



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**January 29, 2015**  
**9:00 a.m.**

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# CONVOCATION MATERIAL

*PUBLIC COPY*

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## CONVOCATION AGENDA January 29, 2015

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**Convocation Room – 8:45 a.m.**

### **Treasurer's Remarks**

#### **Consent Agenda - [Motion \[Tab 1\]](#)**

- **Confirmation of Draft Minutes of Convocation – [November 28, 2014](#)**
- **Motions**
  - [Appointment](#)
  - [2015 Annual General Meeting](#)
  - [In Camera Motion](#)
- **[Conduct of the 2015 Benchers Election](#)**
- **Report of the Director of Professional Development and Competence – [Deemed Call Candidates](#)**

#### **[Tribunal Committee Report \(R. Anand\) \[Tab 2\]](#)**

- Tribunal Model Three Year Review
- For Information*
- Tribunal Office Quarterly Statistics

#### **[Paralegal Standing Committee Report \(C. Corsetti\) \[Tab 3\]](#)**

- Amendments to By-Law 4 Respecting Licensing Exemptions

#### **[Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report \(J. Falconer, J. Leiper\) \[Tab 4\]](#)**

- Human Rights Monitoring Group Requests for Intervention (*P. Schabas*)
- For Information*
- Report of Professor Fiona Kay, *The Diversification of Career Paths in Law* Report
  - Public Education Equality and Rule of Law Series Calendar 2015

#### **[Chief Executive Officer's Report \(R. Lapper\) \[Tab 5\]](#)**

#### **[Government Relations and Public Affairs Committee Report \(W. McDowell\) \(in camera\) \[Tab 6\]](#)**

#### **[Compensation Committee \(C. Bredt\) \(in camera\) \[Tab 7\]](#)**

### **REPORTS FOR INFORMATION ONLY**

#### **[Audit and Finance Committee Report \[Tab 8\]](#)**

- LAWPRO Third Quarter Financial Statements for the Nine Months Ended September 30, 2014
- LibraryCo Inc. Third Quarter Financial Statements for the Nine Months Ended September 30, 2014

#### **[Professional Development and Competence Committee Report \[Tab 9\]](#)**

- Professional Development and Competence Director's Annual Report on Programs and Resources

#### **[Professional Regulation Committee Report \[Tab 10\]](#)**

- Alternative Business Structures Working Group Status Report
- Entity-Based Regulation Review Status Report

#### **[Report from The Action Group on Access to Justice \(TAG\) \[Tab 11\]](#)**

Lunch – Benchers' Dining Room

**Tab 1**

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 29, 2015

MOVED BY:

SECONDED BY:

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

Tab 1.1

DRAFT

MINUTES OF CONVOCATION

Friday, 28<sup>th</sup> November, 2014  
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Backhouse, Boyd, Braithwaite, Bredt, Burd (by telephone), Callaghan, Campion, Corsetti (by telephone), Dickson, Doyle, Earnshaw, Elliott, Epstein, Eustace, Evans, Festeryga (by telephone), Ferrier, Furlong (by telephone), Go, Goldblatt, Gottlieb, Haigh, Hartman, Horvat, Krishna (by telephone), Lawrie, Leiper, Lerner (by telephone), Lippa, MacLean, Manes (by telephone), Marmur, McDowell, McGrath, Mercer, Murchie, Murray, Pawlitz, Porter, Potter (by telephone), Pustina, Rabinovitch, Richardson (by telephone), Richer, Ross, Rothstein, Sandler, Scarfone (by telephone), Schabas, Sheff, Sikand, Silverstein, C. Strosberg, H. Strosberg, Sullivan, Swaye, Symes and Wardle.

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Secretary: James Varro

The Reporter was sworn.

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TREASURER'S REMARKS

The Treasurer reported on the November 10, 2014 Remembrance Day ceremony to mark the centenary of World War I, including the honorary call of students who died in the war and were never called. The Treasurer thanked Patrick Shea of Gowling Lafleur Henderson LLP for his work on this ceremony.

The Treasurer also reported on the dinner recognizing the Front Runners of the 1967 Pan Am Games hosted by the Law Society, the Truth and Reconciliation Committee and Mississauga's at New Credit First Nation on November 18, 2014.

The Treasurer thanked Mary Shena, Amy Costanzo and the catering staff for their assistance in organizing these events.

The Treasurer advised that she was pleased to participate in the Ministry of the Attorney General's Access to Justice Symposium entitled Better Justice Together on November 18, 2014.

The Treasurer also advised that she participated in the County and District Law Presidents' Association Plenary earlier in November.

The Treasurer updated Convocation on other activities in which she engaged in November.

The Treasurer updated Convocation on the move of the Tribunal Office from Osgoode Hall to larger space in offices on University Avenue. The Treasurer thanked Harvey Strosberg for raising this issue last Convocation.

The Treasurer noted the opening of nominations for the 2015 Benchers Election.

The Treasurer reminded benchers of nominations for the Law Society Awards.

The Treasurer announced the retirement of Roy Thomas, Director of Communications, at the end of 2014. The Treasurer thanked Mr. Thomas for his tremendous efforts and contributions to the Law Society and wished him well in his retirement.

The Treasurer acknowledged Dow Marmur's attendance at his last Convocation as an appointed benchers and how much Convocation has benefited from his wisdom for many years.

MOTION – CONSENT AGENDA

It was moved by Ms. Horvat, seconded by Mr. Schabas, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

DRAFT MINUTES OF CONVOCATION – Tab 1.1

The draft minutes of Convocation of October 30, 2014 and November 11, 2014 were confirmed.

MOTION – APPOINTMENTS – Tab 1.2

That the appointments set out in the motion at Tab 1.2 be approved.

Carried

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

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

Carried



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LAW FOUNDATION OF ONTARIO REPORT

The Treasurer welcomed Elizabeth Goldberg, Chief Executive Officer of the Law Foundation of Ontario, to Convocation.

Mr. Sandler presented the Law Foundation of Ontario's Annual Report for information.

The Treasurer thanked Mr. Sandler for his outstanding leadership at the Law Foundation.

Mr. Schabas paid tribute to Mr. Sandler on behalf of the trustees of the Law Foundation.

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Deemed Call to the Bar Process

It was moved by Mr. Goldblatt, seconded by Mr. Wardle, that Convocation expand the deemed call to the bar process to allow candidates to select their preferred call format either by way of a deemed call or attendance at a live call ceremony to begin in May 2015 for candidates registered in the 2014-15 Licensing Process year.

Lost

ROLL-CALL VOTE

Backhouse	Against	MacLean	Against
Boyd	For	Marmur	For
Braithwaite	Against	McDowell	For
Bredt	For	McGrath	For
Callaghan	For	Mercer	Against
Campion	Against	Murchie	Against
Dickson	Against	Potter	Against
Doyle	For	Pustina	For
Earnshaw	For	Rabinovitch	Against
Elliott	For	Richardson	Against
Epstein	Against	Richer	Against
Eustace	Against	Rothstein	Against
Evans	Against	Sandler	For
Ferrier	Against	Scarfone	Against
Festeryga	For	Schabas	For
Go	Against	Sheff	Against
Goldblatt	For	Sikand	Against
Haigh	Abstain	Silverstein	For
Hartman	For	C. Strosberg	Against
Horvat	Against	H. Strosberg	Against
Lawrie	Abstain	Sullivan	For
Leiper	For	Symes	Against
Lerner	Against	Wardle	For
Lippa	Against		

Vote: 19 For; 26 Against; 2 Abstentions

Re: Licensing Process Financial Assistance

Mr. Goldblatt presented the Report respecting the repayable allowance program for information.

*For Information*

- Licensing Process Financial Assistance

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

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Requests for Intervention

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

- a. lawyer Nasrin Sotoudeh – Iran – letters of intervention and public statement presented at Tab 4.1.1;
- b. lawyers Abdulrahman Al Rumaih, Abdulrahman Al Sobaihi and Bander Alnogaithan – Saudi Arabia - letters of intervention and public statement presented at Tab 4.1.2.

Carried

*For Information*

- Equity Advisory Group Appointment of Truth and Reconciliation Commission Representative
- Public Education Equality and Rule of Law Series Calendar 2014 - 2015

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Amendments to the Rules of Professional Conduct

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation approve two amendments to the Rules of Professional Conduct as set out at Tab 5.1.1 of the Report.

Carried

Mr. Mercer updated Convocation on the Committee's work on entity and compliance-based regulation.

*For Information*

- Professional Regulation Division Quarterly Report, July to September 2014

AUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: J. S. Denison Fund

Mr. Bredt presented the report on the end of the J. S. Denison Fund for information.

Re: Law Society of Upper Canada Financial Statements for the Nine Months ended September 30, 2014

Mr. Bredt presented the third quarter Law Society financial statements for information.

Re: Introduction of Electronic Fee Billing

Mr. Bredt presented the report for information.

*For Information*

- Law Society Financial Statements for the nine months ending September 30, 2014
- Electronic Fee Billing
- J. S. Denison Fund
- Investment Compliance Reporting
- Other Committee Work

FEDERATION OF LAW SOCIETIES OF CANADA REPORT

Ms. Pawlitza presented the report for information.

LIBRARYCO INC. UPDATE

Ms. Elliott updated Convocation on the developments at LibraryCo Inc. following the release of the Report of the Legal Information Support Services (LISS) Working Group.

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*REPORTS FOR INFORMATION ONLY*

HERITAGE COMMITTEE REPORT

- Historic Discipline Data Project

LIBRARYCO INC. UPDATE

REPORT NOT REACHED

Chief Executive Officer's Report (R. Lapper) (in camera)

CONVOCATION ROSE AT 12:44 P.M.

Tab 1.2

## CONSENT AGENDA MOTIONS



Tab 1.2.1

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT CONVOCATION ON JANUARY 29, 2015

That Barbara Murchie be appointed to the Access to Justice Committee.

## THE LAW SOCIETY OF UPPER CANADA

### MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 29, 2015

THAT Convocation approve Wednesday May 13, 2015 at 5:15 p.m. at Osgoode Hall, 130 Queen Street West, Toronto as the time and place of the 2015 Annual General Meeting, in accordance with Section 5 of By-Law 2 [Corporate Provisions].

#### Explanatory Note:

Section 5 of By-Law 2 requires that Convocation determine the time and place of the Annual General Meeting each year:

#### **Meeting of members to be held annually**

5. A meeting of members shall be held annually at a time and place determined by Convocation.

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**Tab 1.3**

## **Secretary's Report to Convocation January 29, 2015**

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### **Conduct of the 2015 Benchers Election**

**Purpose of Report:**      **Decision**

**Prepared by the Policy Secretariat  
Jim Varro (416-947-3434)**

**FOR DECISION**

**CONDUCT OF THE 2015 BENCHER ELECTION**

**Motion**

1. That Convocation appoint W. A. Derry Millar to preside over and exercise the powers and perform the duties of the Treasurer in the 2015 bencher election, pursuant to By-Law 3.

**Issue for Consideration**

2. Under By-Law 3 (Benchers, Convocation and Committees), an election of benchers licensed to practise law is presided over by the Treasurer. However, when the Treasurer is a candidate in an election of benchers, s. 4(4) of the By-Law requires that Convocation appoint a licensee to preside over the election and to exercise the powers and perform the duties of the Treasurer in the election. Relevant sections of the By-Law appear on the following page.
3. The nomination of the current Treasurer, Janet E. Minor, as a candidate in the 2015 bencher election has been accepted by the Elections Officer under By-Law 3.
4. Convocation is requested to appoint W. A. Derry Millar to preside over the 2015 bencher election and to exercise the powers and perform the duties of the Treasurer in the election.

### **EXCERPT FROM BY-LAW 3**

#### **Treasurer to preside over election**

4. (1) Subject to subsection (4), an election of benchers shall be presided over by the Treasurer.

#### **Appointment of assistant**

(2) The Treasurer may appoint a licensee who is not a candidate in an election of benchers to assist the Treasurer in exercising the powers and performing the duties of the Treasurer under this Part.

#### **Appointment of licensee to act in absence of Treasurer**

(3) The Treasurer shall appoint a licensee who is not a candidate in an election of benchers to exercise the powers and perform the duties of the Treasurer under this Part whenever the Treasurer is unable to act.

#### **Where Treasurer is candidate in election**

(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer's nomination as a candidate is accepted, appoint a licensee to preside over the election and to exercise the powers and perform the duties of the Treasurer under this Part.

**Tab 1.4**

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

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

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, January 29<sup>th</sup>, 2015

ALL OF WHICH is respectfully submitted

DATED this 29<sup>th</sup> day of January, 2015

**CANDIDATES FOR CALL TO THE BAR**  
**January 29<sup>th</sup>, 2015**

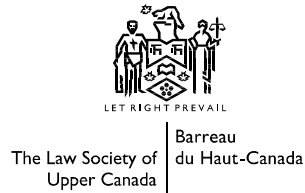
**Transfer from another province (Mobility)**

Zohar Barzilai  
Richard John Campbell  
Sean Christopher Farmer  
Sienna Sze Yin Lam  
Victoria Alberta Christine Banffy Gosling Mainprize  
Murray Norman Marshall  
Steven Rhys McCardy  
Brittany Rae Sargent  
Janine Rachel Seymour  
Michael Yu-Hung Wong

**Licensing Process**

Sourena Sarbazevatan Rashid





**TAB 2**

## **Report to Convocation January 29, 2015**

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### **Tribunal Committee**

#### **Committee Members**

Raj Anand (Chair)  
Janet Leiper (Vice-Chair)  
Larry Banack  
Jack Braithwaite  
Christopher Bredt  
Robert Burd  
Adriana Doyle  
Lee Ferrier  
Alan Gold  
Barbara Murchie  
Linda Rothstein  
Mark Sandler  
Baljit Sikand  
Peter Wardle

**Purpose of Report: Decision  
Information**

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

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### **Decision**

Proposal for Three-Year Review of Tribunal Model [TAB 2.1](#)

### **Information**

Tribunal 2014 Third Quarter Statistics [TAB 2.2](#)

## **COMMITTEE PROCESS**

1. The Committee met on January 15, 2015. Committee members Janet Leiper (Vice-Chair), Larry Banack, Jack Braithwaite, Christopher Bredt, Robert Burd, Adriana Doyle, Lee Ferrier, Barbara Murchie, Linda Rothstein, Mark Sandler and Baljit Sikand attended. Tribunal Chair David Wright and staff members David Draper, Grace Knakowski, Lisa Mallia, Sophia Sperdakos and Jim Varro also attended.

**FOR DECISION**

**PROPOSAL FOR THREE-YEAR REVIEW OF TRIBUNAL MODEL**

**Motion**

2. That Convocation approve the proposal set out in this report respecting the three-year review of the Tribunal model required in the 2012 Tribunal Report to Convocation.

**Issue for Consideration**

3. The June 2012 Tribunal Committee Report (the “2012 Report”) to Convocation, recommending a new model for the Tribunal, included a provision for it to be reviewed in the third year of the Chair’s first term. The Report required the Tribunal Committee, in conjunction with the Chair, the Vice-Chairs, the CEO and the Director of Policy to develop the framework for the model’s review, to be approved by Convocation.
4. The review proposal is set out in this report.

**Rationale**

5. By considering and approving the proposal at this time Convocation will provide the Committee with sufficient time to complete the review within the required period.

**Key issues and Considerations**

6. This proposal reflects the stated purpose of the review set out in the 2012 Report as follows:
  - ...to consider,
    - i. whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14; (See [TAB 2.1.1: Paragraphs 13 and 14](#));
    - ii. its impact on the Tribunals processes; and
    - iii. its cost effectiveness.
7. This proposal addresses,
  - a. the timing of the review;
  - b. the nature and focus of the review;
  - c. the conduct of the review; and
  - d. steps within the review process.

## Discussion

8. Most reports that propose new Law Society initiatives include review provisions. By including a review component in the 2012 Report, the Tribunal Committee provided for monitoring of the model's implementation in accordance with stated goals. This was important as the model, although building on Tribunal improvements, also represented a new direction.

- a. Timing of the Review

9. In accordance with the 2012 Report to Convocation, the three-year review should take place, "in the third year of the Chair's first term."<sup>1</sup> This begins September 3, 2015 and ends September 2, 2016.
10. The Committee recommends that to be most useful the review should also be situated within the context of the Tribunal Chair's four-year term, which ends September 2, 2017, and the requirements for consideration of his reappointment.
11. The review of the model should not be confused with the renewal process for the Tribunal Chair. The three-year review should focus on the model itself, in keeping with the 2012 Report. To ensure that the two processes remain separate, the three-year review should be completed by the time that the Chair's renewal process begins. The 2012 Report states that the process to determine the Chair's renewal is to begin at least one year before the end of the Chair's term (no later than September 2, 2016) and must be completed no less than six months (March 2017) before the conclusion of that term.
12. In addition, to allow time for implementation of any enhancements and changes to the model that may arise from the review so that the Chair's renewal process reflects this, it would be preferable for the three-year review to be completed by early spring 2016 at the latest.

- b. Nature and Focus of the Review

13. Since the review of the model was directed to take place while implementation was likely to be ongoing, the review could best be characterized as a progress report focusing on whether and how the model is addressing its goals and providing guidance on next steps and improvements to the model, if any.
14. The language in the 2012 Report supports this approach by requiring the review to consider whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14 of the Report. The review is not intended to address substantive hearing issues.

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<sup>1</sup> June 2012 Report, p.40.

