

ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO

TREASURER'S MESSAGE:
THE HONOUR OF SERVING

CALLS TO THE BAR
JUNE 2008

LAW SOCIETY'S HIGHEST
HONOURS

RECEPTIONS FOR NEWLY
LICENSED PARALEGALS

YOUR PRACTICE pg. 15

CLIENT IDENTIFICATION
AND VERIFICATION

HOW TO AVOID BEING
A VICTIM OF FRAUD

DUE DILIGENCE IN MORTGAGE
OR LOAN TRANSACTIONS

SPOT AUDITS

TWO-LAWYER RULE FOR
TRANSFER OF TITLE

TOUR D'HORIZON p. 28

AMÉRINDIENS, AMÉRINDIENNES,
ENGAGEZ-VOUS!

DÉCORATIONS DE L'AJEFO

DE LA PART DU
NOUVEAU TRÉSORIER,
W.A. DERRY MILLAR

SACHEZ BIEN QUI SONT
VOS CLIENTS

NEWS & VIEWS pg. 32

CONVOCATION HIGHLIGHTS

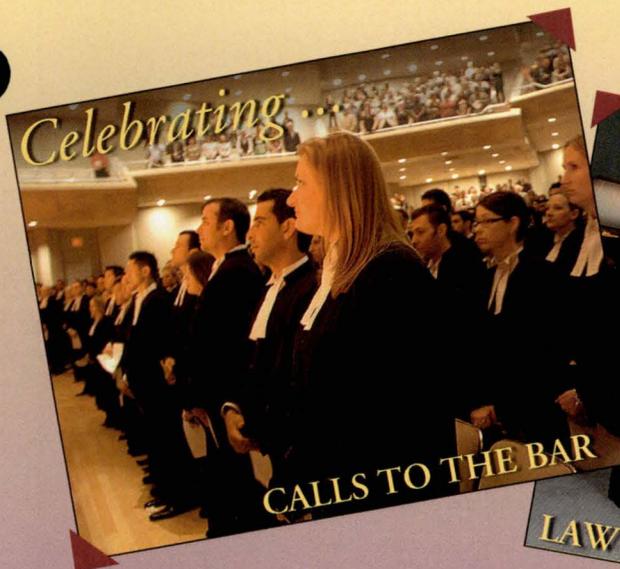
PARALEGAL UPDATE

RULE AND BY-LAW
AMENDMENTS

EcoJUSTICE

NEWS ROUNDUP

LIFE MEMBERS &
JUDICIAL APPOINTMENTS



LET RIGHT PREVAIL

The Law Society of
Upper Canada

Barreau
du Haut-Canada

ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES
DE L'ONTARIO

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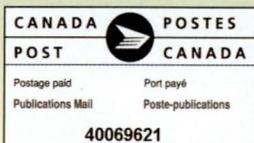
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TOAST THE OPENING OF COURTS WITH YOUR LEARNED FRIENDS

ON SEPTEMBER 9, 2008, AT THE CONCLUSION OF THE OPENING OF THE COURTS OF ONTARIO, THE LAW SOCIETY OF UPPER CANADA WILL HOST A RECEPTION FOR MEMBERS OF THE BENCH AND BAR.

THE RECEPTION WILL BE HELD AT 4:30 P.M. IN CONVOCATION HALL, 130 QUEEN STREET WEST, TORONTO. GUESTS SHOULD ENTER THE BUILDING THROUGH THE MAIN DOORS ON THE EAST SIDE OF OSGOODE HALL.

*PLEASE JOIN US TO CELEBRATE THE
ACCOMPLISHMENTS OF OUR LEGAL SYSTEM.*

VENEZ SOULIGNER LA RENTRÉE DES TRIBUNAUX EN COMPAGNIE DE VOS ÉMINENTS COLLÈGUES

LE 9 SEPTEMBRE 2008, IMMÉDIATEMENT APRÈS LA RENTRÉE DES TRIBUNAUX DE L'ONTARIO, LE BARREAU DU HAUT-CANADA OFFRIRA UNE RÉCEPTION AUX MEMBRES DE LA MAGISTRATURE ET DU BARREAU.

LA RÉCEPTION AURA LIEU À 16 H 30 DANS LA GRANDE SALLE, 130, RUE QUEEN OUEST, TORONTO. LES INVITÉS DEVRAIENT ENTRER PAR LA PORTE DU CÔTÉ EST D'OSGOODE HALL.

*VENEZ CÉLÉBRER AVEC NOUS LES RÉALISATIONS
DE NOTRE APPAREIL JUDICIAIRE !*

TREASURER'S MESSAGE

The honour of serving

It is an honour and a privilege to be elected Treasurer for the next term.

I am grateful for the privilege of leading the lawyers and paralegals of the Law Society as we move forward the priorities established by Convocation in 2007. There is much to accomplish. We need to ensure the implementation of the recommendations of the Sole Practitioner and Small Firm Task Force and equally those of the Retention of Women in Private Practice Task Force. We must continue to meet the challenges posed by the findings of the Licensing and Accreditation Task Force. We must support the efforts of Legal Aid Ontario, criminal, family, immigration and clinic lawyers to ensure that there is adequate

MESSAGE DU TRÉSORIER

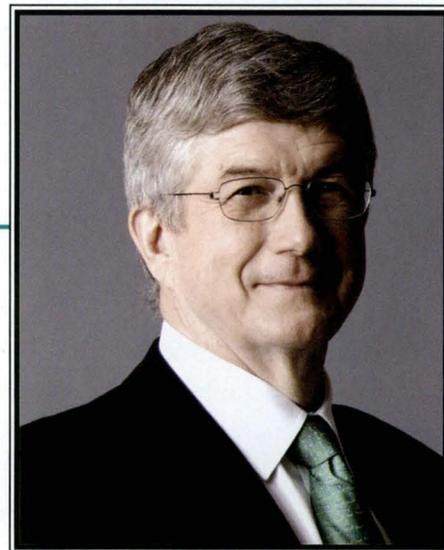
L'honneur de servir

C'est un honneur et un privilège d'avoir été élu trésorier pour le prochain mandat.

Je suis reconnaissant du privilège de diriger les avocats, les avocates et les parajuristes pour réaliser les priorités établies par le Conseil en 2007. Il y a beaucoup à faire. Nous devons assurer la mise en œuvre des recommandations du Groupe de travail sur les juristes autonomes et les petits cabinets ainsi que celles du Groupe de travail sur la rétention des femmes en pratique privée. Nous devons continuer à relever les défis soulevés dans les conclusions du Groupe d'étude sur l'accès à la profession et l'agrément. Nous devons appuyer Aide juridique Ontario, les avocats et avocates en droit criminel, de la famille ou de l'immigration, et les avocats et avocates des cliniques dans leurs efforts pour assurer un financement adéquat à l'aide juridique

funding for legal aid and to work with the Attorney General and the governments of Ontario and Canada to achieve that goal. We must work to advance the causes of equity, justice, the rule of law and to facilitate access to justice for the people of Ontario. We must also support a strong and independent judiciary and work to improve the administration of justice.

An independent and vibrant legal profession is the foundation of a free and democratic society. Since 1797, the lawyers of Ontario have served the public in the finest traditions of our profession and have acted as a cornerstone of our democracy. In 2006, the government of Ontario asked the Law Society to expand our public interest mandate to include the regulation of paralegals. We must continue to improve our regulatory



Treasurer W. A. Derry Millar

en collaboration avec le procureur général et les gouvernements de l'Ontario et du Canada.

Nous devons faire avancer les causes liées à l'équité, à la justice, à la primauté du droit, et faciliter l'accès à la justice pour la population de l'Ontario. Nous devons également défendre une magistrature forte et indépendante et œuvrer pour améliorer l'administration de la justice.

Une profession juridique indépendante et dynamique est la pierre angulaire d'une société libre et démocratique. Depuis 1797, les avocats et les avocates de l'Ontario servent le public selon les plus belles traditions de notre profession et agissent comme pierre angulaire de notre démocratie. En 2006, le gouvernement de l'Ontario a élargi notre mandat dans

policies and practices for both lawyers and paralegals. In serving the public interest, we must fulfil our obligation to regulate all our members in a fair, open and timely manner.

On behalf of Convocation and the lawyers and paralegals of Ontario, I wish to thank Gavin MacKenzie for his hard work and leadership over the past two-and-a-half-years. Treasurer MacKenzie planned and presided over a very productive and successful term. The work done by him and Convocation in ensuring the implementation of paralegal regulation, the success of the Retention of Women in Private Practice Task Force, and the establishment and work of the Licensing and Accreditation Task Force are major achievements that will stand the Society and all of its members in good stead into the future.

I would also like to acknowledge the dedication and expertise of Malcolm Heins, CEO, and the rest of the staff of the Law Society. Convocation and the lawyers and paralegals of Ontario are extremely well served by an experienced, dedicated and talented staff. We will all benefit from their commitment as we move ahead.

Finally, I would like to encourage each one of you to look for opportunities in your daily practice to reinforce the value of civility. It is a core value of the legal profession, and it has drawn some high profile comments recently from judges and from our peers. The lack of civility falls within the range of misconduct for which we can be disciplined. The presence of civility, by contrast, goes a long way to engendering trust and reinforcing the true value of the profession. ■



l'intérêt public afin d'inclure la réglementation des parajuristes. Nous devons continuer d'améliorer nos politiques et nos pratiques de réglementation des avocats et des parajuristes. Pour bien servir le public, nous devons remplir nos obligations et réglementer les activités de tous nos membres de manière juste, transparente et opportune.

Au nom du Conseil, des avocats, des avocates et des parajuristes de l'Ontario, je remercie Gavin MacKenzie de son leadership et de son travail acharné au cours des deux dernières années et demie. Le trésorier MacKenzie a planifié et présidé un mandat très productif et couronné de succès. Le travail qu'il a accompli avec le Conseil pour assurer la mise en œuvre de la réglementation des parajuristes, le succès du Groupe de travail sur la rétention des femmes en pratique privée et le travail du Groupe d'étude sur l'accès à la profession et l'agrément sont des réalisations de taille qui seront utiles au Barreau et à ses membres pour les années à venir.

Je désire également reconnaître le dévouement et l'expertise de M^e Malcolm Heins, notre directeur général, et du personnel du Barreau. Le Conseil, les avocats, les avocates et les parajuristes de l'Ontario sont extrêmement bien servis par ce personnel chevronné, dévoué et talentueux. Nous bénéficierons tous de leur dévouement au fur et à mesure que nous progressons.

Pour conclure, je désire encourager chacun et chacune de vous à chercher dans votre pratique quotidienne des occasions de renforcer la civilité en tant que valeur, essentielle à la profession juridique. À cet égard, certains de nos pairs et certains juges ont récemment fait des déclarations grandement médiatisées. Le manque de civilité relève du manquement professionnel pouvant entraîner des mesures disciplinaires, alors que faire preuve de civilité aide énormément à développer la confiance et à renforcer la valeur réelle de la profession. ■



Calls to the Bar June 2008

Over 1,100 new lawyers were called to the Ontario Bar at five ceremonies held during June in Ottawa, London and Toronto. Women represented 51.9 per cent of the newest lawyers in the profession.

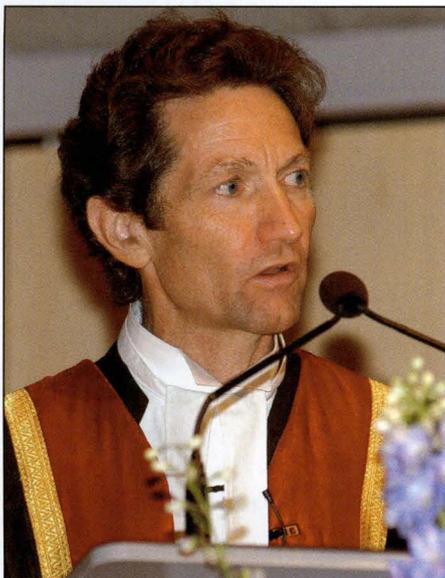
Every year, as part of its Call ceremonies, the Law Society awards honorary doctorates to distinguished persons who exemplify the values held in esteem by the legal profession.

Recipients serve as inspirational keynote speakers for the graduating classes as they begin their careers.

This year's recipients of honorary degrees were Professor Margaret Ogilvie of Carleton



University, the Honourable Coulter A. Osborne, the Honourable Justice Frank N. Marrocco and the Honourable Vibert A. Lampkin.



Treasurer Gavin MacKenzie

At each ceremony, then Treasurer Gavin MacKenzie addressed the new Calls to the profession with the following words of welcome:

"One of the happiest duties we [benchers] perform is to call to the Bar lawyers who have completed law school, articling and the Bar Admission Course. It is a long educational process, but an important one – it is the means by which we assure the people of Ontario that members of our profession have the knowledge, skills and values to serve the public competently and ethically.

"We have many fine traditions in our profession. Some may say that a number of these traditions are antiquated, but they remind us of our profession's history, ideals and values. For example,

we continue to call this institution the Law Society of Upper Canada a century and a half after Upper Canada ceased to exist. We continue to call our governors 'benchers' and our president the 'Treasurer', terms borrowed from the mid-15th century Inns of Court in England.

"Most importantly, we call new lawyers to the Bar of Ontario; we do not just admit them. We do that because we recognize that the law is a calling – it is a calling and it is an honourable one. Those of us who practise law are the guardians of ideals and traditions to which we from time to time dedicate ourselves anew. Ceremonies such as these provide us with a valuable opportunity to do that."

Ottawa – Special Convocation

On June 13 in Ottawa, Carleton University Law Professor and Chancellor's Professor Margaret Ogilvie, LSM, D.D., FRSC, received an honorary doctorate in recognition of her prominence as a legal scholar, innovative researcher and her contributions to the legal profession – both within Canada and abroad.

The author of numerous books and articles, Professor Ogilvie has dedicated her life to education and legal scholarship. Her research interests include contract law, banking law, and law and theology.

Professor Ogilvie's outstanding contributions to legal scholarship have been widely acknowledged. She was inducted as a fellow of the Royal Society of Canada in 1993 and was the recipient of research achievement awards in 1990, 1998 and 2005. She received the David W. Mundell Medal for Legal Scholarship in 1996 and the Law Society Medal in 2001. In 2002, Professor Ogilvie was designated as a Chancellor's Professor, a title granted to distinguished faculty at Carleton University. In January 2008, she was invested into the Order of Ontario.

In her speech to graduates, Professor Ogilvie congratulated them and their families on their achievements and then spoke of the important role that the common law plays in our society, as well as its historical roots.



**Professor Margaret Ogilvie,
LSM, D.D., FRSC**

“Daily, the press presents us with evidences of how our society has fragmented along lines of race, class, gender, orientation and religion. Daily, the press presents us with the challenges we must as a society overcome if we are to recover a common life together. As your legal education has taught you, the law plays a unique role in binding societies together. It will be your task, in your own places in the world, to remold and renew our common law so that it may become the means for healing fragmentation and for facilitating our life together as citizens of this northern kingdom. I hesitate to suggest to you where you might find the resources for this task, but I can think of two no more better resources than the common law itself, and the people, your clients, whom both you and the law are dedicated to serve.

“Our now almost 1,000-year-old understanding of the law in the Anglo-Canadian tradition, as a common endeavour, was rooted in a society as fragmented as ours, when from before

time immemorial (1189), Henry II's justiciars began the noble and unprecedented experiment of using law to bind together disparate nations, languages and customs, into a peaceful society where disputes are resolved without resort to physical violence. With a few exceptions over the past millennium, the history of the countries of the common law have been free from widespread violence and war, and those exceptions, the English Civil War, the American Revolution, the Rebellions of 1837, were prompted more by a desire to restore the common law for the common good than to destroy or replace it.

“Whether a client is rich or poor, whether their problem is simple or complex, each person who comes to you, comes in vulnerability and in the hope that you will have the skills and knowledge to resolve their problem.

“Your clients will expect you to be honest, worthy of trust, a keeper of promises, a respecter of all persons and of the mystery of their lives, and that you will exercise your reason, not your passions, to resolve their problems. They will share their human vulnerability with you and will expect you to share your human wisdom with them. This is the momentous responsibility for which you have been trained and on which you will embark when you leave this place today. But in that responsibility, you will find your own deepest humanity and human satisfaction, and also the wisdom of our common law.”

London – Special Convocation

On June 16, the Honourable Coulter A. Osborne, Q.C. was presented with an honorary doctorate in London.

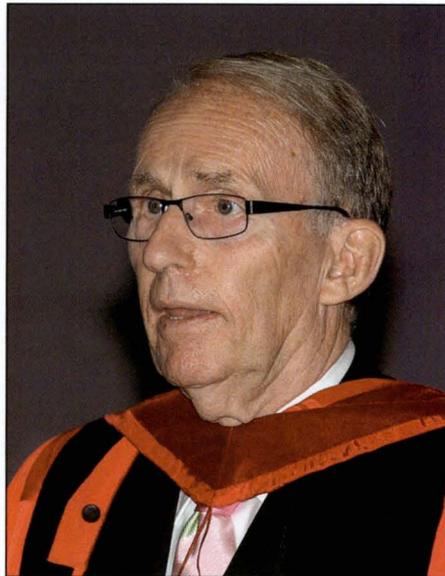
Mr. Osborne has garnered great respect during all stages of his distinguished career, first as a litigator, throughout his tenure as Associate Chief Justice of Ontario, and most recently as the leader of the provincial government's Civil Justice Reform Project.

Mr. Osborne was called to the Ontario Bar in 1959 after receiving his LL.B. from Osgoode Hall Law School and his B.A. from the University of Western Ontario. He practised in Kitchener from the time of his call until his appointment to the Supreme Court of Ontario, High Court of Justice in 1978. He was subsequently appointed to the Court of Appeal for Ontario in 1990 and Associate Chief Justice of Ontario in 1999.

In 2006, Mr. Osborne was asked by then Attorney General Michael Bryant to lead the Civil Justice Reform Project and propose options to reform the civil justice system to make it more accessible and affordable for Ontarians.

In his remarks to the new Calls, Mr. Osborne reminded graduates that they must be vigilant in protecting the rule of law, as well as civil in the conduct of their careers.

"It is beyond any doubt that one of the pillars of a free and democratic society is the rule of law which in its most basic form expresses the principle that no one is above the law. It has been referred to as the glue that binds our society and it represents the social contract by which we live and work together. Our legal system is an essential part of the rule of



**The Honourable
Coulter A. Osborne, Q.C.**

law. While the rule of law as an overarching value is a constant, how we give effect to it may, and I think must, change to accommodate the contemporary reality generally and access to justice concerns in particular. You will, I hope, be a part of that change.

"In Canada and the United States and in other western democracies we accept the core value of the rule of law with what some view as a sense of moral superiority. But the facts on the ground are sometimes different. For example, the Canadian government, acting, or not acting, in the alleged interest of national security, appears to have been an enabler in the rendition and torture of Maher Arar... We appear to be content to sit back and let Omar Kadar, a 21-year-old detainee at Guantanamo Bay and a Canadian citizen be tried under a process and by a tribunal that offends almost every element of the rule of law. This young man, whatever he may have done, was 15 years old when the offences with which he is charged were allegedly committed. Surely there is a better way.

"I referred to compassion a few moments ago. I speak of it today in the context of pro bono services and other work outside your day jobs that is in the public good.

