

## MINUTES OF CONVOCATION

Thursday, February 24, 2011  
9:20 a.m.

## PRESENT:

The Treasurer (Laurie H. Pawlitz), Anand, Backhouse, Boyd, Bredt, Campion, Caskey, Chilcott (by telephone), Conway, Crowe, Dickson, Dray, Elliott, Epstein, Eustace, Falconer, Fleck, Furlong, Go, Gold, Haigh, Halajian (by telephone), Hartman (by telephone), Heintzman, Hunter (by telephone), Kaplan, Krishna, MacKenzie, McGrath, Marmur (by telephone), Minor, Murray, Porter, Potter, Pustina, Rabinovitch, Richer, Ross, Rothstein (by telephone), Sandler, Schabas, Silverstein, Simpson, C. Strosberg (by telephone), Swaye, Symes, Tough (by telephone) and Wright.

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Secretary: James Varro

The Reporter was sworn.

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## IN PUBLIC

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ELECTION OF BENCHER

WHEREAS Glenn Hainey, who was elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by all electors has been appointed a judge of the Superior Court of Justice of Ontario; and

WHEREAS upon being appointed a judge of the Superior Court of Justice of Ontario, Glenn Hainey became unable to continue in office as a bencher, thereby creating 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;

MOVED BY: Christopher Bredt

SECONDED BY: Heather Ross

THAT under the authority contained in By-Law 3, William Edward Kaplan, 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 benchers 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 Mr. Kaplan to Convocation.

The Treasurer addressed the matter of the scope of practice for paralegals.

The Treasurer congratulated Glenn Hainey on his appointment as a judge of the Superior Court of Justice of Ontario on February 4, 2011 and thanked him for his outstanding contributions as a bencher.

The Treasurer thanked all who contributed to the Laura Legge event on February 23, 2011.

#### DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of January 27 and 28, 2011 were confirmed.

#### COMMITTEE APPOINTMENTS

It was moved by Mr. Bredt, seconded by Ms. Ross, –

THAT Mark Sandler be removed from the Equity and Aboriginal Committee at his own request.

THAT Julian Porter be appointed Chair of the Professional Regulation Committee to replace Glenn Hainey.

THAT Julian Porter be appointed to the Proceedings Authorization Committee to replace Glenn Hainey as the Professional Regulation Committee appointee, pursuant to paragraph 44(2)(a) of By-Law 11.

That Gavin MacKenzie be appointed to the Proceedings Authorization Committee to replace Julian Porter.

That Alan Silverstein be appointed to the Paralegal Standing Committee to replace Glenn Hainey.

THAT William Kaplan be appointed to the Professional Regulation Committee.

THAT William Kaplan be appointed to the Law Society Hearing Panel pursuant to section 49.21 of the *Law Society Act*.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The 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, February 24<sup>th</sup>, 2011.

ALL OF WHICH is respectfully submitted

DATED this 24<sup>th</sup> day of February, 2011

CANDIDATES FOR CALL TO THE BAR  
February 24, 2011

Raphael Isaac Amram  
Jason Samuel Ansel  
Stephane Eljarrat  
Heidi Raenn Amnestyne Fraser-Kruck  
Elizabeth Jane Greig-Hatton  
Richard Jonathan Myles Lande  
Christine Mainville  
Marie Jule Katia Anne Morinville  
Vanessa-Lee Routley  
Grant Yim

It was moved by Mr. Conway, seconded by Ms. Dickson, that the Report of the Director of Professional Development and Competence listing the names of the Call to the Bar candidates be adopted.

Carried

### TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report to Convocation  
February 24, 2011

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Tribunals Committee

Committee Members  
Mark Sandler (Co-Chair)  
Linda Rothstein (Co-Chair)  
Alan Gold (Vice-Chair)  
Raj Anand  
Jack Braithwaite  
Christopher Bredt  
Paul Dray  
Jennifer Halajian  
Tom Heintzman  
Heather Ross  
Paul Schabas  
Beth Symes  
Bonnie Tough

Purposes of Report: Decision

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

### COMMITTEE PROCESS

1. The Committee met on February 10, 2011. Committee members Linda Rothstein (Co-Chair), Jack Braithwaite, Christopher Bredt, Paul Dray, Jennifer Halajian, Tom Heintzman, Heather Ross and Beth Symes attended. Staff members Helena Jankovic, Grace Knakowski, Elliot Spears, Sophia Sperdakos and Stephanie Wei also attended.

## FOR DECISION

## a) PROPOSED APPROACH RESPECTING THE ADJUDICATOR EDUCATION REQUIREMENT

## Motion

2. That Convocation approve the implementation approach respecting the adjudicator education requirement set out at paragraph 8 of this report.

## Background and Information

3. The 2005 Final Report of the Tribunals Task Force included the following comments and recommendation respecting adjudicator education:

## ADJUDICATOR EDUCATION/ QUALITY ASSURANCE

*The role of an adjudicator requires special knowledge and education. This ongoing education is essential to ensure quality adjudication and decisions. Since benchers govern the profession in the public interest, the way in which they undertake the role of disciplining those members who fall below ethical standards is one of the most important tasks they do. The continued credibility of self-regulation requires that the adjudicative process be consistent, transparent and fair.*

*Given this high level of responsibility on benchers as adjudicators, a question arises as to the best way to ensure that there are quality assurance measures in place to meet that responsibility. While the Law Society makes ongoing adjudicator education available to benchers, benchers are not required to take it.*

*The Task Force believes that it is incumbent upon the Law Society to mandate ongoing adjudicative education for benchers as part of a tribunals system committed to quality.*

*If education is mandated, any lawyer interested in running for bencher or any potential lay appointee would be advised well in advance that part of their responsibilities as bencher included mandatory adjudicator training. This culture of education would become entrenched with little difficulty. Moreover, the Law Society could make it clear to the public that its adjudicative process included educated and ongoing professional development.*

*The Task Force recommends that all benchers undergo mandatory and ongoing adjudicator education, such education to include but not be limited to,*

- a. conducting hearings and pre-hearing conferences;
- b. evidence;
- c. decision writing; and
- d. jurisprudential updates.<sup>1</sup>

4. Convocation approved the recommendation.

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<sup>1</sup> These principles now apply to all adjudicators

5. To date, adjudicator education includes the following:
  - a. New benchers orientation is conducted after each election. This includes the provision of written materials and training on the hearing process.
  - b. A bencher education session has become a regular part of each Convocation, during which the Chair of the Appeal Panel provides highlights of recent Hearing and Appeal Panel decisions and discusses issues affecting the Tribunal with benchers adjudicators who are present. The Chair of the Hearing Panel also addresses Convocation, as needed, respecting matters affecting the Hearing Panel.
  - c. All adjudicators receive the Adjudicator Guide and regular updates. The updates also include the issues that the Chair of the Appeal Panel discusses at each Convocation.
6. While these initiatives play an important role in adjudicator education they highlight a number of potential gaps:
  - a. Adjudicators who are not benchers or who are absent from Convocation do not hear the monthly oral presentation.
  - b. Although written materials are provided, there is at least some possibility that it will not be read by all those who receive it.
  - c. Time constraints in Convocation's monthly schedule preclude in-depth learning sessions. The usual time allotted is 20 minutes.
  - d. Benchers elected mid-term receive only written orientation materials.
  - e. Orientation sessions are not always video-taped for viewing at a later date.
  - f. Adjudicators who miss the orientation/training sessions may still be scheduled to sit on panels.
  - g. Unlike the approach recommend in the 2005 Task Force report, the "culture" of required education has not yet been fully realized.
7. These factors have led the Committee to consider that more should be done both at the beginning of adjudicator appointments and on an ongoing basis to ensure that adjudicator knowledge is current and adjudicators are provided with opportunities to regularly enhance their competence. Convocation made an important commitment to adjudicator education. The proposal below enhances the implementation of that commitment. This approach allows for the development of a curriculum addressing the varying needs of adjudicators depending upon their background and experience.
8. The Committee has developed the following approach for the adjudicator education framework:
  - a. All adjudicators, regardless of experience level, will be required to participate in a minimum number of adjudicator education programs at regular intervals throughout the year. The exact number and timing will be developed in the coming months.

- b. In the normal course a newly appointed adjudicator would not be scheduled to sit as an adjudicator until after he or she had attended/participated in an adjudicator orientation education session. Similarly, if an adjudicator does not meet the ongoing education requirements he or she will not, in the normal course, be further scheduled to sit as an adjudicator until the requirements have been met. The Chair of the Hearing or Appeal Panel will, however, have the discretion to schedule an adjudicator to sit before he or she has participated in required sessions, where the Chair deems it appropriate to do so.
  - c. The adjudicator education orientation session that will be given to the new adjudicators following the April 2011 election will be videotaped for the education of adjudicators appointed after the date of the orientation session. Where possible, if there is more than one adjudicator who is required to see the videotape they should participate in a session with a moderator to guide discussion.
  - d. The orientation session will address, among other matters,
    - i. the legislative mandate of the Law Society;
    - ii. the Rules of Practice and Procedure generally;
    - iii. conducting hearings and pre-hearing conferences;
    - iv. endorsements;
    - v. application of Rule 18 (Access to Hearing);
    - vi. non-publication orders; and
    - vii. writing reasons, including dissents.
  - e. The Chairs of the Committee and staff will develop a curriculum design in the coming months. The proposed approach will include interactive half day and full day educational sessions provided at regular intervals throughout the year.
  - f. The programming will include a variety of teaching formats such as round table discussions on important Tribunal jurisprudence, mock hearings, workshops on various topics, such as decision writing, including the writing of dissents, question and answer sessions and lectures. A progressive curriculum will be developed to build upon adjudicator knowledge and experience.
  - g. The annual education timetable will take into account practical considerations such as,
    - i. scheduling sessions whenever possible on days when many adjudicators are already at the Law Society, and
    - ii. the importance of accessibility through use of teleconferencing, videoconferencing or webcasting.
9. Adjudicator education is an eligible activity for the purposes of meeting the annual CPD requirement.

Re: Proposed Approach to the Law Society Adjudicator Education Requirement

It was moved by Mr. Sandler, seconded by Mr. Gold, that Convocation approve the implementation approach respecting the adjudicator education requirement set out at paragraph 8 of the Report.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Fleck presented the Report.

Report to Convocation  
February 24, 2011

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Professional Regulation Committee

Committee Members  
Carl Fleck (Acting Chair)  
Julian Falconer  
Patrick Furlong  
Avvy Go  
Michelle Haigh  
Gavin MacKenzie  
Ross Murray  
Julian Porter  
Judith Potter  
Susan A. Richer  
Sydney Robins  
Baljit Sikand  
William Simpson  
Roger Yachetti

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat  
(Sophie Galipeau – 416-947-3458)

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Expanding the Mentoring Process beyond Judicial Referrals

Pro Bono Duty Counsel for Lawyers under Investigation by the Law Society

### COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 10, 2011. In attendance were Carl Fleck, Julian Falconer, Patrick Furlong, Avvy Go, Michelle Haigh, Ross Murray, Julian Porter, Judith Potter, Susan Richer, William Simpson and Stindar K. Lal, Complaints Resolution Commissioner. Staff attending were Cathy Braid, Naomi Bussin, Terry Knott, Zeynep Onen, Katie Rook, Arwen Tillman, Jim Varro, Miriam Weinfeld, and Sophie Galipeau.

### FOR DECISION

#### PROPOSED AMENDMENTS TO RULE 2.02 OF THE RULES OF PROFESSIONAL CONDUCT AND BY-LAW 9 (FINANCIAL TRANSACTIONS AND RECORDS) RESPECTING TRUST ACCOUNT REQUIREMENTS

### MOTION

2. That Convocation approve in principle:
  - a. An amendment to Rule 2.02 respecting client retainers and use of a trust account; and
  - b. An amendment to By-Law 9 respecting the purpose of receipts and disbursements of money in trust.

### Introduction and Background

3. Over the past few years, the Law Society has made changes to enhance the accounting and record-keeping requirements for licensees, in recognition of the fact that licensees are responsible for the safekeeping of and must account for client funds.<sup>1</sup>
4. More recently, the Committee has examined the Law Society's trust account rules in light of the many frauds involving lawyers' trust accounts that have occurred over the past few years. These frauds involved licensees as active participants and licensees

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<sup>1</sup> The proposed imposition of federal regulations applicable to lawyers to prevent money laundering prompted an initiative of the Federation of Law Societies of Canada to create model rules on cash transactions and client identification and verification, which were adopted by all law societies in Canada.

who were duped by dishonest clients. These acts have cost the Law Society millions of dollars in payments by the Compensation Fund, and staff and bench resources.

5. The Law Society currently requires that licensees identify and record the name of the client and the source of the trust funds. However, the following gaps exist:
  - a. There is no requirement for licensees to record the purpose for which they are receiving funds or withdrawing funds;
  - b. There is insufficient guidance to licensees about the purpose of depositing funds into trust and the risks of allowing their trust accounts to be used essentially as a “banking” service.
6. A licensee becomes trustee of funds deposited in trust and is responsible to the owner of the funds, whether or not the licensee considers himself or herself to be providing legal services. The licensee is also responsible to the Law Society for the use or misuse of those funds.
7. Most licensees use their trust accounts for the provision of legal services. However, some licensees permit their trust accounts to be used for transactions that are completely unrelated to any legal services.
8. These regulatory gaps require a response. The Committee recommends that rule and by-law amendments be adopted that would emphasize that the purpose for which a trust account can be used is limited to situations where there is a connection between the monies held in trust and the provision of legal services.

#### Merits of the Proposed Amendments

9. The Committee believes that providing additional guidance on the use of trust accounts for the provision of legal services and rules requiring a record for the purposes for which a licensee is receiving and withdrawing funds would discourage the use of trust accounts to facilitate fraud or dishonesty by the licensee, the client or by some other party trying to shield unsavoury financial dealings from scrutiny. It would also discourage the use of trust accounts to lend legitimacy to dubious or fraudulent investment schemes.
10. The proposed amendments would enable the Law Society to respond more quickly and effectively to regulatory issues involving trust accounts. It would be better equipped to detect improper uses of a trust account and determine whether the recorded legal services have been provided while being able to identify the persons who are legitimately entitled to receive monies held in trust. The Compensation Fund would likely be less exposed to the risk of having to pay compensation for dishonesty.
11. The proposed amendments would also demonstrate the Law Society’s efforts to be proactive in combating fraud and theft by, or involving, legal practitioners.

#### Examples from Other Jurisdictions

12. Other Canadian and Commonwealth jurisdictions define or prescribe the purpose of a lawyer’s trust account.

13. The Law Society of British Columbia Professional Conduct Handbook advises lawyers to make inquiries of a client who seeks to use the lawyer's trust account without requiring substantial legal services.<sup>2</sup>
14. The Nova Scotia Barristers' Society's Trust Accounts Manual states that trust accounts are intended for the deposit and retention of client money received in connection with the practice of law.<sup>3</sup> This does not appear to be set out in a specific by-law or rule. Nova Scotia also requires lawyers to record the type of business or activity engaged in by the client.
15. The Law Society of Alberta Rules were recently amended to include a rule that states that *"the use of a trust account of a law firm is prohibited where no legal services are provided in relation to the trust money in the trust account"*.<sup>4</sup> To provide legal services means to engage in the practice of law.<sup>5</sup> Engaging in the practice of law is defined as commencing, carrying on or defending any action or proceeding and settling or negotiating for the settlement of claims founded in tort.<sup>6</sup>
16. Both the Barreau du Quebec and the Chambre des Notaires have regulations that explicitly require a nexus between the trust account and the provision of legal services. The Barreau stipulates that *"the sums of money held in trust by the advocate must be related to the performance of a lawful, clearly defined contract for services or mandate connected with the practice of his profession"*.<sup>7</sup> Simply holding money in a trust account does not amount to "practice of the profession".<sup>8</sup>
17. The rules for Quebec notaries are essentially identical. The regulations under the Notaries Act provide that a notary may only accept funds or other property in trust that are *"related to the execution of a lawful, clearly defined contract for services or mandate in the practice of his profession"*.<sup>9</sup> The professional practice of a notary is defined as including the preparation of certain legal documents, provision of legal advice, and representation of parties in non-contentious proceedings.<sup>10</sup>

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<sup>2</sup> Chapter 4, s.6 (footnotes).

<sup>3</sup> p.4

<sup>4</sup> Rule 122.1.

<sup>5</sup> Alberta Law Society Rules, rule 47(m).

<sup>6</sup> Alberta Legal Profession Act, s.106(1).

<sup>7</sup> Regulation respecting accounting and standards of professional practice of advocates, c.47.

<sup>8</sup> *Ibid*

<sup>9</sup> Regulation respecting trust accounting by notaries, c.6.

<sup>10</sup> Québec, Notaries Act, s.15.

18. The Law Society of Manitoba Rules state that only trust money may be held in a trust account. Trust money is defined as money received by a lawyer *“in connection with his or her legal practice”*.<sup>11</sup> Legal practice is synonymous with legal services. It is defined as including the preparation of legal documents, the negotiation or settlement of claims, and the provision of legal advice.<sup>12</sup> The Manitoba Legal Profession Act states that a lawyer may hold money in a trust account only where he/she has received it *“as a lawyer for the client”*.<sup>13</sup>
19. The Law Society of Saskatchewan Rules restrict trust accounts to only holding trust funds, which are defined as funds received by a lawyer *“in his or her capacity as a lawyer”*.<sup>14</sup> Capacity as a lawyer is not defined.
20. In New South Wales (NSW), Australia, trust money, the only money that may be deposited in a trust account in that jurisdiction, is defined as money received *“in the course of or in connection with the provision of legal services”*.<sup>15</sup> “Legal services” is defined as work done, or business transacted, in the ordinary course of legal practice.<sup>16</sup>
21. In the United Kingdom, there is no explicit rule which stipulates that only money related to legal services may be deposited in a lawyer’s trust account. However, there is a decision by the Solicitor’s Disciplinary Tribunal that addresses the Law Society’s concern that trust accounts may be used as banking facilities to assist fraudulent transactions. The decision, *Wood and Burdett* (2004), appears in the notes of the Solicitors’ Accounts Rules.<sup>17</sup> The notes are treated as rules, in that they are mandatory and binding.<sup>18</sup> The Tribunal in *Wood and Burdett* expressly stated that lawyers should not provide banking facilities through client trust accounts.<sup>19</sup>

## Discussion of Proposed Changes

### Proposed Amendment to Subrule 2.02(5)

22. Current Subrule 2.02(5) and commentary is set out below.

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<sup>11</sup> Rules 5-41 and 5-43(1)(j).