15. In essence, the goals set out in paragraph 13 of the 2012 Report, can be summarized as follows:
  - a. The model will reflect some of the main philosophical and practical enhancements undertaken prior to the 2012 report. The new model will build on these and advance Tribunal reform. Transparency, fairness, cost effectiveness, separation from the discipline stream, continuation of the role of benchers in the adjudication process as part of an integrated regulatory model and the bencher policy making role in the adjudicative process are all specific components of the pre-2012 approach that are to be part of and enhanced components of the new model.
  - b. The model will deliver high quality administrative law decisions measured by how they withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
  - c. The model will foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
  - d. The model will develop a system that fosters and facilitates the effective use of technology in the hearing process.
- c. Conduct of the Review
16. In developing the original recommendations for the Tribunal model in the 2012 Report the Tribunal Committee established a working group to undertake the initial fact gathering and analysis. The work of the group assisted the full Committee discussions and focused the development of the recommendations Convocation approved in 2012. This proved an effective use of the Committee's time and development of the recommended approach.
17. In the years since the approval of the 2012 Report the Committee has continued to provide advice and input to the Tribunal Chair on implementation issues, to monitor progress and to provide Convocation with relevant policy considerations on matters affecting the Tribunal.
18. The Committee proposes establishing a working group to undertake the fact gathering component of the review process, with particular focus on the goals and criteria in the 2012 Report. The Committee will provide a report to Convocation within the timeline approved.
19. To support the review process, the Tribunal Chair will prepare a background report for the review process providing factual information and data addressing the goals and criteria set out in the 2012 Report and providing such other relevant information as he considers useful to inform the review process. This will enable the working group and Committee to flesh out the framework and process for the review and the ultimate report to Convocation.

20. The Tribunal Office, which provides quarterly reports respecting Tribunal data, will provide information to the working group and the Committee to further inform the review.
  21. The working group and the Committee will develop an approach for obtaining focused input and comment in keeping with the purpose, nature and scope of the review. Without limiting the sources for input, these may include,
    - a. the Tribunal Chair's Practice Roundtable;<sup>2</sup>
    - b. Tribunal members;
    - c. representatives who appear regularly before the Tribunal on behalf of lawyers and paralegals; and
    - d. relevant Law Society Divisions and Committees, including Professional Regulation, Equity and Access to Justice.
  22. Policy staff will support the process. Tribunal staff will assist with data collection and other information requested. The Tribunal Chair and the Registrar will act as resources to the Working Group and the Committee as needed.
- d. Steps within the Review Process
23. If Convocation approves the proposal in this report the following steps and approximate timeline will frame the approach:
    - a. The Committee will establish the review working group by April 2015.
    - b. The Committee, the Tribunal Chair and staff will develop questions that will underlie the Tribunal Chair's report and the topic headings for the review report.
    - c. The Committee and working group will undertake the review work and the input process between May 2015 and January 2016.
    - d. The Committee and working group will develop a draft report for Convocation's ultimate consideration.
    - e. The Committee will provide its report to Convocation in February or April 2016.

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<sup>2</sup> The mandate of the Law Society Tribunal Chair's Practice Roundtable is to function as a forum for the Tribunal to consult with and obtain feedback from those who practice before the Tribunal regarding its policies, processes, practices, Rules of Practice and Procedure, and practice directions. For further information see the Tribunal webpage at <http://lawsocietytribunal.ca/> and click on Chair's Practice Roundtable.

**Paragraphs 13 and 14 of 2012 Report**

13. The Committee has determined the goals of an enhanced Law Society adjudicative model to be as follows:
  - a. To reflect the Law Society's commitment to regulatory processes that are transparent, fair, and cost effective.
  - b. To reflect the separation of the Tribunal from the disciplinary stream of the Law Society and an awareness of the adjudicative and policy-making functions of the Law Society.
  - c. To support and complement the current Tribunals operational structure.
  - d. To reflect the Law Society's integrated regulatory model.
  - e. To recognize, continue and support the benchers' role as adjudicators as part of the profession's responsibility to regulate itself in the public interest.
  - f. To retain and enhance the positive features of the current adjudicative approach.
  - g. To deliver high quality administrative law decisions that withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
  - h. To foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
  - i. To develop a system that fosters and facilitates the effective use of technology in the hearing process.
  - j. To make more effective and efficient use of Law Society resources through an enhanced adjudicative structure.
  
14. The Committee has concluded that the following criteria are essential to an enhanced Tribunal adjudicative model:

**Process**

- a. The process is independent, transparent and accountable. Accountability in the adjudicative structure encompasses among other factors,
  - i. the avoidance of bias, whether perceived or real;
  - ii. the opportunity for parties to participate in the hearing and be heard;
  - iii. adherence to the principle that those who hear the matter decide it;
  - iv. access to an appellate process; and
  - v. processes to address quality of adjudication.
  
- b. The organization and administration are effective. This includes, among other components,
  - i. leadership;
  - ii. a transparent and consistent structure for recruitment or appointment and evaluation of adjudicators; and
  - iii. an efficient and effective Tribunals Office with enhanced duties related to non-adjudicative matters.



### **Adjudicators**

- c. Adjudicators,
  - i. are open-minded and vigilant to conflicts and bias, whether perceived or real;
  - ii. are committed to developing and maintaining knowledge, skill and expertise; and
  - iii. display the appropriate skills, expertise and temperament required for sound adjudication.
- d. There is a requirement for ongoing education and professional development for adjudicators.
- e. Adjudicators adhere to the Adjudicator Code of Conduct.
- f. Within the pool of available adjudicators there is a range of expertise, including features such as content expertise, representation of different practice structures, and litigators and solicitors.
- g. Adjudicators make a time commitment to participate in the range of activities of an adjudicator within an effective administrative tribunal.
- h. Adjudicators are committed to timely adjudication, which includes being available to preside at hearings and write decisions in a timely manner and adhering strictly to any guidelines and benchmarks for writing reasons.
- i. The pool of adjudicators includes,
  - i. bencher lawyers and paralegals;
  - ii. non-benchers lawyers and paralegals;
  - iii. lay representatives;
  - iv. lay, lawyer and paralegal adjudicators qualified to hear cases in the French language; and
  - v. adjudicators reflecting the diversity of the population and the profession.

### **Quality of Decision Making**

- j. Adjudicators are proficient in the Rules of Practice and Procedure and relevant legislation.
- k. There is consistency and coherence in both procedure and substantive decision-making, while ensuring that discretion is not fettered and natural justice is observed.
- l. Adjudicators are trained in conducting a hearing and in effective decision writing.
- m. There is an evaluative process to ensure quality of adjudication and decision writing.

**TAB 2.2**

**INFORMATION**

**TRIBUNAL 2014 THIRD QUARTER STATISTICS**

24. The Tribunal's quarterly reports for the third quarter of 2014 is set out at [TAB 2.2:1 2014 Q3 Final](#) for information.
25. Ongoing collection and reporting of Tribunal operational statistics enable the Tribunal to monitor issues, needs and implementation of the new model and provide the Committee and Convocation with relevant Tribunal information.

TAB 2.2.1

# Law Society Tribunal Statistics

# 2014

July 1 to September 30

**Third Quarter  
Report**

**Law Society Tribunal Statistics  
Third Quarter Report (July 1 – September 30, 2014)**

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**Law Society Tribunal Statistics**  
**Third Quarter Report (July 1 – September 30, 2014)**

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**FILES OPENED**

The Tribunal opens a file when it is issued upon the filing of an originating process that has been served on the parties. An originating process includes a notice of application, referral for hearing, motion for interlocutory suspension or practice restriction, and appeal.

Files related to the same lawyer or paralegal that are heard concurrently are counted as separate files.

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Files</b>	<b>38 (48)</b>	<b>33 (41)</b>	<b>35 (44)<sup>1</sup></b>		<b>106 (133)</b>
Lawyer	28	27	30		85
Paralegal	10	6	5		21
<b>Hearing Files</b>	<b>36 (41)</b>	<b>25 (38)</b>	<b>28 (39)</b>		<b>89 (118)</b>
Lawyer	26	22	25		73
Paralegal	10	3	3		16
<b>Appeal Files</b>	<b>2 (7)</b>	<b>8 (3)</b>	<b>7 (5)</b>		<b>17 (15)</b>
Lawyer	2	5	5		12
Paralegal	0	3	2		5

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<sup>1</sup> Numbers in parentheses are 2013 figures.

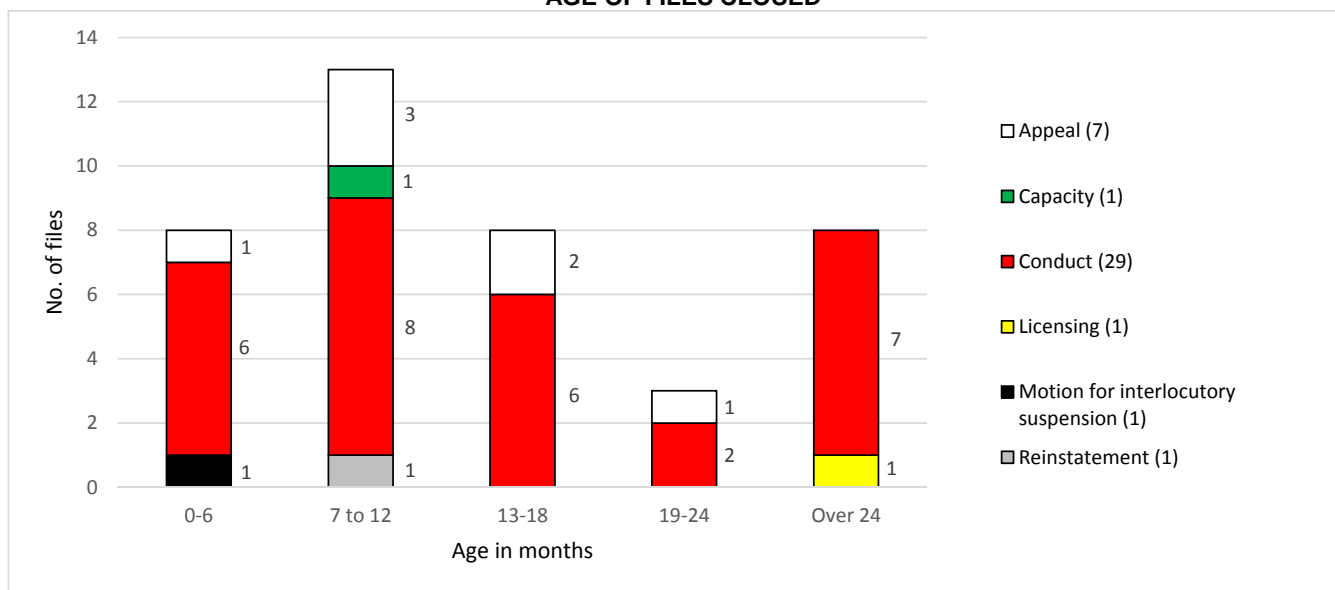
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**FILES CLOSED**

The Tribunal closes a file after the final decision and order, and reasons if any, have been delivered or published. A file that is closed in a quarter may have been opened in that same quarter or anytime prior.

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Files</b>	<b>44 (31)</b>	<b>52 (38)</b>	<b>40 (41)</b>		<b>136 (110)</b>
Lawyer	32	41	32		105
Paralegal	12	11	8		31
<b>Hearing Files</b>	<b>35 (26)</b>	<b>47 (34)</b>	<b>33 (34)</b>		<b>115 (94)</b>
Lawyer	24	36	26		86
Paralegal	11	11	7		29
<b>Appeal Files</b>	<b>9 (5)</b>	<b>5 (4)</b>	<b>7 (7)</b>		<b>21 (16)</b>
Lawyer	8	5	6		19
Paralegal	1	0	1		2

**AGE OF FILES CLOSED**



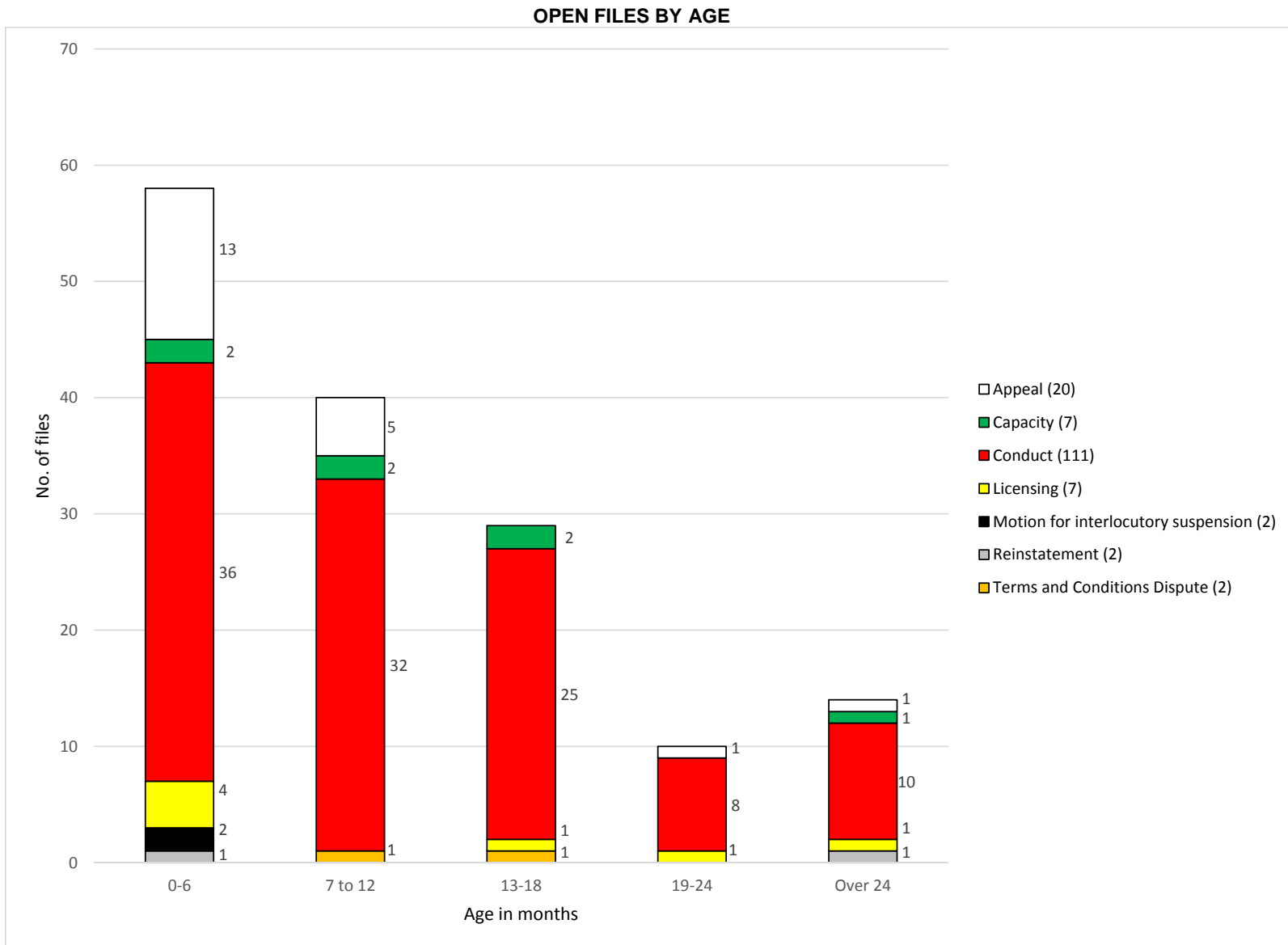
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## OPEN FILES AT QUARTER END

	Q1	Q2	Q3	Q4
<b>Total Files</b>	<b>179 (173)</b>	<b>155 (179)</b>	<b>151 (182)</b>	
Lawyer	150	132	131	
Paralegal	29	23	20	
<b>Hearing Files</b>	<b>162 (146)</b>	<b>135 (153)</b>	<b>131 (157)</b>	
Lawyer	134	116	116	
Paralegal	28	19	15	
<b>Appeal Files</b>	<b>17 (27)</b>	<b>20 (26)</b>	<b>20 (25)</b>	
Lawyer	16	16	15	
Paralegal	1	4	5	

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**OPEN FILES BY AGE – OVER 24 MONTHS**

1. File A, a reinstatement application, was filed in April 2000, but the licensee did not pursue the application until February 2008. The applicant has not yet filed materials. A further proceeding management conference (“PMC”) is scheduled for October 2014. Age of file: 174 months.
2. File B, a licensing application, was filed in June 2009. Several motions were heard. The hearing on the merits commenced in July 2011 and concluded in July 2014. The panel reserved its decision. Age of file: 64 months.
3. File C, a conduct application, was filed in September 2009. At the request of the parties, the hearing on the merits commenced in April 2011. The notice of application was dismissed in April 2013. The licensee filed a motion for costs in October 2013. The motion commenced in January 2014 and continued in September 2014. Written submissions on costs are due in January 2015. Age of file: 61 months.
4. File D, a conduct application, was filed in May 2010. The hearing commenced in March 2011. A motion to quash the proceedings was filed in January 2012 and heard in March and April 2012. The panel delivered its decision on the motion in November 2012 recusing themselves from the hearing and received submissions on costs. The panel’s decision on costs was delivered in March 2013. In April 2013, the matter returned to the PMC and the licensee filed a motion for a stay of the proceedings pending the outcome of a court matter. The motion was dismissed in December 2013 and the hearing commenced in February 2014. Continuation dates are scheduled into October 2014. Age of file: 53 months.
5. File E, a conduct application, was filed in October 2010. Several motions were heard. The hearing on the merits commenced in July 2012. The panel made a finding in September 2012 and penalty submissions were scheduled to be heard in January 2013 but a motion to dismiss the notice of application was filed. The motion was heard in April 2013 and the panel’s decision denying the motion was released in June 2013. The hearing resumed and concluded in July 2014. The panel’s decision on penalty and costs was released in August 2014. Issuance of a reprimand by the hearing panel is pending as the licensee has indicated an intention to appeal. Age of file: 48 months.
6. File F, a conduct application, was filed in September 2011. Both parties filed motions, which were heard in 2012. The hearing on the merits commenced in March 2013 and continued through to September 2013. The panel’s decision on finding was released in September 2014. A penalty hearing is to be scheduled. Age of file: 37 months.
7. File G, a conduct application, was filed in November 2011. The licensee is subject to an interlocutory suspension order. The hearing commenced in September 2012 and continued until July 2013. The panel’s decision on finding was released in August 2014. A penalty hearing is to be scheduled. Age of file: 34 months.
8. File H, a conduct application, was filed in January 2012. The licensee brought a motion to dismiss the application in February 2012. The motion was heard in July 2013 and dismissed in August 2013. The licensee commenced an application for judicial review after receiving the reasons for decision in November 2013. The Divisional Court quashed the application for judicial review in March 2014. The hearing commenced in April 2014 and concluded in June 2014. The panel reserved its decision. Age of file: 33 months.
9. File I, a conduct application, was filed in February 2012. The file was before the PMC throughout 2012 and into 2013. The hearing commenced in December 2013 and continued in April and July 2014. A continuation date is set for October 2014. Age of file: 31 months.
10. File J, a capacity application, was filed in May 2012. The Law Society filed a motion that was heard and granted in December 2012. Hearing dates are to be set. Age of file: 29 months.