"As you enter the practice of law, you will, I hope, commit to helping those who need it though pro bono programs. When I recently reviewed the non-family law segment of the civil justice system, it appeared to me that more lawyers and more law firms have committed to providing pro bono legal services than was the case even five years ago.

"I recognize that not all lawyers and not all law firms can afford to take on pro bono work. Indeed, in a Town Hall meeting in the course of the Civil Justice Review a lawyer from a smaller centre explained: 'I already do a lot of pro bono work. It's called my accounts receivable.' I know what he meant. He acted for those who he knew could not pay because they were part of his community. Like that lawyer, you have, each in your way, the capacity to act in the public good. How you do it will be up to you.

"Lastly I turn to civility. You will hear much more on this subject from others in the coming months. All I want to say now is that:

"Litigation in the adversary system too frequently gives rise to underlying partisan conduct by members of the bar. Too often, the 'I'm the toughest gun in town mentality' is a part of some lawyer's marketing of their services and conduct. The overworked maxim – a lawsuit is not a tea party – should not remotely be taken to justify uncivil or unethical behaviour."

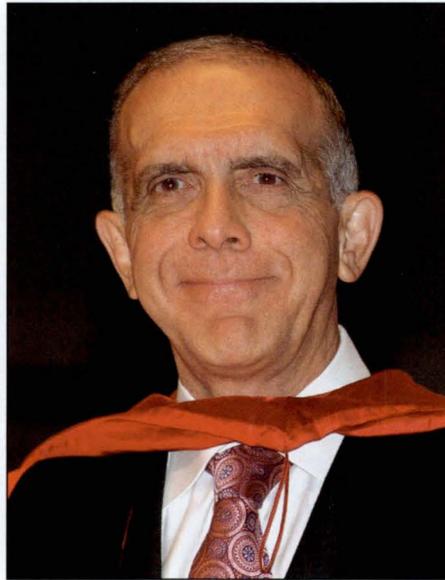
Finally, in Toronto on June 19 and 20, honorary doctorates were presented to the Honourable Justice Frank N. Marrocco of the Superior Court of Justice and the Honourable Vibert A. Lampkin.

The Honourable Justice Frank N. Marrocco was appointed to the Superior Court of Justice in 2005, following a distinguished law career spanning 33 years. He is well known for his professionalism, analytical skills and quiet contemplation – skills that served him well as a lawyer and have ensured his effectiveness as a judge.

Justice Marrocco practised criminal and civil litigation law and later developed a subspecialty in immigration law. A former Queen's Counsel, he was a partner at Gowling Lafleur Henderson prior to his judicial appointment. He was elected as a Law Society bencher in 1995, and served as Chair of the Lawyers' Professional Indemnity Company (LAWPRO) from 2002 to 2003. Recognized for his leadership skills, he was elected as Treasurer of the Law Society in 2003.

Justice Marrocco asked graduates to think ahead to the moment when they will look back upon their careers.

"Fast-forward 40 years. Now it's you who are being asked to 'testify' about your professional life. Picture, along with the family and friends who are with you today, all the loved ones you have yet to meet: partners, children, even grandchildren – will they be proud of the person whose testimony *account* begins and ends with a litany of billable hours?



**The Honourable Justice
Frank N. Marrocco**

"So the question is really: how will you spend your hours?"

"The essence of that question was captured, I think, by Dame Freya Madeleine Stark, DBE. She was born in Paris in 1893. She became famous as a cartographer of the Middle East and a successful writer. In her autobiography she makes this comment, 'There can be no happiness if the things we believe in are different from the things we do.'

"It seems to me that the challenge is two-fold. Firstly, how do you in fact achieve an integration of the two things, that is: what you do and what you believe in? And secondly, how do you avoid the danger of getting distracted?"

"The answer to the first question could be on a selective basis to provide your services to someone who needs it, regardless of their ability to pay. You cannot do it all the time. But you can do it some of the time. In our community today, there are a significant number of community agencies that are beneath the radar of established community

organizations. These community organizations struggle from year to year to survive; they try desperately to reach people who are in the most compelling circumstances. If you are going to be a solicitor, adopt one; take *one* of them on as a client. Use your gift of a legal education for their benefit.

"As for the second question – how to avoid getting 'distracted' – that's a tough one. I think you can get distracted in two ways. First, you can let the everyday realities consume you – all the pressures and stresses of practising law. The tasks and the deadlines and all the minutiae that take away your minutes and your hours. The second way you get distracted is more insidious and occurs when you are confronted by setbacks or defeats – some of them resulting from circumstances beyond your control but some – and these are the worst – resulting from your own errors in judgment. When that happens, self doubt takes up more space in your mind than it should and you resolve to change. Change under those circumstances is not always for the better.

"Today is a good antidote for that. My hope is that you will remember this day to the end of your days. That you will remember not only the day but also the person who celebrated it. That person sat here today having achieved a success. That person sat here today enjoying the respect and love of family and friends. Ask that person today what he or she believes in. Remember the answer. Have faith in that person. We all do."

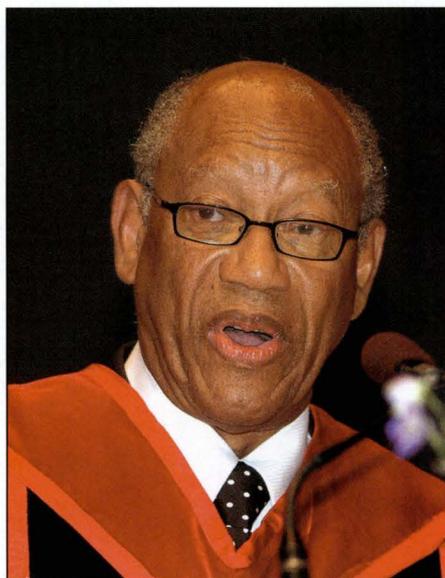
The Honourable Vibert A. Lampkin is a recently retired judge of the Ontario Court of Justice.

Born in Guyana, he earned his first law degree from the University of London in 1957. He was admitted to the Roll of Solicitors in Guyana in 1959 where he had a general law practice until June 1967. He was called to the Ontario Bar in 1969. He practised with the firm Rosenfeld, Schwartz, Malcolmson, Lampkin & Levine until 1982 when he was appointed to the Provincial Court (Criminal Division), which was renamed the Ontario Court of Justice in 1999. He was one of the first Black judges in the province.

Until his retirement this year, Mr. Lampkin served in Newmarket, where he was known for his knowledge of the law, civility and contribution to the body of criminal law, with 286 reported cases. Everyone who appeared or worked in his court was aware of his respect and compassion for people.

In his speech, Mr. Lampkin spoke to the new graduates of the requirements of practice.

“You must treat everyone with courtesy and civility. Live by Newton’s third law of motion: ‘To every action there is an equal and opposite reaction’. That is as true of life as it is of mathematics. If you treat someone with courtesy and respect, you will similarly be treated with courtesy and respect.



The Honourable Vibert A. Lampkin

“Keep up to date. When you receive your degree today, that is the best evidence that at this time you possess certain knowledge. It is no evidence that five years down the road you will be as knowledgeable. The law is a living tree. It is constantly growing, changing and developing whether by legislation or by decisions of the courts, to meet the challenges of the society that it serves.

“If you wish to practise as a barrister, go to any court and watch the leaders of the profession at their work. It is perhaps the best way to learn and improve the art of examining and cross-examining a witness. This may also give you an insight into how particular judges approach the task with which they have to deal. Alan Gold will tell you that if you have a case to argue in court before a particular judge, you will be well advised to read some of his or her judgments before you get to the court. He will tell you that if you fail to do that, you are probably guilty of negligence. Listen to the language the judge uses and try to understand how he or she thinks.

“Be not afraid to put forward a novel argument if it is reasonable. The judge may accept your argument. Remember the comment of Denning, L.J., as he then was, in *Packer v. Packer* in 1954 in the Court of Appeal in England:

What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The rest of the world will go on whilst the law stands still and that will be bad for both.

“Every breakthrough has been made by someone who did something that had not been done before. When Sir Alexander Fleming discovered penicillin by accident, he was the first person to stumble upon it. Two weeks ago, the world witnessed an event in the United States of America that had not been done before and which most of us believed we would never see in our lifetime. An African American, ‘a skinny kid with a funny sounding name’ – as he once described himself – and a woman were for the first time the nominee and the runner-up respectively of the Democratic National Party, a major political party, for the presidency of that country. It is perhaps no accident that they are both lawyers whose spouses are also lawyers. So don’t be afraid to try a new argument or a new strategy in your practice.” ■

Law Society's Highest Honours

A group of 10 lawyers who each represent the highest level of achievement and commitment to serving both the Law Society and the profession were honoured at a special ceremony June 5, 2008.

The Law Society Medal was established in 1985 and is presented to those lawyers whose service reflects the highest ideals of the profession. This year's recipients were Earl Cherniak, Q.C., Kirby Chown, John F. Evans, Q.C., Abraham Feinstein, Q.C., Clifford Lax, Q.C., Audrey Loeb, Sidney H. Troister and David A. Ward, Q.C.

This year, for the first time, the Laura Legge Award was awarded. The recipient was former Law Society Treasurer Susan Elliott in recognition of her

leadership within the profession. The Lincoln Alexander Award, which recognizes community service, was presented to Morley S. Wolfe, Q.C.

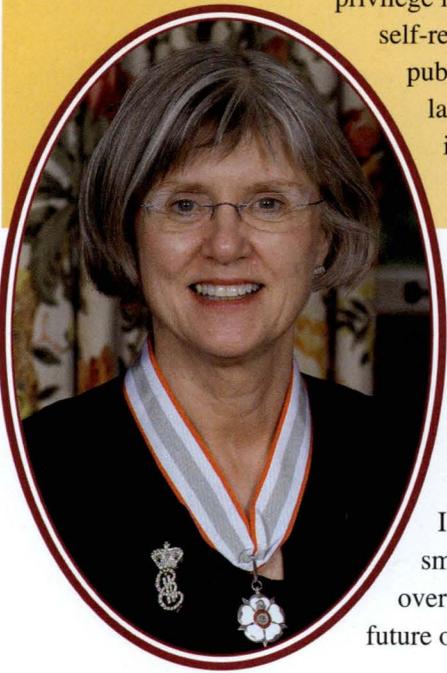
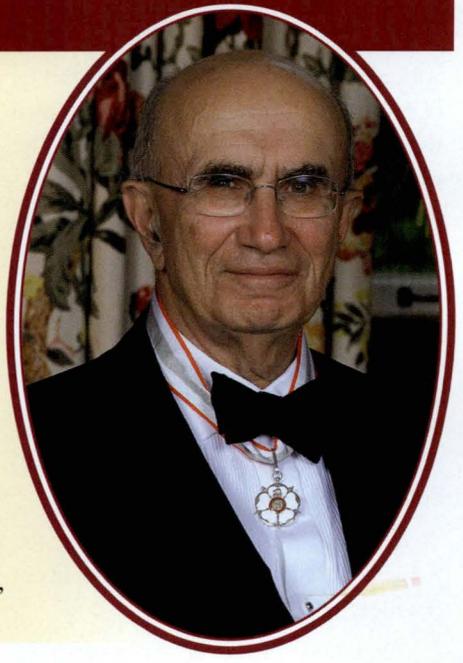
At the ceremony held in Convocation Hall at the Law Society, Treasurer Gavin MacKenzie said, "Today with a membership surpassing 38,000, it is important that we publicly honour those who bring distinction and honour to our profession. In doing so, we are not only recognizing the contributions they have made, but we are identifying them as role models to other members and reaffirming the public's confidence and trust in our profession."

Remarks of the recipients upon receiving their awards follow.

Law Society Medallists

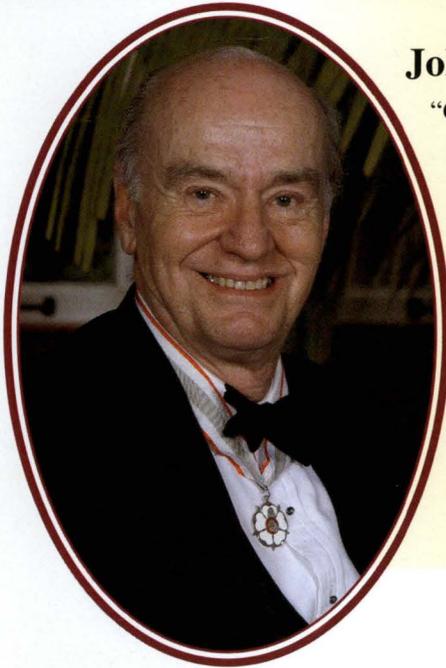
Earl A. Cherniak, Q.C.

"As a student and lawyer member of the Law Society for more than 50 years, I have spent much of my professional life in its home at Osgoode Hall. I have always been moved by its beauty and history. As a student there, I was taught by such giants as Arthur Martin, William Howland, Walter Williston, Brendan O'Brien and Sydney Robins, benchers all, and was called to the Bar by Treasurer John J. Robinette. I aspired to become a bencher like them one day, an ambition that was fulfilled in 1999. Membership in the Society, and the privilege it confers to practise law in an independent, self-regulated profession, and to vindicate the public's rights and remedies under the rule of law, has been, my family apart, the most important aspect of my life. It was a great honour to receive the Law Society's medal."



Kirby Chown

"I am very honoured to be a recipient of the Law Society Medal and to be among such a group of distinguished honorees. I have enjoyed the work that I have done in my firm and the profession to retain and advance women lawyers. I also want to commend the Law Society for its groundbreaking report recently released on this issue. I find I am frustrated with the slow pace of change, but I try to be patient and I never give up. What keeps me going are young women lawyers who are tough, smart and funny and who want to be partners and to lead cases and deals in law firms over the next 20 years. They are a continuing inspiration to me and a bright hope for the future of our profession."

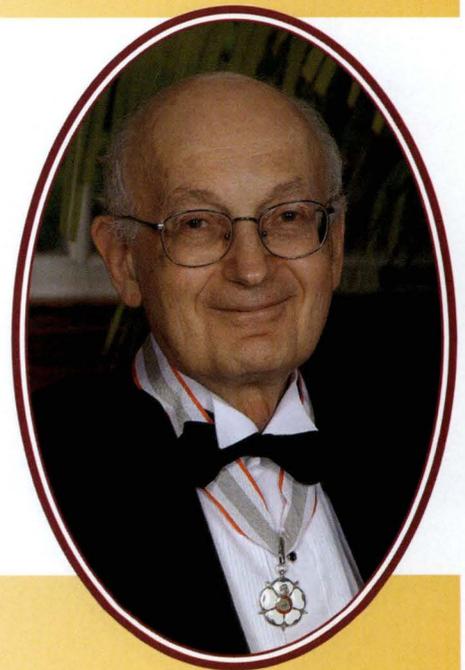


John F. Evans, Q.C.

“Gavin’s call was a joyous moment – quite off my radar. I feel that this recognition shines light on the wealth of excellent lawyers in Hamilton, in the tradition of David Goldberg, John Agro and my dear friend Lincoln Alexander. That the medal bears the respect of the benchers, my elected peers, has enormous meaning for me. I have learned our craft from superlative mentors: Walter Williston’s intense appetite for advocacy and for life, my father’s dinner tales of cross-examinations which successfully circled the wagons. And I am aware of my good fortune: an exceptional woman and five children, now a family of 20, to adore; the fascinating puzzles of an advocate’s daily life; partners, associates and adversaries of great decency, so gracious they nominated me for this award; and a community that gives back many fold whatever I put out.”

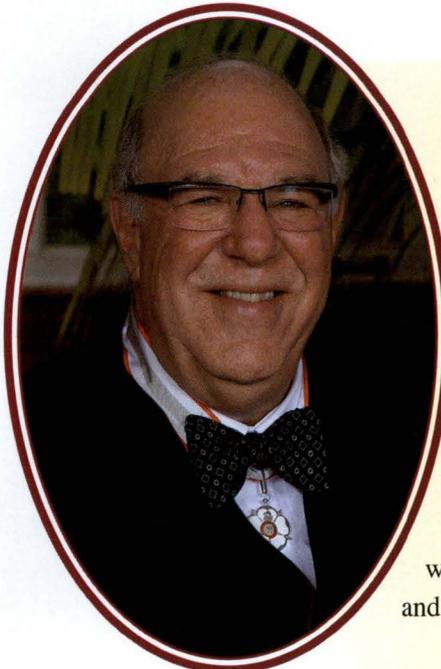
Abraham Feinstein, Q.C.

“I am greatly honored to receive the Law Society Medal. It has been an honour to have been able to work in this profession with so many dedicated volunteers. I think that it is important that this tradition of volunteering continue, in order to meet the challenges facing the legal profession in this decade. These challenges are greater than those faced by the legal profession in the past 200 years. Volunteers must work together to defend the independence of the legal profession and to ensure access to justice. These are fundamental to the maintenance of the rule of law and the foundation of our democracy.”



Clifford Lax, Q.C.

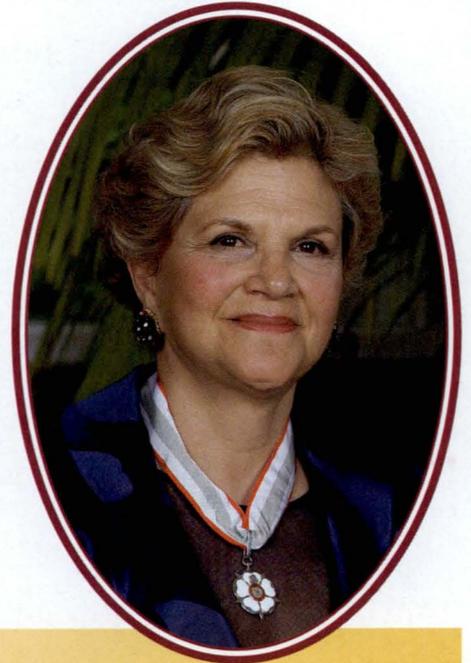
“What a fortuitous choice I made 40 years ago, choosing law as my career. From the friendships formed in law school to the camaraderie of the practising Bar, I have always felt privileged to have had the opportunity of being part of this great profession. Notwithstanding the long hours, sometimes filled with anxiety, sometimes disappointment, often with happiness and always with personal satisfaction, our profession has provided me an opportunity for engagement, for intellectual challenge and for self-fulfilment. So today, while I am deeply honoured to have received this medal, I remember that whatever I may have accomplished to have warranted nomination could not have been possible without the opportunities provided by our profession, without the support and friendship of my partners and professional colleagues, and without the encouragement and love of my wife and family.”



Law Society Medallists

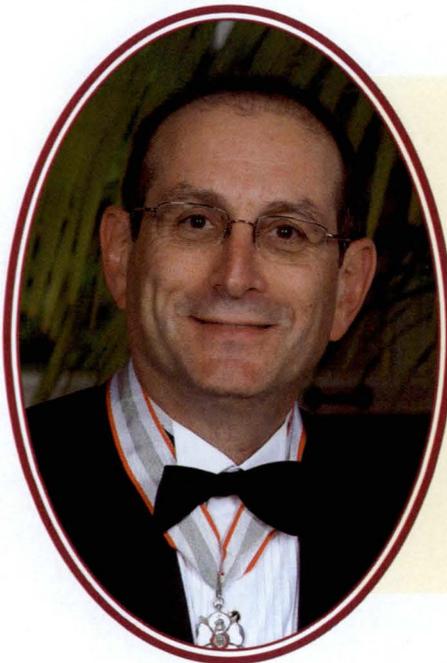
Audrey Loeb

“I am honoured and thrilled to have been awarded the Law Society Medal. To be recognized by one’s peers is very special. I have always considered myself fortunate that I chose law as a career. As a faculty member at Ryerson University, I was able to introduce my students to the fundamentals of the law, write and lecture extensively, and to build a practice in the new field of condominium law. I am also fortunate to have been part of the board of the Princess Margaret Hospital Foundation where I received the support of my colleagues and foundation staff to start the Weekend to End Breast Cancer. Few people have the opportunity to be part of such a successful fundraising endeavour, which has raised over \$78 million in Toronto and another \$100 million across Canada. The money raised by the Weekend has expanded the research being carried on in Canada and on a daily basis improves the lives of breast cancer patients.”