<sup>12</sup> Manitoba Legal Profession Act, s.20(3) and Law Society Rules, rule 3-61.

<sup>13</sup> S.50(1),(4).

<sup>14</sup> Rules 900, 911(3), 912(6).

<sup>15</sup> New South Wales Legal Profession Act, s.243(1).

<sup>16</sup> New South Wales Legal Profession Act, s.4(1).

<sup>17</sup> Rule 15, note IX. See also: <http://www.lawgazette.co.uk/news/solicitors-disciplinary-tribunal-92>.

<sup>18</sup> Solicitors’ Accounts Rules, rule 2(1).

<sup>19</sup> Solicitors’ Accounts Rules, rule 15, note IX.

### Dishonesty, Fraud etc. by Client

(5) When advising a client, a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or instruct the client on how to violate the law and avoid punishment.

[Amended – March 2004]

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activity such as mortgage fraud or money laundering. Vigilance is required because the means for these and other criminal activities may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate. Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer, including verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

A bona fide test case is not necessarily precluded by subrule 2.02(5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

[Amended - January 2005]

23. Under Law Society by-laws, any person who gives a licensee money in trust becomes a client. A licensee who receives money from a client becomes a trustee of that money.
24. While Law Society by-laws prescribe the types of funds that must go into a trust account, and when and how funds are withdrawn from a trust account, they do not currently require a record of the purpose of the receipt and disbursement of the funds.<sup>20</sup>

<sup>20</sup> LawPRO already warns lawyers not to use their trust accounts for any purpose that is not directly related to the practice of law, such as simply running money through the account. According to LawPRO, using a trust account without any underlying legal transaction may result in loss of coverage (LawPRO, "Managing the Finances of your Practice", pp.10-11. <http://www.lawsociety.nf.ca/reports/profinancenews.pdf>).

25. This misuse of a trust account has arisen in Law Society mortgage fraud cases. For example, in *Law Society of Upper Canada v. Di Francesco*, the Hearing Panel found specifically that the lawyer had failed to make reasonable inquiries with respect to a client asking to use his account for what turned out to be money laundering purposes.

### The Proposed Changes

26. The recommended changes to Subrule 2.02(5) and commentary of the *Rules of Professional Conduct*, are set out below.

#### Dishonesty, Fraud etc. by Client

(5) When acting for ~~advising~~ a client, a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or ~~instruct~~ advise the client on how to violate the law and avoid punishment.

(5.1) When retained by a client, a lawyer shall make reasonable efforts to ascertain the purpose and objectives of the retainer and obtain such information about the client necessary to fulfill this obligation.

(5.2) When acting for a client, a lawyer shall not use his or her trust account for purposes outside of the provision of legal services.

#### Commentary

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in dishonest or criminal activity such as mortgage fraud or money laundering. Vigilance is required because the means for these and other criminal activities may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate. The requirement in subrule (5.1) is especially important where a lawyer has suspicions or doubts about whether he or she might be assisting a client in crime or fraud. ~~Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer should make~~ Reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer would include, for example, verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

A client or another person may attempt to use a lawyer's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. A lawyer should be aware that under the Law Society By-laws, anyone who provides money in trust to the lawyer becomes a client and the lawyer is trustee of those funds. This responsibility arises even if the lawyer is not otherwise providing legal services to that person. As part of a lawyer's obligation to avoid assisting or encouraging dishonesty, fraud, crime or illegal conduct, a lawyer should restrict the use of his or her trust account for the provision of legal services, as defined by the Act and the By-Laws.

A *bona fide* test case is not necessarily precluded by subrule 2.02(5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

27. The Paralegal Standing Committee has approved parallel changes to the *Paralegal Rules of Conduct* and is submitting them to Convocation separately<sup>21</sup>.

#### Proposed Amendments to By-Law 9

28. Section 18 of By-Law 9 appears in its entirety at Appendix 1. It describes a licensee's responsibility to maintain financial records. Section 18.1 and 18.2 currently require the following information to be recorded in a book of original entry:
- a. Each date on which money is received in trust for a client or disbursed out of money held in trust for a client
  - b. The method by which money is received or disbursed
  - c. The person from whom money is received or to whom money is disbursed
  - d. The amount of money received or disbursed
  - e. The client for whom money is received in trust or on whose behalf money is disbursed.
29. The proposal is that an additional requirement be added to require a licensee to record the purpose for which the money is received and disbursed. It is connected to the new proposed rule, already discussed, that a lawyer make reasonable enquiries as to the purpose of his or her retainer.
30. The following is suggested amended wording:
18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:
    1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received, the purpose for which it is received and the client for whom money is received in trust.

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<sup>21</sup> The Paralegal Standing Committee will report to Convocation for information the changes to the *Paralegal Guidelines* that correspond to the changes to the Commentary to Subrule 2.02(5).

2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed, the purpose for which it is disbursed and the client on whose behalf money is disbursed.
31. The Committee recommends the changes to By-Law 9 set out above be made. The Paralegal Standing Committee has approved these changes.

#### Conclusion

32. Convocation is requested to approve the changes on a policy basis. If the changes are approved, the Committee will report to Convocation with specific wording for by-law changes and rule amendments, following review by the Law Society's Rules drafter.

#### APPENDIX 1

#### BY-LAW 9

#### PART V

#### RECORD KEEPING REQUIREMENTS

#### REQUIREMENTS

#### Requirement to maintain financial records

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received and the client for whom money is received in trust.
2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed and the client on whose behalf money is disbursed.
3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.



4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.
5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the method by which money is received, the amount of money which is received and the person from whom money is received.
6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.
7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.
8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:
  - a. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.
  - ii. A detailed reconciliation made monthly of each trust bank account.
9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the licensee took possession of each property, the person who had possession of each property immediately before the licensee took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.
10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.
12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

FOR INFORMATION  
PROFESSIONAL REGULATION DIVISION  
QUARTERLY REPORT

33. The Professional Regulation Division's Quarterly Report (fourth quarter 2010), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period October to December 2010 and cumulative information for 2010. It also includes a report about hearings completed by the Law Society in 2008, 2009 and 2010.

ANNUAL REPORT OF THE  
COMPLAINTS RESOLUTION COMMISSIONER

34. Part I of By-Law 11, which governs the office of the Complaints Resolution Commissioner, requires that the Complaints Review Commissioner ("the Commissioner") submit an annual report to the Committee. The Committee must then provide the report to Convocation. The relevant section of the By-Law reads:

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

35. The report of the Commissioner, Stindar K. Lal, appears on the following pages.
36. Mr. Lal attended the Committee's February 10, 2011 meeting to discuss the report.

Annual Report of the Complaints  
Resolution Commissioner

January 1, 2010 – December 31, 2010

Prepared by Stindar Lal QC  
Complaints Resolution Commissioner

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## Annual Report 2010

A. Introduction

The Complaints Resolution Commissioner is appointed by Convocation pursuant to Section 49.14 of the *Law Society Act* (hereinafter referred to as the Act). The role, the function and the duties of the Complaints Resolution Commissioner are set out in Sections 49.14 to 49.19 of the Act and are attached to this Report as Appendix 1. The Complaints Resolution Commissioner is required by Section 3 of By-Law 11 of the Law Society Act to submit to the Professional Regulation Committee an Annual report upon the affairs of the office of the Commissioner during the immediately preceding year.

Accordingly, as the current Complaints Resolution Commissioner, it is my honour to submit this Report to the Professional Regulation Committee of the Law Society of Upper Canada. My appointment by Convocation commenced on April 1, 2010. My appointment was preceded by that of Mr. Clare Lewis. Mr. Lewis was the first Complaints Resolution Commissioner and held the position of Commissioner from April 1, 2005 to March 31, 2010. This Report therefore relates to the period from January 1, 2010 to March 31, 2010 when Mr. Lewis was the Commissioner and for the period from April 1, 2010 December 31, 2010 during my tenure as the Commissioner.

### The Role of the Complaints Resolution Commissioner

As stated in the Act, the role of the Complaints Resolution Commissioner is to provide an independent review of the Law Society's consideration of a complaint and its decision to take no further action in respect of the complaint.

Part I of By-Law 11<sup>22</sup> of the *Law Society Act* (hereinafter referred to as 'By-Law 11') sets out the permissible functions of the Complaints Resolution Commissioner with respect to the review and resolution of complaints. It also outlines the administrative responsibilities of the office of the Complaints Resolution Commissioner. Part I of By-Law 11 is attached to this Report as Appendix 2.

By-Law 11 provides the Complaints Resolution Commissioner with two distinct functions, a formal Complaints Resolution function and a review function. However, to date, the Commissioner has only been called upon to perform the review function.

### Standard of Review

Prior to the statutory establishment of the position of the Complaints Resolution Commissioner, reviews were performed by Lay Benchers functioning as Complaints Review Commissioners, in accordance with By-Law 20<sup>23</sup>. The review function performed by the Complaints Review Commissioners was very similar to the review function performed by the current Complaints Resolution Commissioner, with one notable exception. The standard of review applied by the Complaints Review Commissioners was one of "appropriateness" while By-Law 11<sup>24</sup> imposes a standard of "reasonableness". A copy of the revoked By-Law 20 is attached as Appendix 3, for comparison purposes.

The "reasonableness" standard of review requires the Complaints Resolution Commissioner to determine whether the Law Society's consideration of a complaint and its resulting decision to take no further action with respect to the complaint, was reasonable. The Commissioner's role is similar to that of an ombudsman in that as an ombudsman a degree of deference is given to the body which is being overseen. Accordingly, Sub-section 7 (2) of By-Law 11 provides that

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<sup>22</sup> By-Law 11 was made May 1, 2007, and amended June 28, 2007

<sup>23</sup> By-Law 20 was revoked on December 9, 2005 and replaced with a new unrelated By-Law.

<sup>24</sup> The standard of review is set out in By-Law 11, section 7

the Complaints Resolution Commissioner apply a reasonableness standard of review. Applying this standard of review, if the Complaints Resolution Commissioner is satisfied that the decision to close a complaint file is reasonable, no further action is recommended. However, if the Commissioner is not satisfied that the decision arrived at by the Law Society was reasonable, the complaint will be referred back to the Law Society with a recommendation that the Law Society take further action.

#### History of the Annual Reports

In addition to the “affairs of the Office of the Complaints Resolution Commissioner during the immediately preceding year” as required by section 3 of By-law 11, this Report contains relevant information for the last several years. In my respectful view, the information relating to past years is a useful comparator and provides an accurate picture of how the function of the Commissioner has evolved over the years since its inception.

I have been advised that my predecessor, Mr. Clare Lewis, submitted the first annual report to the Professional Regulation Committee in March 2006. His Report provided a comparison of the statistical data gathered during the last quarter of the Lay Benchers’ activities and the statistical information compiled by the Office of the Complaints Resolution Commissioner for the period April 1, 2005 through December 31, 2005. Each year thereafter, he submitted his Annual Report to the Professional Regulation Committee which then laid the Report before Convocation in June of that year. The final Annual Report submitted by Mr. Clare Lewis was for the 2009 calendar year.

In light of two Commissioners’ tenure during the year 2010, this Annual Report contains statistical information gathered during the last three months of Mr. Lewis’ term and the first nine months of my appointment. I have also included in this Report statistical information collected during the 2006, 2007, 2008 and 2009 calendar years, and in certain instances, data collected in 2005.

#### Composition of the Office

The Office of the Complaints Resolution Commissioner was initially established with one part-time Counsel. However, in order to meet the growing demand for reviews, a second part-time Counsel was appointed in late 2007. The office currently has one part-time and one full-time counsel on staff. Until recently, all office administrative functions were performed by the Coordinator to the Office. However, in September 2010, a second person was hired on a six month contract to provide additional administrative support. As the Complaints Resolution Commissioner, I generally devote approximately four days a week to fulfill my duties.

#### B. The Review Function

A request for review by the Complaints Resolution Commissioner is initiated when staff of either the Complaints Resolution Department or the Investigation Department close a complaint file without taking any disciplinary action. The closure by staff from either of these two departments triggers the complainant’s automatic right to request a review of the Law Society’s decision. Accordingly, every Law Society closing letter, sent out at the conclusion of the Law

Society's investigation, contains an Information Sheet explaining both the role of the Complaints Resolution Commissioner and the process to be followed when seeking a review. The Information Sheet is attached as Appendix 4 to this Report. An updated version of the Information Sheet is currently being developed to capture procedural changes made and to reflect the office's change of address.

### Processing Requests for Review

On receipt of a request for review, the Coordinator to the Office of the Complaints Resolution Commissioner sends the complainant a letter of confirmation. The Coordinator notifies the investigator of the request and the Professional Regulation Division then provides written notice of the request for review to the licensee.

The investigating department, on being advised of the request for review, is responsible for preparing the materials for the review. A bound copy of all relevant materials, referred to as the Complaints Review Index, is prepared for use at the Review Meeting. The Complaints Review Index includes the Law Society's closing letter or report, copies of all materials submitted by the complainant and either the licensee's written response or a synopsis of the response.

Once the Complaints Review Index is completed, it is reviewed by the Director, Professional Regulation, and then delivered to the Coordinator. On receipt of the bound materials, the Coordinator schedules the Review Meeting. A letter is sent to the complainant, advising the complainant of the scheduled date and time. A copy of the Complaints Review Index for the complainant's use at the meeting is also enclosed with the letter. A copy of the bound materials is provided to me and to counsel working in the Office of the Complaints Resolution Commissioner in advance of the meeting.

Documents that fall within the confidentiality provisions of Section 49.12<sup>25</sup> of the *Law Society Act* are also provided to me and Counsel. The type of information considered confidential includes:

1. Personal information relating to the licensee,
2. Evidence from third parties which is protected by confidentiality or solicitor-client privilege,
3. Solicitor-client information, when the complainant is not the client or the information is in respect of other clients.

### Reviewable Complaints

Sub-section 4(1) of By-Law 11 identifies those complaints which may be reviewed by me in my role as the Commissioner. It provides that a complaint may be reviewed if,

- (a) the merits of the complaint have been considered by the Law Society;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;

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<sup>25</sup> 49.12 (1) A benchler, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part.

- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Law Society has notified the complainant that it will be taking no further action in respect of the complaint.

Sub-section 4 (2) of By-Law 11 provides that a complaint may not be reviewed by the Complaints Resolution Commissioner if, in the opinion of the Commissioner, it concerns only the quantum of fees or disbursements charged by a licensee, a licensee's filing requirements, the handling of money and other property or negligence of a licensee.

Since Section 4 of By-Law 11 provides that a review is only available when the merits of a complaint have been considered by the Law Society, Sub-section 4(1) has been interpreted to mean that the Commissioner can only review those files that have been investigated under the authority set out in Section 49.3 of the *Act*. These relate generally to complaints that have been referred to the Complaints Resolution Department or Investigations Department and excludes cases that have been closed by Complaints Services or the Intake Department on grounds, for example, that the Law Society lacks the jurisdiction to act on the complaint.

It is my understanding that in late 2005, when it became apparent that a process for reviewing complaints closed by the Client Service Centre and the Intake Department was needed, an alternate process for reviewing complaints closed without an investigation was established within the Law Society.

Therefore, when the Office of the Complaints Resolution Commissioner receives a request for review of a complaint closed by the Intake Department, the complainant is advised that the Commissioner does not have the jurisdiction to review the matter and the complaint is referred back to the Intake Department for a further response. The Intake Manager reviews the file. If the Manager believes that the file should remain closed but the complainant remains dissatisfied, the file is forwarded to the Director, Professional Regulation, for her review. It is my understanding that a similar review process is used for complaints closed by Complaints Services in the Client Service Centre.

### The Review Meeting

The letter informing the complainant of the date of the Review Meeting invites the complainant to attend an in-person meeting. If the complainant is unable or unwilling to attend the in-person meeting, the complainant is invited to participate in a teleconference meeting or, alternatively, to request a review based on the written materials. Most reviews are in-person meetings between the Commissioner and the complainant. Legal Counsel from the Commissioner's office is also in attendance at the Review Meeting to assist in any legal matters that may arise during the meeting or to respond to any legal issues raised by the complainant. If the complainant fails to attend the Review Meeting without giving the Coordinator prior notice or fails to attend despite several requests to attend, the Commissioner will proceed to review the complaint in the absence of the complainant. The complainant is occasionally accompanied by legal counsel, a friend or a family member. Pursuant to Sub-section 8(4) of By-Law 11, the licensee who is the subject of the complaint is not entitled to participate in the review process.

Until October 1, 2010, all in-person Review Meetings in Toronto were held at the Law Society building at Osgoode Hall. The Office of the Complaints Resolution Commissioner was also located in Osgoode Hall. On September 30, 2010, the Office of the Complaints Resolution Commissioner moved to 155 University Avenue, Toronto. This move, distancing the Office of the Commissioner from the Law Society, has resulted in giving to the public a very significant visual perception of the separate roles of each entity. The new office facilities include a boardroom where the in-person Review Meetings can be held.

### C. Statistical Information Relating to Review Meetings

Thirty-five Review Meetings were conducted by teleconference in 2010, 44 in 2009, 24 in 2008, 10 in 2007 and 15 in each of 2006 and 2005. Since 2008, there has been a dramatic increase in the number of requests for teleconferencing meetings. It is believed that this increase may be attributed to the desire of complainants residing outside the Greater Toronto Area to have their meetings expedited, as out of town meetings are only conducted periodically. The increase in numbers of teleconferencing meetings may also be directly related to the increase in complaints generally. Furthermore, when a complainant is unavailable to attend a scheduled in-person meeting and is seeking to adjourn the meeting, the complainant is often encouraged to proceed by teleconference on the scheduled meeting date, in order to avoid any unnecessary delays in proceeding with the review.

In some circumstances, such as when the complainant fails to attend without a request for an adjournment, or when the complainant is unwilling or unable to participate, the review may proceed based on the written material alone. In 2010, 29 reviews proceeded in this manner. During 2009 and 2008, there were 16 such reviews respectively conducted, nine during 2007, six in 2006 and only one in 2005.