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11. File K, a conduct application, was filed in July 2012. The hearing commenced in September 2012 and continued through June 2013 when the panel reserved its decision. The panel's decision on penalty was released in July 2014. A reprimand is scheduled for October 2014. Age of file: 27 months.
12. File L, a conduct application, was filed in July 2012. The parties appeared numerous times before the PMC and attended several pre-hearing conferences. The hearing was scheduled to commence in December 2013 but was adjourned as a result of exceptional circumstances. The hearing commenced and concluded in July 2014. The panel reserved its decision. Age of file: 27 months.
13. File M, an appeal, was commenced in September 2012. Several motions were heard throughout 2012, 2013 and 2014. The appeal was heard in June 2014 and the panel reserved. The panel's decision was released in September 2014 and the panel is currently awaiting cost submissions. Age of file: 25 months.
14. File N, a conduct application, was filed in September 2012. The licensee filed a motion to dismiss the application in November 2012. The motion was withdrawn in March 2013. In August 2013 the Law Society filed a motion to adjourn the matter *sine die*, which was granted. The panel's decision on finding was released in September 2014. A penalty hearing is to be scheduled. Age of file: 25 months.

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**SUMMARY<sup>2</sup> FILES OPENED AND CLOSED<sup>3</sup>**

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Opened</b>	8 (9)	8 (5)	8 (14)		24 (28)
Lawyer	3	7	7		17
Paralegal	5	1	1		7
<b>Total Closed</b>	12 (7)	13 <sup>4</sup> (11)	5 (7)		30 (25)
Lawyer	8	8	3		19
Paralegal	4	5	2		11

**OPEN SUMMARY FILES AT QUARTER END**

	Q1	Q2	Q3	Q4
<b>Total Files</b>	21 (23)	16 <sup>5</sup> (17)	17 (24)	
Lawyer	14	14	16	
Paralegal	7	2	1	

<sup>2</sup> A summary file is a proceeding that is first returnable to a hearing panel and bypasses the PMC in accordance with Rules of Practice and Procedure R.11.01 (2). These files are heard by a single adjudicator.

<sup>3</sup> This is a subset of the information provided in the charts: "Files Opened" on page 3 and "Files Closed" on page 4.

<sup>4</sup> NOTE: the Q2 Statistics Report indicated 4 summary paralegal matters were closed when the correct number was 5.

<sup>5</sup> NOTE: the Q2 Statistics Report showed the total number of summary files as 17 when the correct number was 16.

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**NUMBER OF LAWYERS AND PARALEGALS BEFORE THE TRIBUNAL**

The yearly total of the “No. of Lawyers / Paralegals” will not equal the sum of the “No. of Lawyers / Paralegals” in Q1 to Q3 because the yearly total counts lawyers and paralegals that appeared in more than one quarter only once.

	Q1	Q2	Q3	Q4	Yearly Total
	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals
<b>PMC</b>	<b>68 (52)</b>	<b>43 (78)</b>	<b>48 (67)</b>		<b>106 (118)</b>
Lawyers	57	35	44		92
Paralegals	11	8	4		14
<b>Hearing Division</b>	<b>65 (50)</b>	<b>56 (58)</b>	<b>49 (43)</b>		<b>121 (109)</b>
Lawyers	51	43	40		95
Paralegals	14	13	9		26
<b>AMC</b>	<b>5 (11)</b>	<b>3 (7)</b>	<b>4 (7)</b>		<b>8 (17)</b>
Lawyers	4	3	4		7
Paralegals	1	0	0		1
<b>Appeal Division</b>	<b>13 (7)</b>	<b>8 (10)</b>	<b>7 (8)</b>		<b>24 (21)</b>
Lawyers	13	5	5		19
Paralegals	0	3	2		5

**Law Society Tribunal Statistics**  
**Third Quarter Report (July 1 – September 30, 2014)**

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**NUMBER OF FILES AND FREQUENCY BEFORE THE TRIBUNAL**

Files heard on more than one occasion by the Tribunal within a quarter are counted each time the file proceeds before the Tribunal. The yearly total of the "No. of Files" will not equal the sum of the "No. of Files" in Q1 to Q3 because the yearly total counts files that appeared in more than one quarter only once.

	Q1		Q2		Q3		Q4		Yearly Total	
	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered
<b>PMC</b>	<b>73 (55)</b>	<b>119 (91)</b>	<b>46 (83)</b>	<b>77 (162)</b>	<b>50 (72)</b>	<b>74 (114)</b>			<b>118 (129)</b>	<b>270 (367)</b>
Lawyer	61	93	37	55	46	68			103	216
Paralegal	12	26	9	22	4	6			15	54
<b>Hearing Division</b>	<b>76 (56)</b>	<b>111 (72)</b>	<b>67 (65)</b>	<b>88 (93)</b>	<b>57 (51)</b>	<b>71 (69)</b>			<b>142 (124)</b>	<b>270 (234)</b>
Lawyer	61	89	54	66	47	58			112	213
Paralegal	15	22	13	22	10	13			30	57
<b>AMC</b>	<b>5 (11)</b>	<b>11 (13)</b>	<b>3 (7)</b>	<b>5 (9)</b>	<b>4 (7)</b>	<b>4 (11)</b>			<b>8 (17)</b>	<b>20 (33)</b>
Lawyer	4	9	3	5	4	4			7	18
Paralegal	1	2	0	0	0	0			1	2
<b>Appeal Division</b>	<b>13 (7)</b>	<b>13 (9)</b>	<b>8 (11)</b>	<b>9 (12)</b>	<b>7 (8)</b>	<b>7 (10)</b>			<b>24 (23)</b>	<b>29 (31)</b>
Lawyer	13	13	5	6	5	5			19	24
Paralegal	0	0	3	3	2	2			5	5

**Law Society Tribunal Statistics**  
**Third Quarter Report (July 1 – September 30, 2014)**

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**TOTAL HEARINGS SCHEDULED AND VACATED**

The number of hearings scheduled in each quarter is listed below. Files scheduled on more than one occasion within a quarter are counted each time the file is scheduled. A hearing is counted as scheduled when the date the hearing is to proceed falls within the quarter. A hearing is counted as vacated when it does not proceed on the scheduled date. Reasons for vacated hearings are noted on pages 13 - 14. The number of hearing calendar days scheduled is noted on page 15.

	Q1	Q2	Q3	Q4	Cumulative
<b>Hearing Division hearings scheduled<sup>6</sup></b>	121 (82)	96 (107)	81 (88)		298 (277)
Lawyer	99	69	69		237
Paralegal	22	27	12		61
<b>All Hearing Division hearing time vacated</b>	29 (14) 24% (17%)	15 (23) 16% (22%)	11 (24) 14% (27%)		55 (61) 19% (22%)
Lawyer	28	10	11		49
Paralegal	1	5	0		6
<b>Some Hearing Division hearing time vacated</b>	9 (8) 7% (10%)	17 (10) 18% (9%)	7 (10) 9% (11%)		33 (28) 11% (10%)
Lawyer	8	15	5		28
Paralegal	1	2	2		5
<b>Appeal Division hearings scheduled<sup>7</sup></b>	15 (14)	9 (16)	7 (13)		31 (43)
Lawyer	14	6	5		25
Paralegal	1	3	2		6
<b>All Appeal Division hearing time vacated</b>	1 (1) 7% (7%)	0 (2) 0% (13%)	0 (2) 0% (15%)		1 (5) 3% (12%)
Lawyer	1	0	0		1
Paralegal	0	0	0		0

<sup>6</sup> This includes proceeding management conference motion hearings.

<sup>7</sup> This includes appeal management conference motion hearings.

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**REASON FOR VACATED HEARINGS<sup>8</sup>**

All hearing time vacated	Q1		Q2		Q3 <sup>9</sup>		Q4	
	L	P	L	P	L <sup>10</sup>	P	L	P
Party / counsel / representative unavailable / ill	8		5		5			
Counsel / representative newly retained / to be retained	5		2	1	2			
Party to obtain / provide additional evidence	4							
Witness unavailable	4			1				
Seized panel member unavailable / ill	2		3		1			
Hearing completed ahead of time estimated			2					
Agreed statement of facts ("ASF") expected / signed	1				1			
Counsel / representative removed from record		1						
Licensee is subject of other conduct / court matters	1							
Request to have applications heard together	1							
Parties requested more time to prepare			1		1			
Licensing application abandoned			1					
Religious observance					1			

<sup>8</sup> A hearing may have been vacated for more than one reason.

<sup>9</sup> This column represents the number of times the reason resulted in a vacated hearing.

<sup>10</sup> L = lawyer, P = paralegal.

**Law Society Tribunal Statistics**  
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Some hearing time vacated	Q1		Q2		Q3		Q4	
	L	P	L	P	L	P	L	P
ASF expected / signed	2		4		1			
Party / counsel / representative unavailable / ill	2		2	1	1	1		
Hearing completed ahead of time estimated	1		5	1	1	1		
Counsel unprepared			2					
Party to bring motion	1							
Party to obtain / provide additional evidence	1							
Witness unavailable		1						
Seized panel member unavailable / ill			1		1			
License revoked in another proceeding			1					
Duty counsel unavailable					1			



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**CALENDAR DAYS SCHEDULED AND VACATED**

The number of hearing calendar days scheduled is listed below. Multiple hearings are often scheduled on each calendar day. A vacated calendar day is a day on which no scheduled hearings or appearances before the PMC or AMC proceeded. The day an adjournment request is heard is not counted as a vacated calendar day. For example, if a request to adjourn a hearing was granted on the first day, only the remaining days are counted as vacated. Or, if one hearing was vacated, but other hearings proceeded, that day is not counted as vacated. Some hearings and appeals were heard on the same calendar day.

Reasons for vacated calendar days are noted on page 16.

	Q1	Q2	Q3	Q4	Cumulative
<b>Number of available calendar days</b>	62 (61)	63 (64)	<b>63</b> (63)		<b>188</b> (188)
<b>Hearing Division calendar days scheduled</b>	60 (55)	62 (59)	<b>59</b> (55)		<b>181</b> (169)
<b>Hearing Division calendar days vacated</b>	4 (3) 7% (5%)	4 (7) 7% (12%)	<b>3</b> (6) <b>5%</b> (11%)		<b>11</b> (16) <b>6%</b> (10%)
<b>Appeal Division calendar days scheduled</b>	18 (15)	13 (11)	<b>13</b> (11)		<b>44</b> (37)
<b>Appeal Division calendar days vacated</b>	1 (1) 6% (7%)	0 (1) 0% (9%)	0 (1) 0% (9%)		<b>1</b> (3) <b>2%</b> (8%)

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**REASON FOR AND RESULTING VACATED CALENDAR DAYS**

<b>Reason</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3<sup>11</sup></b>	<b>Q4</b>
Witness unavailable	3-3			
AMC not required	1-1			
ASF expected / signed	1-1			
Hearing completed ahead of time estimated	1-1	1-1	2-2	
Licensee counsel newly retained / to retain counsel	1-1			
Motion abandoned	1-1			
Seized panel member unavailable / ill	1-1		1-1	
Counsel unprepared		2-3		

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<sup>11</sup> The first figure in this column represents the number of times a panel accepted this reason. The second figure represents the resulting vacated calendar days. The number of calendar days vacated shown on this page may be greater than the calendar days vacated as reported on page 15 because more than one matter may have been scheduled to be heard on the same day and all were vacated; so one calendar day may have been vacated for more than one reason and for more than one matter.

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**PARTIES' ADJOURNMENT REQUESTS**

The following table lists the number of adjournment requests to the Law Society Tribunal in this quarter. Adjournment requests reported below may relate to matters scheduled to be heard during this quarter or in a subsequent quarter.

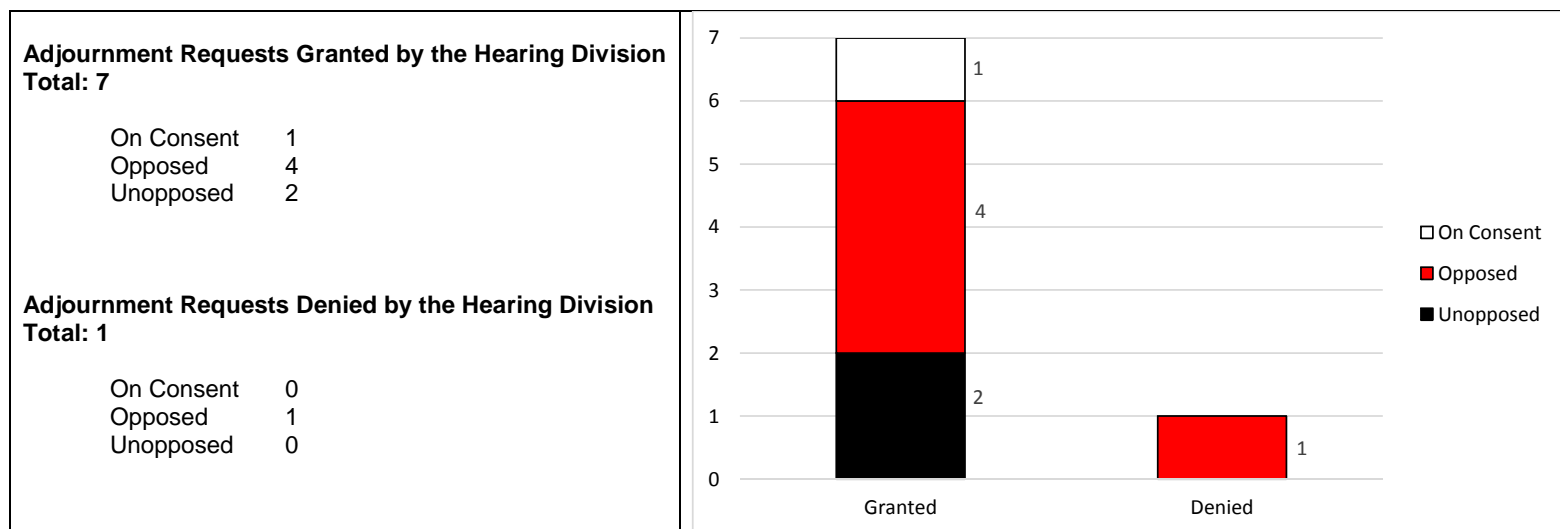
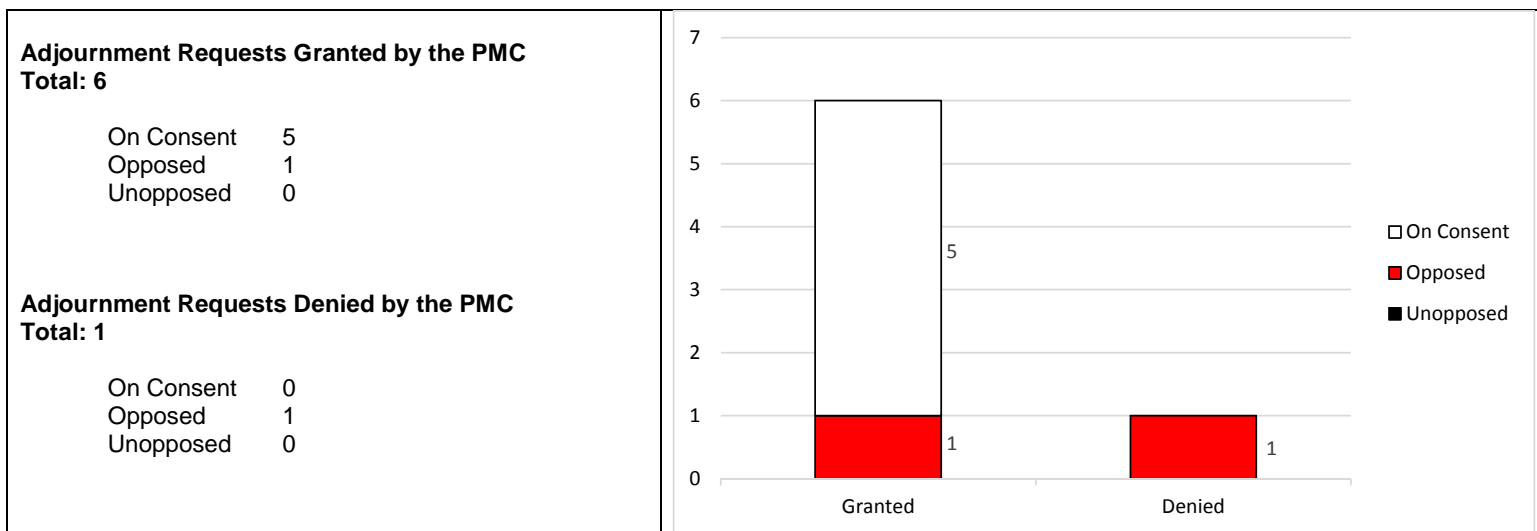
Adjournment request made to		Requests								
		Q1		Q2		Q3 <sup>12</sup>		Q4		Cumulative
		L	P	L	P	L	P	L	P	
PMC	Granted	6 (4)	0 (1)	3 (10)	0 (1)	6 (13)	0 (1)			15 (30)
	Denied	1 (1)	0 (1)	0 (0)	0 (0)	1 (1)	0 (0)			2 (3)
Hearing Division	Granted	15 (6)	2 (0)	6 (11)	3 (2)	7 (7)	3 (2)			36 (28)
	Denied	3 (2)	1 (0)	2 (0)	2 (1)	1 (0)	0 (0)			9 (3)
AMC	Granted	0 (1)	1 (0)	0 (0)	0 (0)	0 (2)	0 (0)			1 (3)
	Denied	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)			0 (0)
Appeal Division	Granted	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)			1 (0)
	Denied	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)			0 (0)

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<sup>12</sup> L = lawyer, P = paralegal.

