (15%) than men (10%).

**Destination of a Change of Status among Those Whose Previous Status WAS IN A PARALEGAL FIRM**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | THOSE WHOSE PREVIOUS POSITION WAS IN PARALEGAL FIRM | | |
|---|---|---|---|
| **CURRENT POSITION** | **ALL RESPONDENTS 2012-2014** | **WOMEN 2012-2014** | **MEN 2012-2014** |
| n= | 246 | 144 | 102 |
| | % | % | % |
| **NET: IN PARALEGAL OR LAW FIRM** | **47** | **38** | **58↑** |
| Stayed in Paralegal firm | 40 | 28 | 56 |
| Went into Law firm | 7 | 10 | 2 |
| **NOT PRACTISING IN A PARALEGAL OR LAW FIRM** | **53** | **62** | **48** |
| Position as paralegal in other type of setting (e.g., prosecutor, legal assistant, law clerk, opening firm) | 4 | 6 | 2↓ |
| Employed outside paralegal or law firm (i.e., position in private corporation, educational institution or government) | 19 | 24 | 12↓ |
| Not working for pay/unemployed | 13 | 15 | 10↓ |
| Other | 17 | 17 | 18 |

Among women whose practice setting was in a law firm, over one-half have continued with their paralegal practice either within a law firm (27%) or in a paralegal firm (24%).

The sample of men whose previous status involved paralegal practice in a law firm is too small to provide generalizable results.

**Destination of a Change of Status among Those Whose Previous Status WAS IN A LAW FIRM**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| CURRENT POSITION | THOSE WHOSE PREVIOUS POSITION WAS IN LAW FIRM | | |
|---|---|---|---|
| | ALL RESPONDENTS 2012-2014 | WOMEN 2012-2014 | MEN 2012-2014 |
| n= | 138 | 103 | 35 |
| | % | % | % |
| **NET: CURRENT POSITION IN PARALEGAL OR LAW FIRM** | **51** | **51** | |
| Went into Paralegal firm | 26 | 24 | Base too small |
| Stayed in Law firm | 25 | 27 | Base too small |
| **NET: CURRENT POSITION NOT IN PARALEGAL PRACTICE** | **49** | **49** | |
| Employed in related position | 8 | 9 | Base too small |
| Employed outside paralegal or law firm (i.e., education, corporate position, government) | 9 | 8 | Base too small |
| Not working for pay/unemployed | 25 | 27 | Base too small |
| Other | 7 | 6 | Base too small |

Examining the activity of solely women, those whose previous status involved paralegal practice in a law firm are more likely to remain in practice within a paralegal or law firm after a change of status than are women whose originating status was in a paralegal firm.

**Destination of a Change of Status among Women Whose Previous Status WAS IN A PARALEGAL FIRM OR LAW FIRM**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | WOMEN | |
|---|---|---|
| **CURRENT POSITION** | **PREVIOUS STATUS IN PARALEGAL FIRM** | **PREVIOUS STATUS IN LAW FIRM** |
| n= | 144 | 103 |
| | % | % |
| **NET: IN PARALEGAL OR LAW FIRM** | **38** | **51↑** |
| Went into Paralegal firm | 28 | 24 |
| Stayed in Law firm | 10 | 27↑ |
| **NET: NOT IN PARALEGAL PRACTICE** | **62** | **49↓** |

Overall, men who have made a change of status from an originating position where they were NOT practising in a paralegal firm or law firm are more likely to move into these settings after a change of status (52%) than are women whose originating position was not in a paralegal or law firm (33%).

The greatest proportion of men who were not in practice within a paralegal or law firm, but changed status to practice within these settings, are now practising within a paralegal firm (47%). Only 5% are practising in a law firm. This represents a ratio of almost 10:1 who have moved to a paralegal firm versus a law firm.

Contrast this with the women who have moved into one of these two settings. The ratio of those moving into a paralegal firm compared to a law firm is about 3 to 1 (24% and 9%, respectively).

**Destination of a Change of Status among Those Whose Previous Status was NOT IN A PARALEGAL OR LAW FIRM**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | THOSE WHOSE PREVIOUS POSITION/STATUS WAS NOT IN A PARALEGAL OR LAW FIRM | | |
|---|---|---|---|
| **CURRENT POSITION** | **ALL RESPONDENTS 2012-2014** | **WOMEN 2012-2014** | **MEN 2012-2014** |
| n= | 345 | 227 | 118 |
| | % | % | % |
| **NET: IN PARALEGAL OR LAW FIRM** | **40** | **33** | **52↑** |
| Went to Paralegal firm | 32 | 24 | 47 |
| Went into Law firm | 8 | 9 | 5 |
| **NET: NOT IN PARALEGAL PRACTICE** | **60** | **67** | **48↓** |
| Employed in related position | 15 | 16 | 11 |
| Employed outside paralegal or law firm (i.e., education, corporate position, government) | 21 | 22 | 19 |
| Not working for pay/unemployed | 14 | 15 | 12 |
| Other | 11 | 14 | 6↓ |

For the most part, the demographic profile of those who filed a change of status notification and had an originating status either in a paralegal or law firm is consistent with the total sample (including those whose status change was associated with maternity/parental leave or retirement) in terms of age, year of paralegal license, and length of time as a paralegal[1]. When the characteristics of women and men are compared, however, some significant differences emerge.

Women whose originating position was in a paralegal firm or law firm are:

- Disproportionately younger (52% are under the age of 40) than men who were in the same setting (31%);
- Less likely to have been in practice as a paralegal for five or more years (24%) than men (39%).

**Demographic Characteristics of Those Whose Originating Position was in Paralegal Practice**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | ALL RESPONDENTS | TOTAL WHOSE PREVIOUS STATUS WAS IN A PARALEGAL OR LAW FIRM | WOMEN WHOSE PREVIOUS STATUS WAS IN A PARALEGAL OR LAW FIRM | MEN WHOSE PREVIOUS STATUS WAS IN A PARALEGAL OR LAW FIRM |
|---|---|---|---|---|
| n= | 793 | 384 | 247 | 137 |
| | % | % | % | % |
| **AGE** | | | | |
| <30 years of age | 25 | 23 | 30 | 9↓ |
| 30-39 years | 23 | 22 | 22 | 22 |
| 40 to 49 years | 26 | 28 | 29 | 26 |
| 50 to 65 years | 24 | 25 | 19 | 36↑ |
| Over 65 years | 2 | 3 | <1 | 7 |
| **YEAR OF PARALEGAL LICENSE** | | | | |
| 2007-2008 | 23 | 28 | 24 | 36↑ |
| 2009-2011 | 42 | 44 | 47 | 37↓ |
| 2012-2014 | 35 | 28 | 29 | 27 |
| **LENGTH OF TIME AS PARALEGAL** | | | | |
| 0 years – have not practiced as paralegal | 13 | 4 | 7 | 1 |
| Less than 5 years ago | 64 | 67 | 69 | 59↓ |
| 5 to 9 years ago | 10 | 13 | 13 | 12 |
| 10 to 19 years ago | 8 | 10 | 7 | 15↑ |
| 20 or more years ago | 6 | 7 | 4 | 12↑ |

Those who have remained in paralegal practice after their change in status, whether it is in a paralegal or law firm, differ demographically from those who moved out of a paralegal or law firm to another setting.

Those who have remained in paralegal practice in a paralegal or law firm are less likely to be female (58%) than are those who moved out of this type of paralegal practice (70%).

Those who have left practice in a paralegal or law firm are disproportionately younger. Fully 51% are less than 40 years of age whereas only 38% of those who remained in this type of practice are under 40 years of age.

**Previous Versus Current Position Among Those Whose Originating Position (Previous Position) was Practising As Paralegal in Paralegal or Law Firm**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | THOSE WHOSE PREVIOUS POSITION WAS PRACTISING AS PARALEGAL IN PARALEGAL OR LAW FIRM | | |
|---|---|---|---|
| | **Total – All those whose previous position was practising as a paralegal** | **Moved from a position in a paralegal or law firm to a position in a paralegal or law Firm** | **Moved from a position in a paralegal or law firm to a position NOT in a paralegal or law firm** |
| n= | 384 | 186 | 197 |
| **GENDER** | | | |
| Men | 36 | 42↑ | 30 |
| Women | 64 | 58 | 70↑ |
| **AGE** | | | |
| <30 years of age | 23 | 20 | 25 |
| 30-39 years | 22 | 18 | 26 |
| | | **38** | **51↑** |
| 40 to 49 years | 28 | 27 | 28 |
| 50 to 65 years | 25 | 33 | 18 |
| | | **60** | **46** |
| Over 65 years | 3 | 3 | 3 |
| **YEAR OF PARALEGAL LICENSE** | | | |
| Last 4 years (2011-2014) | 48 | 44 | 53 |
| More than 4 years ago (2007-2010) | 52 | 57 | 47 |
| **LENGTH OF TIME AS PARALEGAL** | | | |
| Less than 5 years ago | 71 | 64 | 77↑ |
| 5 to 9 years ago | 13 | 13 | 12 |
| 10 to 19 years ago | 10 | 12 | 8 |
| | | **36↑** | **24** |
| 20 or more years ago | 7 | 11↑ | 4 |

# Areas of Paralegal Work

## (Excluding Those Whose Change is due to Maternity/parental Leave or Retirement)

In seeking to better understand what is driving paralegals, in particular women, to leave practice in paralegal or law firms, principal area of paralegal work is examined among those who have moved within paralegal practice in comparison to those who have left practice in paralegal or law firms.

The table on the following page clearly illustrates that there are no significant differences in the principal areas of paralegal work that is practised between previous position and current position.

Among those who have remained in practice within a paralegal or law firm after a change of status:

- The greatest proportions in both previous and current position report their principal area of practice is either in the area of Ontario Courts of Justice Provincial Offenses Act matters (23% in previous position/24% in current position or Small Claims Court matters (22% in previous position/ 24% in current position).
- Statutory Accident Benefits Schedule matters (SABs) in an area of practice that 16% of this group identify as their primary area of practice in the previous position, and 17% identify as primary in their current position.
- About one-in-ten report that their primary area of paralegal work is in Workers' Compensation, both in the previous and current positions.

Less than 10% identify any other single area of paralegal work as their principal area of practice.

Those whose originating position was in a paralegal or law firm setting and then transitioned to another setting are similar to those who remained in a paralegal or law in terms of the principal area of paralegal work that they practiced. They were, however, significantly more likely (30%) than those who remained in a paralegal or law firm (24%) to cite that their principal area of practice in their previous position was in Ontario Court of Justice Provincial Offences Act matters.

## Principal Area of Paralegal Work: Previous versus Current Position

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

***(% who report that the area of paralegal work noted is their principal area upon which they focused)***

| | PREVIOUS POSITION: PRINCIPAL AREA OF PARALEGAL WORK 2012-2014 | | CURRENT POSITION: PRINCIPAL AREA OF PARALEGAL WORK 2012-2014 | |
|---|---|---|---|---|
| | **Previous and current position both in paralegal or law firm** | **Previous position in paralegal or law firm/ Current position not in paralegal or law firm** | **Previous and current position both in paralegal or law firm** | **Previous position in paralegal or law firm/ Current position not in paralegal or law firm** |
| n= | 186 | 197 | 186 | 197 |
| | % | % | % | % |
| Ontario Court of Justice Provincial Offences Act matters | 23 | 30↑ | 24 | n/a |
| Ontario Court of Justice - Summary Conviction offences | 5 | 3 | 2 | n/a |
| Worker's Compensation | 10 | 5 | 11 | n/a |
| Small Claims Court matters | 22 | 24 | 24 | n/a |
| Property Tax Assessment | 4 | 2 | 3 | n/a |
| Statutory Accident Benefits Schedule matters (SABS) | 16 | 15 | 17 | n/a |
| Human Rights | 1 | 1 | 1 | n/a |
| Landlord and Tenant | 6 | 7 | 5 | n/a |
| Other Tribunals | 4 | 5 | 4 | n/a |
| Other | 9 | 10 | 9 | n/a |

Q.7 Please indicate the three principal areas of paralegal work upon which you focused while you were in your previous status category or position and also the principal areas in which you are focused in your current status category or position.

# Unaided Reasons for a Change in Status

## (Excluding Those Whose Change is due to Maternity/parental Leave or Retirement)

One of the key objectives of the research is to explore what factors may be leading paralegals to change their status. The research explored this issue through both unaided and aided questions.

To obtain an unaided perspective, respondents were asked to describe, in their own words, the key factors that influenced their decision to change their status or position.

Overall, the reasons given are varied, and no single issue or set of issues dominate. There are significant differences in the reasons provided between those who maintained practice within a paralegal or law firm and those moving to another setting or status. Some gender differences are also evident.

The reasons most frequently cited for a change of status are related to opportunity-related factors provided in a new position (34%). These reasons are mentioned to a greater degree among those who have moved from a non-paralegal practice setting to a paralegal practice setting (44%), compared to those who have made a transition in the reverse direction, from a paralegal practice setting to not practising as a paralegal (28%). One-third (34%) of those who stayed in practice in a paralegal or law firm note reasons of this nature.

The set of reasons mentioned second most frequently by those who moved from a practice in a paralegal or law setting to another type of setting relate to a position ending (e.g., being laid off or termination of employment), or factors that act as a barrier to practice (e.g., health problems). This set of reasons is provided by about one-quarter of this group of respondents (24%). These issues play less of a role among those who have moved within a paralegal or law firm setting (17%) and those who moved from a non-paralegal setting to practice at a paralegal or law firm (17%).

What fundamentally distinguishes those who have transitioned from practice in a paralegal or law firm to another setting from those who have remained in paralegal or law firm is the extent to which they identify better financial or other types of benefits were a key motivator driving their change of status. Those who moved out of a paralegal firm to another setting identify these reasons more than any other (30%) as driving their decision to change their status. The other two groups were much less likely to mention these reasons (18% among those who stayed within a paralegal or law firm setting and 17% of those who transitioned in one of these two settings).

What distinguishes those who have transitioned into practice at a paralegal or law setting from another setting/ status is the extent to which they cite the prospect of starting up a new firm as the basis for their change of status.

- Among those whose who moved from a setting other than a paralegal or law firm into one of these settings, 22% mention reasons related to starting a new firm as reason for their change of status. It is noteworthy that half of this group (11%) identify that the prospect of opening a new firm was a result of not being able to find paralegal work elsewhere.
- By contrast, starting a new firm is mentioned by only 8% of those who remained in a paralegal or law firm practice and 4% of those who moved from a paralegal or law firm to another setting.

There is only one significant difference between women and men in the reasons identified as key factors influencing a change of status. Women are more likely than men to identify opportunities in the new position as influencing their decision to change (38% among women compared with 28% among men). Within this set of reasons, a greater proportion of women identify job security (7% among women and 2% among men) and better work environment or location (7% among women and 3% among men).

## Main Reasons for a Change of Status
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | TOTAL 2012-2014 | WOMEN | MEN | Moved from Paralegal or law firm to other setting | Stayed within Paralegal firm/law firm | Moved from other setting to paralegal or law firm |
|---|---|---|---|---|---|---|
| n= | 790 | 511 | 279 | 197 | 186 | 171 |
| | % | % | % | % | % | % |
| **OPPORTUNITIES IN NEW POSITION (NET)** | **34** | **38↑** | **28** | **28** | **34** | **44↑** |
| Better opportunities/new challenges/ better quality of work | 7 | 7 | 6 | 4 | 6 | 8 |
| Better able to use my skills/ subject matter for work/ Change in practice area/ different type of work | 6 | 6 | 5 | 3 | 5 | 11 |
| Better opportunity for advancement/ opportunity for advancement/ promotion | 4 | 3 | 5 | 4 | 4 | 2 |
| Independence/ greater control in work | 3 | 3 | 4 | 2 | 5 | 6 |
| Job security / stability | 5 | 7↑ | 2 | 8 | 5 | 4 |
| Better work environment/better location | 6 | 7↑ | 3 | 6 | 9 | 5 |
| To gain experience | 4 | 5 | 3 | 1 | 3 | 8 |
| Better position/ position I wanted/ more job satisfaction | 3 | 3 | 2 | 2 | 1 | 3 |
| Better mentorship | 1 | 1 | 1 | 2 | 2 | - |
| To give back to community/ greater public service opportunity | 2 | 1 | 3 | 1 | 1 | 4 |
| Was able to work as paralegal | 2 | 2 | 1 | 1 | 2 | 5 |
| Offered a teaching position/ enjoy teaching | 1 | 1 | - | 1 | - | 1 |
| **POSITION/CONTRACT ENDED OR REQUIRED TO LEAVE POSITION (NET)** | **22** | **23** | **20** | **24** | **17** | **17** |
| Laid off/ termination of employment/ previous structure terminated | 8 | 9 | 7 | 12 | 7 | 5 |
| Contract ended / Contract not renewed | 2 | 3 | 2 | 2 | - | 2 |
| Age/ Practiced long enough/ semi-retired | 1 | 1 | 1 | 1 | 3 | 1 |
| Company went down/ firm closure | 2 | 2 | 1 | 4 | 2 | - |
| Health problems/ health problems of family members | 3 | 2 | 3 | 4 | - | 4 |
| Went back to original position from secondment/ back to original position | 1 | 1 | 1 | - | 1 | - |
| Was previously unemployed | 2 | 2 | 2 | 1 | - | 4 |
| Change in ownership/ change in firm structure | 2 | 1 | 3 | 2 | 3 | 1 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Relocation | 1 | 2 | <1 | 2 | 1 | 1 |

Continued…

## Main Reasons for a Change of Status (Cont'd)
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | TOTAL 2012-2014 | WOMEN | MEN | Moved from Paralegal or law firm to other setting | Stayed within Paralegal firm/law firm | Moved from other setting to paralegal or law firm |
|---|---|---|---|---|---|---|
| n= | 790 | 511 | 279 | 197 | 186 | 171 |
| | % | % | % | % | % | % |
| Parental leave/ returned after parental leave | 1 | 2 | - | 1 | 2 | - |
| End of articling/Unemployed after articling/ could not find job after articling | 1 | 1 | <1 | 1 | - | 1 |
| Back to school/continuing education | 2 | 2 | 1 | 3 | - | - |
| **REMUNERATION/BENEFITS (NET)** | **22** | **23** | **19** | **30↑** | **18** | **17** |
| Better remuneration/ pay/ stable income/ needed income | 10 | 11 | 7 | 13 | 12 | 7 |
| Financial reasons/ income | 6 | 6 | 6 | 11 | 3 | 5 |
| Benefits/ better benefits/pension | 4 | 5 | 3 | 3 | 4 | 3 |
| Expense/ Fees/ Overhead costs | 4 | 4 | 5 | 6 | 2 | 2 |
| **WORKLIFE BALANCE (NET)** | **12** | **13** | **9** | **16** | **11** | **10** |
| Work/life balance - work/family balance | 3 | 3 | 3 | 5 | 3 | 2 |
| Better hours/ control over hours/ better control of schedule/ flexible work schedule | 4 | 4 | 3 | 2 | 5 | 4 |
| Reduction in stress/ burn out at job | 3 | 4 | 3 | 6 | 2 | 1 |
| Child care/ child care requirements/ want to spend more time with children or family | 1 | 2 | - | 1 | - | 2 |
| Reduction in workload/ workload | 2 | 2 | 1 | 3 | 2 | 1 |
| Spousal requirements/ spouse's career needs | <1 | - | <1 | 1 | - | - |
| **STARTING NEW FIRM OR PROMOTION (NET)** | **8** | **8** | **10** | **4** | **8** | **22↑** |
| Starting new firm/ started new sole practice | 3 | 3 | 4 | 1 | 3 | 11 |
| Could not find work so started a practice | 5 | 4 | 6 | 3 | 5 | 12 |
| Promotion/ progressing legal career | <1 | <1 | <1 | - | - | 1 |
| **NEGATIVE ASPECTS OF PREVIOUS JOB (NET)** | **13** | **12** | **14** | **19** | **19** | **5** |
| Dissolving partnership/ Partners/ Partner retiring | 2 | 2 | 3 | 1 | 8 | - |

| | | | | | | |
|---|---|---|---|---|---|---|
| Didn't like job/didn't like firm/ bad fit | 3 | 4 | 2 | 5 | 4 | 1 |
| Can't afford to practice/ can't make enough money in practice/ poor income | 4 | 4 | 4 | 9 | 2 | 2 |

Continued…

## Main Reasons for a Change of Status (Cont'd)

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | TOTAL 2012-2014 | WOMEN | MEN | Moved from Paralegal or law firm to other setting | Stayed within Paralegal firm/law firm | Moved from other setting to paralegal or law firm |
|---|---|---|---|---|---|---|
| n= | 790 | 511 | 279 | 197 | 186 | 171 |
| | % | % | % | % | % | % |
| Time to leave type of practice/ didn't like type of practice | 1 | 1 | 1 | 2 | 1 | 1 |
| Type of work/ did not like type of work | 1 | 1 | 1 | 2 | 1 | 1 |
| Dispute at previous job/ conflict at previous job | 2 | 3 | 2 | 3 | 5 | 1 |
| **DISCRIMINATION/ HARASSMENT (NET)** | **2** | **2** | **<1** | **3** | **2** | **2** |
| Discrimination/ harassment | 2 | 2 | <1 | 3 | 2 | 2 |
| Equity issues/ treatment of women/ treatment of women with children | <1 | 1 | - | 1 | 1 | - |
| **OTHER REASONS** | **19** | **17** | **23↑** | **20** | **11** | **22** |
| Could not find work as paralegal/unable to do paralegal work | 5 | 6 | 4 | 6 | 2 | 8 |
| Found a job/ needed a job/ received offer of employment | 2 | 1 | 2 | 1 | - | 4 |
| Did not want to do paralegal work/ no longer want to work as a paralegal | 2 | 2 | 2 | 1 | - | 1 |
| Return to paralegal practice/ want to work as paralegal | 2 | 2 | 2 | 1 | 1 | 3 |
| Could not afford to start up firm | <1 | - | <1 | - | - | - |
| Can't find clients/not enough clients | 3 | 2 | 3 | 7 | 2 | 1 |
| Other | 5 | 4 | 8↑ | 4 | 5 | 6 |
| Disability/ WSIB | 1 | 1 | 1 | 2 | 1 | 1 |
| **NO CHANGE/NOT APPLICABLE (NET)** | | | | | | |
| No perceived change in status (e.g. name change only, error, change of address) | 4 | 3 | 4 | 2 | 4 | 3 |
| Not applicable | 1 | 1 | 1 | - | 2 | 1 |
| None/ No reason | <1 | - | 1 | - | 1 | - |
| Not stated | <1 | <1 | <1 | 1 | 1 | - |

Q.15: What were the key factors that influenced your decision to change your status or position?

# Change of Status Characteristics Based on Equity-Seeking Status

In this report, those defined as members of a “racialized” equity-seeking community are those who selected the “racialized/person of colour (visible minority)” response option to the following question or who specifically referred to their race in the description they provided to the “Other – please specify” response category.

*Please check any of the following characteristics with which you self-identify. (Please select all that apply)*

- ❑ Aboriginal
- ❑ Francophone
- ❑ Transgender/Transsexual
- ❑ Gay/Lesbian/Bisexual
- ❑ Racialized/person of colour (visible minority)
- ❑ Person with disabilities
- ❑ A creed or religion that you believe is subject to prejudice or disadvantage
- ❑ Other (Please specify) _____
- ❑ I do not self-identify with any of these personal characteristics

Those referred to as members of a non-racialized equity-seeking community selected one of the categories on the above list other than “racialized/person of colour (visible minority)” or “I do not self-identify with any of these personal characteristics”.

Slightly more than two-thirds of respondents do not self-identify with an equity-seeking community. About one-in-six self-identify as belonging to a racialized equity-seeking community, and a slightly smaller proportion self-identify as belonging to another equity-seeking community.

**Self-Identified Membership in Equity-Seeking Communities**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | All Survey Respondents 2012-2014 |
|---|---|
| | n=793 |
| | % |

| | |
|---|---|
| Do not self-identify with an equity-seeking community | 68 |
| Self-identify as member of a “racialized” equity-seeking community | 17 |
| Self-identify as member of a non-racialized equity-seeking community | 15 |

The racialized equity seeking group distinguishes itself from the other two groups in that they are more likely to hold a position within a paralegal firm or law firm in their current status than they were in their previous status (up 13 points to reach 40%).

Since all three groups have seen an increase in the proportion who are practising within a sole paralegal firm after a change of status, this means that the differences between the groups lie in their practice within multi-paralegal firms and law firms.

For the non-equity seeking group, there have been declines in both the incidence of those who are practising in a multi-paralegal firm after a change (down to 9% after a decline of 8 points) and a decline in the incidence of those doing paralegal work within a law firm (down to 11% after a decline of 8 points).

For the non-racialized equity seeking group, there have been a decline in the proportion who are practising in a law firm after their change of status (down to 7% after a decline of 10 points).

For the racialized equity seeking group, there have been no such declines, either in practice within a multi-paralegal firm nor a law firm.

The non-racialized equity-seeking group distinguishes itself from the other two in that they are the only group which is more likely to indicate they are “not working” after a change of status, with the proportion doubling from 9% to 20%.

## Practice Type or Work Setting – Previous Versus Current Position (2012-2014) Based on Equity Seeking Status

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| ↓ Indicates a significant decline from previous to current position<br>↑ Indicates a significant increase from previous to current position | PREVIOUS POSITION/STATUS | | | CURRENT POSITION/STATUS | | |
|---|---|---|---|---|---|---|
| | **Non-Equity Seeking** | **Racialized Equity** | **Non-Racialized Equity** | **Non-Equity Seeking** | **Racialized Equity** | **Non-Racialized Equity** |
| n= | 537 | 135 | 121 | 537 | 135 | 121 |
| | % | % | % | % | % | % |
| **NET: PARALEGAL FIRM (BOTH OUTSIDE AND IN TORONTO)** | **32** | **27** | **31** | **33** | **40↑** | **36** |
| Sole paralegal firm | 15 | 22 | 15 | 24↑ | 33↑ | 29↑ |
| Paralegal firm with 2 or more paralegals | 17 | 4 | 17 | 9↓ | 7 | 7 |
| **NET: LAW FIRM (BOTH OUTSIDE AND IN TORONTO)** | **19** | **15** | **14** | **11↓** | **10** | **7↓** |
| Law firm with sole lawyer | 7 | 3 | 5 | 3↓ | 1 | 1 |
| Law firm with 2 or more lawyers | 12 | 12 | 9 | 8↓ | 10 | 7 |
| **NET: NOT PRACTISING AS PARALEGAL** | **49** | **58** | **54** | **56↑** | **50** | **55** |
| Position in paralegal-related field (e.g., prosecutor, legal assistant, law clerk, opening firm) | 12 | 7 | 10 | 11 | 8 | 5 |
| Position not in paralegal-related field (e.g., corporate, government, education) | 15 | 16 | 22 | 20↑ | 13 | 17 |
| Not working (e.g., not working for pay, unemployed) | 12 | 21 | 9 | 14 | 13 | 20↑ |
| Other (e.g., student, never worked, on leave) | 10 | 14 | 13 | 11 | 16 | 14 |

Q.6 Your previous status or position means the position you were in immediately prior to notifying the Law Society. Your current status or position means the position you are in now. From among the following, please indicate your practice or work setting while you were in your previous status category or position as well as your current practice or work setting.

# Benefits and Operating Policies Available in Previous and Current Positions

**(Excluding Those Whose Change is due to Maternity/parental Leave or Retirement)**

Employers often offer a variety of benefits and employment policies in order to attract employees. Examples of these benefits and policies include:

- Health-related (e.g., medical, dental, long-term disability, sick leave);
- Financial benefits (e.g., pension plans);
- Flexible work arrangements (e.g., job sharing, part-time work, flexible work hours);
- Parental benefits (e.g., paid or unpaid parental leave, childcare benefits);
- Career advancement options (e.g., continuing professional development, formal mentoring policy); and,
- Harassment or equity policies (e.g., harassment/discrimination policy, accommodation for special needs policy).

Respondents who moved from a position in paralegal practice (in a paralegal firm or law firm) to another position (whether it be in paralegal practice or outside of paralegal practice) were asked to indicate whether the benefits or employment policies noted above were offered by their previous employer/firm and whether their current position offers them.

An increase in the incidence of these benefits/policies from previous to current position may suggest that they, in some measure, play a role in the decision to change positions. While it cannot be determined if they "drive" the decision to change, these incidences do provide a perspective as to the types of workplace benefits/policies that are valued by paralegals.

There are two categories of benefits or policies that those who have made a change are most likely to report they have access to in their current position.

- Continuing professional development (48% report it is offered in their current position)
- Flexible full-time work hours (45%)

A second tier in terms of benefits or policies available to respondents in their current position are:

- Harassment and discrimination policy (39%)
- Medical insurance (31%)
- A dental plan (31%)
- Sick leave (29%)

There are a number of benefits/policies for which the incidence is low both in previous and current position. They fall almost exclusively into the parental benefits category. Twelve percent

or less of respondents indicate that their position – previous or current – has offered them unpaid maternity or parental leave, paid maternity or parental leave, child care benefits, or day care facilities.

The table on the following page illustrates that there have been significant increases in the incidence of those reporting access to specific benefits or policies from previous to current status across a number of categories: financial benefits, flexible work options, leave options and other offerings or policies.

However, an examination of solely those whose change of status originated in position within a paralegal or law firm suggests that these benefits and policies are greater drivers for those transitioning to other types of settings than it is for those who are remaining within these settings.

Among those leaving paralegal and law firms and transitioning to another type of setting or status, the incidence of certain benefits/policies being offered rises significantly from previous to current position. The greatest proportional increases are evident for:

- Financial and health-related benefits
  - Pension plans (up 27 points to reach 34%)
  - Medical insurance (up 18 points to reach 45%)
  - A dental plan (up 17 points to reach 44%)
  - Long-term disability (up 17 points to reach 34%)
- Leave options
  - Sick leave (up 17 points to reach 40%)
  - Leave of absence or sabbatical (up 17 points to reach 26%)
- Other offerings/policies
  - Harassment and discrimination policy (up 21 points to reach 50%)
  - Accommodation for special needs policy (up 21 points to reach 38%)

When these increases are contrasted with the group that has remained in paralegal practice within a paralegal or law firm, the differences are stark. There are only two benefits or policies on which there have been significant increases in availability after a change of status:

- Flexible full-time work hours (up 15 points to reach 48%)
- Continuing professional development (up 12 points to reach 55%)

These findings suggest that those who have moved from paralegal practice in a paralegal or law firm to another setting may be seeking a more comprehensive suite of benefits in their new position.

By contrast, those remaining in a paralegal or law setting appear to may be more focused on a transition that affords them greater professional development opportunities and more flexible full-time work hours.

## Incidence of Benefit or Policy Offered in Previous Versus Current Position Among Those Who Have Moved Out Of, or Moved Into a Paralegal Firm or Law Firm

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| ↓ Indicates a significant decline from previous to current position<br>↑ Indicates a significant increase from previous to current position | PREVIOUS POSITION | CURRENT POSITION | ORIGINATING (PREVIOUS) POSITION IN PARALEGAL FIRM OR LAW FIRM | Moved from a position in Paralegal or Law firm to ther position or status | Moved from a position in Paralegal or Law firm to Position in Paralegal or Law firm |
|---|---|---|---|---|---|
| n= | 521 | 516 | 384 | 159 | 186 |
| | % | % | % | % | % |
| **Financial and Health-Related Benefits/Plans** | | | | | |
| Medical Insurance | 31 | 31 | 27 | 45↑ | 30 |
| A dental plan | 31 | 31 | 27 | 44↑ | 29 |
| Long-term disability | 19 | 21 | 17 | 34↑ | 19 |
| A pension plan | 12 | 17↑ | 7 | 34↑ | 10 |
| **Flexible Work Options** | | | | | |
| Flexible full-time work hours | 29 | 45↑ | 33 | 41↑ | 48↑ |
| Part-time work | 16 | 23↑ | 15 | 28↑ | 16 |
| Job sharing | 10 | 13 | 9 | 14 | 16 |
| **Parental Benefits** | | | | | |
| Paid maternity leave | 9 | 12 | 8 | 20↑ | 12 |
| Paid parental leave | 8 | 10 | 6 | 20↑ | 8 |
| Unpaid maternity leave | 9 | 9 | 9 | 11 | 8 |
| Unpaid parental leave | 8 | 9 | 7 | 11 | 7 |
| Child care benefits | 5 | 6 | 3 | 10↑ | 5 |
| Day care facilities | 2 | 2 | 1 | 4↑ | 1 |
| **Leave Options** | | | | | |
| Sick leave | 26 | 29 | 23 | 40↑ | 27 |
| Leave of absence or sabbatical | 11 | 20↑ | 9 | 26↑ | 17 |
| **Other Offerings/Policies** | | | | | |
| Continuing professional development | 39 | 48↑ | 43 | 37 | 55↑ |
| Harassment and discrimination policy | 33 | 39↑ | 29 | 50↑ | 34 |
| Accommodation for special needs policy | 20 | 27↑ | 17 | 38↑ | 22 |
| Formal mentoring policy | 16 | 19 | 14 | 21 | 18 |

A direct comparison of women and men who have moved in or out of a paralegal or law firm setting does suggest some gender-based differences in what may be driving a change of status.

A number of benefits/policies may have more influence in a change of status among women because women are more likely than men to report increased availability of these benefits/policies from previous to current position:

- A pension plan (up 8 points to reach 20%)
- Part-time work (up 10 points to reach 27%)
- Leave of absence or sabbatical (up 13 points to reach 25%)
- Continuing professional development (up 11 points to reach 50%)
- Harassment and discrimination policy (up 10 points to reach 42%)
- Accommodation for special needs policy (up 11 points to reach 30%)
- Formal mentoring policy (up 6 points to reach 20%)

Among men, however, there is only a single benefit where the incidence of availability increases from previous to current position: flexible full-time work hours (up 15 points to reach 44% who have it in their current position). Women also report that this benefit is available through their current position (up 16 points to reach 46% who have it in their current position), moreso than in their previous position

For the remainder of benefits/policies, there are no significant differences in the proportions saying they are available at their current position compared with their previous position among either men or women.

## Incidence of Benefits/ Policies at Previous Versus Current Position Total sample

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

***(% who report that their previous/current position offers or offered the benefit/operating policy)***

| | TOTAL SAMPLE | | WOMEN | | MEN | |
|---|---|---|---|---|---|---|
| | PREVIOUS POSITION | CURRENT POSITION | PREVIOUS POSITION | CURRENT POSITION | PREVIOUS POSITION | CURRENT POSITION |
| n= | 521 | 516 | 321 | 315 | 200 | 201 |
| | % | % | % | % | % | % |
| **Financial and Health-Related Benefits/Plans** | | | | | | |
| Medical Insurance | 31 | 31 | 32 | 35 | 29 | 26 |
| A dental plan | 31 | 31 | 32 | 35 | 29 | 25 |
| Long-term disability | 19 | 21 | 20 | 24 | 18 | 18 |
| A pension plan | 12 | 17↑ | 12 | 20↑ | 12 | 12 |
| **Flexible Work Options** | | | | | | |
| Flexible full-time work hours | 29 | 45↑ | 30 | 46↑ | 29 | 44↑ |
| Part-time work | 16 | 23↑ | 17 | 27↑ | 15 | 17 |
| Job sharing | 10 | 13 | 12 | 17 | 7 | 9 |
| **Parental Benefits** | | | | | | |
| Paid maternity leave | 9 | 12 | 11 | 14 | 7 | 8 |
| Paid parental leave | 8 | 10 | 8 | 11 | 7 | 8 |
| Unpaid maternity leave | 9 | 9 | 12 | 11 | 5 | 4 |
| Unpaid parental leave | 8 | 9 | 10 | 11 | 7 | 7 |
| Child care benefits | 5 | 6 | 4 | 7 | 6 | 4 |
| Day care facilities | 2 | 2 | 1 | 3 | 2 | 2 |
| **Leave Options** | | | | | | |
| Sick leave | 26 | 29 | 27 | 33 | 24 | 22 |
| Leave of absence or sabbatical | 11 | 20↑ | 12 | 25↑ | 10 | 12 |
| **Other Offerings/Policies** | | | | | | |
| Continuing professional development | 39 | 48↑ | 39 | 50↑ | 39 | 44 |
| Harassment and discrimination policy | 33 | 39↑ | 32 | 42↑ | 35 | 35 |
| Accommodation for special needs policy | 20 | 27↑ | 19 | 30↑ | 21 | 23 |
| Formal mentoring policy | 16 | 19 | 14 | 20↑ | 19 | 18 |

Q.14: For both your previous position and your current position, please indicate whether each of the following was/is offered to you. If you don't know or if it was/is not applicable to your situation you may indicate that.

## Incidence of Benefits/ Policies at Previous Versus Current Position

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

***(% who report that their previous/current position offers or offered the benefit/operating policy)***

| | WOMEN | | WOMEN WHO HAVE MOVED FROM PRACTICE IN PARALEGAL OR LAW FIRM TO SOME OTHER SETTING/POSITION | | WOMEN WHO HAVE REMAINED IN PRACTICE IN PARALEGAL OR LAW FIRM | |
|---|---|---|---|---|---|---|
| | PREVIOUS POSITION | CURRENT POSITION | PREVIOUS POSITION | CURRENT POSITION | PREVIOUS POSITION | CURRENT POSITION |
| n= | 321 | 315 | 138 | 111 | 108 | 108 |
| | % | % | % | % | % | % |
| **Financial and Health-Related Benefits/Plans** | | | | | | |
| Medical Insurance | 32 | 35 | 27 | 44↑ | 32 | 36 |
| A dental plan | 32 | 35 | 28 | 43↑ | 32 | 36 |
| Long-term disability | 20 | 24 | 15 | 35↑ | 24 | 22 |
| A pension plan | 12 | 20↑ | 7 | 35↑ | 8 | 13 |
| **Flexible Work Options** | | | | | | |
| Flexible full-time work hours | 30 | 46↑ | 34 | 40 | 35 | 49↑ |
| Part-time work | 17 | 27↑ | 16 | 30↑ | 16 | 19 |
| Job sharing | 12 | 17 | 12 | 15 | 10 | 22↑ |
| **Parental Benefits** | | | | | | |
| Paid maternity leave | 11 | 14 | 10 | 22↑ | 9 | 15 |
| Paid parental leave | 8 | 11 | 9 | 20↑ | 5 | 9 |
| Unpaid maternity leave | 12 | 11 | 9 | 12 | 12 | 11 |
| Unpaid parental leave | 10 | 11 | 7 | 12 | 8 | 7 |
| Child care benefits | 4 | 7 | 4 | 12↑ | 2 | 7 |
| Day care facilities | 1 | 3 | - | 5 | 1 | - |
| **Leave Options** | | | | | | |
| Sick leave | 27 | 33 | 21 | 41↑ | 32 | 32 |
| Leave of absence or sabbatical | 12 | 25↑ | 10 | 32↑ | 8 | 21↑ |
| **Other Offerings/Policies** | | | | | | |
| Continuing professional development | 39 | 50↑ | 44 | 40 | 41 | 63↑ |
| Harassment and discrimination policy | 32 | 42↑ | 30 | 54↑ | 29 | 39 |
| Accommodation for special needs policy | 19 | 30↑ | 16 | 43↑ | 18 | 26 |
| Formal mentoring policy | 14 | 20↑ | 14 | 23↑ | 13 | 21 |

Q.14: For both your previous position and your current position, please indicate whether each of the following was/is offered to you. If you don't know or if it was/is not applicable to your situation you may indicate that.

# Attributes of Previous and Current Position

**(Excluding Those Whose Change is Due to Maternity/Parental Leave of Retirement)**

## A. Attributes of Previous and Current Position

One of the key objectives of the research is to better understand the factors that may be leading paralegals to make a change in status. One means of assessing this issue was through exploring some of the perceived benefits and values of their current versus their previous position among those who have changed status.

Respondents were asked a series of questions in order to assess this:

*Please indicate how strongly you agree or disagree with the following statements as they relate to your previous status or position and your current status or position. Please do this using a scale from 1 to 5, where "1" means that you agree strongly and "5" means that you disagree strongly. If you don't know or you do not feel the statement is applicable to you, you may indicate that.*

| **Previous Position** | **Strongly Agree** | | | | **Strongly Disagree** | **Don't know** | **Not Applicable** |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | | |
| The pay is good | | | | | | | |
| I have the freedom to decide what I do in my job | | | | | | | |
| I control the scheduling | | | | | | | |
| The benefits are good | | | | | | | |

An increase in the incidence of agreement or disagreement with one or more of these attributes when tracked from previous to current position may suggest that the attribute played some role in the decision to make a change in status. Again, while it cannot be determined whether these attributes "drive" the decision to change, the comparison provides some perspective as to the types of workplace benefits/conditions that are valued by paralegals.

There has been improvement across all the measures explored from previous to current position. However, the extent of improvement stands out on a number of attributes.

This factor that has increased to a greater extent than any measured here, thus positioning it alone in the top tier based on improvement, is opportunities for promotion. The proportions of respondents who agree with the statement "The opportunities for promotion are excellent" is up 34 points from 10% in their previous position to 44% in their current position.

The second tier of attributes that have improved following a change of status relate to measures across the following four categories:

- Practice opportunities
  - "I have the freedom to decide what I do in my job" (a 22-point increase from 37% in their previous position to 59% in their current position); and,
  - "The job allows me to use my talents and paralegal skills" (a 21-point increase from 52% in their previous position to 73% in their current position)
- Pay and Benefits
  - "Job security is good" (a 23-point increase from 21% in their previous position to 44% in their current position).
- Work-life balance and stress
  - "The job allows me to balance career and family" (a 24-point increase from 42% in their previous position to 66% in their current position).
- Job Satisfaction and fulfilment
  - "I feel real enjoyment in my work" (a 24-point increase from 53% in their previous position to 77% in their current position).

The remainder of the attributes tested have improved by 20 points or less from previous position to current position.

## Attributes of Previous and Current Position
## Among Those Who Have Moved Out Of, or Moved Into a Paralegal Firm or Law Firm
**(Excludes Those Whose Change in Status is Related to Maternity/Parental Leave or Retirement)**

| | TOTAL SAMPLE (Excludes "don't know responses") | | |
|---|---|---|---|
| | **Previous Status** | **Current Status** | **GAP** |
| | n=521 | n=516 | |
| ***% who agree with statement as it relates to status*** | % | % | (+/-) |
| **PRACTICE OPPORTUNITIES** | | | |
| The job allows me to use my talents and paralegal skills | 52 | 73↑ | +21 |
| I have the freedom to decide what I do in my job | 37 | 59↑ | +22 |
| The opportunities for promotion are excellent | 10 | 44↑ | +34 |
| **PAY AND BENEFITS** | | | |
| The pay is good | 24 | 40↑ | +16 |
| The benefits are good | 22 | 40↑ | +17 |
| Job security is good | 21 | 44↑ | +23 |
| **WORK-LIFE BALANCE AND STRESS** | | | |
| I control the scheduling | 37 | 57↑ | +20 |
| The job allows me to balance career and family | 42 | 66↑ | +24 |
| My workload is too heavy | 36 | 22↑ | -14 |
| My job is very stressful | 53 | 34↑ | -19 |
| **JOB SATISFACTION AND FULFILMENT** | | | |
| My work is important to society | 64 | 77↑ | +13 |
| I feel real enjoyment in my work | 53 | 77↑ | +24 |
| **WORKING RELATIONSHIPS** | | | |
| I have a good working relationship with female colleagues | 77 | 88↑ | +11 |
| I have a good working relationship with male colleagues | 78 | 86↑ | +8 |
| I have a good working relationship with support staff | 77 | 87↑ | +10 |

Q12: Please indicate how strongly you agree or disagree with the following statements as they relate to your previous status or position and your current status or position. Please do this using a scale from 1 to 5, where "1" means that you agree strongly and "5" means that you disagree strongly. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

A comparison of women and men shows for both groups, there are significant improvements on most attributes from previous position to their current position as a result of a change.

However, as the table on the following page illustrates, the improvement for women from previous to current status on a number of attributes is significantly greater than for men suggesting that these factors may play a greater role in the decision to make a change for women:

- “The opportunities for promotion are excellent” - up 41 points for women/up 25 points for men.
- “The benefits are good” - up 20 points for women/up 13 points for men.
- “The job security is good” - up 27 points for women/up 18 points for men.
- “I feel real enjoyment in my work” - up 27 points for women/up 19 for men.
- “I have a good working relationship with female colleagues” - up 15 points for women/up 5 points for men.

**Attributes of Previous and Current Position Among Women and Men**
**Among Those Who Have Moved Out Of, Or Moved Into A Paralegal Firm Or Law Firm**
**(Excludes Those Whose Change in Status is Related to Maternity/Parental Leave or Retirement)**

| *% who agree with statement as it relates to status* | WOMEN (Excludes "don't know responses") | | | MEN (Excludes "don't know responses") | | |
|---|---|---|---|---|---|---|
| | **Previous Status** | **Current Status** | **GAP** | **Previous Status** | **Current Status** | **GAP** |
| | n=321 | n=315 | | n=200 | n=201 | |
| | % | % | (+/-) | % | % | (+/-) |
| **PRACTICE OPPORTUNITIES** | | | | | | |
| The job allows me to use my talents and paralegal skills | 49 | 71↑ | 22 | 57 | 77↑ | 20 |
| I have the freedom to decide what I do in my job | 32 | 53↑ | 21 | 46 | 67↑ | 21 |
| The opportunities for promotion are excellent | 8 | 49↑ | 41 | 12 | 37↑ | 25 |
| **PAY AND BENEFITS** | | | | | | |
| The pay is good | 23 | 41↑ | 18 | 24 | 38↑ | 14 |
| The benefits are good | 23 | 43↑ | 20 | 22 | 35↑ | 13 |
| Job security is good | 20 | 47↑ | 27 | 23 | 41↑ | 18 |
| **WORK-LIFE BALANCE AND STRESS** | | | | | | |
| I control the scheduling | 34 | 53↑ | 19 | 43 | 64↑ | 21 |
| The job allows me to balance career and family | 44 | 68↑ | 24 | 38 | 62↑ | 24 |
| My workload is too heavy | 38 | 23 | -15 | 33 | 20 | -13 |
| My job is very stressful | 53 | 36 | -17 | 52 | 31 | -21 |
| **JOB SATISFACTION AND FULFILLMENT** | | | | | | |
| My work is important to society | 66 | 81↑ | 15 | 62 | 72↑ | 10 |
| I feel real enjoyment in my work | 52 | 79↑ | 27 | 55 | 74↑ | 19 |
| **WORKING RELATIONSHIPS** | | | | | | |
| I have a good working relationship with female colleagues | 73 | 88↑ | 15 | 84 | 89 | 5 |
| I have a good working relationship with male colleagues | 75 | 85↑ | 10 | 84 | 88 | 4 |
| I have a good working relationship with support staff | 74 | 89↑ | 15 | 83 | 84 | 1 |

# Importance of Specific Issues in Driving Change of Status

**(Excluding Those Whose Change is Due to Maternity/Parental Leave of Retirement)**

## A. Approach to Exploring Drivers of Change of Status

Another means of determining what drives a change of status is to ask respondents directly the extent to which a number of factors were important reasons for their recent change of status. Respondents were asked to rate the importance of 18 factors in their decision to move from their previous status to their current status on a scale from 1 to 5 where a “5” means the issue was “very important” factor and a “1” means the issue was “not at all important”.

*Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where “1” means that it was not important at all and a “5” means that it was very important. If you don’t know or you do not feel the statement is applicable to you, you may indicate that.*

| | Not at all important | | | | Very important | Don’t know | Not Applicable |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | | |
| The pay is better | | | | | | | |
| I have the freedom to decide what I do in my job | | | | | | | |
| I control the scheduling | | | | | | | |
| The benefits are better | | | | | | | |
| The job allows me to use my talents and paralegal skills | | | | | | | |

## B. Factors Identified Most Frequently as Driving a Change

The reason most often identified as driving a change of status is that a new position allows better use of talents and paralegal skills. A majority (57%) cite "The job allows me to use my talents and paralegal skills" as an important reason for their change of status, providing a rating of "4" or "5".

There are a number of factors that fall into second tier of reasons that relate to job freedom and flexibility:

- "The job allows me to balance career and family" (mentioned by 50% of respondents as important);
- "The pay is better" (49%);
- "I have the freedom to decide what I do in my job" (49%); and,
- "My current position offers flexible full-time work hours" (46%).

There is a third tier of reasons is made up of:

- "I control the scheduling" (44%); and,
- "The job is less stressful" (43%).

The remainder of the factors tested are mentioned by less than 40% of respondents.

The table on the following page illustrates that more than six-in-ten respondents indicate that a number of factors listed are not applicable in their current position (i.e., their current status does not provide these benefits). As such, they clearly did not play an important role in the decision to change status.

The table on the following page illustrates that more than six-in-ten respondents identify that a number of factors as not applicable in their transition from their previous to their current position. As such, they clearly did not play an important role in the decision to change status.

**Importance of Specific Issues in Driving a Change of Status**
**Among Those Who Have Moved Out Of, or Moved Into a Paralegal Firm or Law Firm**
**(Excluding Those Whose Change in Status is Not Related to Maternity/Parental Leave or Retirement)**

| | 2012-2014 RESULTS COMBINED | | | |
|---|---|---|---|---|
| | IMPORTANT (4 OR 5 ON SCALE) | NEUTRAL (3 ON SCALE) | NOT IMPORTANT (1 OR 2 ON SCALE) | NOT APPLICABLE OR DON'T KNOW |
| | % | % | % | % |
| The job allows me to use my talents and paralegal skills | 57 | 7 | 10 | 26 |
| The job allows me to balance career and family | 50 | 16 | 8 | 26 |
| The pay is better | 49 | 9 | 12 | 30 |
| I have the freedom to decide what I do in my job | 49 | 12 | 13 | 27 |
| My current position offers flexible full-time work hours | 46 | 9 | 10 | 36 |
| I control the scheduling | 44 | 13 | 15 | 28 |
| Job security is good | 43 | 12 | 10 | 35 |
| My job is less stressful | 35 | 18 | 17 | 29 |
| The opportunities for promotion are excellent | 34 | 1 | 10 | 44 |
| The benefits are better | 31 | 9 | 13 | 47 |
| My workload has decreased | 23 | 17 | 24 | 36 |
| My current position offers a leave of absence or sabbatical | 21 | 6 | 11 | 62 |
| There is a pension plan in my current position | 20 | 4 | 9 | 66 |
| There is a formal mentoring policy in my current position | 19 | 6 | 10 | 65 |
| My current position offers part-time work | 16 | 8 | 18 | 59 |
| There is paid maternity or parental leave | 15 | 3 | 14 | 68 |
| There is accommodation for special needs policy at my current position | 15 | 6 | 11 | 69 |
| There is job sharing in my current position | 9 | 6 | 16 | 69 |

Q.13aa Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement (n=705)

## C. Most Importance of Factors Driving a Change of Status Among Those Whose Originating Position Was in a Paralegal or Law Firm

We also examined the relative importance of these factors among those who have continued practising as a paralegal in a paralegal or law firm compared to those who have moved out of the paralegal or law firm setting.

Issues related to job freedom and flexibility appear to be particularly prominent drivers of a change of status within practice in a paralegal or law firm. Those who remained in paralegal or law firm are more likely than those who are no longer practising as a paralegal in a paralegal or law firm to cite the following as important issues driving their change of status:

- The job allows me to use my talents and legal skills (62% versus 29% of those who have moved to another status);
- The job allows me to balance career and family (54% and 40%, respectively);
- I have the freedom to decide what I do in my job (51% and 27%);
- My current position offers flexible full-time work hours (48% and 35%); and,
- I control the scheduling (46% and 22%).

The decision to leave the paralegal or law-firm setting, on the other hand, seems to be more driven by benefit-oriented factors. Those who are no longer practising in a paralegal or law firm are more likely to assign importance to two of the factors tested compared to those who remained in a paralegal or law firm:

- There is a pension plan in my current position (36% versus 12% of those who have stayed in a paralegal or law firm; and,
- There is paid maternity or parental leave (21% and 13%, respectively).

## Importance of Specific Issues in Driving a Change of Status
## Among Those Whose Originating Position (Previous) Was in a Paralegal or Law Firm
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

***(% who rate issue as a 4 or 5 on 5-point scale where 5 means "very important")***

| | | 2012-2014 RESULTS COMBINED | | | |
|---|---|---|---|---|---|
| | ORIGINATING POSITION (PREVIOUS) IN PARALEGAL OR LAW FIRM | Moved from paralegal or law firm to other position/ status | | Moved from paralegal or law firm to paralegal or law firm | |
| n= | 345 | 159 | | 186 | |
| ***% IMPORTANT - (4 OR 5 ON SCALE)*** | % | Rank | % | Rank | % |
| The job allows me to use my talents and paralegal skills | 47 | | 29 | 1 | 62↑ |
| The job allows me to balance career and family | 48 | 3 | 40 | 2 | 54↑ |
| The pay is better | 48 | 1 | 52 | | 44 |
| I have the freedom to decide what I do in my job | 40 | | 27 | | 51↑ |
| My current position offers flexible full-time work hours | 42 | | 35 | 3 | 48↑ |
| I control the scheduling | 35 | | 22 | 4 | 46↑ |
| Job security is good | 45 | 2 | 47 | | 43 |
| My job is less stressful | 36 | | 32 | | 39 |
| The opportunities for promotion are excellent | 35 | 3 | 40 | | 31 |
| The benefits are better | 33 | 4 | 39 | | 29 |
| My workload has decreased | 24 | | 25 | | 22 |
| My current position offers a leave of absence or sabbatical | 22 | | 24 | | 20 |
| There is a pension plan in my current position | 23 | | 36↑ | | 12 |
| There is a formal mentoring policy in my current position | 18 | | 18 | | 17 |
| My current position offers part-time work | 12 | | 15 | | 9 |
| There is paid maternity or parental leave | 17 | | 21↑ | | 13 |
| There is accommodation for special needs policy at my current position | 15 | | 16 | | 14 |
| There is job sharing in my current position | 9 | | 12 | | 7 |

Q.13aa Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement and have moved from an originating position in a paralegal or law firm (n=345)

## D. Ranking – Most Importance of Factors Driving a Change of Status

The key differences between remaining in, and leaving practice in a paralegal or law firm become even more clear when the ranking of top drivers of a change of status are directly compared.

As the table below illustrates, those who have moved out of a position within a paralegal or law firm to one outside of these two settings place the greatest emphasis on remuneration and benefits, job security and opportunities for promotion as the main factors contributing to their change of status. By contrast, those who have remained within a paralegal or law firm setting are more likely to identify the ability to use their paralegal skills as a key driver, along with factors that relate to control and flexibility over work hours and scheduling.

Both groups place an emphasis on a position that allows a balance of career and family.

**Ranking Based on Importance Among Those Whose Originating Position was Practising in a Paralegal or Law Firm**

| Moved from paralegal or law firm to other position/ status | | | Moved from paralegal or law firm to paralegal or law firm | | |
|---|---|---|---|---|---|
| RANKING BASED ON IMPORTANCE | | % IMPORTANT | RANKING BASED ON IMPORTANCE | | % IMPORTANT |
| 1 | The pay is better | 52 | 1 | The job allows me to use my talents and paralegal skills | 62 |
| 2 | Job security is good | 47 | 2 | The job allows me to balance career and family | 54 |
| 3 | The job allows me to balance career and family | 40 | 3 | My current position offers flexible full-time work hours | 48 |
| 3 | The opportunities for promotion are excellent | | | | |
| 4 | The benefits are better | 39 | 4 | I control the scheduling | 46 |

Q.13aa Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement and have moved from an originating position in a paralegal or law firm (n=345)

**Importance of Issues in Driving a Move from a Position/Status NOT in a Paralegal or Law Firm to a Paralegal or Law Firm**

We also compared those whose previous position was not in a paralegal or law firm but have moved into one of these two settings.

Those who have moved into a practising position in a paralegal or law firm from not working in this type of setting are much more likely than those who stayed within a paralegal/law firm setting to view the following as important issues driving their change of status:

- The job allows me to use my talents and legal skills (78% and 62%, respectively);
- I have the freedom to decide what I do in my job (67% and 51%);
- I control the scheduling (61% and 46%);
- My current position offers part-time work (25% and 9%).

Among those whose previous position was not in a paralegal or law firm, there are also differences in the importance of factors driving a transition to a paralegal firm versus a transition to a law firm.

- Those who have transitioned to paralegal firm differentiate themselves from those who have moved into law firms in the greater extent to which they view work schedule and control issues as important (i.e., “I have the freedom to decide what I do in my job”; “I control the scheduling”; “There is a formal mentoring policy in my current position”).
- While the sample size of those who have moved to a law firm is small, directional results suggest that this group appears to be driven to a greater extent by the prospect of better remuneration, opportunities for promotion, and access to benefits (including pensions, leave of absence/sabbatical and paid maternity or parental leave) than is the case for those who have moved into a paralegal firm.

## Importance of Specific Issues in Driving a Change of Status Among Those Whose Originating Position (Previous) Was NOT in a Paralegal or Law Firm

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

***(% who rate issue as a 4 or 5 on 5-point scale where 5 means "very important")***

| *% IMPORTANT - (4 OR 5 ON SCALE)* | 2012-2014 RESULTS COMBINED | | | |
|---|---|---|---|---|
| | Moved from position in PARALEGAL OR LAW FIRM to PARALEGAL OR LAW FIRM | Moved from position NOT IN A PARALEGAL OR LAW FIRM to PARALEGAL OR LAW FIRM | Moved from position NOT IN A PARALEGAL OR LAW FIRM to PARALEGAL firm | Moved from position NOT IN A PARALEGAL OR LAW FIRM to LAW firm |
| | n=186 | n=171 | n=140 | n=31* |
| | % | % | % | % |
| The job allows me to use my talents and paralegal skills | 62 | 78↑ | 78 | 77 |
| The job allows me to balance career and family | 54 | 55 | 57 | 45 |
| The pay is better | 44 | 52 | 48 | 71↑ |
| I have the freedom to decide what I do in my job | 51 | 67↑ | 71↑ | 45 |
| My current position offers flexible full-time work hours | 48 | 53 | 54 | 48 |
| I control the scheduling | 46 | 61↑ | 65↑ | 45 |
| Job security is good | 43 | 40 | 37 | 55 |
| My job is less stressful | 39 | 33 | 34 | 29 |
| The opportunities for promotion are excellent | 31 | 33 | 27 | 61↑ |
| The benefits are better | 29 | 26 | 21 | 52↑ |
| My workload has decreased | 22 | 22 | 19 | 32 |
| My current position offers a leave of absence or sabbatical | 20 | 18 | 15 | 32 |
| There is a pension plan in my current position | 12 | 15 | 12 | 26 |
| There is a formal mentoring policy in my current position | 17 | 20 | 21 | 16 |
| My current position offers part-time work | 9 | 25↑ | 28↑ | 10 |
| There is paid maternity or parental leave | 13 | 11 | 7 | 29↑ |
| There is accommodation for special needs policy at my current position | 14 | 15 | 14 | 19 |
| There is job sharing in my current position | 7 | 11 | 11 | 10 |

Q.13aa Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement (*__CAUTION: SMALL SAMPLE SIZE. RESULTS SHOULD BE CONSIDERED DIRECTIONAL)__

## E. A Comparison of Men and Women Who Have Moved Into, or Out of Practice in a Paralegal or Law Firm

Comparing reasons for a change of status between women and men reveals that the most frequently mentioned reason is shared by both women and men. The greatest proportion of both women and men identify "*The job allows me to use my talents and paralegal skills"* as an important reason driving their change of status (59% and 53%, respectively).

However, for the remaining reasons, women and men differ significantly based on the extent to which these reasons are considered the reason important. At least one-half of women also mention the following issues as main reasons for their change in status:

- The pay is better (55%);
- The job allows me to balance career and family (54%); and,
- Job security is good (50%).

Each of these reasons are significantly less likely to be considered important by men (40%, 44%, and 33% for the three issues, respectively).

The ranking of issues considered most important in driving a change of status is different across gender. Men place greater importance on controlling the nature and scheduling of work within their new setting.

One-half of men (50%) identify "I have the freedom to decide what I do in my job" as an important factor in their change. This places it closely behind the top reason for a change among men - allowing use of their paralegal skills. Further, the ability to "control the scheduling" is identified by 45% as important, positioning it as the third ranked issue among men base on importance.

Women are more likely than men to identify financial and other types of benefits (including pension and paid maternity/parental leave) as important in driving their change of status.

Comparing reasons for a change of status between women and men reveals that the most frequently mentioned reason is shared by both women and men. However, for the remaining reasons, women and men differ significantly based on the extent to which these reasons are considered the reason important.

The greatest proportion of both women and men identify "*The job allows me to use my talents and paralegal skills"* as an important reason driving their change of status (59% and 53%, respectively).

## Importance of Specific Issues in Driving a Change of Status Among Those Who Have Moved Out Of, or Moved Into a Paralegal Firm or Law Firm

**(Excluding Those Whose Change in Status is Not Related to Maternity/Parental Leave or Retirement)**

### WOMEN COMPARED WITH MEN

***(% who rate issue as a 4 or 5 on 5-point scale where 5 means "very important")***

| | 2012-2014 RESULTS COMBINED | | |
|---|---|---|---|
| | TOTAL RESPONDENTS | WOMEN | MEN |
| n= | 516 | 315 | 201 |
| ***% IMPORTANT - (4 OR 5 ON SCALE)*** | % | % | % |
| The job allows me to use my talents and paralegal skills | 57 | 59 | 53 |
| The job allows me to balance career and family | 50 | 54↑ | 44 |
| The pay is better | 49 | 55↑ | 40 |
| I have the freedom to decide what I do in my job | 49 | 47 | 51 |
| My current position offers flexible full-time work hours | 46 | 47 | 43 |
| I control the scheduling | 44 | 43 | 45 |
| Job security is good | 43 | 50↑ | 33 |
| My job is less stressful | 35 | 38 | 31 |
| The opportunities for promotion are excellent | 34 | 43↑ | 21 |
| The benefits are better | 31 | 36↑ | 23 |
| My workload has decreased | 23 | 25 | 19 |
| My current position offers a leave of absence or sabbatical | 21 | 25 | 13 |
| There is a pension plan in my current position | 20 | 25↑ | 13 |
| There is a formal mentoring policy in my current position | 19 | 22↑ | 13 |
| My current position offers part-time work | 16 | 18 | 12 |
| There is paid maternity or parental leave | 15 | 19↑ | 8 |
| There is accommodation for special needs policy at my current position | 15 | 15 | 14 |
| My current position offers paid parental leave | 13 | 16 | 9 |
| There is job sharing in my current position | 9 | 11 | 8 |

Q.13aa Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement and have moved into, or moved out of a practice in a paralegal or law firm due to a change of status (n=516)

## Importance of Specific Issues in Driving a Change of Status
## Among Those Whose Originating Position (Previous) Was in a Paralegal or Law Firm
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

***(% who rate issue as a 4 or 5 on 5-point scale where 5 means "very important")***

| | WOMEN WHO HAVE MOVED FROM A POSITION IN PARALEGAL OR LAW FIRM TO SOME OTHER SETTING/POSITION | WOMEN WHO HAVE MOVED FROM A POSITION IN PARALEGAL OR LAW FIRM TO PARALEGAL OR LAW FIRM |
|---|---|---|
| n= | 111 | 108 |
| ***% IMPORTANT - (4 OR 5 ON SCALE)*** | % | % |
| The job allows me to use my talents and paralegal skills | 35 | 69↑ |
| The pay is better | 56 | 54 |
| The job allows me to balance career and family | 41 | 62↑ |
| Job security is good | 52 | 58 |
| I have the freedom to decide what I do in my job | 31 | 52↑ |
| My current position offers flexible full-time work hours | 35 | 54↑ |
| The opportunities for promotion are excellent | 48 | 44 |
| I control the scheduling | 25 | 47↑ |
| My job is less stressful | 32 | 48↑ |
| The benefits are better | 42 | 38 |
| My workload has decreased | 27 | 27 |
| My current position offers a leave of absence or sabbatical | 27 | 27 |
| There is a pension plan in my current position | 41↑ | 18 |
| There is a formal mentoring policy in my current position | 22 | 22 |
| There is paid maternity or parental leave | 23 | 20 |
| My current position offers part-time work | 14 | 12 |
| There is accommodation for special needs policy at my current position | 17 | 15 |
| There is job sharing in my current position | 12 | 9 |

Q.13aa Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.

Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement and have moved into, or moved out of a practice in a paralegal or law firm due to a change of status (n=516)

# Likely Return to Working as a Licensed Paralegal

**(Excluding Those Whose Change is Due to Maternity/Parental Leave of Retirement)**

## A. Likelihood of Returning to Paralegal Practice

Over one-third (36%) of those who are not working as a paralegal or not working for pay in their current position indicate that they will be very likely to return to paralegal work. Another one-third report that they will be somewhat likely to return.

There are no significant differences between women and men in the likelihood of returning to working as a licensed paralegal.

**Likelihood of Returning to Work as a Licensed Paralegal Among Those who Have Moved to Other Practice Settings**

**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | TOTAL SAMPLE | WOMEN | MEN |
|---|---|---|---|
| | n=154 | n=107 | n=47 |
| | % | % | % |
| **NET Likely** | **71** | **70** | **75** |
| Very likely | 36 | 35 | 39 |
| Somewhat likely | 35 | 35 | 36 |
| Not very likely | 18 | 19 | 15 |
| Not at all likely | 11 | 11 | 10 |
| **NET Not Likely** | **19** | **30** | **25** |

Q.19 If your change of status or position involved a departure from working as a paralegal, how likely do you believe it is that you will return at some point to work as a licensed paralegal? Would you say that it is very likely, somewhat likely, not very likely or not at all likely that you will at some point return to work as a licensed paralegal?

## Timing of Likely Return to Working as a Licensed Paralegal

Among those reporting that they will likely return to private practice (over one-third (37%) believe they will return to working as a licensed paralegal within a year.

The proportion who anticipate a quick return (within a year) does not differ between women and men. However, the proportion who expect to return in 3 to 4 years is significantly higher among women than men (11% and 0%, respectively).

**Timing of Likely Return to Work as a Licensed Paralegal**
**Among those Reporting They Will Likely Return to Paralegal Practice**
**(Excluding Those Whose Change is Due to Maternity/Parental Leave or Retirement)**

| | TOTAL SAMPLE | WOMEN | MEN |
|---|---|---|---|
| | n=100 | n=175 | n=35* |
| | % | % | % |
| **Less than 1 year** | **37** | **35** | **43** |
| 1-2 years | 22 | 25 | 14 |
| 3-4 years | 7 | 11↑ | - |
| More than 4 years | 2 | 1 | 3 |
| Don't know | 32 | 28 | 40 |

***CAUTION: SMALL SAMPLE SIZE. RESULTS SHOULD BE CONSIDERED DIRECTIONAL**

June 17, 2015

# Paralegal Change of Status – Key Findings Overview

Law Society of Upper Canada

NAVIGATOR

# Background and Research Methodology

# Background

- In 2008, the Retention of Women in Private Practice Working Group of The Law Society of Upper Canada ("the Law Society") conducted a series of consultations to better understand movements within the legal profession in Ontario among women. The Final Consultation Report of the Working Group put forth a series of recommendations to promote the advancement of women in the private practice of law.
- In order to better understand and begin benchmarking movements and changes within the paralegal profession among women, The Law Society commissioned Navigator Ltd. to undertake an analysis of paralegals who have submitted a change of status.
- Three waves of research data (2012-2014) have been collected and combined in order to inform the Law Society about gender-related trends among paralegals in addition to informing the development of initiatives to support and retain women and men in the paralegal profession.

# Research Methodology

- This document presents key findings from a survey conducted online among a sample of paralegal members who changed status in 2012, 2013, and 2014.
- Paralegal members are required to inform the Law Society immediately when their work or practice status changes. At the end of each month, a file of those who provided The Law Society with a change of status notification was produced. The file was then “cleaned”, removing duplicate records and those records for which an email address was not supplied. Once the cleaning process was complete, the remaining paralegal members were sent email invitations requesting participation in the Paralegal Change of Status Survey.
- Among the paralegal members who filed a change of status in 2014 (minus duplicates), 1,410 provided the Law Society with an active email address. This represents an increase over 2012 (974) and 2013 (797).
- A total of 410 paralegals completed the online survey in 2014. In 2012 and 2013, the numbers were 252 and 274, respectively.
- The annual response rates for the three waves of this study have been strong – 32% in 2012, 28% in 2013, and 27% in 2014.

# Areas of Investigation

- The survey instrument was designed to obtain information from each change of status survey respondent. Specifically:
  - Their previous status (i.e., their status prior to filing a change of status); and
  - Their current status (i.e., their status after filing a change of status).
  - Main areas of practice in pervious and current status (if applicable);
  - Benefits and policies provided in the workplace (if applicable);
  - The importance of specific reasons in driving a change of status; and,
  - Attitudes concerning their workplace environment (if applicable).

# Demographic Characteristics of Those Who Are Changing Status

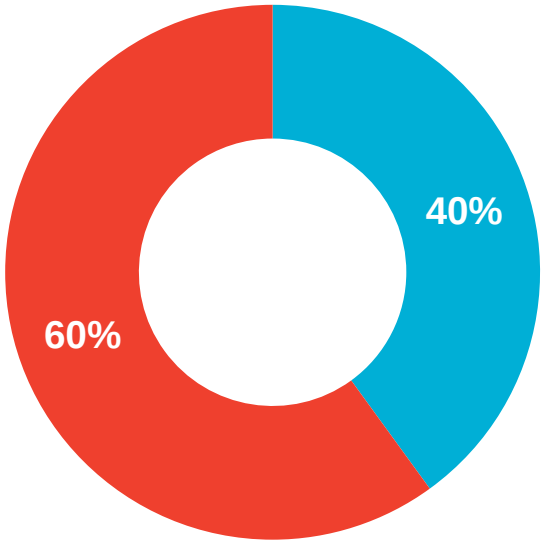
# Characteristics of Those Who are Changing Status

**The Change of Status Survey results suggest that women are changing status to a greater degree than men and that it is particularly younger women who are making a change.**

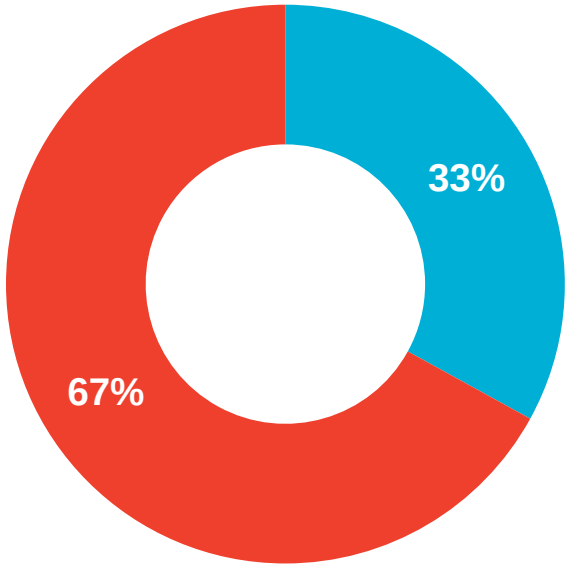
- In 2014, the Law Society's paralegal base of members comprised 60% women and 40% men. By contrast, fully two-thirds (67%) of paralegal members who completed a change of status survey are women. This suggests that members who are changing status are disproportionately women.
- About one-half (50%) of the Law Society's paralegal membership in 2014 were under 40 years of age. This is consistent with the age distribution among survey respondents (49% were under the age of 40). However, the age distribution of survey respondents varies strongly when women and men are compared.
    - Among women, 59% are under the age of 40.
    - Among men, 32% are under the age of 40.

# Gender Distribution of Law Society Paralegal Members Compared to Survey Respondents

## Total Paralegal Membership of The Law Society (2014)*



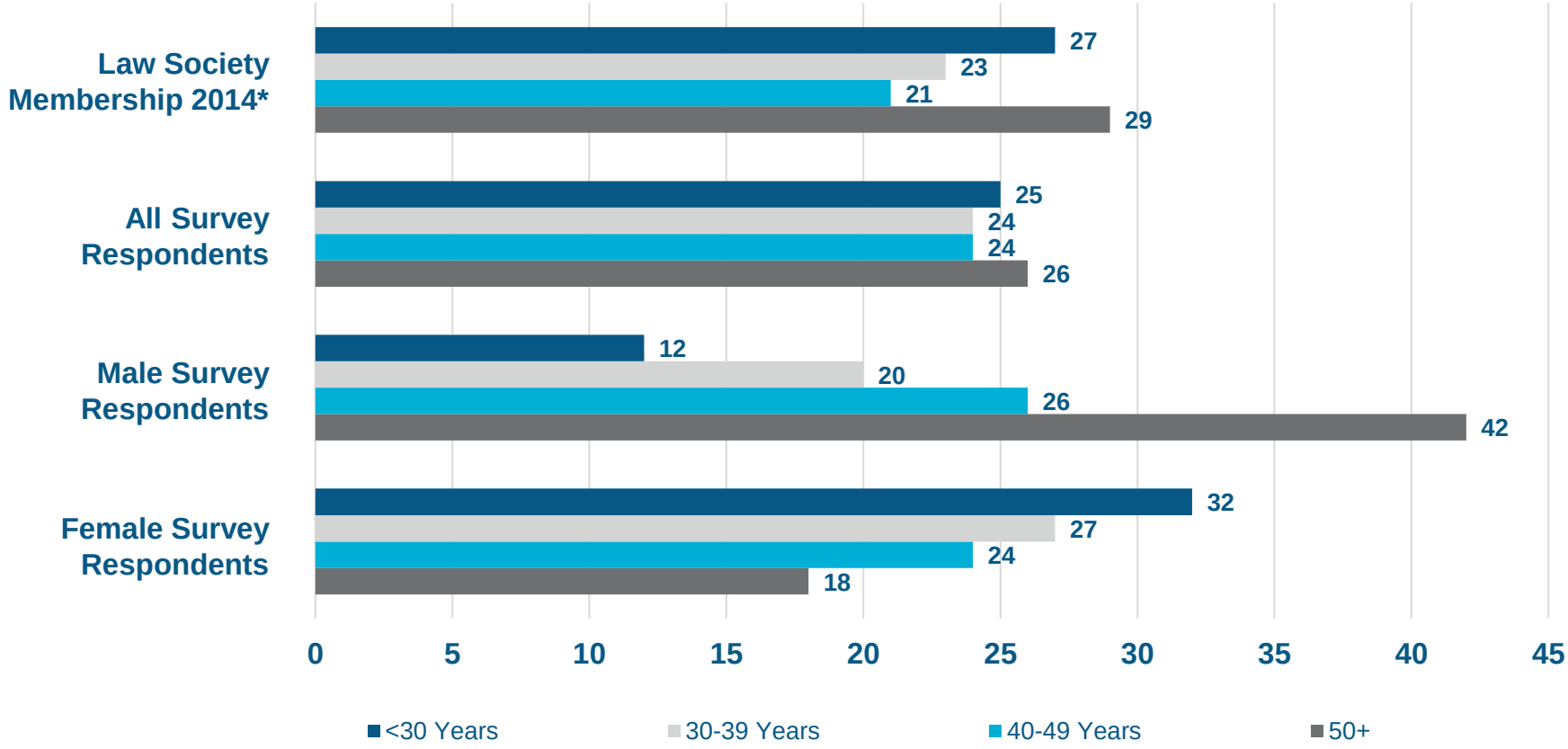

## Total Sample of Change of Status Respondents (2012–2014)




Men Women

*2014 Law Society of Upper Canada Annual Report: The Professions. http://www.annualreport.lsuc.on.ca/2014/en/annual-report-data.html#paralegals-age-gender
Population of paralegal members: n=6711

# Age of Law Society Paralegal Members Compared to Paralegal Change of Status Survey Respondents




*2014 Law Society of Upper Canada Annual Report: The Professions. http://www.annualreport.lsuc.on.ca/2014/en/annual-report-data.html#paralegals-age-gender
Population of paralegal members: n=6711

# Change of Status – Overall Trends

# Change of Status – Overall Trends

The following analysis provides an overview of the type of position held by respondents prior to their change of status and the type of position they currently hold.

Results are presented to illustrate the degree to which there has been movement to and from paralegal practice in a paralegal firm, paralegal practice in a law firm, or a setting or situation in which an individual is not currently practising as a paralegal (“other” type of setting). This latter category includes working in a corporate, government or educational position, other types of employment, retirement, maternity/parental leave, and unemployment.

# Previous and Current Status Among Total Sample

**The majority of paralegal licensees did not practice in a paralegal or law firm prior to their change of status, nor do they currently practice in one of these two settings. In fact, there has been a decline in those practicing in these settings after a change of status.**

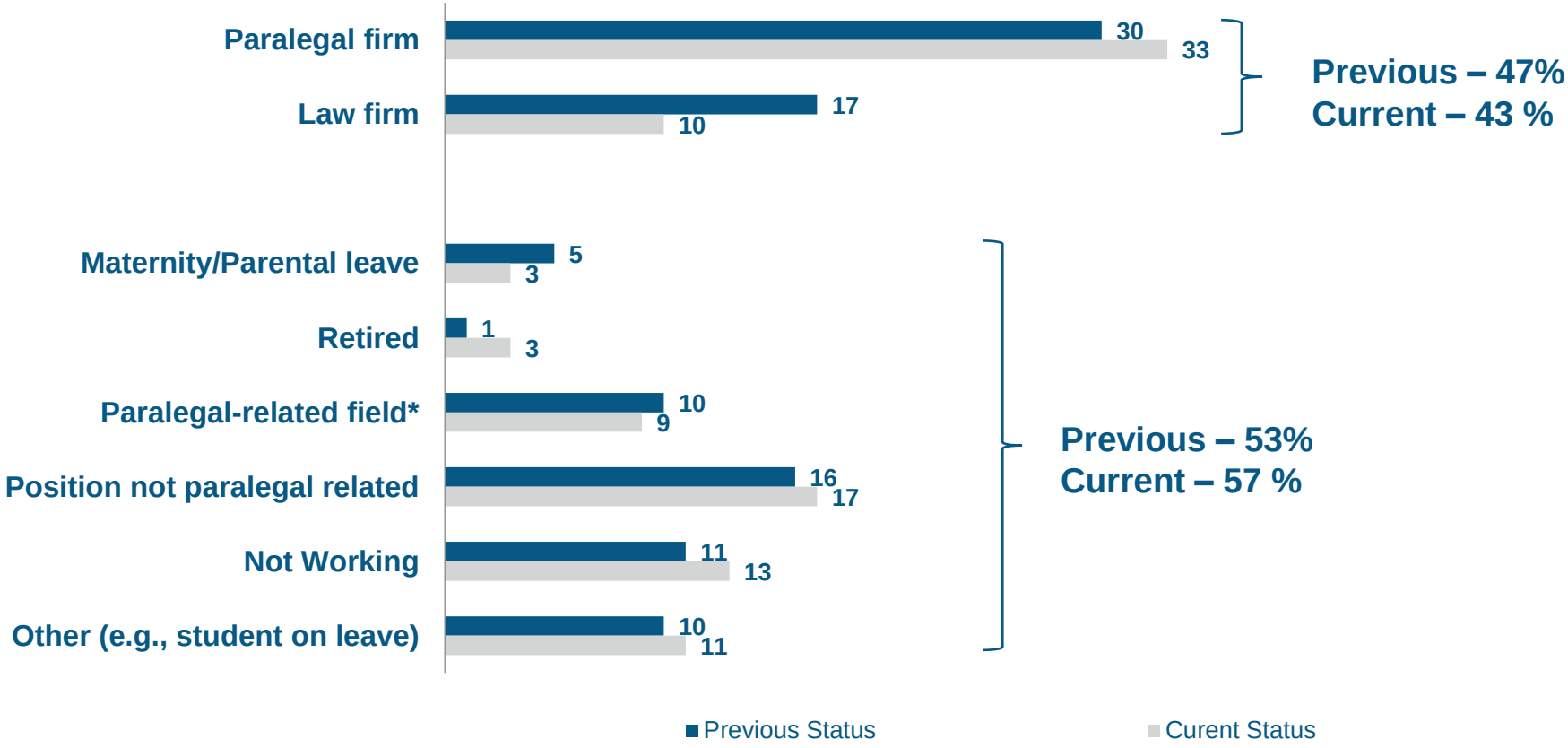
- Prior to a change of status, less than one-half (47%) of survey respondents reported that they were practising as paralegals in a paralegal or law firm. The proportion declines to 43% after a change.
- This decline appears to be driven mainly by representation in law firm settings. Prior to a change of status, 17% of respondents had a position in a law firm. After a change of status, only 10% of respondents report holding a position in a law firm.
- There has been no significant change in the representation of those working in a paralegal firm. About three-in-ten survey respondents (30%) report that they were practising in a paralegal firm in their previous position. The proportion in a paralegal firm setting after a change is 33%.

# Previous and Current Status Among Total Sample

**The majority of paralegal licensees (57%) are not currently practising in a paralegal or law firm.**

- The types of positions or settings among this group are quite varied.
- However, very few of these respondents consider themselves to be “practising” as a paralegal.
  - Over one-in-ten (13%) currently hold a position outside a paralegal or law firm setting (e.g., are working in a corporation, in government, or in an educational setting) and report that they are not practicing as a paralegal in that position. A small proportion (4%) reporting working in one of these settings as a paralegal.
  - Another 9% indicate that they are currently working in a field in which they are using their paralegal skills (e.g., with the prosecutor, as a legal assistant or law clerk).
  - Over one-in-ten (13%) are not currently working for pay.

# Previous and Current Status Among Total Sample




* (e.g. with prosecutor, legal assistant, law clerk)

# Incidence of Practising in a Paralegal or Law Firm

**A closer look at those paralegal licensees who are practising in a paralegal or law firm setting reveals that the representation of those in sole practice as a paralegal has increased while the proportion holding positions in paralegal firms with two or more paralegals has decreased.**

- Prior to a change of status, only 15% of respondents report that they were in sole practice. After a change of status, fully 24% are in sole practice (a 9-point increase).
- Prior to a change of status, 15% of respondents report that they were in a paralegal firm with two or more paralegals. After a change of status, only 9% are in this type of setting (a 6-point decrease).

**The proportions who are undertaking paralegal work in both sole practitioner law firms and multi-lawyer law practices is decreasing.**

**Thus, those who have submitted a change of status seem to be leaving paralegal firms with two or more paralegals or leaving from law firms and moving towards sole paralegal practice or positions in other types of settings.**

# Incidence of Practising in a Paralegal or Law Firm

| | All Survey Respondents (2012-2014) | |
|---|---|---|
| | PREVIOUS % | CURRENT % |
| **IN PARALEGAL FIRM** | **30** | **33** |
| In sole practice as paralegal | 15 | 24 |
| In a paralegal firm with 2 or more paralegals | 15 | 9 |
| **IN LAW FIRM** | **17** | **10** |
| With a lawyer in sole practice | 6 | 2 |
| In a law firm of 2 or more lawyers | 11 | 8 |

Significant increase from previous position

Significant decrease from previous position

# Movement Between Practice in Paralegal or Law Firm and Other Types of Settings

In addition to providing an overview of the representation of those in different settings prior to and after a change of status, the research also provides insight in the *movement* to and from these settings.

The results suggest that there is a significant flow into and out of practice in paralegal and law firms.

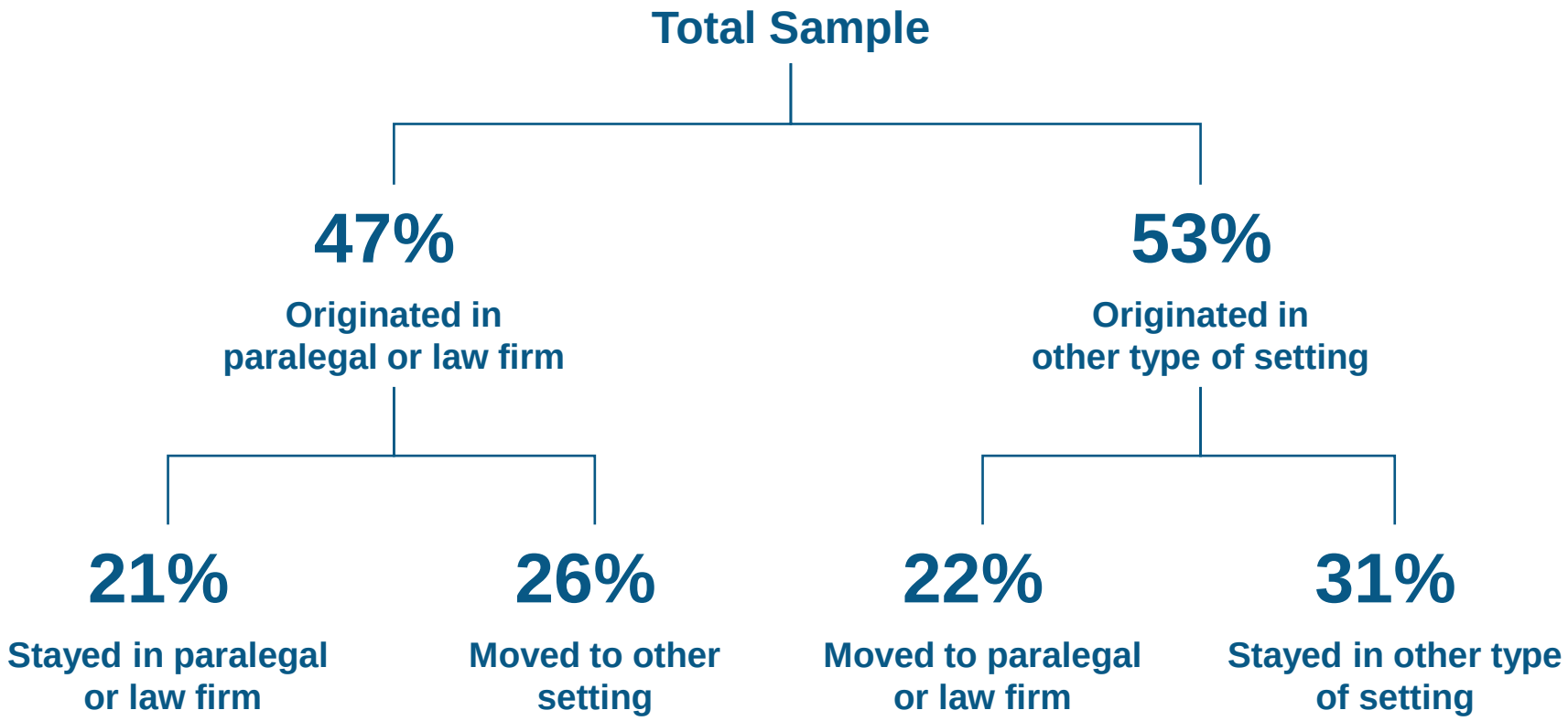
**Almost half of respondents (47%) held a position in a paralegal or law firm prior to their change. Most did not remain in one of these two settings.**

- 26% moved into another type of setting.
- 21% remained in one of these two settings after their change.

**Most of those whose change of status began in a setting/status outside of a paralegal or law firm (53%) did not move into one of these practice types:**

- 31% remained in a setting outside of a paralegal or law firm after their status change.
- 22% moved into a paralegal or law firm.

# Movement Between Practice in Paralegal or Law Firm and Other Types of Settings



# A Closer Look at Women Compared to Men

# Incidence of Practising in a Paralegal or Law Firm Based on Gender

One of the objectives of this research was to better understand movements and changes within the paralegal profession among women. Thus, comparisons between women and men were examined.

**Female paralegals are leaving practice in paralegal or law firm settings to a greater degree than are male paralegals.**

- A comparison of the previous and current practice settings of women and men shows that, prior to a change of status, similar proportions were practising in a paralegal or law firm (48% and 49%, respectively). After a change of status, however, women are less likely than men to be practising in one of these two settings (40% and 55%, respectively).
- Prior to a change of status, men had stronger representation in paralegal firms (36%) than women (28%), whereas women had stronger representation in law firms (20% compared to 13% of men).
- This pattern holds after a change of status. In fact, the gap between the genders is even more pronounced after the change:
    - 50% of men and 27% of women hold positions in paralegal firms.
    - 5% of men and 13% of women hold positions in law firms.

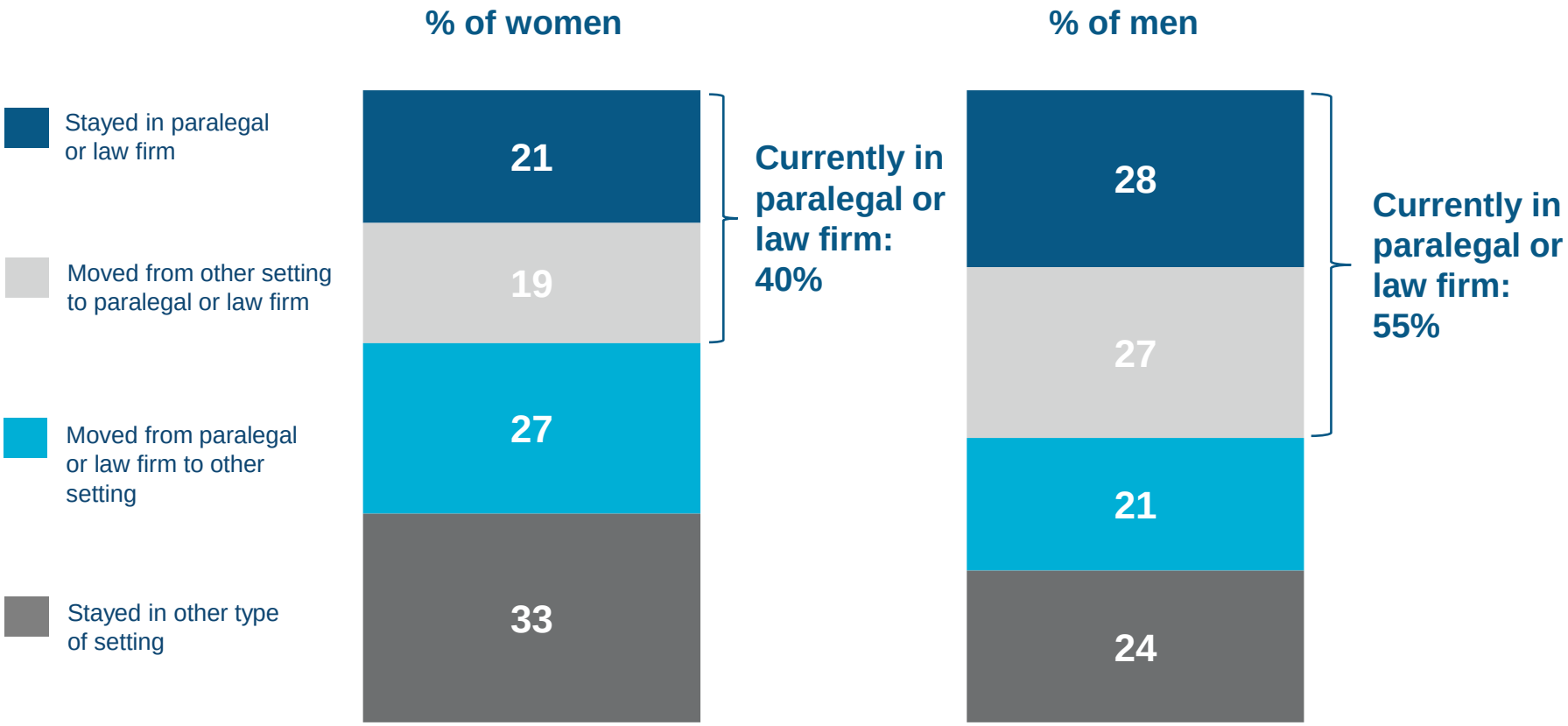
# Incidence of Practising in a Paralegal or Law Firm Based on Gender

| | Excluding Those Whose Change is Related to Maternity/Paternal Leave or Retirement (2012-2014) | | | |
|---|---|---|---|---|
| | Women (n=513) | | Men (n=280) | |
| | PREVIOUS % | CURRENT % | PREVIOUS % | CURRENT % |
| **NET: Position in paralegal or law firm** | **48** | **40** | **49** | **55** |
| Position in a paralegal firm | 28 | 27 | 36 | 50 |
| Position in a law firm | 20 | 13 | 13 | 5 |
| **NET: Not practising in a paralegal or law firm** | **52** | **60** | **51** | **45** |

Significant increase from previous position

Significant decrease from previous position

# Movement Between Practice in Paralegal or Law Firm and Other Types of Settings Among Women and Men



# Benefits/Policies Offered Based on Gender

Respondents who have been employed for pay in both their previous and current settings were asked to indicate whether a cross-section of benefits or employment policies were offered in each of those settings (previous and current).