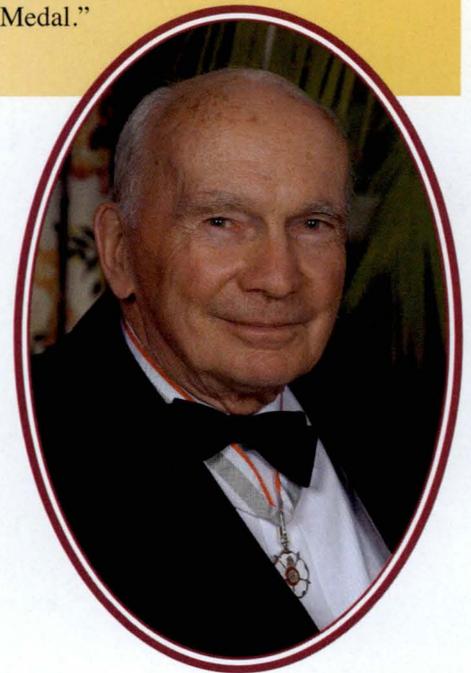
Sidney H. Troister

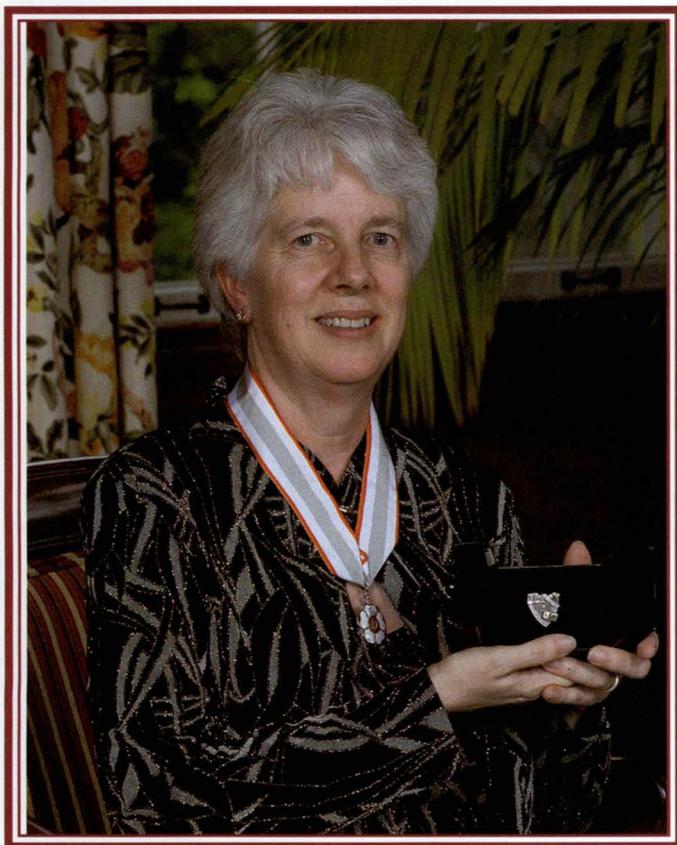
“I have had the good fortune of working at two law firms in my career whose cultures considered involvement in the profession beyond client files and the firm to be fundamental to one’s role as a lawyer. They gave me the incentive and encouragement to write, teach, mentor, participate and ultimately take on a leadership role among the members of the real estate bar in Ontario. The most unexpected but greatest benefit of that work and, more importantly for me, of being a lawyer, has been the establishment of respected friendships that I have developed with so many lawyers across the province. I am grateful for the opportunities I have been given, for the wonderful friendships made, and for the honour of receiving the Law Society Medal.”



David A. Ward, Q.C.

“The award of the Law Society Medal is a great honour, especially as it also marks my 50th year of practice. More than 47 years ago, I had the good fortune to co-found the firm where I have practised as a partner and have seen it grow in both size and stature to become one of Canada’s leading law firms. That, of course, is not from my contribution, but from the contribution of all the partners, associates and staff over these many years. One of the great pleasures of having been awarded the Law Society Medal is receiving congratulatory messages from the many clients, colleagues and friends that I have known and worked with over the years.”





Laura Legge Award

E. Susan Elliott

"I am humbled and honoured to be the initial recipient of the Laura Legge Award. Although she would never describe herself as a pioneer, Laura has for many years been one. She was the first woman bencher elected and the first woman Treasurer. She understood and accepted the sacrifices made when undertaking these roles as a member of a small law firm. She has raised a family, and committed herself to the profession and to the well-being of her community, while still putting her clients' interest ahead of her own. In every way, she has been a role model and a pioneer for women lawyers in Ontario. My thanks to Laura for showing that it can be done!"

Lincoln Alexander Award

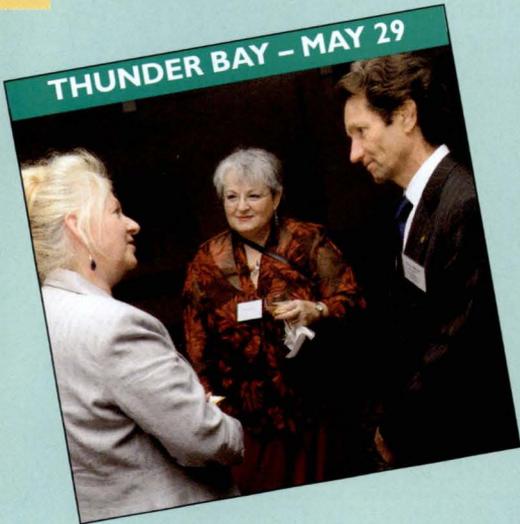
Morley S. Wolfe, Q.C.

"Community service is its own reward! The Lincoln Alexander Award for such service is an acknowledgement by the Law Society that members should participate in the life of the community without compensation, provide assistance for those in need, and contribute to the welfare of those less able to find their own way. To receive the prestigious Lincoln Alexander Award is a signal honour, one that has special meaning for me, for to be thus recognized by one's peers is tribute of the highest degree. My appreciation to the Law Society, and to those who supported my nomination, for believing this was something I merited. Special thanks to my wife and family for allowing me the time and space to do the right thing."



Law Society welcomes newly licensed paralegals at receptions across the province

A total of 965 newly licensed paralegals attended a series of six receptions held in May in Toronto, Sudbury, London, Thunder Bay and Ottawa to welcome them to the Law Society. Benchers and members of the Law Society's senior management team were on hand to recognize this important milestone in the regulation of Ontario's paralegals.



The Law Society assumed responsibility for the regulation of paralegals in May 2007, and licences to practice as paralegals came into effect May 1, 2008. As of publication, 1,922 paralegal licences had been issued.

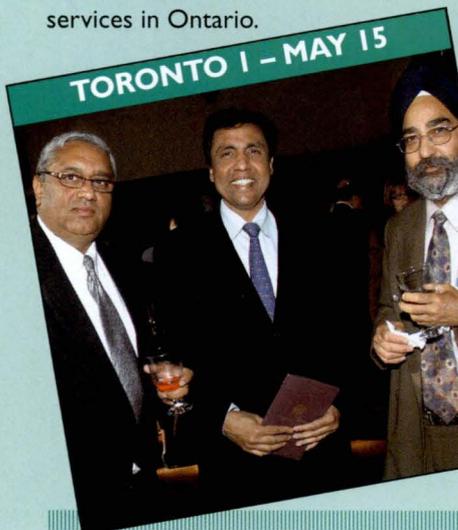
Then Treasurer Gavin MacKenzie congratulated the newly licensed paralegals saying: "Tonight we are gathered to celebrate an historic milestone in the provision of legal services in Ontario.

"You are among the first group of paralegals to successfully complete the licensing process and to be regulated by the Law Society of Upper Canada. Our common objective is to ensure that the people of Ontario have access to legal service providers who meet high standards of competence and ethics. On behalf of the benchers and the lawyers of Ontario, I congratulate you and welcome you to the Law Society of Upper Canada."

These sentiments were echoed by Paul Dray, chair of the Paralegal Standing Committee. "Ontario is the first jurisdiction in North America to license paralegals. Paralegal services have become increasingly popular with the public and are an important component of access to justice. Paralegal regulation ensures that the public is served ethically and competently. It also lends credibility and respectability to the services we provide and creates a regulated profession which we never had before."



Paralegals make an important contribution to ensuring access to justice for Ontario citizens, providing legal services in connection with administrative tribunals, minor matters under the Criminal Code, small claims and provincial offences, including traffic violations. ■



Client identification and verification

On April 24, 2008, Convocation approved amendments to By-Law 7.1 Operational Obligations and Responsibilities. These amendments in Parts III and IV of the By-Law established rigorous client identification and verification regulations for all lawyers and paralegals in Ontario. The regulations are designed to assist in the prevention of fraudulent

or criminal activities, such as money laundering, and are based on a Model Rule developed by the Federation of Law Societies of Canada. The amendments become effective on October 31, 2008, and codify the client due diligence that a prudent lawyer or paralegal should take upon being retained to provide legal services.

INTRODUCTION

By-Law 7.1 requires lawyers and paralegals to follow certain client identification and verification procedures when retained by a client. The By-Law also requires lawyers and paralegals to keep a record of the information and documents obtained to identify and verify the identity of clients.

The client **identification** requirements apply whenever a lawyer or paralegal provides professional services to a client. These requirements call for basic identification information about individual or organizational clients in every retainer. The identity **verification** requirements are triggered where the lawyer or paralegal receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client. A number of exceptions are included. For example, funds paid to the lawyer or paralegal by a financial institution, public body, or a public company, or received from the trust account of another lawyer or paralegal are exempt.

FAQs

1. In what circumstances am I required to identify my client?

You must identify your client whenever you are retained to provide legal services, except:

1. when you provide legal services to your employer, for example as in-house counsel
2. when you are acting as an agent for another lawyer or paralegal who has already identified the client, or
3. when you are acting for a client who has been referred to you by another lawyer or paralegal who has already identified the client.

2. I was acting for a client on a matter before the By-Law came into force and the matter is continuing. Do I have to identify this client?

Not as long as the matter is the same. But if you take on a new matter for this client you must comply with the identification requirements.

3. What are my obligations in determining whether a lawyer or paralegal for whom I am acting as agent or a lawyer or paralegal who has referred a client to me has taken the necessary steps to identify that client?

You are expected to exercise due diligence to satisfy yourself that the other lawyer or paralegal has already identified the client. This would involve asking the other lawyer or paralegal to confirm that he or she has complied with the requirements of the rule.

4. What information do I have to obtain to identify my client when my client is an individual?

When you are retained by an individual, you must get the person's full name, home address and telephone number, and occupation. Where applicable, you must also get their business address and telephone number.

5. What if the individual doesn't have an occupation or doesn't want to tell me what it is?

The By-Law requires you to find out what your client does. If your client doesn't want to answer the question, you should explain that all lawyers are required to ask all clients for this information and that you need it to properly represent him or her. If the client refuses to provide this information, you must

advise the client that you will be in breach of the By-Law unless you get it and your professional obligations do not permit you to act in such circumstances.

Note that "occupation" does not need to be "employment". If your client is retired, a homemaker, a volunteer caregiver or otherwise occupied, you should record that information.

6. What information do I have to get from a client that isn't an individual, such as a company or a public body?

When your client is an organization (a corporation, partnership, fund, trust, co-operative or unincorporated association), or a private company, you must get and record its full name, its business address and business telephone number, where applicable, its incorporation or business identification number and where it was issued, the general nature of the business and the name, position and contact information of the person or persons instructing you in the matter.

7. Are there any exceptions to the requirement to obtain information about organizations?

Yes. When your client is a financial institution, a public body or a public company (i.e. not a private company), you do not need to obtain or record the nature of the business activities it is engaged in.

8. What if my client is representing someone else?

If your client is acting for or representing another person, you must obtain the same information for that other person as you would if that person was your client: their full name, home address and telephone number, their occupation, and where applicable, their business address and telephone number.

The same requirement applies if the third party is an organization or company: you have to get all of the information you would get if you were representing the organization or company directly.

9. The By-Law talks about identification and about verification. What's the difference?

Identification refers to the basic information you need to get about your client to know who they are whenever you are retained: their name, address, etc. Verification refers to the information you need to get to confirm that your client is who or what they say they are. Verification is required only when you are acting for a client or giving instructions on behalf of a client regarding the receiving, payment or transferring of funds.

10. Do I have to verify my client's identity whenever I receive money to cover my fees?

No. Professional fees, disbursements and expenses are all exempted. If those are the only funds being transferred or received, you do not have to verify your client's identity.

11. Are there any other exceptions to the verification requirements?

Yes, there are several.

You don't have to verify your client's identity when the funds involved are paid by or to a financial institution or a public body, such as a department of the federal, provincial or territorial government, a city or a hospital, paid by a company other than a private company, or paid to a client that is a company other than a private company. This means the only companies whose identity must be verified are companies whose shares are not publicly traded (i.e. private companies).

The verification requirements are also not triggered when funds are received from the police or another public official acting in his or her official capacity or when it is paid to satisfy a fine or other penalty imposed by a court. Funds received or paid for bail (judicial interim release) are also exempt.

12. My client will be receiving (or paying) money to settle a legal proceeding. Will I have to verify her identity in that case?

No. There is no requirement to verify the identity of a client if the only funds involved are paid or received as a settlement of legal or administrative proceedings.

13. My client has directed me to pay money in trust to another lawyer or paralegal. Do the verification requirements apply?

No.

14. Do I have to verify the identity of my client when I receive money from the trust account of another lawyer or paralegal?

No, the verification requirements are not triggered in such a case.

15. So how do I verify the identity of my client?

If your client is an individual, you must look at an original identifying document that you reasonably believe to be independent and reliable, such as a government issued driver's licence, birth certificate, passport or, where permitted, a provincial or territorial health insurance card. You must also retain a copy of the document for your records.

16. How do I verify the identity of a corporation?

You are only required to verify the identity of a corporation if it is a private company. To verify the identity of such a company, you must consult documentation that is independent and reliable, such as the corporation's annual filing or a certificate of corporate status.

17. My client is a partnership. How do I verify its identity?

Reliable documents to verify the identity of a partnership would include, for example, a copy of the partnership agreement.

18. I am acting for a trust. How do I verify its identity?

The documentation you will need to consult to verify the identity of a trust will vary depending on the nature of the trust. Examples of appropriate documentation might include the trust agreement or other documents establishing the trust, documents amending the trust, and documents identifying the trustees.

19. The rule talks about identifying directors and shareholders. What is required?

When your client, or the party your client is representing, is an organization (e.g. a company, public body, or a trust), and receipt, payment or transfer of funds is involved, the By-Law imposes special requirements. You have to make reasonable efforts to obtain and record the name and occupation of all directors, except where the client or third party beneficiary is a securities dealer. When someone owns 25 per cent or more of the organization or the shares of the corporation, you must also make reasonable efforts to obtain and record their address.

20. What are "reasonable efforts"?

In most cases, asking your client for the information will suffice. It may also be appropriate to consult corporate minute books where readily available or an online corporate registry service.

21. If I am not able to get the names of the directors and owners, may I continue to act for the client?

Yes, provided you have made reasonable efforts to obtain the information. Although not required by the By-Law, it would also be prudent to record the efforts you have made.

22. I am a lawyer in Vancouver and my client is in Calgary. Are there any special rules for verifying his identity?

Yes, when your client is an individual and is in Canada, but you cannot meet with him or her, you have two options for verifying

identity. Your first option is to have a commissioner of oaths or a guarantor certify that they have verified the client's identity by looking at the sort of reliable, independent documents discussed above.

23. What does that involve?

The person looking at the document will have to provide you with a legible photocopy of the document that they have signed and on which they have included their name, profession and address, and have identified the type and number of the identification document provided by the client. This is called an attestation in the By-Law.

24. Who can provide an attestation?

An attestation may be provided by a commissioner of oaths or a guarantor in Canada when the client is in Canada. The list of guarantors is similar to the list of guarantors on a passport application and includes such professionals as lawyers, Quebec notaries, doctors, dentists, pharmacists, professional engineers and veterinarians. You must exercise due diligence in ascertaining that the person providing the attestation is a member of one of these professions.

25. What is the other method of verifying the identity of a client I cannot meet in person?

If your client is an individual and is outside of Canada, or if you choose not to use a commissioner of oaths or guarantor, you will have to engage an agent to conduct the verification for you. If you use an agent you must have an agreement in writing with that person, and they must provide you with the information they obtain. The agent may provide the information in an attestation.

26. I have acted for an individual client before and have already verified the client's identity. Do I have to do it again?

As long as you recognize the person, you do not have to verify the identity of an individual more than once.

27. My client is a corporation or a partnership. Do I have to verify its identity again if I have already done so?

No, you don't have to verify the identity of a client that is an organization if you have already done so. This exception also applies to verifying the identity of the person or persons instructing you on behalf of your corporate client and to obtaining names of directors and owners.

28. I have acted for a corporate client on a number of matters and have complied with the identification requirements. Someone new is now giving me instructions on behalf of the client. Do I have to verify that person's identity?

Yes. In every case involving the receipt, payment or transfer of funds, you must verify the identity of the person instructing you, unless you have previously done so.

29. Do I have to identify my client or verify my client's identity before acting for the client?

In the case of an individual client, you must identify the client when retained to act and must verify their identity before, or when you give instructions or act on their behalf to receive, pay or transfer funds. The same is true for verifying the identity of the person or persons authorized to instruct counsel for a client that is a corporation or other organization.

30. Does this mean that I have to verify the identity of my corporate client before I can act for them where the payment, receipt or transfer of funds is involved?

No. When your client is not an individual you have 60 days from the time you give instructions, or act on behalf of your client, to receive, pay or transfer funds to verify their identity.

31. What happens if after the funds have moved I am unable to verify the identity of my client in the 60-day window?

You have an obligation to take all reasonable steps to verify your client's identity. The obligation is met if you have taken the reasonable steps to verify the identity of a client that is not an individual within 60 days, even if you are unable to verify the identity. Although you have 60 days within which to comply with the verification requirements if your client is not an individual, you should take steps to verify the identity of your client as early as possible in the retainer in accordance with the By-Law.

32. Do I have to document the steps I take to verify my client's identity?

Yes. The By-Law requires that you obtain a copy of every document you rely on to verify a client's identity. You must also record the information you obtain to identify your client and any information and copies of documents you rely on to identify the directors and owners of 25 per cent or more of any client that is a company or other organization.

33. Do I have to keep identification and verification information in a separate file or can I keep it with my client files?

The information and documents obtained to identify your client may be kept in your client file. There is no need to maintain a separate file.