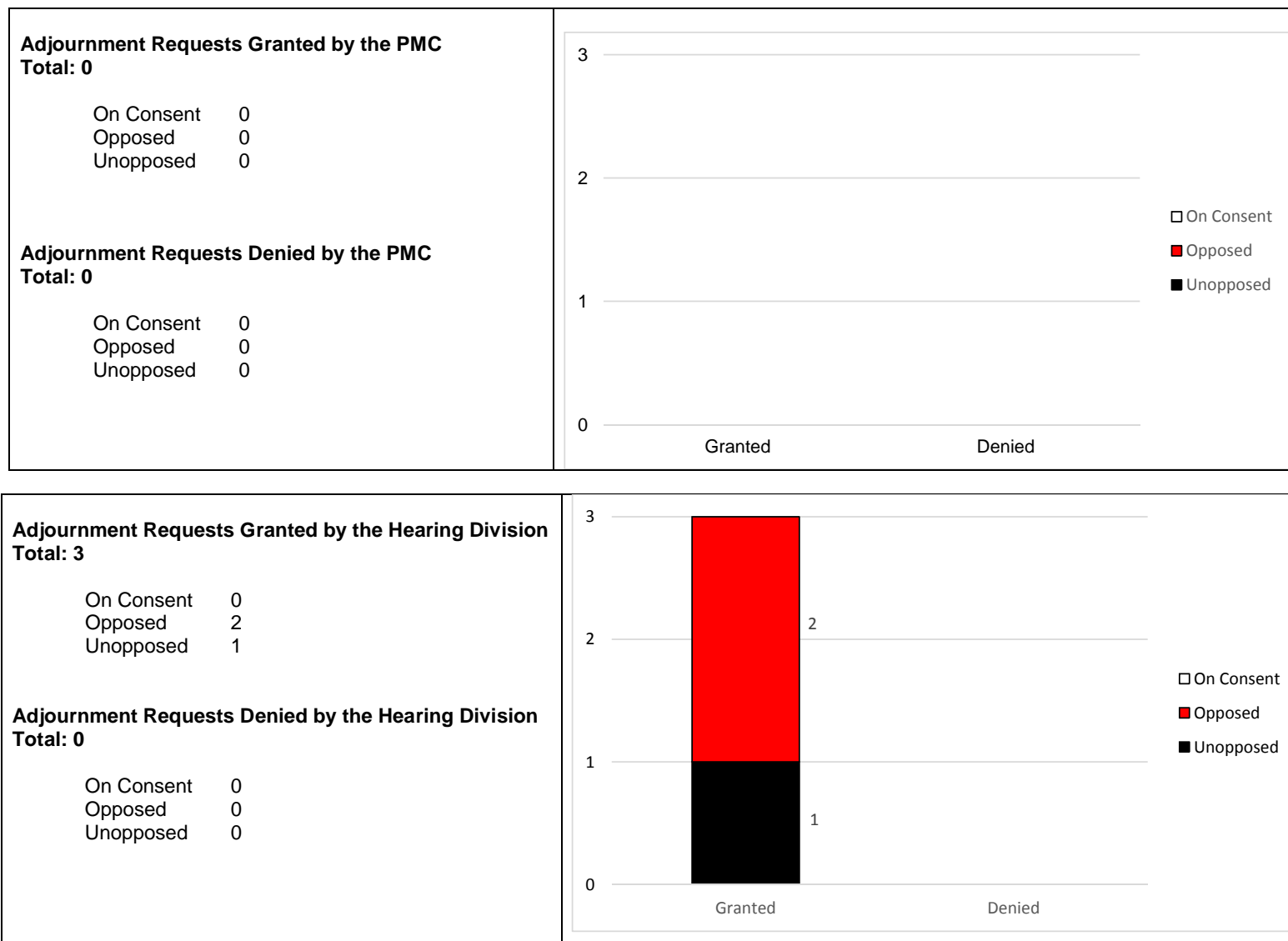
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**PARTIES' POSITION ON ADJOURNMENT REQUESTS (LAWYER MATTERS)**



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**PARTIES' POSITION ON ADJOURNMENT REQUESTS (PARALEGAL MATTERS)**



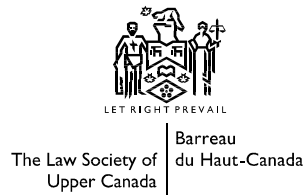
Law Society Tribunal Statistics  
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TRIBUNAL REASONS PRODUCED AND PUBLISHED<sup>13</sup>

	Q1	Q2	Q3	Q4	Cumulative
<b>Written reasons produced</b>	39 (41)	55 (31)	<b>53</b> (34)		<b>147</b> (106)
Lawyer	31	48	41		120
Paralegal	8	7	12		27
<b>Written reasons published</b>	41 (37)	43 (36)	<b>46</b> (34)		<b>130</b> (107)
Lawyer	35	36	37		108
Paralegal	6	7	9		22
<b>Oral reasons produced</b>	35 (20)	14 (20)	<b>20</b> (16)		<b>69</b> (56)
Lawyer	30	8	18		56
Paralegal	5	6	2		13
<b>Oral reasons published</b>	21 (16)	1 (17)	<b>13</b> (0)		<b>35</b> (33)
Lawyer	17	0	9		26
Paralegal	4	1	4		9

<sup>13</sup> The number of reasons produced does not equal the number of reasons published because some reasons produced in a quarter may not be published or will be published in a subsequent quarter.



**TAB 3**

**Report to Convocation  
January 29, 2015**

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**Paralegal Standing Committee**

**Committee Members**  
**Cathy Corsetti, Chair**  
**Susan McGrath, Vice-Chair**  
**Marion Boyd**  
**Robert Burd**  
**Adriana Doyle**  
**Ross Earnshaw**  
**Robert Evans**  
**Michelle Haigh**  
**Brian Lawrie**  
**Marian Lippa**  
**Malcolm M. Mercer**  
**Baljit Sikand**  
**Catherine Strosberg**

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat**  
**Julia Bass 416 947 5228**

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For Decision

Motion to Amend By-law 4 – Ending of Exemptions..... [TAB 3.1](#)



## COMMITTEE PROCESS

1. The Committee met on January 14<sup>th</sup>, 2015. Committee members present were: Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd, Adriana Doyle, Ross Earnshaw, Robert Evans, Michelle Haigh, Brian Lawrie, Marian Lippa, Malcolm M. Mercer, Baljit Sikand and Catherine Strosberg (by telephone).
2. Staff in attendance were: Zeynep Onen, Diana Miles, Terry Knott, Sheena Weir, Lesley Cameron and Julia Bass.

**TAB 3.1**

**FOR DECISION**

**ENDING OF TWO LICENSING EXEMPTIONS**

**Motion**

3. That Convocation approve the amendments to By-law 4 set out in the Motion at [TAB 3.1.1](#), to end the licensing exemptions for,
  - a. the Canadian Registered Safety Professionals, and
  - b. Appraisal Institute of Canada.

**Issue for Consideration**

4. Convocation has previously approved a policy that the licensing exemptions in By-law 4 be reduced where possible. The Paralegal Standing Committee has continued to work on the necessary steps to achieve this objective, and now recommends the ending of these two exemptions.

**‘Integration Process’**

5. In 2011, the Law Society established an ‘Integration Process’ – a preferential opportunity to become licensed, offered to members of exempted groups, in keeping with the policy of reducing the number of exempt persons providing legal services. The process has been successful; a total of 312 candidates became licensed, and the last applicants to take advantage of this process have now become licensed.

**Details of the Groups**

6. Further information on the two groups in question is set out below.

Board of Canadian Registered Safety Professionals (BCRSP):

7. This organization's over 4,000 members, located throughout Canada, provide expert advice on compliance with the *Occupational Health and Safety Act*, *Workplace Hazardous Information System*, the *Environmental Protection Act*, etc. However, a small number have been involved in workers' compensation claims, representing employers and occasionally workers from the initial claim up to and including appeals at the WSIB. Twenty-nine BCRSP members applied under the Integration Process.

Appraisal Institute of Canada (AIC):

8. This organization is the principal real property valuation association in Canada, with approximately 5,000 members. Most AIC members offer valuation services, required for obtaining a mortgage and other purposes, but a small minority of members have developed a practice of appealing municipal assessments at the Assessment Review Board. Twelve members applied under the Integration process.

**Key Issues and Considerations**

9. In November 2012, the Report from the Attorney General's appointee, Mr David Morris was received, as part of the statutorily required five year review of paralegal regulation. Mr Morris' Recommendation No.1 was for a further review of the exemptions.
10. The Law Society's policy, as established by Convocation, is that it is generally in the public interest for persons offering advocacy services to members of the public, including potentially vulnerable clients, to be licensed by the Law Society, insured and required to observe the rules of conduct.
11. These two organizations are well-established professional associations, most of whose members do not provide any advocacy services. In the Committee's view, it was appropriate for any of their members who wished to provide such services to become licensed under the Integration process. After due consideration, the Committee is of the view that there is no compelling argument for keeping the exemption for these associations.
12. A Black-line version of the By-law, with the proposed changes, is shown at [TAB 3.1.2](#).

**TAB 3.1.1**

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

**BY-LAW 4  
[LICENSING]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 29, 2015

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010, October 28, 2010, April 28, 2011, June 23, 2011, September 22, 2011, November 24, 2011, October 25, 2012, February 27, 2014 and March 4, 2014, be further amended as follows:

**1. Subparagraph 30 (1) 7 iv of the English version of the By-Law is deleted and the following substituted:**

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

**2. Subparagraph 30 (1) 7 iv of the French version of the By-Law is deleted and the following substituted:**

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

## BY-LAW 4

### LICENSING

....

## PART V

### PROVIDING LEGAL SERVICES WITHOUT A LICENCE

....

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

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

....

#### Other profession or occupation

7. An individual,
  - i. whose profession or occupation is not the provision of legal services or the practice of law,
  - ii. who provides the legal services only occasionally,
  - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
  - iv. who is
    - ~~A. — a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category;~~
    - ~~B. — a member of the Board of Canadian Registered Safety Professionals, or~~
    - ~~C. — a member of the Appraisal Institute of Canada in the designated membership category.~~

....

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**RÈGLEMENT ADMINISTRATIF N° 4**

**OCTROI DE PERMIS**

....

**PARTIE V**

**PRESTATION DE SERVICES JURIDIQUES SANS PERMIS**

....

**Prestation de services juridiques de catégorie P1 sans permis**

30. (1) Sous réserve du paragraphe (2), les personnes suivantes peuvent, sans permis, fournir en Ontario des services juridiques identiques à ceux que les titulaires de permis de catégorie P1 sont autorisés à fournir :

....

**Autre profession ou emploi**

7. Toute personne :
- i. dont la profession ou l'emploi ne consiste pas à fournir des services juridiques ni à exercer le droit,
  - ii. qui fournit des services juridiques à l'occasion seulement,
  - iii. qui fournit des services juridiques comme auxiliaire dans le cadre de sa profession ou de son emploi,
  - iv. qui est membre;  
~~A. de la *Human Resources Professionals Association of Ontario* dans la catégorie des professionnels en ressources humaines agréés;~~  
~~B. du Conseil canadien des professionnels en sécurité agréés;~~

C. — ~~de l'Institut canadien des évaluateurs dans la catégorie des membres~~  
~~accrédités.~~

. . . .

**TAB 4**



## **Report to Convocation January 29, 2015**

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

**Committee Members**  
**Julian Falconer, Chair**  
**Janet Leiper, Chair**  
**Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee**  
**Beth Symes, Vice-Chair**  
**Constance Backhouse**  
**Peter Festeryga**  
**Avvy Go**  
**Howard Goldblatt**  
**Jeffrey Lem**  
**Marian Lippa**  
**Barbara Murchie**  
**Judith Potter**  
**Susan Richer**

**Purposes of Report: Decision and Information**

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



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Public Education Equality and Rule of Law Series Calendar 2014 - 2015

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on January 15, 2015. Committee members Julian Falconer, Chair, Janet Leiper, Chair, Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee, Beth Symes, Vice-Chair, Constance Backhouse, Howard Goldblatt, Jeffrey Lem, Marian Lippa, Barbara Murchie, Judith Potter and Susan Richer participated. Sandra Yuko Nishikawa, Chair of the Equity Advisory Group, and Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, also participated. Staff members Josée Bouchard, Denise McCourtie, Diana Miles, Zeynep Onen, Ekua Quansah, Marisha Roman, Grant Wedge and Sheena Weir also attended. Professor Fiona Kay, Queen's University, attended to make a presentation.

**TAB 4.1**

**FOR DECISION**

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS**

**Motion**

2. That Convocation approve the letters and public statements in the following cases:
  - a. Lawyer Narges Mohammadi – Iran – letters of intervention and public statement presented at [TAB 4.1.1](#).
  - b. Lawyers Vitaliy Moiseyev and Tatiana Akimtseva – Russian Federation – letters of intervention and public statement presented at [TAB 4.1.2](#)
  - c. Lawyer Dr. Amin Mekki Medani – Sudan – letters of intervention and public statement presented at [TAB 4.1.3](#)

**Rationale**

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

**Key Issues and Considerations**

4. The Monitoring Group considered the following factors when making a decision about the ongoing harassment of human rights lawyer Narges Mohammadi:
  - a. there are no concerns about the quality of sources used for this report;
  - b. the Law Society of Upper Canada has intervened fourteen times in respect of human rights issues in Iran, most recently in December 2014, concerning the arrest and harassment of lawyer Nasrin Sotoudeh;
  - c. the continued harassment of human rights lawyer Narges Mohammadi by Iranian authorities falls within the mandate of the Monitoring Group.

5. The Monitoring Group considered the following factors when making a decision about the assassinations of lawyers Vitaliy Moiseyev and Tatiana Akimtseva:
  - a. there are no concerns about the quality of sources used for this report;
  - b. in the past, the Law Society of Upper Canada has expressed concern to the Russian government on numerous occasions over threats and violence against lawyers in Russia, as well as the imprisonment of lawyers Sapiyat Magomedova and Musa Suslanov;
  - c. the assassinations of lawyers Vitaliy Moiseyev and Tatiana Akimtseva fall within the mandate of the Monitoring Group.
6. The Monitoring Group considered the following factors when making a decision about the arrest and detention of human rights lawyer Dr. Amin Mekki Medani:
  - a. there are no concerns about the quality of sources used for this report;
  - b. the Law Society of Upper Canada has intervened three times in respect of human rights issues in Sudan, most recently in November 2013, concerning the arrest and harassment of lawyer Adam Sharief;
  - c. the arrest and continued detention of human rights lawyer and activist Dr. Amin Mekki Medani falls within the mandate of the Monitoring Group.

## **Key Background**

### **ISLAMIC REPUBLIC OF IRAN – THE ONGOING HARASSMENT OF HUMAN RIGHTS LAWYER AND ACTIVIST NARGES MOHAMMADI**

#### **Sources of Information**

7. The background information for this report was taken from the following sources:
  - a. Gulf Center for Human Rights (“GCHR”);<sup>1</sup>
  - b. High Representative of the European Union for Foreign Affairs and Security Policy: Press;<sup>2</sup>

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1 The Gulf Centre for Human Rights (GCHR) is an independent, non-profit and non-governmental organization that provides support and protection to human rights defenders, such as independent journalists and lawyers, in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, as well as in Iran, Iraq, Yemen and Syria. The GCHR promotes freedom of expression, association and peaceful assembly. It was founded in April 2011 and has offices in Beirut and Copenhagen. It receives guidance from an Advisory Board composed of regional and international human rights defenders, including academics and lawyers.