An increase in the incidence of these benefits/policies from previous to current position may suggest that they, in some measure, play a role in the decision to change positions. While it cannot be determined if they "drive" the decision to change, these incidences do provide a perspective as to the types of workplace benefits/policies that are valued by paralegals.

**An array of benefits appears to play a greater role for women in their decision to change status. By contrast, it appears that among men, benefits play less of a role.**

- Among men, there is only a single benefit where the incidence of availability increases from previous to current position: flexible full-time work hours.
- By contrast, women report increased availability of a broad array of benefits and policies after a change of status (e.g., pension plan; part-time work; leave of absence; continuing professional development). Thus, a number of these benefits or policies may have played a role in prompting a change of status among women.

# Benefits/Policies Offered Based on Gender

| | Excluding Those Whose Change is Related to Maternity/ Paternal Leave or Retirement (2012-2014) | | | |
|---|---|---|---|---|
| | WOMEN | | MEN | |
| | PREVIOUS % n=321 | CURRENT % n=315 | PREVIOUS % n=200 | CURRENT % n=201 |
| **Financial and Health-Related Benefits/Plans** | | | | |
| Medical Insurance | 32 | 35 | 29 | 26 |
| A dental plan | 32 | 35 | 29 | 25 |
| Long-term disability | 20 | 24 | 18 | 18 |
| A pension plan | 12 | 20 | 12 | 12 |
| **Flexible Work Options** | | | | |
| Flexible full-time work hours | 30 | 46 | 29 | 44 |
| Part-time work | 17 | 27 | 15 | 17 |
| Job sharing | 12 | 17 | 7 | 9 |
| **Parental Benefits** | | | | |
| Paid maternity leave | 11 | 14 | 7 | 8 |
| Paid parental leave | 8 | 11 | 7 | 8 |
| Unpaid maternity leave | 12 | 11 | 5 | 4 |
| Unpaid parental leave | 10 | 11 | 7 | 7 |
| Child care benefits | 4 | 7 | 6 | 4 |
| Day care facilities | 1 | 3 | 2 | 2 |
| **Leave Options** | | | | |
| Sick leave | 27 | 33 | 24 | 22 |
| Leave of absence or sabbatical | 12 | 25 | 10 | 12 |
| **Other Offerings/Policies** | | | | |
| Continuing professional development | 39 | 50 | 39 | 44 |
| Harassment and discrimination policy | 32 | 42 | 35 | 35 |
| Accommodation for special needs policy | 19 | 30 | 21 | 23 |
| Formal mentoring policy | 14 | 20 | 19 | 18 |

Significant increase from previous position

# Important Issues or Factors Driving a Change of Status Based on Gender

Another means of determining what drives a change of status is to ask respondents directly the extent to which a number of factors were important considerations in their decision to make a change. Respondents were asked to rate the importance of 18 factors in their decision to move from their previous status to their current status. The top reasons for a change of status between women and men are shown on the following page.

**Both women and men report that use of their paralegal talents and skills and the ability to balance career and family were key factors in their change of status.**

- The greatest proportion of both women and men identify “The job allows me to use my talents and paralegal skills” as an important reason driving their change of status (59% and 53%, respectively, say this is an important reason).
- Having a position that allows them to “balance career and family” is also one of the most important factors identified by both women and men (55% and 44%, respectively).

**This is where the similarities end. The other most frequently cited reasons for a change differ between women and men:**

- For women, remuneration and job security play a greater role in a change than for men.
- For men, control over and scheduling of work are top factors.

# Important Issues or Factors Driving a Change of Status Based on Gender

**Among Those Who Have Moved Out of or Into a Paralegal or Law Firm**
**Excluding Those Whose Change is Related to Maternity/ Paternal Leave or Retirement (2012-2014)**

| Women | | | Men | | |
|---|---|---|---|---|---|
| n=315 | | | n=201 | | |
| | | % IMPORTANT (4 or 5 on 5-point scale) | | | % IMPORTANT (4 or 5 on 5-point scale) |
| 1 | The job allows me to use my talents and paralegal skills | 59 | 1 | The job allows me to use my talents and paralegal skills | 53 |
| 2 | The pay is better | 55 | 2 | I have the freedom to decide what I do in my job | 51 |
| 3 | The job allows me to balance career and family | 54 | 3 | I control the scheduling | 45 |
| 4 | Job security is good | 50 | 4 | The job allows me to balance career and family | 44 |

Q.13aa: Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means that it was not important at all and a "5" means that it was very important. If you don't know or you do not feel the statement is applicable to you, you may indicate that.
Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement and have moved from an originating position in a paralegal or law firm (n=345)

# A Closer Look at Those Whose Previous Position was Practising in a Paralegal or Law Firm

# Profiling Those Whose Originating Position was in Paralegal or Law Firm

In addition to gender, the research examines differences between those who stayed in practice within a paralegal or law firm setting, and those who moved out of practice within one of these two settings to another type of setting or status. These two groups differ significantly in their demographic profiles.

- Fully 70% of those who left practice in a paralegal or law firm were women. Just over one-half were under the age of 40. The vast majority of them (77%) had been practicing for less than five years when they made the change.
- Contrast this with those who have remained in practice within a paralegal or law firm setting. There is a smaller representation of women in this group (58%), only 38% of them are under the age of 40. A smaller proportion have been practicing for 5 years or less (64%).

# Profiles of Those Whose Originating Position was in a Paralegal or Law Firm

| | Excluding Those Whose Change is Related to Maternity/ Paternal Leave or Retirement (2012-2014) | |
|---|---|---|
| | Moved from a position in a paralegal or law firm to another type of setting/status | Stayed in practice within a paralegal or law firm setting |
| | n=197 | n=186 |
| **GENDER** | | |
| Men | 30 | 42 |
| Women | 70 | 58 |
| **AGE** | | |
| <30 years of age | 25 | 20 |
| 30-39 years | 26 (51) | 18 (38) |
| 40 to 49 years | 28 | 27 |
| 50 to 65 years | 18 (46) | 33 (60) |
| Over 65 years | 3 | 3 |
| **LENGTH OF TIME AS PARALEGAL** | | |
| Less than 5 years ago | 77 | 64 |
| 5 to 9 years ago | 12 | 13 |
| 10 to 19 years ago | 8 (24) | 12 (36) |
| 20 or more years ago | 4 | 11 |

Significantly greater proportion than other group

# Benefits/Policies Offered - Among Those Whose Originating Position was in a Paralegal or Law Firm

We also compared those who moved from a paralegal or law firm to another type of setting with those who remained in a paralegal or law firm setting in terms of the benefits and policies offered in their previous and current positions. Again, an increase in the incidence of these benefits/policies from previous to current position may suggest that they, in some measure, play a role in the decision to change positions.

**The enhanced suite of benefits and policies offered after a change of status may influence the decision to leave practice in a paralegal or law firm for a position in another type of setting.**

- Those who have moved out of a position in a paralegal or law firm report increased access to the majority of benefits and policies examined. These respondents were seeking a more comprehensive suite of benefits than were offered in their previous position.
- Those who stayed in a paralegal or law firm report increased access to only two benefits (access to enhanced professional development and more flexible full-time hours), suggesting that the other benefits and policies listed may not have been highly valued by this group.

# Benefits/Policies Offered - Among Those Whose Originating Position was in a Paralegal or Law Firm

| | Moved from a position in a Paralegal or Law firm to Other position or status | Moved from a position in a Paralegal or Law firm to Position in Paralegal or Law firm |
|---|---|---|
| | n=159 | n=186 |
| **Financial and Health-Related Benefits/Plans** | | |
| Medical Insurance | 45 | 30 |
| A dental plan | 44 | 29 |
| Long-term disability | 34 | 19 |
| A pension plan | 34 | 10 |
| **Flexible Work Options** | | |
| Flexible full-time work hours | 41 | 48 |
| Part-time work | 28 | 16 |
| Job sharing | 14 | 16 |
| **Parental Benefits** | | |
| Paid maternity leave | 20 | 12 |
| Paid parental leave | 20 | 8 |
| Unpaid maternity leave | 11 | 8 |
| Unpaid parental leave | 11 | 7 |
| Child care benefits | 10 | 5 |
| Day care facilities | 4 | 1 |
| **Leave Options** | | |
| Sick leave | 40 | 27 |
| Leave of absence or sabbatical | 26 | 17 |
| **Other Offerings/Policies** | | |
| Continuing professional development | 37 | 55 |
| Harassment and discrimination policy | 50 | 34 |
| Accommodation for special needs policy | 38 | 22 |
| Formal mentoring policy | 21 | 18 |

Significant increase from previous position

# Important Issues or Factors Driving a Change of Status Among Those Whose Originating Status was in a Paralegal or Law Firm

In addition to differences related to benefits and policies, those who moved from a paralegal or law firm to another type of setting and those who remained in a paralegal or law firm setting were compared on what they ranked as the most important reasons for their recent change of status.

**Both groups identify "The job allows me to balance career and family" as one of the top factors for their change of status.**

**However, the other top-ranked factors driving the decision to remain in paralegal or law firms versus transition into another type of setting are very different in nature.**

- The top drivers of a change of status out of a paralegal or law firm are remuneration and benefits, job security, and opportunities for promotion.
- The top drivers of a change of status within paralegal or law firm settings are related to the ability to use talents and paralegal skills and control or flexibility over work hours and scheduling.

# Important Issues or Factors Driving a Change of Status Among Those Whose Originating Status was in a Paralegal or Law Firm

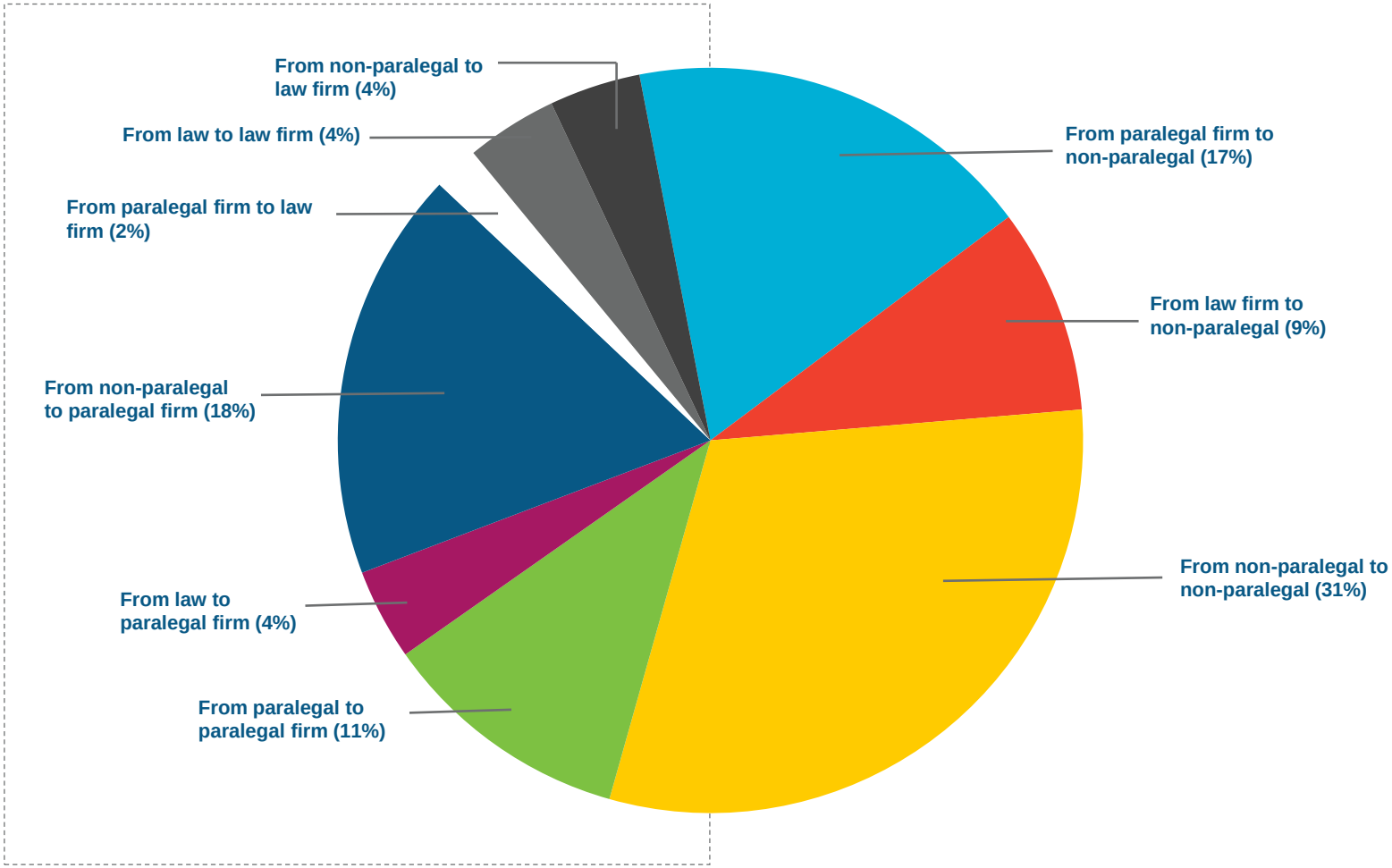
| Moved from paralegal or law firm to other position/ status | | | Moved from paralegal or law firm to paralegal or law firm | | |
|---|---|---|---|---|---|
| n=159 | | | n=186 | | |
| | | % IMPORTANT (4 or 5 on 5-point scale) | | | % IMPORTANT (4 or 5 on 5-point scale) |
| 1 | The pay is better | 52 | 1 | The job allows me to use my talents and paralegal skills | 62 |
| 2 | Job security is good | 47 | 2 | The job allows me to balance career and family | 54 |
| 3 | The job allows me to balance career and family | 40 | 3 | My current position offers flexible full-time work hours | 48 |
| | The opportunities for promotion are excellent | | | | |
| 4 | The benefits are better | 39 | 4 | I control the scheduling | 46 |

Q.13aa: Please indicate how important each of the following were in your decision to move from your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where “1” means that it was not important at all and a “5” means that it was very important. If you don’t know or you do not feel the statement is applicable to you, you may indicate that.
Base: Those who made a change of status excluding those whose change was due to maternity/ parental leave and retirement and have moved from an originating position in a paralegal or law firm (n=345)

# Appendix

Click to add research footnote

# Overview of Change of Status Activity



# Incidence of Those Practicing in a Paralegal Firm

Survey respondents are less likely to self-identify as belonging to a “racialized equity-seeking” group.

| | Law Society Paralegal Membership Statistics (2013) | All Survey Respondents (2012-2014) |
|---|---|---|
| n= | 4456 | 894 |
| | % | % |
| **RACIALIZED EQUITY-SEEKING*** | **33*** | **17*** |
| Arab | 1 | n/a |
| African Canadian/Black | 7 | 6 |
| Chinese | 5 | 3 |
| East Asian | 1 | 1 |
| Latin Hispanic | 4 | 1 |
| South Asian | 9 | 5 |
| South East Asian | 2 | 2 |
| Other | 4 | 4 |
| **NON-RACIALIZED EQUITY-SEEKING** | **n/a** | **14*** |
| Aboriginal communities | 2 | 2 |
| Francophone | n/a | 2 |
| Gay/Lesbian/Bisexual | 2 | 2 |
| Person with disabilities | 5 | 6 |
| Other* | n/a | 5 |
| **DO NOT IDENTIFY WITH AN EQUITY-SEEKING COMMUNITY** | **65**** | **69** |

* Note: Multiple mentions accepted.
** Note: In Law Society paralegal member statistics, this group is defined as “white”.
Change of Status Q.4: Please check any of the following characteristics with which you self-identify.
Change of Status Q.5: If you have self-identified as being Aboriginal or racialized/person of colour, please specify how you identify yourself.

**Tab 4.4.**

**FOR INFORMATION**

# CONSIDERATION OF FURTHER MODEL CODE RULE CHANGES

15. The Committee took note of the further amendments to the lawyers' *Rules of Professional Conduct* being considered by the Professional Regulation Committee.

16. If these changes are approved by Convocation, it will be appropriate to consider similar amendments to the Paralegal *Rules of Conduct*.

# MATERIALS TO FOLLOW
# WHEN AVAILABLE

LET RIGHT PREVAIL

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

**Tab 6**

# Secretary's Report to Convocation
# June 25, 2015

## Transparency and Accessibility of Convocation

**Purpose of Report:** **Decision**

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

**FOR DECISION**

# TRANSPARENCY AND ACCESSIBILITY OF CONVOCATION

## Motion

1. **That Convocation approve regular webcasting of Convocation to ensure the transparency and accessibility of Convocation.**

2. **That if Convocation does not approve regular webcasting of Convocation, that to ensure the transparency and accessibility of Convocation, Convocation approve one or both of the following:**
   a. **Creating an audio recording of each Convocation as described in this report, other than Convocations that may be webcast at the Treasurer's discretion, and making it available on the Law Society's website;**
   b. **Posting a transcript of the public session of each Convocation on the Law Society's website.**

## Background

3. As part of the Law Society's commitment to ensure effective communication and outreach[1], at the direction of the Treasurer, a series of webcasts of Convocation were scheduled.

4. The first five Convocations of 2015 were webcast on a trial basis to determine the level of the professions' interest in Convocation, and to assess the ongoing value of providing an up-close look at the way Convocation operates as it considers its policy agenda.

5. The four webcasts from January to May are archived on the Law Society's website. The webcast for June Convocation will be added following Convocation.

[1] Effective communication and outreach was articulated in the 2011-2015 strategic priorities as follows:

> Reaching and connecting with the public, other stakeholders and members has been and remains a priority for the Law Society. Print, electronic media via the internet, social media and video/multimedia meetings are all competing for the time of the intended audiences. The issue for the Law Society is how best to engage with its members, the public and other stakeholders through communications in this busy environment.

## Communications about the Webcasts and Convocation

6. The Law Society publicized the webcasts with notices on the website in advance of the Convocations, through an email to licensees in advance of the Convocations and through notices in the e-Bulletin. Notice of upcoming webcasts was also provided by the Treasurer beginning at January in her remarks at the start of each Convocation.

7. These communications supplemented regular information provided about Convocation. Prior to and after Convocation through the website and email distribution of the Convocation News, lawyers and paralegals are informed of the agenda of the meeting and decisions and discussions that took place. All public material for Convocation is available on the website, including the minutes of each Convocation once confirmed.

## Viewers for the Webcasts

8. The following shows the maximum number of people who accessed the online webcasts up to May:

| | |
|---|---|
| January | 27 |
| February | 17 |
| April | 27 |
| May | 52 |

9. Based on the numbers, while May Convocation showed an increase in viewers, the conclusion is that there is no significant interest in viewing a typical Convocation.

## Cost

10. The cost of each webcast is $1600.00 exclusive of tax. Staff time and resources are also expended to support and manage each webcast with the external provider. For Information Systems staff, two to four hours for each of two staff are devoted to a webcast to co-ordinate the webcast with the external provider including scheduling, setup and testing.

11. The cost of providing only an audio stream of Convocation was obtained and it is the same cost as both audio and video streaming ($1600). Another audio option is to use a telephone audio bridge at a cost of approximately $400.00 for the day plus $14.00 per participant. Participants would be required to call in to connect to the audio. Depending on the numbers, this may be a more expensive option given the charge per participant.

## Discussion

12. The Priority Planning Committee discussed the merits of continuing with Convocation webcasts at its meeting on June 10, 2015. The Treasurer then requested that this report

be provided to Convocation and a determination made about whether regular webcasts should continue and whether other options are available to continue the valid purpose of making Convocation's proceedings transparent and accessible.

**Information on the Options**

Scheduling Regular Webcasts

13. It is apparent that there is a very small uptake for the webcasts. The question is whether that uptake justifies the cost.

14. Arguably, the financial outlay is only one factor to be considered. The value of the regular webcast in part is the corporate message that Convocation is transparent and accessible. As such, there may be merit to regular webcasting, and accepting the associated cost, to be true to the commitment to these goals.

15. The archived webcasts would supplement information about a particular Convocation already available to those who wish to access it, as described earlier in this report.

16. Scheduling regular webcasting would automatically accommodate webcasts of those agenda items that would be expected to garner high interest among the professions. Two examples are the articling debate and the Trinity Western University accreditation deliberations, both of which saw much larger numbers access the webcasts.[2]

17. Ongoing webcasting of Convocation is thus an example of how the Law Society could be more purposeful with its communications and create an opportunity for engagement.

Maintaining the Status Quo

18. If a decision is made not to schedule regular webcasts, the Law Society would still continue to regularly provide information about a particular Convocation, as noted earlier in this report.

---

[2] Convocation Webcast User Statistics for October and November 2013 Convocations (Pathways Debate):

| | **October** | **November** |
|---|---|---|
| Peak Concurrent Watchers | 226 | 153 |
| Average Concurrent Watchers | 180–200 | 90–120 |

In April 2014, the Law Society webcast two Convocations (a special Convocation on April 10 and the regularly-scheduled Convocation on April 24) that dealt with the accreditation of Trinity Western University's Law School. The viewing audience hit a peak of 120 people for the first Convocation and close to 300 for the second.

19. Further, as was done prior to this year, at the Treasurer's direction, Convocation agenda items that would be expected to garner high interest among licensees would determine whether Convocations should be webcast. Two examples are noted above.

20. Arguably, the Law Society could be seen as being more targeted with its communications while being fiscally responsible following the above process.

Providing an Audio Recording and Transcript

21. If a decision was made to not schedule regular webcasts, with the continuation of the communications and process outlined in paragraph 6 and 7, and webcasting at the Treasurer's discretion, another option to provide more information about Convocation on an ongoing basis would be to make an audio recording of the meeting. The recording could be posted on the Law Society's website after the meeting together with the transcript of the meeting as the verbatim record.

22. To create the audio file, the Law Society would record the webcast that is provided every Convocation internally to Law Society staff, and once edited as a quality measure (e.g. to remove inactivity during breaks) convert it to an audio file. The cost to create each audio file is estimated at $100.00.

23. By-Law 3, s. 83(2) provides that "The transcript of Convocation open to the public shall be made available for public inspection." The benefit of the transcript is that it can be searched by key word and thus may be a useful resource for those who wish to pinpoint a particular item of interest. It also includes a table of contents of the matters on the agenda.

Providing a Transcript Only

24. Another option would be to forego an audio recording and post the transcript of the meeting. As indicated, the searchable transcript may be a sufficient resource for those wishing to access a particular discussion or decision.

**A Note on Technology**

25. Over the course of the webcasts, some concerns about the quality of the webcast were relayed to the Law Society by viewers, including some unsteadiness with the camera shots, problems with sound quality and in the early webcasts, temporary connectivity issues.

26. There are technological limitations to Convocation Room for webcasting. Apart from the quality of the picture and sound, only two camera angles are permitted. This requires most speakers to speak from the lectern to be adequately seen and heard on the webcast. This can present challenges for some benchers in manoeuvering through a typically crowded room to speak.

27. It is suggested that if regular webcasting is not approved and selected Convocations as directed by the Treasurer are webcast, consideration be given to convening Convocation in the Lamont Learning Centre to take advantage of a larger space and much better technology for webcasting.

**TAB 7**

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

# Report to Convocation
# June 25, 2015

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

**Committee Members**
**Julian Falconer, Chair**
**Janet Leiper, Chair**
**Avvy Go**
**Howard Goldblatt**
**Jeffrey Lem**
**Marian Lippa**
**Barbara Murchie**
**Judith Potter**
**Susan Richer**

**Purposes of Report: Decision and Information**

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

# TABLE OF CONTENTS

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on June 11, 2015. Committee members bencher Julian Falconer, Chair, bencher Janet Leiper, Chair, and benchers Avvy Go, Howard Goldblatt, Marian Lippa, Barbara Murchie, Judith Potter and Susan Richer participated. Benchers Fred Bickford, Suzanne Clément, Dianne Corbiere, Teresa Donnelly, Sandra Y. Nishikawa, Gina Papageorgiou and Raj Sharda along with Paul Saguil, Chair of the Equity Advisory Group, also participated. Staff members Josée Bouchard, Grant Wedge, Marisha Roman, Ekua Quansah and Susan Tonkin also attended.

*THIS SECTION CONTAINS*

*IN CAMERA MATERIAL*

**TAB 7.2**

## FOR DECISION

## HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS

22. **That Convocation approve the letters and public statements in the following cases:**
    a. **Lawyer Mahienour El-Massry - Egypt – letters of intervention presented at TAB 7.2.1.**
    b. **Lawyers Valerian Vakhitov and Khusanbay Saliev- Kyrgyzstan– letters of intervention and public statement presented at TAB 7.2.2.**

### Rationale

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

### Key Issues and Considerations

24. The Monitoring Group considered the following factors when making a decision about the sentencing of human rights lawyer Mahienour El-Massry:

    a. there are no concerns about the quality of sources used for this report;

    b. the Law Society of Upper Canada intervened in Mahienour El-Massry's case in June 2014.

    c. The sentencing and continued arbitrary detention of human rights lawyer Mahienour El-Massry by Egyptian authorities falls within the mandate of the Monitoring Group.

25. The Monitoring Group considered the following factors when making a decision about the ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev:

    a. there are no concerns about the quality of sources used for this report;

    b. the Law Society of Upper Canada has intervened in the case of Kyrgyzstani lawyer Tahir Asanov in November 2010,

    c. the harassment of human rights lawyers in Kyrgyzstan falls within the mandate of the Monitoring Group.

## KEY BACKGROUND

### EGYPT – THE DETENTION AND SENTENCING OF HUMAN RIGHTS LAWYER MAHIENOUR EL-MASSRY

#### Sources of Information

26. The background information for this report was taken from the following sources:

    a. The Observatory for the Protection of Human Rights Defenders;[1]
    b. The Daily News Egypt;[2]
    c. Cairo Institute for Human Rights Studies;[3] and,
    d. International Federation for Human Rights.[4]

#### Background

27. The following information served as the basis for the Law Society's intervention in Mahienour El-Massry's case in June 2014.

28. On May 20, 2014, the Sidi Gaber Misdemeanour Court in Alexandria, Egypt rejected the objection filed by Mahienour El-Massry, a human rights lawyer, regarding the sentence issued against her in absentia on January 2, 2014, convicting her to two years imprisonment and a fine of EGP 50,000 (approximately $7,609 CAD).[5] She was sentenced for "protest without a permit" and "assaulting security forces". Mahienour El-Massry was immediately detained after the hearing.[6]

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1 The Observatory for the Protection of Human Rights Defenders is a joint International Federation of Human Rights ("FIDH") and World Organization Against Torture ("OMCT") program created in 1997. This unique collaboration is based on the complementarily approach of each organization and is based on their respective non-governmental organization ("NGO") networks. One of the main objectives is to focus the international community's attention on cases of harassment and repression of human rights defenders.

2 The Daily News Egypt is an independent English language daily newspaper established in 2005. The former owner was Egyptian Media Services. It was distributed with the International Herald Tribune as a supplement. In June 2012, The Business News for Press, Publishing and Distribution Company announced it would begin publishing a newspaper under the name Daily Egypt news. The paper claims to be independent and free from government censorship. .

3 Cairo Institute for Human Rights Studies was founded in 1993 and is an independent regional non-governmental organization which aims to promote respect for the principles of human rights and democracy in the Arab region.

4 International Federation of Human Rights (FIDH) is an international non-governmental organization defending all civil, political, economic, social and cultural rights, set out in the Universal Declaration of Human Rights. Based in France, the FIDH is a non-partisan, non-religious, apolitical and non-profit organization.

5 FIDH, News Release, EGY 0001/0514/OBS 045, "Egypt: Arbitrary detention and confirmation of the sentencing of Ms. Mahienour El-Massry (22 May 2014) on-line: http://www.fidh.org/en/north-africa-middle-east/egypt/15366-egypt-arbitrary-detention-and-confirmation-of-the-sentencing-of-ms; The Observatory for the Protection of Human Rights Defenders, Urgent Appeal, EGY 0001/0514/OBS 045, " Arbitrary detention/sentencing/Judicial harassment/ repression of peaceful protest" (22 May 2014); Aya Nader, " AFTE condemns arrest of activist supporters". Daily Egypt News (26 May 2014) on-line: http://www.dailynewsegypt.com/2014/05/26/afte-condemns-arrest-activist-supporters/; Cairo Institute for Human Rights Studies, Public Statement, "Confirmation of the Verdict against Mahienour El-Massry: A New Episode in the Series of Incarcerating Women Human Rights Defenders (WHRDs)…The Verdict Must be Renunciated and the Law Needs to be Revised" (22 May 2014) on-line: http://www.cihrs.org/?p=8631&lang=en .

6 Aya Nader, " AFTE condemns arrest of activist supporters". Daily Egypt News (26 May 2014) on-line: http://www.dailynewsegypt.com/2014/05/26/afte-condemns-arrest-activist-supporters/

29. Manhienour El-Massry and seven other members of the political group "Revolutionary Socialists", including human rights lawyer Hassan Mustafa were charged after they organized a protest on December 2, 2013. The protest was related to Khaled Saeed murder's retrial. Khaled Saeed became a symbol of police repression during the 2011 Egyptian Revolution when he was killed by police forces on June 6, 2012. [7]

**Update**

30. On July 20, 2014, following a number of adjournments, the Sidi Gaber Appeal Misdemeanour Court sentenced Mahienour El-Massry to six months of prison and a fine of EGP 50,000 for "protesting without a permit" and "assaulting security forces".[8] Mahienour El-Massry's lawyers appealed the sentence.

31. On September 21, 2014, following a request filed by Mahienour El-Massry's lawyers, the Al Mansheya Misdemeanour Appeals court suspended the execution of Mahienour El-Massry's six-month prison sentence, pending the appeal.[9]

32. According to The Observatory for the Protection of Human Rights Defenders, on May 8, 2014, Mahienour El-Massry was referred to court on separate charges of "assaulting security forces", stemming from a March 2013 incident in which "she and other lawyers and human rights activists went to Raml police station to provide legal assistance to three lawyers who were arrested and sent to the police by supporters of the Muslim Brotherhood".[10] The lawyers allege that they were attacked by the police. Mahienour El-Massry was briefly detained following this incident, before the prosecution released her. The trial was postponed a number of times.

33. On February 9, 2015, El Raml Misdemeanour Court sentenced Mahienour El-Massry and other activists to two years in jail. Mahienour El-Massry was not detained as she paid bail pending appeal.[11]

34. On May 11, 2015, El Raml Misdemeanour Court of Appeal ordered that Mahienour El-Massry be remanded in custody.[12]

35. According to reports, on May 31, 2015, El Raml Misdemeanour Court of Appeal sentenced Mahienour El-Massry and other activists to one year and three months imprisonment.[13]

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7 FIDH, News Release, EGY 0001/0514/OBS 045, "Egypt: Arbitrary detention and confirmation of the sentencing of Ms. Mahienour El-Massry (22 May 2014) on-line: <http://www.fidh.org/en/north-africa-middle-east/egypt/15366-egypt-arbitrary-detention-and-confirmation-of-the-sentencing-of-ms >.
8 FIDH, News Release, EGY 001/0514/ OBS 045.7, "New Information" (1 June 2015) on-line: https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/egypt/egypt-sentencing-and-arbitrary-detention-of-ms-mahienour-el-massry-mr
9 *Ibid.*
10 *Ibid.*
11 *Ibid.*
12 *Ibid.*
13 *Ibid.*

36. Organizations such as Lawyers for Lawyers have noted that the situation of Egyptian lawyers is deteriorating and have called on the Egyptian authorities to "end all acts of harassment towards lawyers, and to guarantee lawyers can do their work without improper interference."[14]

## KYRGYZSTAN – THE ONGOING HARASSMENT OF HUMAN RIGHTS LAWYERS VALERIAN VAKHITOV AND KHUSANBAY SALIEV

### Sources of Information

37. The background information for this report was taken from the following sources:

a. Council of Bar and Law Societies of Europe;[15]
b. International Commission of Jurists;[16]
c. The Observatory for the Protection of Human Rights Defenders ("OPHRD").[17]

### Background

38. The following information has been reported about Valerian Vakhitov and Khusanbay Saliev, prominent human rights lawyers and members of the Osh branch of Bir Duino - Kyrgyzstan (One World), a human rights organization.[18]

14 Lawyers for Lawyers, "Egypt – Call to restore confidence in judiciary" (26 May 2015), on-line: http://www.advocatenvooradvocaten.nl/10592/egyptcall-to-restore-confidence-in-judiciary/

15 The CCBE, founded in 1960, represents the bars and law societies of 32 European member States and 13 additional associate and observer countries. It acts as the liaison between the European Union and Europe's national bars, and law societies, representing more than 1 million European lawyers. The CCBE has been at the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based.

16 Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

17 The Observatory for the Protection of Human Rights Defenders is a joint program of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT). The OMCT, which is based in Geneva, was created in 1985 and is the main coalition of international non-governmental organizations fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. OMCT has consultative status with ECOSOC (United Nations), the International Labour Organization, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe. OMCT's International Secretariat provides personalized medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent interventions across the world, in order to protect individuals and to fight against impunity. FIDH is an international NGO that defends the civil, political, economic, social and cultural rights, set out in the *Universal Declaration of Human Rights*. It acts in the legal and political field for the creation and reinforcement of international instruments for the protection of Human Rights and for their implementation. It is a non-partisan, non-religious, apolitical and non-profit organization and it has public interest status in France, where it is based. FIDH undertakes international fact-finding, trial observation and defence missions, and political dialogue, advocacy, litigation and public awareness campaigns.

18 "Concerns regarding acts of harassment against Mr. Khusanbay Saliev and Mr. Valerian Vakhitov, human rights lawyers." Letter to President of Kyrgyz Republic. 8 May 2015. *Council of Bars and Law Societies of Europe*.

39. According to reports, in March 2015, officers of the State Committee of National Security (SCNS) searched the homes of Valerian Vakhitov and Khusanbay Saliev and the Osh office of Bir Duino. The officers seized case materials, acting in violation of Article 29 of Kyrgyzstan's Law on Advokatura, which provides that "any interference with a lawyer's work is prohibited, unless a lawsuit is filed against him".[19] On April 30, 2015, the Osh Regional Court nullified the search warrants that had previously been issued by the Osh City Court to allow the SCNS to conduct the March 2015 searches.[20]

40. On the same date, the Osh City Court refused to consider a complaint against the SCNS filed by Valerian Vakhitov and Khusanbay Saliev, stating that the Osh Regional Court had already ruled against the search warrants and, consequently, the complaints were automatically dismissed.[21]

41. Reports indicate that Valerian Vakhitov, Khusanbay Saliev and their colleagues have been the subjects of ongoing acts of intimidation.[22]

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http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/HR_Letter_Kyrgyzstan1_1431329038.pdf [CBCE]

19 "Kyrgyzstan: Searches of lawyers' premises are contrary to international law and standards" *International Commission of Jurists* (31 March 2015), on-line: http://www.icj.org/kyrgyzstan-searches-of-lawyers-premises-are-contrary-to-international-law-and-standards/ and "Urgent Appeal – The Observatory", *The Observatory for the Protection of Human Rights Defenders* (7 May 2015), on-line: https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/kyrgyzstan/kyrgyzstan-judicial-harassment-of-lawyers

20 "Urgent Appeal – The Observatory", *The Observatory for the Protection of Human Rights Defenders* (7 May 2015), on-line: https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/kyrgyzstan/kyrgyzstan-judicial-harassment-of-lawyers

21 *Ibid.*

22 CBCE *supra* at note 18.

**TAB 7.2.1**

**PROPOSED LETTERS OF INTERVENTION**

**MAHIENOUR EL-MASSRY**

His Excellency Abdel Fattah el-Sisi
President of the Arab Republic of Egypt
Abedine Palace
Cairo, Egypt

Your Excellency:

**Re: The sentencing and detention of human rights lawyer Mahienour El-Massry**

I write on behalf of The Law Society of Upper Canada* further to our letter of 26 June 2014, to voice our continued concern over the sentencing and detention of human rights lawyer Mahienour El-Massry. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Mahienour El-Massry is a prominent human rights lawyer in Egypt. She was awarded the Ludovic-Trarieux International Human Rights Prize in 2014.

In our letter of 26 June 2014, the Law Society expressed concern about reports that Mahienour El-Massry had been detained and sentenced to two years' imprisonment and a fine of EGP 50,000.

The Law Society presently writes to voice its continued deep concern as a result of reports that on May 8, 2014, Mahienour El-Massry was referred to court on separate charges of "assaulting security forces", stemming from a March 2013 incident. On February 9, 2015, El-Raml Misdemeanour Court sentenced Mahienour El-Massry and other activists to two years in jail. Mahienour El-Massry appealed this decision and, according to reports, on May 31, 2015, El-Raml Misdemeanour Court of Appeal sentenced Mahienour El-Massry and other activists to one year and three months imprisonment.

In concern over these reports, The Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 states:

> Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients

> freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Article 23 states:

> Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the government of Egypt to:

a. release Mahienour El-Massry immediately, as she is a prisoner of conscience;
b. guarantee in all circumstances the physical and psychological integrity of Mahienour El-Massry;
c. provide Mahienour El-Massry with regular access to her lawyer, family, her physician and adequate medical care;
d. guarantee all the procedural rights that should be accorded to Mahienour El-Massry and other human rights lawyers and defenders in Egypt;
e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Mahienour El-Massry in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
f. guarantee that adequate reparation would be provided to Mahienour El-Massry if found to be a victim of abuses;
g. put an end to all acts of harassment against Mahienour El-Massry as well as other human rights lawyers and defenders in Egypt;
h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

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

cc:

Mr. Ibrahim Mehleb
Prime Minister of the Arab Republic of Egypt
Magles El Shaab Street, Kasr El Aini Street
Cairo, Egypt

Mr. Mahmoud Saber
Minister of Justice of the Arab Republic of Egypt
Ministry of Justice
Magles El Saeb Street, Wezaret Al Adl
Cairo, Egypt

Wael Aboul-Magd
Ambassador of the Arab Republic of Egypt
454 Laurier Avenue East
Ottawa, ON, K1N 6R3

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

## Proposed Letter to Lawyers' Associations

Dear [Name],

**Re: The sentencing and detention of human rights lawyer Mahienour El-Massry**

I write to inform you that on the advice of the Human Rights Monitoring Group*, The Law Society of Upper Canada sent the attached letter to His Excellency Abdel Fattah el-Sisi, President of Egypt, expressing our continued deep concerns over reports of the sentencing and detention of human rights lawyer Mahienour El-Massry

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

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

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch

- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

**TAB 7.2.2**

## PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

## VALERIAN VAKHITOV AND KHUSANBAY SALIEV

Mr. Almazbek Atambayev
President of Kyrgyz Republic
Administration of the President of Kyrgyz Republic
Prospekt Chuy 205
720003 Bishkek
Kyrgyzstan

Your Excellency:

**Re: The ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev**

I write on behalf of The Law Society of Upper Canada* to voice our grave concern over the ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Valerian Vakhitov and Khusanbay Saliev are prominent human rights lawyers and members of the Osh branch of Bir Duino - Kyrgyzstan (One World), a human rights organization.

According to reports, in March 2015, officers of the State Committee of National Security (SCNS) searched the homes of Valerian Vakhitov and Khusanbay Saliev and the Osh office of Bir Duino. The officers seized case materials, acting in violation of Article 29 of Kyrgyzstan's Law on Advokatura, which provides that "any interference with a lawyer's work is prohibited, unless a lawsuit is filed against him". On April 30, 2015, the Osh Regional Court nullified the search warrants that had previously been issued by the Osh City Court to allow the SCNS to conduct the March 2015 searches.

On the same date, the Osh City Court refused to consider a complaint against the SCNS filed by Valerian Vakhitov and Khusanbay Saliev, stating that the Osh Regional Court had already ruled against the search warrants and, consequently, the complaints were automatically dismissed.

Reports indicate that Valerian Vakhitov, Khusanbay Saliev and their colleagues have been the subjects of ongoing acts of intimidation.

In concern over these reports, the Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 states:

> Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Article 23 states:

> Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the government of Kyrgyzstan to:

a. guarantee in all circumstances the physical and psychological integrity of Valerian Vakhitov and Khusanbay Saliev;
b. guarantee all the procedural rights that should be accorded to Valerian Vakhitov, Khusanbay Saliev and other human rights lawyers and defenders in Kyrgyzstan;
c. put an end to all acts of harassment against Valerian Vakhitov and Khusanbay Saliev as well as other human rights lawyers and defenders in Kyrgyzstan;
d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

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

cc:

Ms. Jyldyz Mambetalieva Jeenbaevna
Minister of Justice
32 M. Gandi Str.
720010 Bishkek
Kyrgyzstan

Permanent Mission of Kyrgyzstan to the United Nations in Geneva
Rue Maunoir 26/ Rue du Lac 4-6
1207 Geneva
Switzerland

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

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Dear [Name],

**Re: The ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev**

I write to inform you that on the advice of the Human Rights Monitoring Group*, The Law Society of Upper Canada sent the attached letter to Mr. Almazbek Atambayev, President of the Kyrgyz Republic, expressing our deep concerns over reports of the ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

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I thank you for your time and consideration.

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Paul Schabas
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Letter to be sent to:

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- Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

## PROPOSED PUBLIC STATEMENT

### The Law Society of Upper Canada expresses grave concerns about the ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev

The Law Society of Upper Canada is gravely concerned about the ongoing harassment of human rights lawyers Valerian Vakhitov and Khusanbay Saliev.

Valerian Vakhitov and Khusanbay Saliev are prominent human rights lawyers and members of the Osh branch of Bir Duino - Kyrgyzstan (One World), a human rights organization.

According to reports, in March 2015, officers of the State Committee of National Security (SCNS) searched the homes of Valerian Vakhitov and Khusanbay Saliev and the Osh office of Bir Duino. The officers seized case materials, acting in violation of Article 29 of Kyrgyzstan's Law on Advokatura, which provides that "any interference with a lawyer's work is prohibited, unless a lawsuit is filed against him". On April 30, 2015, the Osh Regional Court nullified the search warrants that had previously been issued by the Osh City Court to allow the SCNS to conduct the March 2015 searches.

On the same date, the Osh City Court refused to consider a complaint against the SCNS filed by Valerian Vakhitov and Khusanbay Saliev, stating that the Osh Regional Court had already ruled against the search warrants and, consequently, the complaints were automatically dismissed.

Reports indicate that Valerian Vakhitov, Khusanbay Saliev and their colleagues have been the subjects of ongoing acts of intimidation.

In concern over these reports, The Law Society of Upper Canada urges the government of Kyrgyzstan to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 states:

> Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Article 23 states:

> Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take

> part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the government of Kyrgyzstan to:

a. guarantee in all circumstances the physical and psychological integrity of Valerian Vakhitov and Khusanbay Saliev;
b. guarantee all the procedural rights that should be accorded to Valerian Vakhitov, Khusanbay Saliev and other human rights lawyers and defenders in Kyrgyzstan;
c. put an end to all acts of harassment against Valerian Vakhitov and Khusanbay Saliev as well as other human rights lawyers and defenders in Kyrgyzstan;
d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

**TAB 7.3**

**FOR INFORMATION**

# CAREER CHOICES STUDY

## Background

42. In January 2008, the Law Society released the findings of a survey of Licensing candidates and recently-called lawyers conducted in late June and July of 2007. Invitations to participate in the survey were sent to 5,310 Licensing candidates and new calls to the bar (those who were called to the bar in the preceding two years, and those enrolled in the 2006 to 2008 Licensing Program). The 2008 Career Choices Report is available at http://www.lsuc.on.ca/with.aspx?id=2147487014

43. In May 2013, the second Career Choices Study was released. The survey was conducted with new licensees (after one year of call) called in 2010 (1189 licensees), 2011 (1459 licensees) and 2012 (1676 licensees). The 2013 Career Choices Study is also available at http://www.lsuc.on.ca/with.aspx?id=2147487014

44. The third Career Choices Study is presented at **TAB 7.3.1.** The survey was conducted with new licensees (after one year of call) called in 2013 (1532 licensees) and 2014 (1626 licensees).

June 2015

# Career Choices Study

The Law Society of Upper Canada

NAVIGATOR

# Table of Contents

# Methodology and Objectives

# Objectives

Broadly, the objective of the research is to investigate among new licensees' experiences from their entry into law school to their entry into practice. The research objectives are outlined in more detail below.

**Law School:**

- Pre-law school educational background;
- Law school preferences and the reasons underlying those preferences.

**Articling:**

- Key factors that influenced the choice of an articling position;
- Preferences for and actual setting of articles;
- Challenges faced in securing an articling position;
- Preferences for and actual experience of articling with respect to the areas of law in which experience was gained.

**Practice:**

- Key factors that influenced the choice of post-call practice/workplace setting;
- Preferences for and actual practice/workplace setting;
- Key factors influencing choice of practice areas;
- Preferred and actual practice areas.

**Financial Considerations:**

- Sources used to pay for law school education;
- Level of personal indebtedness and the impact of that debt;
- Awareness and use of programs to address student debt.