34. Can I keep identification and verification information in electronic form?

Yes, as long as a paper copy can be readily produced.

35. How long do I have to retain client identification and verification information?

You have to keep the information for the longer of your professional relationship with the client, as long as is necessary to provide service to the client, and six years following completion of the work the client retained you to do for them.

36. Do I have to verify the identity of clients I was already working for when this By-Law came into force?

The By-Law does not apply to matters for which you were already retained when the By-Law was enacted, but it does apply to all new matters. That means that you will have to take the necessary steps to identify all clients for any matters for which you are retained after the By-Law comes into force, even if you have acted for the client in the past or have a general retainer agreement with the client.

37. My client was very evasive when I tried to get the necessary information to identify him and to verify his identity. What do I do?

If you reasonably suspect that your client is trying to get you to assist him in something illegal or dishonest, you have a duty to refuse to act for him in that matter. The duty applies whether your suspicions are aroused during the identification and verification process or at any time during your retainer.

38. I need advice about a specific situation that is not addressed in these questions. What should I do?

If you have any unanswered questions or concerns about compliance with the By-Law, you should contact the Law Society at 416-947-3315 or 1-800-668-7380 ext. 3315. This strictly confidential telephone service provides you with assistance in interpreting the *Rules of Professional Conduct* and By-Laws. ■

How to avoid being a victim of fraud

Fraudsters are finding ever more creative means of taking money from honest people. LAWPRO reports that from January to May 2008, there have been more than 50 claims which had a fraudulent component, costing over \$4 million, as compared to 35 claims for the same period in 2007.

As quickly as regulators and law enforcement can warn people of one type of scam, a new one appears. This makes it essential that lawyers remain alert to the possibility of fraud, are aware of the possible *modus operandi* for suspect transactions, and take steps to reduce the risk to their businesses.

There have been several reports of counterfeit bank drafts and certified cheques that have been presented to lawyers involved in business and real estate transactions. Lawyers are attractive targets for fraudsters because of the prospect of using their trust accounts as a means of turning counterfeit money into real money. "It's the oldest con in the books," says Stephen McClyment, Senior Investigation Counsel at the Law Society. "I pay for something in a store with a counterfeit \$100 bill and receive real money as change."

Coverage for claims involving counterfeit bank drafts and certified cheques are not specifically insured or excluded from coverage under LAWPRO's policy. LAWPRO looks to the circumstances of the claim reported to determine whether the necessary elements are there for coverage to apply, and then ensures that there is nothing within the policy that may serve to restrict or exclude coverage.

In situations in which a lawyer has suffered a shortfall in a trust account because of reliance on a counterfeit instrument, claims are likely to arise once the true nature of the instrument, such as

a fraudulent certified cheque, has become known and it is declined. To the extent that a shortfall is experienced by the lawyer's clients, coverage is generally available. To the extent that a shortfall rests between the lawyer and his/her bank, no coverage is generally available in the absence of any professional service having been provided to the bank.

Features of the fraud

Two common elements of these fraudulent transactions are, first, that the client is not known to the solicitor and, secondly, that there is an urgency to complete the transaction.

A typical example involves a **debt recovery scenario**, where a lawyer is retained, often by an overseas client, to collect a debt. In some cases, it proves surprisingly easy to collect the debt, while in others there may be a simulated negotiation involving letters passing by mail or fax, or conversations on the phone until agreement is reached. Other features can be higher than normal fees, or the promise of more business in the future.

When the debt is finally recovered, a certified cheque or bank draft is presented, payable to the lawyer in trust. The client requests that funds (minus the lawyer's fee) be wired to another account, often offshore, as soon as possible. The lawyer sends money from his trust account, and a few days later, learns that the certified cheque was counterfeit.

LAWPRO reports a similar scenario involving **business loans**, with the new client borrowing money to purchase inventory, equipment or materials for the client's business. Loan documentation is presented that looks valid, funds arrive via bank draft in trust to the lawyer, and the lawyer remits funds on to the client. Again, only later does it emerge that the draft was counterfeit.

If a business transaction has a very quick turnaround, you should be suspicious. "You need to slow your client down," says Sean Scanlan, Senior Director Corporate Security for CIBC. His role is to manage the bank's national response to issues related to fraud and security. "Ask them why the transaction has to be completed so quickly." A simple step, which may provide some protection, is to request payment of a retainer before undertaking the work. A retainer will take a few days to clear. This can slow the transaction down, and it may put off fraudsters who do not want to stay in one place too long.

On **real estate transactions**, the timing of closing a deal is often crucial, but verifying that the purchasing client's certified cheque is good and final, particularly where the client is not someone you know personally or have acted for before, is a valid step to take. If you suspect that a certified cheque may not be legitimate, call the bank on which it was drawn, outline your concerns, and ask whether the cheque was legitimately issued from a suspense account.

Scanlan recommends taking another step. "Go to the Internet, get the central number for the main branch of the bank, and ask them to connect you to the branch in question. It's very easy for fraudsters to produce a fake business card or to put a phone number on the cheque which goes directly to someone else in the ring." If the bank refuses to answer, for reasons of privacy, for example, call your own bank manager, who can verify the particulars of the cheque with his

counterpart at the issuing bank, institution-to-institution.

Where you have concerns or suspicions about a transaction, an alternative is to request payment by LVTS, the Large Value Transfer System established by the Canadian Payments Association. In LVTS, funds are transferred electronically from one financial institution to another, and are treated as final and irrevocable when received by the payee bank. This is because the payer directs its bank to transfer funds, which will only be processed if there are sufficient funds to cover the transaction.

All major Canadian banks and many international banks participate in LVTS. You should confirm with your bank whether this is a valid option for you, the costs and whether funds will appear in your trust account quickly enough to enable you to complete the transaction on the scheduled closing date.

Know your client

“We can’t emphasize enough the importance of – **Knowing Your Client**,” says McClyment. “If any new client walks into your office, it is in your own best interests to verify that they are who they

say they are. In certain circumstances, this might entail more than just taking a photocopy of a driver’s licence.” This is particularly true if you are asked to receive and then disburse funds on their behalf. Ensure that you comply with the Client Identification and Verification By-Law, which comes into effect on October 31, 2008.

If you have concerns about the client or the transaction, ask for information about which bank they use, where their business is, and their other business relationships. If the client is supposedly a large, international company, and you are a small firm in a small town, ask them how they found your name, and why they want to work with you. “How come I’m so lucky to get this business?” is a question that may come to mind,” says Scanlan.

While it is possible for fraudsters to take steps to cover their tracks at all stages of the transaction, independent

checking of certain aspects of the deal should be considered, including:

- verification of the client’s and/or creditor company’s identification, place of business and type of business
- verification of the debtor company’s place of business and type of business
- verification of any employees’ names, with an independent search to determine if the employee is listed as an employee of the company [on the internet]
- verification with the issuing bank that the cheque or draft is covered by funds in the account
- verification with your bank that the funds are good and final in your trust account before you forward funds on; bear in mind that it can take up to 30 days for funds to be transferred on international transactions. ■

A list of red flags which can indicate fraudulent actions in real estate transactions was published in the *Gazette* in 2006. This can be found at: http://rc.lsuc.on.ca/pdf/realEstatePracticeGuide/rbg_mortgageFraudOLGArticle.pdf

Practice Portal: Real Estate

We have compiled the most popular resources and reference tools for the real estate practitioner and put them all in one place. The new Practice Portal gives you easy and immediate access to the information most important for your practice.

The Real Estate Practice Portal is focused entirely on real estate law – it’s your gateway to up-to-date and relevant information for your practice, including:

- Case law
- Upcoming CLE
- Commentary
- Forms/precedents
- Current awareness
- Practice tools

This will prove to be an invaluable tool for the real estate practitioner – if you practise real estate law, visit the new Practice Portal now under the Practice Resources section in the Law Society’s Resource Centre at www.lsuc.on.ca.

Due diligence in mortgage or loan transactions

MORTGAGE FRAUD IS A SERIOUS AND GROWING PROBLEM IN ONTARIO. IN MANY CASES, MORTGAGE FRAUD INVOLVES THE USE OF FALSE IDENTITIES (TITLE FRAUD) AND THE ARTIFICIAL INFLATION OF PROPERTY VALUES (VALUE FRAUD).

Title fraud occurs when a property is fraudulently transferred from its true registered owner and/or a fraudulent mortgage is registered on the property. In these types of transactions, a fraudster usually misappropriates the identity of the true registered owner. Value fraud occurs when the value of a property is inflated to deceive a mortgage lender in order to obtain a higher mortgage amount than would otherwise be available.

For consumers, the purchase of a home often represents their single largest investment. Over the course of the past year, there have been a number of court cases dealing with the rights of innocent homeowners to have title restored to their names and fraudulent mortgages set aside. In the recent case of *Rabi v. Rosu*, the Ontario Superior Court of Justice commented on the impersonal nature of mortgage lending and borrowing in this day and age and stated that in the circumstances of that case more care should have been exercised in advancing a sum in excess of one quarter of a million dollars.

The completion of a real estate transaction usually involves the participation of a number of parties in the transaction such as a lawyer, a lender and its agents, a real estate agent or broker, a mortgage agent or broker and others. In order to properly protect the public, the Law Society maintains that it is imperative that all of the parties involved in the transaction exercise care to detect and deter fraud at all stages in the transaction and particularly at the early

stages of the transaction when the borrower first makes contact with the lender or its agent to obtain mortgage financing or executes an agreement of purchase and sale to buy or sell property. It is essential that there be checks and balances throughout the entire process of the transaction.

The Law Society has prepared this document to outline the steps required of a lender to ensure that adequate care is exercised in the funding of mortgage or loan transactions and the steps required of a lawyer acting for a lender in such transactions.

LENDER DUE DILIGENCE

The following is a list of the steps required of a lender in a mortgage or loan transaction to detect and deter fraud.

Checking Identification

Prior to instructing the lawyer to act in a mortgage or loan transaction, the lender or a licensed mortgage broker or agent on behalf of the lender should:

- meet personally with the borrower(s) and obtain two pieces of original identification for each borrower, one of which must be government issued photo identification;
- examine the original identification obtained for irregularities and retain photocopies or document particulars of the identification; and
- check the information contained in the mortgage loan application using other sources such as credit reporting agencies and employer references.

If there are irregularities or suspicious circumstances that cannot be adequately explained, the lender must not proceed with the transaction.

Verification of the Transaction

Prior to instructing the lawyer to act in a mortgage or loan transaction, the lender or its agent must:

- take steps to verify that the registered owner is in fact selling or mortgaging the property. These steps should include at a minimum an on-site visit of the property or an on-site appraisal. Other steps that may be taken, depending on the circumstances, would include obtaining utility or realty tax bills, reviewing the MLS listing of the property or a phone call to the owner using the 411 listing;
- satisfy itself as to the value of the property. Depending on the circumstances, these steps could include reviewing the agreement of purchase and sale for discrepancies, reviewing the MLS listing of the property, attending at the property or conducting an on site appraisal; and
- review the application and supporting documentation such as the agreement of purchase and sale and amendments. If there are suspicious circumstances that cannot be adequately explained, the lender must not proceed with the transaction.

When instructing the lawyer to act in a mortgage or loan transaction, the lender must:

- provide the lawyer with a copy of the agreement of purchase and sale and all addenda and amendments obtained by the lender in the course of its decision to finance the transaction so that the lawyer may compare these documents to the documents or information in the lawyer's file;
- provide the lawyer with the name and contact information of an individual at the lending institution who can provide

the lawyer with informed instructions on short notice.

Timely Registration of Discharge of Mortgages

Where the lender does not instruct the borrower's lawyer to register the discharge of mortgage after the mortgage has been paid out, the lender must register on title the discharge of mortgage document no later than 60 days after the mortgage has been paid in full and provide particulars of the registration to the lawyer for the borrower or to the borrower directly if the borrower is not represented by a lawyer.

LAWYER DUE DILIGENCE

The following is a list of the steps that a lawyer must or should take when acting for a lender in a mortgage or loan transaction to detect and deter fraud.

Duty to Avoid Becoming the Tool or Dupe of an Unscrupulous Client

When advising a client, a lawyer has a duty not to 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.

A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activity such as mortgage fraud.

Before accepting a retainer or during a retainer if a lawyer has suspicions or doubts about whether he or she might be assisting the 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;
- make a record of the results of these inquiries; and
- disclose his or her concerns to all of the clients in the retainer.

Despite having taken these steps, in certain circumstances the lawyer may have to withdraw completely from representing the client.

Checking Identification

The lawyer should undertake steps to verify that the person retaining the lawyer and/or signing documents under the lawyer's supervision has reasonable identification to substantiate that he or she is the named client/party and should retain details or information in the file about the identification obtained. In addition, effective October 31, 2008, a lawyer must identify and verify the identity of a client in accordance with the provisions of By-Law 7.1

Title Search

When doing a title search of the property, the lawyer should review:

- all documents on title affecting the client's interest in the property;
- the values revealed by arms-length transfers in the recent past, to determine if there have been any suspicious changes in value; and
- the pattern of inactive or deleted instruments on the parcel register and inquire about any suspicious patterns of transfers or discharges.

The lawyer should retain notes on the search of title with respect to every real estate file and should report the results of the title search and due diligence process and, in particular, any suspicious patterns of transfers or discharges and/or any suspicious changes in values revealed by the due diligence process to the purchaser/borrower if the lawyer is acting for the purchaser/borrower, the lender if the lawyer is acting for the lender and the title insurer.

Disclosure to the Clients on Joint Retainers

Where the lawyer acts for both the borrower and the lender in the mortgage transaction, the lawyer must disclose to

the borrower and lender in writing, before the advance or release of the mortgage or loan funds, all material information that is relevant to the transaction.

Depending on the circumstances of the transaction, this information might include:

- the fact that there is a flip (the property is being re-sold the same day or within a short period of time at a higher price);
- the fact that there are amendments to the agreement of purchase and sale, either formal or otherwise, changing the terms of the agreement upon which the lender has based its mortgage transaction. Examples include purchase price reductions, extra deposits payable, renovation or other credits, cash-backs or other credits to the purchaser, changing the parties to the transaction, changing the purchase price, adding subsequent mortgages, changing the amount payable on closing and changing the manner of taking title;
- the fact that the mortgage documentation is to be executed under a power of attorney where this fact is not apparently known to the lender;
- information about the circumstances of the agreement of purchase and sale upon which the lender has based its mortgage transaction and which could affect the lender's ultimate decision to advance funds. Examples include: the vendor named in the agreement of purchase and sale is not the registered owner of the property at the time of the agreement of purchase and sale, the use of counter cheques and identification irregularities;
- information about the transaction or purchaser that is inconsistent with the information shown in the mortgage commitment such as changes in the mortgagor's economic circumstances, changes in the mortgagor's employment, changes in the

mortgagor's marital status and evidence of inaccurate appraisals;

- the fact that the mortgage advance exceeds the balance due or actually paid on closing; and
- the direct payment of the deposit or down-payment to the vendor.

Execution of Documents

Prior to registering electronic documents, the lawyer should obtain and retain in the lawyer's file the client's written authorization.

Timely Reporting to the Lender Client

A lawyer who acts for a lender in a mortgage transaction must provide a final report on the transaction together with the duplicate registered mortgage to the lender within 60 days of the registration of the mortgage or within such other time period as instructed by the lender. ■

Spot audits: Helping lawyers keep on the right track

"The audit greatly enhanced my knowledge of the business end of my practice."

"The auditors gave us usable ideas for improving our procedures."

These are two comments made by lawyers about the Law Society's highly successful Spot Audit Program. Designed to promote quality assurance and protection of the public, the program has had measurable, positive results since it was introduced in 1998.

"Since the inception of the spot audit program, Compensation Fund payments have steadily declined from a high of \$6.9 million in 1999 to \$1.1 million in 2007," says Leslie Greenfield, Manager, Practice Audits at the Law Society. "While there are no doubt a number of factors that contributed to this, we believe that the spot audit program, under which lawyers understand that their financial records can be audited at any time, has a positive effect on behaviour."

Other research shows that spot audits increase the longevity of newly formed sole practices. "Forty-two per cent of sole practices that have not undergone a spot audit will not exist within five years. That figure is reduced to 25 per cent when the firms have been spot audited," confirms Greenfield.

The audit process

Firms come into the audit program by a number of routes: random selection; via

referrals because of a complaint or disciplinary matter; or because they raise certain risk indicators, such as becoming sole practitioners for the first time, or financial indicators from the Members' Annual Reports.

A typical audit normally takes two days, but can vary depending on the firms' volume of financial transactions and area of practice. For example, a law practice engaged in private mortgages or estates can take more time to audit, primarily as a function of the examination of the paperwork involved.

Rimpal Hinduja has been an auditor with the Spot Audit program for the past six-and-a-half-years. Handling from 70 to 75 audits annually, he is currently one of a team of 13 auditors.

"The scope of the audit is the same, regardless of the size of the firm," Hinduja reports. "We look at the firm's books and records with regard to their trust and general accounts, and look specifically at records relating to private mortgages and estate work."

For private mortgage work, the auditors ensure that the lending client's instructions have been followed and the requisite forms completed. For mortgages over \$50,000, auditors also confirm that the lender and borrower

are represented by independent lawyers where required by Law Society rules. On estate files, the auditors examine accounts and records where the lawyer is the named executor of an estate or otherwise has control of estate assets as the solicitor for the estate. Auditors also assess whether the estate assets have been distributed according to the terms of the will.

While the aim of the audit is to ensure that processes are being undertaken in accordance with the By-Laws and *Rules of Professional Conduct*, its primary purpose is to assist firms, not to cause undue alarm. Often, auditors will highlight areas where improved processes can lead to more efficient business practices, and those being audited are appreciative of the feedback they receive.

"Many of the lawyers I audit can be nervous when we first meet," says Hinduja, "particularly if they don't know anyone else who has been through the process. However, if they have friends or colleagues who have been audited, they are usually more relaxed."

In fact, a survey of audited lawyers undertaken in 2007 found a very high satisfaction rate, with 97 per cent reporting that the process was

constructive, 99 per cent finding the report useful, and 100 per cent reporting that the auditor was professional and helpful.

Brigitte Raney, a sole practitioner working primarily in immigration law from Campbellford, confirms this. "I received plenty of notice and a list of what the auditor wanted to see so that I could prepare for the meeting. If your books are reasonably up to date, you will have enough time to get things ready. The whole process was a positive experience, and the auditor was trying to be helpful."

Ann Farquharson, a sole practitioner from Peterborough agrees. "I'm a sole practitioner and I employ a bookkeeper to help me on the financial side. For me, it was reassuring to know that, apart from a few minor oversights, our systems are working well."

Number of spot audits to be increased

In June, Convocation approved an increase in the number of random spot audits conducted each year. This boost will enable the program to attain the goals set when the program was first established, namely that all firms in Ontario would be audited every five years. An increase in the number of law firms, as well as the need for followup audits of firms (called "re-audits") where problems have previously been identified, has meant that the five-year cycle has slipped to eight years or longer. Each year, approximately 1,100 spot audits are conducted and, of those, five to 10 per cent require re-audits to confirm that deficiencies are corrected.

Achieving the reduction from the current eight-year cycle to five years will increase the program's cost. Advocates of the program believe that the increased costs are more than justified, given the savings achievable in terms of costs of discipline and claims for compensation. The increased costs will be spread over the next two years' budgets.