2 The High Representative of the European Union for Foreign Affairs & Security Policy was created under the Treaty of Lisbon and the holder of the office is charged with coordinating the EU's Common foreign and security policy.

- c. International Campaign for Human Rights in Iran;<sup>3</sup> and
- d. The Observatory for the Protection of Human Rights Defenders ("OPHRD").<sup>4</sup>

## Background

8. The following information has been reported about Narges Mohammadi.
9. Narges Mohammadi is a prominent human rights lawyer and activist,<sup>5</sup> as well as spokesperson and Vice-President of the Defenders of Human Rights Centre ("DHRC") in Iran. The history of her harassment by Iranian authorities has been well documented.
10. Reports indicate that, on 14 February 2012, Narges Mohammadi was sentenced to six years in prison for the offences of "propaganda against the Islamic Republic", "assembly and collusion against national security" and "membership in an illegal group" (the DHRC).<sup>6</sup> This was a reduction of her initial sentence of eleven years on the same charges, which was handed down in October 2011.<sup>7</sup> The international community believed this to be an unjust persecution of a human rights defender.<sup>8</sup>
11. It is reported that Narges Mohammadi was unsuccessful in appealing her six-year sentence and was taken into custody on 12 April 2012. According to sources, she "was released on bail on July 31, 2012 for medical reasons, and has since continued to advocate and work for the defence of human rights in Iran."<sup>9</sup>

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3 The International Campaign for Human Rights in Iran is based in New York and is a non-partisan, independent human rights non-profit organization that works in Latin America, the United States, and Europe. The organization, which was founded in 2008, is comprised of lawyers, researchers, and journalists with extensive research and advocacy experience in international organizations and publications. The organization has earned a reputation among journalists and diplomats as one of the major organizations providing relevant, verified, and up-to-date information about the human rights situation in Iran. It routinely cooperates with Human Rights Watch, Amnesty International, and the Committee to Protect Journalists.

4 The Observatory for the Protection of Human Rights Defenders is a joint program of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT). The OMCT, which is based in Geneva, was created in 1985 and is the main coalition of international non-governmental organizations fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. OMCT has consultative status with ECOSOC (United Nations), the International Labour Organization, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

5 "Statement by the spokesperson of the EU High Representative Catherine Ashton on the sentencing of Ms. Narges Mohammadi, an Iranian Human Rights Defender", High Representative of the European Union for Foreign Affairs and Security Policy: Press (8 October 2011), online:

<[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/124989.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/124989.pdf)> [EU].

6 "Press Release - Iran: Ms. Nargess Mohammadi at risk of arrest", *The Observatory for the Protection of Human Rights Defenders* (7 November 2014), online:

<[http://www.omct.org/files/2014/11/22887/20141107\\_iran\\_mohammadi\\_obs\\_pr\\_en.pdf](http://www.omct.org/files/2014/11/22887/20141107_iran_mohammadi_obs_pr_en.pdf)> [Observatory Press Release].

7 "Narges Mohammadi Summoned to Evin Prison Court on Unspecified Charges", *International Campaign for Human Rights in Iran* (7 November 2014), online: <<http://www.iranhumanrights.org/2014/11/narges-mohammadi-2/>> [ICHR].

8 EU *supra* note 5.

9 Observatory Press Release *supra* note 6.

12. On International Women's Day, in March 2014, she met with Catherine Ashton, the High Representative of the European Union for Foreign Affairs & Security Policy, at the Austrian Embassy in Tehran.<sup>10</sup> Reports indicate that, following the release of photographs of the meeting, Narges Mohammadi "was harshly criticized by the state-controlled media and hardliners in the Iranian Parliament, and was described as "a sedition activist and convict.""<sup>11</sup> Shortly after these events, she allegedly received a notice from the Islamic Revolution Prosecutor's Office banning her from travelling abroad.<sup>12</sup>
13. It is reported that Narges Mohammadi was summoned on 1 June 2014 to the Prosecutor's Office located at Evin Prison and interrogated. She was allegedly asked to defend herself against numerous accusations of "disturbing the public opinion" and "assembly and collusion against the national security."<sup>13</sup> These accusations arose as the result of her attendance and participation in meetings at which participants criticized the Citizenship Charter in Iran, and discussed International Women's Day and the Day of Clean Air.<sup>14</sup>
14. Reports indicate that on 3 November 2014, she delivered a speech during a ceremony marking the second anniversary of Sattar Beheshti's death.<sup>15</sup> Beheshti, a prominent blogger, died from torture in police custody in November 2012.<sup>16</sup> During the speech, Narges Mohammadi allegedly asked: "How is it that the Parliament Members are suggesting a Plan for the Promotion of Virtue and Prevention of Vice, but nobody spoke up two years ago, when an innocent human being by the name of Sattar Beheshti died under torture in the hands of his interrogator?"<sup>17</sup>
15. Two days later, Narges Mohammadi received another summons to attend the Prosecutor's Office at Evin Prison related to unspecified charges.<sup>18</sup> Multiple sources quote Mohammadi as stating the following: "In the summons I received on 5 November 2014, it is stated that I must turn myself in 'for charges,' but there is no further explanation about these charges."<sup>19</sup> There have been no reports indicating whether or not Narges Mohammadi has been taken into custody, or if she has been officially charged in relation to her most recent summons.
16. Given the history of Narges Mohammadi's harassment by Iranian authorities for her work advocating for human rights in Iran, the Monitoring Group is deeply concerned that she is at high risk of being arrested and charged contrary to international law.

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10 "Iran: Judicial Harassment of Human Rights Activist Narges Mohammadi", Gulf Center for Human Rights (14 November 2014), online: <<http://www.gc4hr.org/news/view/818>> [GCHR].

11 ICHRI *supra* note 7.

12 Observatory Press Release *supra* note 6.

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

16 GCHR *supra* note 10.

17 GCHR *supra* note 10.

18 ICHRI *supra* note 7.

19 See ICHRI *supra* note 7 and GCHR *supra* note 10.

17. The harassment of Narges Mohammadi by Iranian authorities contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*.<sup>20</sup> Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

18. The actions of Iranian authorities also contravene Article 19 of the *Universal Declaration of Human Rights*, which guarantees that "[e]veryone has the right to freedom of opinion and expression."<sup>21</sup>
19. Organizations believe that Iranian authorities continue to harass and intimidate Narges Mohammadi in order to prevent her from carrying out peaceful human rights activities, and that her ongoing harassment constitutes part of a trend of harassment against human rights defenders in Iran.<sup>22</sup> Groups are calling on the Iranian government to cease immediately any illegal actions against her.

## RUSSIAN FEDERATION – THE ASSASSINATIONS OF LAWYERS VITALIY MOISEYEV AND TATIANA AKIMTSEVA

### Sources of Information

20. The background information for this report was taken from the following sources:
- a. International Commission of Jurists ("ICJ");<sup>23</sup>

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20 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, online: <<http://www.refworld.org/docid/3ddb9f034.html>> [UN *Basic Principles*].

21 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), at Article 9 online: <<http://www.un.org/en/documents/udhr/#atop>> [UDHR].

22 GCHR *supra* note 10.

23 The ICJ is one of the world's oldest international human rights and Rule of Law-related NGOs. It provides in-depth legal expertise to back its efforts in the development, promotion and clarification of international standards. It continues to advocate with governments, the legal profession, and civil society in order to insure

- b. Lawyers for Lawyers ("L4L"),<sup>24</sup> and
- c. Radio Free Europe / Radio Liberty ("RFE/RL").<sup>25</sup>

## Background

21. The following information has been reported about Vitaliy Moiseyev and Tatiana Akimtseva.
22. Vitaliy Moiseyev and Tatiana Akimtseva were both lawyers in Moscow who represented Sergey Zhurba, "a deputy of the regional council of the Odintsovo region, who was a key witness in a case of a significant number of killings by members of the Orekhovskaya gang, a criminal organization active in Moscow particularly during the 1990s."<sup>26</sup>
23. Reports indicate that, on 23 September 2014, Tatiana Akimtseva was shot and killed after receiving threats from unknown individuals.<sup>27</sup> Her driver, the eyewitness to her murder, was also killed.<sup>28</sup> There are no reports indicating that any arrests were made related to these crimes. It is unknown whether an investigation is currently taking place.
24. The verdict in the Orekhovskaya gang case was released on 23 October 2014. Dmitry Belking, head of the gang, and his accomplice Oleg Pronin, "were found guilty of committing 22 murders and 11 attempted murders as well as a number of other crimes".<sup>29</sup>
25. On 24 October 2014, Moscow Police confirmed with media that Vitaliy Moiseyev and his wife Elena Moiseyeva were found dead from gunshot wounds in a car near Moscow.<sup>30</sup> It is

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implementation of these standards at the international and national levels. In the 1990's, a number of important international developments took place as a result of initiatives by the ICJ. Foremost among these was the establishment of the International Criminal Court in 1998 with the adoption of the Rome Statute.

24 L4L is an independent and non-political Dutch foundation seeking to promote the proper functioning of the rule of law. L4L provides financial, moral and/or legal support to oppressed lawyers and lawyers' organizations. The organization maintains contact and co-operates with the United Nations, the European Union, governments, embassies, universities, human rights organizations, as well as individual lawyers worldwide. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013.

25 RFE/RL is one of the most comprehensive media organizations in the world, producing radio, Internet and television programs in countries where a free press is either banned by the government or not fully established. RFE/RL broadcasts in 28 languages in 21 countries. RFE and RL were originally separate organizations, which were established at the beginning of the Cold War to transmit uncensored news and information to audiences behind the Iron Curtain. Initially, both RFE and RL were funded principally by the U.S. Congress through the Central Intelligence Agency. All CIA involvement ceased in 1971 and the two organizations were funded by Congressional appropriation through the Board for International Broadcasting. In 1976 the two corporations merged. In 1991, former Estonian President Lennart Meri nominated RFE/RL for the Nobel Peace Prize.

26 "Russian Federation: ICJ calls for prompt and effective investigation into killing of lawyer Vitaliy Moiseyev", *International Commission of Jurists: News* (24 October 2014), online: <<http://www.icj.org/russian-federation-icj-calls-for-prompt-and-effective-investigation-into-killing-of-lawyer-vitaliy-moiseyev/>> [ICJ].

27 *Ibid.*

28 *Ibid.*

29 "Russian Federation: Lawyer killed together with his wife", *Lawyers for Lawyers* (3 December 2014), online: <<http://www.advocatenvooradvocaten.nl/9795/russian-federation-lawyer-killed-together-with-his-wife/>> [L4L Russia].

30 "Moscow Lawyer In High Profile Organized Crime Case Killed", *RFE/RL* (24 October 2014), online:



reported that the two were "shot at least 30 times with a Kalashnikov rifle as they were leaving their house in their car".<sup>31</sup>

26. Vitaliy Moiseyev's assassination occurred hours before he was scheduled to testify in court in respect to a different case against other leaders of the Orekhovskaya gang.<sup>32</sup> There are no reports indicating any arrests have been made pertaining to these crimes.
27. Temur Shakirov, an ICJ Legal Adviser, issued the following statement in relation to the assassinations of Sergey Zhurba's lawyers: "These killings are reprehensible for the deprivation of life of victims and the anguish cause [sic] to their families [...] But they also inflict more general harm on the rule of law in the country, where lawyers come under lethal attack merely for representing their clients and discharging their professional functions."<sup>33</sup>
28. The Monitoring Group is deeply concerned about the current state of the rule of law in Russia and the safety of lawyers discharging their duties. Moreover, the Monitoring group notes Principles 16 and 17 of the United Nations *Basic Principles on the Role of Lawyers*.<sup>34</sup> Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

29. The ICJ and Lawyers for Lawyers believe that these lawyers were killed as a result of fulfilling their legitimate legal duties and are calling upon the government of the Russian Federation to adhere to the *Basic Principles on the Role of Lawyers*, to provide adequate protection for lawyers, judges, witnesses, and investigative authorities, and bring those responsible for these crimes to justice.

## REPUBLIC OF THE SUDAN – THE ARREST AND CONTINUED DETENTION OF HUMAN RIGHTS LAWYER DR. AMIN MEKKI MEDANI

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<http://www.rferl.org/content/orekhovo-moiseyev-belkin-assassination-trial-akimtseva-moscow/26653785.html>> [RFE/RL].

31 ICJ *supra* note 26.

32 L4L *Russia supra* note 29.

33 ICJ *supra* note 26.

34 UN *Basic Principles supra* note 20.

## Sources of Information

30. The background information for this report was taken from the following sources:
- a. Front Line Defenders ("FLD");<sup>35</sup>
  - b. International Federation for Human Rights / La Fédération Internationale des Ligues des Droits de l'Homme ("FIDH");<sup>36</sup>
  - c. No Peace Without Justice ("NPWJ");<sup>37</sup> and
  - d. Reuters.<sup>38</sup>

## Background

31. The following information has been reported about Dr. Amin Mekki Medani.
32. Dr. Amin Mekki Medani is a prominent human rights lawyer and rights defender, President of the Confederation of Sudanese Civil Society, Vice President of the Civil Society Initiative, and former President of the Sudan Human Rights Monitor.<sup>39</sup> He earned a PhD in Comparative Criminal Law from the University of Edinburgh and "[h]e served as head of the Office of the High Commissioner for Human Rights (OHCHR) office in the West Bank and Gaza, Chief of Mission of the OHCHR in Zagreb, Croatia, legal advisor to the Special Representative of the U.N. Secretary-General in Iraq as well as Afghanistan, and a Regional Representative for the OHCHR in Beirut, Lebanon".<sup>40</sup>

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35 Front Line Defenders is an international charitable organization, founded in Dublin in 2001, with the aim of protecting human rights defenders. The group promotes respect for the UN *Declaration on Human Rights Defenders* and maintains a special consultative status with the Economic and Social Council of the United Nations. Front Line Defenders also maintains partnership status with the Council of Europe and observer status with the African Commission on Human and Peoples' Rights.

36 FIDH is an international NGO that defends the civil, political, economic, social and cultural rights, set out in the *Universal Declaration of Human Rights*. It acts in the legal and political field for the creation and reinforcement of international instruments for the protection of Human Rights and for their implementation. It is a non-partisan, non-religious, apolitical and non-profit organization and it has public interest status in France, where it is based. FIDH undertakes international fact-finding, trial observation and defence missions, and political dialogue, advocacy, litigation and public awareness campaigns.

37 No Peace Without Justice (NPWJ) is an international non-governmental organization that works for the protection and promotion of human rights, democracy, the rule of law and international justice, NPWJ has General (Category I) consultative status at the United Nations ECOSOC and is also a founding member of the Steering Committee of the NGO Coalition for the International Criminal Court, the Italian civil society partner in the Democracy Assistance Dialogue and the host of the International Campaign for a United Nations Ban on Female Genital Mutilation.

38 Thomson Reuters is the world's largest international multimedia news agency, providing investing news, world news, business news, technology news, headline news, small business news, news alerts, personal finance, stock market, and mutual funds information available on Reuters.com, video, mobile, and interactive television platforms. Thomson Reuters' journalists are subject to an Editorial Handbook which requires fair presentation and disclosure of relevant interests.

39 "Sudan – Prominent human rights defender Mr Amin Mekki Medani detained and moved to undisclosed location", Front Line Defenders (9 December 2014), online: <<http://www.frontlinedefenders.org/node/27777>> [FLD].

40 *Ibid.*

33. It is reported that Dr. Amin Mekki Medani was arrested without a warrant or explanation by National Intelligence and Security Services (NISS) officials on 6 December 2014, at his house in Khartoum.<sup>41</sup> His whereabouts were unknown until December 21, 2014, when he was transferred from NISS custody to Kober Prison in Khartoum.<sup>42</sup>
34. Reports indicate that on December 22, 2014, Dr. Amin Mekki Medani was permitted to meet with a team of lawyers. On December 24, 2014, he received a visit from his family, who has now been permitted to bring him food that meets his health needs as a diabetic. On January 10, 2015, Dr. Amin Mekki Medani was charged under Article 50 (undermining the constitutional system) and Article 51 (waging war against the state) of the 1991 Sudanese Penal Code. Both of these charges carry the death penalty.
35. It is believed that he was arrested and charged as a result of signing a political declaration referred to as the "Sudan Call".<sup>43</sup> It is reported that he and others who signed the declaration, which took place in Addis Ababa, were arrested upon their return to Khartoum.<sup>44</sup> The document is said to bring together opposition forces, political parties and civic organisations in a commitment to end wars and conflicts and to work towards the establishment of a democratic, citizenship-based state in Sudan.<sup>45</sup> According to reports, the agreement is "aimed at unifying opposition to President Omar Hassan al-Bashir".<sup>46</sup>
36. Reuters reported that, while "he does not represent a political party, Mekki signed the unity agreement on behalf of a number of non-governmental organizations critical of Bashir's government."<sup>47</sup> Groups maintain that he was arrested as a result of taking part in his legitimate human rights activities.<sup>48</sup>
37. Groups have expressed concern for Dr. Amin Mekki Medani's health and safety, noting that he is "76 years of age and suffers from high blood pressure and diabetes for which he has prescribed medication."<sup>49</sup> According to one source, "the NISS refused to allow him to take his medications with him when he was arrested".<sup>50</sup>
38. The Monitoring Group expresses deep concern over the arrest, continued detention, and treatment of Dr. Amin Mekki Medani. The Monitoring Group notes that the *Universal Declaration of Human Rights* under Article 3 gives everyone the right to life, liberty, and

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41 *FLD supra* note 39.