# Methodology

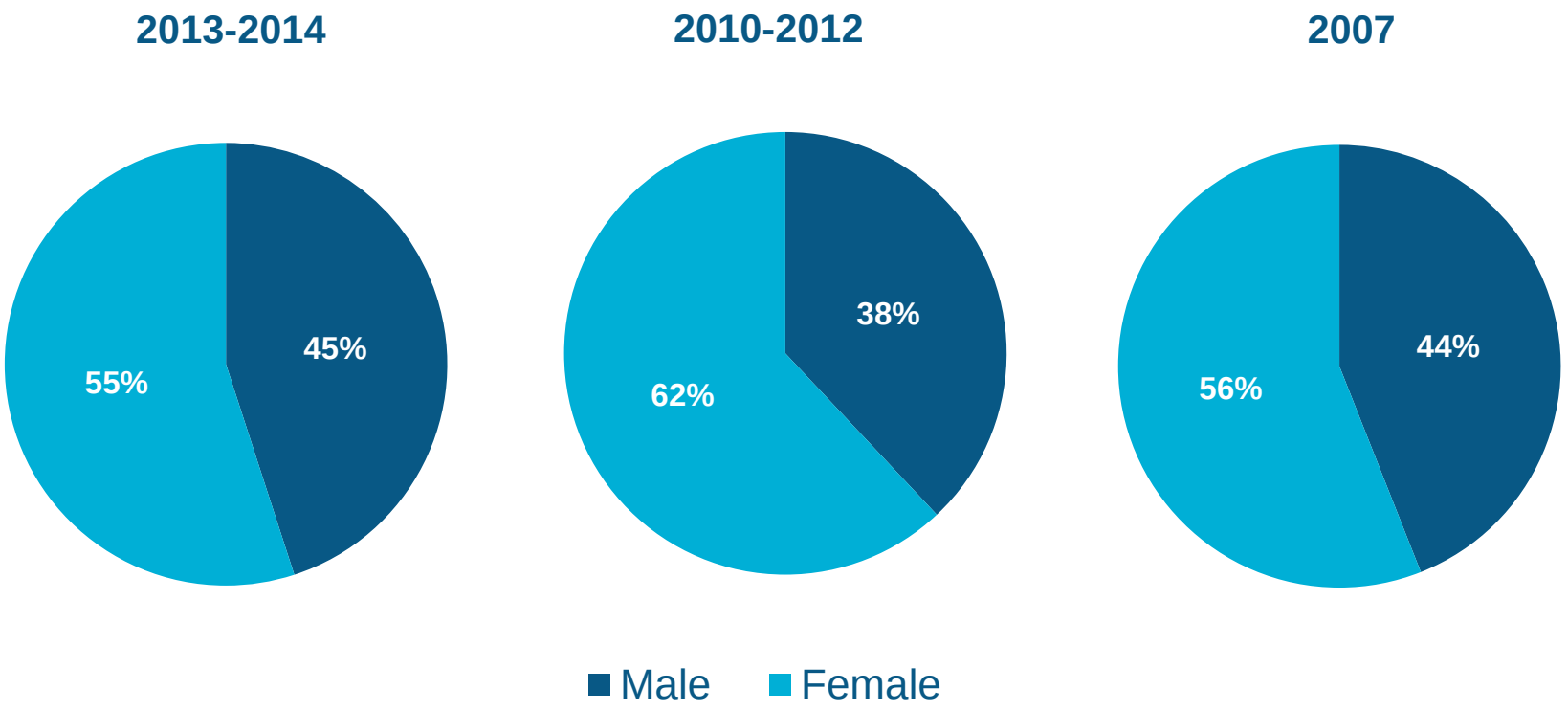
- Navigator is pleased to present to the Law Society of Upper Canada ("the Law Society") this report of findings from a survey of recently-called lawyers. This is the third report of findings from this study. A benchmark wave was undertaken in 2007. Findings from the third wave (2010-2012) were reported in May, 2013.
- The survey was administered online and was available in both English and French. The sample was provided by the Law Society.
- In each of 2013 and 2014, invitations to participate in the survey were sent to new licensees for whom the Law Society had an email address. The number of invitations sent by year is as follows:
  - 2013 - 1532
  - 2014 – 1626
- Surveys were completed by 585 of those who were invited to participate in the research. This represents a response rate of 19%.
- The margin of error for the total sample of 585 is +/- 3.66 percentage points, nineteen times out of twenty. Smaller sub-samples of the total sample (e.g., gender) will have a higher margin of error.

# Sample Demographics

# Sample Demographics – Gender, Age, Current Professional Status

- More women (55%) than men (45%) responded to the survey.
- As would be expected given the sample of members who were invited to participate in this research, and consistent with the age profile of members responding to previous waves of the survey, the largest proportion of respondents (80%) fall in the 25-34 age range.
  - About two-thirds of respondents (64%) are between 25 and 29 years of age, with 16% between 30 and 34 years of age.
  - Of the remainder, 12% are younger (18-24 years of age) and 8% are older (4% 35-39, 3% 40-49 and 1% 50 years of age or older).
- The mean age of respondents has dropped to 28.35 years from 31.24 years in the previous wave.
- NCA respondents are on average older than non-NCA respondents.
  - One fifth of NCA respondents (20%) are 35 years or older, compared to 7% of non-NCA respondents.
  - The mean age of NCA respondents is 30.92, compared to a mean age of 28.05 among non-NCA respondents.
- As would be expected, those who were mature students when they attended law school are also on average older (mean age of 32.60 years as compared to a mean of 27.23 years among those who were not mature students).
- The vast majority of respondents articled in Ontario (92%) and all but 3% of them are currently practicing or working in law.

# Gender




Q.35 Please indicate your gender.
Base:All respondents: 2014 (n=585) 2013 (n=972) 2007 (n=1303)

# Age

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **18-24** | 2 | <1 | 12 | 5 |
| **25-29** | 52 | 51 | 64 | 56 |
| **30-34** | 30 | 33 | 16 | 26 |
| **35-39** | 8 | 8 | 4 | 6 |
| **40-49** | 6 | 7 | 3 | 5 |
| **50+** | 2 | 1 | 1 | 2 |

Q.36 In what year were you born?
Base: All respondents
Note: The mean age of respondents is 30.15 years

# Current Status

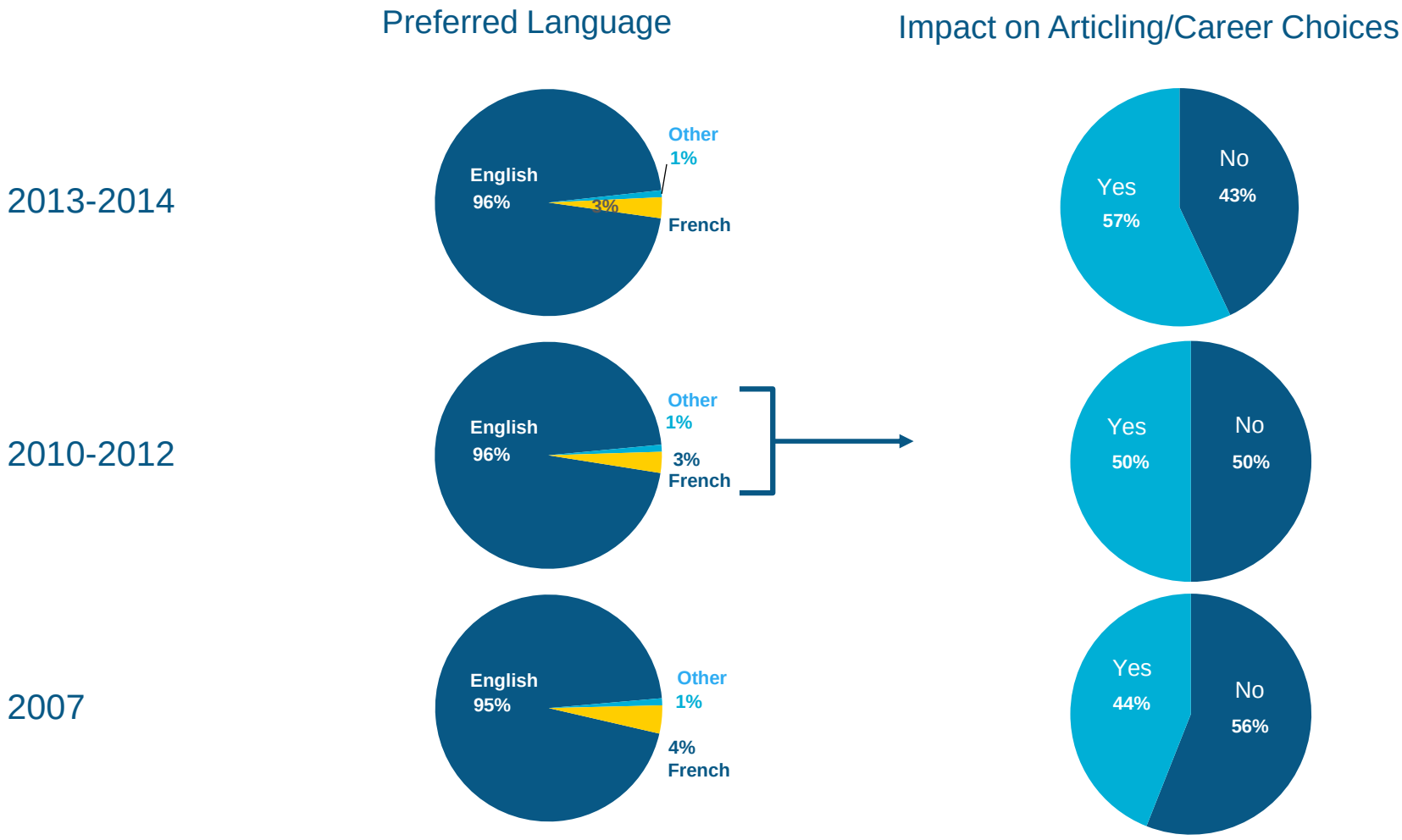
| | % Among Total Sample | | |
|---|---|---|---|
| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 972 | 585 | 1557 |
| **I articled in Ontario but have not yet begun practising/working** | 4 | 3 | 3 |
| **I articled in Ontario and am currently practising/working** | 89 | 89 | 89 |
| **I did not article in Ontario and have not begun practising/working** | 1 | <1 | <1 |
| **I am currently practising/working but did not article in Ontario** | 7 | 8 | 7 |
| **No answer** | <1 | - | - |

Q.10 Which one of the following best describes your current status?
Base: All respondents

# Sample Demographics – Language

- Overwhelmingly, the language in which respondents feel most comfortable delivering legal services is English (96%).
  - Among those who are more comfortable in a language other than English, two-thirds are most comfortable delivering legal services in French. This represents 3% of the total sample.
  - A language other than English or French is the preference of the remaining 1% of respondents.
- Among respondents who feel most comfortable delivering legal services in a language other than English, 57% indicated that the language in which they are most comfortable had an impact on their articling or career choices, whereas 43% said it did not.
- In order to investigate challenges faced by those who are more comfortable in a language other than English, those respondents were asked to explain the nature of the impact on their articling or career choices.
- Among the 12 of these respondents who offered a comment, 42% mention wanting to work in a bilingual environment and 42% say that they wanted to work in a French-speaking environment. Given the extremely small sample of respondents who provided an explanation, these findings should be regarded as directional.

# Language and Impact on Articling/Career Choices




Q.37 In what language do you feel most comfortable delivering legal services?
Base: All respondents 2014 (n=585) 2013 (n=972) 2007 (n= 1303)
Q.38 Did the language in which you are most comfortable have any impact on your articling or career choices?
Base: Those who feel most comfortable in a language other than English 2014 (n=21) 2013 (n=40) 2007 (n=59)

# Sample Demographics – Equality-Seeking Communities

- Findings from this research include the views of a number of equality-seeking communities.
  - Membership in an equality-seeking community was determined by respondents themselves through a question that invited them to indicate whether they self-identify with one or more of a number of characteristics.
- While the majority of those responding to the survey (56%) do not self-identify with any of the characteristics tested, a significant minority of respondents do so self-identify (44%).
- "Racialized" or "person of colour" comprise the largest proportion of these respondents (20% of respondents overall), followed by adherents of a religion or creed that is a minority in Canada (10%). Also represented in the sample are those who self-identify as:
  - Gay, lesbian or bisexual (6%);
  - Francophone (5%);
  - Person with disabilities (3%);
  - Aboriginal (e.g., First Nations, Métis, Inuit) (2%).
- NCA respondents are more than twice as likely as non-NCA respondents to self-identify as racialized/person of colour (41% and 18%, respectively).
  - No NCA respondents self-identify as either Aboriginal or Francophone.

# Membership in an Equality-Seeking Community

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **Racialized/Person of colour (visible minority)** | 16 | 19 | 20 | 19 |
| **Religion or creed that is minority in Canada** | 10 | 8 | 10 | 9 |
| **Francophone** | 7 | 7 | 5 | 6 |
| **Gay/Lesbian/Bisexual** | 4 | 4 | 6 | 5 |
| **Aboriginal (e.g., First Nations, Métis, Inuit)** | 2 | 2 | 2 | 2 |
| **Person with disabilities** | 2 | 3 | 3 | 3 |
| **Transgender/Transsexual** | <1 | - | - | - |
| **Other** | 5 | 4 | 5 | 4 |
| **I do not identify with any of these personal characteristics** | 61 | 60 | 56 | 59 |

Q.39 Please check any of the following characteristics with which you self-identify.
Base: All respondents
Note: Multiple mentions accepted

# Sample Demographics – Race

- Those who self-identified as either Aboriginal or as racialized/person of colour were invited to further self-identify their race.
- Findings from this question disclose diversity among those who responded to the survey:
  - South Asian (e.g., Indo-Canadian, Indian Subcontinent Canadian) (32%);
  - Chinese Canadian (20%);
  - African Canadian, Black Canadian (16%);
  - Latin American, Hispanic or Latino Canadian (5%);
  - First Nations (4%);
  - East Asian Canadian (e.g., Japanese, Korean) (4%);
  - Southeast Asian Canadian (e.g., Vietnamese, Cambodian, Thailand, Philippines) (4%);
  - Métis (3%);
  - Arab Canadian (2%).
- Among NCA respondents who self-identify as racialized/person of colour, the largest proportion self-identify as South Asian (40%).
- Next most highly represented, comprising one-fifth of these NCA respondents (20%), is African Canadian or Black Canadian.
- Chinese Canadian represent 12%, Latin American/Hispanic/Latino Canadian 8%, and Southeast Asian Canadian 4% of NCA respondents.

# Sample Demographics – Race

| | % Among Total Sample | | | |
|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 234 | 201 | 128 | 329 |
| **South Asian (e.g., Indo-Canadian, Indian Subcontinent Canadian)** | 27 | 30 | 32 | 31 |
| **Chinese Canadian** | 20 | 25 | 20 | 23 |
| **African Canadian, Black Canadian** | 16 | 18 | 16 | 17 |
| **First Nations** | 7 | 2 | 4 | 3 |
| **East Asian Canadian (e.g., Japanese, Korean)** | 7 | 6 | 4 | 5 |
| **Southeast Asian Canadian (e.g., Vietnamese, Cambodian, Thai, Philippine)** | 6 | 5 | 4 | 5 |
| **Métis** | 5 | 4 | 3 | 4 |
| **Arab Canadian** | 5 | 3 | 2 | 3 |
| **Inuit** | <1 | - | 1 | <1 |
| **Latin American, Hispanic or Latino Canadian** | <1 | 2 | 5 | 3 |
| Other | 14 | 11 | 20 | 15 |

Q.40 Please specify how you identify yourself.
Base: Those who self-identify as "Aboriginal" or "Racialized/Person of Colour" (n=128)
Note: Multiple mentions accepted

# Sample Demographics – Financial Support Obligations

- The research also investigates the incidence of financial support obligations during law school.
- The majority of respondents (70%) report that they had no dependents "who relied on me either alone or in part for financial support" while they were attending law school.
- However, small minorities do report dependents who relied on them for some measure of financial support:
  - 4% report that they had shared custody of children;
  - 1% report that they had sole custody of children;
  - 2% report that they had shared support responsibilities for an adult;
  - 1% report that they had sole support responsibilities for an adult.
- Although the majority of NCA respondents (62%) report that they had no dependents "who relied on me either alone or in part for financial support" while they were attending law school, this is significantly less than the proportion found among non-NCA respondents (71%).

# Sample Demographics – Financial Support Obligations

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **I had sole custody of children who relied on me alone or in part for financial support** | 2 | 1 | 1 | 1 |
| **I had shared custody of children who relied on me alone or in part for financial support** | 6 | 5 | 4 | 4 |
| **I had sole support of an adult who relied on me alone or in part for financial support** | 2 | 1 | 1 | 1 |
| **I had shared support of an adult who relied on me alone or in part for financial support** | 3 | 2 | 2 | 2 |
| **I had no dependents who relied on me alone or in part for financial support** | 88 | 91 | 94 | 93 |

Q.40 Please specify how you identify yourself.
Base: Those who self-identify as "Aboriginal" or "Racialized/Person of Colour" (n=128)
Note: Multiple mentions accepted

# Pre-Law Educational Background and Law School Preferences

# Pre-Law Educational Background

- Virtually all respondents (96%) had completed at least a 3 year undergraduate degree before entering law school, with the largest single proportion having obtained a 4 year undergraduate degree:
  - 8% had obtained a 3 year undergraduate degree;
  - 73% had obtained a 4 year undergraduate degree;
  - 2% had completed at least one year of a post-graduate degree program;
  - 13% had completed a post-graduate degree.
- Of the remaining 4%:
  - 1% had completed 3 years of undergraduate study without obtaining a degree;
  - 1% had completed 2 years of undergraduate study; and,
  - 2% had completed fewer than 2 years of undergraduate study
- Francophone respondents appear to have undertaken less undergraduate education than have respondents overall. They are more likely than respondents overall to report having:
  - Completed fewer than two years undergraduate studies (10% and 2%, respectively);
  - Obtained a three year undergraduate degree (29% and 8%).
- Conversely, Francophone respondents are significantly less likely than are respondents overall to report having completed a four year undergraduate degree (45% and 73%, respectively).

# Level of Education Completed When Entered Law School

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **Completed fewer than two years undergraduate studies** | 2 | 2 | 2 | 2 |
| **Completed two years without obtaining an undergraduate degree** | 3 | 1 | 1 | 1 |
| **Completed three years without obtaining an undergraduate degree** | 3 | 1 | 1 | 1 |
| **Obtained a three year undergraduate degree** | 14 | 11 | 8 | 10 |
| **Obtained a four year undergraduate degree** | 61 | 66 | 73 | 69 |
| **Completed at least one year of a post-graduate degree** | 2 | 4 | 2 | 3 |
| **Obtained a post-graduate degree** | 15 | 15 | 13 | 14 |

Q.1 How far had your studies progressed at the time you entered law school?
Base: All respondents

# Mature Students

- One-in-five respondents (21%) attended law school as a mature student
- More than four-in-ten (44%) mature students report having been in the workforce for five years or more prior to entering law school, and about one-fifth (18%) were working for 10 years or more:
  - 55% were in the workforce for fewer than 5 years;
  - 26% for 5-9 years;
  - 15% for 10-19 years.
- Among those mature students who were in the workforce prior to entering law school, the mean length of time worked is 5.84 years.

# Number of Years in the Workforce Prior to Entering Law School

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **1-2 years** | 4 | 4 (20) | 6 (30) | 5 |
| **3-4 years** | 4 | 4 (19) | 5 (25) | 4 |
| **5-9 years** | 8 | 6 (29) | 5 (26) | 6 |
| **10-14 years** | 3 | 3 (16) | 2 (7) | 3 |
| **15-19 years** | 2 | 2 (9) | 2 (8) | 2 |
| **20 or more years** | 2 | 1(7) | 1 (3) | 1 |
| **I did not attend law school as a mature student** | 77 | 80 | 79 | 79 |

Q.2 If you attended law school as a mature student, please indicate how many years, if any, you were in the workforce prior to entering law school.
Base: All respondents
Note: Proportions in parentheses ( ) are calculated among mature students
Note: Mean length of time in workforce is 6.89 years

# Law School Preferences

- Selected by the greatest proportions of respondents as the first choice of law school to attend are Osgoode Hall (20%) and the University of Toronto (20%).
- Clustered together quite closely are the University of Ottawa Common Law Section (10%), the University of Western Ontario (7%) and Queen's University (7%).
- The proportions of respondents making the remaining Ontario law schools their first choice are as follows:
  - University of Ottawa French Common Law Section (3%);
  - University of Windsor (3%);
  - University of Ottawa Droit Civil (2%).
- Consistent with findings from the previous wave, close to one-in-five respondents (19%) report having made a law school outside of Ontario their preferred choice:
  - 10% made a law school outside of Canada their first preference.

# Law School Preferences

- It is worth noting that respondents who self-identify as Francophone are disproportionately likely to have made the French Common Law Section at the University of Ottawa their first choice (42% as compared to 3% among respondents overall), and are also significantly more likely to have included this program in their top three choices.
- As might be expected, 70% of NCA respondents made a law school outside of Canada their first choice.
    - However, close to one-third of NCA respondents (31%) made an Ontario law school their first choice, suggesting that attending a law school outside of Canada may have been more of a necessity than a preference.

# Law School Preferences

**% Among Total Sample**

| | First Choice | | | | Second Choice | | | | Third Choice | | | | NET | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| **n=** | 1303 | 972 | 585 | 1557 | 1303 | 972 | 585 | 1557 | 1303 | 972 | 585 | 1557 | 1303 | 972 | 585 | 1557 |
| **Osgoode Hall Law School (York University)** | 19 | 18 | 20 | 19 | 20 | 19 | 18 | 19 | 13 | 8 | 8 | 8 | 53 | 45 | 45 | 45 |
| **Queen's University** | 6 | 8 | 7 | 8 | 12 | 12 | 11 | 12 | 17 | 14 | 14 | 14 | 34 | 34 | 33 | 34 |
| **University of Ottawa English Common Law Section** | 10 | 10 | 10 | 10 | 10 | 9 | 7 | 8 | 10 | 8 | 9 | 9 | 30 | 28 | 26 | 27 |
| **University of Ottawa French Common Law Section** | 3 | 4 | 3 | 3 | 2 | 1 | 2 | 1 | 1 | < 1 | 1 | <1 | 5 | 4 | 5 | 5 |
| **University of Ottawa Droit Civil** | 2 | 1 | 2 | 1 | <1 | 1 | 1 | 1 | 1 | < 1 | 1 | <1 | 3 | 2 | 3 | 2 |
| **University of Toronto** | 24 | 21 | 20 | 21 | 16 | 11 | 12 | 11 | 7 | 6 | 5 | 6 | 46 | 38 | 37 | 38 |
| **University of Western Ontario** | 8 | 9 | 7 | 8 | 9 | 8 | 9 | 8 | 13 | 13 | 10 | 11 | 30 | 29 | 26 | 28 |
| **University of Windsor** | 4 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 6 | 5 | 7 | 6 | 13 | 12 | 14 | 13 |
| **Out of province** | 20 | 21 | 19 | 20 | 11 | 15 | 14 | 15 | 7 | 14 | 12 | 13 | 38 | 35 | 33 | 34 |
| **Out of country** | 4 | 5 | 10 | 7 | 6 | 3 | 5 | 4 | 5 | 2 | 4 | 3 | 15 | 7 | 12 | 9 |
| **No other** | - | - | - | - | - | 8 | 8 | 8 | - | 13 | 13 | 13 | - | - | - | - |
| **None/No answer** | - | - | - | - | 12 | 8 | 10 | 9 | 20 | 17 | 16 | 17 | - | - | - | - |

Q.3 Please indicate which law schools were your first, second and third choice. If you applied more than one year, please base your answer on your most recent application.
Base:All respondents

# Reasons for First Preference

- A wide variety of considerations have a bearing on the selection of a law school as a first choice. By quite a wide margin (15 percentage points), however, a strong academic reputation is cited most frequently (63%).
- Strong academic reputation is followed by:
  - Location of law school where respondent wanted to practise/work (48%);
  - Location of law school affordable (33%);
  - Curriculum strongly linked to areas respondent wanted to study or practise (30%);
  - Tuition costs (29%); and,
  - Availability of family support (25%).
- There is little variation by demographic sub-group in the importance assigned to a strong academic reputation in determining the first choice of law school to attend, suggesting that prospective students widely view this as the most critical attribute of a law school.
  - There is, however, an interesting difference between respondents who are mature students and those who are not. Mature students (53%) are significantly less likely than those who are not mature students (65%) to cite a strong academic reputation as one of the most important reasons that had a bearing on their first choice of law school.
- Consistent with these findings, when respondents were asked to select the two most important of these reasons strong academic reputation again leads by a significant margin with close to half of respondents (46%) selecting it, followed by location of law school where I wanted to practise/work (32%).

# Reasons for First Preference

- Selected by smaller proportions of respondents as one of their two most important reasons are:
  - Location of law school affordable (17%)
  - Curriculum strongly linked to areas respondent wanted to study/practise (15%);
  - Tuition costs (15%); and,
  - Availability of family support: (11%).
- None of the other reasons tested was selected by more than 6% of respondents as one of the two most important. There are, however, noteworthy differences by subgroup on some of them.
- Not surprisingly, perhaps, those who incurred debt prior to entering law school are more likely than those who did not to include location of law school affordable (22% and 14%, respectively) as one of the two most important factors bearing on their first choice of law school. This was also the case for NCA respondents (26% and 16%, respectively).
- Those who were mature students (34%) are significantly less likely than those who were not (49%) to cite strong academic reputation, as are those who were NCA students (36%) as compared with those who were not (47%).
- As might be expected, Francophones (39%) are dramatically more likely than respondents overall (4%) to cite the language in which the program was offered, as are those who attended the University of Ottawa French Common Law program (69%).

# Reasons for First Preference

**% Among Total Sample**

| | Had a Bearing on Choice | | | | Two Most Important Reasons | | | |
|---|---|---|---|---|---|---|---|---|
| n= | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| **Strong academic reputation** | 63 | 63 | 63 | 63 | 48 | 48 | 46 | 47 |
| **Location of law school where I wanted to practise/work** | 42 | 40 | 48 | 43 | 28 | 29 | 32 | 30 |
| **Location of law school affordable** | 37 | 34 | 33 | 33 | 17 | 15 | 17 | 16 |
| **Curriculum strongly linked to areas I wanted to study/practise** | 33 | 31 | 30 | 31 | 15 | 17 | 15 | 16 |
| **Tuition costs** | 30 | 26 | 29 | 27 | 15 | 13 | 15 | 14 |
| **Availability of family support** | 22 | 23 | 25 | 24 | 11 | 11 | 11 | 11 |
| **Availability of joint programs** | 11 | 13 | 11 | 12 | 6 | 7 | 5 | 6 |
| **Financial aid available** | 14 | 12 | 13 | 12 | 5 | 4 | 3 | 4 |
| **Attractive extra-curricular law school activities** | 18 | 18 | 21 | 19 | 5 | 4 | 5 | 4 |
| **Opportunities to develop skills relevant to the practice of law** | 18 | 18 | 20 | 19 | 4 | 6 | 5 | 5 |
| **Language of program** | 11 | 10 | 12 | 11 | 4 | 4 | 4 | 4 |
| **My undergraduate academic standing** | 12 | 10 | 14 | 12 | 4 | 3 | 6 | 4 |
| **Availability of flexible/part-time program** | 1 | 2 | 2 | 2 | 1 | 1 | 1 | 1 |
| **Availability of community support** | 6 | 7 | 7 | 7 | 1 | 1 | 1 | 1 |
| **Availability of student support programs** | 2 | 2 | 3 | 3 | <1 | < 1 | 1 | <1 |
| **Services offered by law school career development officers** | 3 | 4 | 4 | 4 | <1 | < 1 | 1 | <1 |
| **Other** | 21 | 18 | 19 | 19 | 17 | 16 | 16 | 16 |

Q.5 Which, if any, of the following reasons had a bearing on your first choice of law school to attend? (Please select all that apply).
Q.6 Which two of these reasons were the most important?
Base: All respondents

# Law School From Which Degree Obtained

- Respondents are quite widely dispersed as to the law school from which they obtained a law degree:
  - Osgoode Hall (14%);
  - University of Ottawa English Common Law Section (14%);
  - University of Toronto (12%);
  - Queen's University (10%);
  - University of Windsor (10%);
  - University of Western Ontario (9%);
  - University of Ottawa French Common Law Section (4%);
  - University of Ottawa Droit Civil (2%).
- Close to one-third of respondents obtained a law degree from an institution outside Ontario:
  - 19% obtained a law degree from a Canadian law school outside of Ontario;
  - 12% obtained a law degree from a law school outside of Canada.

# Law School From Which Degree Obtained

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **Osgoode Hall Law School (York University)** | 19 | 16 | 14 | 15 |
| **Queen's University** | 10 | 10 | 10 | 10 |
| **University of Ottawa English Common Law Section** | 14 | 15 | 14 | 14 |
| **University of Ottawa French Common Law Section** | 5 | 4 | 4 | 4 |
| **University of Ottawa Droit Civil** | 2 | 2 | 2 | 2 |
| **University of Toronto** | 14 | 13 | 12 | 13 |
| **University of Western Ontario** | 9 | 9 | 9 | 9 |
| **University of Windsor** | 9 | 10 | 10 | 10 |
| **Out of province** | 18 | 20 | 19 | 20 |
| **Out of country** | 5 | 7 | 12 | 9 |

Q.4 From which institution(s) did you obtain a law degree?
Base: All respondents
Note: The sum of proportions is greater than 100% as some respondents have more than one law degree.

# Bar Membership/Practice Experience Outside Canada

- Consistent with the sample for this research, 100% of respondents have been called to the bar in Ontario.
- As might be expected given the proportion of respondents who have obtained a degree from a law school outside of Canada, 9% of respondents have been called to a bar outside Canada and almost two-thirds of them (64%) have practised at that bar.
    - The proportion of NCA respondents called to a bar outside of Canada is much higher at 44%. However, fully 98% of NCA respondents have also been called to the bar in Ontario.
- Just over two-fifths of those who have practised outside of Canada did so for 2 years or less (41%). However, some of these respondents practised outside of Canada for significantly longer than that, with 13% having practised for 10 or more years. The mean is 5.03 years.

# Bar Membership

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 1303 | 972 | 585 | 1557 |
| **Alberta** | 1 | 1 | 2 | 1 |
| **British Columbia** | 1 | 2 | 3 | 3 |
| **Manitoba** | <1 | 1 | <1 | 1 |
| **New Brunswick** | 1 | 1 | - | <1 |
| **Newfoundland** | <1 | <1 | <1 | <1 |
| **Nova Scotia** | <1 | 1 | <1 | 1 |
| **Ontario** | 68 | 99 | 100 | 99 |
| **PEI** | - | - | - | - |
| **Quebec** | 1 | 2 | 2 | <1 |
| **Saskatchewan** | <1 | < 1 | <1 | <1 |
| **Yukon** | <1 | < 1 | - | <1 |
| **Northwest Territories** | <1 | < 1 | <1 | <1 |
| **Nunavut** | - | < 1 | 1 | <1 |
| **A Bar outside Canada** | 5 | 7 | 9 | 8 |
| **A Bar in Canada outside Ontario (NET)** | 5 | 8 | 9 | 9 |

Q.7 To which Bar(s) have you been called?
Base:All respondents
Note: Multiple responses accepted. Total proportions exceed 100%
Note:In 2007, 30% of respondents had not yet been called to the bar

# Practice Outside Canada

**% Among Total Sample**

| | Those who have been called to a Bar outside Canada | | | |
|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| **Practiced outside of Canada?** | n = 60 | n = 71 | n = 50[C] | n = 121 |
| **Yes** | 77 | 72 | 64 | 69 |
| **No** | 23 | 28 | 36 | 31 |
| **How long?** | n=46[C] | n = 51[C] | n = 32[C] | n = 83 |
| **1 year** | 13 | 33 | 25 | 30 |
| **2 years** | 22 | 18 | 16 | 17 |
| **3 years** | 17 | 16 | 6 | 12 |
| **4 years** | 9 | 10 | 13 | 11 |
| **5 years** | 4 | 6 | 19 | 11 |
| **6 years** | 9 | 2 | 3 | 2 |
| **7 years** | 9 | 6 | 3 | 5 |
| **8 years** | 4 | 2 | 3 | 2 |
| **9 years** | 7 | 2 | - | 1 |
| **10 or more years** | 7 | 6 | 13 | 8 |
| **No answer** | - | - | - | - |

Q.8 If you have been called to a Bar outside of Canada, did you practise there? Base: Among those who have been called to a Bar outside Canada
Q.9 For how long did you practise in that country? Base: Among those who practised outside of Canada
C Caution, small base size

# Articling

Click to add research footnote

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# Key Factors Influencing Choice of Articling Position (Unprompted)

- Respondents who articled in Ontario were asked on an open-ended (or unprompted) basis what key factors influenced their choice of articling position. (The key distinction between open-ended and closed-ended questions is that the latter present a range of answer categories from which respondents are invited to choose, whereas the former do not present any pre-selected categories and allow respondents to respond as they wish in their own words.)
- Three key factors are identified on an open-ended basis:
  - Areas of interest/practice areas offered (mentioned by 34% of these respondents);
  - Preferred location (20%); and,
  - Perceived prestige/reputation (14%).
- Subgroup differences are minimal here, suggesting consistency in views as to the key factors that influence the choice of articling position.

# Key Factors Influencing Choice of Articling Position (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 903 | 537 | 1440 |
| **Type of Work (NET)** | **38** | **42** | **39** |
| Areas of interest/practice areas offered by the firm | 28 | 34 | 30 |
| The type of work/firm | 6 | 5 | 6 |
| Advancing social justice causes/working for public interest | 2 | 1 | 2 |
| Challenging work/interesting work | 2 | 2 | 2 |
| Exposure to litigation opportunities | 2 | 1 | 2 |
| Practical/court/litigation experience | 1 | <1 | 1 |
| Worked in particular areas during law school/academic interest | 1 | <1 | 1 |
| Experience in area prior to law school | 1 | 1 | 1 |
| Meet career goals/satisfying work | 1 | <1 | <1 |
| Like working with clients/providing client service | <1 | 1 | <1 |
| **Type of Firm/Organization (NET)** | **33** | **26** | **31** |
| Perceived prestige/reputation | 18 | 14 | 17 |
| Preferred size of firm | 10 | 8 | 9 |
| Preferred particular type of agency public/private/NGO/government | 6 | 4 | 5 |
| Job security/stability | 1 | 1 | 1 |
| **Location (NET)** | **23** | **25** | **24** |
| Preferred location | 20 | 20 | 20 |
| Preferred city/town | 3 | 5 | 4 |

Q.11 What were the key factors that influenced your choice of articling position?
Base:Respondents who articled in Ontario

# Key Factors Influencing Choice of Articling Position (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 903 | 537 | 1440 |
| **Previous Employment/Summer Experience/Summered at firm and was hired back** | **23** | **17** | **21** |
| **Job Offer (NET)** | **20** | **27** | **23** |
| Was offered job/job offer | 11 | 15 | 13 |
| Availability of position/work | 8 | 12 | 10 |
| Financial pressure to accept any job offered | 1 | 1 | 1 |
| Did not have a choice | 1 | <1 | <1 |
| The economy/recession | <1 | <1 | <1 |
| **Culture/Environment (NET)** | **14** | **12** | **13** |
| Good/friendly/helpful colleagues | 5 | 4 | 5 |
| Good fit with company culture/values | 5 | 5 | 5 |
| Good/nice working environment | 4 | 2 | 3 |
| The working language | 1 | 2 | 1 |
| **Professional Development (NET)** | **9** | **11** | **10** |
| Development opportunities/learning opportunities | 5 | 4 | 5 |
| Mentorship program at firm/organization | 2 | 1 | 2 |
| Good/experienced principal/lawyers | 2 | 2 | 2 |
| Potential future opportunities | 1 | 4 | 2 |
| Autonomy/carriage of own files | 1 | 1 | 1 |
| **Good remuneration/salary/benefits** | **9** | **11** | **10** |

Q.11 What were the key factors that influenced your choice of articling position?
Base:Respondents who articled in Ontario

# Key Factors Influencing Choice of Articling Position (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 903 | 537 | 1440 |
| **Variety of Work (NET)** | **7** | **4** | **7** |
| Variety of work | 7 | 2 | 5 |
| Multiple practice areas/rotation | 1 | 2 | 1 |
| **Work-Life Balance (NET)** | **5** | **1** | **3** |
| Good work-life balance/lifestyle | 3 | 1 | 2 |
| Good hours/hours of work/flexibility | 2 | <1 | 1 |
| **Other** | **3** | **16** | **13** |
| **None** | **1** | **<1** | **1** |
| **Don't know/Don't recall/No answer** | **1** | **-** | **<1** |

Q.11 What were the key factors that influenced your choice of articling position?
Base Respondents who articled in Ontario

# Key Factors Influencing Choice of Articling Position (Prompted)

- Respondents were then presented with a list of factors on a closed-ended (or prompted) basis and asked two questions. The first, intended to get a sense of what candidates consider important in an articling position, asked what factors influenced their choice of an articling position. The second question, intended to get at what really drives the final decision, asked respondents to identify the one factor that had the greatest influence.
- In response to the first of these questions, the practice areas offered by the firm or organization (cited by 52% of respondents) emerges as the factor most frequently identified as having influenced the choice of articling position.
- Four further factors are cited by at least 40% of respondents, and a fifth is cited by just less than 40%:
  - Preferred location for articling (44%);
  - Perceived prestige (43%);
  - Having summered at the firm and been asked back (41%);
  - Supportive environment (40%);
  - Good remuneration (39%).
- When asked to identify the one factor that had the greatest influence, the two factors selected most frequently are the same two factors cited most frequently on an unprompted basis:
  - Having summered at the firm/organization and been asked back to article (cited by 29% of respondents);
  - The practice areas offered by the firm/organization (cited by 19% of respondents).
- None of the other factors presented is identified as the greatest influence by more than 10% of respondents.

# Key Factors Influencing Choice of Articling Position (Unprompted)

- There appears to be a strong consensus that these two factors are the most important as subgroup differences on this question are very limited.
- Although the difference is not dramatic, women (60%) are significantly more likely than men (51%) to cite the type of work as one of the factors influencing their choice.
- Suggesting that women are getting access to articling offers following summer placements in about the same proportions as men, there is no significant difference by gender here (43% and 39%, respectively). Similarly, there is no significant difference in reported access to offers following summer placements between those who identify as a member of an equality-seeking community and those who do not (37% and 44%, respectively).
- The very small proportion of respondents who identify good remuneration as the greatest influence on their choice of articling position (4%) is interesting, given that 39% say that it was one of the factors influencing their choice.
    - Of particular interest is that neither those who entered law school in debt (5%) nor those who incurred debt during law school (5%) are significantly more likely than those who did not incur debt at either stage (3% and 1%, respectively) to say that good remuneration was the greatest influence on their choice of an articling position.
- The total sample of NCA respondents who articled in Ontario (n=49) is too small to support analysis of these respondents.

# Key Factors Influencing Choice of Articling Position (Unprompted)

**% Among Respondents who articled in Ontario**

| | Influenced Choice of Articling Position | | | | Greatest Influence | | | |
|---|---|---|---|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 1260 | 903 | 537 | 1440 | 1260 | 903 | 537 | 1440 |
| I had summered at the firm/organization and was hired back | 35 | 40 | 41 | 40 | 19 | 30 | 29 | 29 |
| The practice areas offered by the firm/organization | 53 | 54 | 52 | 53 | 19 | 20 | 19 | 19 |
| I had a preferred city/town in which I wanted to article | 43 | 45 | 44 | 44 | 9 | 10 | 7 | 9 |
| Perceived prestige of firm/organization | 44 | 44 | 43 | 44 | 9 | 7 | 8 | 8 |
| The environment at the firm organization is supportive | 47 | 40 | 40 | 40 | 8 | 5 | 5 | 5 |
| Firm organization has work-life balance policies/statements | 34 | 28 | 24 | 27 | 6 | 4 | 4 | 4 |
| Good remuneration | 41 | 37 | 39 | 38 | 5 | 3 | 4 | 3 |
| I worked in the area of law during law school | 17 | 17 | 19 | 18 | 3 | 3 | 2 | 3 |
| I wanted to return home to article | 12 | 10 | 10 | 10 | 3 | 2 | 3 | 3 |
| Hire-back policies | 16 | 16 | 18 | 17 | 2 | 1 | 1 | 1 |
| Family members who are lawyers | 2 | 2 | 4 | 3 | <1 | 1 | 1 | 1 |
| Good benefits | 29 | 26 | 30 | 28 | <1 | <1 | <1 | <1 |
| The firm/organization offers internal professional development programs | 19 | 20 | 15 | 18 | <1 | <1 | - | <1 |
| The firm/organization offers a mentorship program | 14 | 13 | 13 | 13 | 1 | <1 | <1 | <1 |
| The firm/organization has a diverse workforce | 14 | 11 | 11 | 11 | 1 | <1 | <1 | <1 |
| Firm/organization has policies/statements/practices about maternity/parental leaves or family responsibilities | 9 | 8 | 7 | 8 | <1 | <! | <1 | <1 |
| Firm/organization provides support for external professional development | 12 | 11 | 10 | 11 | <1 | - | - | - |
| Other | 10 | 7 | 10 | 8 | 8 | 5 | 7 | 6 |
| None of these factors influenced my choice of articling position | 6 | 8 | 9 | 8 | 6 | 8 | 9 | 8 |

Q.12 Did any of the following factors influence your choice of articling position? (Please select all that apply).
Q.13 And which of these was the greatest influence in your choice of articling position?
Base: Respondents who articled in Ontario

# Preferred/Actual Areas of Practice Exposure - Articling

- In order to understand what practice exposure respondents wanted from their articling experience, and to what extent the actual articling experience provided what they were seeking, respondents were asked to indicate both the top three areas of law in which they wanted to gain experience and the top three areas of law they actually did gain experience during their articles.
- Combining the top three areas of law in which experience was sought, three areas are cited by more than one-in-five respondents:
  - Corporate/commercial (37% of respondents ranked it as one of the top three areas in which they wished to gain experience);
  - Civil litigation – plaintiff (ranked among the top three by 28%);
  - Civil litigation – defendant (ranked among the top three by 25%).
- There are a number of differences by subgroup in areas of experience sought during articling.
- Women are more than three times more likely than men to have sought experience in human rights/social justice law (24% and 7%, respectively), and more than twice as likely to have sought experience in family/matrimonial law (17% and 7%).
- Men, by contrast, are significantly more likely than women to have sought experience in corporate commercial law (49% and 28%), civil litigation-defendant (30% and 22%), securities law (14% and 8%), intellectual property law (11% and 6%), and tax law (9% and 4%).

# Preferred/Actual Areas of Practice Exposure - Articling

- Comparison of the areas of law to which respondents sought exposure during articling with the areas of law in which respondents actually gained experience suggest that their main desires were met.
- One area in which students do not appear to be getting the experience they are seeking is human rights/social justice law:
- Whereas 16% of respondents indicated that this was an area in which they wished to gain experience during articling, just 9% of respondents actually did so.

# Preferred/Actual Areas of Practice Exposure – Articling (2010-2012)

| | Total Base | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Top 3 Areas in Which Wanted to Gain Experience | | | | Top 3 Areas in Which Actually Gained Experience | | | |
| | Top | 2nd | 3rd | NET | Top | 2nd | 3rd | NET |
| n= | 903 | 903 | 903 | 903 | 903 | 903 | 903 | 903 |
| | % | % | % | % | % | % | % | % |
| Aboriginal Law | 1 | 1 | 2 | 4 | < 1 | 1 | 2 | 3 |
| ADR/Mediation Services | 1 | 2 | 3 | 6 | - | 2 | 1 | 3 |
| Administrative Law | 4 | 7 | 8 | 19 | 5 | 8 | 6 | 19 |
| Bankruptcy & Insolvency Law | 1 | 1 | 2 | 4 | 1 | 1 | 2 | 4 |
| Civil Litigation - Plaintiff | 11 | 10 | 7 | 28 | 15 | 12 | 7 | 35 |
| Civil Litigation - Defendant | 8 | 11 | 8 | 27 | 14 | 14 | 8 | 36 |
| Construction Law | < 1 | 1 | 1 | 2 | 1 | 2 | 1 | 4 |
| Corporate/Commercial Law | 17 | 12 | 8 | 37 | 13 | 10 | 10 | 33 |
| Criminal/Quasi Criminal Law | 8 | 3 | 3 | 14 | 9 | 3 | 4 | 15 |
| Employment/Labour Law | 7 | 5 | 6 | 17 | 7 | 5 | 6 | 18 |
| Environmental Law | 3 | 2 | 2 | 6 | 2 | <1 | 1 | 3 |
| Family/Matrimonial Law | 6 | 3 | 3 | 12 | 5 | 4 | 3 | 12 |
| Human Rights/Social Justice | 5 | 6 | 4 | 16 | 2 | 5 | 2 | 9 |
| Immigration Law | 3 | 3 | 2 | 7 | 2 | 1 | 1 | 5 |
| Intellectual Property Law | 6 | 3 | 3 | 11 | 5 | 2 | 3 | 10 |
| International Law | 3 | 3 | 3 | 8 | 1 | < 1 | 2 | 3 |
| Language Rights Law | - | < 1 | - | < 1 | - | < 1 | < 1 | < 1 |
| Poverty Law | 1 | < 1 | 2 | 3 | 1 | < 1 | < 1 | 2 |
| Real Estate Law | 3 | 4 | 5 | 12 | 3 | 3 | 4 | 11 |
| Securities Law | 3 | 6 | 2 | 10 | 3 | 5 | 3 | 11 |
| Tax Law | 3 | 2 | 2 | 8 | 3 | 1 | 2 | 6 |
| Wills, Estates, Trusts Law | 1 | 3 | 6 | 10 | 1 | 4 | 4 | 9 |
| Workplace Safety & Insurance Law | - | < 1 | 1 | 1 | < 1 | 1 | 1 | 3 |
| Other | 7 | 3 | 3 | 14 | 8 | 4 | 4 | 16 |
| No other | - | 5 | 10 | - | - | 6 | 12 | - |
| None/No answer | - | 2 | 6 | - | - | 4 | 9 | - |

Q.14 From among the following, please indicate the top three areas of law in which you wanted to gain experience during articling.
Q.15 And which were the top three areas in which you actually gained experience during articling?
Base: Respondents who articled in Ontario.