"As a quality assurance tool, the spot audit is a proactive means whereby firms can evaluate their financial practices, detect problems and correct deficiencies," says Diana Miles, Director, Professional Development & Competence at the Law Society. "Our commitment to this program is a demonstration of our commitment to quality service for the public," adds bencher Laurie Pawlitzka, Chair of the Professional Development & Competence Committee. ■

The two-lawyer requirement for transfers of title to real property – Rule 2.04.1

As of March 31, 2008, Rule 2.04.1 of the Rules of Professional Conduct came into effect. This section, known as the two-lawyer rule, prohibits lawyers from acting for both parties in the transfer of title to real property, except under specific circumstances and provided the lawyer complies with the general rules on conflicts of interest.

These include:

- a transfer where the transferor and the transferee are the same and the change is being made to effect a change in legal tenure;
- a transfer where the transferor and the transferee are the same and the transfer is being made to effect a severance of land;
- a transfer from an estate trustee, executor or administrator to a person who is beneficially entitled to a share in the estate;
- a transfer where the transferor and the transferee are related persons as defined in section 251 of the *Income Tax Act (Canada)*;
- the lawyer practises law in a remote location where

there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

In addition, no law statements will be required for transfers involving a government body, including a municipality, or for transfers of easements.

The two lawyers may be in the same firm as long as general rules on conflict of interest are complied with.

Professional Development & Competence has developed a series of Questions and Answers about the two-lawyer rule, which can be found on www.lsuc.on.ca. We reproduce here two checklists to assist in complying with the rules, the first for individual lawyers and the second for two lawyers in the same firm.



**STEPS TO ASSIST IN COMPLYING WITH THE
TWO-LAWYER REQUIREMENT FOR TRANSFERS OF TITLE
TO REAL PROPERTY - RULE 2.04.1**

- Determine whether you are being requested to act for or represent both the transferor and the transferee with respect to a transfer of title to real property.**
- If so, determine whether there is a conflict of interest that would preclude a lawyer from acting for both the transferor and the transferee in the transaction or whether this is a situation where it would not be prudent for a lawyer to accept such a retainer. If there is such a conflict, then you either cannot or should not act for both parties.**
- If there is no such conflict, then determine whether the transaction falls within one of the following exceptions to the two-lawyer requirement:**
 - The transferor and the transferee are the same and the change is being made to effect a change in legal tenure (e.g. severance of a joint tenancy)
 - The transfer is being registered to give effect to a severance of land prior to the expiry of a consent under the *Planning Act* or pursuant to a municipal by-law
 - The transfer is a transfer from an estate trustee, executor or administrator to a person who is beneficially entitled
 - The transferor and the transferee are related persons as defined in section 251 of the *Income Tax Act (Canada)*
 - The transfer involves a transfer where the lawyer practises law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer
 - The transferor or the transferee is a government body including, the Crown in Right of Ontario, the Crown in Right of Canada, a Crown corporation, any agency, board or commission of the Crown or a municipal corporation.

If one of these exceptions applies, then you may act for both parties provided that you comply with Rule 2.04 on conflicts of interest including the joint retainer provisions [Rules 2.04(6)-(10)].

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- Before accepting the joint retainer, you must advise the transferor(s) and the transferee(s) that:**
 - You have been asked to act for both or all of them;
 - No information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned; and
 - If a conflict develops that cannot be resolved, you cannot continue to act for both or all of them and may have to withdraw completely.
 - If the clients are agreeable to retaining you on these conditions, then you must obtain the informed consent of each of the clients by:
 - Having the client sign a written consent;
 - Obtaining the client's oral consent and then sending that client a letter confirming his or her consent.
 - If one of the clients in the joint retainer is more vulnerable or less sophisticated than the other(s), you should consider having this client obtain independent legal advice before accepting the joint retainer.
 - If you have a continuing relationship with one of the clients for whom you act regularly, before accepting the joint retainer, you must advise the other client(s) of the continuing relationship and recommend that the other client(s) obtain independent legal advice about the joint retainer.

- Once you accept the joint retainer, you must assume complete professional responsibility for all documents that you electronically sign using the electronic land registration system and must comply with Rule 2.04 on conflicts of interest.**



**STEPS TO ASSIST IN COMPLYING WITH THE TWO-LAWYER
REQUIREMENT FOR TRANSFERS OF TITLE TO REAL PROPERTY -
RULE 2.04.1**

- Determine whether two lawyers in your firm are being requested to act for, or represent both the transferor and the transferee with respect to a transfer of title to real property.**
- If so, determine whether there is a conflict of interest that would preclude lawyers of the same firm from acting for both the transferor and the transferee in the transaction or whether this is a situation where it would not be prudent for lawyers of the same firm to accept such a retainer. If there is such a conflict, then the lawyers in the same firm either cannot or should not act for both parties. If there is no such conflict, then the lawyers in the same firm may act provided that they comply with the joint retainer rules [2.04(6)-(10)]**
- Before accepting the joint retainer, the lawyers must advise both the transferor and the transferee that:
 - The lawyers have been asked to act for both or all of them;
 - No information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned; and
 - If a conflict develops that cannot be resolved, you cannot continue to act for both or all of them and may have to withdraw completely.
- If the clients are agreeable to retaining you on these conditions, the lawyers must obtain each client's informed consent by:
 - Having the client sign a written consent; or
 - Obtaining the client's oral consent and then sending that client a letter confirming his or her consent.
 - If one of the clients in the joint retainer is more vulnerable or less sophisticated than the other(s), you should consider having this client obtain independent legal advice before accepting the joint retainer.
 - If you have a continuing relationship with one of the clients for whom you act regularly, before accepting the joint retainer, the lawyers must advise the other client(s) of the continuing relationship and recommend that the other client(s) obtain independent legal advice about the joint retainer.
- Once you accept the joint retainer, each lawyer must assume complete professional responsibility for all documents that the lawyer electronically signs using the electronic land registration system and must comply with Rule 2.04 on conflicts of interest.**

Amérindiens, Amérindiennes, engagez-vous!

LES AMÉRINDIENS ONT EU UN RÔLE PARTICULIER DANS LA COLONISATION EUROPÉENNE EN CE PAYS.

On apprend dans les livres d'histoire que les explorateurs français qui sont venus passer leurs premiers hivers avec Champlain ont bénéficié des connaissances des plantes médicinales de leurs hôtes pour survivre au scorbut. Ils ont appris des premiers habitants l'art de transformer la sève en sirop d'érable et les moyens à prendre pour survivre aux rigoureux hivers.

Les nouveaux habitants ont modifié l'habillement traditionnel européen pour y incorporer des emprunts vestimentaires faits aux Amérindiens pour des raisons pratiques. Et bien que les mariages officiels entre Français et Amérindiennes étaient assez rares, les unions temporaires l'étaient beaucoup moins. Selon les compilations du linguiste Louis Tardivel, les langues amérindiennes auraient donné quelque 200 mots au français moderne et autant à l'anglo-américain. Un grand nombre d'aliments dont personne ne peut plus se passer provient d'Amérique : la pomme de terre, la tomate, le maïs, la cacahuète, le piment et bien d'autres choses.

Les Amérindiens ont encore un rôle à jouer dans notre société moderne. Pour la profession juridique, qui s'est organisée en ordre professionnel en 1797 en Ontario, l'entrée des Amérindiens constitue un progrès de taille sur le plan de l'accès à la justice. Le premier avocat autochtone a été reçu au Barreau en 1938. Aujourd'hui, on en compte entre 250 et 300 en Ontario. L'Association du Barreau autochtone, l'organisation



**M^e Céleste Courville,
avocate à Timmins**

nationale des avocats et avocates autochtones et de diplômés en droit, compte environ 750 membres au Canada.

Pour assurer l'accès à la justice en représentant convenablement leur communauté, les Autochtones ont besoin d'occuper des postes stratégiques. La fonction d'avocat est idéale

pour se retrouver dans les méandres de l'appareil judiciaire et pour aider une société à défendre ses positions et à rester fière. Le nombre d'avocates et d'avocats autochtones en Ontario augmente et il y en a même quelques-uns qui offrent leurs services en français. Des avocats bilingues et triculturels.

C'est le cas de M^{es} Céleste Courville et Geoffrey Laplante qui habitent tous deux dans le Nord de l'Ontario, elle à Timmins, lui à North Bay. M^e Courville a été assermentée en 2006. Elle a suivi le programme de droit en français à Ottawa. Elle pratique le litige civil dans le cabinet Wallbridge, Wallbridge depuis deux ans. M^e Laplante a été assermenté en 1995. Il a étudié le droit à Queen's University. Père célibataire, il partage son emploi du temps entre ses deux enfants et sa pratique autonome de droit criminel.

M^{es} Courville et Laplante ont toujours su qu'ils feraient du droit. À l'âge de quatre ans, M^e Courville, assistant à un procès, a su dès lors que c'est dans ce milieu qu'elle aussi aiderait les gens. M^e Laplante, lui, a été motivé en

4^e année par son enseignante, Mme Legros, à devenir avocat après avoir remis un devoir fort éloquent sur le bilinguisme.

Céleste Courville est Métis de Cochrane. Bien qu'elle a adoré son passage à l'Université d'Ottawa, son profond attachement au Nord et un sentiment de loyauté envers sa communauté l'ont amenée à Timmins où elle travaille en anglais et en français.

Geoffrey Laplante est de la communauté algonquine de Golden Lake et a grandi à North Bay. Il a aussi beaucoup tiré de son expérience d'étudiant à Kingston où il faisait partie de l'équipe de football, développant ainsi sa confiance dans ses pleines capacités. Cependant, son appartenance à la vie sportive (il est aussi fervent de canoë-kayak) et à sa ville natale l'a facilement fait revenir dans sa communauté où il travaille dans les deux langues officielles.

M^e Laplante et M^e Courville n'ont jamais senti de discrimination contre leurs racines autochtones. Bien au contraire, ces deux avocats sont très fiers de qui ils sont, que ce soit du côté amérindien ou du côté francophone. Les deux sentent qu'ils rendent service à la communauté autochtone lorsqu'ils observent le sentiment d'aise que ressentent leurs clients d'être entre personnes qui se rejoignent culturellement. Bien sûr, ils reconnaissent les injustices vécues par les communautés autochtones. D'ailleurs, M^e Courville travaille beaucoup sur les réclamations contre les pensionnats indiens.

Les deux avocats ont été très sensibles aux excuses du Premier ministre. Pour M^e Courville, ces excuses ont agi comme un signe de guérison. Pour M^e Laplante, il faut malgré tout attendre de voir ce que nous réservent les gouvernements dans

l'avenir qu'il entrevoit tout de même avec optimisme. Pour lui, les efforts du Barreau du Haut-Canada ont un impact très positif sur l'accès à la justice pour les Autochtones et pour les francophones, tout comme certaines décisions des tribunaux concernant les droits autochtones. Les initiatives visant à encourager les Autochtones à choisir le droit comme carrière sont d'excellent augure, mais il trouve qu'il faut encore former des spécialistes sur les droits autochtones pour continuer d'améliorer le système. M^e Courville est également d'avis que si des Autochtones désirent défendre leurs droits à titre d'avocat, il faut qu'ils ou elles choisissent les domaines propices à l'activisme. Les deux avocats voient cependant d'un bon œil les progrès faits par les travailleurs autochtones auprès des tribunaux et les

centres d'amitié autochtone au chapitre de l'accès à la justice.

Des démarches sont en voie de développement pour ouvrir une faculté de droit dans le Nord de l'Ontario. Un des problèmes des populations en région est que les avocats doivent s'éloigner pour étudier. Et ils ne reviennent pas toujours dans leur région natale. Pour M^e Laplante, on doit effectivement continuer d'encourager les avocats bilingues à s'installer dans le Nord pour desservir les Autochtones et les francophones. Il se réjouit de la possibilité d'une faculté de droit dans la région, mais croit que le manque d'écoles secondaires dans les réserves plus au Nord constitue un problème fondamental puisque les jeunes doivent quitter leur milieu à partir de la 8^e année pour

poursuivre leur scolarité. Il s'agit d'un dangereux déracinement qui peut difficilement être rattrapé au simple stade de l'université. Pour M^e Courville, une faculté de droit dans le Nord serait très bienvenue pour assurer que les Autochtones sont servis par les leurs.

Les Autochtones et les francophones de ce pays ont traversé ensemble toute sorte de moments heureux et malheureux. Après 400 ans de cette relation, 400 ans de présence francophone en Amérique, pour M^{es} Laplante et Courville, l'heure est à la réjouissance.

Pour Céleste, les fêtes du 400^e prouvent que la culture et l'esprit français sont encore vivants et elle en est fière. Pour Geoff, sans le Québec, il n'y aurait pas de Canada. Il espère un autre 400^e pour nos descendants. ■

Décorations de l'AJEFO

Cette année, les deux personnes dont l'AJEFO a choisi de reconnaître les contributions à la promotion et à l'amélioration des services juridiques en français en Ontario sont M^e Céline Allard et le professeur Yves Le Bouthillier.

M^e Céline Allard a obtenu son LL.B. de l'Université d'Ottawa en 1984 et depuis 1992, elle pratique exclusivement dans le domaine du droit de la famille et de la médiation. Elle est d'ailleurs agréée par le Barreau du Haut-Canada comme spécialiste en droit de la famille qu'elle a enseigné au Barreau pendant longtemps ainsi que la responsabilité professionnelle selon le *Code de déontologie*.

M^e Allard a été chef de section associée à la formation professionnelle du Barreau du Haut-Canada en droit de la famille. De plus, elle est présidente du Tribunal de l'enfance en difficulté de l'Ontario (français). L'Ordre du mérite lui est décerné pour souligner son travail tant au sein de l'AJEFO qu'à titre d'avocate œuvrant dans un cabinet privé dans la région d'Ottawa.



M^e Céline Allard



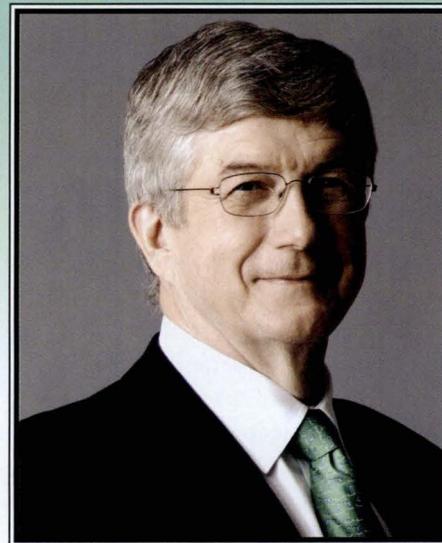
M^e Yves Le Bouthillier

Le professeur Yves Le Bouthillier a obtenu son baccalauréat en droit de l'Université d'Ottawa en 1984 et il est devenu membre du Barreau de l'Ontario en 1987. Depuis, il est professeur à la Faculté de droit de l'Université d'Ottawa où il enseigne, entre autres, le droit international de l'environnement, la protection internationale des droits de la personne et le droit de l'immigration et des réfugiés. M^e Le Bouthillier a publié plusieurs articles et donné de nombreuses conférences, autant dans le domaine des droits linguistiques et scolaires que dans celui du droit international et des droits de la personne. Il a occupé le poste de président de la Commission du droit du Canada de 2005 à 2007. Après avoir été vice-doyen du

Programme de common law en français de l'Université d'Ottawa, M^e Le Bouthillier y est retourné à titre de professeur. Il est maintenant directeur de l'Académie de droit de l'environnement du Fonds mondial pour la conservation de la nature à Ottawa. L'Ordre du mérite lui est remis pour son travail au sein de l'AJEFO et pour son travail dans l'enseignement.

De la part du nouveau trésorier, W.A. Derry Millar

DÈS LE DÉBUT DE SON MANDAT, LE NOUVEAU TRÉSORIER DU BARREAU DU HAUT-CANADA, W.A. DERRY MILLAR, A AIMABLEMENT ACCEPTÉ L'INVITATION DE L'AJEFO AU CONGRÈS ANNUEL DE 2008 DANS LA BELLE VILLE DE QUÉBEC. SON ALLOCUTION, RÉSUMÉE ICI, CONTIENT SES PENSÉES À TITRE DE CHEF DU BARREAU À L'AUBE DE SA NOUVELLE RELATION AVEC L'ASSOCIATION DES JURISTES D'EXPRESSION FRANÇAISE DE L'ONTARIO.



Le trésorier W.A. Derry Millar

Mais avant tout, qui est le nouveau trésorier? W.A. Derry Millar a servi comme administrateur à de nombreux conseils, dont Aide juridique Ontario, LawPRO, LibraryCo et Pro Bono Law Ontario. Entre 2003 et 2007, il a été avocat principal de la Commission d'enquête sur Ipperwash. En 2001, M^e Millar était élu Fellow of the American College of Trial Lawyers. Associé chez WeirFoulds s.r.l. à Toronto, M^e Millar a d'abord été élu conseiller du Barreau en 1995 et réélu pour un quatrième mandat consécutif en 2007. Il a tenu de nombreux postes importants, y compris celui de président du Comité sur la mobilité interjuridictionnelle. Plus récemment, il a agi à titre de président du Comité des finances.

Dans ses notes d'allocution, M^e Millar reconnaît la solide collaboration du Barreau avec l'AJEFO qu'il considère comme un partenaire important. Il attribue le succès de l'évolution de l'accès aux services juridiques en français au cours des trois dernières décennies aux efforts de l'AJEFO et de l'Université d'Ottawa qui a lancé en 1977 le Programme de common law en français, et se réjouit que la profession juridique francophone soit aujourd'hui représentative de sa communauté. Il

s'intéresse ainsi à la perspective de l'AJEFO sur les diverses questions qui touchent la communauté juridique.

Il note cependant qu'il existe encore bien des écueils dans la situation des francophones en Ontario. Par exemple, moins de un pour cent des avocats qui sont capables de représenter des clients en français dessert la population du Nord-Est, composée de 25,1 pour cent de francophones. Le Barreau est conscient que le manque d'avocats et avocates en région est une réalité à regarder en face avec ses partenaires. Les avocats et avocates francophones se trouvent très souvent un emploi dans la fonction publique fédérale, ce qui peut aggraver la pénurie d'avocats en pratique privée. Bien que cette situation ne soit pas si surprenante, considérant que la majorité des finissants en droit ont étudié à Ottawa et y élisent domicile, le Barreau et ses partenaires peuvent ensemble explorer des solutions.

Une autre réalité qu'il considère comme nécessaire de discuter avec nos partenaires est le manque d'outils et de programmes dont les avocats et avocates ont besoin pour offrir un service efficace à leurs clients francophones. La communauté francophone perçoit encore la justice en français comme une route

pavée d'obstacles. Le Barreau et ses partenaires veulent s'assurer que la profession dans son ensemble est au courant des droits linguistiques de la minorité francophone.

Au cours des ans, le Barreau, l'AJEFO et l'Université d'Ottawa ont travaillé ensemble pour trouver des voies de solution aux défis posés à la communauté francophone et aux avocats, avocates et parajuristes qui décident de travailler dans les deux langues officielles. C'est ainsi qu'on a ajouté un commentaire à la Règle 1.03 du *Code de déontologie* pour décrire les situations où les avocats devraient informer leurs clients d'expression française de leur droit à faire leurs poursuites en français en Ontario. C'est également ainsi qu'en 2006, le Barreau et l'AJEFO ont ensemble mené une campagne de sensibilisation pour informer les avocats et avocates de ce droit linguistique et de leurs responsabilités face à leur clientèle francophone par le biais de lignes directrices sur le cadre judiciaire et quasi judiciaire. Le *Code de déontologie des parajuristes* prévoit également la responsabilité d'informer les clients et clientes de leurs droits linguistiques.