Most of the Review Meetings are held in Toronto. However, to provide greater accessibility to the process for those complainants who reside outside of the Toronto area, in December 2007, Convocation approved the holding of complaint Review Meetings in centres outside of Toronto. Past meetings have been held in Cambridge, Kitchener, London and Ottawa. To date, I have attended Review Meetings in London and Ottawa. In 2010, four complaint files were reviewed in London, in 2009 seven complaint files were reviewed in London and in 2008, nine files were reviewed in London. Although three reviews were scheduled to proceed in London during 2007, only one in-person meeting took place. The second London file was returned to the investigator for further work in advance of the meeting; the third complainant failed to attend the meeting and the review proceeded on the written material.

In 2010, I conducted a Review Meeting in Ottawa on eight files. There were no meetings held in Ottawa during 2009 but 19 complaint files were reviewed in Ottawa in 2008, 12 in 2007 and five in 2006. There were no meetings held in either Cambridge or Kitchener during 2008 or 2010 but three reviews were performed in Cambridge in 2007.

In 2010, one file was sent back to the Law Society following a review of the file but in advance of the Review Meeting because it was discovered that the Complaints Resolution Commissioner did not have the jurisdiction to conduct a review as the complaint had not been considered on its merits. There were 14 such files in 2009. All of such files were brought to the attention of the Director, Professional Regulation.



As previously indicated, requests for review are also received from Complaints Services and the Intake Department of the Law Society. Since an investigation into the merits of such complaints has not been conducted, the complainant is advised in writing of my lack of jurisdiction to conduct a review. During 2010, approximately 56 requests were received and determined to be outside of the Commissioner's jurisdiction, 47 as a result of the complaints having not been investigated on its merits and nine where the complainant did not request a review within 60 days of being notified of the Law Society's decision to close the complaints file, in accordance with Sub-section 5 (3) of By-Law 11.

Given the dramatic increase in the number of requests for review received since the establishment of the Complaints Resolution Commissioner's Office, the number of files reviewed each year, with the exception of a minor decrease in 2010, has significantly also increased. The steady increase in the number of requests has been attributed not only to the larger number of complaints received by the Law Society as a whole but also to an increased awareness by complainants of the Commissioner's independent review function.

In 2010, requests for review were received on 244 complaint files. In 2009, there were 254 requests for review. There were 188 file requests for review in 2008 and 154 in 2007. The non-jurisdictional requests received from the Client Service Centre and Intake Department have not been included in these calculations.

The following Table 1 provides a breakdown of the department that conducted the investigation from which the review was requested in 2010. Table 2 provides a comparison with the previous three years.

Table 1 – CRC Requests Received by Department in 2010

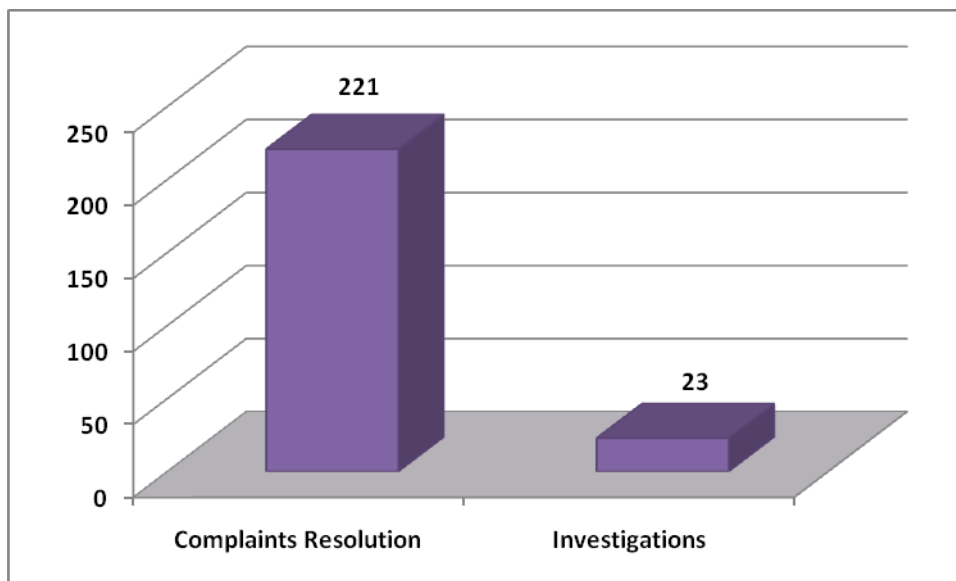
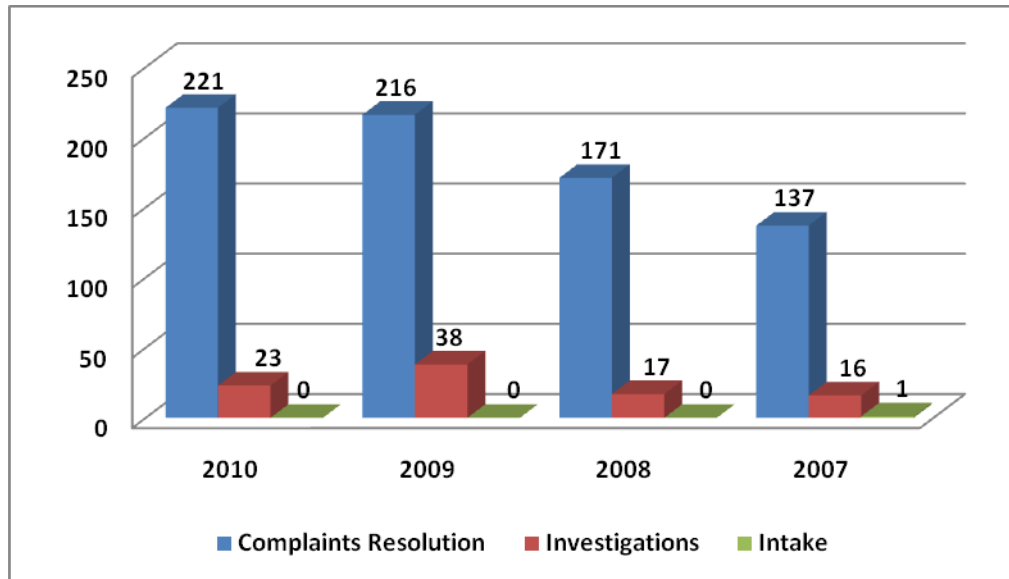


Table 2 – Comparison of Requests Received by Department from 2007 through 2010

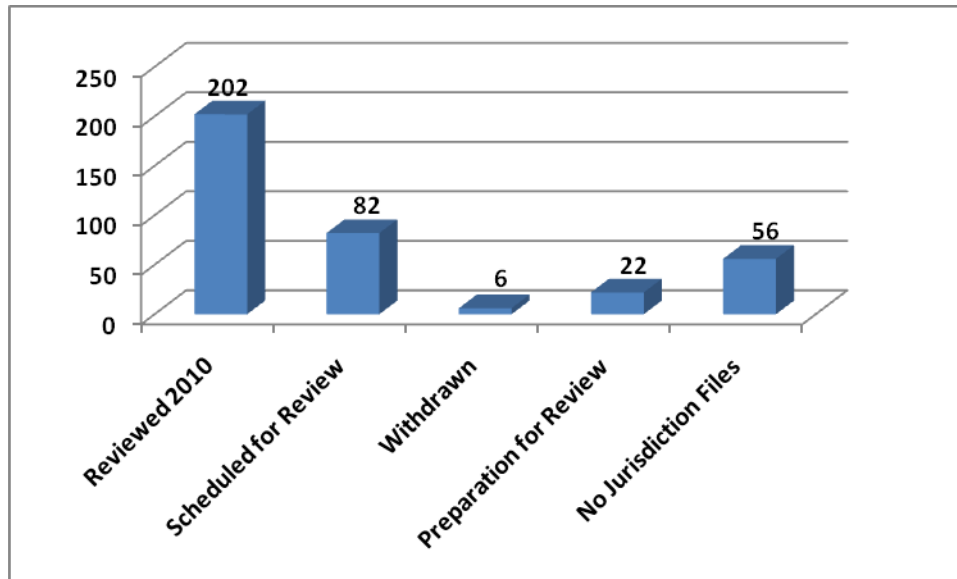


Although there has been a steady increase in the number of requests for review over the years, the largest number of requests was received in 2009. I am advised that this is attributable to the number of requests received from the Investigation Department files. It is believed that this marked increase may have resulted from an Investigation Department project designed to reduce an inventory backlog during 2009.

#### Status of Requests

Table 3 that follows provides a summary of the work flow status of all complaint files in the Commissioner's Office as of December 31, 2010. It includes the status of the files in which a request for review was received in 2009 but not reviewed until 2010 and those requests which were received in 2010. It also includes one request received in 2008 which was not reviewed until 2010 because after the receipt of the request for review, the file was returned to the Complaints Resolution Department for further work, following a managerial review.

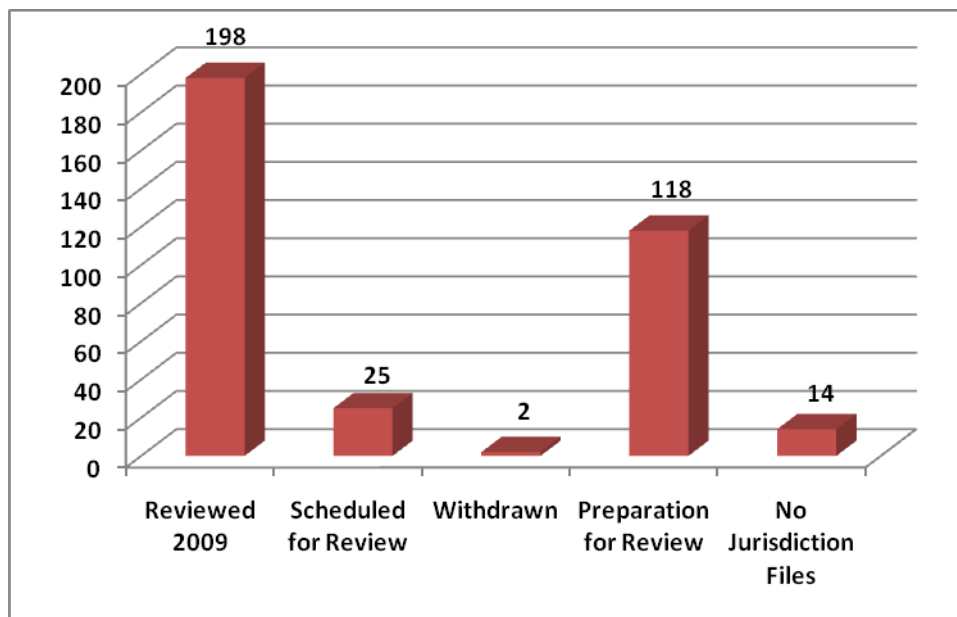
Table 3 - Status of CRC Requests 2010



From the 202 reviews conducted in 2010, 123 requests for review were made in 2009. From the requests for review received in 2010, 79 files were reviewed in 2010 and it is anticipated that the remaining 2010 file requests will proceed to review in 2011.

Table 4 that follows depicts the work flow status of the files located in CRC in 2009 as at December 31, 2009, for comparison purposes.

Table 4 - Status of Requests received in 2009



There were 162 files as at December 31, 2010 in the CRC active inventory. A review has been scheduled for a date in 2011 on 84 files and 78 are still being prepared for review. A decision in two files reviewed in 2010 remained pending on December 31, 2010.

In 2010, two complaint files were withdrawn by the complainant as the complainant no longer wished to pursue the matter. In advance of the meeting, six files were withdrawn for further work, following a managerial review. During 2009, two file review requests were withdrawn, one by the complainant and one as a result of a managerial review.

Following receipt of the requests for review during 2008, nine files were withdrawn to allow further investigation to be performed prior to the review. The Department Manager or Counsel to the Director identified the need for further investigation during a managerial review for readiness to proceed. Of the nine files, three files were returned for review because on completion of the further investigation by the Complaints Resolution Department, the complainant resubmitted a request for review. Therefore, a total of six requests were withdrawn.

In comparison, there were ten such withdrawals in 2007. Eight were withdrawn by the Department Manager. Counsel to the Complaints Resolution Commissioner identified the need for further investigation on two of the files. Following discussions with the Department Manager, the Manager agreed to have further work performed in advance of the Review Meeting. An eleventh file was withdrawn prior to the Review Meeting at the request of the complainant.

#### Number of Reviews Conducted

From January 1, 2010 to December 31, 2010, 202 files were reviewed by the Complaints Resolution Commissioner. As previously noted, my appointment as Commissioner began on April 1, 2010. Mr. Clare Lewis was the Complaints Resolution Commissioner during the first three months of 2010 and he conducted 45 of the file reviews in 2010. During the remaining nine months, I reviewed 157 of the remaining 202 files.

From January 1, 2009 to December 31, 2009, 198 files were reviewed. Mr. Lewis reviewed 196 of the files and Senior Counsel reviewed two of the files, as the Commissioner's Delegate, pursuant to Section 49.16 of the Act. Section 49.16 of the Act provides, in part, that the Commissioner may in writing delegate any of his powers or duties to members of his staff. Mr. Lewis, identifying a potential conflict, delegated his functions in relation to these two files, to his Counsel. Mr. Lewis also delegated two files to Counsel, in 2008. There was no such delegation during 2010.

#### Department that Conducted the Investigation

Table 5 that follows identifies the department that conducted the investigation of the files reviewed in 2010.

Table 5 – CRC Reviews Conducted in 2010 by Department

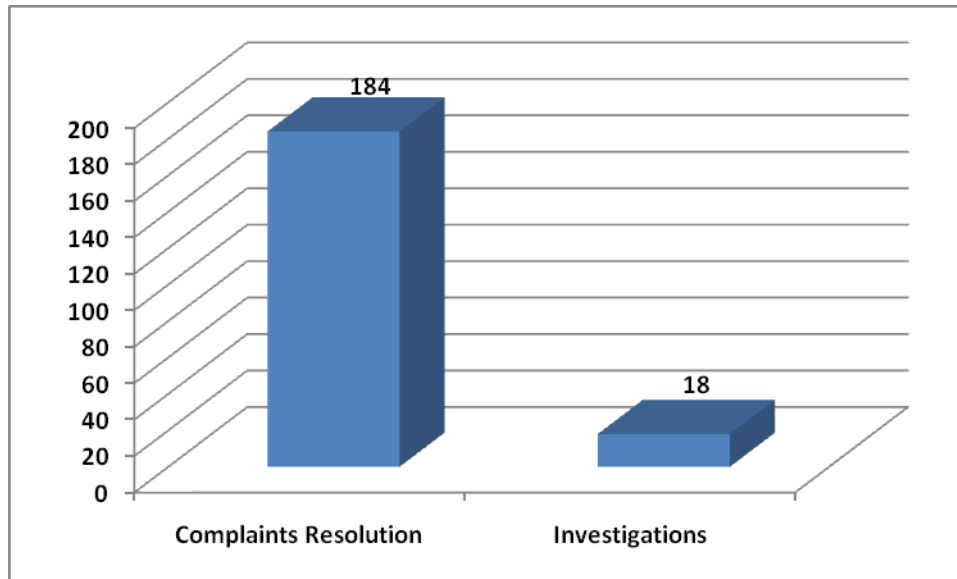
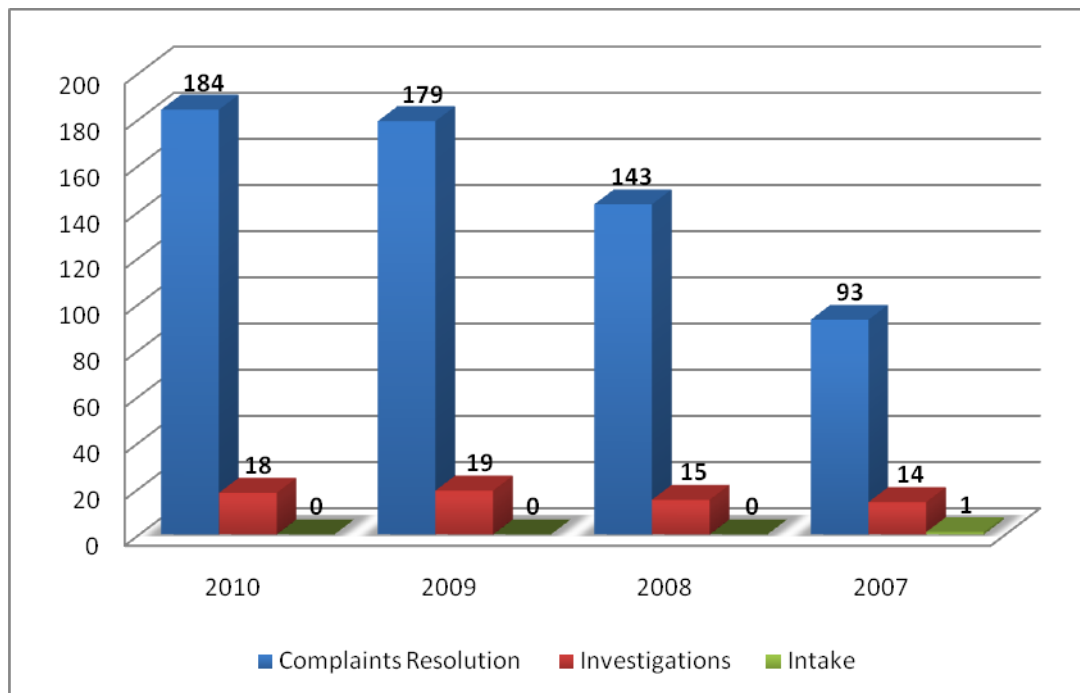


Table 6 that follows provides a comparison of the number of files received from each department and reviewed by the Commissioner during 2010, 2009, 2008 and 2007.

Table 6 – CRC Reviews Conducted 2010, 2009, 2008 &amp; 2007 by Department



As table 6 demonstrates, from the 202 files reviewed in 2010, 184 (91.09%) were investigated by the Complaints Resolution Department and 18 (8.91%) of the files were investigated by the Investigations Department.

For 2009, from the 198 files reviewed in 2009, 179 (90.40%) were investigated by the Complaints Resolution Department and 19 (9.60%) were investigated by the Investigations Department.