# Preferred/Actual Areas of Practice Exposure – Articling (2013-2014)

| | Total Base | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Top 3 Areas in Which Wanted to Gain Experience | | | | Top 3 Areas in Which Actually Gained Experience | | | |
| | Top | 2nd | 3rd | NET | Top | 2nd | 3rd | NET |
| n= | 537 | 537 | 537 | **537** | 537 | 537 | 537 | **537** |
| | % | % | % | **%** | % | % | % | **%** |
| **Aboriginal Law** | 2 | 1 | 3 | **5** | 1 | 2 | 2 | **5** |
| **ADR/Mediation Services** | 1 | 4 | 3 | **7** | <1 | 3 | 2 | **5** |
| **Administrative Law** | 4 | 5 | 7 | **17** | 4 | 6 | 6 | **16** |
| **Bankruptcy & Insolvency Law** | <1 | 2 | 2 | **4** | <1 | 1 | 2 | **3** |
| **Civil Litigation - Plaintiff** | 11 | 10 | 7 | **28** | 17 | 11 | 6 | **34** |
| **Civil Litigation - Defendant** | 9 | 10 | 6 | **25** | 12 | 13 | 7 | **31** |
| **Construction Law** | 1 | 1 | 1 | **2** | 1 | 1 | 1 | **3** |
| **Corporate/Commercial Law** | 16 | 11 | 10 | **37** | 13 | 10 | 12 | **35** |
| **Criminal/Quasi Criminal Law** | 11 | 3 | 4 | **17** | 12 | 3 | 3 | **19** |
| **Employment/Labour Law** | 9 | 4 | 5 | **18** | 9 | 4 | 6 | **19** |
| **Environmental Law** | 1 | 1 | 1 | **4** | 1 | 1 | 1 | **3** |
| **Family/Matrimonial Law** | 4 | 4 | 4 | **12** | 5 | 5 | 3 | **12** |
| **Human Rights/Social Justice** | 3 | 8 | 5 | **16** | 1 | 4 | 4 | **9** |
| **Immigration Law** | 3 | 1 | 1 | **6** | 3 | 2 | 1 | **6** |
| **Intellectual Property Law** | 5 | 2 | 2 | **8** | 3 | 1 | 1 | **5** |
| **International Law** | 4 | 3 | 3 | **9** | 1 | <1 | 1 | **3** |
| **Language Rights Law** | <1 | <1 | <1 | **1** | - | <1 | <1 | **1** |
| **Poverty Law** | <1 | <1 | 1 | **2** | 1 | - | <1 | **1** |
| **Real Estate Law** | 3 | 5 | 5 | **13** | 4 | 4 | 5 | **12** |
| **Securities Law** | 2 | 6 | 3 | **11** | 2 | 5 | 3 | **10** |
| **Tax Law** | 2 | 1 | 3 | **7** | 2 | 2 | 2 | **6** |
| **Wills, Estates, Trusts Law** | 2 | 5 | 4 | **10** | 2 | 4 | 4 | **10** |
| **Workplace Safety & Insurance Law** | 1 | 1 | 2 | **3** | 1 | 2 | 1 | **4** |
| **Other** | 6 | 4 | 2 | **12** | 4 | 4 | 4 | **12** |
| **No other** | - | 5 | 10 | **-** | - | 7 | 11 | **-** |
| **None/No answer** | - | 3 | 6 | **-** | <1 | 5 | 11 | <1 |

Q.14 From among the following, please indicate the top three areas of law in which you wanted to gain experience during articling.
Q.15And which were the top three areas in which you actually gained experience during articling?
Base:Respondents who articled in Ontario.

# Preferred Articling Setting

- Preferences for and actual articling setting were examined in much the same way as was practice exposure during articling.
- Looking first at preferences, the private practice experience in some form (and especially in Toronto) dominates:
  - The single greatest preference was for a large private law firm in Toronto (the top preference of 28% and one of the top three of 42%);
  - Medium private law firm in Toronto (13% and 43%, respectively);
  - Government/public agency (13% and 36%);
  - Large private law firm outside Toronto (13% and 23%);
  - Medium private law firm outside Toronto (5% and 19%);
  - Crown's office (5% and 14%).
- Women (21%) are significantly less likely than men (37%) to make a large private law firm in Toronto the top preference for articling setting.
- Members of an equality-seeking community (29%) are, however, no less likely than others (28%) to include a large private law firm in Toronto among their top three preferences.
- Respondents who self-identify as a member of an equality-seeking community are also significantly more likely than those who do not to make a government or public agency setting their top preference (17% and 11%, respectively).

# Preferred Articling Setting

- Similar differences are found when examining top three preferences combined by gender. Men are significantly more likely than women to want to article in a large private law firm in Toronto (54% and 32%, respectively).
- Women, by contrast, are significantly more likely than men to include three non-firm settings among their top three preferences.
  - Government/public agency (42% and 29%, respectively);
  - Legal clinic (21% and 6%);
  - Crown's office (17% and 10%).
- There are also some differences in top three preferences for articling by membership in an equality-seeking community.
- Members of an equality-seeking community (42%) are more likely than those who are not (31%) to include a government or public agency setting among their top three preferences.
- Members of an equality-seeking community appear less inclined, however, to consider a private law firm placement outside Toronto. They are significantly less likely to include among their top three preferences:
  - A large private law firm outside of Toronto (16% compared to 28% among those who do not identify as a member of an equality-seeking community);
  - A medium-sized private law firm outside of Toronto (12% and 25%, respectively);
  - A small private law firm outside of Toronto (8% and 19%, respectively).

# Actual Articling Setting

- Turning to the setting in which respondents actually articled, the findings are similar to the findings with respect to preferred settings. They also reflect the settings that tend to offer the greatest number of articling positions:
  - Large private law firm in Toronto (21%);
  - Government/public agency (16%);
  - Large private law firm outside Toronto (14%);
  - Medium-sized private law firm in Toronto (10%);
  - Small private law firm outside Toronto (9%);
  - Medium-sized private firm outside Toronto (6%);
  - Small private law firm in Toronto (4%).
- While there are not many significant differences by subgroup in actual articling position, there is one by gender and several by membership in an equality-seeking community.
- Looking first at gender, men (25%) are more likely than women (18%) to have articled at a large private firm in Toronto. While the difference here is not great, it is significant.
- Although the differences are once again not great, members of an equality-seeking community are significantly less likely than those who are not to have articled in a large private law firm outside Toronto (9% and 18%, respectively), and significantly more likely to have articled in a government or public agency setting (20% and 13%, respectively) or in a sole practice in Toronto (7% and 2%, respectively).

# Preferred/Actual Articling Setting (2013-2014)

| | Total Base | | | | |
|---|---|---|---|---|---|
| | Top 3 Preferences for Setting Prior to Articling | | | | Actual Articling Setting |
| | Top | 2nd | 3rd | NET | |
| n= | 537 | 537 | 537 | 537 | 537 |
| | % | % | % | % | % |
| Sole practice outside of Toronto | 1 | 1 | 2 | 5 | 3 |
| Small private law firm outside of Toronto (less than 5 lawyers) | 4 | 4 | 6 | 14 | 9 |
| Medium private law firm outside of Toronto (5 – 10 lawyers) | 5 | 9 | 6 | 19 | 6 |
| Large private law firm outside of Toronto (more than 10 lawyers) | 13 | 7 | 4 | 23 | 14 |
| Sole practice in Toronto | <1 | 1 | 1 | 2 | 4 |
| Small private law firm in Toronto (less than 5 lawyers) | 2 | 7 | 11 | 20 | 4 |
| Medium private law firm in Toronto (5 – 50 lawyers) | 13 | 19 | 10 | 43 | 10 |
| Large private law firm in Toronto (more than 50 lawyers) | 28 | 8 | 6 | 42 | 21 |
| In-house counsel for a private corporation | 3 | 6 | 7 | 16 | 2 |
| Government or a public agency | 13 | 12 | 11 | 36 | 16 |
| Education | <1 | 1 | 1 | 2 | - |
| Crown's office | 5 | 6 | 3 | 14 | 2 |
| Legal clinic | 4 | 4 | 6 | 14 | 1 |
| Non-governmental organization (NGO) | 1 | 3 | 6 | 10 | 1 |
| Some other setting in law | 5 | <1 | 1 | 6 | 6 |
| No preference | 2 | 4 | 6 | 2 | - |
| No answer | - | 9 | 12 | - | - |

Q.16 From among the following, please indicate what your top three preferences were for the setting in which you wished to ARTICLE and then the setting in which you articled.
Base: Respondents who articled in Ontario

# Preferred/Actual Articling Setting (2010-2012)

| | Total Base | | | | |
|---|---|---|---|---|---|
| | Top 3 Preferences for Setting Prior to Articling | | | | Actual Articling Setting |
| | Top | 2nd | 3rd | NET | |
| n= | 903 | 903 | 903 | 903 | 903 |
| | % | % | % | % | % |
| **Sole practice outside of Toronto** | 1 | < 1 | 1 | 2 | 3 |
| **Small private law firm outside of Toronto (less than 5 lawyers)** | 2 | 3 | 6 | 11 | 5 |
| **Medium private law firm outside of Toronto (5 – 10 lawyers)** | 4 | 9 | 6 | 19 | 5 |
| **Large private law firm outside of Toronto (more than 10 lawyers)** | 14 | 4 | 3 | 21 | 15 |
| **Sole practice in Toronto** | < 1 | 1 | 1 | 1 | 3 |
| **Small private law firm in Toronto (less than 5 lawyers)** | 3 | 3 | 11 | 17 | 6 |
| **Medium private law firm in Toronto (5 – 50 lawyers)** | 14 | 18 | 9 | 41 | 14 |
| **Large private law firm in Toronto (more than 50 lawyers)** | 30 | 10 | 5 | 45 | 25 |
| **In-house counsel for a private corporation** | 2 | 6 | 9 | 17 | 1 |
| **Government or a public agency** | 15 | 14 | 11 | 40 | 13 |
| **Education** | < 1 | < 1 | 1 | 1 | - |
| **Crown's office** | 4 | 6 | 4 | 13 | 2 |
| **Legal clinic** | 2 | 4 | 5 | 11 | 2 |
| **Non-governmental organization (NGO)** | 3 | 4 | 5 | 12 | 1 |
| **Some other setting in law** | 5 | 1 | < 1 | 6 | 6 |
| **No preference** | 1 | 5 | 10 | 1 | - |
| **No answer** | - | 11 | 14 | 25 | - |

Q.16 From among the following, please indicate what your top three preferences were for the setting in which you wished to ARTICLE and then the setting in which you articled.
Base:Respondents who articled in Ontario

# Preferred/Actual Articling Setting (2007)

| | Total Base | | | | |
|---|---|---|---|---|---|
| | Top 3 Preferences for Setting Prior to Articling | | | | Actual Articling Setting |
| | Top | 2nd | 3rd | NET | |
| n= | 1260 | 1260 | 1260 | 1260 | 1260 |
| | % | % | % | % | % |
| **Sole practice outside of Toronto** | 1 | <1 | 1 | 3 | 3 |
| **Small private law firm outside of Toronto (less than 5 lawyers)** | 3 | 4 | 5 | 12 | 6 |
| **Medium private law firm outside of Toronto (5 – 10 lawyers)** | 6 | 8 | 5 | 19 | 7 |
| **Large private law firm outside of Toronto (more than 10 lawyers)** | 10 | 5 | 7 | 22 | 14 |
| **Sole practice in Toronto** | <1 | 1 | 1 | 2 | 2 |
| **Small private law firm in Toronto (less than 5 lawyers)** | 4 | 4 | 10 | 18 | 5 |
| **Medium private law firm in Toronto (5 – 50 lawyers)** | 14 | 23 | 10 | 47 | 14 |
| **Large private law firm in Toronto (more than 50 lawyers)** | 28 | 10 | 6 | 44 | 22 |
| **In-house counsel for a private corporation** | 2 | 5 | 8 | 15 | 2 |
| **Government or a public agency** | 14 | 15 | 13 | 42 | 12 |
| **Education** | <1 | 1 | 1 | 2 | - |
| **Crown's office** | 6 | 6 | 7 | 19 | 3 |
| **Legal clinic** | 2 | 4 | 6 | 12 | 2 |
| **Non-governmental organization (NGO)** | 2 | 4 | 5 | 11 | 1 |
| **Some other setting** | 6 | 1 | 1 | 8 | 8 |
| **No preference** | 1 | 2 | 4 | 7 | <1 |
| **No answer** | - | 6 | 9 | | - |

Q.16 From among the following, please indicate what your top three preferences were for the setting in which you wished to ARTICLE and then the setting in which you articled/are articling.
Base: Respondents who will be articling, are articling currently, or did article in Ontario

# Challenges Faced in Securing Articles

# Challenges Faced in Securing Articles

- Concern in the profession over a possible shortage of articling placements increased following the completion of the benchmark wave of this study in 2007.
- Reflecting this, the Law Society added five new measures to the questionnaire in the 2010-2012 wave. The objective was to better understand the challenges being encountered by those seeking articles. This is the second report of findings from these measures.
- The first of these measures asks respondents to indicate how long it took them to secure an articling position. Fully 82% of respondents report that they found an articling position less than a year after they began searching actively for one, and just over half of respondents (53%) report that they were able to find one in less than three months.
    - For 14% of respondents, however, more than a year was required to do so.
- There is only one significant difference by subgroup on this measure. Members of an equality-seeking community are significantly more likely than those who do not identify as members of such a community to report that it took more than a year (18% and 11%, respectively) to secure an articling position.
- Respondents were then asked whether they faced any significant challenges in their articling search. About one-third of respondents (64%) report that they encountered no significant challenges. There are, however, some important differences by subgroup here.
    - Members of an equality-seeking community (57%) are significantly less likely than those who are not members of such a community (70%) to report not having faced any significant challenges. This is also the case among those who identify as racialized/person of colour (50%) when compared to respondents overall (64%).
    - Also less likely to report not having encountered any significant challenges are those who attended law school as a mature student (56%) compared to those who did not (66%).

# Challenges Faced in Securing Articles

- Challenges cited by those respondents who reported facing one include:
  - Having had at least one interview but not receiving any offers (13%);
  - Not being able obtain an interview for an articling position (11%);
  - That there were no articling positions in the respondent's preferred practice area (6%);
  - That there were no articling positions in the respondent's preferred work environment (3%);
  - That there were no articling positions in the respondent's preferred region (3%).
  - Follow-up questions were asked of those who reported having faced the last three of the challenges listed above.
- Among the very small sample of 16 respondents who were unable to find a position in their preferred region, the greatest proportion report that they were seeking a position in the City of Toronto (44%). Just over three-in-ten of these respondents indicate that they were seeking to article outside the City of Toronto (31%).
- Responses among those who were unable to find a position within their preferred practice area are widely diffused, with most of the areas listed being reported by only one or two respondents. The single largest proportions are found for intellectual property law (15% of these respondents).
- Only 16 respondents report that they were unable to find an articling position in their preferred work environment. Environments mentioned most frequently among these respondents are a firm/organization that offers practice areas in which they were interested (31%) and a firm/organization with a positive learning environment (19%).

# Challenges Faced in Securing Articles

- Given the small sample of racialized/person of colour in each wave of research, data from the two most recent waves of research (2010-2014) were combined to determine whether any significant differences that are not apparent within the discrete waves emerge.
- This analysis of combined data discloses the following differences between racialized/persons of colourand the total population under study.
  - Those who self-identify as racialized/person of colour are significantly more likely to report:
    - taking more than one year to search for and secure an articling position (18% and 11%, respectively);
    - taking six months to just less than one year to search for and secure a practice position (21% and 12%);
    - applying for 25-50 articling positions and not getting an interview (6% and 3%);
    - applying for fewer than 25 articling positions and not getting an interview (4% and 2%); and,
    - reporting that there was not an articling positions in the type of work environment they were seeking (7% and 3%).
  - Members of this group are significantly less likely to report:
    - taking less than three months to search for and secure an articling position (49% and 56%, respectively);
    - taking less than three months to search for and secure a practice position (49% and 59%); and,
    - facing no significant challenges in their search for an articling position (59% and 70%).
- Taken together, these results suggest that members who identify as racialized/person of colour face more challenges than the norm and that it takes them longer to secure an articling position.
- Analysis of gender using the combined waves did not yield any significant differences.

# Time Required to Secure an Articling Position

% Among Total Sample

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 903 | 537 | 1440 |
| **Less than 3 months** | 57 | 53 | 56 |
| **3 to < 6 months** | 13 | 13 | 13 |
| **6 months to < 1 year** | 12 | 15 | 13 |
| **More than 1 year** | 10 | 14 | 11 |
| **Other** | 8 | 6 | 8 |

Q.10A How much time elapsed from the point at which you actively began to search for an articling position to the time you actually secured an articling position?
Base:Respondents who articled in Ontario

# Challenges Faced in Search for Articling Position

| | % Among Total Sample | | |
|---|---|---|---|
| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 903 | 537 | 1440 |
| I faced no significant challenges in my search for an articling position | 74 | 64 | 70 |
| I applied for more than 100 articling positions and did not get an interview | 2 | 4 | 3 |
| I applied for 51-100 articling positions and did not get an interview | 3 | 4 | 3 |
| I applied for 25-50 articling positions and did not get an interview | 2 | 5 | 3 |
| I applied for fewer than 25 articling positions and did not get an interview | 1 | 2 | 2 |
| I had at least one interview for articling positions, but did not get any offers | 10 | 13 | 11 |
| There were no articling positions available in the region I wanted to article | 3 | 3 | 3 |
| There were no articling positions in the practice area I was pursuing | 7 | 6 | 6 |
| There were no articling positions in the type of work environment I was seeking | 3 | 3 | 3 |
| Another significant challenge | 9 | 17 | 14 |

Q.15A Some people experience significant challenges during their search for an articling position. Please indicate below if you faced any of the following challenges in your search?
Base: Respondents who articled in Ontario
Note: Multiple responses accepted. Total proportions exceed 100%

# Regions in which Articling Positions Unavailable

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 21[c] | 16[c] | 37[c] |
| **Ontario outside the City of Toronto (NET)** | 62 | 31 | 49 |
| **East Region** | 29 | 13 | 22 |
| **Central West Region** | 14 | 6 | 11 |
| **Central South Region** | 5 | 6 | 5 |
| **Southwest Region** | 14 | 6 | 11 |
| **City of Toronto** | 24 | 44 | 32 |
| **A region outside of Ontario** | 14 | 25 | 19 |

Q.15B You mentioned that one of the challenges you faced is that there were no articling positions in the region in which you wanted to article. What region is that?
Base:Respondents who articled in Ontario and who reported that there were no articling positions in the region in which they wished to article.
C:Caution, small base size

# Practice Areas in which Articling Positions Unavailable

% Among Total Sample

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 50 | 33c | 83 |
| **Aboriginal Law** | 2 | 6 | 4 |
| **Civil Litigation – Plaintiff** | 2 | 3 | 2 |
| **Corporate Commercial Law** | 8 | 9 | 8 |
| **Criminal/Quasi-Criminal Law** | 8 | 3 | 6 |
| **Employment/Labour Law** | 2 | 9 | 5 |
| **Environmental Law** | 4 | - | 2 |
| **Family/Matrimonial Law** | 2 | - | 1 |
| **Human Rights/Social Justice** | 12 | 3 | 8 |
| **Immigration Law** | 18 | 3 | 12 |
| **Intellectual Property Law** | 4 | 15 | 8 |
| **International Law** | 18 | 9 | 14 |
| **Poverty Law** | 2 | - | 1 |
| **Real Estate Law** | 4 | 3 | 4 |
| **Wills, Estates, Trusts Law** | 2 | 3 | 2 |
| **Other** | 12 | 18 | 14 |

Q.15C You mentioned that one of the challenges you faced is that there were no articling positions in the practice area you were pursuing. What practice area is that?
Base: Respondents who articled in Ontario and who reported that there were no articling positions in the practice area that they were pursuing.

# Work Environments in which Articling Positions Unavailable

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 29[c] | 16[c] | 45[c] |
| **Firm/organization that offers practice area(s) in which I am interested** | 28 | 31 | 29 |
| **Firm/organization that is committed to work-life balance** | 24 | 6 | 18 |
| **Small law firm** | 21 | 13 | 18 |
| **Firm/organization with a positive learning environment** | 17 | 19 | 18 |
| **A not-for-profit organization** | 14 | 13 | 13 |
| **A non-governmental organization (NGO)** | 7 | - | 4 |
| **Government/public organization** | 7 | 6 | 7 |
| **Other** | 7 | 19 | 11 |
| **No answer** | 3 | 6 | 4 |

Q.15C You mentioned that one of the challenges you faced is that there were no articling positions in the practice area you were pursuing. What practice area is that?
Base: Respondents who articled in Ontario and who reported that there were no articling positions in the practice area that they were pursuing.

# The Practice of Law

# Preferred Articling Setting

- As with preferences for articling setting, private law firms are the top preferred practice/work settings:
  - Large private law firm in Toronto (selected as top preference by 21% of respondents, and as one of the top three preferences by 37%);
  - Government/public agency (16% and 39%, respectively);
  - Medium private law firm in Toronto (12% and 39%);
  - Large private law firm outside Toronto (11% and 22%);
  - In-house counsel for a private corporation (6% and 25%);
  - Medium private law firm outside Toronto (6% and 21%); and
  - Small private law firm outside Toronto (6% and 18%).
- There are some differences by gender in top preferences, but they are modest:
  - Men are significantly more likely than women to prefer a large private law firm in Toronto (28% and 16%, respectively);
  - Women are directionally more likely than men to prefer a government or public agency setting (18% and 13%);
- There are also some modest differences in top preferences among members of an equality-seeking community:
  - They are directionally less likely than those who are not members of such a community to choose either a  a large private law firm outside Toronto (8% and 13%, respectively) or the Crown's office (3% and 6%);
  - Members of an equality-seeking community are, however, significantly more likely to identify a government or public agency setting as their top preference (20% and 13%).
- Those who attended law school as a mature student are significantly less likely than those who did not to make a medium private law firm in Toronto their top choice (7% and 14%, respectively), and are significantly more likely to make their top choice a small private law firm in Toronto (7% and 3%).

# Actual Practice Setting

- Consistent with preferences, private law firms are the most common form of actual practice/work setting:
  - Large private law firm in Toronto (14%);
  - Government or public agency (12%);
  - Small private law firm outside Toronto (11%);
  - Medium private law firm in Toronto (10%);
  - In-house counsel for a private corporation (10%);
  - Large private law firm outside Toronto (9%).
- Women are less likely than men to be working in a large private law firm in Toronto (11 and 17%, respectively).
- Differences by membership in an equality-seeking community are also evident.
  - Consistent with their preferences, members of an equality-seeking community are less likely to be working either in a large private law firm outside of Toronto (6% and 11%) or a medium-sized private law firm outside of Toronto (4% and 9%).
- Also consistent with their preferences, those who attended law school as a mature student are only about half as likely as those who did not to report that they are currently practising in a medium private law firm in Toronto (6% and 11%, respectively).

# Actual Practice Setting

- Inconsistent with their preference (21%), NCA respondents are less likely than non-NCA respondents to be working in a large private law firm in Toronto (5% and 15%, respectively).
- A comparison of actual practice settings with top preferred settings suggests that in many cases respondents are working in a desired practice setting. It also, however, suggests several modest gaps:
    - The proportions of respondents who report practising in a large private law firm in Toronto (14%) and in a government or public agency (12%) are lower than the proportions of respondents who selected these settings as their top preference (21% and 16%, respectively).

# Preferred/Actual Practice Setting (2013-2014)

| | Total Sample | | | | |
|---|---|---|---|---|---|
| | Top 3 Preferences for Practice Setting | | | | Actual Practice Setting |
| | Top | 2nd | 3rd | NET | |
| n= | 585 | 585 | 585 | 585 | 585 |
| | % | % | % | % | % |
| Sole practice outside of Toronto | 2 | 1 | 2 | 5 | 5 |
| Small private law firm outside of Toronto (less than 5 lawyers) | 6 | 5 | 7 | 18 | 11 |
| Medium private law firm outside of Toronto (5 – 10 lawyers) | 6 | 10 | 5 | 21 | 7 |
| Large private law firm outside of Toronto (more than 10 lawyers) | 11 | 5 | 5 | 22 | 9 |
| Sole practice in Toronto | 1 | 1 | 2 | 4 | 5 |
| Small private law firm in Toronto (less than 5 lawyers) | 4 | 5 | 9 | 18 | 7 |
| Medium private law firm in Toronto (5 – 50 lawyers) | 12 | 16 | 11 | 39 | 10 |
| Large private law firm in Toronto (more than 50 lawyers) | 21 | 8 | 7 | 37 | 14 |
| In-house counsel for a private corporation | 6 | 9 | 9 | 25 | 10 |
| Government or a public agency | 16 | 11 | 12 | 39 | 12 |
| Education | 1 | 1 | 2 | 3 | <1 |
| Crown's office | 4 | 5 | 2 | 12 | 3 |
| Legal clinic | 4 | 4 | 4 | 12 | 2 |
| Non-governmental organization (NGO) | 2 | 6 | 5 | 13 | 1 |
| Some other setting in law | 2 | 1 | 1 | 3 | 2 |
| Some other setting outside of law | - | - | - | - | 3 |
| No preference | 2 | 4 | 5 | 2 | - |
| None/ No answer | - | 9 | 11 | - | - |

Q.17 From among the following, please indicate what your top three preferences were for the setting in which you wished to PRACTISE/WORK and then the setting in which you currently practise/work? (Please indicate your current practice/work setting ONLY if you are currently practising/working in law.)
Base:Preferred practice setting was investigated among all respondents. Actual practice setting was measured only among those practising or working in law in Ontario.

# Preferred/Actual Practice Setting (2010-2012)

| | Total Sample | | | | |
|---|---|---|---|---|---|
| | Top 3 Preferences for Practice Setting | | | | Actual Practice Setting |
| | Top | 2nd | 3rd | NET | |
| n= | **972** | **972** | **972** | **972** | **932** |
| | % | % | % | % | % |
| **Sole practice outside of Toronto** | 2 | 1 | 1 | 4 | 3 |
| **Small private law firm outside of Toronto (less than 5 lawyers)** | 4 | 4 | 6 | 13 | 7 |
| **Medium private law firm outside of Toronto (5 – 10 lawyers)** | 4 | 9 | 5 | 18 | 4 |
| **Large private law firm outside of Toronto (more than 10 lawyers)** | 13 | 4 | 3 | 20 | 11 |
| **Sole practice in Toronto** | 1 | 1 | 1 | 3 | 4 |
| **Small private law firm in Toronto (less than 5 lawyers)** | 4 | 4 | 9 | 17 | 7 |
| **Medium private law firm in Toronto (5 – 50 lawyers)** | 15 | 16 | 9 | 40 | 14 |
| **Large private law firm in Toronto (more than 50 lawyers)** | 21 | 9 | 6 | 36 | 16 |
| **In-house counsel for a private corporation** | 7 | 10 | 8 | 25 | 7 |
| **Government or a public agency** | 16 | 13 | 12 | 42 | 14 |
| **Education** | 1 | 1 | 2 | 4 | 1 |
| **Crown's office** | 3 | 5 | 4 | 13 | 1 |
| **Legal clinic** | 3 | 4 | 6 | 13 | 1 |
| **Non-governmental organization (NGO)** | 2 | 5 | 5 | 13 | 1 |
| **Some other setting in law** | 2 | 1 | 1 | 4 | 3 |
| **Some other setting outside of law** | - | - | - | - | 4 |
| **No preference** | 1 | 4 | 8 | 1 | - |
| **None/ No answer** | - | 10 | 13 | 23 | - |

Q.17 From among the following, please indicate what your top three preferences were for the setting in which you wished to PRACTISE/WORK and then the setting in which you currently practise/work? (Please indicate your current practice/work setting ONLY if you are currently practising/working in law.)
Base:Preferred practice setting was investigated among all respondents. Actual practice setting was measured only among those practising or working in law in Ontario.

# Preferred/Actual Practice Setting (2007)

| | Total Sample | | | | |
|---|---|---|---|---|---|
| | Top 3 Preferences for Practice Setting | | | | Actual Practice Setting |
| | Top | 2nd | 3rd | NET | |
| n= | 972 | 972 | 972 | 972 | 932 |
| | % | % | % | % | % |
| **Sole practice outside of Toronto** | 2 | 1 | 1 | 4 | 3 |
| **Small private law firm outside of Toronto (less than 5 lawyers)** | 4 | 4 | 6 | 13 | 7 |
| **Medium private law firm outside of Toronto (5 – 10 lawyers)** | 4 | 9 | 5 | 18 | 4 |
| **Large private law firm outside of Toronto (more than 10 lawyers)** | 13 | 4 | 3 | 20 | 11 |
| **Sole practice in Toronto** | 1 | 1 | 1 | 3 | 4 |
| **Small private law firm in Toronto (less than 5 lawyers)** | 4 | 4 | 9 | 17 | 7 |
| **Medium private law firm in Toronto (5 – 50 lawyers)** | 15 | 16 | 9 | 40 | 14 |
| **Large private law firm in Toronto (more than 50 lawyers)** | 21 | 9 | 6 | 36 | 16 |
| **In-house counsel for a private corporation** | 7 | 10 | 8 | 25 | 7 |
| **Government or a public agency** | 16 | 13 | 12 | 42 | 14 |
| **Education** | 1 | 1 | 2 | 4 | 1 |
| **Crown's office** | 3 | 5 | 4 | 13 | 1 |
| **Legal clinic** | 3 | 4 | 6 | 13 | 1 |
| **Non-governmental organization (NGO)** | 2 | 5 | 5 | 13 | 1 |
| **Some other setting in law** | 2 | 1 | 1 | 4 | 3 |
| **Some other setting outside of law** | - | - | - | - | 4 |
| **No preference** | 1 | 4 | 8 | 1 | - |
| **None/ No answer** | - | 10 | 13 | 23 | - |

Q.17 From among the following, please indicate what your top three preferences were for the setting in which you wished to PRACTISE/WORK and then the setting in which you currently practise/work? (Please indicate your current practice/work setting ONLY if you are currently practising/working in law.)
Base:Preferred practice setting was investigated among all respondents. Actual practice setting was measured only among those practising or working in law in Ontario.

# Key Factors Influencing Choice of Position (Unprompted)

- Those who are currently practising or working in law in Ontario were asked on an open-ended basis to list the key factors that had an influence on their decision to choose that position.
- While a wide variety of factors were cited, practice areas offered was cited by the single largest proportion of these respondents (41% NET). This is the same factor that was cited by the largest proportion when respondents were asked on an unprompted basis about the key factors that influenced their choice of an articling position.
- Cited next most frequently was that the respondent received a job offer (35% NET), and in particular the availability of the position/work (cited by 23% of respondents).
- Following next in frequency of mention are:
  - The type of firm/organization (15% NET);
  - Various aspects of professional development (15% NET);
  - The culture or environment (14% NET);
  - Good remuneration/salary/benefits (14%);
  - Previous employment with the firm or organization (11% NET).
- All other mentions are limited to less than 13% of respondents.
- The only notable differences by subgroup here are by gender:
  - Women are  more likely than men to cite the type of firm/organization (18% NET and 12% NET, respectively).
  - Men, in contrast, are more likely than women to cite remuneration (17% and 12%, respectively).

# Key Factors Influencing Choice of Position (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 878 | 541 | 1419 |
| **Practice Areas (NET)** | **42** | **41** | **42** |
| Areas of interest/practice areas offered by the firm | 25 | 21 | 24 |
| The type of work/firm | 4 | 3 | 4 |
| Challenging work/interesting work | 4 | 6 | 5 |
| Advancing social justice causes/working for public interest | 3 | 2 | 2 |
| Worked in particular areas during law school/academic interest | 2 | 2 | 2 |
| Experiences in area prior to law school | 2 | 3 | 2 |
| Like working with clients/providing client service | 2 | 4 | 2 |
| Meet career goals/satisfying work | 2 | 2 | 2 |
| Exposure to litigation opportunities | 2 | 3 | 3 |
| Practical/court/litigation experience | 1 | <1 | 1 |
| **Job Offer (NET)** | **31** | **35** | **32** |
| Availability of position/work | 18 | 23 | 20 |
| Was offered job/job offer | 9 | 11 | 9 |
| Financial pressure to accept any job offered | 3 | 1 | 2 |
| The economy/recession | 2 | 1 | 1 |
| Did not have a choice | 1 | 1 | 1 |

Q.20 What were the key factors that influenced your choice of position?
Base: Respondents who are practising/ working in law in Ontario
Note: The sum of proportions exceeds 100% because of multiple mentions

# Key Factors Influencing Choice of Position (Unprompted)

% Among Total Sample

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 878 | 541 | 1419 |
| **Culture/Environment (NET)** | **17** | **14** | **16** |
| Good/friendly/helpful colleagues | 9 | 6 | 8 |
| Good/nice working environment | 8 | 6 | 7 |
| Good fit with company culture/values | 4 | 3 | 3 |
| The working language | <1 | 1 | 1 |
| **Type of Firm/Organization (NET)** | **15** | **15** | **15** |
| Perceived prestige/reputation | 6 | 6 | 6 |
| Preferred size of firm | 4 | 3 | 4 |
| Job security/stability | 2 | 1 | 2 |
| Preferred particular type of agency – public/private/NGO/government | 2 | 4 | 3 |
| Freedom of own practice | 1 | 1 | 1 |
| **Previous Employment (NET)** | **14** | **11** | **13** |
| Articling experience/past experience | 9 | 6 | 8 |
| Summered at firm and was hired back/hire back policies | 5 | 5 | 5 |
| **Work-Life Balance (NET)** | **13** | **8** | **11** |
| Good work-life balance/lifestyle | 11 | 6 | 9 |
| Good hours/hours of work/flexibility | 3 | 3 | 3 |

Q.20 What were the key factors that influenced your choice of position?
Base: Respondents who are practising/ working in law
Note: The sum of proportions exceeds 100% because of multiple mentions

# Key Factors Influencing Choice of Position (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 878 | 541 | 1419 |
| **Professional Development (NET)** | **12** | **15** | **13** |
| Development opportunities/learning opportunities | 4 | 4 | 4 |
| Potential future opportunities | 3 | 5 | 4 |
| Mentorship program at firm/organization | 3 | 4 | 3 |
| Autonomy/carriage of own files | 2 | 2 | 2 |
| Good/experienced lawyers | 1 | 2 | 1 |
| **Location (NET)** | **9** | **12** | **10** |
| Preferred location | 7 | 9 | 8 |
| Preferred city/town | 2 | 3 | 2 |
| **Good remuneration/salary/benefits** | **9** | **14** | **11** |
| **Variety of Work (NET)** | **4** | **4** | **4** |
| Variety of work | 4 | 3 | 4 |
| Multiple practice areas | <1 | <1 | <1 |
| **Other** | **3** | **16** | **14** |
| **None** | **1** | **1** | **1** |
| **Don't know/Don't recall/No answer** | **3** | **1** | **2** |

Q.20 What were the key factors that influenced your choice of position?
Base: Respondents who are practising/ working in law
Note: The sum of proportions exceeds 100% because of multiple mentions

# Key Factors Influencing Choice of Position (Prompted)

- The factors that influenced respondents when they were choosing their current position were also investigated through two closed-ended questions. The first, which was designed to get a sense of the considerations bearing on the decision-making process, presented a list of factors and asked respondents to indicate whether any of them had an influence. The second, the objective of which was to identify the key drivers, asked respondents to choose the one factor that had the greatest influence.
- As would be expected, findings from the first question suggest that a wide array of factors bear on this decision. Cited by the greatest proportions of respondents, and largely consistent with the factors found on an unprompted basis, are:
  - The practice areas offered (cited by 52%);
  - Good remuneration (44%);
  - Supportive environment (44%);
  - Being asked back following articles (41%);
  - Prestige (36%);
  - Good benefits (35%);
  - The existence of work/life balance practices, policies or statements (34%).
- Once again, there are a number of differences by gender. Women are more likely than men to cite as key factors influencing their choice of position:
  - Work/life balance policies/statements/practices (cited as an influencing factor by 38% of women and 28% of men);
  - Maternity/parental leave policies (16% and 5%);
  - Working in the area of law during law school (26% and 15%).

# Key Factors Influencing Choice of Position (Prompted)

- There are also some interesting differences by membership in an equality-seeking community. Most dramatically, those who self-identify with an equality-seeking community (34%) are significantly less likely than those who do not (46%) to say that having articled at the firm or organization and being hired back was a key factor that influenced their choice of position. They are also less likely to identify a supportive work environment (38% and 48%, respectively) as influential factors.
- Members of an equality-seeking community are three times as likely to see as important that the firm or organization has a diverse workforce (21% and 7%, respectively).
- Those who were mature students in law school (26%) are significantly less likely than those who were not (36%) to report work-life balance policies, statements and practices as a key factor. They are also less likely to identify as a key factor good benefits (27% and 37%, respectively) and good remuneration (32% and 47%, respectively), and the environment at the firm being supportive (35% and 46%, respectively).
- Although the sample of NCA respondents is small and these findings should therefore be regarded with caution, NCA respondents are significantly less likely than non-NCA respondents to cite that the firm/organization offers internal professional development programs as a key factor influencing their choice of position (5% and 16%, respectively), in addition to the practice area offered by the firm/organization (40% and 54%, respectively), good remuneration (24% and 46%, respectively), good benefits (15% and 37%, respectively), the environment at the firm being supportive (27% and 46%, respectively), and the perceived prestige of the firm/organization (22% and 37%, respectively).

# Greatest Influence on Choice of Position

- When respondents are required to pick the one factor among those tested that had the greatest influence on their choice of position, two factors emerge as dominant:
  - Being asked back following articles (28%);
  - Practice areas offered (24%).
- There are no differences by gender, membership in an equality-seeking community, mature student status, and NCA students in the proportions identifying being asked back after articles and practice areas offered as the most influential factor.
- Of considerable interest here is that notwithstanding the significant increase in debt load since 2007, the details of which are reported in the next section, only a small minority of respondents (6%) cite good remuneration as the factor of greatest influence in their choice of position. Moreover, there is no significant difference between those who were carrying debt when they graduated from law school and those who were not in the proportions who cite good remuneration as the greatest influence on their choice of position.

# Factors Influencing Choice of Position/Greatest Influence

**% Among Total Sample**

| | Influence on Choice of Position | | | | Greatest Influence | | | |
|---|---|---|---|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 772 | 878 | 541 | 1419 | 772 | 878 | 541 | 1419 |
| I had articled at the firm/organization and was hired back | 43 | 48 | 41 | 45 | 24 | 34 | 28 | 31 |
| The practice areas offered by the firm/organization | 55 | 50 | 52 | 51 | 23 | 20 | 24 | 22 |
| The environment at the firm/organization is supportive | 44 | 43 | 44 | 43 | 9 | 9 | 8 | 8 |
| Firm/organization has work-life balance policies/statements/practices | 42 | 35 | 34 | 34 | 10 | 9 | 10 | 10 |
| Perceived prestige of firm/organization | 41 | 35 | 36 | 35 | 6 | 5 | 5 | 5 |
| Good remuneration | 50 | 44 | 44 | 44 | 3 | 4 | 6 | 5 |
| I worked in the area of law during law school | 18 | 20 | 21 | 21 | 4 | 3 | 4 | 4 |
| The firm/organization offers a mentorship program | 11 | 11 | 9 | 10 | 1 | 1 | 1 | 1 |
| Firm/organization has policies/statements/practices about maternity/parental leaves or family responsibilities | 13 | 9 | 11 | 10 | 1 | 1 | - | <1 |
| Family members who are lawyers | 2 | 2 | 3 | 2 | 1 | 1 | 1 | 1 |
| Good benefits | 39 | 32 | 35 | 33 | 1 | <1 | 1 | 1 |
| The firm/organization offers internal professional development programs | 22 | 18 | 15 | 17 | <1 | <1 | <1 | <1 |
| Firm/organization provides support for external professional development | 23 | 18 | 17 | 18 | <1 | <1 | <1 | <1 |
| The firm/organization has a diverse workforce | 14 | 12 | 13 | 12 | 1 | <1 | <1 | <1 |
| Other | 15 | 16 | 14 | 15 | 11 | 14 | 12 | 13 |

Q.21 Did any of the following factors influence your choice of position? (Choose all that apply)
Q.22 And which of these was the greatest influence in your choice of position?
Base: Respondents who are practising/working in law

# Time Required to Secure a Practice Position

- The final question related to selection of a practice position explores the length of time required to secure one.
- About three-quarters of respondents (74%) report that they were able to secure a practice position within six months of having begun to search for one actively, and fully 57% report that they were able to do so in less than three months.
- For slightly more than one-in-ten respondents (12%) the process took from six months to one year, and for a small minority (4%), it took longer than that.
- Significantly less likely to report that they were able to secure a position in less than three months are:
  - Members of an equality-seeking community (50%) as compared to those who are not a member of such a community (62%);
  - Those who identify as racialized/person of colour (49%) as compared to respondents overall (57%);
  - NCA respondents (45%) as compared to non-NCA respondents (58%), although this difference is directional.
- Conversely, members of an equality-seeking community (18%, compared to 8% among respondents who are not a member of such a community) and those who identify as racialized/person of colour (23%, compared to 8% those who do not identify) are significantly more likely to report that it took them 6 months to a year to secure a position.

# Time Required to Secure a Practice Position

% Among Total Sample

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 878 | 541 | 1419 |
| **Less than 3 months** | 60 | 57 | 59 |
| **3 to < 6 months** | 14 | 17 | 15 |
| **6 months to < 1 year** | 12 | 12 | 12 |
| **A year or more** | 3 | 4 | 3 |
| **I have been unable to find a practice position and am not currently working** | <1 | - | <1 |
| **I was unable to find a position practising law and am currently working outside of law** | <1 | <1 | <1 |
| **Other** | 11 | 10 | 11 |

Q.22A How much time elapsed from the point at which you actively began to search for a practice position to the time you actually secured a practice position?
Base:Respondents who are practising law in Ontario

# Key Factors Influencing Choice of Practice Areas (Unprompted)

- The research examined, on an open-ended or unprompted basis, the key factors that influenced choice of practice area. The findings shed light on what is important in selecting an area of law to practice.
- By a significant margin, and as might be expected given earlier findings, some aspect of the practice areas themselves (58% NET), and in particular interest in those areas (30%), is cited most often overall as influencing choice of current practice areas.
- Ranking behind interest in the practice area is that the respondent received a job offer (26% NET) or had previous employment experience (14% NET).
- A further series of factors are cited by about one-in-ten respondents in each case. These include that the areas currently practised allow for a good work/life balance (11% NET), foster professional development (11% NET), and provide good remuneration (11%).
- Women are more likely than men to say that practice area (62% and 52% NET, respectively) and professional development (13% and 7% NET, respectively) are key influencing factors. In contrast, men are more likely than women to cite good remuneration (14% and 8%, respectively) as a key influencing factor.
- Members of equality-seeking groups are more likely to cite a job offer (31% and 22% NET, respectively) as a key influencing factor.

# Key Factors Influencing Choice of Practice Areas (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 898 | 551 | 1449 |
| **Aspects of Practice Areas (NET)** | **60** | **58** | **59** |
| Areas of interest | 37 | 30 | 34 |
| Experiences in area prior to law school | 8 | 8 | 8 |
| Worked in particular areas during law school/academic interest | 6 | 4 | 6 |
| Advancing social justice causes/working for the public interest | 5 | 4 | 5 |
| Challenging work/interesting work | 5 | 10 | 7 |
| The type of work/firm | 3 | 3 | 3 |
| Exposure to litigation opportunities | 3 | 4 | 3 |
| Practical/court/litigation experience | 2 | <1 | 1 |
| Like working with clients/providing client service | 2 | 5 | 3 |
| Meet career goals/satisfying work | 1 | 3 | 2 |
| **Job Offer (NET)** | **23** | **26** | **24** |
| Availability of position/work | 16 | 20 | 17 |
| Was offered job/job offer | 5 | 5 | 5 |
| Financial pressure to accept any job offered | 2 | 1 | 2 |
| The economy/recession | 1 | 1 | 1 |
| Did not have a choice | <1 | 1 | 1 |

Q.18 What were the key factors that influenced your current choice of practice areas?
Base: Respondents who are practising/ working in law

# Key Factors Influencing Choice of Practice Areas (Unprompted)

**% Among Total Sample**

| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|
| n= | 898 | 551 | 1449 |
| **Previous Employment (NET)** | **18** | **14** | **17** |
| Articling experience/summer experience/past experience | 15 | 10 | 13 |
| Hired back | 3 | 4 | 3 |
| **Work-Life Balance (NET)** | **12** | **11** | **11** |
| Good work-life balance/lifestyle | 10 | 9 | 10 |
| Good hours/hours of work/flexibility | 2 | 3 | 2 |
| **Professional Development (NET)** | **11** | **11** | **11** |
| Development opportunities/learning opportunities | 4 | 4 | 4 |
| Potential future opportunities | 3 | 4 | 4 |
| Mentorship program at firm/organization | 2 | 2 | 2 |
| Good/experienced lawyers | 1 | 1 | 1 |
| Autonomy/carriage of own files | 1 | 1 | 1 |
| **Culture/Environment (NET)** | **10** | **7** | **9** |
| Good/friendly/helpful colleagues | 5 | 3 | 4 |
| Good/nice working environment | 3 | 3 | 3 |
| Good fit with company culture/values | 2 | 1 | 2 |
| The working language | <1 | <1 | <1 |
| **Good remuneration/salary/benefits** | **8** | **11** | **<9** |

Q.18 What were the key factors that influenced your current choice of practice areas?
Base: Respondents who are practising/ working in law

# Key Factors Influencing Choice of Practice Areas (Unprompted)

| | % Among Total Sample | | |
|---|---|---|---|
| | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 898 | 551 | 1449 |
| **Type of Firm/Organization (NET)** | **8** | **9** | **9** |
| Preferred particular type of agency – public/private/NGO/government | 2 | 3 | 3 |
| Preferred size of firm | 2 | 1 | 2 |
| Perceived prestige/reputation | 2 | 2 | 2 |
| Job security/stability | 1 | 1 | 1 |
| Freedom of own practice | 1 | 2 | 1 |
| **Location (NET)** | **6** | **7** | **7** |
| Preferred location | 6 | 4 | 5 |
| Preferred city/town | 1 | 3 | 2 |
| **Variety of Work (NET)** | **4** | **3** | **4** |
| Variety of work | 4 | 3 | 4 |
| Multiple practice areas | <1 | <1 | <1 |
| **Other** | **1** | **11** | **10** |
| **None** | **<1** | **<1** | **<1** |
| **Don't know/Don't recall/No answer** | **<1** | **<1** | **<1** |

Q.18 What were the key factors that influenced your current choice of practice areas?
Base: Respondents who are practising/ working in law

# Preferred Areas of Practice

- Having examined the key considerations in choosing a practice area, the research then explored the practice areas themselves. As with other areas of investigation in this research, respondents were asked to choose the top three areas in which they wanted to practise and then the top three areas in which they actually practise.
- Examining top three preferred areas of law combined, four areas are indicated by at least one-in-five respondents. Further these preferences are consistent with the areas of practice exposure sought during articling:
  - Corporate/commercial (33%);
  - Civil litigation – defendant (24%);
  - Civil litigation – plaintiff (23%);
  - Human rights/social justice (20%).
- Men are significantly more likely to include among their top three preferences:
  - Corporate commercial law (43% compared to 24% among women); and
  - Civil litigation – plaintiff (28% and 18%, respectively).
- Women are significantly more likely to indicate a preference for:
  - Human rights/social justice law (25% compared to 14% among men).