42 *Ibid.*

43 "NPWJ and NRPTT strongly condemn arbitrary arrest of Sudanese human rights lawyer Dr. Medani and call for his immediate release", *No Peace Without Justice* (8 December 2014), online: <<http://www.npwj.org/ICC/NPWJ-and-NRPTT-strongly-condemn-arbitrary-arrest-Sudanese-human-rights-lawyer-Dr-Medani-and-call>> [NPWJ].

44 *Ibid.*

45 *Ibid.*

46 "Sudan opposition says two leaders arrested after unity deal", *Reuters* (7 December 2014), online: <<http://uk.reuters.com/article/2014/12/07/uk-sudan-opposition-arrest-idUKKBN0JL08O20141207>>.

47 *Ibid.*

48 "Sudan: Arrest of Dr. Amin Mekki Medani", *FIDH* (7 December 2014), online: <<https://www.fidh.org/International-Federation-for-Human-Rights/Africa/sudan/16596-sudan-arrest-of-the-president-of-the-sudan-human-rights-monitor>> [FIDH].

49 *FIDH supra* note 46; see also *FLD supra* note 39.

50 *FIDH supra* note 46.

security of person.<sup>51</sup> Dr. Amin Mekki Medani has the right to access medication for his medical conditions. Moreover, Article 9 prohibits arbitrary arrests and detentions.<sup>52</sup>

39. Dr. Amin Mekki Medani's ongoing arbitrary detention also contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*. His unlawful detention prohibits him from meaningful human rights work, in violation of Principle 16:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

40. Front Line Defenders, the FIDH, and NPWJ believe that Sudanese authorities continue to detain Dr. Amin Mekki Medani as part of a government campaign against the "Sudan Call" and its signatories. These groups are calling for his immediate release and for an end to arbitrary arrests and acts of intimidation against human rights advocates in Sudan.

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<sup>51</sup> UDHR *supra* note 21.

<sup>52</sup> *Ibid.*

TAB 4.1.1

## PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

### NARGES MOHAMMADI

President Hassan Rouhani  
Office of the President  
Palestine Avenue  
Azerbaijan Intersection  
Tehran, 13168-43311  
Islamic Republic of Iran

Your Excellency:

#### **Re: The ongoing harassment of human rights lawyer and activist Narges Mohammadi**

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

Narges Mohammadi is a prominent human rights lawyer and activist, as well as spokesperson and Vice-President of the Defenders of Human Rights Centre ("DHRC") in Iran. The history of her harassment by Iranian authorities has been well documented.

Reports indicate that, on 14 February 2012, Narges Mohammadi was sentenced to six years in prison for the offences of "propaganda against the Islamic Republic", "assembly and collusion against national security" and "membership in an illegal group" (the DHRC). This was a reduction of her initial sentence of eleven years on the same charges, which was handed down in October 2011. The international community believed this to be an unjust persecution of a human rights defender.

It is reported that Narges Mohammadi was unsuccessful in appealing her six-year sentence and was taken into custody on 21 April 2012. According to sources, she was released on bail on 31 July 2012 for medical reasons, and has continued her work for the defence of human rights in Iran.

On International Women's Day, in March 2014, she met with Catherine Ashton, the High Representative of the European Union for Foreign Affairs & Security Policy, at the Austrian Embassy in Tehran. Reports indicate that, following the release of photographs of the meeting, Narges Mohammadi was harshly criticized by the state-controlled media and members of the Iranian Parliament, who described her as "a sedition activist and convict." Shortly after these

events, she allegedly received a notice from the Islamic Revolution Prosecutor's Office banning her from travelling abroad.

It is reported that Narges Mohammadi was summoned on 1 June 2014 to the Prosecutor's Office located at Evin Prison and interrogated. She was allegedly asked to defend herself against numerous accusations of "disturbing the public opinion" and "assembly and collusion against the national security." These accusations arose as a result of her attendance and participation in meetings at which participants criticized the Citizenship Charter in Iran, and discussed International Women's Day and the Day of Clean Air.

Reports indicate that on 3 November 2014, she delivered a speech during a ceremony marking the second anniversary of Sattar Beheshti's death. Beheshti, a prominent blogger, died from torture in police custody in November 2012. During the speech, Narges Mohammadi allegedly asked: "How is it that the Parliament Members are suggesting a Plan for the Promotion of Virtue and Prevention of Vice, but nobody spoke up two years ago, when an innocent human being by the name of Sattar Beheshti died under torture in the hands of his interrogator?"

Two days later, Narges Mohammadi received another summons to attend the Prosecutor's Office at Evin Prison related to unspecified charges. Multiple sources quote Mohammadi as stating the following: "In the summons I received on 5 November 2014, it is stated that I must turn myself in 'for charges,' but there is no further explanation about these charges." There have been no reports indicating whether or not Narges Mohammadi has been taken into custody, or if she has been officially charged in relation to her most recent summons.

Given the history of Narges Mohammadi's harassment by Iranian authorities for her work advocating for human rights in Iran, the Law Society of Upper Canada is deeply concerned that she is at high risk of being arrested and charged contrary to international law.

The harassment of Narges Mohammadi by Iranian authorities contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

The actions of Iranian authorities also contravene Article 19 of the *Universal Declaration of Human Rights*, which guarantees that “[e]veryone has the right to freedom of opinion and expression.”

Organizations believe that Iranian authorities continue to harass and intimidate Narges Mohammadi in order to prevent her from carrying out peaceful human rights activities, and that her ongoing harassment constitutes part of a trend of harassment against human rights defenders in Iran.

The Law Society urges the government of the Islamic Republic of Iran to,

- a. put an end to all acts of harassment against Narges Mohammadi as well as other human rights lawyer and defenders in Iran;
- b. guarantee in all circumstances the physical and psychological safety and integrity of Narges Mohammadi;
- c. guarantee all the procedural rights that should be accorded to Narges Mohammadi, if ever she is taken into custody and put on trial;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the harassment of Narges Mohammadi in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Narges Mohammadi if found to be a victim of abuses;
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

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

cc:

H.E. Mr. Mostafa Pourmohammadi  
Minister of Justice of the Islamic Republic of Iran  
Department of Justice  
Tehran, Islamic Republic of Iran

H.E. Mr. Abdolreza Rahmani Fazli  
Minister of Interior of the Islamic Republic of Iran  
Ministry of Interior  
Tehran, Islamic Republic of Iran

H.E. Dr. Mohammad Javad Zarif  
Minister of Foreign Affairs of the Islamic Republic of Iran  
Ministry of Foreign Affairs,  
Bagh-e Melli, Tehran, Islamic Republic of Iran

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights

Dr. Ali Najafi Tavan, President, Iran Central Bar Association

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales



## **Proposed Public Statement**

### **The Law Society of Upper Canada Expresses Concern about the Ongoing Harassment of Narges Mohammadi in Iran**

The Law Society of Upper Canada is deeply concerned about the ongoing harassment of lawyer Narges Mohammadi in Iran.

Narges Mohammadi is a prominent human rights lawyer and activist, as well as Spokesperson and Vice-President of the Defenders of Human Rights Centre ("DHRC") in Iran. The history of her harassment by Iranian authorities has been well documented.

Reports indicate that, on 14 February 2012, Narges Mohammadi was sentenced to six years in prison for the offences of "propaganda against the Islamic Republic", "assembly and collusion against national security" and "membership in an illegal group" (the DHRC). This was a reduction of her initial sentence of eleven years on the same charges, which was handed down in October 2011. The international community believed this to be an unjust persecution of a human rights defender.

It is reported that Narges Mohammadi was unsuccessful in appealing her six-year sentence and was taken into custody on 21 April 2012. According to sources, she was released on bail on 31 July 2012 for medical reasons, and has continued her work for the defence of human rights in Iran.

On International Women's Day, in March 2014, she met with Catherine Ashton, the High Representative of the European Union for Foreign Affairs & Security Policy, at the Austrian Embassy in Tehran. Reports indicate that, following the release of photographs of the meeting, Narges Mohammadi was harshly criticized by the state-controlled media and members of the Iranian Parliament, who described her as "a sedition activist and convict." Shortly after these events, she allegedly received a notice from the Islamic Revolution Prosecutor's Office banning her from travelling abroad.

It is reported that Narges Mohammadi was summoned on 1 June 2014 to the Prosecutor's Office located at Evin Prison and interrogated. She was allegedly asked to defend herself against numerous accusations of "disturbing the public opinion" and "assembly and collusion against the national security." These accusations arose as a result of her attendance and participation in meetings at which participants criticized the Citizenship Charter in Iran, and discussed International Women's Day and the Day of Clean Air.

Reports indicate that on 3 November 2014, she delivered a speech during a ceremony marking the second anniversary of Sattar Beheshti's death. Beheshti, a prominent blogger, died from torture in police custody in November 2012. During the speech, Narges Mohammadi allegedly asked: "How is it that the Parliament Members are suggesting a Plan for the Promotion of Virtue and Prevention of Vice, but nobody spoke up two years ago, when an innocent human being by the name of Sattar Beheshti died under torture in the hands of his interrogator?"

Two days later, Narges Mohammadi received another summons to attend the Prosecutor's Office at Evin Prison related to unspecified charges. Multiple sources quote Mohammadi as stating the following: "In the summons I received on 5 November 2014, it is stated that I must turn myself in 'for charges,' but there is no further explanation about these charges." There have been no reports indicating whether or not Narges Mohammadi has been taken into custody, or if she has been officially charged in relation to her most recent summons.

Given the history of Narges Mohammadi's harassment by Iranian authorities for her work advocating for human rights in Iran, the Law Society of Upper Canada is deeply concerning that she is at high risk of being arrested and charged contrary to international law.

The harassment of Narges Mohammadi by Iranian authorities contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

The actions of Iranian authorities also contravene Article 19 of the *Universal Declaration of Human Rights*, which guarantees that "[e]veryone has the right to freedom of opinion and expression."

Organizations believe that Iranian authorities continue to harass and intimidate Narges Mohammadi in order to prevent her from carrying out peaceful human rights activities, and that her ongoing harassment constitutes part of a trend of harassment against human rights defenders in Iran.

The Law Society urges the government of the Islamic Republic of Iran to,

- a. put an end to all acts of harassment against Narges Mohammadi as well as other human rights lawyer and defenders in Iran;
- b. guarantee in all circumstances the physical and psychological safety and integrity of Narges Mohammadi;
- c. guarantee all the procedural rights that should be accorded to Narges Mohammadi, if ever she is taken into custody and put on trial;

- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the harassment of Narges Mohammadi in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Narges Mohammadi if found to be a victim of abuses;
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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

### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: The ongoing harassment of human rights lawyer Narges Mohammadi**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to His Excellency Mr. Hassan Rouhani, President of the Islamic Republic of Iran, expressing our deep concern over reports of the continued harassment of human rights lawyer Narges Mohammadi.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

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

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights
- Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales
- Dr. Ali Najafi Tavan, President, Iran Central Bar Association

TAB 4.1.2

## PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

### VITALIY MOISEYEV AND TATIANA AKIMTSEVA

His Excellency President Vladimir Putin  
Office of the President of the Russian Federation  
23, Ilyinka Street,  
Moscow, 103132, Russia.

Your Excellency:

#### **Re: The assassinations of lawyers Vitaliy Moiseyev and Tatiana Akimtseva**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the assassinations of Vitaliy Moiseyev and Tatiana Akimtseva. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Vitaliy Moiseyev and Tatiana Akimtseva were both lawyers in Moscow who represented Sergey Zhurba, a deputy of the regional council of the Odintsovo region, who was a key witness in a case of a significant number of killings by members of the Orekhovskaya gang. The Orekhovskaya gang is a criminal organization that was particularly active in Moscow during the 1990s.

Reports indicate that, on 23 September 2014, Tatiana Akimtseva was shot and killed after receiving threats from unknown individuals. Her driver, the eyewitness to her murder, was also killed. There are no reports indicating that any arrests were made related to these crimes. It is unknown whether an investigation is currently taking place.

The verdict in the Orekhovskaya gang case was released on 23 October 2014. Dmitry Belking, head of the gang, and his accomplice Oleg Pronin, were found guilty of committing 22 murders and 11 attempted murders, including a number of other crimes.

On 24 October 2014, Moscow Police confirmed with media that Vitaliy Moiseyev and his wife Elena Moiseyeva were found dead from gunshot wounds in a car near Moscow. The two were reportedly shot at least 30 times as they were driving away from their home.

Vitaliy Moiseyev's assassination occurred hours before he was scheduled to testify in court in respect to a different case against other leaders of the Orekhovskaya gang. There are no reports indicating any arrests have been made pertaining to these crimes.

Temur Shakirov, a Legal Adviser with the International Commission of Jurists, issued the following statement in relation to the assassinations of Sergey Zhurba's lawyers: "These killings are reprehensible for the deprivation of life of victims and the anguish cause [sic] to their families [...] But they also inflict more general harm on the rule of law in the country, where

lawyers come under lethal attack merely for representing their clients and discharging their professional functions.”

The Law Society of Upper Canada is deeply concerned about the current state of the rule of law in Russia and the safety of lawyers discharging their duties. The Law Society would like to remind Your Excellency of Principles 16 and 17 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Human rights groups believe that these lawyers were killed as a result of fulfilling their legitimate legal duties and are calling upon the government of the Russian Federation to adhere to the *Basic Principles on the Role of Lawyers*, to provide adequate protection for lawyers, judges, witnesses, and investigative authorities, and bring those responsible for these crimes to justice.

The Law Society urges the government of the Russian Federation to,

- a. thoroughly investigate the deaths of Vitaliy Moiseyev and Tatiana Akimtseva and to ensure that the perpetrators of these acts of violence are tried fairly and are brought to justice;
- b. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;
- c. put an end to all acts of harassment and intimidation of human rights defenders in Russia; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

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cc:

H.E. Mr. Alexander Ivanovich Bastrykin  
Chairman of the Investigative Committee of the Russian Federation  
Investigative Committee of the Russian Federation  
Tekhnicheskii pereulok, d.2  
105005 Moscow, Russian Federation

H.E. Mr. Yury Yakovlevich Chayka  
Prosecutor General of the Russian Federation  
Prosecutor General's Office  
Bolshaya Dmitrovka, 15a  
125993 Moscow GSP-3, Russian Federation

H.E. Ambassador Extraordinary and Plenipotentiary Alexander N. Darchiev  
The Embassy of the Russian Federation in Canada  
285 Charlotte Street, Ottawa, ON  
K1N 8L5

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights



Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Geri Reznik, Chairman, Moscow City Bar Association (MCBA)

Semenyako Evgeny, President, Federal Chamber of Lawyers of the Russian Federation

## Proposed Public Statement

### **The Law Society of Upper Canada Expresses Concern about the Assassinations of Vitaliy Moiseyev and Tatiana Akimtseva in Russia**

The Law Society of Upper Canada is deeply concerned about the assassinations of lawyers Vitaliy Moiseyev and Tatiana Akimtseva in Russia.

Vitaliy Moiseyev and Tatiana Akimtseva were both lawyers in Moscow who represented Sergey Zhurba, a deputy of the regional council of the Odintsovo region, who was a key witness in a case of a significant number of killings by members of the Orekhovskaya gang. The Orekhovskaya gang is a criminal organization that was particularly active in Moscow during the 1990s.

Reports indicate that, on 23 September 2014, Tatiana Akimtseva was shot and killed after receiving threats from unknown individuals. Her driver, the eyewitness to her murder, was also killed. There are no reports indicating that any arrests were made related to these crimes. It is unknown whether an investigation is currently taking place.

The verdict in the Orekhovskaya gang case was released on 23 October 2014. Dmitry Belking, head of the gang, and his accomplice Oleg Pronin, were found guilty of committing 22 murders and 11 attempted murders, including a number of other crimes.

On 24 October 2014, Moscow Police confirmed with media that Vitaliy Moiseyev and his wife Elena Moiseyeva were found dead from gunshot wounds in a car near Moscow. The two were reportedly shot at least 30 times as they were driving away from their home.

Vitaliy Moiseyev's assassination occurred hours before he was scheduled to testify in court in respect to a different case against other leaders of the Orekhovskaya gang. There are no reports indicating any arrests have been made pertaining to these crimes.

Temur Shakirov, a Legal Adviser with the International Commission of Jurists, issued the following statement in relation to the assassinations of Sergey Zhurba's lawyers: "These killings are reprehensible for the deprivation of life of victims and the anguish cause [sic] to their families [...] But they also inflict more general harm on the rule of law in the country, where lawyers come under lethal attack merely for representing their clients and discharging their professional functions."

The Law Society of Upper Canada is deeply concerned about the current state of the rule of law in Russia and the safety of lawyers discharging their duties. The Law Society would like to remind the Russian government of Principles 16 and 17 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

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abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Human rights groups believe that these lawyers were killed as a result of fulfilling their legitimate legal duties and are calling upon the government of the Russian Federation to adhere to the *Basic Principles on the Role of Lawyers*, to provide adequate protection for lawyers, judges, witnesses, and investigative authorities, and bring those responsible for these crimes to justice.