Depuis le 1^{er} mai 2007, le Barreau réglemente les activités des parajuristes

dans l'intérêt public. Le trésorier est d'avis que cette responsabilité doit être assumée dans les deux langues officielles des tribunaux de l'Ontario et du Canada, et le Barreau élabore tous ses règlements administratifs et ses examens d'admission en français et en anglais. De plus, le trésorier encourage l'AJEFO à travailler avec les collèges communautaires pour assurer que des programmes d'études parajuridiques agréés seront offerts en français.

Le trésorier Millar rappelle aux juristes de l'AJEFO le travail accompli par le Barreau sur les solutions proposées pour retenir les femmes dans la pratique privée. Le groupe de travail concerné a consulté diverses organisations de la communauté juridique, dont l'AJEFO, avant de finaliser son rapport. Dans son discours, le trésorier sollicite également la perspective de l'AJEFO pour déterminer les meilleures façons d'offrir des programmes de formation

permanente en français. Il souligne la collaboration du Barreau et de l'AJEFO pour communiquer au public francophone les voies d'accès à l'appareil judiciaire dans sa propre langue.

Il se dit déçu de l'absence de conseiller francophone au Barreau, mais se réjouit de la présence croissante de conseillers élus bilingues ainsi que la capacité du Barreau de tenir des causes disciplinaires en français.

En conclusion, le trésorier Millar rend hommage au juge à la retraite Michel Bastarache pour son rôle dans l'avancement des droits linguistiques au Canada et à Monsieur Roy McMurtry pour avoir donné le coup d'envoi des procès bilingues dans les tribunaux de l'Ontario. ■

Juin en août

C'est en plein cœur de la ville de Québec et de ses festivités soulignant ses 400 ans que le 29^e Congrès de l'AJEFO a eu lieu cette année. L'AJEFO tient habituellement son Congrès annuel au mois de juin. Cependant, cette année, comme le Congrès de l'Association du Barreau canadien avait lieu au mois d'août à Québec, l'AJEFO a voulu permettre à ses membres de participer aux deux congrès pour tirer le maximum de la formation juridique offerte à cette occasion en minimisant les déplacements. C'est ainsi qu'elle a reporté son Congrès au mois d'août. C'est donc au mois d'août que le mandat de la présidente sortante M^e Louise Hurteau s'est terminé pour faire place à M^e Sean McGee, le nouveau président de l'AJEFO.

Sachez bien qui sont vos clients

Le 24 avril 2008, le Conseil approuvait des modifications au Règlement administratif 7.1 sur les obligations et les responsabilités opérationnelles afin d'établir des règlements rigoureux pour que les avocats, les avocates et les parajuristes de l'Ontario s'assurent de bien vérifier l'identité de leurs nouveaux clients. Le Barreau s'est largement inspiré du règlement type de la Fédération des ordres professionnels de juristes du Canada pour prévenir les activités frauduleuses ou criminelles.

À compter du 31 octobre 2008, date d'entrée en vigueur des modifications, le Règlement administratif 7.1 exige que les avocats et les parajuristes suivent certaines procédures pour identifier et vérifier l'identité des clients lorsqu'ils sont engagés par un client, et conservent un dossier des renseignements et documents obtenus dans le but d'identifier et de vérifier l'identité des clients.

Les exigences de vérification de l'identité s'appliquent lorsqu'un avocat ou un parajuriste reçoit, paie ou vire des fonds pour le compte d'un client ou donne des directives à l'égard d'une telle opération pour le compte d'un client.

Plusieurs exceptions sont prévues. Par exemple, les fonds payés à un avocat ou un parajuriste par un établissement financier, un organisme public ou une société ouverte, ou reçus du compte en fiducie d'un autre avocat ou parajuriste sont exemptés.

La page 16 du présent numéro de la *Revue des juristes* contient une foire aux questions sur les circonstances où il faut identifier le client et la portée des mesures obligatoires, entre autres. On affiche également **en français** sur le site web (www.lsuc.on.ca) du Barreau toute la série de questions et réponses sur le même sujet.

Si des questions demeurent sans réponse, vous pouvez toujours communiquer avec le Barreau au 416-947-3315 ou au 1-800-668-7380, poste 3315. Ce service téléphonique strictement confidentiel vous offrira de l'aide pour interpréter le *Code de déontologie* et les règlements administratifs.

CONVOCATION June 2008 Highlights

W.A. Derry Millar elected as Treasurer

W.A. Derry Millar has been elected to lead the Law Society as Treasurer. He succeeded Gavin MacKenzie on June 26.

New bencher elected

New bencher Glenn Hainey of Toronto was elected at June Convocation. Mr. Hainey was elected to replace W.A. Derry Millar who was elected Treasurer.



Glenn Hainey

Ontario Civil Legal Needs Project proposal approved

As part of its commitment to improving access to justice, Convocation approved the Access to Justice Committee's proposal to undertake, in conjunction with Pro Bono Law Ontario, a civil legal needs assessment in Ontario. Convocation also approved the Committee's motion to apply to the Law Foundation of Ontario for funding and to include budget funds for the project in the Law Society's 2009 budget.

The Ontario Civil Legal Needs project will focus on civil legal needs from the perspective of the public, particularly low and middle income Ontarians, by directly surveying the public. The project will assess both the legal and social service components of those needs and will identify strategies to best meet those needs. The project also proposes to hold focus groups with legal and social service providers.

At a planning session held in September 2007, benchers identified access to justice as a priority and also identified the need for a comprehensive assessment of the legal needs of low and middle income Ontarians.

Human Rights Monitoring Group

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

- lawyers in Zimbabwe – statement
- lawyers P. Uthayakumar, M. Manoharan, R. Kenghadharan, and V. Ganabati Rao – Malaysia (the "Hindraf lawyers") – letter of intervention
- lawyers Charles Cubaka and Jean-Claude Mubalama – Democratic Republic of Congo – letter of intervention
- lawyer Francisco Soberon – Peru – letter of intervention
- lawyer Shirin Ebadi – Iran – letter of intervention
- lawyer Emanuel Zeltser – U.S. national detained in Belarus – letter of intervention

The Human Rights Monitoring Group was established to monitor human rights violations that target lawyers and judges as a result of the discharge of their legitimate professional duties.

Per diem rate for bencher remuneration adjusted

Convocation approved an increase linked to the Consumer Price Index to the per diem rates for bencher remuneration. The rates will increase to \$530 per full day and \$320 per half day, effective for work commencing June 1, 2008. The previous per diem rates of \$500 per day and \$300 per day were first set in November 2005.

Visit our website for full Convocation reports:

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

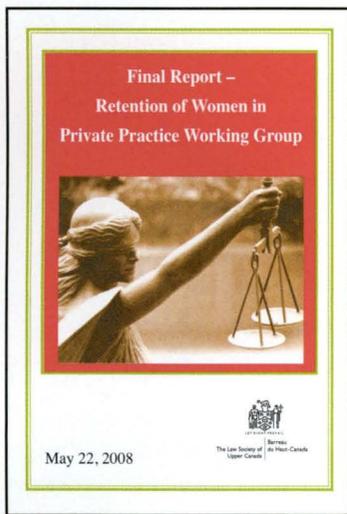
Increase in number of spot audits will meet approved five-year audit cycle

Convocation approved an increase in the number of random spot audits conducted each year to accomplish the five-year audit cycle for all Ontario law firms originally set in

1997 when the spot audit program was approved. This cycle time has gradually increased because of the increasing number of law firms and in some cases, the need for re-audits where problems have been identified. The increase in audits will be undertaken incrementally and will be considered during the 2009 budget process. ■

May 2008 Highlights

Convocation accepts recommendations to retain women in private practice



The Working Group on the Retention of Women in Private Practice presented its final report, including the results of its province-wide consultation with the profession. Convocation voted in support of the nine recommendations to enhance the retention and advancement of women in private practice.

The recommendations include the establishment of a parental leave

program for sole and small firm practitioners, as well as a practice locum service. A recommendation to create the Justicia Think Tank, a project in which the Law Society will work with a group of large and medium-sized firms across the province committed to implementing programs aimed at improving the retention of women, was also adopted.

Profession to be consulted on proposed new Rules of Practice and Procedure

Convocation approved the Tribunals Committee's request to begin a phased consultation on proposed new Rules of Practice and Procedure for Hearing Panels. The committee will first seek input from a number of lawyers who appear regularly as counsel before Law Society Hearing Panels and then from legal organizations and the profession at large. The consultation will continue until September 2, 2008. Following the consultation, the committee will return to Convocation with revised rules for consideration and approval.

The Rules of Practice and Procedure govern the Law Society's hearing process. Convocation authorized the development of new Rules of Practice and Procedure in May 2005 with its approval of the Tribunals Task Force Report. The proposed rules apply only to Hearing Panel matters. Once the new Hearing Panel rules have been approved corresponding rules for appeals will be developed.

Finance Committee

Convocation approved the transfer of \$2.7 million from the Unrestricted Fund Balance to the Working Capital Reserve to raise the Working Capital Reserve

fund balance to \$10.675 million, which is approximately equivalent to two months' operating expenses for the Law Society.

Withdrawals of notices of application to be published on website

Convocation approved the Tribunal Committee's recommendation to publish withdrawals of notices of application in the "tribunal decisions" section of the Law Society website. Withdrawals of notices of application occur when the Law Society, as prosecutor in a matter, requests that a matter be withdrawn from the hearing process. Withdrawals occur during the hearing stage after particulars

of the application have already been published in the "current hearings" section of the Law Society website. The Tribunals Committee recommended the publication of withdrawals as the policy is in keeping with the Law Society's commitment to transparent processes. Publication will ensure that the public is aware of the outcome of proceedings.

Convocation also agreed that no steps should be taken to retroactively remove previously published interim orders or reasons regarding the withdrawn proceeding. In addition, Hearing Panels will be encouraged to include an

endorsement of the Law Society's request to withdraw the matter on the notice of application rather than issuing a formal order withdrawing the application.

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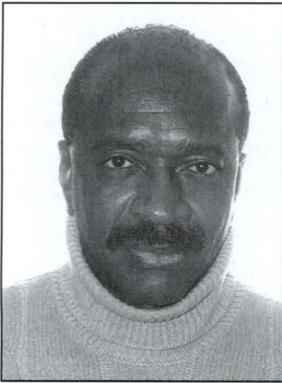
Undischarged bankrupts and LAWPRO policy exclusions for mandatory real estate practice coverage

Convocation voted to maintain the status quo respecting LAWPRO's policy exclusion for undischarged bankrupts for mandatory real estate practice coverage.

Professional Regulation Committee Report

The decision item on amendments to By-Law 7.1 [Operational Obligations and Responsibilities] and By-Law 8 [Reporting and Filing Requirements] in the Professional Regulation Committee Report was referred back to the Committee. ■

April 2008 Highlights



Jack Braithwaite

New Bencher Elected

Jack Braithwaite of Sudbury was elected to fill the vacancy created by the appointment of Kim Carpenter-Gunn as a judge of the Superior Court of Justice.

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New client identification and verification requirements come into effect October 31

Convocation approved amendments to By-Law 7.1 [Operational Obligations and Responsibilities] to establish rigorous client identification and verification regulations for Ontario's lawyers and paralegals. The amendments, effective October 31, 2008, will assist in preventing potential fraudulent or criminal activities by requiring lawyers and paralegals to identify and verify the identity of clients.

The amendments are based on a Model Rule developed by the Federation of Law Societies of Canada, the umbrella organization for Canada's 14 law societies. The Law Society consulted with the profession on the Model Rule in the fall of 2007.

Law Society views Lakehead law school proposal as important initiative

Convocation voted to express its view to the Ministry of Training, Colleges and Universities and the National Committee on Accreditation that a proposal from Lakehead University for the establishment of a new law school is an important initiative worthy of careful consideration. The Ministry of Training, Colleges and Universities approves the establishment of university programs, including new law schools, in Ontario.

The National Committee on Accreditation is a subcommittee of the Federation of Law Societies, which has the responsibility of assessing whether a proposed law program curriculum meets requirements on behalf of Canadian law societies. If appropriate, the Federation will recommend that the proposed program's graduates be entitled to enter provincial bar admission or licensing processes without having to satisfy any additional requirements. Each law society then determines whether or not to accept the recommendation. This process helps to ensure national consistency and the portability of law degrees across Canada.

New private practice re-entry requirements replace Private Practice Refresher Program

New private practice re-entry requirements will replace the Private Practice Refresher Program (PPRP). Lawyers who have not been in private practice for 80 per cent or more of the five years immediately prior to their application to re-enter private practice, and who intend to practice in firms of five or fewer lawyers, will undergo a practice management review within 12 months of their re-entry into private practice. They will receive tailored advice on managing their practices from seasoned professionals.

Convocation also approved a transitional provision for those who have already applied and been accepted into the PPRP.

Discrimination and Harassment Counsel hourly rates increased

Convocation approved an increase in the hourly rate for the discrimination and harassment counsel (DHC) and the alternate discrimination and harassment counsel, as well as an increase in the annual budget for the program. The DHC program is available to anyone who experiences discrimination or harassment by a lawyer or paralegal. The DHC's confidential services are offered free-of-charge to the Ontario public, including law firm staff, students, paralegals and lawyers.

Compensation Fund per claimant limit increased for claims involving a lawyer

The Compensation Fund's per claimant limit was raised to \$150,000 from \$100,000 for claims involving a lawyer licensee. The increase will apply only to claims involving funds advanced to a lawyer licensee on or after April 24, 2008.

Human Rights Monitoring Group

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

- Lawyers in China (a public statement and letter of intervention were approved)
- Extra-judicial killings in the Philippines (a letter of intervention was approved)

The Human Rights Monitoring Group was established to monitor human rights violations that target lawyers and judges acting in the discharge of legitimate professional duties.

Financial statements approved

Convocation approved audited financial statements for the year ended December 31, 2007 for the General Fund, the Compensation Fund and LibraryCo Inc. Convocation also appointed Deloitte & Touche LLP as the auditor of the Law Society's General Fund and Compensation Fund and LibraryCo Inc. for the 2008 financial year.

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

	Attendance		Motions*	
	Apr 24	May 22	Apr 24	May 22
Aaron, Robert	✓	✓	A	F
Aitken, Melanie	✓	✓	F	
Anand, Raj	✓	✓	F	F
Backhouse, Constance	✓	✓	F	F
Banack, Larry	✓	✓	A	F
Boyd, Marion	✓	✓	F	F
Braithwaite, Jack	✓	✓	F	F
Bredt, Christopher	✓	✓	F	
Campion, John	✓		F	
Caskey, James	✓	✓	F	F
Chahbar, Abdul Ali	✓	✓	F	F
Chilcott, W. Dan		✓		F
Conway, Thomas	✓		F	
Crowe, Marshall	✓	✓	F	
Daud, Aslam				
Dickson, Mary Louise	✓	✓	F	F
Dray, Paul	✓	✓	F	F
Elliott, Susan	✓	✓	F	F
Epstein, Seymour	✓	✓	F	F
Go, Avvy	✓	✓	A	F
Gold, Alan		✓		F
Gottlieb, Gary L.		✓		F
Halajian, Jennifer	✓	✓	F	F
Hare, Susan	✓	✓	F	F
Hartman, Carol	✓	✓	F	F
Heintzman, Thomas G.	✓		F	
Henderson, Paul	✓	✓	F	F
Hunter, George				
Krishna, Vern	✓	✓	F	F
Lawrie, Brian	✓	✓	F	F
Legge, Laura		✓		F
Lewis, Doug	✓	✓	F	F
Marmur, Dow		✓		F
McGrath, Susan	✓	✓	A	F
Millar, Derry	✓	✓	F	F
Minor, Janet	✓	✓	F	F
Pawlitza, Laurie	✓	✓	F	F
Porter, Julian	✓		F	
Potter, Judith	✓	✓	A	F
Pustina, Nicholas J.	✓	✓	F	F
Rabinovitch, Jack		✓		F
Robins, Sydney	✓		F	
Rock, Allan				
Ross, Heather	✓	✓		F
Rothstein, Linda	✓	✓	F	F
Ruby, Clayton	✓	✓	F	F
St. Lewis, Joanne	✓	✓	F	F
Sandler, Mark	✓	✓	F	F
Scace, Arthur				
Schabas, Paul	✓	✓	F	F
Sikand, Baljit	✓	✓	F	F
Silverstein, Alan	✓	✓	F	F
Strosberg, Catherine	✓	✓	F	F
Strosberg, Harvey				
Swaye, Gerald	✓	✓	A	F
Symes, Beth	✓	✓	F	F
Tough, Bonnie	✓	✓	F	F
Warkentin, Bonnie	✓	✓	F	F
Wright, Bradley	✓	✓	F	F
MacKenzie, Gavin (Treas.)	✓	✓		

Non-voting benchers in attendance:

Apr. 24, 2008 –

J. Ground, A. Lawrence, R. Murray,
J. Wardlaw.

May 22, 2008 –

P. Furlong, A. Lawrence,
D. Murphy, R. Murray, J. Wardlaw.

*Motions A=against F=for Ab=abstain

Appointments

Benchers Larry Banack was reappointed as the chair of the Hearing Panel. Bencher Bonnie Warkentin was reappointed as vice-chair of the Hearing Panel. Bencher Mark Sandler was reappointed chair of the Appeal

Panel. Benchers Abdul Chahbar, W. Dan Chilcott, Alan Gold, Janet Minor, Sydney Robins, Allan Rock, Mark Sandler and Bradley Wright were reappointed to the Appeal Panel. All appointments are effective June 28, 2008. ■

Roll-Call Votes

April 24, 2008

Professional Regulation Committee Report

Re: Amendments to By-Law 7.1 Respecting Client Identification and Verification Requirements

It was moved by Mr. Ruby, seconded by Ms. Rothstein, that Convocation amend By-Law 7.1 (Operational Obligations and Responsibilities) to add requirements for client identification and verification, effective June 30, 2008, as set out in Appendix 1 to the Report.

It was moved by Mr. Lewis, seconded by Mr. Caskey, and accepted as a friendly amendment that the effective date of June 30, 2008 be changed to October 31, 2008.

The Ruby/Rothstein motion as amended was carried. Carried. Vote: For – 41, Against – 6.

May 22, 2008

Re: Equity and Aboriginal Issues Committee

Re: Retention of Women in Private Practice Working Group

A friendly amendment was made to Recommendation 4 by deleting the words “on January 1, 2009” and substituting “in 2009”.

It was moved by Ms. Pawlitza, seconded by Ms. Warkentin, that Recommendation 4 be approved as amended. Carried.

It was moved by Ms. Pawlitza, seconded by Ms. Warkentin, that the balance of the recommendations be approved. Carried.