# Preferred Areas of Practice

- Overall, members of an equality-seeking community do not differ significantly from those who are not members of such a community in their preferences. There are just two practice areas in which members of an equality-seeking community are more likely than those who are not to express interest:
  - Human rights/social justice law (25% and 16%, respectively);
  - Intellectual property law (12% and 7%).
- Those who identify as racialized/person of colour are more likely to include family/matrimonial law (18% as compared to 11% among respondents overall) and intellectual property law (16% and 9%) among their top three preferred practice areas.
- Although the sample sizes are small and the findings should therefore be regarded with caution, NCA respondents are significantly more likely than non-NCA respondents to include among their top three preferred areas corporate commercial law (51% and 31%, respectively), real estate law (29% and 12%, respectively), and intellectual property law (17% and 8%).

# Actual Areas of Practice

- The first tier for top three areas of law (combined) actually practised are consistent with combined top three preferences:
  - Corporate/commercial (30%);
  - Civil litigation – plaintiff (26%);
  - Civil litigation – defendant (26%).
- For most areas of practice, the proportion of respondents actually practising in the area is close to the proportion of respondents who indicated a desire to practise in that area.
- Findings from the actual practice measure do differ from preferred practice area in one area of practice.
  - Human rights/social justice law, which is the fourth most preferred practice area at 20% combined, is sharply lower at 9% combined for top three areas of law actually practised.
- The gap between practice area preferences and actual practice areas found for human rights/social justice law has implications for women given that their interest in that practice area is higher.

# Preferred/Actual Areas of Practice (2013-2014)

| | Total Sample | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Top 3 Areas in Which Wanted to Practise | | | | Top 3 Areas in Which Actually Practise | | | |
| | Top | 2nd | 3rd | NET | Top | 2nd | 3rd | NET |
| n= | 570 | 570 | 570 | 570 | 551 | 551 | 551 | **551** |
| | % | % | % | **%** | % | % | % | **%** |
| **Aboriginal Law** | 3 | 1 | 2 | **5** | 2 | 1 | 1 | **3** |
| **ADR/Mediation Services** | 1 | 3 | 3 | **7** | - | 2 | 2 | **4** |
| **Administrative Law** | 4 | 6 | 6 | **15** | 3 | 6 | 7 | **17** |
| **Bankruptcy & Insolvency Law** | <1 | 1 | 1 | **3** | 1 | 1 | 1 | **2** |
| **Civil Litigation - Plaintiff** | 8 | 9 | 6 | **23** | 9 | 10 | 7 | **26** |
| **Civil Litigation - Defendant** | 7 | 9 | 8 | **24** | 11 | 10 | 5 | **26** |
| **Construction Law** | 1 | 1 | 1 | **2** | 1 | 1 | 1 | **3** |
| **Corporate/Commercial Law** | 15 | 12 | 6 | **33** | 13 | 9 | 8 | **30** |
| **Criminal/Quasi Criminal Law** | 9 | 2 | 4 | **16** | 9 | 2 | 3 | **14** |
| **Employment/Labour Law** | 7 | 7 | 5 | **19** | 7 | 3 | 3 | **13** |
| **Environmental Law** | 2 | 1 | 1 | **5** | 1 | 1 | 1 | **3** |
| **Family/Matrimonial Law** | 4 | 3 | 4 | **11** | 8 | 4 | 2 | **14** |
| **Human Rights/Social Justice** | 4 | 8 | 8 | **20** | 1 | 5 | 3 | **9** |
| **Immigration Law** | 3 | 2 | 2 | **7** | 3 | 1 | 1 | **5** |
| **Intellectual Property Law** | 4 | 2 | 2 | **9** | 3 | 1 | 3 | **7** |
| **International Law** | 6 | 4 | 3 | **13** | 1 | 1 | 1 | **3** |
| **Language Rights Law** | <1 | <1 | 1 | **1** | 1 | <1 | 1 | **1** |
| **Poverty Law** | 1 | 1 | 2 | **4** | 1 | 1 | 2 | **2** |
| **Real Estate Law** | 3 | 5 | 5 | **13** | 6 | 5 | 1 | **13** |
| **Securities Law** | 2 | 5 | 4 | **11** | 3 | 4 | 1 | **8** |
| **Tax Law** | 3 | 1 | 4 | **8** | 2 | 1 | 1 | **5** |
| **Wills, Estates, Trusts Law** | 3 | 5 | 4 | **12** | 3 | 6 | 5 | **14** |
| **Workplace Safety & Insurance Law** | 1 | <1 | 1 | **2** | 1 | 1 | 2 | **4** |
| **Other** | 9 | 4 | 2 | **14** | 8 | 6 | 9 | **20** |
| **No Other (Q.20 = Not practicing)** | - | 4 | 9 | **9** | 2 | 1 | 1 | **2** |
| **None/ No answer** | - | 3 | 6 | **-** | - | 17 | 29 | **-** |

Q.19 Please indicate the top three areas of law in which you wanted to practise/work.
Base: All respondents
Q.20 And which are the top three areas of law in which you are actually practising/working? (Please answer this question ONLY if you are currently practising/working)
Base: Respondents who are practising/ working in law

# Preferred/Actual Areas of Practice (2010-2012)

| | Total Sample | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Top 3 Areas in Which Wanted to Practise | | | | Top 3 Areas in Which Actually Practise | | | |
| | Top | 2nd | 3rd | NET | Top | 2nd | 3rd | NET |
| n= | 938 | 938 | 938 | **938** | 898 | 898 | 898 | **898** |
| | % | % | % | **%** | % | % | % | **%** |
| **Aboriginal Law** | 1 | 1 | 2 | **5** | 1 | 1 | 1 | **4** |
| **ADR/Mediation Services** | 1 | 2 | 4 | **7** | < 1 | 1 | 2 | **3** |
| **Administrative Law** | 3 | 5 | 5 | **13** | 2 | 7 | 6 | **16** |
| **Bankruptcy & Insolvency Law** | 1 | 1 | 2 | **4** | 1 | 1 | 1 | **3** |
| **Civil Litigation - Plaintiff** | 9 | 9 | 6 | **25** | 11 | 10 | 6 | **28** |
| **Civil Litigation - Defendant** | 7 | 9 | 6 | **23** | 11 | 9 | 6 | **27** |
| **Construction Law** | 1 | 1 | 1 | **3** | 1 | 1 | 1 | **3** |
| **Corporate/Commercial Law** | 13 | 10 | 7 | **30** | 13 | 9 | 7 | **29** |
| **Criminal/Quasi Criminal Law** | 8 | 3 | 3 | **14** | 7 | 2 | 2 | **11** |
| **Employment/Labour Law** | 7 | 5 | 5 | **17** | 6 | 3 | 4 | **13** |
| **Environmental Law** | 2 | 2 | 3 | **7** | 1 | 1 | 1 | **3** |
| **Family/Matrimonial Law** | 6 | 3 | 3 | **11** | 7 | 2 | 2 | **11** |
| **Human Rights/Social Justice** | 6 | 8 | 6 | **20** | 1 | 5 | 3 | **9** |
| **Immigration Law** | 2 | 3 | 3 | **9** | 2 | 1 | 1 | **5** |
| **Intellectual Property Law** | 6 | 2 | 3 | **11** | 4 | 1 | 1 | **7** |
| **International Law** | 5 | 3 | 3 | **11** | 1 | 2 | 1 | **4** |
| **Language Rights Law** | - | < 1 | < 1 | **< 1** | - | - | - | **-** |
| **Poverty Law** | 1 | 2 | 2 | **6** | 1 | < 1 | 1 | **2** |
| **Real Estate Law** | 3 | 4 | 4 | **11** | 6 | 4 | 3 | **13** |
| **Securities Law** | 3 | 5 | 2 | **10** | 4 | 4 | 1 | **9** |
| **Tax Law** | 4 | 2 | 2 | **9** | 4 | 1 | 1 | **6** |
| **Wills, Estates, Trusts Law** | 2 | 4 | 5 | **11** | 2 | 5 | 5 | **12** |
| **Workplace Safety & Insurance Law** | < 1 | < 1 | 1 | **1** | 1 | 2 | 1 | **4** |
| **Other** | 9 | 4 | 3 | **16** | 9 | 5 | 7 | **19** |
| **No Other (Q.20 = Not practicing)** | | 5 | 13 | **13** | 2 | < 1 | 1 | **2** |
| **None/ No answer** | - | 2 | 6 | **8** | - | 20 | 32 | **-** |

Q.19 Please indicate the top three areas of law in which you wanted to practise/work.
Base: All respondents
Q.20 And which are the top three areas of law in which you are actually practising/working? (Please answer this question ONLY if you are currently practising/working)
Base: Respondents who are practising/ working in law

# Preferred/Actual Areas of Practice (2007)

| | Total Sample | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Top 3 Areas in Which Wanted to Practise | | | | Top 3 Areas in Which Actually Practise | | | |
| | Top | 2nd | 3rd | NET | Top | 2nd | 3rd | NET |
| n= | 1303 | 1303 | 1303 | 1303 | 772 | 772 | 772 | 772 |
| | % | % | % | % | % | % | % | % |
| Aboriginal Law | 1 | 2 | 2 | 5 | 2 | 1 | 1 | 3 |
| ADR/Mediation Services | 1 | 2 | 5 | 8 | <1 | 1 | 3 | 4 |
| Administrative Law | 2 | 7 | 6 | 15 | 4 | 7 | 9 | 20 |
| Bankruptcy & Insolvency Law | 1 | 1 | 3 | 5 | 1 | 1 | 3 | 4 |
| Civil Litigation - Plaintiff | 10 | 10 | 7 | 26 | 10 | 11 | 6 | 28 |
| Civil Litigation - Defendant | 8 | 9 | 6 | 22 | 12 | 10 | 5 | 26 |
| Construction Law | <1 | 1 | 1 | 2 | <1 | 1 | 1 | 2 |
| Corporate/Commercial Law | 13 | 12 | 8 | 33 | 11 | 12 | 9 | 32 |
| Criminal/Quasi Criminal Law | 11 | 3 | 4 | 19 | 10 | 4 | 2 | 16 |
| Employment/Labour Law | 7 | 5 | 4 | 16 | 6 | 3 | 4 | 13 |
| Environmental Law | 2 | 2 | 2 | 6 | 1 | 1 | <1 | 3 |
| Family/Matrimonial Law | 5 | 5 | 4 | 13 | 8 | 2 | 2 | 12 |
| Human Rights/Social Justice | 6 | 9 | 8 | 22 | 2 | 5 | 4 | 10 |
| Immigration Law | 1 | 3 | 2 | 7 | 1 | 2 | 1 | 4 |
| Intellectual Property Law | 6 | 3 | 2 | 11 | 3 | 2 | 2 | 7 |
| International Law | 5 | 4 | 4 | 13 | 1 | 2 | 2 | 5 |
| Language Rights Law | <1 | <1 | <1 | 1 | <1 | - | <1 | <1 |
| Poverty Law | 1 | 2 | 3 | 6 | 1 | 1 | 1 | 2 |
| Real Estate Law | 3 | 4 | 5 | 11 | 6 | 4 | 3 | 13 |
| Securities Law | 4 | 5 | 5 | 14 | 4 | 4 | 2 | 10 |
| Tax Law | 4 | 2 | 3 | 10 | 3 | 1 | 1 | 6 |
| Wills, Estates, Trusts Law | 1 | 3 | 5 | 9 | 2 | 4 | 4 | 10 |
| Workplace Safety & Insurance Law | 1 | 1 | 1 | 2 | <1 | 1 | 2 | 4 |
| Other | 7 | 3 | 3 | 12 | 12 | 4 | 5 | 21 |
| None/ No answer | <1 | 4 | 7 | - | <1 | 17 | 28 | - |

Q.19 Please indicate the top three areas of law in which you wanted to practise/work.
Base: All respondents
Q.20 And which are the top three areas of law in which you are actually practising/working? (Please answer this question ONLY if you are currently practising/working)
Base: Respondents who are practising/ working in law

# Financial Considerations

Click to add research footnote

# Sources Used to Pay for Law School Education

- Loans from government (50%) – OSAP (40%) and "other government loans" (10%) – or a bank (53%) are reported most frequently as the major sources used to pay for respondents' law school education.
- Loans from the government or a bank are followed by support from family members' income or savings (reported by 26% as a major source), income from respondents' own employment (25%) and respondents' own savings (22%).
- Law school bursaries or scholarships are cited by 12% of respondents as a major source of support.
- There are a number of significant subgroup differences.
- Women are directionally more likely to report using income from their own employment (28% and 22%).
- Members of an equality-seeking community are significantly less likely than others to use OSAP (36% and 43%, respectively), their own savings (18% and 25%), and bank loans (48% and 57%).
- Those who were mature students at the time they attended law school are more likely than those who were not to report as a major source bank loans (63% and 50%). Those who were mature students are less likely, however, to report that family members' income or savings were a major source (16% and 29%).

# Sources Used to Pay for Law School Education

- NCA respondents are significantly less likely than non-NCA respondents to report as major sources:
  - A bank loan (38% and 55%, respectively);
  - An OSAP loan (13% and 43%); and,
- NCA respondents are, however, significantly more likely than non-NCA respondents to report that family members' income and savings were a major source (43% and 25%).
- Finally, respondents who were carrying debt when they entered law school are significantly more likely than are respondents who were debt-free at the beginning of law school to report as a major source:
  - A bank loan (69% and 43%);
  - An OSAP (51% and 33%);
  - Credit cards (17% and 5%).
- Respondents with pre-law school debt are less likely than those without pre-law school debt to report that their own savings (16% and 26%) or family members' income and savings (16% and 33%) were major sources.

# Sources Used to Pay for Law School Education

**% Among Total Sample**

| | Major Source | | | | Moderate Source | | | | NET | | | | Not Used | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 1303 | 972 | 585 | 1557 | 1303 | 972 | 585 | 1557 | 1303 | 972 | 585 | 1557 | 1303 | 972 | 585 | 1557 |
| **Your own savings** | 27 | 24 | 22 | 23 | 47 | 45 | 48 | 46 | 73 | 69 | 70 | 69 | 26 | 31 | 30 | 31 |
| **Income from your own employment** | 32 | 25 | 25 | 25 | 50 | 52 | 51 | 52 | 82 | 77 | 76 | 77 | 17 | 23 | 24 | 23 |
| **Spouse or partner's income/savings** | 9 | 7 | 4 | 6 | 11 | 10 | 8 | 9 | 19 | 17 | 12 | 15 | 80 | 83 | 88 | 85 |
| **Family members' income/savings** | 29 | 30 | 26 | 29 | 22 | 21 | 24 | 22 | 51 | 51 | 50 | 51 | 48 | 49 | 50 | 49 |
| **OSAP loan** | 35 | 34 | 40 | 36 | 17 | 17 | 16 | 16 | 51 | 50 | 56 | 52 | 48 | 50 | 44 | 48 |
| **Other government loan(s)** | 13 | 13 | 10 | 12 | 6 | 5 | 5 | 5 | 19 | 17 | 15 | 17 | 80 | 83 | 85 | 83 |
| **Bank loan(s)** | 45 | 42 | 53 | 46 | 14 | 11 | 10 | 11 | 58 | 53 | 63 | 57 | 41 | 47 | 37 | 43 |
| **Credit card(s)** | 9 | 8 | 10 | 9 | 31 | 23 | 22 | 23 | 40 | 31 | 32 | 31 | 59 | 69 | 68 | 69 |
| **Private loan from family/friends** | 10 | 9 | 10 | 9 | 14 | 12 | 10 | 12 | 24 | 21 | 21 | 21 | 75 | 79 | 79 | 79 |
| **Any other type(s) of loans** | 1 | 1 | 1 | 1 | 3 | 2 | 2 | 2 | 4 | 3 | 3 | 3 | 95 | 97 | 97 | 97 |
| **Law school bursaries or scholarships** | 16 | 14 | 12 | 14 | 43 | 40 | 44 | 42 | 59 | 55 | 57 | 55 | 40 | 45 | 43 | 45 |
| **Non-law school scholarship(s)/bursary** | 3 | 3 | 2 | 2 | 11 | 9 | 6 | 8 | 15 | 12 | 8 | 10 | 84 | 88 | 92 | 90 |
| **Band funding for First Nations students** | 1 | - | <1 | <1 | <1 | < 1 | 1 | 1 | 1 | < 1 | 1 | 1 | 98 | 100 | 99 | 99 |
| **Government scholarships and/or bursaries program for Aboriginal students** | <1 | < 1 | <1 | <1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 98 | 99 | 99 | 99 |
| **Corporate or private scholarship program for Aboriginal students** | <1 | - | <1 | <1 | <1 | < 1 | 1 | 1 | <1 | < 1 | <1 | 1 | 98 | 100 | 99 | 99 |
| **Other sources** | 2 | 2 | 3 | 2 | 1 | 1 | 1 | 1 | 3 | 3 | 4 | 3 | 51 | 35 | 4 | 24 |
| **None** | 3 | 2 | 1 | 2 | 10 | 11 | 9 | 10 | <1 | < 1 | <1 | <1 | - | - | - | - |

Q.30 Which of the following sources did you use to pay for yoru law school education

# Loans and Bursaries

- As part of the examination of financial considerations related to law school attendance, respondents were asked whether they made application for any loans or bursaries and were refused. Over one-third of respondents (38%) were refused a loan or bursary.
- More likely to have had their application refused are:
  - Those in debt at the time they began law school as compared to those who entered law school free of debt (47% and 32%);
  - Those who incurred debt during law school as compared to those who did not (45% and 11%);
  - Non-NCA respondents compared to NCA respondents (41% and 16%).
- Reasons cited most frequently by those who were refused are that they did not meet the requirements (22%) or that they did not demonstrate sufficient financial need (18%).
- Interestingly, close to one-third (30%) of the respondents who report having been turned down either don't know the reason for the refusal (9%) or say that no reason was provided (21%).

# Loans and Bursaries

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| **Loans or bursaries applied for but were refused?** | n =1303 | n =972 | n=585 | n=1557 |
| **Yes** | 35 | 35 | 38 | 36 |
| **No** | 65 | 65 | 62 | 64 |
| **Reason for refusal** | n =450 | n = 338 | n=223 | n=561 |
| **Did not meet requirements/ criteria/ did not qualify** | 19 | 22 | 22 | 22 |
| **Did not demonstrate sufficient financial need** | 12 | 16 | 18 | 17 |
| **Family/ household income too high** | 11 | 8 | 11 | 9 |
| **Previous year/ prior employment income too high/ made too much money** | 10 | 9 | 2 | 6 |
| **Deemed to have financial support from elsewhere** | 6 | 7 | 2 | 5 |
| **Too many assets/ owned-home/ car/ RRSPs** | 6 | 4 | 5 | 4 |
| **Poor academic standing/ record** | 5 | 2 | 3 | 3 |
| **Already had too much debt** | 4 | 4 | 1 | 3 |
| **No co-signer** | 3 | 1 | 3 | 2 |
| **Not enough funding** | 3 | 3 | 4 | 3 |
| **Newcomer/ immigrant/ residency issues** | 2 | 3 | - | 2 |
| **All other mentions (equal to or less than 1%)** | 4 | 1 | 4 | 4 |
| **None/ No answer/ Don't know** | 28 | 29 | 30 | 29 |

Q.25 Are there any loans or bursaries that you applied for but were refused?
Base: All respondents
Q.26 If you were refused a loan or bursary and reasons for the refusal were provided please outline those reasons.
Base: Among those who applied for loans and bursaries and were refused

# Loans and Bursaries

- Student debt was examined across a number of dimensions. The first of these was the extent of indebtedness at the beginning of law school.
- Just over six-in-ten students (62%) began law school with no debt. However, mature students entered with more debt (53% and 64%), as did racialized students (51% and 62%).
- Among the 38% of respondents who report that they were in debt at the beginning of law school, the average amount of debt reported was $36,014 ($38,080 between 2010-2012). Breaking this down:
  - About one-in-five (22%) respondents who entered law school in debt had outstanding obligations to OSAP. The average amount of OSAP debt was $20,320. OSAP loans, at 33% of total reported debt represent the single largest share of debt among those students who entered law school in debt. Bank loans come in second at 31%.
  - About one-in-six respondents (16%) entered law school with outstanding bank loans. The average amount of bank debt was slightly under $26,913. Bank loans, at 31% of total reported debt, are virtually tied with OSAP loans for largest share of debt (33%).
  - Credit card debt is reported by 10% of respondents, with the average amount of indebtedness among these respondents being just over $9,379. Credit card debt represents 7% of the total debt reported.
  - Government loans other than OSAP are reported by 5% of respondents, and the average amount was just over $22,446. These loans represent 8% of the total debt reported.
  - Private loans from family or friends are reported by 5% of respondents, with the average amount of indebtedness being just under $31,464. Private loans from family or friends represent 11% (6% between 2010-2012) of the total debt reported.
  - While "other types of loans" were held by just 2% of students who were in debt when they entered law school, they represent the third largest share at 11% (tied with private loans from family or friends) of the total debt reported. This significant share of total student indebtedness is the result of the average amount of this debt reported being $99,556, the highest average for any type of debt.

# Debt at the Beginning of Law School

| | % Among Total Sample | | | |
|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 1303 | 972 | 585 | 1557 |
| **I had no debt when I began law school** | 62 | 64 | 62 | 63 |
| | | | | |
| **Mean Amount of Debt *** | ($) | ($) | ($) | ($) |
| **Mean Total Debt** | 26,482 | 38,080 | 36,014 | 37,268 |
| **OSAP loan** | 20,008 | 23,058 | 20,320 | 21,939 |
| **Other government loans** | 17,558 | 19,262 | 22,446 | 20,298 |
| **Bank loans** | 16,073 | 32,749 | 26,913 | 30,363 |
| **Credit cards** | 5,106 | 7,066 | 9,379 | 7,864 |
| **Private loan from family/friends** | 14,385 | 17,751 | 31,464 | 22,803 |
| **Any other type of loans** | 56,242 | 96,611 | 99,556 | 97,593 |

Q.23 What was the extent of your debt, if any, when you began law school? (Include any personal debt, such as loans, lines of credit, credit card, etc, and estimate the amount)
Base: All respondents
* Mean (debtor) = Total debt/debt owners

# Debt Incurred During Law School

- Although 62% of respondents entered law school debt free, just 20% of respondents report that they incurred no debt during law school to allow them to complete their law school education. Thus, eight-in-ten respondents (80%) incurred at least some debt in order to complete their law school studies.
  - There are no differences by subgroup among those who did not incur any debt during law school.
- Among those who incurred debt during law school, the average amount reported was $63,641.
- The total amount of debt reported by women on average ($59,184) is slightly lower than the amount of debt reported by men on average ($69,331).
- The total amount of debt reported by members of an equality-seeking community on average ($62,119) is about the same as higher than the total amount of debt reported by those who are not members of an equality-seeking community on average ($64,782).
- Nearly six-in-ten (57%) of students who incurred debt during law school report having taken out a bank loan, with average bank indebtedness being $49,125. At 55%, bank loans represent the second largest share of total debt incurred during law school.
  - Men (59%) are no more likely than women (55%) to report having taken out a bank loan to support their law school studies. Among those who reported a bank loan, the average total indebtedness among men ($52,877) is higher than the average among women ($45,797). Although there is an overall decline in the amount of debt, men now find themselves in the position of holding more bank loan debt than women.
  - Members of an equality-seeking community (53%) are somewhat less likely than non-members (60%) to report a bank loan. However, among those in each group who did take out a bank loan, the average total indebtedness among members of equality-seeking communities ($47,215) is much higher than the total among those who do not report membership in an equality-seeking community ($50,470).

# Debt Incurred During Law School

- Over one-half (53%) of students who incurred debt during law school report having received money from OSAP. Although this proportion is not significantly different than the proportion of respondents who report bank debt (57%), at 24% OSAP loans represent a smaller share of total debt incurred. Average reported indebtedness to OSAP among those who received a loan from that source is $22,822.
  - Although women (51%) were significantly more likely than men (43%) to report having incurred OSAP debt during law school between 2010-2012, this difference no longer exists. On average, among those who incurred it, total OSAP debt among women was $22,993 while among men was $22,606.
  - Consistent with previous waves of research, there is no significant difference by membership in an equality-seeking community in the incidence of having incurred OSAP debt. Incidence among those who identify with such a community was 51%. Compared to 54% among those who do not. On average, among those who incurred it, total reported OSAP debt is similar among members of an equality-seeking community ($23,321) and those who are not ($22,443).
- At 13%, the proportion of students who had recourse to "other government loans" is substantially lower than the proportions who had recourse to bank loans and OSAP. "Other government loans" represent a 7% share of total indebtedness incurred during law school. The average amount of indebtedness for "other government loans" is $29,343.
  - As they were in previous waves, men (11%) and women (15%) are equally likely to have incurred this type of debt. On average, among those who incurred it, total reported debt for "other government loans" is slightly higher among women ($30,398) than it is among men ($27,571).
  - Also consistent with findings with previous waves, there is no difference by membership in an equality-seeking community in the proportions who report having had recourse to "other government loans". On average, among those who report this type of debt, total reported debt for members of an equality-seeking community ($28,103) is lower than total debt among those who do not identify with such a community ($30,487).

# Debt Incurred During Law School

- Private loans from family or friends are reported by 17% of respondents who incurred debt, with average indebtedness of $30,423. Private loans represent a 10% share of total indebtedness incurred during law school.
  - Men (18%) and women (16%) do not differ on this type of debt. On average, among those who received a loan from family or friends, total debt among men ($31,755) is slightly higher than it is among women ($29,171).
  - Members of an equality-seeking community (16%) are as likely as those who are not members of an equality-seeking community (17%) to report a private loan of this nature. There is no difference in total private loans indebtedness among members of an equality-seeking community ($30,537) and among those who are not members of an equality-seeking community ($30,339).
- Just more than one-in-ten respondents (15%) report incurring credit card debt, with average debt of $7,532. Credit card debt represents only a 2% share of total indebtedness reported.
  - There is no difference by gender in the incidence of incurring credit card debt, with women (16%) and men (13%) being equally likely to have done so. However, total average credit card debt among those who incurred it is somewhat higher among men ($8,046) than it is among women ($7,187).
  - Members of an equality-seeking community (15%) are as likely as those who are not (15%) to report credit card debt. However, among those who report it, total credit card indebtedness among members of an equality-seeking community ($5,905) is smaller than the total reported by those who are not members of such a community ($8,854).
- Once again, the proportion of respondents reporting "any other type of loans" is low (3%), with the average debt amount being $33,528. "Any other type of loans" represents the remaining 2% share of total indebtedness.
  - Women (4%) and men (2%) are equally likely to report "any other types of loans". However, on average, among those who report this type of debt, women ($20,292) report a substantially lower total debt than do men ($60,000).
  - There is no difference statistically between members of an equality-seeking community (4%) and those who are not (2%) in reporting this type of debt. On average, among those who do report it, total debt among those who are not members of such a community ($37,450) is higher than the total debt among those who are ($28,625).

# Debt at the Beginning of Law School

| | % Among Total Sample | | | |
|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 1303 | 972 | 585 | 1557 |
| **I incurred no debt during law school** | 22 | 23 | 20 | 22 |
| | | | | |
| **Amount of Debt** | ($) | ($) | ($) | ($) |
| **Mean* Total Debt** | 45,246 | 54,147 | 63,641 | 57,806 |
| **OSAP loan** | 18,927 | 20,413 | 22,822 | 21,366 |
| **Other government loans** | 23,510 | 30,123 | 29,343 | 29,848 |
| **Bank loans** | 31,828 | 42,191 | 49,125 | 45,093 |
| **Credit cards** | 7,581 | 9,283 | 7,532 | 8,681 |
| **Private loan from family/ friends** | 18,280 | 24,017 | 30,423 | 26,327 |
| **Any other type of loans** | 20,542 | 44,908 | 33,528 | 40,891 |

Q.24 What was the extent of the debt, if any, that you incurred during law school to allow you to complete your law school education? (Include any personal debt, such as loans, lines of credit, credit card etc. and estimate the amount)
Base: All respondents
* Mean (debtor) = Total debt/ debt owners

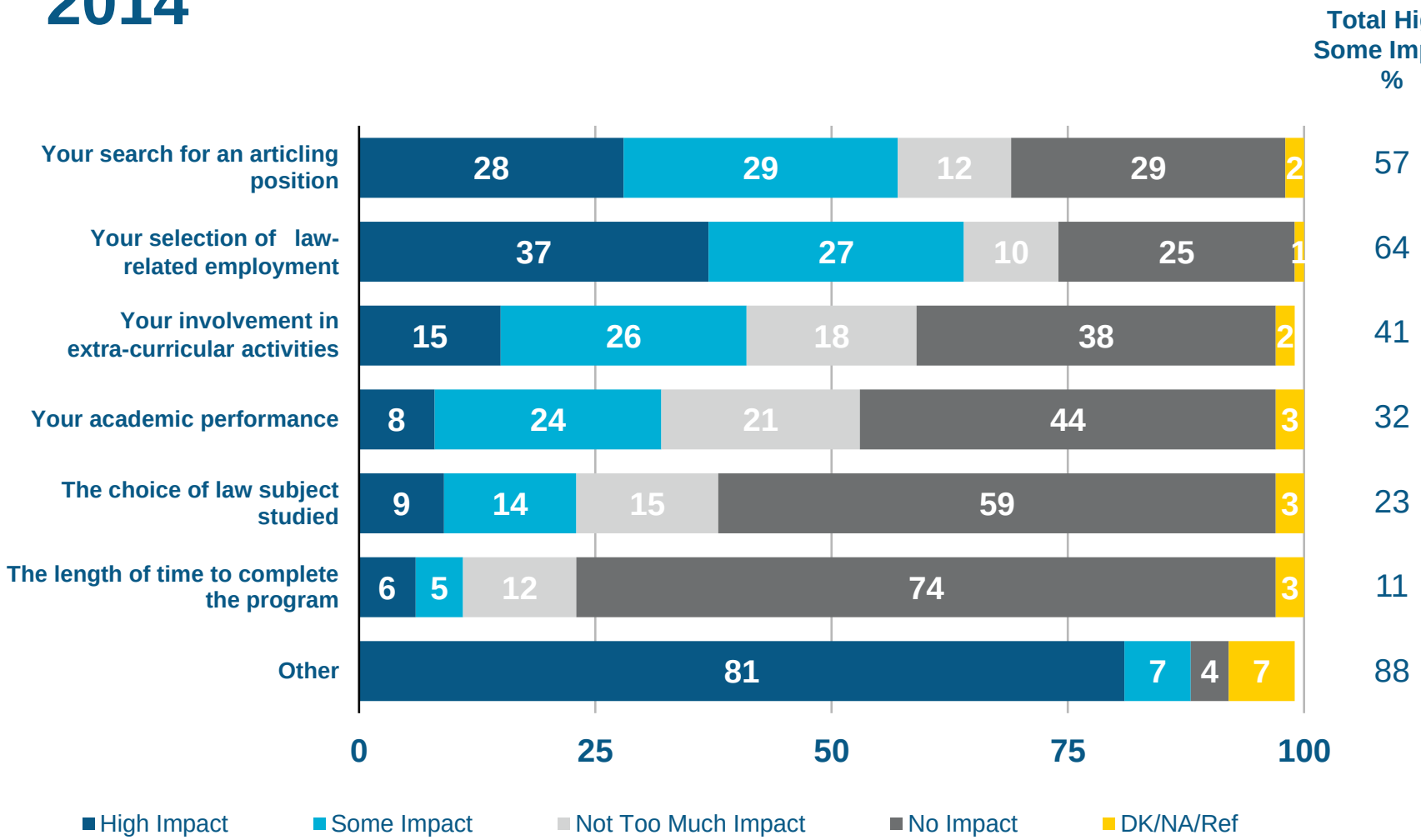
# Impact of Debt

- In order to investigate the impact that debt may have had on those who were carrying it, both those who entered law school in debt and those who incurred debt during law school were presented with several aspects of the law school experience, the search for an articling position and the selection of post-call employment and were asked to indicate what effect that debt had on each of them.
- The greatest reported impact was on employment.
- Close to two-thirds of respondents (64%) say that the debt they were carrying had "high" (37%) or "some" (27%) impact on their search for law-related employment.
    - There are no significant differences by gender or membership in an equality-seeking community here. However, those who were mature students when they attended law school (71%) are significantly more likely than those who were not mature students (62%) to report the debt they were carrying had at least "some" impact (44% and 34%, respectively indicated "high" impact).
- Similarly, close to six-in-ten respondents (57%) say the debt had "high" (28%) or "some" (29%) impact on their search for an articling position.
    - There are no significant differences in the impact of debt on the search for an articling position by gender, membership in an equality-seeking community, or mature student status.
- About four-in-ten respondents (41%) say that debt had "high" (15%) or "some" (26%) impact on their involvement in extra-curricular activities.
    - Mature students are more likely to say that debt had at least "some" impact (51% compared to 39% among those who were not mature students), and in particular to say that it had "high" impact (24% and 13%, respectively).
    - Members of an equality-seeking community are directionally more likely to say that debt had at least "some" impact (46% compared to 38% )
    - There are no differences by gender.

# Impact of Debt

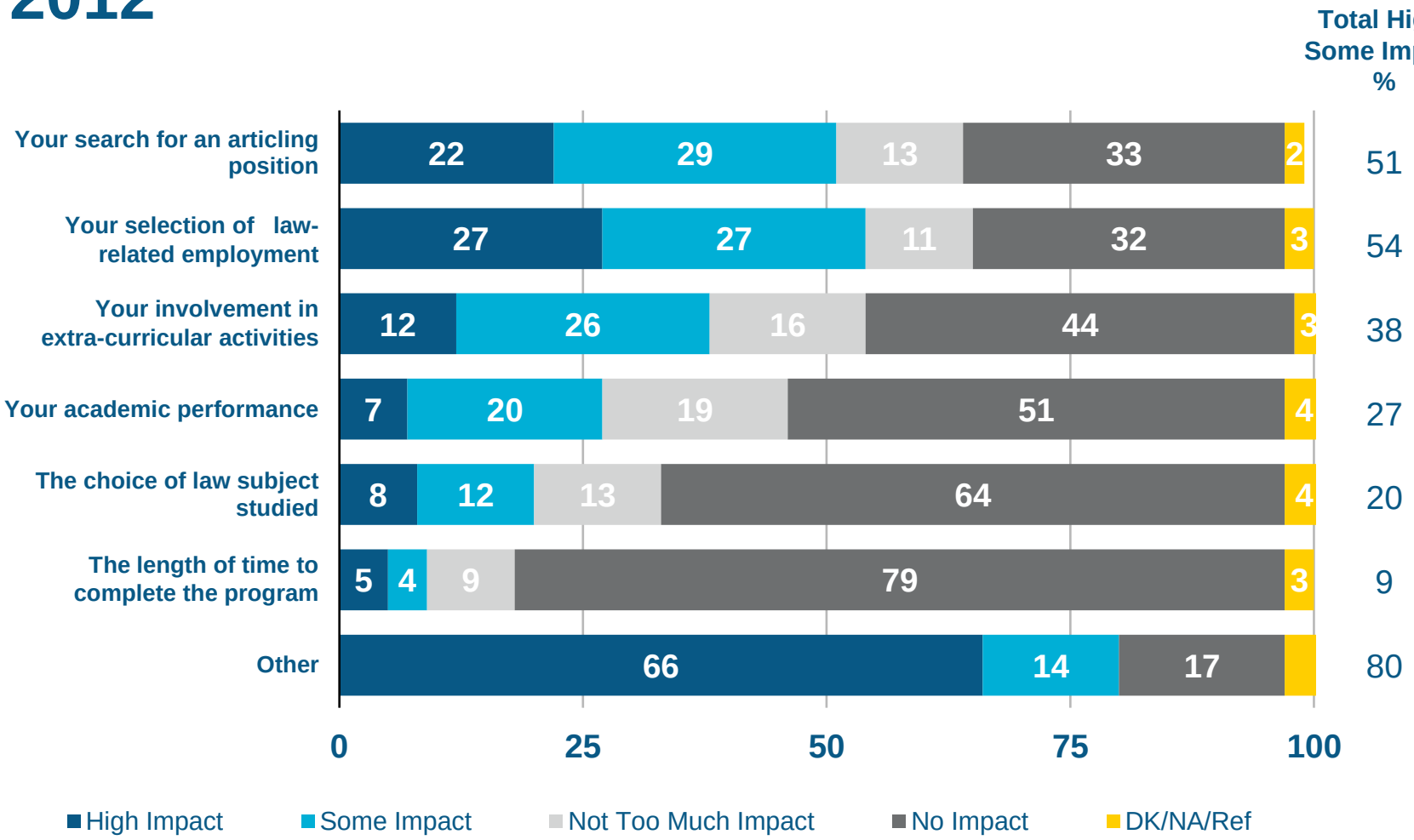
- While the impact of debt on academic performance appears more muted, it is still reported by almost one-third of respondents (32%).
  - Women (28%) are significantly more likely than men (20%) to report that it had a "high" impact on their academic performance.
  - Debt appears to have the greatest impact on the academic performance of mature students. They are significantly more likely than are those who were not mature students to report at least "some" impact (43% and 29%), and fully twice as likely to report that it had "high" impact (12% and 6%, respectively).
- About three-in-five (59%) say that debt had "no impact" on the choice of law studied. Nearly one-quarter of respondents (23%) say that debt had "high" (9%) or "some" (14%) impact on this.
  - There are no statistically significant subgroup differences here.
- Finally, the substantial majority of respondents (74%) say that debt had "no impact" on the length of time to complete the program. Just over one-in-ten (11%) say that it had "high" (6%) or "some" (5%) impact.
  - While there are no differences by gender or membership in an equality-seeking community on this measure, mature students appear once again to be disproportionately affected.
  - Those who were mature students while they were attending law school are directionally more likely than those who were not to say both that debt had at least "some" impact on the length of time to complete the program (16% and 10%, respectively) and, in particular, that it had "high" impact (9% and 5%).

# Impact of Debt (Entered Law School In Debt and/or Incurred Debt During Law School) 2012-2014




Q.27 To what extent, if at all, did the debt that you were carrying during your law school studies have a negative impact on any of the following?
Base: Respondents who entered law school with debt and/or incurred debt during law school (n=480)
Note: The "Other" category is composed of a very small group of respondents (n=27) and the issues they cite on which debt had an impact are diffused widely and mentioned by only a few respondents in each case.

# Impact of Debt (Entered Law School In Debt and/or Incurred Debt During Law School) 2010-2012




Q.27 To what extent, if at all, did the debt that you were carrying during your law school studies have a negative impact on any of the following?
Base: Respondents who entered law school with debt and/or incurred debt during law school (n=758)
Note: The "Other" category is composed of a very small group of respondents (n=35) and the issues they cite on which debt had an impact are diffused widely and mentioned by only a few respondents in each case.

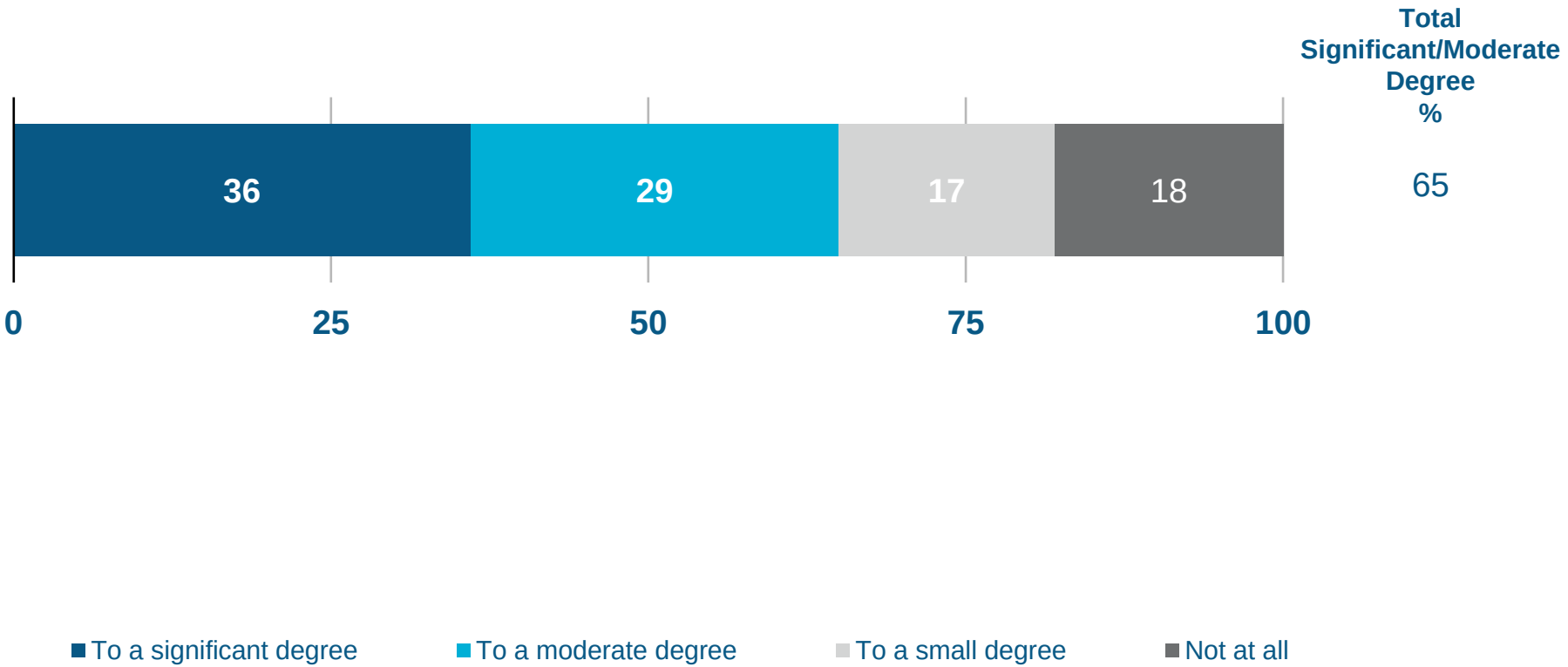
# Influence of Debt on Career Choices

- Respondents were asked directly to what degree the debt they were carrying after leaving law school influenced their career choices. The findings suggest that it does exert some influence.
- Almost two-thirds of respondents (65%) believe the debt influenced their career choices to at least a "moderate" degree, with 36% of respondents saying that it influenced those choices to a "significant" degree.
- As would be expected, the likelihood of saying that debt had a "significant influence" increases with the amount of debt held, from 19% among those with less than $20,000 in debt to 47% among those with $50,000 or more in debt.
- Although there are no differences by either gender or membership in an equality-seeking community here, there are once again differences among mature students.
    - Those who were mature students at the time they were attending law school are significantly more likely than are those who were not mature students to believe that the debt they were carrying had a "significant influence" on their career choices (46% and 33%, respectively).
- Respondents who indicated that debt influenced their career choices to at least "a small degree" were asked to describe on an open-ended basis the ways in which their career choices were affected.
- Nearly two-thirds (63%) of the descriptions provided of the principal effect refer to having to place a premium on remuneration. These include:
    - Looking for high paying jobs (mentioned by 34%);
    - Finding a job that would help pay down debt (22%);
    - Having to look for jobs in large corporate/commercial or Bay Street firms (7%).