The Law Society urges the government of the Russian Federation to,

- a. thoroughly investigate the deaths of Vitaliy Moiseyev and Tatiana Akimtseva and to ensure that the perpetrators of these acts of violence are tried fairly and are brought to justice;
- b. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;
- c. put an end to all acts of harassment and intimidation of human rights defenders in Russia; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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### **Proposed Letter to Lawyers' Associations**

Dear [Name],

**Re: The assassinations of lawyers Vitaliy Moiseyev and Tatiana Akimtseva**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to His Excellency Mr. Vladimir Putin, President of the Russian Federation, expressing our deep concern over reports of the assassinations of lawyers Vitaliy Moiseyev and Tatiana Akimtseva.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

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

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

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Letter to be sent to:

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- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights
- Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales
- Geri Reznik, Chairman, Moscow City Bar Association (MCBA)
- Semenyako Evgeny, President, Federal Chamber of Lawyers of the Russian Federation

**TAB 4.1.3**

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**DR. AMIN MEKKI MEDANI**

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

Your Excellency:

**Re: The arrest and continued detention of human rights lawyer Dr. Amin Mekki Medani**

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

Dr. Amin Mekki Medani is a prominent human rights lawyer and defender, President of the Confederation of Sudanese Civil Society, Vice President of the Civil Society Initiative, and former President of the Sudan Human Rights Monitor. He earned a PhD in Comparative Criminal Law from the University of Edinburgh and served as head of the Office of the High Commissioner for Human Rights (OHCHR) in the West Bank and Gaza, Chief of Mission of the OHCHR in Zagreb, Croatia, legal advisor to the Special Representative of the U.N Secretary-General in Iraq as well as Afghanistan, and a Regional Representative for the OHCHR in Beirut, Lebanon.

It is reported that Dr. Amin Mekki Medani was arrested without a warrant or explanation by National Intelligence and Security Services (NISS) officials on 6 December 2014, at his house in Khartoum. His whereabouts were unknown until December 21, 2014, when he was transferred from NISS custody to Kober Prison in Khartoum. On January 10, 2015, Dr. Amin Mekki Medani was charged under Article 50 (undermining the constitutional system) and Article 51 (waging war against the state) of the 1991 Sudanese Penal Code. Both of these charges carry the death penalty.

It is believed that he was arrested as the result of signing a political declaration referred to as the "Sudan Call". It is reported that he and others who signed the declaration, which took place in Addis Ababa, were arrested upon their return to Khartoum. The document is said to bring together opposition forces, political parties and civic organisations in a commitment to end wars and conflicts and to work towards the establishment of a democratic, citizenship-based state in Sudan.

Sources indicate that Dr. Amin Mekki Medani signed the unity agreement on behalf of a number of non-governmental organizations. Human rights groups and non-governmental organizations maintain that he was arrested as the result of taking part in his legitimate human rights activities.

Groups have expressed concern for Dr. Amin Mekki Medani's health and safety, noting his age of 76 years, and that he suffers from high blood pressure and diabetes, for which he has prescribed medication. According to one source, the NISS did not permit him to bring his medications with him when he was arrested.

The Law Society of Upper Canada expresses deep concern over the arrest, continued detention, and treatment of Dr. Amin Mekki Medani. The Law Society notes that the *Universal Declaration of Human Rights* under Article 3 gives everyone the right to life, liberty, and security of person. Dr. Amin Mekki Medani has the right to access medication for his medical conditions. Moreover, Article 9 prohibits arbitrary arrests and detentions.

Dr. Amin Mekki Medani's ongoing arbitrary detention also contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*. His unlawful detention prohibits him from meaningful human rights work, in violation of Principle 16:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

Human rights groups believe that Sudanese authorities continue to detain Dr. Amin Mekki Medani as part of a government campaign against the "Sudan Call" and its signatories. These groups are calling for his immediate release and for an end to arbitrary arrests and acts of intimidation against human rights advocates in the Republic of the Sudan.

The Law Society urges the government of the Republic of the Sudan to,

- a. release Dr. Amin Mekki Medani immediately, as he is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological safety and integrity of Dr. Amin Mekki Medani;
- c. provide Dr. Amin Mekki Medani with regular access to his lawyer, family, his physician and adequate medical care;

- d. guarantee all the procedural rights that should be accorded to Dr. Amin Mekki Medani and other human rights lawyers and defenders in Sudan;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest of Dr. Amin Mekki Medani in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- f. guarantee that adequate reparation would be provided to Dr. Amin Mekki Medani if found to be a victim of abuses;
- g. put an end to all acts of harassment against Dr. Amin Mekki Medani as well as other human rights lawyers and defenders in Sudan;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

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

cc:

H.E. Mr. Mohammed Bushara Dousa  
Minister of Justice  
Ministry of Justice  
Justice Towers  
Gamhoria Street, PO Box 302  
Khartoum, Republic of the Sudan

H.E. Mr. Ali Ahmed Karti  
Minister of Foreign Affairs  
Office of the Ministry of Foreign Affairs  
Khartoum, Republic of the Sudan



H.E. Ambassador Mahomoud Fadl Abdelrasoul  
Embassy of the Republic of the Sudan  
354 Stewart Street, Ottawa, ON  
K1N 6K8

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Al Tayeb Haroun, Secretary General, Sudan Bar Association

## **Proposed Public Statement**

### **The Law Society of Upper Canada Expresses Concern about the arrest and continued detention of Dr. Amin Mekki Medani in Sudan**

The Law Society of Upper Canada is deeply concerned about the arrest and ongoing detention of human rights lawyer Dr. Amin Mekki Medani in Sudan.

Dr. Amin Mekki Medani is a prominent human rights lawyer and rights defender, President of the Confederation of Sudanese Civil Society, Vice President of the Civil Society Initiative, and former President of the Sudan Human Rights Monitor. He earned a PhD in Comparative Criminal Law from the University of Edinburgh and served as head of the Office of the High Commissioner for Human Rights (OHCHR) in the West Bank and Gaza, Chief of Mission of the OHCHR in Zagreb, Croatia, legal advisor to the Special Representative of the U.N. Secretary-General in Iraq as well as Afghanistan, and a Regional Representative for the OHCHR in Beirut, Lebanon.

It is reported that Dr. Amin Mekki Medani was arrested without a warrant or explanation by National Intelligence and Security Services (NISS) officials on 6 December 2014, at his house in Khartoum. His whereabouts were unknown until December 21, 2014, when he was transferred from NISS custody to Kober Prison in Khartoum. On January 10, 2015, Dr. Amin Mekki Medani was charged under Article 50 (undermining the constitutional system) and Article 51 (waging war against the state) of the 1991 Sudanese Penal Code. Both of these charges carry the death penalty.

It is believed that he was arrested as the result of signing a political declaration referred to as the "Sudan Call". It is reported that he and others who signed the declaration, which took place in Addis Ababa, were arrested upon their return to Khartoum. The document is said to bring together opposition forces, political parties and civic organisations in a commitment to end wars and conflicts and to work towards the establishment of a democratic, citizenship-based state in Sudan. According to reports, the agreement is aimed at unifying opposition to President Omar Hassan al-Bashir.

Sources indicate that Dr. Amin Mekki Medani signed the unity agreement on behalf of a number of non-governmental organizations. Human rights groups and non-governmental organizations maintain that he was arrested as the result of taking part in his legitimate human rights activities.

Groups have expressed concern for Dr. Amin Mekki Medani's health and safety, noting his age of 76 years, and that he suffers from high blood pressure and diabetes, for which he has prescribed medication. According to one source, the NISS did not permit him to bring his medications with him when he was arrested.

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- d. guarantee all the procedural rights that should be accorded to Dr. Amin Mekki Medani and other human rights lawyers and defenders in Sudan;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest of Dr. Amin Mekki Medani in order to identify all those responsible, bring

them to trial and apply to them civil, penal and/or administrative sanctions provided by law;

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- g. put an end to all acts of harassment against Dr. Amin Mekki Medani as well as other human rights lawyers and defenders in Sudan;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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

### **Proposed Letter to Lawyers' Associations**

Dear [Name],

**Re: The arrest and continued detention of human rights lawyer Dr. Amin Mekki Medani**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to His Excellency Mr. Omar Hassan Ahmad al-Bashir, President of the Republic of the Sudan, expressing our deep concern over reports of the arrest and ongoing detention of human rights lawyer Dr. Amin Mekki Medani.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

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

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights
- Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales
- Al Tayeb Haroun, Secretary General, Sudan Bar Association

**TAB 4.2**

**REPORTS FOR INFORMATION**

**TAB 4.2.1**

**FOR INFORMATION**

**PROFESSOR FIONA KAY, *THE DIVERSIFICATION OF CAREER PATHS IN LAW* REPORT**

41. Professor Fiona Kay, Queen's University, surveyed a 19-year cohort (1990 to 2009) of lawyers in Ontario to explore lawyers' movement out of private practice. The report entitled *The Diversification of Career Paths in Law: Tracking Movement out of Private Practice Among a Recent Two Decade Cohort of Law Graduates* was presented to the Equity and Aboriginal Issues Committee in January 2015. It is presented to Convocation for information at [TAB 4.2.1.1](#).
42. Although the divide between private and non-private practice appears to be more permeable than once thought, little is known about the timing of transitions across sectors and the factors prompting major career moves within and from the legal profession. The study offers new insight to job transitions, specifically career paths that diverge from professional footing in private law practice.

**REPORTS ON THE 2014 SURVEY OF JUSTICIA FIRMS**

43. Launched in November 2008, the Justicia Project was the first of its kind in Canada and grew to include 57 participating law firms across the province, with one out-of-province firm. Several other provincial law societies are following Ontario's lead and more than 75 law firms across Canada have joined or are about to make a long-term commitment to Justicia.
44. Through the Justicia Project, law firms indicated their commitment to develop resources to support the advancement of women in private practice. Ontario's Justicia firm representatives worked together to identify and adopt principles and best practices regarding tracking gender demographic information, flexible work arrangements, networking and business development, and mentoring and leadership skills development for women.
45. Two reports have recently been posted online. They analyze the 2014 responses to a survey of Justicia firms of under 100 lawyers and over 100 lawyers. The reports are available at [http://www.lsuc.on.ca/justicia\\_project/](http://www.lsuc.on.ca/justicia_project/).





# The Diversification of Career Paths in Law

Tracking Movement out of Private Practice Among  
a Recent Two Decade Cohort of Law Graduates

Fiona M. Kay,  
Stacey Alarie,  
and Jones Adjei

*A Report to the Law Society of Upper Canada*

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## **The Diversification of Career Paths in Law**

### **Executive Summary**

This report explores lawyers' movement out of private practice. Our focus is on the early career years when more frequent job changes take place. In order to pay close attention to these formative career years, we sampled from a 19-year cohort (1990 to 2009) of law graduates admitted to the Ontario Bar. Using a cross-sectional survey conducted in 2009 of 1,270 law graduates, we examined career paths emerging from private law practice.

Although the divide between private and non-private practice appears to be more permeable than once thought, little is known about the timing of transitions across sectors and the factors prompting major career moves within and from the legal profession. Our study offers new insight to job transitions, specifically career paths that diverge from professional footing in private law practice.

The results of this study show that the majority of contemporary law graduates who began their careers in private practice no longer follow the traditional model of a career characterized by continuous employment and a direct path to partnership within a single law firm. More common are career paths that include job changes across firms, across sectors of the profession, and with intervals of unemployment or time away from law practice invested in further education, travel, full-time work outside law practice, or raising children. Women are at greater risk of leaving than their male colleagues with whom they entered private practice following law school. New lawyers are most likely to leave private practice during the early career years, with a peak in departures at about seven to eight years after entering private practice. This pattern is, however, distinctively male. Women's departures from private practice are also elevated during the early career years, but the pattern is better described as an initially rapid exodus followed by a steady stream of women leaving private practice over time.

Background factors connected to legal education appear generally unrelated to subsequent career movement out of private practice. Factors including graduation from an elite law school, amount of law school debt and graduates' assessments of how well law school prepared them for a career in law did not appear to shape job moves out of private practice. One exception was law school grades. For men, but not women, successful academic performance in law school smoothed movement out of private practice. The results also reveal that certain areas of law held greater retention for lawyers in private practice. Not surprisingly, lawyers working in litigation were less likely to leave private practice compared with lawyers working in other areas of law. Men working in the area of business law (including corporate and commercial, intellectual property, bankruptcy, tax, and insurance) were also at lower risk of leaving private practice compared with men in other areas of law. However, women engaged in business law did not experience this same pull to stay in private practice. Clientele responsibilities were important factors in keeping men and women in private practice. Regardless of gender, lawyers that were primarily responsible for recruiting new clients to the firm (rather than servicing existing clients) and that had responsibility for a major client of the firm were far less likely to leave private practice than lawyers that lacked these responsibilities. Meanwhile, billing long hours lowered men's risk of leaving private practice, but had no similar effect on women's risk of leaving.

Further gender differences emerged in the context of organizational size. Men working as sole practitioners were less likely to leave private practice than men working in smaller mid-size law firms (10 to 19 lawyers). In contrast, for women, neither firm size nor whether they started their careers in solo practice affected their risk of leaving private practice. Furthermore, for both men and women in our sample, the provision of flexible full-time hours appeared insufficient to stem the flow from private practice.

For both men and women, job satisfaction is critical to retention in private practice. Extrinsic job satisfaction (e.g., satisfaction with remuneration, opportunities for promotion, and being fairly rewarded in view of the market and one's level of experience) offered a powerful incentive to stay in private practice. However, intrinsic job satisfaction (e.g., satisfaction with intellectual challenge of work, sense of accomplishment through work, the opportunity to use one's legal skills in the job, and taking enjoyment in one's work) failed to hold lawyers in private practice.

Professional development opportunities, including clientele responsibilities and mentoring, are powerful levers to keep junior lawyers in the private practice of law. On the other side, lawyers that felt marginalized and experienced mistreatment by other legal professionals (e.g., being assigned tasks beneath their skill level, being denied work after expressing an interest, exclusion from social gatherings or receiving derogatory or disrespectful comments from other lawyers or judges) were at greater risk of leaving private practice. Interestingly, although women were more often the recipients of disparate treatment, it was men that were more likely to leave private practice as a result of these negative experiences.

Finally, parental leaves have a curious effect on departures from private practice. Although other studies show parental leaves wield damage on the careers of women, our analysis did not show a similar negative effect on women's legal careers. Rather, we found the increased risk of leaving private practice surfaced among men who had taken parental leaves. This finding contrasts with our recently published study of an earlier cohort of Ontario lawyers (a cohort of 1975 to 1990 bar admissions). In our study of the early fifteen-year cohort, we found parental leaves moved women out of private practice 37% more quickly, while parental leaves had no impact on men's risk of leaving private practice (Kay, Alarie, and Adjei 2013:1252). It is

possible that many of the women in our current study, a sample of recent bar admissions, were yet to start families or would remain childless. Certainly, our qualitative analysis of the comments written by participants in our study revealed that numerous women expressed apprehension about having children and the difficulties of managing busy careers and family life. It is, therefore, premature to conclude that parental leaves or having children have little influence on women's transitions out of private practice.

For both women and men lawyers, taking time away from law practice (for purposes other than parental leave) increased their risk of leaving private practice. Women were more likely to experience these gaps in their careers and for longer durations than their male counterparts. Women were also more likely to spend the time attending to the care of young children, while men more often entered graduate school, travelled, or worked on a full-time basis in positions outside the practice of law.

Our analysis of the comments written by participants in our survey offers further insight into the processes generating departures from private practice. This analysis provides a more nuanced understanding of the nature of work-life conflicts, particularly the often relentless, unpredictable and invasive time demands in private practice. Numerous lawyers in our study admonished the billable hour system of evaluation used in law firms. Others described strategies adopted in an effort to harmonize family responsibilities with demanding careers. Their detailed comments regarding job changes revealed the pressures pushing lawyers out of private practice, as well as the attractions of work settings outside private practice. This push/pull dynamic was more commonly reported by women. Some women left in anticipation of having children and encountering an incompatibility between family life and career; while others left after having one or more children, sometimes as a short term strategy to managing family demands, with the

intent to return to private practice in a few years. Yet, not all accounts expressed disappointment or reproached private practice. Some lawyers wrote of achieving work-life balance in firms that were innovative in their approach to schedule flexibility, reduced hours, and supports for lawyers with young children or elder care responsibilities. Many of the lawyers in our survey, including both those continuing to work in private practice and those who had left, wrote of their love for the law, their fascination with legal problem-solving, and the pleasure they took in providing quality legal services to their clients. Participants in our study also provided extensive feedback as to the changes they would like to see take place in law firms. These included: flexible hours, improved mentoring and training, modification or departure from the billable hour system, and targeted efforts to achieve gender equality.