In 2008, from the 158 files reviewed, 143 (90.51%) were investigated by the Complaints Resolution Department and 15 (9.49%) were investigated by the Investigations Department.

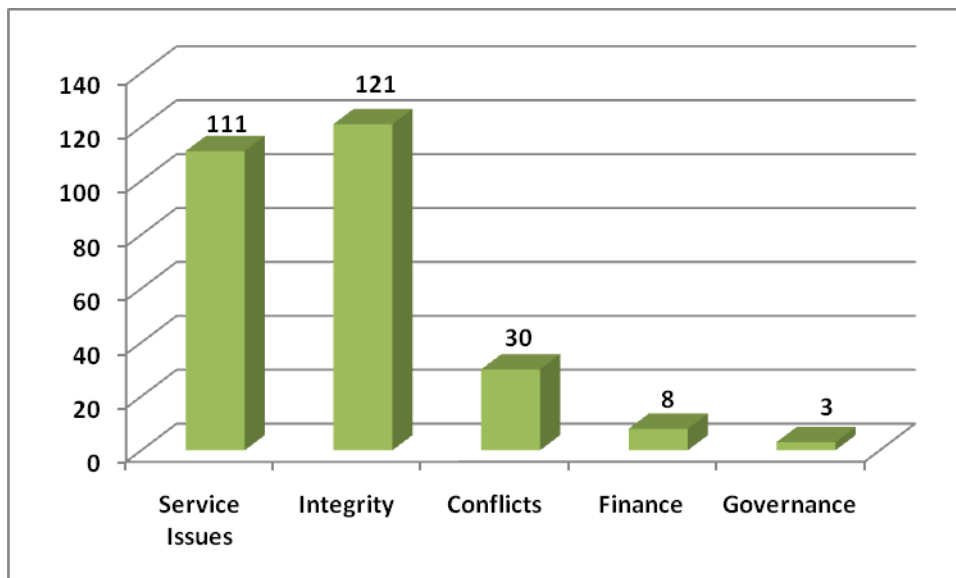
In 2007, 93 of the files (86%) reviewed by the Commissioner were investigated by the Complaints Resolution Department, 14 (approximately 13%) were from the Investigations Department and one (less than 1%) was investigated by the Intake Department.

Although not included in Table 6, in 2006, of the 79 files reviewed, 67 (approximately 85%) were from the Complaints Resolution Department, 10 (approximately 13%) were from Investigations Department and two (less than 2%) had been investigated by Outside Counsel.

#### Predominant Issues in the Cases Reviewed

In cases investigated by the Law Society, the Society identifies the issues raised in the complaint file. Relying on the Law Society's categorization, Tables 7, 8, 9 and 10 that follow identify the predominant issue identified in each of the files reviewed in 2010, 2009, 2008 and 2007 respectively. For the purpose of preparing the following tables, when the complaint raises both service issues and issues of integrity, the integrity issue may only be included in the service issues category.

Table 7 - Predominant Issues identified in each of the 2010 files reviewed



Based on the numbers of the predominant issues identified and reflected in table 7, it appears that there were more than 202 files reviewed in 2010, which is not the case. This discrepancy has resulted from the data input into the current case management system. The excess has resulted from the fact that in certain instances, more than one predominant issue was identified in each file. However, in previous years, the collection of the data was done manually which allowed for an identification of a single “predominant issue” where both integrity and service issues were noted.

Table 8 – Predominant Issues identified in each of the 2009 files reviewed

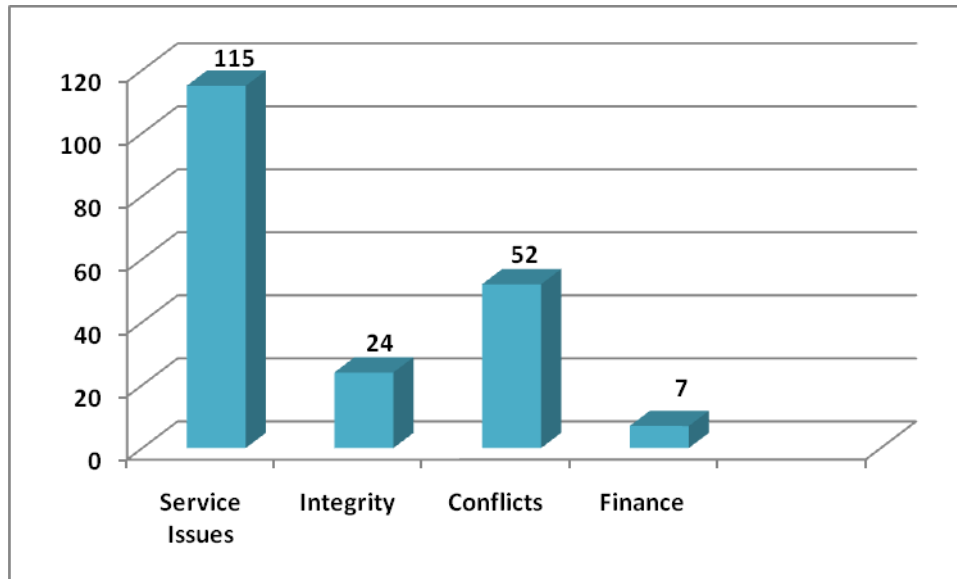


Table 9 - Predominant Issues identified in each of the 2008 files reviewed

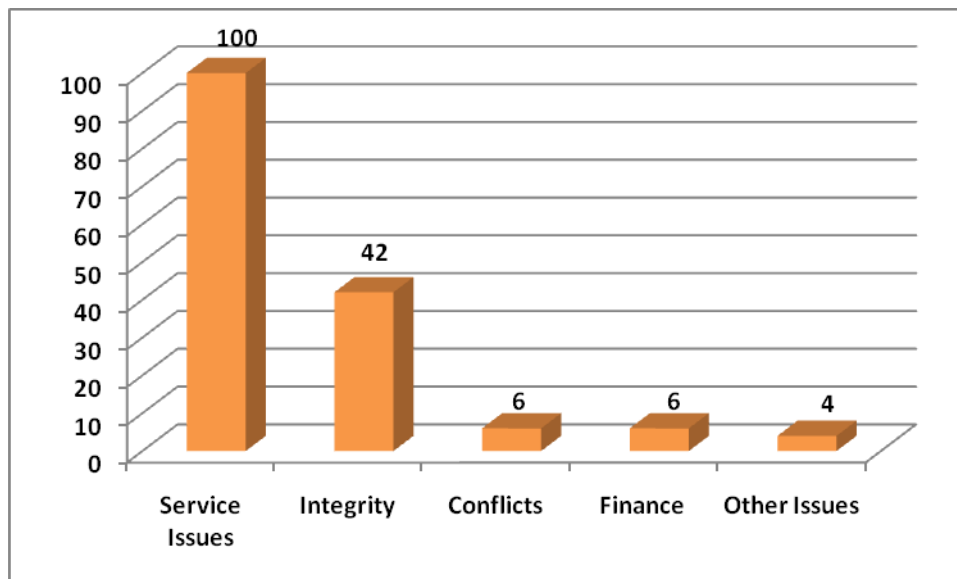
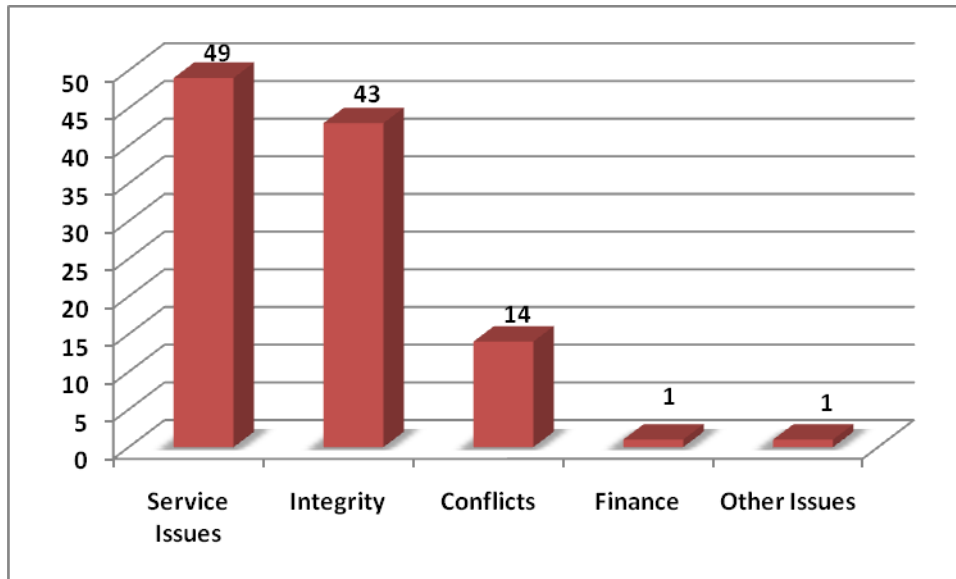


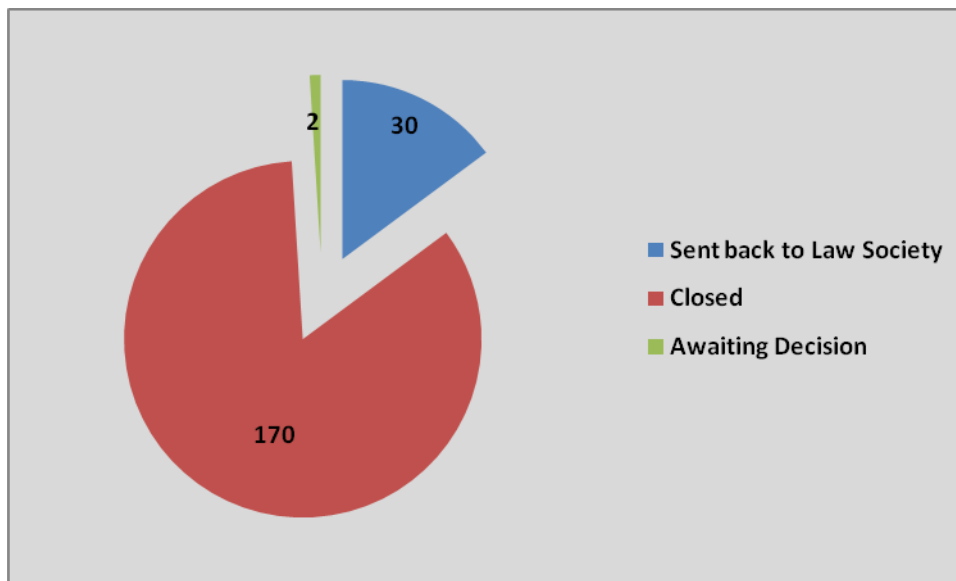
Table 10 - Predominant Issues identified in each of the 2007 files reviewed



### Review Results

Figure 1 (1) that follows, reflects the results of the Review Meetings conducted in 2010.

Figure 1 (1) Review Results 2010

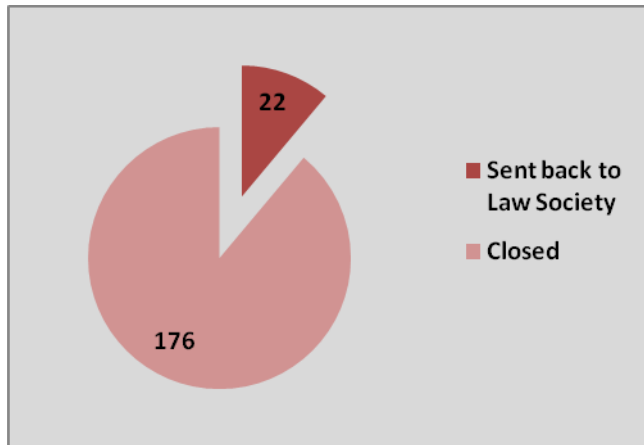


As shown in Figure 1 (1), the review results indicate that in 2010, among the 202 complaint files reviewed, 30 files were sent back to the Law Society, representing approximately 14.85 per cent of the total files reviewed in 2010. Twenty-eight of the 30 files were from the Complaints Resolution Department and two of the files were from the Investigations Department.



Figure 1 (2), that follows, depicts results of the file reviews conducted in 2009.

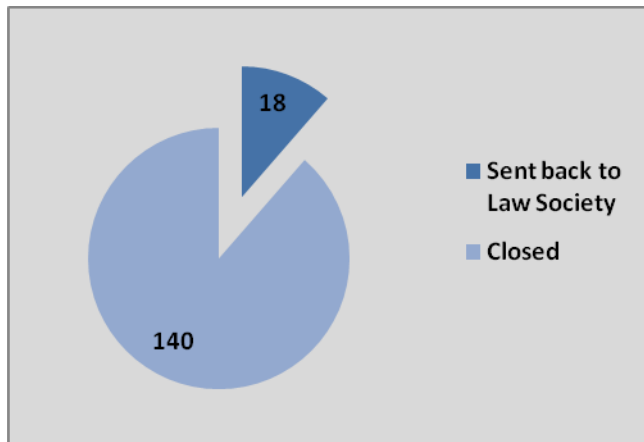
Figure 1 (2) Review Results 2009



As shown in Figure 1 (2), the review results indicate that in 2009, among the 198 complaint files reviewed, 22 files were sent back to the Law Society, representing approximately 11% of the total files reviewed in 2009. Twenty of the 22 files were from the Complaints Resolution Department and two of the files were from the Investigations Department.

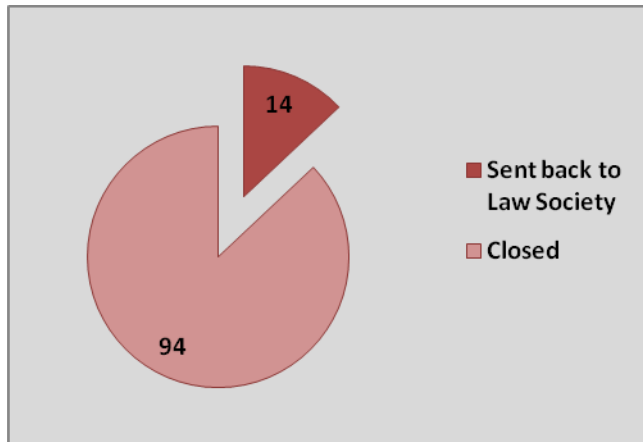
Figures 1(3), 1(4), 1(5), 1(6), and 1(7) that follow, depict the results of the review conducted in 2008, 2007, 2006, 2005 and 2004, respectively. This information is provided for comparison purposes only.

Figure 1 (3) - Review Results 2008



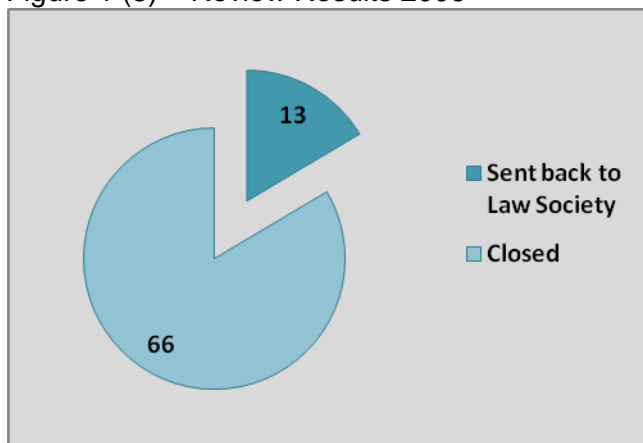
The 2008 review results, depicted in figure 1(3), indicate that in 2008 a total of 18 complaint files, representing approximately 11% of the files reviewed, were sent back to the Law Society with a recommendation for further action. Fourteen of the 18 files were from the Complaints Resolution Department and four cases were from the Investigations Department.

Figure 1 (4) - Review Results 2007



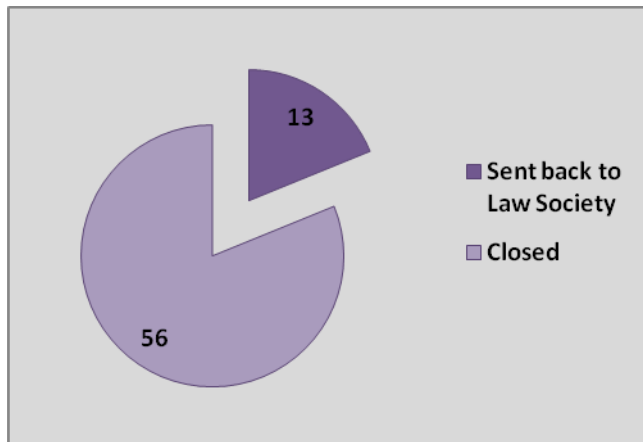
The 2007 review results, depicted in figure 1(4), indicate that in 2007 14 complaints, approximately 13% of the files reviewed, were referred back for further action. Twelve of the 14 files were from the Complaints Resolution Department and two cases were from the Investigations Department. This statistical data does not include the 2 files that were taken back by the investigating department at the suggestion of Counsel to the Complaints Resolution Commissioner prior to the Review Meeting.

Figure 1 (5) – Review Results 2006



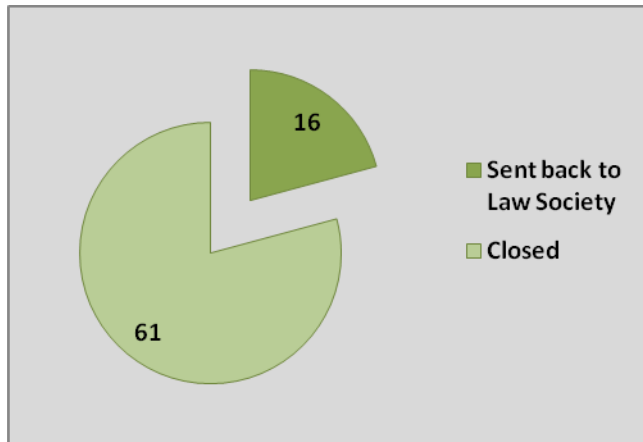
The 2006 review results, depicted in figure 1(5), indicate that in 2006 a total of 13 complaints, representing 16.45% of the files reviewed were referred back for further action. Nine of the 13 files were from the Complaints Resolution Department, three cases were from the Investigations Department and Outside Counsel investigated one of the files.