# Influence of Debt on Career Choices

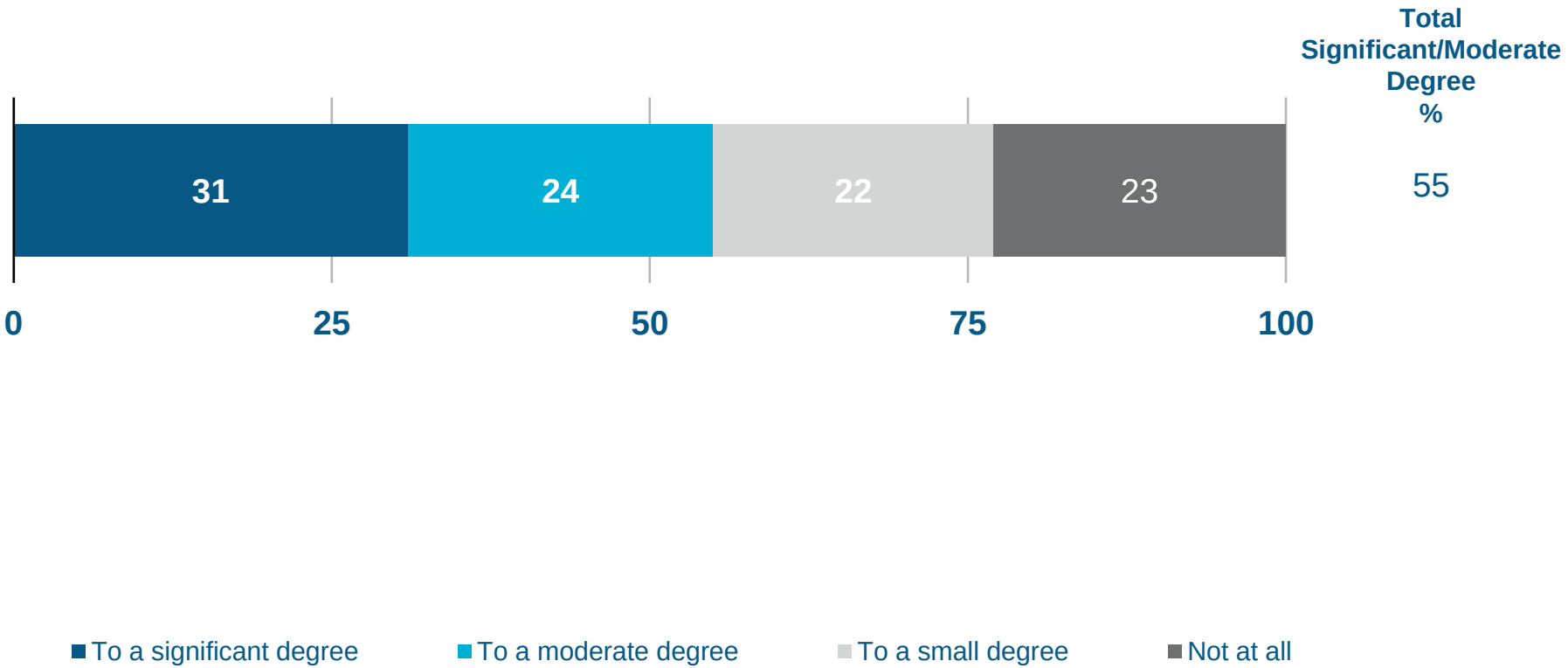
- More than half of the ways in which these respondents describe the effect that debt had on their career choices are negative descriptions or references to career options that would not be feasible. These include:
  - Needing a job right away or having to accept any position offered (20%);
  - Accepting a job that may not have been the first choice in their area of interest (18%);
  - Being unable to practice in a preferred location or having to relocate (7%); and
  - Being unable to accept pro-bono, Legal Aid, or internship positions (3%).

# Influence of Debt on Career Choices (2012-2014)




Q.28 To what degree, if at all, did the debt you were carrying after leaving law school influence your career choices?
Base: Respondents who entered law school with debt and/or incurred debt during law school (n=480)

# Influence of Debt on Career Choices (2010-2012)




Q.28 To what degree, if at all, did the debt you were carrying after leaving law school influence your career choices?
Base: Respondents who entered law school with debt and/or incurred debt during law school (n=480)

# Effect of Debt on Career Choices

| | % Among Total Sample | | | |
|---|---|---|---|---|
| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
| n= | 817 | 582 | 396 | 978 |
| **Look for high paying/ high salary/ high remuneration jobs** | 49 | 39 | 34 | 37 |
| **Needed a job that helped me pay down my debt** | 24 | 32 | 22 | 28 |
| **Could not chose pro bono/ Legal Aid/ unpaid/ internship positions** | 10 | 10 | 3 | 7 |
| **Had to seek out job in large corporate/ commercial firm/ Bay Street firm** | 9 | 7 | 7 | 7 |
| **Need a job right away/ accept any position that is offered** | 9 | 15 | 20 | 17 |
| **Accept a job that may not have been first choice in area of interest** | 8 | 14 | 18 | 16 |
| **Unable to practice in preferred location/ had to relocate** | 7 | 6 | 7 | 6 |
| **Unable to seek out jobs in the public sector** | 6 | 2 | 2 | 2 |
| **Seek out position with job security/ stable employment** | 5 | 8 | 7 | 8 |
| **Seek out less interesting but more lucrative positions** | 3 | 2 | 2 | 2 |
| **Unable to pursue further education/ academia** | 3 | 2 | 1 | 1 |
| **Limited choices/ unable to be choosy over job** | 3 | 5 | 4 | 5 |
| **Had to seek out jobs in private sector** | 2 | 3 | 3 | 3 |
| **Unable to chose to be a sole practitioner** | 2 | 3 | 4 | 4 |
| **All other mentions (equal to or less than 1%)** | 3 | 1 | 1 | 1 |
| **None/ No answer/ Don't know** | 5 | 4 | 2 | 3 |

Q.29 Please describe how that debt affected your career choices?
Base: Among those whose debt affected career choices

# Employment during Law School

- More than one-half of respondents (53%) report that they were employed for pay during the school term at some point while they were attending law school.
- A greater proportion of women (61%) than men (44%) indicate that they worked for pay while attending law school.
- There are no differences by membership in an equality-seeking community or incurring debt/entered law school with debt in the incidence of working for pay at some point during law school. Inconsistent with other aspects of the examination of financial considerations, however, there are also no differences among mature students.
- Those who were employed for pay during law school were asked during which of the three years they were working. The smallest proportion of these students were working in first year (54%). This increases significantly to 84% of these respondents working in second year and remains at about the same level in third year (79%).
- While there are no differences by either gender or membership in an equality-seeking community, there are once again differences among mature students.
    - Those who were mature students while attending law school are significantly more likely than are those who were not to report working in first year (67% and 51%, respectively).

# Employment during Law School

- Among those respondents who were working during each of the respective years, the mean number of reported hours per week worked 13.34 in first year, 12.92 in second year and 12.83 in third year.
- As might be expected, respondents who had incurred debt prior to law school report a higher mean for hours worked per week in each of the three years of law school when compared to those who entered law school without debt:
  - Year 1 – 14.78 hours per week as compared to 12.17 hours per week;
  - Year 2 – 13.77 and 12.32, respectively;
  - Year 3 – 14.59 and 11.61, respectively.
- Mean hours worked per week do not differ significantly by gender
- Members of an equality-seeking community report a higher number of hours worked per week during each year of law school than do those who are not members of such a community.
  - Year 1 – 14.48 and 12.27;
  - Year 2 – 14.18 and 11.84;
  - Year 3 – 13.66 and 12.11.
- Those who were mature students during law school report a higher mean number of hours worked per week during each year of law school than do those who were not mature students:
  - Year 1 – 14.06 and 13.04;
  - Year 2 – 14.76 and 12.36;
  - Year 3 – 14.74 and 12.21.

# Law School Programs at Address Student Debt Loads

- Awareness of law school programs to address student debt loads appears somewhat limited, as less than half of respondents (42%) are aware of such programs having been available at the school they attended.
- There is no difference in awareness by membership in an equality-seeking community or mature student status.
- More men (48%) are aware of such programs than are women (38%).
- However, and presumably because they had need of such programs and took steps to learn what was available, there are significant differences by debt profile:
  - Those who entered law school in debt (53%) are significantly more likely than those who entered law school without debt (36%) to report awareness of such programs.
  - The difference in awareness between those who incurred debt in law school and those who did not is even wider (48% and 18%, respectively).
- Among those aware, six-in-ten (60%) have used the program, 26% report that they were not eligible for it, and 14% did not use it.
- There are no differences by subgroup in usage of these programs.

# Law School Programs at Address Student Debt Loads

- Among those who used one of these programs, the mean amount of debt relieved was $7,581. As a percentage of total debt, the greatest proportion of respondents (38%) report that between 1% and 9% of their debt was relieved.
- Fully 36% of respondents who used such a program either do not know how or cannot recall how much of their debt was relieved.
- Among those who applied for relief under the program but were refused, more than one-quarter (26%) say that this was because they did not meet the criteria or that they were for some other reason not eligible for the program.
- Among those who provided a more detailed explanation, the reasons for the refusal tend to suggest that in some way their need was not sufficient.
  - Almost six-in-ten (57%) say that the reason was that their income was too high (32%) or that they had assets (5%), that their parents' income was too high (14%), or that their spouse or partner's income was too high (6%).
  - For 12% the reason was that they did not have enough debt;
  - For 3% the reason was that they did not qualify for OSAP (suggesting that this is a precondition for some debt relief programs).
- Among the 14% who knew about the program and simply chose not to use it, the principal reason is that either they had no debt or had insufficient debt to warrant applying (38%). A further 26% knew they weren't eligible.

Q.29 Please describe how that debt affected your career choices?
Base: Among those whose debt affected career choices

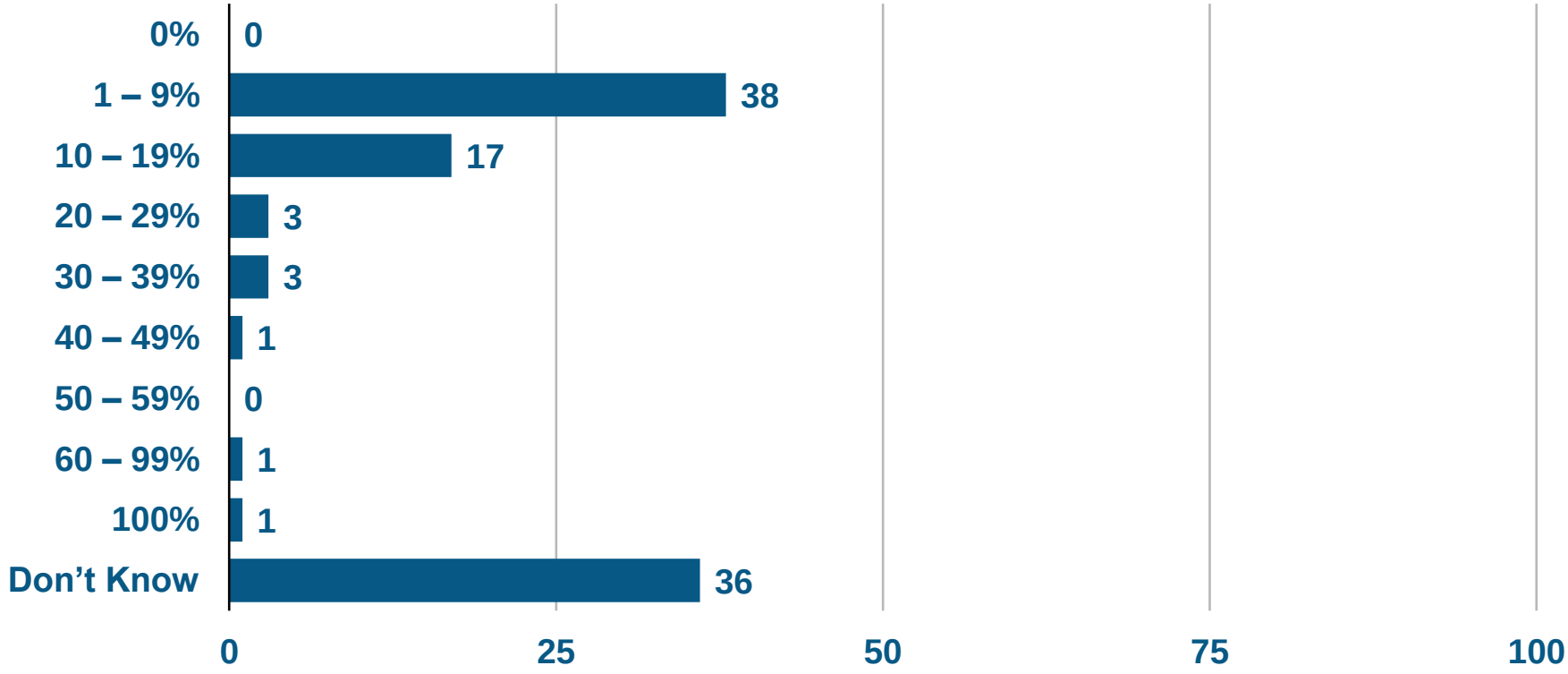
# Awareness and Use of Programs to Address Student Debt Load in Law Schools

**% Among Total Sample**

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| **Did the law school have a program to address student debt loads?** | n = 1303 | n = 972 | n=585 | n=1557 |
| **Yes** | 48 | 43 | 42 | 43 |
| **No** | 14 | 14 | 17 | 15 |
| **Not sure** | 38 | 43 | 41 | 42 |
| **Have you used that program?** | n = 625 | n = 421 | n=248 | n=669 |
| **Yes** | 54 | 59 | 60 | 59 |
| **No** | 18 | 14 | 14 | 14 |
| **Was not eligible** | 28 | 28 | 26 | 27 |

Q.29 Please describe how that debt affected your career choices?
Base: Among those whose debt affected career choices

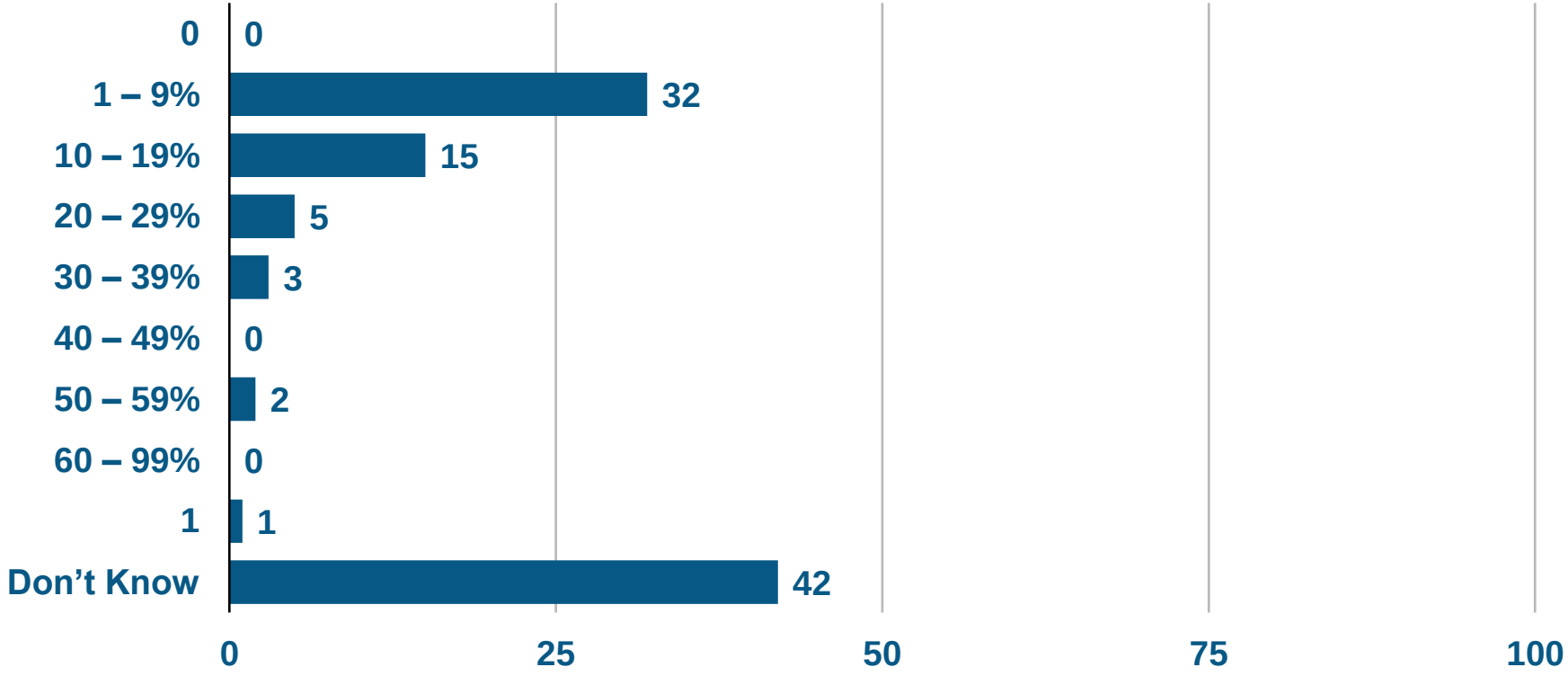
# Percentage of Overall Debt Relieved (2012-2014)




Q.32 Have you used that program? If yes, please indicate how much of your debt was relieved and what percentage of your overall debt that represented.
Base: Respondents who have used the program (n=396)

115

# Percentage of Overall Debt Relieved (2010-2012)




Q.32 Have you used that program? If yes, please indicate how much of your debt was relieved and what percentage of your overall debt that represented.
Base: Respondents who have used the program (n=247)

# Reasons For Not Using the Program

% Among Total Sample

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 111 | 57 | 34 | 91 |
| **No debt/ Not needed** | 41 | 42 | 38 | 41 |
| **Not eligible** | 19 | 25 | 26 | 25 |
| **I didn't believe I was eligible** | 12 | 5 | - | 3 |
| **Others needed it more** | 8 | 7 | 6 | 7 |
| **Not enough provided/ Not worth the trouble** | 6 | 5 | 3 | 4 |
| **Unaware of programs/ my eligibility for programs** | 5 | 7 | - | 4 |
| **Refused/ Applied but was unsuccessful** | 4 | 2 | 15 | 7 |
| **Other** | 11 | 2 | 6 | 3 |
| **Don't know/ Can't recall** | 3 | 5 | 6 | 5 |
| **No answer** | 4 | 5 | - | 3 |

Q.32c Have you used that program? If no, please explain why you have not used the program.
Base: Among non-users of the program

# Reasons Why Not Eligible For Program

% Among Total Sample

| | 2007 | 2010-2012 | 2013-2014 | Combined 2010-2014 |
|---|---|---|---|---|
| n= | 177 | 117 | 65 | 182 |
| **Did not meet criteria/not eligible** | 14 | 32 | 26 | 30 |
| **I earn too much/my income too high** | 28 | 26 | 32 | 29 |
| **Not enough debt** | 13 | 15 | 12 | 14 |
| **Partner's/spouse's income too high** | 5 | 10 | 6 | 9 |
| **Parents' income too high** | 12 | 9 | 14 | 10 |
| **I had assets (e.g., RRSP, savings, car)** | 10 | 9 | 5 | 7 |
| **NCA/ Out of province/ Foreign student** | 3 | 5 | 3 | 4 |
| **I did not qualify for OSAP** | 5 | 4 | 3 | 4 |
| **I had a bank loan** | 3 | 3 | 3 | 3 |
| **No answer** | - | 3 | 2 | 2 |
| **Don't know** | 4 | 5 | 3 | 4 |

Q.32c Have you used that program? If no, please explain why you have not used the program.
Base: Among non-users of the program

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

# CEO's REPORT

Since my last report to Convocation in November, outside of regular operations the organization has focused much of its efforts on the following:

- Strategic planning for the 2015-2019 bencher term;
- Completion of the 2014 audit process and budget planning for the 2016 fiscal year;
- Administration of the 2015 Bencher Election process;
- Development of a new testing framework for the paralegal licensing examination;
- Development of new standards for the paralegal college program accreditation process;
- Ongoing implementation of the Law Practice Program
- Ongoing implementation of the three year technology plan;
- Ongoing work and development on a number of policy initiatives including TAG, Compliance-Based Entity Regulation, Alternative Business Structures, Challenges Faced by Racialized Licensees and support of Federation of Law Societies initiatives;
- Review of LibraryCo and library services;
- Judicial Review of the Law Society's decision not to accredit Trinity Western University;

This report will provide an overview of priorities and initiatives that are currently underway, operational trends and activities and policy initiatives that are in development to support strategic priorities established by Convocation.

## STRATEGIC PLANNING UPDATE

The bencher engagement activities leading to the establishment of the organization's next four year Strategic Priorities Work Plan are well underway, with returning and newly elected benchers participating in a variety of information gathering exercises. The various surveys that have been provided to benchers for their input are a valuable tool for gathering thoughts on the next term's priorities, allowing all governors the opportunity to spend sufficient time deliberating on the merits and value of the various proposals and how they support the Law Society's mandate and obligations. Interactions with benchers will continue throughout the summer months, including in-person meetings.

A draft strategic plan providing information on the various initiatives that have been prioritized by benchers will be developed, debated, revised and then presented for further input at the Bencher Planning Session. The planning session is scheduled for the evening of October 14 and all day on October 15, 2015, and will take place in Niagara-on-the-Lake.

## FINANCE & BUDGET PLANNING

### FINANCIAL REPORTING

The Society's audited financial statements for 2014 were presented at the Annual General Meeting in May. The statements received an unqualified audit opinion, and the Society remains in a strong financial position. Interim financial statements as at the end of the first quarter of 2015 were reviewed by the Audit & Finance Committee in May.

Audited annual financial statements have also been completed for LibraryCo, the Law Society Pension Fund and the Law Society Foundation. Like the Law Society, these have all received unqualified audit opinions. The operations of the Errors & Omissions Insurance Fund, managed by LawPRO, continue to be combined into our financial statements.

As part of year end procedures we are submitting all required tax returns and not-for-profit returns.

With the assistance of a Working Group of LAWPRO and the Law Society's Audit and Finance Committee, the Finance Department completed a tender for external audit services. As approved by Convocation, PricewaterhouseCoopers LLP will be the Law Society's auditors for the 2015 financial year, taking over from Deloitte.

## BUDGET DEVELOPMENT

Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation not later than the end of November).

Budget planning for 2016 and longer term projections for the 2016 to 2018 budget cycle have started with initial discussions on the financial pressures associated with the budget for 2016 and the strategic planning for the new bencher term. The CEO has led preliminary discussions with the Audit & Finance Committee. A summarized budget timetable is set out below:

| DATE | PROCESS |
|---|---|
| Summer | The Senior Management Team considers individual and collective budget assumptions, variables and objectives. Where possible, this review incorporates assessments from the strategic planning exercise completed by new and returning benchers in the spring and how proposals fit into the medium-term plan for the organization. |
| Summer | The LibraryCo board develops a budget for submission to the Audit & Finance Committee and Convocation in September. |
| September | A draft budget for LibraryCo and the Law Society is presented to the Audit & Finance Committee.<br>A Budget Information Session is held for all benchers to ensure a full exchange of information on the 2016 budget. |
| October | Bencher Strategic Planning Session is held.<br>Draft 2016 operating budgets for lawyers and paralegals, a capital budget for 2016 and a medium-term financial plan are presented to the Audit & Finance Committee, Paralegal Standing Committee, Compensation Fund Committee and Convocation for approval. |

## REVIEW OF LIBRARYCO AND LEGAL INFORMATION SERVICES

The Law Society is working with the other shareholders of LibraryCo (County and District Law Presidents' Association and Toronto Lawyers' Association) to set a direction for the evolution of libraries and legal information services going forward. Under the Administrative Services Agreement with LibraryCo, the Law Society continues to administer the financial affairs of LibraryCo together with any other requested supplementary assistance during the transition process.

### INVESTMENTS

The Investment Policy and the performance of our investment manager, Foyston, Gordon & Payne Inc. have been assessed by the Audit & Finance Committee and Convocation in April. The primary Investment Policy objective is the preservation of capital and this was accomplished with Foystons outperforming the performance benchmarks in 2014.

### INSURANCE

The Society's primary insurance arrangements have been renewed for the 2015 insurance year.

### PENSION FUND

The Finance Department, the Audit & Finance Committee, the Human Resources Department and the staff pension committees have ensured that the Pension Fund for the Employees of the Law Society of Upper Canada is fully in compliance with regulatory requirements. The audited financial statements for the year ended December 31, 2014 will be submitted to the regulator by the end of June.

## OPERATIONAL TRENDS AND ACTIVITIES

### COMPLAINTS AND INVESTIGATIONS

Complaint trends fluctuate year by year. In 2012, the total number of new cases received was 1.7% lower than the number received in 2011. However, in 2013, there was a noticeable increase (5.4%) in new cases compared to 2012. Last year, the trend reversed again, with the Division receiving 4781 cases, 5% lower than the 5040 cases received in 2013 and about the same number as received in 2012 (4782).

This decreasing trend in new complaints has continued in the first five months of 2015. From January 1 to May 31, 2015, Professional Regulation received 1947 new cases, a 6% decrease from the number received during the first five months of 2014 (2072).

The distribution by type of subjects of the cases received in the first five months of 2015 (January to May) is:

- Lawyers: 1450 complaints (74.5%)
- Paralegals: 233 complaints (12%)

- Lawyer Applicants: 64 cases (3.3%)
- Paralegal Applicants: 72 cases (3.7%)
- Unauthorized practitioners: 128 complaints (6.5%)

The effect of the reduced caseload is not evenly distributed. The workload of the Investigations department which addresses the more serious, complex issues has not reduced notably. We have noticed in particular an increase in the number of high risk investigations with evidence of significant misapplication or misappropriation of funds. These investigations have been large and complex and require the expertise of a forensic auditor. The high risk nature requires that the Law Society take interim steps to protect the public (see discussion about managing risk, below), which has an impact on staff workload.

## MORTGAGE FRAUD

Over the past several years the Law Society has received new reports of mortgage fraud allegations at the rate of between two and five lawyers every month. In 2014, the Law Society received reports of lawyers engaged in mortgage fraud at an average of between four and five (4.5) lawyers every month. This year, from January through May, the Law Society received reports of lawyers engaged in mortgage fraud at an average of 2.5 per month. At the end of May 2015, 73 mortgage fraud investigations (102 cases) were in the inventory, 9% fewer than at the end of May 2014 (80 mortgage fraud investigations).

The target is to complete investigations in 18 months. Currently, 36% of mortgage fraud investigations are less than 10 months old, 37% are between 10 and 18 months old, and 27% are older than 18 months. Cases aged 18 months or older typically have a history that includes investigation interruptions beyond the control of the Law Society, including summary hearing process for a licensee's failure to cooperate, the need to wait for third party evidence, and delays in obtaining cooperation including from witnesses. We track these investigations and monitor them regularly for timely completion.

## MANAGING RISK THROUGH INTERLOCUTORY SUSPENSION AND RESTRICTION

Professional Regulation Division is seeking interlocutory suspensions as indicated as a result of rigorous risk assessments when cases arrive and during an investigation. Interlocutory suspensions and practice restrictions are an important tool to address risk to the public to prevent future harm. From January to May 2015:

- The Proceedings Authorization Committee authorized four interlocutory suspension applications,
- Four interlocutory suspension orders have been made by the Law Society Tribunal, and

- Three interlocutory suspension matters are currently before the Tribunal. Interim interlocutory orders have been made in two of the three cases.

All of these matters relate to serious misconduct and Professional Regulation staff have moved quickly to protect the public.

## TRUSTEESHIPS AND COMPENSATION FUND

Trustee Services becomes involved to protect, preserve and distribute client files, funds and/or property when a licensee cannot do so because of regulatory action, death or incapacity. Since January 1, 2015, Trustee Services has obtained 12 new formal trusteeship matters, which are dealt with in the Superior Court, and 10 formal trusteeships have been completed and closed. An additional 17 cases have been opened in which guidance and information has been provided on how to wind up a licensee's practice. The department has received 609 and closed 753 requests from clients and others concerning licensees' practices.

Between January 1 and May 31, 2015, a total of 78 applications for compensation have been received by the Compensation Fund: 70 claims involving 26 lawyers and eight claims involving eight paralegals. During this period, a total of 37 claims have been granted: $807, 900 has been paid on 33 claims against 20 lawyers and $6,800 has been paid on four claims against four paralegals.

The Compensation Fund continues to carry a number of potential claims related to a very high-profile real estate loss. Fund staff, senior managers and the Compensation Fund Committee are closely monitoring other related proceedings both within and outside the Law Society. This will assist in the determination of whether these matters fall within the Fund's jurisdiction as set out in the *Law Society Act* and described in the guidelines passed by Convocation.

## LICENSING UPDATE

### *LAW PRACTICE PROGRAM (LPP)*

The first year of the LPP has now been completed. The LPP is now moving into its second year of the three year pilot. The first of the LPP candidates who have fulfilled all of the requirements will be called to the Bar this month, June 2015.

At this time, candidates are registering in the English language program with Ryerson and the French language program with University of Ottawa. The final number of candidates registered in each program will not be known until the end of August/early September.

## PARALEGAL LICENSING AND ACCREDITATION

The Licensing and Accreditation department has been engaged in implementing two significant enhancements to the paralegal licensing platform to support entry-level competence of paralegals in accordance with the Law Society's strategic priorities.

### *EXPANSION OF PARALEGAL LICENSING EXAMINATION*

In October 2012, Convocation approved an expansion of the licensing assessment process for paralegals to include substantive and procedural law competencies, in addition to the ethics, professional responsibility and practice management competency areas that are currently the focus of the paralegal licensing examination.

Over the last 18 months, the Licensing and Accreditation team has been involved in implementing the revised testing framework, which entails a number of rigorous and resource intensive protocols to ensure the examination is defensible, valid, reliable and fair. As a result of extensive work with psychometricians and consultation with members of the legal professions, candidates will now be required to demonstrate entry-level competence in 196 competencies, all of which are also embedded in the criteria for accreditation at the college level. Close to 400 examination items have been developed, revised and validated by subject matter experts in accordance with the new Examination Blueprint, which has increased the length of the examination from 3.5 hours to 7 hours. The first sitting of the expanded paralegal licensing examination will take place in August 2015, where an estimated 700 candidates will be writing. The Licensing and Accreditation team will hold an information session for candidates in June to provide information about the new process and standards. The session will be webcast and available to candidates across the province.

## PARALEGAL COLLEGE PROGRAM ACCREDITATION – NEW STANDARD FOR 2015

Following Convocation's approval of more stringent standards for accreditation and governance of paralegal college programs in February 2014, the Licensing and Accreditation team has been busy transitioning the 27 programs accredited under the current platform to the new expectations that will be in place as of September 2015.

Most notably, the enhanced standards introduce more rigorous requirements related to faculty qualifications, program structure and scheduling, and assessment methodologies, all of which support effective pre-licensure training and address deficiencies that have been identified based on over five years of audit and monitoring activities. In addition, the new protocols will involve a mandatory accreditation process every five years to confirm alignment of curricula, faculty and program structure with Law Society's criteria and requirements.

Over the last year, the team has been engaged in creating a revised set of accreditation application materials, establishing a new invoicing process to capture revenues, and communicating extensively with college administrators via email, conference calls, and website notices. In addition, in the fall of 2014, an information session was held at the Law Society with approximately seventy attendees from community colleges, private career colleges and representatives from the Ministry of Training, Colleges and Universities to discuss the new standards and revised expectations. Communication with colleges is ongoing and will continue into the fall of 2015, at which point program audits and spot checks will focus on compliance with the new requirements.

## THE GREAT LIBRARY AND LIBRARY SERVICES

The Great Library team have worked with an app developer to create a Great Library app, to be released summer 2015. The app brings the Infolocate search to mobile legal researchers to identify books and online resources available from Ontario law libraries. The app also provides quick links to Great Library research guides and ways to contact reference librarians while on the go.

The Technical Services team has prepared and uploaded historic Law Society Professional Conduct Handbooks from 1964 to 2000. All of the professional rules can be found using the Great Library's *Infolocate.ca* search tool, and read or downloaded in full as PDFs. The Handbooks were scanned in by Corporate Records and Archives to create the digital files. The Handbooks are the second major digital collection – following Convocation's Minutes and Transcripts – made publicly available by the Great Library.

## QUALITY ASSURANCE: PRACTICE AUDITS

During the Operational Review conducted in 2013 by the Law Society, the Spot Audit department identified program cost efficiencies while strengthening its effectiveness through an enhanced risked-based selection approach. These program changes were to be implemented over the 2014 and 2015 periods resulting in a reduction of spot audits from 1,800 to 1,400 and estimated gross cost savings of $500,000. In accordance with Convocation's policy approval the annual number of audit engagements from 2015 onwards will be stabilized at 1,400 regardless of the number of new law firms established in the province in the foreseeable future.

In April 2015, Convocation determined that the Law Society will no longer be conducting 500 desk audits to monitor CPD compliance. This will provide cost savings of approximately $55,000. The desk audits of randomly selected lawyers and paralegals were determined to no longer be necessary following assessments of CPD compliance information. The number of licensees with CPD record keeping deficiencies was extremely low (less than 1%) and the Law Society now has robust reminder processes

and sanctions to ensure that licensees maintain their CPD requirements. CPD audits will continue to be part of lawyer practice management reviews and paralegal practice audits (approximately 500 audits).

## CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD 2015 registration and revenue results through April are currently higher than projected. If this trend continues it is anticipated that the 2015 net contribution will exceed the $2.2 million projected net income amount. Key indicators including the number of original programs held to date and the number of paid registrations have both increased. The department continues to see a shift towards online learning with more registrants viewing programs by live webcast or on demand. The programs are both offering and selling fewer copies of printed materials as members grow more comfortable with electronic program materials. These developments provide savings in program expenses, including catering costs, course materials and venue rentals.

In 2014 CPD introduced a new e-Course online learning format, launching seven courses in November, in time for the year end push for members to complete their CPD requirement. Total e-Course sales in 2014 were 2664 units. For 2015 CPD has launched two new courses in the first half of the year with three to follow for the Fall.

The new e-Course format has received two awards for Professional Excellence from the Association for Continuing Legal Education (ACLEA), a North American association of legal education providers. The awards were received in the Programming category for the "Opening Your Practice Simulation Game for Lawyers and Paralegals (e-Course)" and the John Day Memorial Award for Professional Excellence in the Technology category for e-Courses.

## COMMUNICATIONS AND MARKETING

The Communications & Marketing Department recently launched the latest version of the Law Society's online Annual Report. The 2014 Annual Report features messages from the Treasurer and CEO, interactive charts, updates on the Law Society's strategic initiatives, and the organization's approved financial statements.

The microsite, available at annualreport.lsuc.on.ca, was well received—in the 30 days after launch, nearly 4,500 pages were viewed in 1,098 separate visits from interested lawyers and paralegals, stakeholders and members of the public.

The online annual report will be promoted throughout the year with an online marketing campaign designed to highlight various initiatives and interesting statistics about Ontario's legal professions.

## MEDIA RELATIONS AND ISSUES MANAGEMENT

At the end of 2014, we realigned our organizational structure around communications so that we could apply greater skill and agility to communications initiatives, particularly in the areas of external proactive media relations, issues management and stakeholder outreach. Communications team members focusing on media relations and issues management work under Grant Wedge's direction.

The bencher election, media interest in a number of high-profile regulatory matters, as well as TAG, the Challenges Faced by Racialized Licensees Working Group, our renewed Aboriginal Initiatives Strategy, ABS initiatives and the Treasurer's own outreach agenda have all provided opportunities for the Law Society to respond to inquiries and take the lead in publicizing events. These issues have also afforded us the opportunity ensure that the Law Society's role and mandate are clear in the various messages distributed in the public realm.

From January 1 to June 5, 2015, the Law Society received and responded to 142 media inquiries. During this same time, 22 media interviews took place, regarding the following issues:

- ABS & Compliance-based regulation
- Bencher election 2015
- Pathways
- Racialized Licensee consultation
- Reporting to Toronto Police Services

As well, staff prepared internal and external communications materials (internal FAQs, fact sheets, speeches and statements) on number of key issues, including ABS, Aboriginal Initiatives, Compliance-based regulation and the Truth and Reconciliation Commission Report.

## THREE YEAR TECHNOLOGY PLAN

### *SHAREPOINT – ENTERPRISE CONTENT MANAGEMENT (ECM)*

Several years ago, the Law Society embarked on an enterprise content management strategy that would manage our many information repositories, improve cross-functional knowledge sharing and create a centralized repository to preserve our corporate memory and records.

SharePoint 2013 was the chosen solution because of its ease of use and adaptability to a wide variety of business user requirements.

Enterprise Content Management or ECM, through the SharePoint platform, is one of our major initiatives. Phase 2, the rollout to all Law Society divisions, is near completion. During this phase, employees have been introduced to My Sites, OneDrive (a powerful alternative to the H: drive), shared sites for team collaboration, and SharePoint's powerful search capabilities.

The Law Society's new intranet, or internal website, will also be built on the SharePoint platform. By doing so, we can drive traffic to SharePoint and further integrate the platform into employees' day to day activity, increasing their familiarity with its look and feel. The new intranet is planned to go live by the end of the summer.

The Law Society Tribunal case management system will also be built upon SharePoint, using a rich combination of standard document management features, custom automation of common business processes, and secure external access (known as an "extranet"). The system will be ready to go live in July, as scheduled, with data migration and user training extending into the fall, and full production usage starting in January 2016.

### *LICENSEE DATABASE REDESIGN*

We are starting to plan the modernization of our lawyer/ paralegal database and enterprise applications. This is a major, multi-year project, which will involve the complete overhaul of the lawyer/paralegal database, and will allow us to move away from our antiquated server environment. The current environment also inhibits us from a further development to meet future needs. As a first step, we have embarked on a "Life of a Licensee" study to document processes across divisions and develop a clear understanding of data requirements of the organization. In this way, we can ensure that current and potential needs are fully considered as we begin to explore what the future database should look like.

### *LSUC PORTAL*

The Finance Portlet, which allows licensees to view and pay their annual fees and initiate fee adjustments using the Law Society Portal, has had a successful launch. The Finance department targeted the 2015 annual fee billing for the introduction of paperless billing of lawyers and paralegals. Utilizing the Law Society Portal, lawyers and paralegals received invoices, statements and other notifications related to annual fees in their portal account. This process improvement was considerably more efficient, delivered significant savings on paper, printing and postage and offered an improved delivery method for licensees.

Along with receipt of invoice, the portal provides for secure credit card payment directly from within the members account and eliminates the need for staff to receive and

process credit card payments for the annual fee. In addition, members are able to view their transactions on line and print copies of invoices, statements and other notices as needed.

Efforts are currently underway to redesign the Portal to standardize its look and feel, improve navigation, and provide the flexibility necessary for future functionality. New self-serve features will include pre-authorized fee payment options, a document library for previous years' lawyer and paralegal annual reports and reminders related to licensee obligations such as the Continuing Professional Development and LAR/PAR requirements.

## NETWORK SECURITY

While the security of the Law Society's information systems has always been a major priority, the rapidly escalating numbers of cyber-attacks and data breaches suffered by organizations of all sizes show us that we cannot become complacent in this area. In fact, in recent weeks we have noted two targeted attacks against the Law Society, through our phone and email systems. While unsuccessful in accessing sensitive information, these incidents show that we must maintain our vigilance, and we must continually work to improve the security of all our systems, from the smallest smartphone to the largest server.

## SAFETY AND SECURITY

In a similar fashion, the Facilities team is also looking at security, in terms of the buildings we occupy and the people within, ensuring that our existing policies remain relevant and up to date. We have completed the threat assessment phase and are now working through the emergency planning portion.

Considerable time has been spent working with the City, police and PanAm Game organizers to ensure the Law Society is prepared for the influx of people and events happening around Osgoode Hall. There are daily events planned for Nathan Phillip's Square that are expected to draw 15,000 to 20,000 people daily. Organizers are anticipating that more than 100,000 people are expected for events planned for the opening of the games on July 10th. It is expected that opening events will severely disrupt the regular activity of the downtown core. In order to secure the building and ensure the safety of staff, we are considering closing the Law Society for the day.

## CAPITAL PROJECTS

Space planning is always a challenge at the Law Society. There are a number of capital projects on the go with respect to enhancements, build outs of new space and department moves.

The Tribunal administration office and hearing rooms will be consolidated into one location, moving to 375 University Avenue. The move to a building separate from Osgoode Hall also provides the Law Society Tribunal with the physical presence required to establish that they are independent of the Law Society. The space is fully accessible and secure, providing functional space for both our licensees and members of the public. The new offices will be operational in early September.

As well a number of departments will be moving or changing spaces including Human Resources, Communications & Marketing, Information Systems, Equity and the Complaints Resolution Commissioner. The Complaints Resolution Commissioner (CRC) is currently located at 155 University Avenue. We have terminated our lease and will be moving the CRC into the 393 University Avenue, 5th Floor location at no additional cost

## DOORS OPEN

Once again, the Law Society played host to thousands of people for the annual Doors Open Toronto event. 12,000 people walked through the doors of Osgoode Hall over the weekend of May 23 & 24. The event relies on volunteers to provide tours and information. There were approximately 75 volunteers represented by Ministry of the Attorney General, friends of Osgoode Hall and, the Law Society, including staff, the Treasurer, Bencher Barbara Murchie, and me.

## EXCELLENCE CANADA

In 2005 the Client Service Centre, one of the largest departments in the Corporate Services Division, embarked upon the Progressive Excellence Program through Excellence Canada, formerly the National Quality Institute. In February, they achieved the fourth and highest level of the Progressive Excellence Program and also met the requirements for the Canada Awards for Excellence Gold Trophy, an award with vice-regal patronage from the Governor-General of Canada, His Excellency, The Right Honourable David Johnston.

The achievement of this milestone was the result of a commitment to excellence spanning more than ten years, in each of six areas: Leadership, Planning, Client Focus, People Focus, Process Management and Supplier/Partner Focus.

This is a significant achievement for the Client Service Centre!

The larger Corporate Services Division, including the Client Service Centre, will be embarking on a new certification program offered through Excellence Canada called *Excellence, Innovation and Wellness*.

This certification is a blueprint for building a culture of continual improvement. Similar to the Progressive Excellence Program, there are four milestones to validate success. I look forward to reporting to you on their progress.

## POLICY AND GOVERNANCE INITIATIVES

### ACCESS TO JUSTICE AND THE ACTION GROUP (TAG)

TAG continues to establish itself as a catalyst and convenor for access to justice initiatives across Ontario. The Reference Group, with key stakeholders across the access to justice landscape, guides the development of TAG's capacity and growth of its network. A full-time Manager for TAG, Sabreena Delhon, was hired in the spring of 2015 through financial support for TAG from the Law Foundation of Ontario.

In March 2015, the Law Society and TAG hosted a meeting of the National Action Committee chaired by Justice Cromwell with representatives from each of the Access to Justice Committees across Canada. TAG has also presented at access to justice events organized by Flip Your Wig and the County and District Law President's Association.

TAG has established a range of clusters with diverse collaborators. Targeted Legal Services is a cluster organized by TAG, the Law Society and Social Justice Tribunals Ontario. Over the course of three symposia, this cluster explores how licensees can find innovative ways to meet the varied access to justice needs of their clients. The first two events each drew a combined in-person and webcast audience of over 200 for each event. The third and final symposium will take place on September 16, 2015.

A cluster on Mental Health has been established and will coordinate with existing and emerging comprehensive strategies from the Law Society, Legal Aid Ontario, the Advocate's Society, the Ontario Bar Association and other health focused organizations. Taking a trauma informed approach, this cluster will develop tools that help licensees manage their wellness.

A cluster focused on outreach with Aboriginal licensees, organizations and communities is in development. This work will intersect with the renewal of the Law Society's Aboriginal Initiatives Strategy, and build upon the Final Report of the Truth and Reconciliation Commission tabled June 2, 2015.

Shared Steps is a cluster that will produce practical legal information on family law matters that is accessible to the public and trusted intermediaries. Led by Community Legal Education Ontario (CLEO), coordinated content will be developed by leading

justice sector organizations such as the Ministry of the Attorney General, the Superior Court of Justice, the Ontario Court of Justice, the Social Justice Tribunals of Ontario, the Ontario Bar Association, Legal Aid Ontario and a number of community legal clinics.

Others clusters in various stages of development aim to: address the shortage of qualified child custody and access assessors, enhance public legal education and create adaptable service models that meet the needs of rural and remote communities.

A comprehensive public engagement and communications plan that will enhance impact of access to justice initiatives across Ontario is in development.

## COMPLIANCE-BASED ENTITY REGULATION

In 2015, the Law Society continued its consideration of compliance-based entity regulation, as decided by Convocation in February 2014. Staff were directed by the Professional Regulation Committee to develop a framework for this approach to regulation. In doing so, the staff conducted extensive research into the requirements and experiences of other jurisdictions and current Law Society needs and challenges.

This project was led by Zeynep Onen (Executive Lead) and participants were Terry Knott, Diana Miles, Elliot Spears, Wendy Tysall, Grant Wedge, Kerry Boniface, Naomi Bussin, Allison Cheron, Margaret Drent, Leslie Greenfield, Anne-Marie Kearney and Arwen Tillman. A report was provided to the Professional Regulation and Paralegal Standing Committees in June.

As directed by the Treasurer, a task force appointed by Convocation will now study this issue, and make recommendations to Convocation.

## CHALLENGES FACED BY RACIALIZED LAWYERS

The Challenges Faced by Racialized Licensees Working Group has been working under its mandate to identify challenges faced by racialized licensees in different practice environments, identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline, consider best practices for preventive, remedial and support strategies and determine appropriate preventative, remedial, enforcement, regulatory and support strategies.

Based on the findings of the informal and formal engagement process, the Working Group drafted a Consultation Paper, and in preparing it, consulted with members of the Equity Advisory Group, the Community Liaisons, the Canadian Association of Black Lawyers (CABL), the Canadian Association of South Asian Lawyers (CASAL), the

Federation of Asian Canadian Lawyers (FACL) and the South Asian Bar Association (SABA).

In November 2014, Convocation approved a broad based consultation with lawyers, paralegals, academics, members of the judiciary and the public. The Consultation Paper was posted in French and English on-line with a deadline for written submissions of March 1, 2015.