June 26, 2008

Professional Development and Competence Committee Report

Re: Spot Audit Program

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve an annual increase in the number of random spot audits conducted to accomplish the five-year audit cycle it approved in 1997, with the implementation process for accomplishing this goal to be considered during the 2009 budget process and voted upon as part of the budget debate in October 2008. Carried. Vote: For – 48, Against – 1. ■

CONVOCAATION ATTENDANCE AND ROLL-CALL VOTES

	Attendance		Motions*	
	Jun 26		Jun 26	
Aaron, Robert				
Aitken, Melanie	✓			F
Anand, Raj	✓			F
Backhouse, Constance	✓			F
Banack, Larry	✓			F
Boyd, Marion	✓			F
Braithwaite, Jack	✓			F
Bredt, Christopher	✓			F
Campion, John	✓			F
Caskey, James	✓			F
Chahbar, Abdul Ali	✓			F
Chilcott, W. Dan	✓			F
Conway, Thomas	✓			F
Crowe, Marshall	✓			F
Daud, Aslam				
Dickson, Mary Louise	✓			F
Dray, Paul	✓			F
Elliott, Susan	✓			F
Epstein, Seymour	✓			F
Go, Avvy				
Gold, Alan	✓			F
Gottlieb, Gary L.	✓			A
Hainey, Glenn	✓			F
Halajian, Jennifer	✓			F
Hare, Susan	✓			F
Hartman, Carol	✓			F
Heintzman, Thomas G.	✓			F
Henderson, Paul	✓			F
Hunter, George				
Krishna, Vern	✓			F
Lawrie, Brian	✓			F
Legge, Laura	✓			F
Lewis, Doug	✓			F
MacKenzie, Gavin	✓			F
Marmur, Dow	✓			F
McGrath, Susan	✓			F
Minor, Janet	✓			F
Pawlitza, Laurie	✓			F
Porter, Julian	✓			F
Potter, Judith	✓			F
Pustina, Nicholas J.	✓			F
Rabinovitch, Jack	✓			F
Robins, Sydney	✓			F
Rock, Allan				
Ross, Heather	✓			F
Rothstein, Linda	✓			F
Ruby, Clayton				
St. Lewis, Joanne	✓			F
Sandler, Mark	✓			F
Scace, Arthur				
Schabas, Paul	✓			F
Sikand, Baljit	✓			F
Silverstein, Alan	✓			F
Strosberg, Catherine	✓			F
Strosberg, Harvey				
Swaye, Gerald	✓			F
Symes, Beth	✓			F
Tough, Bonnie	✓			F
Warkentin, Bonnie	✓			F
Wright, Bradley	✓			F
Millar, Derry (Treas.)	✓			F

Non-voting benchers in attendance:

June 26, 2008 –
P. Copeland, A. Feinstein, P. Furlong, A. Lawrence, R.R. McMurtry,
D. Murphy, R. Murray, J. Wardlaw.

*Motions A=against F=for Ab=abstain

Constance Backhouse

The Law Society is pleased to congratulate Bencher Constance Backhouse, who was named as a Member of the Order of Canada on July 1, 2008, for her outstanding contributions as an educator, author and human rights activist.

Professor Backhouse is a Distinguished University Professor and University Research Chair at the University of Ottawa, where she teaches criminal law, human rights, legal history and women and the law. She was awarded the Law Society Medal in 1998, received an honorary doctorate from the Law Society in 2002, and was elected a bencher in 2003. She became a Fellow of the Royal Society of Canada in 2004. In June 2008, she also received a Killam Prize, one of five awarded across the country, which honours Canadian scholars actively engaged in research.



PARALEGAL UPDATE • PARALEGAL UPDATE • PARALEGAL UPDATE

Paralegal Education Program Accreditation

The Law Society has accredited the college paralegal programs at: Seneca College; Algonquin College; Sheridan College; Humber College; Durham College; and Westervelt College.

These programs meet the standards and competencies for paralegal education program accreditation. All paralegal applicants who apply for a paralegal licence with the Law Society after June 30, 2010, must have graduated from an accredited legal services program.

Discrimination and Harassment Counsel (DHC) Program

The Law Society's Discrimination and Harassment Counsel (DHC) Program now offers services in connection with the work of licensed paralegals, as well as lawyers. The program is designed to assist anyone who believes that they have been discriminated against or harassed by a lawyer or paralegal, including members of the public,

employees in legal or paralegal firms, students, and paralegals and lawyers themselves.

The DHC program is part of the Law Society's efforts to promote equity and diversity in the workplace and the professions, and to help stop discrimination and harassment. The program operates independently and at arm's length from the Law Society. For assistance, call 1-877-790-2200 or email: assistance@dhcounsel.on.ca

Supervision of Non-Licenses

Law Society By-Law 7.1, Operational Obligations and Responsibilities (Part I), has been amended to include provisions for paralegal supervision of non-licenses. It specifies that both paralegals and lawyers must have effective control of the work of the people they supervise and must assume complete professional responsibility for the work they undertake. If a paralegal or lawyer gives a supervised person express instruction and authorization, the supervised person may act on their behalf regarding scheduling or other routine

administrative matters before an adjudicative body.

X-COPPER Services Inc.

On May 28, 2008, X-Copper Services Inc. declared bankruptcy. The Law Society is actively addressing any issues of public protection and client interest that have arisen as a consequence of the bankruptcy. On June 18, the court granted the Law Society a trustee order, allowing for the recovery of client files and other material containing client information.

The Law Society is now guiding former X-Copper clients on the steps they need to take to protect their legal rights. Law Society staff have been assigned to help former clients through the various steps required to obtain new legal representation, to recover their files, or to approach the courts to reopen their cases. It is also determining if there are any funds that may be recovered for clients who paid for services they did not actually receive.

NOTICE TO THE PROFESSION

Recent Rule and By-Law Amendments

Following is a comprehensive list of amendments made to Law Society By-Laws and *Rules of Professional Conduct* by Convocation at their April, May and June 2008 meetings.

April 24, 2008

By-Law 7.1 – New client identification and verification requirements come into effect October 31

Amendments to By-Law 7.1 [Operational Obligations and Responsibilities] establish new client identification and verification regulations for lawyers and paralegals.

By-Law 8 – Licensee information requirements and the Law Society register

Convocation amended By-Law 8 [Reporting and Filing Requirements] to require that lawyers and paralegals report changes in their personal and business information to the Law Society as they occur and provide specified information to the Law Society when requested to do so. The amendments also set out the content of the Law Society register of lawyers and paralegals and the manner in which the register may be made available to the public.

By-Law 7.1 – Provisions for paralegal supervision of non-licensees

Convocation amended By-Law 7.1 [Operational Obligations and Responsibilities] to specify that both paralegals and lawyers must have effective control of the work of supervised persons and must assume complete professional responsibility for the work. Where the lawyer or paralegal gives the supervised person express instruction and authorization, the supervised person may act on behalf of the lawyer or paralegal in respect of scheduling or other related routine administrative matters before an adjudicative body.

By-Laws 4 and 5 – Annual fee for paralegals

By-Law 4 [Licensing] and By-Law 5 [Annual Fee] were amended to provide that paralegals who are over 65 years of age or are

incapacitated may apply to be exempted from payment of the annual fee.

By-Laws 4 and 7.1 – Summer law students

Convocation approved amendments to By-Law 4 [Licensing] and By-Law 7.1 [Operational Obligations and Responsibilities] to restore the right of students working in law firms during the summer to appear as agents in court matters. Summer students inadvertently lost the right to act as agents as a result of amendments to the *Law Society Act*.

Rule 2.08 – Division of fees and referral fees

Rules 2.08 (6), (7) and (8) of the *Rules of Professional Conduct* were amended to refer to licensees rather than lawyers, making clear that lawyers may divide fees with and accept referral fees from paralegals in accordance with the rules. The amendments also make clear that the prohibition on splitting fees or paying referral fees does not apply to arrangements between lawyers and paralegals. The amendments make the rules consistent with the companion rules in the *Paralegal Rules of Conduct*. Minor amendments were also made to the *Paralegal Rules of Conduct* to ensure complete consistency.

May 22, 2008

Rule 1.02 – Definition of conduct unbecoming a barrister and solicitor

Rule 1.02 (Definitions) was amended to clarify the definition of conduct unbecoming a barrister and solicitor.

Rule 6.07 – Housekeeping amendments to Rules of Professional Conduct

A housekeeping amendment was made to the commentary following subrule 6.07(3) (Practice by suspended lawyer prohibited).

By-Law 4 – Licensing exemptions

By-Law 4 [Licensing] was amended to implement the following previously approved policy changes:

- 'equivalency' provisions for Justices of the Peace applying for paralegal licences, approved March 2008;
- a licensing exemption for Pro Bono Students Canada, approved February 2008.

June 26, 2008

By-Laws 4 and 5 – Pro bono legal services and annual fee

Lawyers in the 25% and 50% (non-practising) fee categories who wish to provide pro bono legal services through Pro Bono Law Ontario (PBLO) may now apply to the Law Society to be exempt from the requirement to pay 100% of the Law Society's annual fee, mirroring the LAWPRO insurance levy exemption for non-practising lawyers who provide LAWPRO-approved PBLO pro bono legal services. By-Law 5 [Annual Fee] and By-Law 4 [Licensing] were amended to reflect the new policy.

By-Laws 4 and 7.1 – Supervision of summer students

Amendments to By-Law 4 [Licensing] and By-Law 7.1 [Operational Obligations and Responsibilities] expand the category of lawyers who are permitted to supervise summer students to include lawyers in government or corporations. Previous amendments, made in April 2008, permit the supervision of students by lawyers in law firms. The amendments were required to restore students' rights of appearance as existed before recent amendments to the *Law Society Act*. The amendments also entitle licensed paralegals to supervise summer students, where work is limited to the paralegal scope of practice.

By-Law 3 – Benchers remuneration

By-Law 3 [Benchers, Convocation and Committees] was amended to include reasonable travel time as an activity eligible for benchers remuneration and the eligible time allowed for reason writing was increased from one day to a reasonable amount of time. The amendments follow an evaluation of the existing benchers remuneration model by the Audit and Finance Committees.

Rule 3.05

Minor amendments were made to Rule 3.05(5) of the *Rules of Professional Conduct* to correct a reference to a particular section of By-Law 15.

By-Laws 7.1 and 8

By-Law 7.1 [Operational Obligations and Responsibilities] was amended to clarify amendments made in April 2008 regarding client identification and verification requirements.

Minor amendments were also made to By-Law 8 [Reporting and Filing Requirements] to clarify amendments made in April 2008 regarding information about licensees to be published in the Law Society register. ■

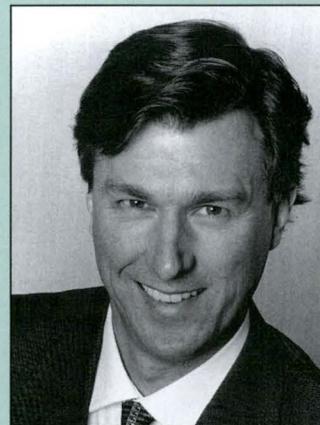
More information and printable versions of the updated rules and by-laws are available on the Law Society website at www.lsuc.on.ca

THE ADVOCATES' SOCIETY'S 2008-09 EXECUTIVE

Peter J. E. Cronyn, of Nelligan O'Brien Payne LLP in Ottawa, will serve as President of The Advocates' Society for the 2008-09 term.

Joining Mr. Cronyn on the Executive Committee are **Sandra A. Forbes**, of Davies Ward Phillips & Vineberg LLP in Toronto (First Vice-president); **Marie T. Henein**, of Henein and Associates in Toronto (Second Vice-president); **Mark D. Lerner** of Lerner LLP in London (Treasurer); and **Peter H. Griffin**, of Lenczner Slaght Royce Smith Griffin LLP in Toronto (Secretary).

Biographical information about the Society's Executive Committee and Board of Directors is available at <http://www.advocates.ca/about/officers.html>.



Law Society Directory

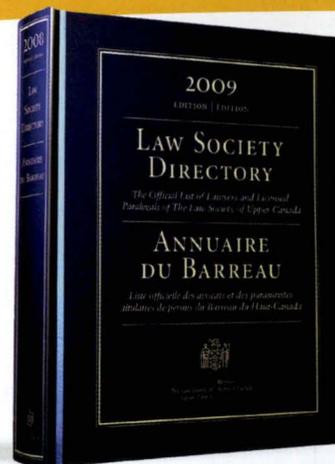
The Official List of Lawyers and Licensed Paralegals of The Law Society of Upper Canada
2009 Edition

LexisNexis Canada is currently compiling the 2009 edition of the *Law Society Directory, The Official List of Lawyers and Licensed Paralegals of The Law Society of Upper Canada*. The 2009 edition has been updated to include both lawyers and licensed paralegals.

Promote your services to lawyers and licensed paralegals in Ontario by purchasing an ad or enhanced listing in the 2009 edition of the *Law Society Directory*. The Directory is a great opportunity to increase the visibility of your practice amongst your peers.

The *Law Society Directory*, the definitive resource for those seeking Ontario-based legal services.

For more information, please contact **Nazreen Yousuf** at 905-479-2665, ext. 450, toll free 1-800-668-6481, ext. 450 or via email at nazreen.yousuf@lexisnexis.ca



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Ecojustice: Because the earth needs a good lawyer

by Jode Robert

IF A TREE FALLS IN THE FOREST, DOES ANYONE HEAR? WELL, IT DEPENDS IF THE FELLING OF THE TREE IS A VIOLATION OF LAW, AND WHETHER WORD GETS BACK TO ONE OF THE LAWYERS AT CANADA'S LARGEST ENVIRONMENTAL LAW WATCHDOG, ECOJUSTICE CANADA.

If you have not yet heard of Ecojustice, it is probably because until late last year the organization was called Sierra Legal Defence Fund – a somewhat cumbersome name for an organization that was never part of the venerable Sierra Club, America's oldest environmental organization, and does not 'fund' activities by other groups.

While the non-profit organization's name changed last fall, the work remains the same: Providing *pro bono* legal and scientific services for a wide array of citizens and advocacy groups across the country. Ecojustice was founded in 1990 by Law Society of Upper Canada Medal (LSM) recipient Stewart Elgie. "The organization began as a response to the growing need for a credible watchdog to ensure our governments and corporations respect the laws that protect our environment," says Elgie.

In the past two decades, the organization has grown from a team of two in a cramped Vancouver office to a national force, including more than a dozen environmental lawyers and scientists based in Vancouver, Toronto, Ottawa and, soon, Alberta. An independent registered charity, Ecojustice is funded entirely through grants and donations from tens of thousands of individual supporters across Canada.

As Elgie notes, "Ecojustice's growth has been stimulated by an impressive array of successes: victories at all levels of court and expert advocacy to secure tougher environmental laws – at the

municipal, provincial and federal levels."

Each year Ecojustice's lawyers have tackled some of the most significant environmental cases in the country, choosing cases strategically to set important precedents in Canada's burgeoning body of environmental law – such as the landmark Hudson decision that affirmed the right of municipalities to ban pesticides and protect their environment, one of its five successes in the Supreme Court of Canada on major environmental cases.

Selecting cases to take on is not an easy task. Ecojustice's lawyers and scientists receive countless inquiries and requests from citizens and groups across the country and can only take on a handful of cases each year. As Dr. Anastasia Lintner, coordinating lawyer in the Toronto office suggests, the ones chosen need to "pack the biggest punch possible."

Lintner is a rare breed, with a PhD in economics to accompany her law degree from Osgoode Hall. She says that although it is often difficult to articulate precisely the factors which determine whether a particular issue merits Ecojustice's involvement, their cases are selected based on two principal criteria: the legal impact and the environmental impact.

"Our goal is often to raise novel issues that could have far-reaching effects in the legal community and establish or uphold key rights, such as the right to participate in environmental decision-making, and fundamental environmental law

principles including polluter pays, intergenerational equity and precaution," says Lintner.

The environmental impact of a case depends on both the scale and the pervasiveness of the issue. For example, the scale of exploitation in Alberta's tar sands is having an unprecedented effect on the province's landscape and water resources, not to mention the climate. This has made tar sands development an obvious target.

Ecojustice lawyer Sean Nixon went to court last year to challenge Imperial Oil's \$8 billion Kearl Tar Sands project – a project that would swallow up 200 square kilometres of Boreal Forest and strip-mine it for highly polluting fossil fuels. Despite leaving a scar on the landscape visible from space, a joint panel assessing the impact of the project concluded that it would cause "no significant environmental effects." On behalf of concerned environmental groups, Ecojustice lawyers challenged the assessment – and ultimately won.

Other environmental impacts, such as the extinction of a particular species, may appear to have a smaller overall impact on the landscape, but still carry a huge cost for the ecosystem, says the organization's new executive director, Vancouver lawyer Devon Page. "The disappearance of threatened and endangered species is often indicative of a larger, systemic problem – the proverbial canary in the coal mine," says Page. "This is why we have launched various lawsuits to protect species at risk, from spotted owls and grizzly bears to caribou and orca whales."

EcoJustice spearheaded the successful campaign for federal endangered species legislation. Now it is going to court to ensure the law lives up to its promise. Page says that litigation in these cases

helps provide a voice for these species in the courts, with the hope of establishing crucial precedents that serve to protect other species in the years ahead. "Quite literally, our lawsuits can be the last line of defence for the environment."

Although the odds are often long, Page is optimistic. "Each and every day Canadians are becoming more aware of the urgent need to reduce our collective

environmental footprint and begin the much-needed shift towards sustainability." However, he notes that as an environmental charity, Ecojustice faces chronic underfunding and always appreciates support from members of the legal community. "Many of our volunteers and supporters are fellow lawyers that realize the vital role public interest litigation plays in ensuring

environmental justice – and we are grateful. The legal profession has immense power to put us on the path towards sustainability." In the meantime, Ecojustice lawyers will continue to fight the good fight, one lawsuit at a time. ■

Jode Roberts is a Toronto-based artist and environmental advocate who works for Ecojustice. www.ecojustice.ca

RETENTION OF WOMEN IN PRIVATE PRACTICE Implementation phase has begun

The implementation phase of the *Report on the Retention of Women in Private Practice* has begun. Co-chairs Bonnie Warkentin and Laurie Pawlitza asked Convocation to support the recommendations following three months of consultations with the profession.

"We spoke with more than 900 lawyers, and received 55 written submissions," reported Jose Bouchard, Equity Advisor at the Law Society. "We heard from women and men, lawyers from small, medium and large practices, and sole practitioners, as well as lawyers who are no longer in private practice. From Thunder Bay to Windsor, the report received overwhelming support."

In introducing the motion to approve the recommendations, Janet Minor, Chair of the Equity & Aboriginal Issues Committee, said, "The positive response was not just to the recommendations, but also to the fact that Convocation is addressing these important issues and also that Convocation wanted to listen to the profession." Laurie Pawlitza echoed these remarks, saying, "Overwhelmingly the profession agreed that the Law Society ought to take a leadership role on this issue."

For medium to large firms, a think tank called *Justicia* will be established. Ms. Pawlitza noted that, as a result of the interest in the program, it is likely that there will be separate working groups for firms of five to 25 lawyers, 25 to 100 lawyers, and firms of more than 100 lawyers. Firms are being invited to join *Justicia*, and the initial networking meetings will begin in the fall.

For sole practitioners and firms of five lawyers or less, the introduction of paid parental leave for those who have no access to other financial plans, coupled with the development of a locum registry, will offer flexibility that will enable these firms to survive at vulnerable times. Of particular note is the support given to the idea of the locum registry by the CDLPA, which will help develop regionally based registries. Both programs are expected to be implemented in 2009.