Figure 1(6) - Review Results 2005



As depicted in Figure 1 (6), in 2005, 13 or 18.84% of the files reviewed were sent back for further action. Of the 13 files sent back in 2005, the former Complaints Review Commissioner made 5 of the referrals and eight were made by Mr. Clare Lewis as the Complaints Resolution Commissioner. The Complaints Review Commissioners' standard of review was, as indicated earlier, "appropriateness" as opposed to the current standard, which is "reasonableness".

Figure 1 (7) – Review Results 2004



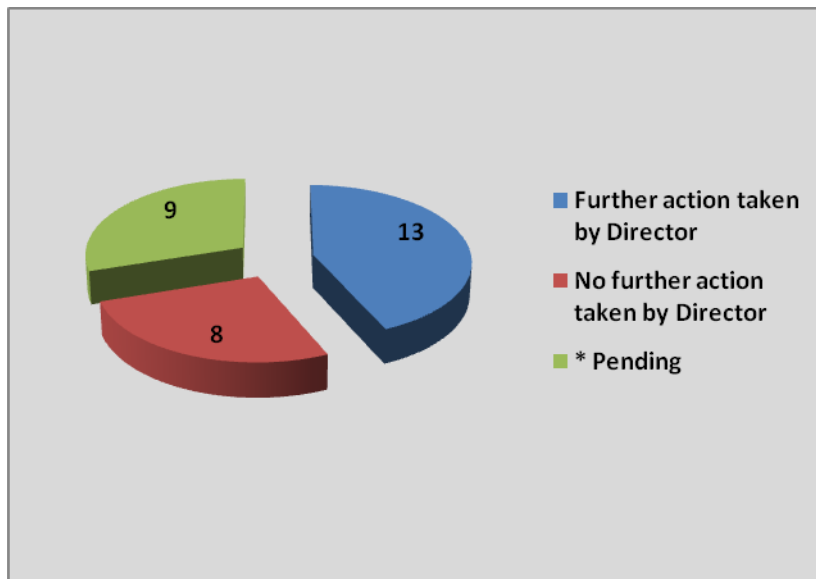
In 2004, using the “appropriateness” standard of review, 16 or 20.77% of the files reviewed by the Complaints Review Commissioner were sent back for further action.

#### Status of Files Sent Back

There were 33 files sent back to the Law Society following a Review Meeting in 2010, however, three of the files were reviewed in 2009 but the decision was not rendered until 2010. These three files are, therefore, not captured in the statistics that follow.

Figure 2 (1) that follows, reflects the Law Society’s response to the 30 files that the Complaints Resolution Commissioner sent back to the Law Society for further action in 2010, in accordance with Section 7 of By-Law 11.

Figure 2(1) – Results for files sent back in 2010



\* Response from the Director on nine files sent back late in 2010, remain outstanding. However, six of the files arise from a single complaint against the members of a law firm.

Among the 202 files reviewed in 2010, 30 of the files were sent back to the Law Society with a recommendation for further action, for a number of reasons. Six of the 30 files were sent back by Mr. Clare Lewis, in his role as Complaints Resolution Commissioner and I sent the remaining 24 complaint files back. However, six of the 24 complaint files sent back by me arose out of a single complaint against six members of a law firm.

Twenty four of the 30 files sent back to the Director, Professional Regulation, were referred back pursuant to By-Law 11 Sub-section 7(2)(b), as the Complaints Resolution Commissioner concluded that the Law Society's consideration and resulting decision to take no further action was unreasonable. In the remaining six complaint files, although in my role as Complaints Resolution Commissioner I was satisfied that the decision, based on all of the available evidence, was reasonable, I recommended that other action be taken. For example, in one case I was of the view that further inquiries into the licensee's use of the client's trust funds was appropriate. In two cases, as a result of additional material obtained through the review process, I recommended that further investigation be conducted. In another case, I felt that an allegation made in the original complaint was never investigated and I recommended that an investigation be made into this allegation. I also suggested in one file that it would have been appropriate for the Law Society to make further attempts to locate the complainant's file and, in another file, I suggested that the Law Society make further attempts to recover funds owing to the complainant.

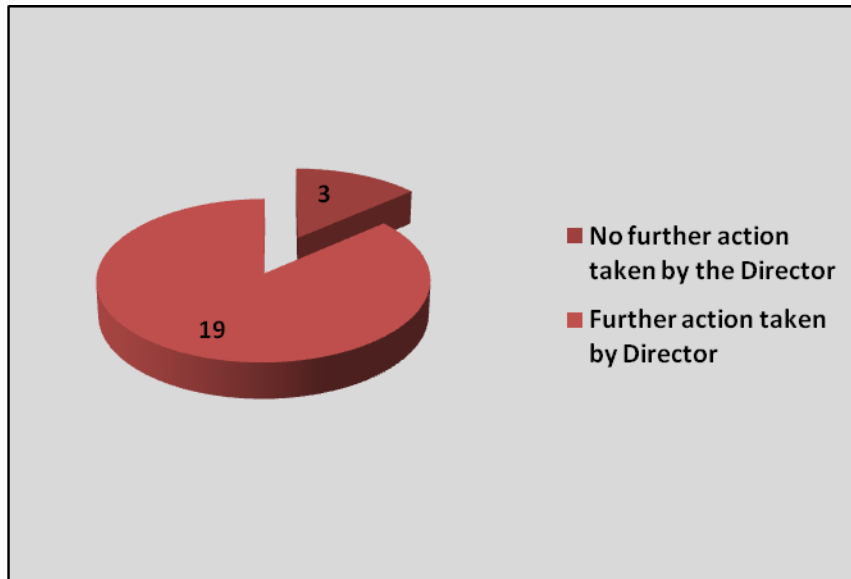
Of the 24 files referred back pursuant to Sub-section 7(2)(b) on the basis that the decision was unreasonable, the Director, Professional Resolution, accepted the recommendation on 10 complaint files. The recommendation was declined on seven of the complaint files and the Director's decision remains pending on seven complaint files.

There are a number of reasons why the Director declined to take further action on the six files. On one of the files, my recommendation followed my receiving additional information from the complainant regarding the licensee's accounting practices, however, the Director stated that since the Law Society had recently conducted a spot audit on the licensee's practice, further investigation was unnecessary. The Director was of the view that the investigator's conclusion was a reasonable one in three of the files. In one complaint file, relying on additional evidence that had not been included in the materials provided to me during my review, the Law Society did not agree that further action was required. In another complaint, despite the fact that the complainant alleged that the opposing licensee behaved uncivilly towards his counsel, the Director declined to take further action because although the licensee provided a sworn affidavit, she was not prepared to make her own complaint.

There are complaint files where I was satisfied that the Law Society's consideration of the complaint and its resulting decision to take no further action was reasonable, however, I sent the complaint back with a suggestion that other action nonetheless be taken. The Director agreed to take further action on three of the files, declined one of my recommendations and a decision on two files remains pending. No further action was taken in the one case because my recommendation that the licensee's books and records be reviewed was unnecessary as a spot audit was already in progress.

Figure 2 (2) that follows, reflects the Law Society's response to the 22 files that the Complaints Resolution Commissioner sent back to the Law Society for further action in 2009.

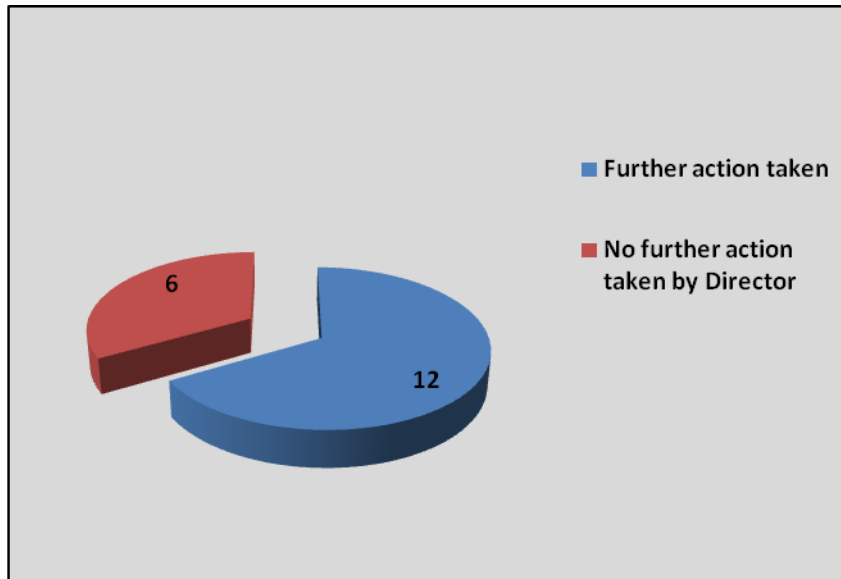
Figure 2 (2) – Results for files sent back in 2009



From 22 files sent back to the Law Society in 2009, the Commissioner found the Law Society's decision, on 18 of the files, to be unreasonable and referred the file back in accordance with Section 7 of By-Law 11. Specific recommendations for further action were made by the Commissioner in each of these cases. The Director, Professional Regulation, declined the recommendation on two of the files referred back and no further action was taken by the Law Society. Although the specific recommendation was not accepted on a third file, the Director, Professional Regulation, did take further action on the file.

With respect to the remaining four files sent back to the Law Society in 2009, although the Complaints Resolution Commissioner found the Law Society's investigation into these complaints and the resulting decisions to take no further action reasonable, the Commissioner nonetheless sent these files back to the Law Society for a variety of reasons. One of the files was sent back to the attention of the Director, Professional Regulation, identifying the Commissioner's concerns regarding the licensee's practice. On the second file, the Commissioner recommended that the Law Society assist the complainant in retrieving money owing to him which the licensee undertook to return to the complainant but failed to do so. On the third file, the Commissioner brought his concern regarding a provision in the *Rules of Professional Conduct* to the Director's attention. On the fourth file, although the Law Society's decision was reasonable based on the material available during the course of the investigation, since closing the file, new information was received from the complainant, raising ongoing concerns regarding the licensee's professional conduct.

Figure 2 (3) - Results of files sent back in 2008



Although the Director did not take any further regulatory action on six of the files referred back in 2008, on two of the files the Director addressed a concern identified by the Commissioner in a manner which differed from the specific recommendation. For example, rather than take further regulatory steps, the Director recommended a referral to Practice Review on one file and on another file the licensee was referred to Practice Audits to consider the appropriateness of a spot audit.

Figure 2(4) that follows sets out the Law Society's response to the 14 files that the Commissioner sent back to the Law Society in 2007.

Figure 2(4) – Results of files sent back in 2007

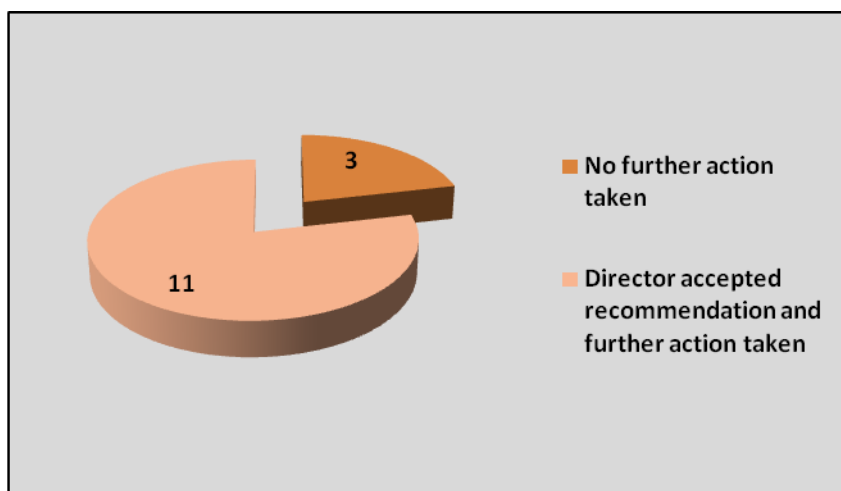
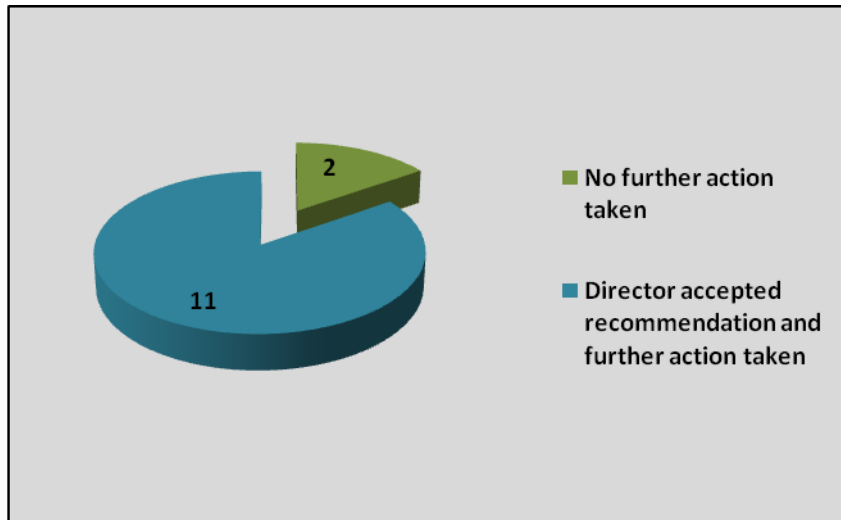


Figure 2(5) that follows sets out the status of the files that were sent back to the Law Society for further action in 2006.

Figure 2(5) – Results of files sent back in 2006



#### D. Schedule of Review Meetings

In order to meet the growing demand for reviews over the past several years, the frequency of the review days has increased. During 2006, a review day was scheduled for every two weeks with three files being reviewed on each of these days. However, due to the growing number of requests for review in 2007, the number of files reviewed on each review day was increased from three to four. On occasion, telephone meetings were also held on separate dates and nine files were reviewed in the absence of the complainant.

Beginning in May 2008, to meet the increasing demand for reviews and in order to manage the waiting time between the receipt of the request for review and the meeting day, two consecutive days of meetings were held every two weeks. Meetings with three different complainants were usually scheduled on each day but on occasions, a fourth meeting was arranged. Many of the meetings involved complaints against multiple licensees. In addition, a number of Review Meetings were held on days not otherwise scheduled as review days. Those files reviewed in the complainant's absence were also reviewed on days not scheduled as Review Meeting days. Furthermore, during the trips to either Ottawa or London, more than four files are reviewed on each of the review days.

Although I continued to conduct reviews on four days a month at the commencement of my appointment and met with four complainants on each of the review days, effective November 2010, a fifth review day was added each month. I added a fifth day of reviews in order to reduce the current inventory backlog and to reduce the amount of time between when the file has been prepared for review and the date of the meeting is scheduled to proceed.

It was these increases in both the number of review days and the number of files reviewed on each review day that allowed for a review to be conducted on 202 files in 2010.

#### E. Systemic Issues

In addition to referring matters back to the Law Society with a recommendation for further action, I have continued to identify systemic issues during the Review Meetings and I have brought these issues and concerns to the attention of the Director, Professional Regulation, in order to support the Law Society's efforts to serve the public interest.

Counsel and I together with the Director, Professional Regulation, and her departmental Managers, have also worked towards addressing and improving practices and procedures between the Professional Regulation departments and the Office of the Complaints Resolution Commissioner.

Counsel to the Office of the Complaints Resolution Commissioner have also continued to work on an informal basis with the Managers of the Professional Regulation departments to clarify issues and address concerns, in advance of the Review Meetings. For example, when additional material has been received by my office, in advance of a scheduled Review Meeting, the documents have been provided to the department manager and/or the investigator for consideration before the meeting. When possible, if outstanding issues have been identified prior to the Review Meeting, the issues have been addressed by the investigator before the meeting. These mutually supportive practices and procedures have promoted a more efficient and effective transfer of files and have allowed for greater consistency in the practices and procedures within the review process.

#### F. The Resolution Function

In addition to the review function performed by the Complaints Resolution Commissioner, section 9 of By-Law 11 also provides that the Law Society may refer a complaint to the Commissioner for resolution. This function is intended to be a more formal resolution process for addressing complaints.

By-Law 11 states that the Society will determine whether a matter is referred to the Commissioner for resolution, prior to the file being closed or a referral to the Proceedings Authorization Committee has been made. The Society can only refer a complaint to the Commissioner for resolution with the consent of the complainant, the licensee and the Society. The Complaints Resolution Commissioner has the broad discretion to determine the process for the resolution function.

During 2006, Counsel to the Commissioner, in consultation with the Director, Professional Regulation, and her counsel, drafted a proposal for identifying and streaming files for resolution. Counsel to the Director created the necessary policies to implement the process.

The resolution process was ready for implementation in 2007. Although one file was identified as appropriate for the process during 2007, the complainant did not wish to participate in the process. The complaint file was, therefore, investigated in the ordinary course.



During 2008, although a second file was considered suitable for the resolution process and the parties expressed an interest in participating in the process on reviewing the nature of the complaint, it became apparent that because of an ongoing investigation involving the licensee, the file was not in fact suitable.

There were no files identified as suitable for the resolution process during 2009 and 2010.

G. My Observations To Date

I believe that the establishment of the Office of the Complaints Resolution Commissioner, by the Law Society, has significantly improved complainant satisfaction with the Law Society's public complaint process. I believe that dissatisfied complainants must be given an opportunity to voice their concerns to an independent third party and I have made every effort to provide Law Society complainants with such a forum. This includes meeting with complainants in person, thereby adding a valuable personal component to the process for resolving Law Society complaints.

In my humble opinion, the integrity of the Office of the Complaints Resolution Commissioner depends significantly on how it is perceived by the complainants and the public at large. In that regard, the recent relocation of the Office away from the Law Society Building is a huge step in the right direction. It is not uncommon for complainants to ask questions to determine the extent of the Commissioner's independence from the Law Society. The location of the Office away from the Law Society building is tangible evidence of that independence in the minds of the complainants. I wish to acknowledge the support that I have received from the Chief Executive Officer of the Law Society and other senior officers of the Law Society in achieving this objective.

In order to continue to meet the growing demand for an independent review, we are working towards introducing some innovative practices such as triaging methods to make the review process more efficient.