The Working Group held open house events and heard from over 1,000 racialized and non-racialized lawyers, paralegals, law students, articling students and members of the public in the Greater Toronto Area (Downtown Toronto, Brampton, Newmarket, Oshawa), Hamilton, London, Ottawa, Sudbury, Thunder Bay, and Windsor. Three Toronto open houses (one in French and two in English) were webcast to ensure full access to all lawyers, paralegals and members of the public in Ontario. The Working Group also received more than 40 written submissions.

As part of the consultation process, the Working Group also reached out to larger law firms in Toronto to discuss the questions raised in the consultation paper. The Chair of the Working Group and Law Society staff met with managing partners and often recruitment partners or partner representatives on the Law Firms Diversity and Inclusion Network. The meetings have yielded positive discussions about policy options for addressing many of the challenges identified in the consultation paper. There has been interest and enthusiasm expressed for working collaboratively with the Law Society. Firms have begun a number of initiatives to create more inclusive workspaces. There is recognition of the business and human drivers for increasing competence in the diversity and inclusion aspects of hiring and retention.

In April 2015, the Working Group presented an interim report to Convocation and will work towards a final report for the fall of 2015.

## ALTERNATIVE BUSINESS STRUCTURES (ABS) WORKING GROUP

Work continues on our alternative business structures, or ABS, initiative through the work of the Working Group on ABS. The results of a call for input based on a discussion paper issued in late 2014 were reviewed by the Working Group and reported to Convocation in February 2015. As this reported indicated, the over 40 responses included opinion ranging from definitive opposition to any ABSs and concerns with introducing certain types of ABSs in Ontario to strong support for introducing some level of ABS in Ontario, with appropriate regulatory oversight.

The Working Group continues to meet to consider its next steps given the responses and determine the matters that warrant further study and how that study should unfold. The

Working Group's dedicated ABS webpage on the Law Society's website continues to be updated with relevant information and educational materials.

## BENCHER ELECTION 2015

The Director of Policy, who was designated as the Elections Officer, directed the election process. The election was conducted entirely online via a third party, Computershare. While our voter turnout proportionately was less than in 2011 (37%), 16,040, or nearly 34% of the electorate, voted in the 2015 Bencher Election.

## FEDERATION OF LAW SOCIETIES OF CANADA SUPPORT

The Law Society makes a significant contribution in both human and financial resources to the Federation. Staff and benchers continue to contribute to the progress of a number of Federation initiatives.

Former Treasurer Tom Conway continues as president of the Federation and we look forward to continuing to work with him in that capacity for the balance of his term. Former Treasurer Laurie Pawlitza, our Federation Council representative, also chairs the Canadian Common Law Program Approval Committee. Both have participated on the working group to recommend terms of reference for the National Requirement Review Committee. Bencher Malcolm Mercer serves as a member of the National Committee on Accreditation.

Staff in our Policy Secretariat continue to provide key support to a number of Federation initiatives. The quarter-time secondment of Sophia Sperdakos, Policy Counsel and one-third time secondment of Juda Strawczynski, Counsel to the Director of Policy, to the Federation continues into 2015. Their support of the policy work related to the national requirement and NCA processes have been very helpful in advancing the Federation's work in these areas. Sophia also serves on the Standing Committee on National Discipline Standards Suitability to Practise/Good Character Working Group.

Other staff continue with their contributions to a number of Federation initiatives. These include Diana Miles, Executive Director, Organizational Strategy /Professional Development & Competence, who participates as a member of the National Admission Standards Project Steering Committee, Zeynep Onen, Executive Director, Professional Regulation who is a member of the Standing Committee on National Discipline Standards, Naomi Bussin, Senior Counsel, Office the Director of the Executive Director, Professional Regulation who is a member of the Standing Committee's Suitability to Practise/Good Character Working Group and Jim Varro, Director of Policy, who serves as a member of the Standing Committee on the Model Code of Professional Conduct.

I also serve as a member of the Governance Review Committee, the Standing Committee on Access to Legal Services and the above-noted Steering Committee.

## GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Public Affairs liaises with all levels of government to ensure ongoing and enhanced networks and relationships. Many or perhaps most issues taken up by Convocation are of interest to the government or require its involvement in some way. Consequently, Public Affairs is involved in the issues, policies and initiatives being considered by benchers. In addition, government initiatives that affect the Law Society's mandate are monitored and addressed.

## THE REAL ESTATE LIAISON GROUP (RELG)

The Real Estate Liaison Group, created by the Treasurer together with the Ontario Bar Association, CDLPA and LawPRO engages in dialogue on real estate issues of common interest and and planning in response to expressed concern about the future and current state of real estate practice in Ontario.

The group continues to meet to discuss current issues, including ABS, regulatory policy issues touching on real estate practice and legislative developments. I expect as we move forward and learn more the marketplace in which real estate practice occurs, RELG will continue to be a valuable forum for discussion, including on matters related to the Law Society's responsibilities.

## LEGAL INFORMATION AND SUPPORT SERVICES (LISS)

The LISS Working Group reported in October 2014. Since then, the Law Society has been working with the other shareholders of LibraryCo (County and District Law Presidents' Association and Toronto Lawyers' Association) on the directions for the evolution of libraries and legal information services set by the LISS report – with a focus on four main areas: governance, physical space, licensee competence and research literacy, and monetary funding and financial efficiencies.

This work has now transitioned to the LibraryCo Board, which is engaging in detailed research including a survey of all library branches including the services provided and the physical premises available.

## TRINITY WESTERN UNIVERSITY (TWU) ACCREDITATION

TWU's application regarding the Law Society's decision not to accredit its law school was heard over four days during the week of June 1, 2015.

TWU made oral submissions first. The Attorney General of Canada went next, followed by the interveners supporting TWU's position (Christian Legal Fellowship, Evangelical Fellowship of Canada and Christian Higher Education Canada and Justice Centre for Constitutional Freedoms).

The Law Society began its oral submissions towards the end of the second day of the hearing (June 2). It was followed by the interveners supporting the Law Society's position (Criminal Lawyers' Association, The Advocates' Society and Out on Bay Street and OUTlaws).

TWU's oral submissions in reply closed the hearing on June 4.

The panel hearing the matter consisted of Associate Chief Justice Marrocco and Mr. Justice Nordheimer and Mr. Justice Then. The panel was well prepared for the hearing and remained engaged throughout the hearing, asking the parties and interveners many questions.

As was expected, the panel reserved its decision.

## TORONTO LAWYERS FEED THE HUNGRY PROGRAM

The Toronto Lawyers Feed the Hungry Program is a program of the Law Society Foundation. It operates through the cafeteria and with in-kind support from the Law Society. Meals are served on Wednesday nights, Thursday mornings, Friday nights and Sunday mornings. On average, the Program serves approximately 60,000 guests a year at an average annual cost of $360,000. With the current fund balance and assuming attendance remains at current levels, the Program has sufficient funding for 12 to 18 months of operation.

## LAW SOCIETY REFERRAL SERVICES ONLINE

The Law Society Referral Service (LSRS) became fully automated at the end of 2014. Referrals are now requested and automatically processed through a web-based service available 24 hours a day, seven days a week. Historically, the LSRS also provided information to its callers regarding legal resources when a referral was not available or required. With the move to on-line services, we needed to find a way to continue to provide this type of support to the public. As a result, we created a series of easily-accessible links to legal resources that will assist members of the public in making more informed decisions about legal matters which can be found at http://www.lsuc.on.ca/legal-resources/.

## MEMBER ASSISTANCE PLAN (MAP)

In 2014, there were 595 cases with Homewood Health, the Law Society's Member Assistance Program provider. Counselling cases represented 81.2%, Plan Smart cases (future planning) accounted for 12.7% and Peer Support 4.7% of overall utilization. Members between the ages of 31-40 continue to represent the majority of users and we have seen a 25% increase in cases relating to work stress over the last year.

Counselling cases included psychological issues (45.3%); work issues (21.9%); marital/relationship issues (15.8%) and addiction issues (4.7%).

Looking at overall utilization, there were three main areas of Plan Smart cases:

1. Career Counselling, including Career Choice and Career Dissatisfaction - 41%
2. Legal Advisory Services* - 14.8%
3. Financial Advisory Services 13. 1%

**1/3 in the area of Family/Divorce/Custody*

The Member Assistance Program is committed to creating and operating a comprehensive, professional and effective peer volunteer program for members of the legal profession. They have actively recruited and trained 21 peer volunteers, including three paralegals as at the end of 2014. Recruitment is ongoing with three candidates accepted and awaiting training and another six new applicants to be interviewed. The program's peers are members of the profession who have met their own challenges and recovery and have come back to lend their support to colleagues. In 2014, the program matched a total of 28 new pairings between peer and client. The peer program has seen a 57% increase in 2014 from 2013 in the number of matches.

The Member Assistance Program continues to be promoted by Homewood Health. In 2014, they attended 16 speaking engagements, focusing on the benefits and features of the MAP or on more specific topics such as stress, professionalism, mental health and work/life balance. Their audiences ranged in size from 10 to 250+. They have also set up information booths at the Ontario Bar Association Institute as well as the Solo and Small Firm Conference.

We are seeing that the Member Assistance Program, through Homewood, is gaining momentum as a credible and valuable resource to our membership as demonstrated in the utilization rates, the number of peer requests and the number of partnerships with legal organizations across the Province.

## PARENTAL LEAVE ASSISTANCE PROGRAM (PLAP)

As of April 30, 2015, 18 lawyers had applied to PLAP in 2015. Since the program launch in March 2009, there have been 317 applicants who have received benefits under PLAP.

## CONCLUSION

This is a time of significant transition for the Law Society of Upper Canada. Our recent Bencher election saw eighteen new lawyer Benchers elected. Two new lay Benchers have recently been appointed. We congratulate all of our new Benchers, and look forward to the fresh perspective that they will bring to us, and to our work.

At the same time, we acknowledge the huge contribution made by those Benchers who are not returning to our new term. Their support to us as staff and their colleagues, and their dedication to the public interest in the governance of the legal professions is most deeply appreciated.

The leadership of Treasurer Janet Minor over the past year has been invaluable and continues to be our guidance as we embark on transition, and some major new initiatives over the next year. Her unwavering dedication to the Law Society is remarkable, and I acknowledge with sincere thanks her support of our work.

It is exciting to begin this new Bencher term. We look forward to the development of our new Strategic Plan to guide us in the priorities for our work for the next four years, and to our continued work on some very exciting new initiatives. I am deeply conscious of the challenges that a transition of this nature creates for our staff. I am also very confident that they will meet that challenge, with their continued commitment to excellence, and I thank them for it.

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

**TAB 9**

**Report to Convocation**
**June 25, 2015**

# Audit & Finance Committee

**Committee Members**
**Christopher Bredt (Co-Chair)**
**Peter Wardle (Co-Chair)**
**Susan Elliott (Vice Chair)**
John Callaghan
Seymour Epstein
Michelle Haigh
Vern Krishna
Judith Potter
Catherine Strosberg

**Purpose of Report: Decision and Information**

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

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## COMMITTEE PROCESS

1. The Audit & Finance Committee ("the Committee") met on June 10, 2015. Committee members in attendance were Chris Bredt (co-chair), John Callaghan (phone), Seymour Epstein, Michelle Haigh, and Catherine Strosberg.

2. Also in attendance were benchers Paul Cooper (phone), Andrew Spurgeon and Anne Vesprey.

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

4. Also in attendance: Stephanie Kalinowski, Hicks Morley and Michael Nicoló and Brenda Lee-Kennedy – PricewaterhouseCoopers LLP.

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*IN CAMERA MATERIAL*

TAB 9.2

# REPORTS FOR INFORMATION

**TAB 9.3**

**FOR INFORMATION**

# LIBRARYCO INC. FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 2015

15. **Convocation is requested to receive the first quarter financial statements for LibraryCo for information.**

## Rationale

16. LibraryCo Inc. is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the County and District Law Presidents' Association and the Toronto Lawyers' Association. LibraryCo is a wholly-owned subsidiary of the Law Society. There is a quarterly financial reporting schedule to the shareholder. These interim statements convey the performance of LibraryCo before the end of the year. Unlike annual statements, interim statements do not have to be audited.

17. The Law Society provides administrative services to LibraryCo, for a fee, under an administrative services agreement.

18. The statements have been approved by LibraryCo's board.

# LIBRARYCO INC.
# FINANCIAL REPORT
**For the three months ended March 31, 2015**

## KEY POINT SUMMARY

### Overall Results

Results for the first quarter identify a surplus of $41,770 compared to a budgeted surplus of $9,834. The positive variance from budget of $31,936 comprises relatively small variances spread across most expense categories. It is typically too early in the year to attribute these variances to timing differences or actual savings.

The budget for the year includes a total deficit of $100,000 mainly comprised of a contingency of $85,541.

### Revenues

19. The Law Society grant (line 1) is the transfer to LibraryCo. This transfer includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was $1.9 million and matched budgeted amounts for the period.

20. A Law Foundation of Ontario grant (line 2) was not granted to LibraryCo for 2015. In 2014, this grant was used to subsidize the purchase of electronic resources.

21. Other Income (line 3) consists of investment income on LibraryCo's cash and short term investments.

### Expenses

22. Total expenses were $1,883,891 compared to a budgeted total of $1,914,169.

23. Salaries and benefits (line 5) were nil compared to 2014 as LibraryCo no longer has any staff.

24. Administration expenses (line 6) of $107,500 represents the service fee paid to the Law Society and equals budget.

25. Professional fees (line 7) include audit expenses, consulting and legal fees.

26. Professional fees are lower than budget by nearly $5,300 due to underspending of budget allocated for consulting fees in the first quarter.

27. Contingency (line 8) was created during the budget reallocation approved by the Board in March. Budget has been allocated to the remaining three quarters of 2015.

28. Other head-office expenses (line 9) include LibraryCo publications (such as the production of the Annual Report), head office courier/postage costs, LibraryCo's Directors and Officers (D&O) insurance, bank charges, web initiatives and website maintenance costs, the cost of providing most libraries with a toll free telephone number, miscellaneous expenses and meeting expenses (including travel and accommodation) related to board meetings, audit and finance committee and transition committee meetings.

29. Other head-office expenses are lower than budget for the period by approximately $10,100 primarily as a result of underspending for publication expenses within LibraryCo, 1-800 line charges, web initiatives and miscellaneous expenses.

30. Electronic product expenses of $84,750 (line 11) are in line with the new agreement with LexisNexis.

31. Group benefits and insurance (line 12) consist of the Group Benefits for enrolled library staff and library D&O and property insurance.

32. Group benefits and insurance are lower than budget by about $9,200 as group benefits premiums may vary slightly month-to-month and these are budgeted conservatively. Given that both the D&O and property insurance policies expire at the end of April, a conservative increase in insurance for the remaining three quarters of 2015 was also taken into consideration when budgeting for 2015.

33. Other centralized expenses (line 13) includes continuing education bursaries for library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 law libraries, the Conference for Ontario Law Associations' Libraries (COLAL) meeting expenses (yearly meeting held in October – covers meeting costs including travel and accommodation for library staff), and CDLPA meeting expenses for the Library Committee.

34. Other centralized expenses are lower than budget by about $2,500 primarily because of underspending in publications, COLAL continuing education and courier costs.

35. County and District law libraries grants (line 15) are in line with budget at $1,585,935.

36. Capital and special needs grants (line 16) consist of computer refreshment grants, special needs grants and conference bursaries for library staff.

37. Capital and special needs grants provided in the first quarter include:

| *Organization* | *Grant Amount* | *Purpose* |
|---|---|---|
| Norfolk Law Association | $734.67 | Computer |
| Haldimand Law Association | $734.67 | Computer |
| Prescott & Russell Law Association | $395.50 | Photocopier Repair |
| Frontenac Law Association | $1,000.00 | Computer |
| Total: | $2,864.84 | |

Capital and special needs grants are under budget by $3,100 as computer grants do not follow a pattern.

**Balance Sheet**

38. Cash and short-term investments (line 1) consists of cash and a one year GIC.

39. Cash and short-term investments have decreased by $28,502 primarily as a result of the deficit in the last 12 months.

40. Accounts receivable (line 2) are related to long term disability benefits premiums made by LibraryCo on the libraries' behalf for the past quarter. These receivables are usually repaid early in the next quarter.

41. Prepaid expenses (line 3) primarily represents the property and D&O insurance policies for LibraryCo and the libraries which expire at the end of April.

42. Accounts payable and accrued liabilities (line 5) are almost $5,300 higher than 2014. Expenses such as the monthly electronic products expense and the Law Society administrative services charges are paid the following month.

43. The General Fund has decreased by $32,000 over the last 12 months in line with the deficit for the period which used the General Fund to finance expenses. Based on the 2015 budgeted deficit of $100,000 from the General Fund, this Fund is expected to be depleted to a balance of nearly $40,000.

44. The Reserve Fund has a balance at the end of September of $500,000 comprising a general component of $200,000, a capital and special needs component of $150,000, and a staffing and severance component of $150,000 in accordance with Board policy.

**LIBRARYCO INC.**
**Schedule of Actual and Budgeted Revenues and Expenses**
**Stated in Dollars**
***For the three months ended March 31***
**Unaudited**

| | | 2015 Actual | YTD Budget | YTD Variance | Annual Budget | 2014 Actual |
|---|---|---|---|---|---|---|
| | **REVENUES** | | | | | |
| 1 | Law Society of Upper Canada grant | 1,924,003 | 1,924,003 | - | 7,696,000 | 1,874,632 |
| 2 | Law Foundation of Ontario grant | - | - | - | - | 542,000 |
| 3 | Other Income | 1,658 | - | 1,658 | - | 1,850 |
| 4 | **Total revenues** | **1,925,661** | **1,924,003** | **1,658** | **7,696,000** | **2,418,482** |
| | **EXPENSES** | | | | | |
| | **Head office/administration** | | | | | |
| 5 | Salaries and benefits | - | - | - | - | 34,065 |
| 6 | Administration | 107,500 | 107,500 | - | 430,000 | 131,925 |
| 7 | Professional fees | 3,705 | 9,000 | 5,295 | 36,000 | 3,798 |
| 8 | Contingency | - | - | - | 85,541 | - |
| 9 | Other | 6,393 | 16,524 | 10,131 | 53,325 | 10,722 |
| 10 | **Total Head office/administration expenses** | **117,598** | **133,024** | **15,426** | **604,866** | **180,510** |
| | **Law Libraries - centralized purchases** | | | | | |
| 11 | Electronic products and services | 84,750 | 84,750 | - | 339,000 | 739,332 |
| 12 | Group benefits and insurance | 74,348 | 83,550 | 9,202 | 337,345 | 78,344 |
| 13 | Other | 18,395 | 20,910 | 2,515 | 126,650 | 12,146 |
| 14 | **Total Law Libraries - centralized purchases** | **177,493** | **189,210** | **11,717** | **802,995** | **829,822** |
| 15 | County and District law libraries - grants | 1,585,935 | 1,585,935 | - | 6,343,739 | 1,570,232 |
| 16 | Capital and special needs grants | 2,865 | 6,000 | 3,135 | 44,400 | 5,701 |
| 17 | **Total County and District Law Libraries Expenses** | **1,588,800** | **1,591,935** | **3,135** | **6,388,139** | **1,575,933** |
| 18 | **Total expenses** | **1,883,891** | **1,914,169** | **30,278** | **7,796,000** | **2,586,265** |
| 19 | **Surplus (Deficit)** | **41,770** | **9,834** | **31,936** | **(100,000)** | **(167,783)** |

*This statement includes the revenues and expenses of the LibraryCo entity only.*

**LIBRARYCO INC.**
**Balance Sheet**
**Stated in Dollars**
***As at March 31***
**Unaudited**

| | | 2015 | 2014 |
|---|---|---|---|
| | **Assets** | | |
| | **Current Assets** | | |
| 1 | Cash and short-term investments | 735,993 | 764,495 |
| 2 | Accounts receivable | 20,155 | 19,096 |
| 3 | Prepaid expenses | 7,394 | 6,700 |
| 4 | **Total Assets** | **763,542** | **790,291** |
| | **Liabilities, Share Capital and Fund Balances** | | |
| | **Liabilities** | | |
| 5 | Accounts payable and accrued liabilities | 80,216 | 74,938 |
| 6 | **Total Liabilities** | **80,216** | **74,938** |
| | **Share Capital and Fund Balances** | | |
| 7 | Share capital | 200 | 200 |
| 8 | General fund | 183,126 | 215,153 |
| 9 | Reserve fund | 500,000 | 500,000 |
| 10 | **Total Share Capital and Fund Balances** | **683,326** | **715,353** |
| 11 | **Total Liabilities, Share Capital and Fund Balances** | **763,542** | **790,291** |

*This Balance Sheet includes the financial resources of the LibraryCo entity only.*

## LIBRARYCO INC.
## Statement of Changes in Fund Balances
## Stated in Dollars
***For the three months ended March 31***

| | | 2015 | | | 2014 |
|---|---|---|---|---|---|
| | | General Fund | Reserve Fund | **Total** | **Total** |
| 1 | Balance, beginning of year | 141,356 | 500,000 | **641,356** | **882,936** |
| 2 | Surplus (Deficit) | 41,770 | - | **41,770** | **(167,783)** |
| 3 | **Balance, end of period** | **183,126** | **500,000** | **683,126** | **715,153** |

*This statement includes the fund balances of the LibraryCo entity only.*

**TAB 9.4**

**FOR INFORMATION**

## OTHER COMMITTEE WORK

45. The Committee approved resolutions and received other related documents for the Pension Plan for the Employees of the Law Society of Upper Canada. Specifically, the Committee:
    a) adopted the Law Society of Upper Canada Pension Plan Governance Structure and Guidelines effective January 1, 2015, updated with minor changes
    b) consented to the assumption of the Standard Life contracts by Manulife, as a result of the acquisition by Manulife of Standard Life. Standard Life is the current custodian and record-keeper of the Pension Plan
    c) received the Pension Governance Report for the 16 months ending April 30, 2015 detailing the activities of the Pension Plan for the 2014 year, including the Audited Financial Statements for the Plan, the membership statistics
    d) received the Legal Advisor's Report for the period May 8, 2014 to April 30, 2015 summarizing relevant legal developments that may have an impact on the Pension Plan.

46. The Committee's role in relation to the Law Society's pension fund is set out in By-law 3:

**Administrator of pension plan**
118. (1) The Audit and Finance Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

**Powers**
(2) The performance of any duty, or the exercise of any power, by the Audit and Finance Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

47. The Committee also reviewed the major assumptions impacting the 2016 budget and provided feedback to staff on development of the 2016 budget, reviewed the financial support that the Law Society provides to external organizations and the establishment of the 2016 annual fee for lawyers and paralegals and the 2016-2018 financial plan.

*THIS SECTION CONTAINS*

*IN CAMERA MATERIAL*

**TAB 11**

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

# Report to Convocation
# June 25, 2015

## Priority Planning Committee

**Committee Members**
Janet Minor (Chair)
Raj Anand
Marion Boyd
Christopher Bredt
John Callaghan
Cathy Corsetti
Julian Falconer
Howard Goldblatt
Michelle Haigh
Carol Hartman
Jacqueline Horvat
Janet Leiper
William McDowell
Susan McGrath
Malcolm Mercer
Julian Porter
Paul Schabas
Peter Wardle

**Purpose of Report: Information**

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

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**Tab 11.1**

**FOR INFORMATION**

# CONVOCATION'S PRIORITY PLANNING - STATUS OF WORK ON CONVOCATION'S PRIORITIES

## Committee Process

1. The Priority Planning Committee ("the Committee") has prepared this status report for Convocation's information on the work completed or in progress on Convocation's policy agenda. This report follows the status report to Convocation in June 2014.

## Background

2. In March 2007, Convocation approved the following recommendations of the Governance Task Force with respect to prioritizing and planning Convocation's policy agenda:

    a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and

    b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,

        i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
        ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;
        iii. In addition to the bencher members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
        iv. The mandate of the Committee is to
            A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
            B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
            C. report annually to Convocation on the status of Convocation's priorities.

3. A Planning Session was held from September 25 to 27, 2011 following the bencher election that year. At the Session, attendees identified a number of priority areas as the focus for 2011 to 2015. Committee meetings in the fall of 2011 resulted in the presentation to Convocation of six priority areas and two other areas linked to the effectiveness with which the Law Society carries out its mandate. These eight areas are:
   - Access to Justice
   - Competency and professional standards
   - Equity, diversity and retention
   - Tribunals issues
   - Business structures and law firm financing
   - Professional regulation
   - Effective communication and outreach
   - Convocation governance effectiveness

4. On December 9, 2011, Convocation approved these priority areas.

5. Following consultation with the chairs of the standing committees and task forces and members of the senior management team, on April 26, 2012 the Committee presented to Convocation a work plan to achieve the priorities approved by Convocation for the 2011 – 2015 term. Included was an update on the implementation of initiatives that had been carried out by the Law Society to address the approved priorities and implement the work plan. At that meeting, Convocation approved the work plan.

6. Convocation also confirmed its earlier policy for the process for adding new issues and initiatives to the work plan, as follows:
   a. Depending on the nature of the issue that arises, the Treasurer may discuss it with the chair of the relevant committee and the Chief Executive Officer to determine whether the issue can be accommodated within the current work plan. If it can be accommodated, the work plan will be amended and reported to Convocation for information.
   b. If the issue cannot be accommodated within the current work plan, the issue will have to be scoped out, and the financial and resource implications determined. The Committee will then present the issue to Convocation for its decision on whether to add it to the work plan.

7. This is the Committee's final report on the status of the initiatives undertaken to achieve Convocation's priorities for the 2011-2015 term.

**The Status of Work on the Priorities**

8. Earlier this month, Committee members reviewed the work done on the priorities for the

2011 – 2015 bencher term. Set out in the table at **Tab 11.1.1** is a report on each of the priorities (summarized, based on the April 2012 report) and the status of the work done updated to June 2015.

9. In reviewing the progress of work on the priorities in accordance with Convocation's March 2007 policy, the Committee concluded that significant progress has been made on the priorities, including initiatives that have been completed and some that evolved as aspects of the priorities. The priority planning process Convocation established has helped to advance the effectiveness of the Law Society's mandate.

**Next Steps**

10. While this report concludes the Committee's monitoring of progress on the work on these priorities, it will soon engage in preparing for Convocation's approval the priorities for the next bencher term, mindful of priorities from this term that, given their importance, will continue to be studied to completion early in the upcoming term.

11. A more robust priority planning process to set the stage for this approval has begun and will continue through the summer and into the fall of 2015, when benchers will meet to confirm priorities for 2015-2019. Thereafter, with assistance from operational staff, the Committee will prepare a work plan for Convocation's approval later this year or early in 2016.

12. As the Committee engages in this planning process, it will also consider the Law Society's operational strategic direction established by the Chief Executive Officer and the role it plays in benchers' discussions about the priority agenda for the upcoming term.

**TAB 11.1.1**

# STATUS OF CURRENT WORK ON THE EIGHT PRIORITIES

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| **ACCESS TO JUSTICE**<br><br>1. Resources, information/communications and leadership by the Law Society;<br>2. Facilitating access to legal and administrative services, including publicly-accessible information, legal referral services, legal aid, alternative dispute resolution, legal expense insurance and *pro bono* services, including limited scope retainers;<br>3. Licensing options as a means to increase access to justice; and<br>4. Court and procedural reforms. | • Supporting development of dedicated resources for family law litigants<br><br>**Incorporated into The Action Group on Access to Justice (TAG) – the platform and content of the web-based Unified Family Law Platform now being shared through the TAG Family Law cluster group, and used and adapted to supplement the online legal information platform, Shared Steps, hosted through Community Legal Education Ontario (CLEO)**<br><br>• Encouraging development of other "upfront" services and administrative services for information<br><br>**Ongoing:**<br>▪ **Over 279,000 copies of the Access to Justice Guide for the public in French and English, 'Handling your everyday legal problems, distributed to the public as of May 1, 2015; Guide was also updated for 2015 and distribution initiated at the Law Society's Doors Open event on May 20 and 21, 2015**<br><br>▪ **September 2014, Guide prepared for First Nation, and Inuit (FNMI) audiences, and translated into Odawa, Northwestern Ojibwe, Severn Ojibwe, Kanienkeha, and Swampy Cree; English version for these audiences also to be published on the Law Society website and printed for distribution**<br><br>▪ **Fact sheets for FNMI audiences being produced, providing specific information about hiring a lawyer or paralegal and the complaints and regulatory function and process of the Law Society; to be translated into French and FN languages, printed and posted to the Law Society's website** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | • Proposing/encouraging court and procedural reforms<br><br>**Ongoing:**<br>▪ **Rule Amendments following family and civil rules changes in 2013 enabling limited scope retainers (amendments to be considered by Convocation on June 25, 2015)**<br><br>▪ **In 2015, the Law Society hosting three public legal education events on 'Targeted Legal Services' through the TAG initiative, in partnership with external TAG partners. (See also Professional Regulation)**<br><br>• Liaising with other stakeholder groups, such as Pro Bono Law Ontario, Ontario Justice Education Network and the Law Commission of Ontario on access to justice initiatives<br><br>**Ongoing:**<br>▪ **Work through TAG continues and administered through the Reference Group, consisting of a broad cross-section of representatives from the justice sector.**<br><br>▪ **TAG cluster groups developing individual projects and initiatives, including the Targeted Legal Services, Assessor Task Force, Family Law Online, Mental Health and Wellness, Rural, Northern and Remote Access, Aboriginal Justice, Technology/Legal Innovation and Public Legal Information cluster**<br><br>▪ **TAG with the Law Society hosted a meeting of the National Action Committee in March 2015 with representatives from access to justice committees across the country**<br><br>▪ **Events in which TAG has been active include: Flip Your Wig, the Ismali Conciliation & Arbitration Board and the County and District Law Presidents' Association**<br><br>▪ **Ongoing work involves the Family Dispute Resolution Institute of Ontario (FDRIO) to support activities for Ontario's first Family Dispute Resolution week scheduled for November 23-27, 2015** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | ▪ **Website continues for the LIFE/IJAT Project – Law Society/OJEN/CLEO partnership Legal Information for Everyone/Information juridiques accessible a tous (LIFE/IJAT), to provide resources to licensees to support them in undertaking public legal education.**<br>o **English and French-language websites at LIFEtoolbox.ca and IJAToutils.ca fully functional**<br>o **promotion of the website and resources to the legal professions is ongoing** |
| **COMPETENCY AND PROFESSIONAL STANDARDS**<br><br>1. Entry level competencies;<br>2. Competence in the early years of practice;<br>3. Competencies by areas of practice;<br>4. Licensing options as a means to promote competence;<br>5. Measurable and enforceable practice standards;<br>6. Mentoring and support for licensees, including mentoring programs, advisor services, practice supports;<br>7. Technological applications for learning, assessment and assistance; and<br>8. National standards. | • Considering developments at the front end of legal education to enhance competence<br><br>**Implementation of three-year pilot project for revisions to lawyer licensing program; Law Practice Program launched fall 2014**<br><br>**Implementation of performance-based evaluations in the Articling Program that mirror the expected completion of skills and tasks competencies in the Law Practice Program approved October 2013 and have been introduced to Articling Candidates and Principals for the current term**<br><br>**Approved reforms to the accreditation and ongoing audit framework for paralegal education programs including:**<br>▪ **revisioning of the paralegal licensing examination to increase the substantive legal knowledge component - new examination will be administered for the first time August 2015;**<br>▪ **new accreditation and audit process for paralegal colleges to come into effect fall 2015, and includes the introduction of more stringent standards and criteria for programme accreditation, introduction of a mandatory Re-accreditation Process requiring colleges to renew their accreditation on a five-year cycle, and implementation of a fee structure** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | **Review of provisions respecting experiential learning for law school students**<br><br>• Ongoing assessment of entry level competencies, with a specific focus on competency standards and assessment of newly licensed individuals<br><br>**Ongoing development of the National Admission Standards including approval of the National Competency Profile**<br><br>• Considering initiatives to support and promote sound practice management practices, including succession planning<br><br>**Contingency planning resources in place since September 2013**<br><br>• Developing initiatives to institutionalize mentoring, advisor and other support services for lawyers and paralegals; inputs will include information from other committees<br><br>**Creation of the Mentoring and Advisory Services Proposal Task Force, November 2013, Interim Report provided to Convocation in April 2015, work ongoing**<br><br>• Other work<br><br>**Completion of the work of the Working Group on the Delivery of Legal Information and Library Services, created by Treasurer April 2013, and based on that work, work commenced on transitional issues related to library and legal information services**<br><br>**Continuation of the meetings of the Real Estate Liaison Group established by Treasurer with other stakeholders as a forum for discussion of real estate practice issues**<br><br>**Elimination of CPD compliance desk audits, April 2015** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| **EQUITY, DIVERSITY AND RETENTION**<br><br>1. Processes and initiatives to ensure that equity principles are observed and promoted;<br>2. The development of programs for other members of equity-seeking communities, using the Justicia model as a means to facilitate these initiatives; and<br>3. Communications strategies for promoting equity and diversity. | • Investigating contract compliance strategies<br><br>**To be considered in the context of the ongoing work of the Challenges Face by Racialized Licensees Working Group (see below)**<br><br>• Developing communication plans on the importance of the commitment to diversity and legal obligations, when applicable.<br><br>**Ongoing in relation to various projects**<br><br>• Considering development of programs to encourage law firms to enhance diversity, based on identified needs, and create reporting mechanisms - including consideration of the applicability of a "Justicia" model.<br><br>**Justicia project resources continued promotion on the Law Society's website, in written materials, in CPD programs, in social media and at suitable events, and communications plan updated as required**<br><br>**Considering retention of women issues among paralegal licensees**<br><br>**Ongoing assessment of the effectiveness of the Parental Leave Assistance Program (PLAP)**<br><br>**Challenges Faced by Racialized Licensees Working Group to report to Convocation in the fall of 2015 on the status of its work and consultations completed in 2015 to identify best-practices to address challenges**<br><br>• Working in collaboration with the Professional Development and Competence Committee to identify the needs of lawyers/ paralegals from diverse communities; developing strategies and supports, where applicable, to assist in maintaining standards of competence and professional conduct. |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | **Resources for the profession in place to assist with AODA compliance**<br><br>**Model policies and guidelines are developed and maintained up to date (see also below)**<br><br>**Continuation of custom-design education programs for law firms, legal organizations and law schools. on various equity-related topics**<br><br>• Other work<br><br>**Implementation of the Law society French Language Services Policy**<br><br>**Implementation of provisions in By-Law 2 on Law Society services in English and French adopted by Convocation May 2014 ongoing**<br><br>**The guides *Advising Clients of their French Language Rights – Lawyers' Responsibilities* and *Advising Clients of their French Language Rights – Paralegals' Responsibilities* updated and available online**<br><br>**October 4, 2014, signing of the protocol with the Office of the French Language Services Commissioner to address complaints received about the Law Society's French language services; implementation ongoing**<br><br>**Continuation of research about the legal profession to identify and understand trends including:**<br>▪ **Lawyer and Paralegal Annual Reports – Demographic Data Collection**<br>▪ **The Diversification of Career Paths in Law**<br>▪ **Change of Status Quantitative Survey**<br>▪ **Professor Kay, Leaving Law and Barriers to Re-entry**<br>▪ **Professor Ornstein, Racialization and Gender of Lawyers in Ontario**<br>▪ **Career Choice Study** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | **Ongoing implementation and renewal of the Law Society's Aboriginal Strategy, including:**<br>▪ **Expansion of LAR Practice Categories**<br>▪ **Continue Mentoring and Networking**<br>▪ **Continuing Professional Development (CPD)**<br>▪ **Development of a Certified Specialist Program** |
| **TRIBUNAL ISSUES**<br><br>1. Adjudicator training;<br>2. Use of technology in the hearing process;<br>3. Enhancements to procedures and processes, including file and case management, to improve effectiveness and efficiency;<br>4. Quality of adjudication;<br>5. The appropriate model for the hearing process. | • Creating a standard for adjudicator expertise and competence to ensure quality adjudication<br><br>**Development and implementation of the Law Society Tribunal Mission Statement and Core Values and Tribunal Logo, January 2014**<br><br>**Creation of Member Position Description, October 2014**<br><br>**Introduction of an Appointment Process for Adjudicators**<br><br>**Introduction of an Adjudicator Performance Development Process, May 2014**<br>**Development of template for conducting three-year review of Tribunal model**<br><br>• Enhanced training for adjudicators<br><br>**Formal one-half to full day education sessions offered to all adjudicators now scheduled throughout the year (commenced January 2012)**<br><br>**New Tribunal Member Training Session, 2014 and 2015**<br><br>**In-depth new bencher orientation and training session for 2015**<br><br>• Policy guidelines or directions on key procedures<br><br>**Policy on adjudicator as witness and amendment to Adjudicator Code of Conduct adopted September 2013** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | **Required updates to Adjudicator Code of Conduct and amendments to by-laws respecting the restructured Law Society Tribunal, March 2014**<br><br>**Rules of Practice and Procedure - Hearing and Appeal Division amended as required by the *Modernizing Regulation of the Legal Profession Act, 2013,* March 2014**<br><br>**Ontario Regulation 167/07 amended to reflect establishment of the Law Society Tribunal, March 2014**<br><br>**Ongoing amendments to the Rules to enhance case management, including changes to pre-hearing conference provisions, September 2014**<br><br>**Re-inclusion of Provisions for Appeals from Summary Orders, September 2014**<br><br>**Practice Direction on Tribunal Book of Authorities, May 2015**<br><br>• Exploring structural changes to the tribunal to improve its effectiveness<br><br>**Appointment of non-bencher Chair of the Law Society Tribunal, September 2013**<br><br>**Appointment of appointee adjudicators (lawyer, paralegal and lay) to Law Society Tribunal, through formal recruitment processes**<br><br>**Implementation of new Scheduling Process, May 2014**<br><br>• Other work<br><br>**Launch of the Law Society Tribunal website, March 2014**<br><br>**Creation of Guides to assist self-represented licensees, March 2014** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | **Implementation of Chair's Practice Roundtable with Tribunal stakeholders, January 2014**<br>**Ongoing Development of New Electronic Case Management System, commenced 2013**<br><br>**First Law Society Tribunal Annual Report, April 2015**<br><br>**Second phase of Law Society Tribunal website (enhanced tools to search orders and current proceedings) , January 2015**<br><br>**Procurement and design of new Law Society Tribunal offices at 375 University Avenue** |
| **BUSINESS STUCTURES AND LAW FIRM FINANCING**<br><br>1. Regulatory schemes that may involve new methods of oversight permitting more flexible delivery regimes/ business structures;<br>2. Maintaining independence and other core values within new business structures;<br>3. Ensuring competence, quality of work and value to the client;<br>4. Transparency, the client's understanding of who is the legal services provider, addressing possible conflicts of interest in alternate models;<br>5. Balancing more accessible legal services, possible lower cost with accountabilities for robust/ meaningful regulation; and | • Developing a plan to identify priorities and legal services delivery models for consideration<br><br>• Implementing the plan including a regulatory review to determine the impact of any proposal, and consultations as appropriate<br><br>• Reporting the results to Convocation, including, as appropriate, proposals and recommendations for next steps<br><br>**Following February 2014 Report of the ABS Working Group through the Professional Regulation Committee, consultation based on four proposed models for ABS completed in early 2015 and results reported to Convocation February 2015**<br><br>**Consideration of next steps underway by ABS Working Group, based on consultation results and Working Group's review** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| 6. Financing of law firms and alternate structures | |
| **PROFESSIONAL REGULATION**<br><br>1. Discipline diversion and avoidance, and exploration of initiatives aimed at reducing the number of complaints arising from certain areas of legal practice;<br>2. Expanding matters for single adjudicators;<br>3. Exploring "paper" hearings (i.e. written hearings);<br>4. Enhancing case management, including time limits, disclosure obligations and issue identification;<br>5. Area-specific regulation, flowing from defining/establishing/ enforcing area-specific practice standards. | • Review of discipline process to identify opportunities for improved timeliness including a review to consider expansion of the issues heard by a single member hearing panel (also a Tribunal priority)<br><br>**Review ongoing**<br><br>• Completing next phase of review of limited scope retainers (see also Access to Justice priority)<br><br>**Second phase of limited scope retainer conduct rule review completed following new family and civil rules enabling limited scope retainers in 2013-14 (amendments to be considered at June 25, 2015 Convocation)**<br><br>• Other work<br><br>**October 2014 as the effective date of Convocation's approved amendments to professional conduct rules to implement the Federation of Law Societies of Canada Model Code of Professional Conduct**<br><br>**Ongoing review of rule changes arising from Model Code committee's work, including conflicts of interest, doing business with a client, short term limited legal services, incriminating physical evidence – call for input on changes proposed for summer and fall 2015**<br><br>**Amendments to By-Law 11 to support the Law Society's authority to enforce the payment of costs under section 45.1 of the *Law Society Act,* June 2014**<br><br>**Amending and updating the policy on Law Society Investigations of Benchers, Employees, and Licensee Adjudicators, October 2014**<br><br>**Consideration of a framework for the regulation of entities and for compliance based** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | **regulation commenced in January 2015; report to Convocation in June 2015 to initiate proposed task force study** |
| **EFFECTIVE COMMUNICATION AND OUTREACH**<br><br>1. Reaching and connecting with the public, other stakeholders;<br>2. Determining how best to engage with its members, the public and other stakeholders through communications;<br>3. Using print, electronic media via the internet, social media and video/multimedia meetings | • Continuing work<br><br>**Support to several key organizational initiatives including the following:**<br>▪ **Lawyer Bencher Election, April 30, 2015**<br>▪ **Webcasts of Convocations January to May 2015**<br>▪ **Ongoing TAG initiatives throughout 2014 and 2015**<br>▪ **Challenges Faced by Racialized Licensees Working Group**<br>▪ **ABS Working Group**<br><br>**See also Access to Justice above respecting publications** |
| **CONVOCATION GOVERNANCE EFFECTIVENESS**<br><br>1. Determining the internal Convocation governance issues that need to be enhanced to deliver the Law Society's mandate;<br>2. Examining the Law Society's committee structure, Convocation processes and related operational supports;<br>3. Considering other work to help to facilitate effective governance. | • Examining ways to improve and make more effective Convocation's review and decision-making processes, including:<br>o Review of the size, mandates and structure of committees<br>o Considering a consent agenda for certain Convocation matters<br>o Enhancements to procedural rules for Convocation<br>o Considering scheduling committee meetings and Convocation less often<br>o Considering the appropriate venue for Convocation<br><br>**Review of remaining issues ongoing through Governance Issues Working Group in consultation with Treasurer**<br><br>• Reviewing the regional bencher designation in bencher elections<br><br>**Completed June 2014 with no change proposed to regional scheme** |

| PRIORITY AND DESCRIPTION | JUNE 2015 - ELEMENTS OF THE PRIORITY AND STATUS OF WORK (in bold) |
|---|---|
| | • Other work<br><br>**Reforms to the bencher election process approved by Convocation implemented for 2015 election** |

*THIS SECTION CONTAINS*

*IN CAMERA MATERIAL*

Tab 12

June 16, 2015

**Update Report**
**TAG – The Action Group on Access to Justice**

## TAG's Anniversary

TAG is celebrating its one-year anniversary this month. Over the past year TAG has moved from an aspirational idea to a dynamic reality. TAG arose from the recognition that while there was great will within the justice sector and among allied areas to improve access to justice, the need for enhanced collaboration and practical solutions called for a facilitator and catalyst. TAG is filling that role and is seeing progress on a number of issues as evidenced by its diverse clusters and growing list of partners.

## PLANNING ACTIVITIES

### Reference Group Meeting

The Reference Group met on May 29. In that meeting David Hole, Project Manager for Connecting Ottawa[1], shared lessons learned from his work on collective impact oriented projects. He stressed the importance of building responsive, targeted networks that strengthen existing access to justice efforts. Mr. Hole also shared details about the structure and policies that guide Connecting Ottawa's Advisory Group. Reference Group members discussed how TAG could adapt aspects from the Connecting Ottawa project to inform participation in the Reference Group. The meeting also included updates about in-progress and in-development clusters.

## OUTREACH

### Public Legal Education (PLE) Learning Exchange Day of Discussion

On June 1 TAG attended the PLE Learning Exchange Day of Discussion. The event highlighted efforts that increase the understanding of legal rights in communities across the province. Special emphasis was placed on projects funded through the Law Foundation of Ontario's Connecting Communities program. The event also explored findings from a new paper by CLEO's Centre for Research & Innovation titled "Don't Smoke, Don't Be Poor, Read Before Signing: Linking Health Literacy and Legal Capability".[2]

[1] Connecting Ottawa aims to improve access to justice for linguistic minorities by drawing upon a network of 40 community health, legal, immigration, disability, and social services agencies.
[2] The paper can be downloaded at this link: http://www.plelearningexchange.ca/wp-content/uploads/2015/04/FINAL-April-7-Health-Paper_final.pdf

### Family Dispute Resolution Institute of Ontario (FDRIO)

Family Dispute Resolution Institute of Ontario (FDRIO) is a new non-profit organization of professionals bringing together a broad spectrum of dispute resolution services to families experiencing conflict. It aims to increase access to justice for families by providing the public with cohesive, affordable dispute resolution options. November 23-27 has been declared Family Dispute Resolution (FDR) Week by Premier Kathleen Wynne. TAG will assist with program development and communications activities for FDR week.

## CLUSTER ACTIVITES

### Custody & Access Assessor Task Force

The Custody & Access Assessor Task Force cluster officially kicked off on June 3 with a meeting that brought together representatives from the family justice system including professionals from the College of Physicians and Surgeons of Ontario and the Ontario College of Social Workers. Professor Nicholas Bala (Faculty of Law, Queen's University) gave a presentation outlining the challenges faced by court appointed assessors and the impact of unfounded complaints against assessors on the court process. What followed was a dynamic, facilitated discussion about potential solutions that make sense for the justice system and the colleges that regulate assessors. Working groups were identified and populated. Pending activities of these working groups, this cluster will reconvene with the anticipated addition of representatives from the Ministry of Health and Long-Term Care and the Ministry of Children and Youth Services.

# MATERIALS TO FOLLOW
# WHEN AVAILABLE