All initiatives developed as a result of the recommendations will be pilot programs that will be evaluated as to their effectiveness, *Justicia* and the parental leave program in three years, and the locum registry in five years.

Mentoring program for law students and lawyers with disabilities

A mentoring program for law students and lawyers with disabilities is now up and running. The program is designed to match students and lawyers with disabilities with experienced lawyers and senior law students who provide advice and guidance about law practice, and entering and remaining in the legal profession.

The Law Society is looking for experienced lawyers willing to be a mentor, and lawyers with disabilities seeking mentors.

Lawyers with or without disabilities are welcome to join. To become a mentor, or if you are seeking a mentor, please contact us by telephone at 416-947-3315, or by e-mail at equity@lsuc.on.ca. We look forward to hearing from you.

Lawyers Feed the Hungry for 10 Years

A RECEPTION TO MARK 10 YEARS OF operation of the Lawyers Feed the Hungry program was held on May 22. Martin Teplitsky, founder of the program, thanked the almost 100 volunteers who attended for their dedication in making the program a success.

“The entire program would not be possible without the support and hard work of our volunteers,” said Teplitsky. Volunteers include lawyers, paralegals, judges, law students, legal staff and volunteers from outside the legal community. They cook, serve and clean up after the meals. Guests of honour at the reception were the Honourable Warren Winkler, who was one of the first volunteers, and Harvey Strosberg, past Treasurer of the Law Society and a strong supporter of the program.

Meals are served from the Osgoode Hall cafeteria: dinner on Wednesdays,

and breakfast on Thursdays and Sundays. An average of 1,300 meals are served each week – a big step from the 100 meals per week served when the program started in 1998.

The Law Society makes available the Osgoode Hall cafeteria and kitchen facilities for

the program, and Law Society staff perform the administrative functions needed to keep the program operational. The program is funded by donations to the Law Society Foundation. ■



Treasurer W.A. Derry, Millar, Harvey Strosberg (former Treasurer and supporter of the program), Chief Justice Winkler, Martin Teplitsky and Malcolm Heins at the Lawyers Feed the Hungry reception.

Designate your 2008 United Way donation to the Feed the Hungry Program

Each autumn, individuals, businesses and corporations heed the call of the United Way of Greater Toronto to help address two of the city’s most critical social issues — hunger and homelessness.

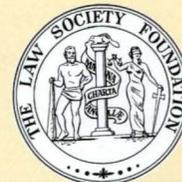
For the past 10 years, providing healthy, hot meals for individuals and families in need has been an important mission of *The Law Society Foundation* and its dedicated team of volunteers.

Each year, lawyers, judges and other friends of the Law Society of Upper Canada contribute financially or commit their personal time to the Law Society Foundation’s Feed the Hungry Program. To learn more about the Law Society Foundation or the Feed the Hungry Program, go to www.lsuc.on.ca.

Please consider designating your 2008 United Way donation to help **The Law Society Foundation** fight hunger in the city. It’s as simple as providing our address and charitable number to your United Way representative.

Direct donations can be made by mailing a cheque made payable to The Law Society Foundation to the address listed below.

The Law Society Foundation
Charitable Number: 11924 1719 RR0001
130 Queen Street West, Toronto, ON,
M5H 2N6
lsf@lsuc.on.ca



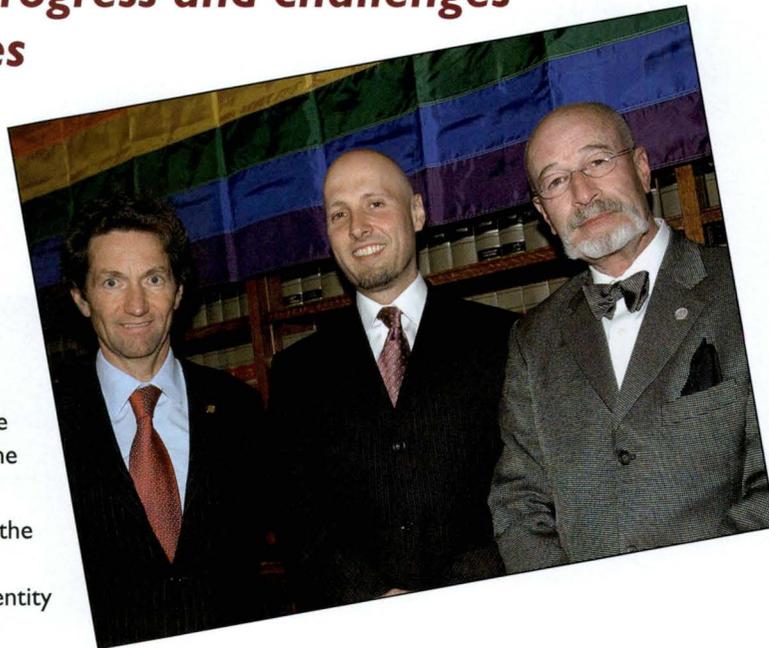
Mayor David Miller joined Law Society Foundation volunteers in 2006 in support of the Feed the Hungry Program.

Pride Week forum looks at progress and challenges ahead for LGBT communities

Participants attending the June 24 Pride Week forum at the Law Society learned that, although Canada's lesbian, gay, bisexual and transgender (LGBT) communities have made significant progress in addressing substantive inequality issues in recent years, it is crucial for them to remain vigilant. Hosted by the Law Society and The Sexual Orientation and Gender Identity Section of the Ontario Bar Association, the forum drew a crowd of approximately 150 people.

Forum panelists looked at how the law has evolved to reflect the changing values in society – and how the law regulates the behaviours and expressions of LGBT identities, both within the public and private spheres.

Shown here, from left to right at the reception that followed the forum are: Gavin MacKenzie, Former Law Society Treasurer; Milé Komlen, Chair of the Sexual Orientation and Gender Identity Section of the Ontario Bar Association and Chair of the Law Society's Equity Advisory Group; and Gregory Goulin, President of the Ontario Bar Association.



Symposium for National Committee on Accreditation Candidates

On May 13, over 100 NCA candidates attended the first symposium giving advice on the requirements for practising as a lawyer in Ontario.

The symposium was initiated in response to concerns identified by NCA students in the Articling Consultation Report commissioned by the Equity and Aboriginal Committee, presented to Convocation in June 2007.

That report examined the challenges faced by students looking for articling positions, particularly those from the Francophone, Aboriginal and equity-seeking communities, as well as mature students and internationally trained students.

The morning featured a presentation by Daphne Simon, Associate Registrar, detailing the Ontario Licensing Process. Advice on finding articling positions and jobs was provided by Angela Sordi, a consultant with ZSA Legal Recruitment.



The afternoon gave participants an opportunity to ask questions of a panel of ex-NCA students, Roslyn Baichoo, Cherie Daniel, Edu Idike, Prakash Narayanan, and Shanthi Sente; and university career advisors Jane Price, Director, Professional Diversity & Legal Opportunities, University of Toronto; Chantal Morton, Director of Career Services at Osgoode Hall; and Ivana Kadic, Graduate Studies Career Advisor, University of Toronto.

National Aboriginal Day event

Panelists at the National Aboriginal Day celebrations held at the Law Society on June 20 looked at the role of the media in Aboriginal image and realities.

Speakers included Mr Justice Sidney Linden, the Conflict of Interest Commissioner and Commissioner for the Ipperwash Inquiry; John Miller of the School of Journalism at Ryerson University; David Walmsley, National Editor, *The Globe & Mail*; Harmony Rice, from the Aboriginal Peoples Television Network and *SPIRIT* magazine; Maurice Switzer, Director of Communications, Union of Ontario Indians; and Dr. Allen Bonner, author.

The Ipperwash inquiry into the shooting death of Dudley George during the protests by Stoney Point band members in 1995 was discussed, with John Miller summarizing the findings of his study of the media coverage of the event. Most Ontarians learned about the event via the media and research shows that most coverage was biased against the Native people. David Walmsley agreed that prior to the incident, there was a general lack of understanding about the Aboriginal land claims and says that his newspaper is working to correct this by providing more rounded information.



Justice Linden discussed how the inquiry helped to heal some of the wounds caused by the incident. He incorporated native symbols into his proceedings, and a ceremonial drumming was held which included the OPP.

Maurice Switzer argued that the main challenge for improving public awareness of Aboriginal issues is overcoming stereotypes. He suggested a sustained public education campaign on historical and contemporary aboriginal issues could help Canadians better understand these issues.

Holocaust Memorial Day forum examines ongoing struggle for disclosure on war criminal documents – past and present

More than 100 people gathered at the Law Society on April 30 to learn what is being done to lift the veil of secrecy on documents regarding Holocaust-era and more recent war crimes. The event was co-hosted by the Law Society and B'Nai Brith Canada to commemorate National Holocaust Memorial Day.



Over the years, access to millions of documents has been blocked and efforts continue to bring them to light, a panel of four lawyers and archival experts told forum participants.

Panel moderator the Honourable Justice Gertrude Spiegel, of the Ontario Superior Court of Justice, told participants that archival evidence is a

key resource for confronting Holocaust denial and racist ideology, as well as a vital means of honouring the millions of its victims. Noting that she is the daughter of Holocaust survivors, Justice Spiegel stressed the importance of continuing to collect, preserve and make documentary evidence available to scholars and the public.

Building diversity in the workplace

Speakers at a panel discussion recognizing South Asian Heritage month held May 12 shared their insights on the importance of diversity in the workplace. Hosted by the Law Society, the South Asian Bar Association of Toronto, and the South Asian Legal Clinic of Ontario, attendees learned not only about the business case for diversity, but also how diversity initiatives can be implemented in their organizations.

Panellists included Ritu Bhasin, Director of Student and Associate Programs at Stikeman Elliott LLP, Roy Lee, from the Department of Justice, Malliha Wilson from the Ministry of the Attorney General and Ian Holloway, Dean of the University of Western Ontario Law School. Mona Kumar, legal counsel at Pricewaterhouse Coopers LLP, spoke about diversity initiatives at her accounting firm.

All agreed that it is important to have a structured approach. Firms should start with an audit of their culture followed by a clear definition of their objectives, both quantitative and qualitative. At Stikeman Elliott, for example, the objectives were to eradicate barriers in recruitment to ensure that the firm attracted the best people; to support students and associates who face equity challenges; and to increase diversity in management and leadership. By delineating objectives, they are able to identify positive action that will achieve these goals.

Panellists included Paul Marsden, Senior Military Archivist with the Government Records Branch, Library and Archives Canada; Terry Beitner, Director and General Counsel with the Crimes Against Humanity and War Crimes Section of the Department of Justice Canada; David Matas, Senior Legal Counsel, B'nai Brith Canada; and international human rights lawyer and historian Alti Rodal, Director of the Ukrainian-Jewish Encounter Initiative.

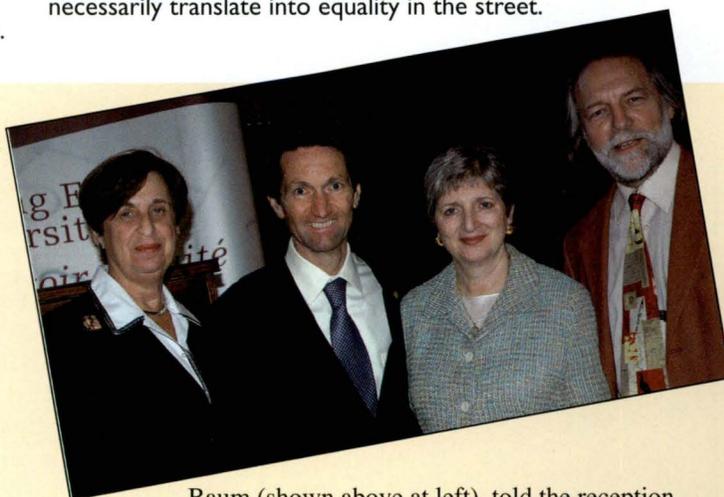
The forum was followed by a reception. Remarks were delivered by Gavin MacKenzie, Law Society Treasurer; Professor Alain Goldschlager, Co-chair of the Ontario Region of Bnai Brith Canada's League for Human Rights; and Claire Baum, who lived with a Dutch Christian family as a "hidden child" from 1942–1945, before being reunited with her parents.



The Canadian government has adopted a quantitative approach to its internal employment practices, and set targets that have to be measured each year.

Also highlighted was the need for diversity in order to service clients and meet client demands. With the increasing globalization of business, clients demand service that brings an understanding of their culture's way of doing business and communication style. And international firms, following the lead of major American corporations, are increasingly asking for evidence of their advisors' commitment to diversity.

Haroon Siddiqui, Editor Emeritus at the *Toronto Star*, spoke at a reception following the forum. He reminded the audience of the need to continue to fight the battle for equality and to fight systemic discrimination – equality in the law does not necessarily translate into equality in the street.



Baum (shown above at left), told the reception that of the 5,000 Jewish Dutch children who went into hiding to escape the concentration camps, only 3,500 survived. "I owe my survival to the courage of others," she said.

New private practice re-entry requirement approved

At April's meeting, Convocation approved a new private practice re-entry requirement that replaces the Private Practice Refresher Program (PPRP). The Law Society now requires lawyers who are returning to private practice as sole practitioners, or in a firm of five or fewer lawyers, after an absence of 48 months over the past five years, to undergo a practice management review within 12 months of establishing their practice.

Lawyers who have already applied and been accepted into the PPRP will

be given the option to continue with the PPRP modules and assessments, or undergo a practice management review.

Some benefits of a practice management review are as follows:

- Lawyers will receive personalized on-site guidance aimed at assisting them to address and correct any practice deficiencies.
- Reviewers will assist lawyers in creating efficiencies in their practices, which will lead to better managed and more effective law practices.

- Lawyers will receive specific advice, tailored to their own practices, about setting and meeting best practice expectations.

Lawyers returning to private practice will receive a package of resources and materials designed to assist them in establishing their practices.

For more information about the new private practice re-entry requirement, visit the Law Society's website at www.lsuc.on.ca, or phone the Resource Centre at 416-947-3315 or 1-800-668-7380, ext. 3315.

THE CALL CAME IN ABOUT 10:00 A.M. MONDAY. The man seemed tentative and quiet, as if he didn't know what to do or who to call. He had read about OLAP in the *Gazette* and *Ontario Reports* and decided to give us a try. He started to cry and asked if someone could call back in

10 minutes while he composed himself. An OLAP case manager called him back and realized that they needed to talk face-to-face and they arranged to meet later that day. The caller, let's call him Bill, was severely unwell. He had interrupted sleep, and he was fatigued to the point of exhaustion. He also had recurring stomachaches and chest pains, and had lost his appetite for food. He had been to his doctor for a battery of tests, but everything was fine.

Emotionally, he had little left in the way of resources. He was irritable and sad, crying often. He locked the door to his office and stared blankly out the window.

The OLAP case manager listened to the pain in Bill's story. She also heard that Bill had had a thriving practice, a loving family and friends, and was involved in charity work – things he used to care about, but just didn't have the energy for now. When asked why he had not asked for help earlier, he replied that lawyers solve problems, they don't have them. Asking for help is a sign of weakness.

Getting help means that other lawyers will take advantage of you if they find out.

The case manager explained that lawyers are not immune to the challenges that face all humans. Other lawyers appreciate our human condition and are there to help. For example, OLAP's 75 volunteers are there to lend a sympathetic ear.

The pair spent almost two hours in earnest conversation. Bill was booked for counselling, both individual and family, and matched with a peer support volunteer. Bill has had other lawyers help him with the hump in his practice. He has a long way to go, but he believes that he can get there.

This story is one of the many stories we hear at OLAP every day. Other Bills also abuse alcohol and drugs. There are many Bills, both men and women, working as sole practitioners or in all sizes of firms, at any stage of their careers, who need help. OLAP is here to help with issues of stress, burnout, addictions and mental wellness issues. The service is 24 hours and confidential.

If you are a Bill or know someone who is, please contact Leota Embleton, Program Manager, Doron Gold, Case Manager and Terri Wilkinson, Case Manager, at 1-877-576-6227. To contact John Starzynski, Volunteer Executive Director, please call 1-877-584-6227.



Ontario Lawyers' Assistance Program (OLAP)

www.olap.ca

LIFE MEMBERS

*Life Membership is granted to members of the Society
who have been entitled to practise law in Ontario for a period of 50 years.*

Thomas Edward Armstrong, Q.C., Toronto
William Ash, Toronto
Howard George Ashbourne, Weston
William George Atwell, Concord
David Bernstein, Q.C., Toronto
Ronald Phillip Biderman, Toronto
Donald Harry Bitter, Q.C., Toronto
Alfred Alan Borovoy, Toronto
James Alexander Bradshaw, Q.C., Toronto
Leonard Austin Braithwaite, Q.C., Toronto
Mitchell Bros, Barrie
John William Brown, Q.C., Toronto
Donald Joseph Catalano, Q.C., Toronto
John Charles Clarke, Q.C., Ottawa
Edward James Conroy, Sudbury
Harold Purdy Crawford, Q.C., Toronto
Lyle Francis Curran, Q.C., Sarnia
Robert Edward Dale, Q.C., Toronto
Thomas Ernest Evans, Q.C., Bradford

Leonard Feigman, Q.C., Toronto
James Cameron Fleming, Q.C., Toronto
Lloyd Stephen David Fogler, Q.C., Toronto
Frederick Gladstone Hamilton, Q.C.,
Toronto
Kjeld Ernest Hansen, Q.C., Chatham
Dennis Charles Hefferon, Toronto
Gerald Heifetz, Toronto
Harvey Melville Kerbel, Q.C., Toronto
George Dennis Lane, Q.C., Toronto
Charles Robert Langdon, Q.C., Toronto
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JUDICIAL APPOINTMENTS

Federal Court of Canada

Effective Date: February 20, 2008

Mr. Justice Russel Zinn

Superior Court of Justice

Effective Date: February 20, 2008

Mr. Justice Bruce G. Thomas
(formerly of the Ontario Court of Justice)

Mr. Justice Gary Trotter
(formerly of the Ontario Court of Justice)

Madam Justice Kim Carpenter-Gunn

Mr. Justice Christopher Corkery

Madam Justice Cory A. Gilmore

Madam Justice Andra Pollak

Effective Date: April 14, 2008

Mr. Justice David R. Aston
*(formerly of the Family Branch of the
Superior Court of Justice)*

Madam Justice Mary Jane Hatton
*(formerly of the Family Branch of the
Superior Court of Justice)*

Madam Justice Kelly Anne Gorman

Effective Date: May 9, 2008

Regional Senior Justice, East Region,
Charles T. Hackland

Effective Date: June 19, 2008

Mr. Justice Gregory Mulligan

Mr. Justice Thomas A. Bielby

Madam Justice Lois B. Roberts

Madam Justice Jane E. Kelly

Ontario Court of Justice

Effective Date: January 30

Mr. Justice Marc Bode

Madam Justice Carole Curtis

Mr. Justice Peter Caldwell West

Madam Justice Jennifer Ruth Hoshizaki

Effective Date: May 14, 2008

Mr. Justice Francesco Valente

Effective Date: July 23, 2008

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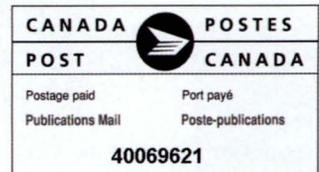
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