We also continue to face the challenge of addressing the belief held by many of the complainants that the Complaints Resolution Commissioner has the absolute ability to take whatever steps that may be necessary to provide the remedy that the complainant is seeking. These perceived remedies include finding the licensee negligent, awarding damages, reducing the fees charged by the licensee and finding the licensee guilty of an offence. This perception remains despite a clear indication in the documentation supplied to the complainant that the Commissioner is not empowered to do so. When these issues are raised, I make every attempt to explain why I cannot provide such relief and draw their attention to the documentation that they had received. It is, however, a challenge that we need to address perhaps through better communication and education.

Despite the increased demands on this office, I am confident that we have continued to provide the public with an independent and impartial forum of review. I have made every effort to ensure that complainants are treated with respect and that their complaints are dealt with in a fair, effective, efficient and transparent manner. This is possible in great measure due to the professionalism and dedication of the legal and administrative staff in this office. In closing, I wish to publicly express my gratitude and recognize their significant contribution to the important task they carry out.

Law Society Act  
R.S.O. 1990, CHAPTER L.8  
COMPLAINTS RESOLUTION COMMISSIONER

Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

Functions of Commissioner

- 49.15 (1) The Commissioner shall,
- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
  - (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

Investigation by Commissioner

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

Access to information

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

### Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

### Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

### Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

### Confidentiality

49.18 (1) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

### Exceptions

- (2) Subsection (1) does not prohibit,
- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
  - (b) disclosure required in connection with a proceeding under this Act;
  - (c) disclosure of information that is a matter of public record;
  - (d) disclosure by a person to his or her counsel; or
  - (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

### Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

### Decisions final

49.19 A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

## Appendix 2

## BY-LAW 11

Made: May 1, 2007  
Amended: June 28, 2007  
September 20, 2007 (editorial changes)  
October 25, 2007 (editorial changes)  
February 21, 2008  
April 24, 2008  
October 30, 2008  
January 29, 2009  
October 28, 2010

## REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE

## PART I

## COMPLAINTS RESOLUTION COMMISSIONER

## GENERAL

## Definitions

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

## Provision of funds by Society

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefore by Convocation.

## Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefore by Convocation.

## Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

## REVIEW OF COMPLAINTS

### Reviewable complaints

4. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
  - (c) the complaint has not been previously reviewed by the Commissioner; and
  - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

### Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
- 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
- 3. Negligence of a licensee.

Interpretation: "previously reviewed"

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

### Right to request referral

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

### Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

### Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

#### When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
  - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
  - (ii) if it was faxed, on the first day after it was faxed.

#### Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

#### Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

#### Fresh evidence

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

#### Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

#### Disposition of complaint referred for review: notice

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

Procedure

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: licensee

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, *etc.*

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

### Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

## RESOLUTION

### Discretionary referral of complaints

9. (1) The Society may refer a complaint to the Commissioner for resolution if,
- (a) the complaint is within the jurisdiction of the Society to investigate;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
  - (c) the complaint has not been referred to the Proceedings Authorization Committee;
  - (d) no resolution of the complaint has been attempted by the Society; and
  - (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

### Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

### Outcome of Resolution

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

### No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

### Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

### Confidentiality: Commissioner

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

### Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.



Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

Procedure

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

...

Appendix 3

#### BY-LAW 20

Made: January 28, 1999

Amended:

May 28, 1999

April 26, 2001

January 24, 2002

Revoked and Replaced: December 9, 2005

#### REVIEW OF COMPLAINTS

Complaints Review Commissioners

Each lay benchers is a Complaints Review Commissioner.

Function

2. (1) Subject to subsection (2), the function of a Complaints Review Commissioner is to review the Society's disposition of a complaint against a member.

Same

(2) A Complaints Review Commissioner shall not review the disposition of a complaint against a member by,

- (a) the chair and vice-chairs of the Discipline Committee as it was constituted before February 1, 1999;
- (b) a committee of benchers acting under section 33 of the Act as that section read before February 1, 1999;
- (c) Convocation acting under section 33 of the Act as that section read before February 1, 1999;
- (d) The Proceedings Authorization Committee;
- (e) The Hearing Panel; or
- (f) The Appeal Panel.

#### Request to review disposition of complaint

3. (1) A complainant who is dissatisfied with the Society's disposition of his or her complaint against a member may request the Society to refer the disposition of the complaint to a Complaints Review Commissioner for review.

#### Referral of disposition of complaint to Commissioner

(2) If a request is made under subsection (1), unless a complaint was disposed of by the persons or body mentioned in subsection 2 (2), the Society shall refer the disposition of a complaint to a Complaints Review Commissioner for review.

#### Review by Commissioner of disposition of complaint

4. (1) A Complaints Review Commissioner shall review every disposition of a complaint referred to him or her under subsection 3 (2) and shall decide whether the Society's disposition of a complaint was appropriate.

#### Referral to Society for further investigation

(2) A Complaints Review Commissioner may, before or after deciding whether the Society's disposition of a complaint was appropriate, refer a complaint to the Society and direct the Society to investigate the complaint further.

#### Procedure on review

5. The procedure applicable to a review by a Complaints Review Commissioner of the Society's disposition of a complaint shall be determined by the Complaints Review Commissioner and, without limiting the generality of the foregoing, the Complaints Review Commissioner may decide who may make submissions to him or her, when and in what manner.

#### Independent counsel

6. The Complaints Review Commissioners may retain independent counsel on such terms and conditions as they consider appropriate to provide them with advice on the performance of their duties and the exercise of their duties under this By-Law.

#### Two or more Commissioners may review disposition of complaint

7. Despite any provision in this By-Law, two or more Complaints Review Commissioners may sit together to review the Society's disposition of a complaint and sections 2, 4 and 5 apply, with necessary modifications, to the review of the Society's disposition of a complaint by two or more Commissioners.

#### Commencement

8. This By-Law comes into force on February 1, 1999.

#### ADDENDUM

#### Complaints Resolution Commissioner's Annual Report 2010

Prepared by Stindar Lal QC  
Complaints Resolution Commissioner

Addendum to the Complaints Resolution Commissioner's Annual Report 2010

Table 3.1 - Status of CRC Requests 2010

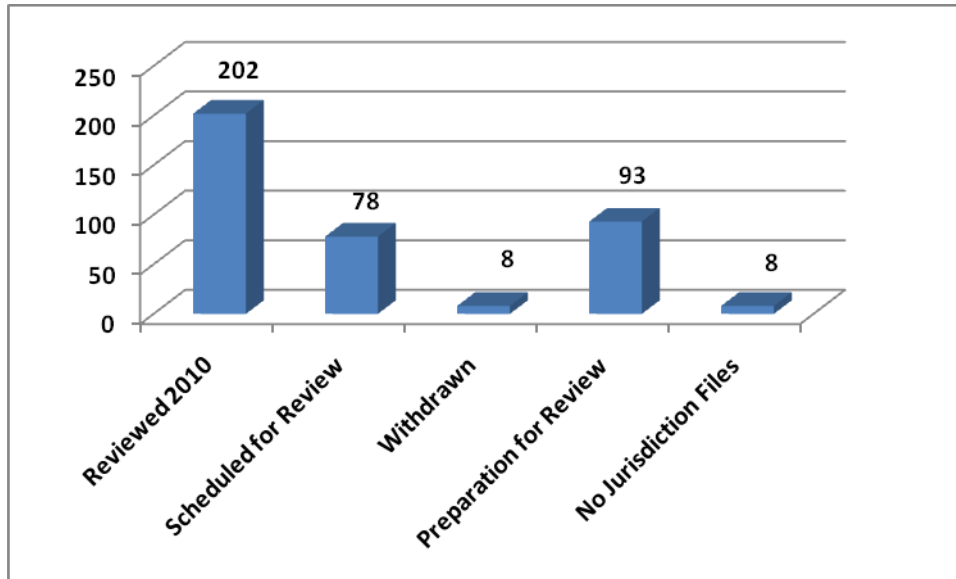


Table 3 included in the Complaints Resolution Commissioner's Annual Report 2010 indicates that 82 files were already scheduled for review as at December 31, 2010 but the review date was set in 2011. Although Table 3.1 depicts 78 files scheduled for review, the discrepancy in the two tables is as a result of the reviews being scheduled in late 2010 but the data input on the case management system taking place the first week of January 2011.

Table 3 indicates that six requests for review were withdrawn in 2010. This figure represents the six files that were withdrawn following a managerial review and does not include the two files that were withdrawn by the complainant prior to the review meeting. Although Table 3 indicates that there were 22 files still being prepared for review as at December 31, 2010, the 22 files represent those files already with the Office of the Complaints Resolution Office but not yet scheduled for review. It does not include those files being prepared for review by the Law Society. Once included, there were 93 files at various stages of preparation, as reflected in Table 3.1.

Table 3.1 indicates that there were eight No Jurisdiction files during 2010. However, this figure does not include the files where the complainant had requested a review of a decision made by either the Client Service Centre or the Intake Department to close a complaint file, which files I do not have the jurisdiction to review. If these files are included, there were 56 requests for review on No Jurisdiction files.

### EXPANDING THE MENTORING PROCESS BEYOND JUDICIAL REFERRALS

37. Currently, through the Civility Complaints Protocols created jointly with the judiciary, lawyers who are the subject of a complaint from the judiciary can be diverted for mentoring rather than becoming the subject of an investigation. A pool of mentors has been created through the Advocates' Society, the Criminal Lawyers' Association, the Ontario Crown Attorneys' Association and the Association of the Law Officers of the Crown.
38. As a number of complaints about incivility and unprofessionalism are not from judges, the Committee has agreed to begin discussions with the various associations that provide mentoring about expanding the mentoring process to include lawyers against whom a complaint is received from any source, in the appropriate cases. Further information will be provided to Convocation on the results of these discussions.

### PRO BONO DUTY COUNSEL FOR LAWYERS UNDER INVESTIGATION BY THE LAW SOCIETY

39. Currently, the Advocates' Society and the Criminal Lawyers' Association provide *pro bono* duty counsel services at the Proceeding Management Committee and at Law Society hearings before the Hearing Panel.
40. Most lawyers are not represented during the investigation stage. When they do obtain representation, it tends to be at the point where they realize the issues may proceed to discipline.
41. In most cases, Law Society investigations are closed without further regulatory action. However, it is recognized that being the subject of an investigation is a stressful event for lawyers and counsel can be of assistance to them.
42. The Committee is considering the merits of making duty counsel services available to lawyers under investigation on a *pro bono* basis in keeping with the policy approved by Convocation for *pro bono* duty counsel.
43. The Committee has agreed to begin exploratory discussions with the Advocate's Society and the Criminal Lawyers' Association about this project. Further information will be provided to Convocation following these discussions.

Attached to the original Report in Convocation file, copy of:

- (1) Copy of the Professional Regulation Division's Quarterly Report (October - December 2010). (pages 16 – 125)
- (2) Complaints Resolution Commissioner Information Sheet. (pages 165 – 166)

Re: Proposed Amendments to Rule 2.02 and By-Law 9 Respecting Trust Account Requirements

It was moved by Mr. Fleck, seconded by Mr. Falconer, that Convocation approve in principle:

- a. An amendment to Rule 2.02 of the *Rules of Professional Conduct* respecting client retainers and use of a trust account; and
- b. An amendment to By-Law 9 respecting the purpose of receipts and disbursements of money in trust.

Carried

*For Information*

- Professional Regulation Division Quarterly Report
- Report of the Complaints Resolution Commissioner
- Expanding the Mentoring Process Beyond Judicial Referrals
- Pro Bono Counsel for Lawyers Under Investigation

PARALEGAL STANDING COMMITTEE REPORT

Ms. Boyd absented herself from Convocation.

Ms. Corsetti presented the Report.

Report to Convocation  
February 24, 2011

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Paralegal Standing Committee

Committee Members  
Cathy Corsetti, Chair  
William Simpson, Vice-Chair  
Marion Boyd  
Robert Burd  
James R. Caskey  
Paul Dray  
Seymour Epstein  
Michelle Haigh  
Douglas Lewis  
Susan McGrath  
Kenneth Mitchell  
Baljit Sikand

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

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Changes to the Small Claims Court Rules  
Quarterly Report on Professional Regulation

### COMMITTEE PROCESS

1. The Committee met on February 10th, 2011. Committee members present were Cathy Corsetti (Chair), William Simpson (Vice-Chair), Robert Burd, James Caskey (by telephone), Paul Dray, Seymour Epstein, Michelle Haigh, Susan McGrath and Kenneth Mitchell. Staff members in attendance were Zeynep Onen, Roy Thomas, Terry Knott, Elliot Spears, Arwen Tillman, Naomi Bussin, Sheena Weir and Julia Bass.

## FOR DECISION

### TRIBUNAL MEMBERS - REQUEST FOR EQUIVALENCY

#### Motion

2. That By-law 4 be amended to provide for educational equivalency for members of adjudicative tribunals with five years of full time experience.

#### Issue

3. The Law Society received a request from the board of directors of the Society of Ontario Adjudicators and Regulators ('SOAR'). SOAR is an organization of Chairs, members, management and staff of administrative justice system agencies. A copy of their submission is attached at Appendix 1.
4. Many members of SOAR are adjudicators on Ontario tribunals, most of whom are lawyers. However, there are a number of adjudicators who are not lawyers. There are about 40 adjudicative tribunals, with roughly 100 to 150 non-lawyer members.

5. The request from the SOAR board asks for an accelerated route to a paralegal licence for such adjudicators, so that tribunal members who have obtained expertise in, for example, workers' compensation law, could retire from the tribunal and practice before it (subject to conflict of interest rules). This would involve the recognition of their experience as tribunal members as providing training equivalent to the accredited college programme.
6. The adjudicators take the position that they are in a comparable position to the Justices of the Peace, who have special status in the application process for a paralegal licence, provided they have three years full-time experience. In both cases, it is argued that the performance of a judicial function for a number of years provides training and expertise in proper legal process and at least one area of substantive law.
7. The provision regarding Justices of the Peace is found in subsection 13 (2) of By-law 4 as follows:

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

1. (a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis;

8. This subsection exempts eligible Justices of the Peace from the requirement to take an accredited college programme. The provision was approved by Convocation in March 2008, at the request of the Association of Justices of the Peace of Ontario.
9. SOAR estimates the approximate number of annual applicants at about 10 to 15.

#### The Committee's Deliberations

10. Many of these adjudicators are highly trained, especially those who sit on tribunals with an extensive mandatory education programme. There would thus be the potential for the Law Society to acquire a group of well-educated members, most of whom would probably not become licensed if it required a two year educational programme, although some might find it possible to obtain advanced standing in a community college paralegal programme, by application to the college.
11. Although the request was sent to the Law Society by SOAR, membership in SOAR would not be relevant to the status of applicants since SOAR is a voluntary membership organization. Rather, relevant objective criteria are required.
12. While the SOAR request does not differentiate between full-time and part-time adjudicators, the Committee was of the view that such a provision should be limited to full-time tribunal members only, as there are definitional problems with setting a required number of hours for part time work.
13. While the minimum number of years of experience for Justices of the Peace was set at three, the Committee was of the view that five years is an appropriate requirement for tribunal members.

14. The Committee noted that the applicants under such a process would probably only have substantive legal knowledge in one or two areas. However, they would be bound by the *Paralegal Rules of Conduct* which prohibit taking a file for which one lacks the necessary skills and knowledge.
15. The Committee recommends that the proposal be adopted. If Convocation approves the provision in principle, the necessary wording for the by-law will be drafted.

## APPENDIX 1

## Society of Ontario Adjudicators and Regulators

February 1, 2011

Paralegal Standing Committee  
Law Society of Upper Canada  
Osgoode Hall  
Toronto M5H 2N6

Dear Committee Members,

Re: Paralegal Licensing

SOAR is an organization of Chairs, members, management and staff of administrative justice system agencies. The mission of the Society of Ontario Adjudicators and Regulators is to advance administrative justice through education, advocacy and innovation.

The SOAR Board of Directors is seeking special consideration under the Law Society of Upper Canada By-Law 4 in regard to members of adjudicative tribunals who are not lawyers and who may be interested in working as a paralegal after leaving the tribunal.

SOAR proposes a special consideration similar to that afforded to a justice of the peace under section 12(2) of the By-Law so that members of certain adjudicative tribunals would not be required to have completed a legal services program as described in section 12(1) of the By-Law.

While there are a very large number of tribunals in Ontario, SOAR proposes the special consideration only for members of adjudicative tribunals. A list of adjudicative tribunals is set out in Schedule A of Regulation 126/10 made pursuant to the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*. A copy of the Schedule is attached to this letter.

Members and Vice-Chairs of tribunals generally either come to the tribunal with expertise in the procedural and substantive law that the tribunal deals with, or develop that expertise through the performance of their duties. In the course of holding hearings, members must make rulings and decisions that accord with the principles of natural justice and fairness. Adjudicative tribunals are covered by the *Statutory Powers and Procedures Act* or have equivalent tribunal rules.



Many people are appointed to tribunals in mid-career or at a later stage in their careers. After serving on certain Tribunals, a logical and appropriate career path is to act as a representative or consultant in the area of law dealt with by the Tribunal, subject to conflict of interest guidelines. SOAR anticipates that a relatively small number of people who may be eligible under the proposed special consideration will wish to work as a paralegal but we believe that it would be appropriate for that option to be available.

Pursuant to the legislation and government policies respecting appointments, Members of tribunals are now generally appointed for an initial two year term and may be reappointed for two further terms of three years and five years respectively, to a maximum of ten years. A Member who has been re-appointed following an initial appointment will have the support and confidence of the Chair of the tribunal and the Lieutenant Governor in Council. Most tribunals have both salaried full-time and per diem members.

SOAR proposes that special consideration be given to tribunal members who are not lawyers and who meet the following criteria:

The person has served as an adjudicator as a member of an adjudicative tribunal, as defined by Regulation 126 to the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, for at least five years.

SOAR would like to thank the Committee for its consideration of this proposal.

Yours truly,

Brian Cook  
on behalf of the SOAR Board of Directors

#### SCHEDULE 1: ADJUDICATIVE TRIBUNALS

1. Agriculture, Food and Rural Affairs Appeal Tribunal.
2. Animal Care Review Board.
3. Assessment Review Board.
4. Board of negotiation continued under subsection 27 (1) of the *Expropriations Act*.
5. Board of negotiation established under subsection 172 (5) of the *Environmental Protection Act*.
6. Building Code Commission.
7. Child and Family Services Review Board.
8. Chiropody Review Committee.
9. Consent and Capacity Board.

10. Conservation Review Board.
11. Criminal Injuries Compensation Board.
12. Crown Employees Grievance Settlement Board.
13. Custody Review Board.
14. Dentistry Review Committee.
15. Environmental Review Tribunal.
16. Fire Safety Commission.
17. Health Professions Appeal and Review Board.
18. Health Services Appeal and Review Board.
19. Human Rights Tribunal of Ontario.
20. Landlord and Tenant Board.
21. Licence Appeal Tribunal.
22. Medical Eligibility Committee formed under subsection 7 (1) of the *Health Insurance Act*.
23. Normal Farm Practices Protection Board.
24. Ontario Civilian Police Commission.
25. Ontario Labour Relations Board.
26. Ontario Municipal Board.
27. Ontario Parole Board.
28. Ontario Review Board.
29. Ontario Special Education Tribunal (English).
30. Ontario Special Education Tribunal (French).
31. Optometry Review Committee.
32. Pay Equity Hearings Tribunal.
33. Physician Payment Review Board.
34. Public Service Grievance Board.
35. Social Assistance Review Board.
36. Social Benefits Tribunal.
37. Workplace Safety and Insurance Appeals Tribunal.

## PROPOSED CHANGES TO REQUIREMENTS FOR THE USE OF TRUST ACCOUNTS

### Motion

16. That Convocation approve in principle the amendments to Rule 3.02 of the *Paralegal Rules of Conduct* shown at paragraph 21.

### Background

17. The Professional Regulation Committee has approved changes to the rules governing the use of trust accounts, involving changes to both the lawyers' *Rules of Professional Conduct* and to By-law 9. The changes are part of the response to the recent wave of major fraud cases, which have cost the Law Society millions of dollars in Compensation Fund payments and Law Society resources.
18. While paralegals have not been subject to the same involvement in fraud, in keeping with the principle that the rules for paralegals and lawyers should be consistent, the Paralegal Standing Committee is proposing parallel amendments to the Paralegal Rules and has also approved the proposed changes to By-law 9.
19. The proposed changes to By-law 9 governing both paralegals and lawyers will be submitted to Convocation in the Report from the Professional Regulation Committee. The changes were approved by the Paralegal Standing Committee in January 2011. The Report from the Professional Regulation Committee contains further background on the rationale for the changes proposed.

### *Paralegal Rules of Conduct*

20. The current Paralegal Rule 3.02 (3) includes the following:

Dishonesty, Fraud, etc. by Client

(3) A paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct when advising a client and he or she shall not instruct the client on how to violate the law and avoid punishment.

(4) A paralegal shall take all reasonable measures to avoid becoming the tool or dupe of an unscrupulous client or persons associated with such a client.

21. To be consistent with the proposed changes to the Lawyers' *Rules*, Rule 3.02 of the *Paralegal Rules of Conduct* should be amended to include wording to the following effect:

Dishonesty, Fraud etc. by Client

(3) When acting for a client, a paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or advise the client on how to violate the law and avoid punishment.

(3.1) When retained by a client, a paralegal shall make reasonable efforts to ascertain the purpose and objectives of the retainer and any funds received and obtain such information about the client necessary to fulfill this obligation.

(3.2) When acting for a client, a paralegal shall not use his or her trust account for purposes outside the provision of legal services.

22. There would also need to be accompanying changes to the *Paralegal Guidelines*. If Convocation approves the proposed changes to Rule 3.02, the necessary changes to the *Guidelines* will be prepared. They would reflect the new wording to be added to the lawyers' Commentary, shown below:

A client or another person may attempt to use a lawyer's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. A lawyer should be aware that under the Law Society By-laws, anyone who provides money in trust to the lawyer becomes a client and the lawyer is trustee of those funds. This responsibility arises even if the lawyer is not otherwise providing legal services to that person. As part of a lawyer's obligation to avoid assisting or encouraging dishonesty, fraud, crime or illegal conduct, a lawyer should restrict the use of his or her trust account for the provision of legal services, as defined by the Act and the By-Laws.

#### The Committee's Deliberations

23. The Committee considered the proposed changes and recommends them to Convocation for approval. Approval is sought for these changes in principle – the wording will be reviewed by the Law Society's outside drafting consultant.

### FOR INFORMATION

#### CHANGES TO SMALL CLAIMS COURT RULES

24. On January 1st 2011, new rules came into effect for the Ontario Small Claims Court. The changes include the removal of the distinction between lawyers and paralegals in the costs rules at section 19.04. A copy of the Ministry of the Attorney General bulletin on the changes is attached at Appendix 2.

#### QUARTERLY REPORT FROM THE PROFESSIONAL REGULATION DEPARTMENT

25. The Director of Professional Regulation presented the Quarterly Report from her department for the last quarter of 2010.

## **What's New? Changes to the Small Claims Court Rules and Forms in effect January 1, 2011**

On January 1, 2011, amendments to section 30 of the *Courts of Justice Act* and court rules and forms under the *Rules of Small Claims Court* (the "Rules") will come into effect.

### **Change to Service by Registered Mail at an Individual's Place of Residence**

A claim can be served by "personal service" or by an "alternative to personal service". In one "alternative to personal service", the claim can be served where the person lives by registered mail or courier with proof (verification by Canada Post or the courier company) that the document was received.

Previously, for service to be effective under this method, the signature of the defendant, verifying receipt of the document, was required. As of January 1, 2011, the signature of defendant, *or any person who appears to be a member of the same household*, verifying receipt of the document is required.

As usual, if verification is not received, the plaintiff may then serve the claim by another method allowed by the Rules, for example, by personal service or by requesting an order for substituted service.

For more information about serving a claim, see the ***Guide to Making a Claim*** and ***Guide to Serving Documents*** available at court offices and online at: [www.ontario.ca/attorneygeneral](http://www.ontario.ca/attorneygeneral). A new version of these guides, including this change, will be available after January 1, 2011.

### **Service of Defences on All Parties**

In the past, the Rules required the defendant to file his or her defence at the court office together with a copy for every plaintiff. Court staff was required to serve a copy of the defence on each of the plaintiffs.

As of January 1, 2011, the defendant is required to file a defence together with a copy of it for every party in the case. Court staff must serve a copy of the defence on all plaintiffs and defendants in the case.

For more information about service of defences, see the ***Guide to Replying to a Claim*** and ***Guide to Serving Documents*** available at court offices and online at: [www.ontario.ca/attorneygeneral](http://www.ontario.ca/attorneygeneral). A new version of these guides, including this change, will be available after January 1, 2011.

## Costs and Disbursements

Under the Rules, a successful party is entitled to have his or her reasonable disbursements (expenses) paid by the unsuccessful party. As of January 1, 2011:

- The maximum amount that can be claimed for serving documents has increased to \$60 per person served; and
- The maximum amount that can be claimed for preparing a plaintiff's claim, defendant's claim or defence has increased to \$100. (The clerk of the court may now assess this expense.)

Previously, costs that could be awarded by the court for representation by students-at-law and agents were limited to half of what could be awarded where a lawyer represented a party. As of January 1, 2011, that limitation will be removed. However, section 29 of the *Courts of Justice Act* still limits court-ordered costs to 15 per cent of the amount claimed or the value of the property sought to be recovered (unless the court considers it necessary in the interests of justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding).

As well, previously representation costs and/or compensation for inconvenience and expense for people who represent themselves could only be requested from the court in cases where the amount claimed was more than \$500. As of January 1, 2011, a request for representation costs, or compensation for inconvenience or expense, can be made in any Small Claims Court case, regardless of the value of the claim.

## Financial Information Form and Supporting Documentation

Following judgment, if a debtor has not paid under the terms of the judgment, the creditor may schedule an "examination hearing" to get information about the debtor's assets and ability to pay.

The Rules require a person who is a debtor (i.e. not a corporation) to complete a financial information form listing his or her income, expenses, debts and assets, and serve it on the creditor before the examination hearing. (This form must not be filed at the court office.)

As of January 1, 2011, the debtor must also:

1. Give a copy of the completed financial information form to the judge at the examination hearing, and
2. Bring documents to the hearing that support the figures in the form.

For more information about examination hearings, see the ***After Judgment – Guide to Getting Results*** available at court offices and online at: [www.ontario.ca/attorneygeneral](http://www.ontario.ca/attorneygeneral). A new version of these guides, including this change, will be available after January 1, 2011.

### **Contempt for failing to answer questions at an examination hearing**

Where a person is found in contempt of court for refusing to answer questions or provide records at an examination hearing, the maximum penalty has been reduced from 40 days to 5 days in jail, effective January 1, 2011.

### **Contempt Hearings for willful failure to attend an examination**

Previously, a contempt hearing for willful failure to attend an examination in Small Claims Court was required to be heard before a judge of the Superior Court of Justice. As of January 1, 2011, these hearings may also be heard by a deputy judge or provincial civil judge.

Also, as of January 1, 2011, where the court finds a person in contempt of court for willful failure to attend an examination, the maximum penalty has been reduced from 40 days to 5 days in jail.

For more information about contempt proceedings, see the ***After Judgment – Guide to Getting Results*** available at court offices and online at: [www.ontario.ca/attorneygeneral](http://www.ontario.ca/attorneygeneral). A new version of this guide, including this change, will be available after January 1, 2011.

### **Small Claims Court Forms**

Minor improvements have been made to 19 Small Claims Court forms to make the forms more clear and easy to use and to reflect the changes to the Rules. The forms are available on the Ontario Court Forms website at the following link: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca).

Although you can see the new forms at this website, they cannot be filed with the court until January 1, 2011. After January 1, 2011, the new forms should be filed with the court office. If necessary, old forms will be accepted by the court office until February 1, 2011.

### **Want more information about Small Claims Court?**

For general information about Small Claims Court you can visit the Ministry of the Attorney General's website at: [www.ontario.ca/attorneygeneral](http://www.ontario.ca/attorneygeneral).

The following publications are available on this website under "Small Claims Court":

- "Before Making a Claim in Small Claims Court", information about what to consider before you make a claim in the Small Claims Court.
- "Small Claims Court Guides to Procedures", a series of eight guides which provide an overview of court procedures in Small Claims Court.
- "Small Claims Court Brochures", a series of 12 brochures which provide a one-page summary of court procedures in Small Claims Court.

New versions of the guides and brochures will be available after January 1, 2011.

You can also visit [Justice Ontario](http://JusticeOntario.ca), a Ministry of the Attorney General website for answers to basic questions about Ontario's justice system, including lawsuits and disputes, family law, criminal law, going to court, human rights, wills and estate planning, tickets and fines, and how to find a lawyer or paralegal.

To access *Justice Ontario* on-line, visit: [www.ontario.ca/justiceontario](http://www.ontario.ca/justiceontario). For access to this information in over 170 languages, you can also reach *Justice Ontario* by toll-free telephone at 1-866-252-0104.

Re: Tribunals – Request for Equivalency

It was moved by Ms. Haigh, seconded by Mr. Simpson, that By-Law 4 be amended to provide for educational equivalency for members of adjudicative tribunals with five years of full time experience.

Carried

Ms. Boyd returned to Convocation.

Re: Proposed Changes to Requirements for the Use of Trust Accounts

It was moved by Mr. Dray, seconded by Mr. Simpson, that Convocation approve in principle the amendments to Rule 3.02 of the *Paralegal Rules of Conduct* set out at paragraph 21 of the Report.

Carried

*For Information*

- Changes to Small Claims Court Rules
- Quarterly Report from the Professional regulation Department

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*REPORTS FOR INFORMATION*

Audit Committee Report

- Response to Questions Raised at January 2011 Convocation on LAWPRO's Third Quarter Financial Statements
- Internal Control Assessment
- Discipline Orders Receivable

Report to Convocation  
February 24, 2011

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Audit Committee

Committee Members  
Chris Bredt (Chair)  
Susan Elliott  
Seymour Epstein  
Vern Krishna  
Doug Lewis  
Jack Rabinovitch  
Heather Ross  
William Simpson

Purpose of Report: Information

Prepared by the Finance Department  
Wendy Tysall, CFO, 416-947-3322

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on February 9, 2011. Committee members in attendance were Chris Bredt (c), Susan Elliott (teleconference), Seymour Epstein, Doug Lewis, Heather Ross and William Simpson. Brad Wright also attended the meeting by phone.
2. Law Society staff attending were Wendy Tysall, Zeynep Onen, Brenda Albuquerque-Boutilier, Michael Elliott and Andrew Cawse.

FOR INFORMATION

LAWPRO THIRD QUARTER FINANCIAL STATEMENTS

3. At Convocation in January, there were three questions concerning LAWPRO 's third quarter financial statements which had been presented to Convocation for information.
  - a. According to the transcript of Convocation, one question queried trends in the loss reserve to equity ratio. Concern was expressed that since 2006 LAWPRO has not been meeting its objectives and that reserves are going up. The question was whether this threatened LAWPRO's future.

- b. In the context of LAWPRO's financial results being better than anticipated, the second question asked if it was too early to tell whether that will be reflected in reduced insurance premiums next year.
  - c. The final question was about the future outlook on annual operating surpluses and deficits .
4. Responses to these questions from LAWPRO's management are attached.

## FOR INFORMATION

### OTHER COMMITTEE WORK

#### Internal Control Assessment

- 5. The Committee had previously completed a questionnaire for assessing internal controls at the Law Society. The Committee reviewed the final version which had been signed by the Chief Executive Officer and the Chief Financial Officer.
- 6. As part of this review, the Committee was updated on revisions to the Law Society's Business Conduct Policy. The Committee will review the final draft of the revised policy.

#### Discipline Orders Receivable

- 7. The Committee continued its examination of amounts receivable from lawyers and paralegals related to discipline orders and related collection issues. In particular, the Committee was concerned about members who are practising or employed and have not met the financial obligations of their order(s).
- 8. The Director, Professional Regulation advised that of the practising or employed members, all but six, are either on payment plans, have had writs filed against them or their costs are not yet due according to the terms of the Order.
- 9. The Committee will continue to assess the best alternatives for the collection of these amounts, particularly the role of writs of execution. The Tribunals Committee also discussed this issue at their February meeting.

Attached to the original Report in Convocation file, copy of:

- (1) Copy of a letter from Kathleen A. Waters, President & CEO, Lawyers' Professional Indemnity Company (LAWPRO) to Christopher D. Bredt, Chair, Audit Committee dated February 7, 2011, re: Questions on LAWPRO Results for Quarter ended September 30, 2010.

(pages 4 – 6)

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

- Report of the Activities of the Discrimination and Harassment Counsel – July 1 to December 31, 2010
- Public Education Series Calendar 2011

Report to Convocation  
February 24, 2011

---

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

Committee Members  
Janet Minor, Chair  
Raj Anand, Vice-Chair  
Constance Backhouse  
Paul Copeland  
Avvy Go  
Susan Hare  
Thomas Heintzman  
Dow Marmur  
Judith Potter  
Heather Ross  
Mark Sandler  
Paul Schabas  
Baljit Sikand  
Beth Symes

Purpose of Report: Information

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

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (Equity Committee) met on February 9, 2011. Committee members Raj Anand, Vice-Chair, Constance Backhouse, Avvy Go, Susan Hare, Thomas Heintzman, Judith Potter, Heather Ross, and Beth Symes participated. . Bencher Thomas Conway also attended. Milé Komlen, Chair of the Equity Advisory Group (EAG), and Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario (AJEFO), attended. Cynthia Petersen, Discrimination and Harassment Counsel, attended to present her semi-annual report. Staff members Josée Bouchard, Susan Tonkin, Aneesa Walji and Mark Andrew Wells attended.



## FOR INFORMATION

REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND  
HARASSMENT COUNSEL – JULY 1, 2010 TO DECEMBER 31, 2010

2. Subsection 20 (1) a) of By-Law 11, *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Equity Committee) directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Equity Committee not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year.
3. Subsection 20(2) of By-Law 11 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".
4. On February 9, 2011, the Equity Committee considered, pursuant to Subsection 20(1) (a) of By-Law 11, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period July 1, 2010 to December 31, 2010 (Appendix 1). The Committee submits the report to Convocation for information.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES  
2011

5. The calendar of Public Education Equality and Rule of Law Series is presented at Appendix 2.

Appendix 1

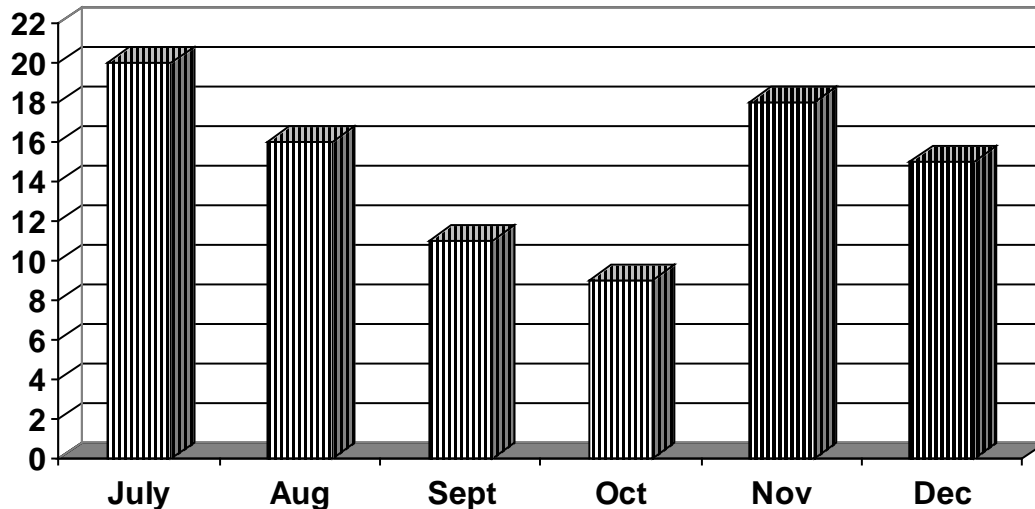
REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF UPPER CANADA

For the period from July 1, 2010 to December 31, 2010

Prepared By Cynthia Petersen  
Discrimination and Harassment Counsel

#### A. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this six month reporting period, 89 individuals contacted the DHC Program with a new matter.<sup>1</sup>
2. There was an average of 14.8 new contacts per month, which is consistent with the average over the past 8 years. The volume of new contacts was distributed as follows:



3. Of the 89 individuals who contacted the DHC, 64 (72%) used the telephone to make their initial contact and 25 (28%) used email.
4. During this reporting period, one individual was provided services in French. The remaining 88 new contacts with the Program were provided services in English; one required translation from Cantonese.

#### B. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

5. Of the 89 new contacts with the Program, 33 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario. This is consistent with the average volume of complaints over the past 8 years.
6. One complaint was made against a paralegal. The remaining 32 complaints were made against lawyers.

<sup>1</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

7. The complaint against a paralegal was made by a paralegal member of the Law Society.
8. Of the 32 complaints against lawyers, 16 (50%) were made by members of the public and 16 (50%) were made by members of the Law Society. Of the 16 complaints by members of the legal profession, none was made by a paralegal.

#### C. COMPLAINTS AGAINST LAWYERS FROM MEMBERS OF THE BAR

9. In this reporting period, there were 16 complaints against lawyers by members of the Law Society. Fourteen (14) of these complaints were made by lawyers and 2 were made by law students.
10. Of the 16 complaints by members of the legal profession, 11 (69%) were made by women and 5 were made by men.
11. Of the 14 complaints by lawyers, 11 (79%) were made by women and 3 were made by men. This is consistent with the ratio of female/male complainants over the past 8 years.
12. Of the two (2) law student complaints, one was made by a woman and one was made by a man.
13. Eleven (11) of the 14 complaints by lawyers (79%) arose in the context of the complainant's employment.
14. The remaining complaints by lawyers arose in a variety of different contexts. One was against a lawyer who was working as co-counsel with the complainant, one was against an opposing counsel in litigation, and one was against a lawyer who was providing a public service to the complainant.
15. Both of the law student complaints arose in the context of the complainant's employment or a job interview.
16. There were 9 complaints based (in whole or in part) on sex. Of these,
  - four (4) involved allegations of sexual harassment, including reports of inappropriate remarks (e.g. comments about women's breasts), unwelcome sexual overtures, and an incident of sexual assault (i.e., non consensual touching) – three of these complaints arose in the complainant's employment context (i.e., harassment by their employer or a colleague) and one arose between co-counsel (who worked at different firms); and
  - three (3) included pregnancy as a ground of discrimination. One involved an employer's failure to accommodate a lawyer with a high-risk pregnancy and the other two involved allegations of discrimination in the workplace based on pregnancy and maternity leave.
17. There was one law student complaint of discrimination based on sex in the workplace. It did not involve either sexual harassment or pregnancy related issues.

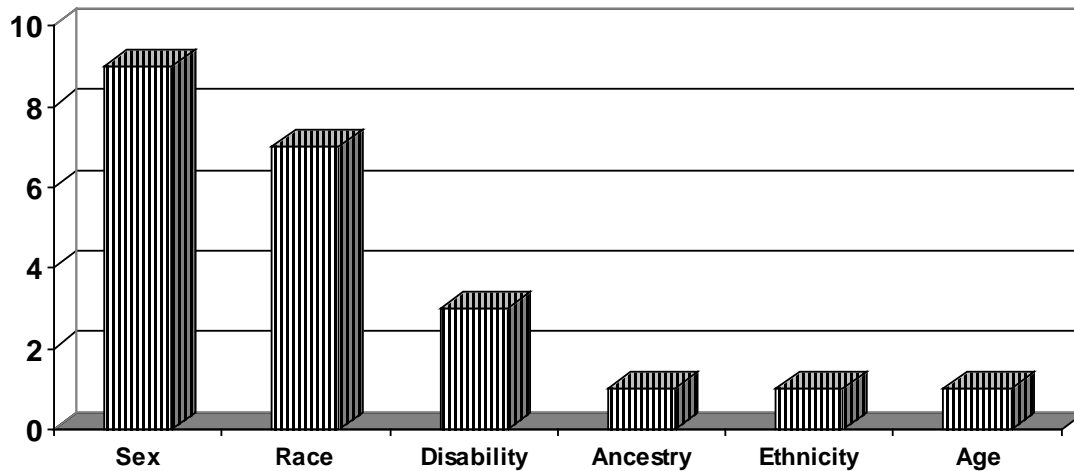
18. All of the sex-based complaints were made by female complainants. All of the respondents in the sexual harassment complaints were male.
19. There were seven (7) complaints based (in whole or in part) on race, including one of the law student complaints.
  - Two of these race-based complaints were made by Black women, one was made by a First Nations woman, and one was made by an Asian women. All reported racial discrimination and harassment. Two also reported sexual harassment and one also reported discrimination based on a perceived disability. Two of these complaints arose in the context of the complainants' employment, one arose in the context of a co-counsel relationship and one arose in the context of obtaining a public service from another lawyer.
  - Two men complained about discrimination based on race and ethnicity. Both self-identified as being from a visible racialized minority, but neither specified their race. One was a lawyer who complained about racial discrimination and harassment by a number of opposing counsel. The other was a law student who complained about racial discrimination by prospective employers in the articling job application process.
20. There were three (3) complaints based (in whole or in part) on disability (or perceived disability). Two of the complainants were female and one was male. Two of the complaints involved allegations of a lack of appropriate accommodation in the workplace and one involved allegations of discrimination in the delivery of a public service by a lawyer. Both of the accommodation cases involved individuals who self-identified as having psychiatric disabilities.
21. There were also complaints made by lawyers based (in whole or in part) on ancestry, ethnic origin, and age. The age discrimination case involved an issue of mandatory retirement.
22. In summary, the number of complaints<sup>2</sup> by lawyers and law students in which each of the following prohibited grounds of discrimination was raised are:
 

• sex	9	(4 sexual harassment; 3 pregnancy)
• race	7	
• disability	3	
• ethnic origin	1	
• ancestry	1	
• age	1	

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<sup>2</sup> The total number exceeds 16 because some complaints involved multiple grounds of discrimination.

### Grounds Raised in Complaints by Members of the Bar

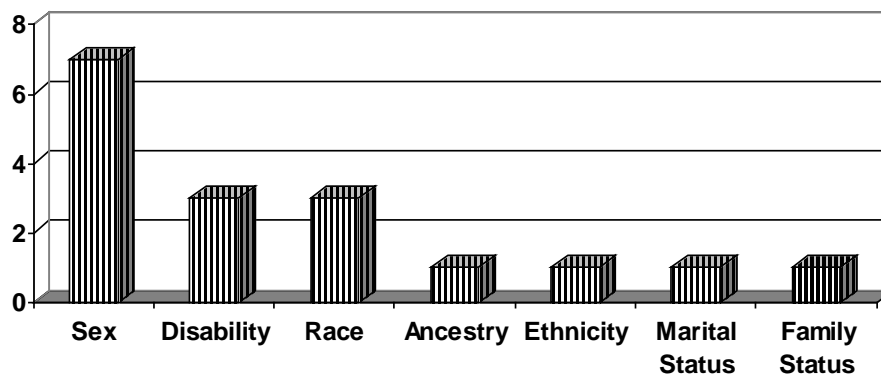


#### D. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

23. During this reporting period, there were 16 complaints against lawyers made by members of the public.
24. Twelve (12) of the public complaints (75%) were made by women and 4 (25%) were made by men.
25. Of the 16 public complaints:
  - nine (9) involved clients complaining about their own lawyer (or a lawyer that they attempted to retain);
  - six (6) involved employees complaining about a lawyer in their workplace; and
  - one (1) involved a litigant who was complaining about the conduct of opposing counsel.
26. There were seven (7) complaints based (in whole or in part) on sex. Of these, five (5) involved allegations of sexual harassment. Three of the sexual harassment cases arose in the context of the complainant's employment (i.e., a lawyer sexually harassing an employee). Two involved client complaints about their own lawyers. All of the sexual harassment complainants were female and all of the respondents were male. The allegations included inappropriate leering, sexual comments, display of pornography, unwelcome sexual overtures and sexual assault (including a rape). Both of the client complaints involved allegations of non-consensual sexual touching/assault.
27. Only one of the sex-based complaints was made by a man. He reported that a female lawyer refused to represent him in a family law matter because he is male.

28. There were three (3) public complaints based (in whole or in part) on race. One was a client complaint about denial of services; the complainant was male and did not identify his race. He alleged that a lawyer was refusing to represent him because of his ethnicity and race. The other two race-based complaints arose in the context of the complainants' employment. One was made by an Asian woman who reported racial harassment by lawyers in her workplace. The other was made by an Aboriginal woman who complained about racial harassment and discrimination based on race and ancestry by a lawyer in her workplace.
29. There were three (3) public complaints based on disability. Two involved clients who felt demeaned by their lawyers' patronizing conduct and one involved an employee of a law firm whose medical confidentiality was breached by her boss (a lawyer).
30. There were also public complaints based on marital status and family status. Both involved allegations that lawyers were refusing, on discriminatory grounds, to provide services to the complainants who were seeking to retain them as counsel.
31. In summary, the number of public complaints<sup>3</sup> in which each of the following grounds of discrimination was raised are as follows:
- sex 7 (5 sexual harassment)
  - disability 3
  - race 3
  - ethnic origin 1
  - ancestry 1
  - marital status 1
  - family status 1

#### Grounds Raised in Public Complaints



<sup>3</sup> The total exceeds 16 because some complaints were based on multiple grounds of discrimination.

#### E. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

32. In this reporting period, there were no complaints against lawyers or law students by paralegals.

#### F. COMPLAINTS AGAINST PARALEGALS

33. In this reporting period, the DHC received only one complaint of discrimination and harassment against a paralegal.<sup>4</sup>
34. The complaint was made by a female paralegal. She alleged gender-based bullying and sexist harassment by male paralegals in her workplace.

#### G. SERVICES PROVIDED TO COMPLAINANTS

35. The DHC provides a variety of services to lawyers and law students who have made discrimination or harassment complaints, such as the victims of sexual harassment and/or sexual assault, lawyers who are experiencing workplace difficulties relating to a maternity leave, or lawyers with disabilities who have confronted discriminatory barriers to employment or challenges in obtaining appropriate workplace accommodation. The DHC provides these individuals with referrals to other agencies and resources, informal mentoring, safe counsel, and general (non-legal) advice – some on an ongoing basis.
36. Complainants who contacted the DHC with new matters during this reporting period were advised of various avenues of redress open to them, including:
- speaking to their union representative (if they are unionized);
  - filing an internal complaint within their workplace;
  - making a complaint to the law firm that employs the respondent lawyer;
  - filing an Application with the Human Rights Tribunal of Ontario;
  - filing a complaint with the Law Society;
  - where appropriate, contacting the police; and
  - contacting a lawyer for advice regarding possible legal claims.
37. New complainants were also provided with information about each of these options, including:
- what (if any) costs might be involved in pursuing an option;
  - whether legal representation is required in order to pursue an option;
  - referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);
  - how to file a complaint, Application or report (eg. whether it can be done electronically, whether particular forms are required, etc.)

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<sup>4</sup> There was a second complaint about a paralegal, but the complainant simply left a voicemail message and did not provide contact information so that she could be reached. She did not follow up, so no specific information was obtained about the nature of her complaint. It may or may not have been within the mandate of the DHC program.

- the processes involved in each option (eg. investigation, conciliation, mediation, hearing, etc.)
  - what types of remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, public interest remedies); and
  - the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to precise limitation periods).
38. Complainants were told that the options available to them are not mutually exclusive.
39. In some cases, upon request, strategic tips and coaching were provided to complainants about how to handle a situation without resort to a formal complaints process (e.g. confronting the offender, documenting incidents, speaking to a mentor).
40. Some complainants were referred to other agencies/organizations (such as the Lawyer's Assistance Plan and the Human Rights Legal Support Centre) or were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

#### H. MEDIATION / CONCILIATION

41. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation or conciliation/intervention services of the DHC Program.
42. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory resolution of the complaint. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate. If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into discussions with the DHC.
43. Where informal conciliation/intervention services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the complainant's concerns, in the hope of achieving a resolution to the complaint. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel or representative, but rather as a go-between to facilitate constructive dialogue between the parties. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent.



44. Many complainants have declined the offer of the DHC's mediation and conciliation service, notwithstanding that the service is free, confidential, and in the case of formal mediation, is subject to a mutual "without prejudice" undertaking by both parties. The reasons why complainants have declined mediation are varied and include: complainants desiring to have a fact-finding investigation, complainants believing that the respondent will not participate in good faith, and complainants wanting to create a formal record of the respondent's misconduct through an adjudicative process.
45. During this reporting period, three complainants requested formal mediation.<sup>5</sup> However, two of the respondents refused to participate.<sup>6</sup> Consequently, only one formal mediation session was conducted (by one of the Alternate DHC). The mediation involved an in-house counsel who initially made a sexual harassment complaint against her employer (including personal allegations against another lawyer) and later made a sex discrimination/reprisal complaint when her employment was subsequently terminated. The mediation was successful and the settlement agreement included both personal and public interest remedies.
46. In addition to the mediation session described above, a number of informal interventions were conducted by the DHC during this reporting period (at the complainants' request).
- Upon the request of a lawyer with a psychiatric disability, the DHC contacted his employer to discuss his concerns about the law firm's failure to accommodate him appropriately. The parties were subsequently able to develop a mutually-agreeable accommodation plan without the DHC's further involvement.
  - Upon the request of a legal assistant working in a law firm, the DHC contacted her boss (a lawyer in the firm) and spoke to him about an inappropriate sexual joke that he had allegedly made in the workplace. The lawyer acknowledged the impropriety and apologized. The complainant (to the best of my knowledge) was satisfied and did not pursue the matter further.
  - Upon the request of a female associate in a law firm, the DHC contacted a male partner in the firm and spoke to him about her perception that he was engaging in gender-based bullying and intimidation of female employees. She alleged that, among other things, he had used sexist profanities ("bitch") when speaking to her in anger. He denied the allegations. No resolve was achieved. I do not know whether the complainant pursued the matter further.

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<sup>5</sup> Some of the complaints arose in a prior reporting period, but the complainants requested mediation during this reporting period.

<sup>6</sup> In both cases, the complainants were lawyers alleging racial discrimination and harassment in their workplaces. The respondent lawyers/employers indicated that they were not willing to participate in mediation with the DHC. Both cases involved in-house counsel.

- Upon the request of a legal assistant, who had taken time off work due to a disability, I contacted her boss (a lawyer) and discussed her concerns about breaches of confidentiality regarding her medical condition. The respondent lawyer denied some of the allegations made by the complainant, but provided assurances of privacy going forward, which were satisfactory to the complainant. To the best of my knowledge, the matter was thereby resolved.
- Upon the request of a man who had been denied legal representation by a family law lawyer, I contacted the lawyer and asked her to provide an explanation to him for her decision. His perception was that she was refusing to represent him based on his sex, which she denied. She agreed to provide him with an explanation. The complainant never contacted the DHC again, so I do not know whether the matter was resolved to the complainant's satisfaction or whether he pursued it further in some other forum.

#### G. SUMMARY OF GENERAL INQUIRIES

47. Of the 89 new contacts with the DHC during this reporting period, 20 involved general Inquiries. These contacts included:
- inquiries by law firms about how best to handle internal harassment complaints;
  - inquiries by lawyers about their personal responsibilities (eg. whether there is an obligation to disclose a disability or pregnancy to an employer);
  - questions about the scope of the DHC Program's mandate;
  - questions about the services offered by the DHC and confidentiality;
  - requests from the public for promotional materials about the DHC Program;
  - inquiries about the data collected by the DHC;
  - inquiries about the Law Society's complaint process;
  - questions from law firms about the availability of model policies on equity issues ; and
  - inquiries about the Rules of Professional Conduct and human rights legislation as they apply to lawyers in practice in Ontario.

#### H. MATTERS OUTSIDE THE DHC MANDATE

48. During this reporting period, the DHC received 36 calls and emails relating to matters outside the Program's mandate.
49. These contacts included complaints about judges and complaints about workplace harassment that did not involve lawyers or paralegals.
50. There were several harassment complaints against lawyers that did not involve any human rights issues or prohibited grounds of discrimination (eg. bullying, demeaning and intimidating behaviour by co-workers, employers, opposing counsel, etc.) There were also complaints of unprofessional conduct by lawyers that did not involve allegations of discrimination or harassment (eg. lack of civility, unethical practices, etc.).
51. In addition, some individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.

52. Many of these individuals were referred to other agencies, including (but not limited to) the LSUC's Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to each person.
53. Although there are a number of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

#### I. PROMOTIONAL ACTIVITIES

54. The LSUC maintains a bilingual website for the DHC Program.
55. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.
56. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.
57. The DHC works closely with the Law Society's Equity Advisor (Josée Bouchard) to design and deliver Discrimination and Harassment Prevention and Violence Prevention workshops to law firms across the province. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the Program's services.
58. Given the relatively low number of complaints by and about paralegals, I believe that the Law Society should focus more resources on promoting awareness about the DHC Program among paralegals and their clients.

Appendix 2

### PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES 2011

#### INTERNATIONAL WOMEN'S DAY

March 1, 2011 (date changed)

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

#### Special Film Screening and Discussion – The Journey of Feminism

The International Women's Rights Project will present *Constitute!* – a documentary film which tells the story of the largest social mobilization of women in Canadian history. The film celebrates the constitutional activism of women and activists who fought for stronger equality provisions in the Charter of Rights and Freedoms. A panel of speakers comprising intergenerational feminist voices, including those involved in making the documentary will discuss the journey of feminism in Canada and its popularity now and in the future. A reception will follow the film presentation and discussion.

**LA JOURNÉE DE LA FRANCOPHONIE**

March 21, 2011

Reception (6:00 p.m. – 8:00 p.m.)

Convocation Hall

**RULE OF LAW SERIES**

Website Launch Event – The Redress Campaign of the Chinese Head Tax and Exclusion Act

March 29, 2011

Lamont Learning Centre (4:30 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

**HOLOCAUST MEMORIAL DAY**

April 2011 (date to be determined)

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

**ASIAN AND SOUTH ASIAN HERITAGE MONTH**

May 24, 2011

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

**ACCESS AWARENESS - DISABILITY ISSUES AND LAW FORUM**

June 8, 2011

Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

**NATIONAL ABORIGINAL DAY**

June 16, 2011

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

**PRIDE WEEK**

June 23, 2011

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

**CONVOCATION ROSE AT 12:25 P.M.**Confirmed in Convocation this 28<sup>th</sup> day of April, 2011

Treasurer