## The Diversification of Career Paths in Law

Careers in law are becoming more diverse. Contemporary law graduates launch their careers in an array of settings (Dinovitzer et al. 2009; Kay, Masuch, and Curry 2004). Many law graduates pursue careers outside traditional private law practice, working in government, as in-house counsel to corporations and labour unions, and in law clinics, Legal Aid services, and public interest organizations. Others embark on careers beyond the practice of law, applying their legal knowledge to businesses, academe, and other work settings far removed from law practice. Even for individuals who follow the more traditional route – joining a private law firm following law school – careers are becoming more wide-ranging. The traditional partnership contest, characterized by an up-or-out pyramid structure, has changed to incorporate intermediary tiers of permanent salaried associates, non-equity (service or salaried) partners, and equity (owners, profit-sharing) partners (Faulconbridge and Muzio 2008; Galanter and Henderson 2008; Sokol 2007). For lawyers who set out to establish themselves in private practice, either in law firms or as sole practitioners, their careers may involve considerable movement (Kay, Alarie, and Adjei 2013; Monahan and Swanson 2009). Not only do lawyers move geographically (Dinovitzer and Hagan 2006) and between firms (Fields et al. 2005), some traverse sectors of practice, leaving private practice to work in government, education, and corporations (Henderson and Bierman 2009; Kay 1997; Kay et al. 2013).

Yet, the vast majority of studies examining the legal profession focus on partnership promotions in law firms (Epstein et al. 1995; Hull and Nelson 2000; Kay and Hagan 1998; Noonan and Corcoran 2004), with particular attention directed to large corporate law firms (Beckman and Phillips 2005; Chambliss 1997; Galanter and Henderson 2008; Gorman 2006).



Only a handful of studies have examined lawyers employed in government (Narcisse 2011; Vauchez 2008) or those working abroad in organizations such as the World Trade Organization or international human rights courts (Hagan and Kay 2011; Merry 2006). Rarer yet are studies that attempt to track law graduates' mobility across sectors of practice. Yet, some recent work suggests there may be considerable traffic across sectors (Dinovitzer et al., 2009; Henderson and Bierman 2009; Kay 1997; Kay et al. 2013).

Our study offers new insight to job transitions, specifically career paths that venture out from professional footing in private law practice. First, we examine the timing of job moves and whether movement occurs most often during early career formation or later as opportunities open up for experienced lawyers to make lateral moves. Second, we pay close attention to gender differences in the timing of these moves and the factors that encourage lawyers to leave private practice. Policy initiatives and projects underway at law societies and bar associations suggest that retention of women in private practice is a pressing concern for gender equality in the legal profession.<sup>1</sup> Third, we incorporate several innovative measures to tap the influence of education

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<sup>1</sup> In May 2008, a Law Society of Upper Canada report recommended that the Law Society implement a three-year pilot project (The "Judicia Project") for firms of more than 25 lawyers and the two largest firms in each region, in which firms would commit to adopting programs for the retention and advancement of women. See: The Law Society of Upper Canada. 2008. *Final Report – Retention of Women in Private Practice Working Group*. Toronto, ON: The Law Society of Upper Canada; [www.lsuc.on.ca/media/convmay08\\_retention\\_of\\_women\\_consultation.pdf](http://www.lsuc.on.ca/media/convmay08_retention_of_women_consultation.pdf) [accessed 1 May 2014]; In November 2008 the "Judicia Project" was launched. Firms signed on to the project share best practices to promote and advance women in the private practice of law, including policies on pregnancy, parental leave and flexible work arrangements, as well as gender-based programs on mentoring, leadership, and networking opportunities. See: The Law Society of Upper Canada. 2009. *Annual Report: Performance Highlights*. Toronto, ON: The Law Society of Upper Canada; [www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=5022](http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=5022) [accessed 1 May 2014]; The Law Society of Upper Canada. 2011. *Retention of Women in Private Practice*. Toronto, ON: The Law Society of Upper Canada; [www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=1247485438](http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=1247485438) [accessed 1 May 2014]; See also Joan C. and Veta T. Richardson. 2010. *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*. The Project for Attorney Retention. Chicago, IL: American Bar Association.

factors, including law school debt and law school preparation for careers, on job changes. Fourth, we examine the properties of jobs, related to the incentive system, time demands and nature of work that may influence job moves out of private practice. In this context, we also examine closely the bases for job satisfaction and experiences of disadvantage and their consequences for leaving private practice. Finally, we examine the impact of parental leaves and time taken away from law practice on departures from private practice by women and men. Most studies focus on employment interruptions that are the result of unemployment spells between jobs rather than time away to pursue other endeavours, and rarely look at gender differences (Theunissen et al. 2011). We turn next to develop our expectations based on the literature on timing of job mobility, gender differences in turnover, and causes of turnover among professionals generally and lawyers more specifically.

### ***Timing of Job Moves***

When is movement out of private law practice most likely to occur? Do lawyers move early in their career, as they explore what it is like to work in law and ‘test the waters’ for establishing themselves in private practice? Do job moves take place after a few years, once lawyers have paid off student loans (McGill 2006) and after they have accumulated valuable practice experience that they can bring to their work as in-house counsel or to business ventures outside the practice of law? Are lawyers most likely to move once they have children in an effort to achieve a better balance between personal and professional lives?

Research suggests professionals often switch jobs when they are in the early years (Wheeler 2008). Novice professionals are perhaps more receptive to change because this career phase is one of development and exploration, a time when professionals acquire experience and refine their career aspirations (Klassen and Chiu 2011). During the early career years, lawyers

also accumulate at least partially transferrable human capital that enables movement across sectors (Borghans and Golsteyn 2007). But after working for an organization for a few years, professionals are less likely to quit because their experience with the current employer has brought increased wages and job responsibilities. Their experience and seniority is associated with both current and future rewards and, therefore, the cost of job changing is higher than if the change had occurred early on (Arranz, García-Serrano, and Toharia 2010; Park and Sandefur 2003). These investments bond the individual to the organization (Lambert, Hogan, and Barton 2001). Over time and with more promotions, individuals may become 'entrapped' by developing firm-specific skills and loyalty to the firm (Saporta and Farjoun 2003).

Taken together, research suggests that the early career stage has considerable flux as professionals explore the market for better job matches. Over time, professionals are likely to become invested in the firm or solo practice they have spent years developing. Therefore, we hypothesize:

*Hypothesis 1:* The greatest risk of job moves out of private practice will occur during the early years (e.g., less than eight years) of practice experience.

### ***The Gender Gap in Retention of Lawyers in Private Practice***

Twenty years ago, studies of the legal profession drew attention to the higher rates of attrition among women. This overrepresentation of women in an exodus from law has been referred to by some writers as 'the flight from law' (Hirsch 1989; Menkel-Meadow 1989; Otvos 1992). Nelson's study of Chicago lawyers (1988) found women were more likely to leave firms prior to partnership decisions than were male associates. The turnover was most pronounced among earlier cohorts of women. Of women associates hired from 1971 to 1975, only 35% remained in 1984 compared with 48% of all associates. The gap in turnover declined with the

next cohort. Of those entering law from 1976 to 1980, 42% of women remained in 1984 compared with 51% of the total cohort (Nelson 1988:139). Spurr and Sueyoshi (1994) surveyed 2,587 lawyers from two cohorts (one entered law firms during the years 1969 and 1973 and the other between 1980 and 1983) in Chicago and New York cities. These authors found that women were considerably less likely to be promoted and slightly more likely to leave the firm without being promoted (Spurr and Sueyoshi 1994). However, in contrast to Nelson's study (1988), Spurr and Sueyoshi (1994) found little change in the gender differential in turnover, with the gap increasing slightly across the two cohorts. Studies in Canada also document a gender gap in attrition from law. Brockman's (1992, 1994) surveys of lawyers in Alberta and British Columbia uncovered that a larger proportion of women than men left the practice of law. In a survey of Ontario lawyers, Kay (1997) found that women moved out of law practice 60% more quickly than men and that the small firms appeared to be the least successful in retaining female lawyers.

More recent studies reinforce the claim that a gender gap persists. Patton's study of U.S. law firms (2005:174) shows that 9% of women had left their firms within 16 months of being hired and more than half (55%) had left within four and one-half years of starting in law firms. The gender differential in exits from law firms is particularly pronounced. Several studies reveal that gender predicts exits from law firms even when taking into account law school quality, legal specialization, having taken a leave for childcare, children, current work hours, and measures of social capital (Hagan and Kay 1995; Hull and Nelson 2000; Kay 1997; Kay and Hagan 1999; Spurr and Sueyoshi 1994). In a national U.S. study of lawyers admitted to the bar in the year 2000 and tracked seven years into practice, Dinovitzer and colleagues (2009) found that a higher proportion of women had left larger private firms compared with men. In particular, women who worked in large law firms (of 100 or more lawyers) at wave one (2003) were more likely than

men to move to positions in non-profit/education, state government and legal services, as well as to move to inside counsel at wave two (2008) (Dinovitzer et al. 2009).

More broadly, research documents women's elevated risk of departure from private practice, including law firms of various sizes and offices of sole practitioners. The pattern appears to be one of cumulating disadvantages. As Noonan and Corcoran (2004:146) observed in their study of University of Michigan law graduates, "[w]omen fell behind men in each stage in the progression to partnership. Women were slightly less likely than men to try out private practice (82 vs. 87 percent). Women who entered private practice were 1.8 times as likely as men to leave within four years (18 vs. 10 percent)." Similarly, in a longitudinal study of Ontario lawyers, Kay and colleagues (2014:1256) found women were more likely to leave private practice early in their careers: 31% of women compared with 21% of men departed within five years. We therefore test the following hypothesis:

*Hypothesis 2: Women are more likely than men to leave private practice.*

## ***Reasons for Leaving Private Practice***

### **Job Dissatisfaction with Development and Advancement Opportunities**

Although research has documented attrition of women lawyers, particularly from law firms and private practice (Kay 1997; Nelson 1988; Noonan and Corcoran 2004; Spurr and Sueyoshi 1994), only a handful of studies have examined the context and reasons prompting the decision to leave (Brockman 1994; Kay and Hagan 2003; Reichman and Sterling 2002). We draw on these studies and the broader literature on turnover to unpack the factors shaping departures from private practice.

The literature on job turnover emphasizes job dissatisfaction and perceived alternatives as catalysts for quitting one's job (Barak, Nissly, and Levin 2001; Crossley et al. 2007; Lambert, Hogan, and Altheimer 2010). Most models propose, and empirical research suggests, that job satisfaction mediates the relationship between job and organizational attributes (e.g., earnings, nature of the work, advancement opportunities, and work-group relations) and turnover. The general argument is that dissatisfaction with one's job triggers thoughts about leaving (Boswell, Boudreau, and Tichy 2005; Griffeth, Hom, and Gaertner 2000) and actual leaving behaviour (Rode et al. 2007). Several facets of job satisfaction reduce turnover, including satisfaction with job, pay, promotions, supervision, and coworkers (Fields et al. 2005). Among these, promotions, including the opportunities for promotion available and the likelihood of being promoted, are key considerations in employees' decisions to stay with an organization or to quit (Benson and Brown 2007; Patterson and Mavin 2009; Saporta and Farjoun 2003).

In the case of the legal profession, women report lower satisfaction than men with their prospects for advancement and earnings (Dinovitzer and Garth 2007; Dinovitzer et al. 2009; Hagan and Kay 2007; Reichman and Sterling 2002; Rhode 2001). Women's dissatisfaction is rooted in pervasive gender bias and consequent inequalities for professional rewards. For example, in a study of 796 law offices, Gorman and Kmec (2009) found that law firms' propensity to select women declines between entry-level hiring and partner promotion. Gorman and Kmec (2009) suggest that bias is most severe in upper-level promotion decisions as a result of three factors (high status, work uncertainty, and predominance of male incumbents) that combine to trigger gender bias in decision-makers' evaluation of candidates. Other research suggests women and men are aware of these gender inequities in the ascent to partnership. For example, in a survey of lawyers in Alberta, Brockman (1994:135) found "career advancement"

and “attaining partnership” were most frequently mentioned by women and men as areas in which women were discriminated against.

Gender inequality aside, both men and women professionals are likely to leave jobs when they perceive their job tenure is insecure, prospects for promotion are uncertain, or salaries are not climbing. Their doubts may be seeded through cues from senior lawyers. For example, managing lawyers may send negative signals to some junior lawyers by overlooking them for valuable mentoring and challenging assignments, salary increases and annual bonuses, and a general failure to reward work accomplishments. Senior lawyers may even communicate directly to associates, in the years leading up to partnership decisions, that their prospects for invitation into the law firm partnership are slim. As a result, quitting one’s job may be a pre-emptive move when professionals perceive the risk of losing their job to be high (Batt and Valcour 2003; Dobrev 2005; Manski and Straub 2000) or their career progression has stalled. Research on job satisfaction with extrinsic rewards (e.g., opportunities for advancement, earnings, and job security) and turnover leads us to test the following hypothesis:

*Hypothesis 3a:* High extrinsic job satisfaction is negatively related to leaving private practice.

The broader work literature also shows that job resources, such as social support and inclusion in work teams, play an important role in fostering retention (Lange, De Witte, and Notelaers 2008). These resources increase employees’ growth, learning and development, and provide motivation in achieving work goals (Schaufeli and Bakker 2004). Furthermore, job resources provide a quality of work life that satisfies a professional’s need for skill development, involvement in the core activities of the organization, and recognition by colleagues for their contributions. When these job resources are scarce, professionals become dissatisfied with their quality of work life and this dissatisfaction has been found to influence intention to quit

(Armstrong et al. 2007). These experiences of scarce resources may be the product of subtle cognitive bias on the part of superiors that results in women being passed over and disadvantaged early in their career development in law (Kay and Gorman 2008). Though, some research posits that direct discrimination and sexual harassment, as well as an array of embedded institutional practices, marginalize women within law firms (Epstein 1997). Whether subtle or direct, intentional or not, firms that fail to invest in the professional development of their associates are at risk of cultivating disgruntled and detached lawyers, eager to find an exit route. As Kanter (1977:427) observed, “Complex organizations whose opportunity and power structures routinely disadvantage some kinds of people (whether women or men) are likely to generate the behavioral consequences of such disadvantaging.”

In the case of lawyers, dissatisfaction with developmental opportunities leads women to seek out new employment opportunities. For example, Brockman (1994:136) found in her survey of Alberta lawyers that access to clients and assignment of files were reported as spheres in which women experienced discrimination. In Ontario, Kay and Hagan (2003) found that women lawyers were more likely to be excluded from important files, and this experience of being marginalized increased women's subsequent intentions to quit the firm and seek work elsewhere. These studies underscore the importance of development through challenging work, service of major clients, and inclusive work climates. Challenging work brings the opportunity to exercise legal skills and is intrinsically satisfying to new law graduates. The opportunity to work with major clients raises the profile of junior lawyers and establishes reputations. Inclusive work climates, characterized by respectful and supportive interactions, invite mentoring and involve new lawyers in the life of the firm. We therefore test three further hypotheses related to these facets of job satisfaction:



*Hypothesis 3b:* High intrinsic job satisfaction is negatively related to leaving private practice.

*Hypothesis 3c:* The opportunity to work with major clients of the firm is negatively related to leaving private practice.

*Hypothesis 3d:* Experiences of discrimination and disadvantage are positively related to leaving private practice.

### **Work-Life Balance: The Debate over the Impact of Children on Careers**

Another reason identified for women lawyers' departure from work settings, particularly from private practice, is that work-family conflicts lead women to quit law firms. A large body of research examining work-life conflict or role overload suggests that women in professions have "competing devotions" (Blair-Loy 2003:10) to work and family responsibilities. For example, even when in full-time employment, women still retain major responsibility for domestic work and caring (Cabrera 2007). Recent cohorts of married men have increased the amount of time they spend on housework. Nonetheless, married women continue to take on considerably more housework than men (Bianchi, Casper, and King 2005; Crompton and Lyonette 2011). Although women in high-paying professional careers can outsource some housework and childcare (e.g., to nannies, daycares, and private boarding schools), many women still take on a 'second shift' at home (Percheski 2008). One study documented that women perform double the hours of housework and up to four times as much of the childcare as men (Preston 2004). Perhaps not surprisingly, demands of family responsibilities are commonly invoked in theorizing women's 'opting out' of professional careers, with such turnover depicted as a strategic adaptation in the face of competing demands of work and family (Belkin 2003; Moen 2007; Moen, Kelly, and Hill 2011; Stone 2007; Stone and Lovejoy 2004). There is some evidence to support this argument. Research on job turnover has found women and men identify different reasons for leaving jobs, with women being more likely than men to cite reasons such

as household responsibilities, illness in the family, pregnancy and wanting to have a job closer to home, whereas men rarely cited family reasons (Sicherman 1996; Walsh 2013).

The work-family conflict argument has been applied frequently with reference to the exodus of women lawyers from the private practice of law. As Donovan (1990:142) remarked, “The most notorious reason for women to leave [a firm] is motherhood.” Similarly, in a 2007 survey of the University of Virginia School of Law class of 1990, Monahan and Swanson (2009) concluded that the gender difference in law graduates’ full-time employment (a 33% difference) was largely accounted for by having children at home, though two-thirds of the women with two children at home continued to work full-time. In a survey of lawyers who had left the profession in British Columbia, Brockman (1994) found that women expressed concerns over the difficulties associated with combining family life and law practice. She also found that childcare responsibilities and family leave policies play a significant role in career decisions (including job selection, preferred specialties, cases, and hours of work) for women but not for men. Reasons commonly reported by women for leaving the field of law were the lack of flexibility offered by law firms, long hours required by the firm, childcare commitments, and the stressful nature of the work. In contrast, men were less likely to cite work-family conflict as a reason for leaving law; rather men cited leaving firms in order to use different skills (Brockman 1994). Furthermore, in a U.S. study based on in-depth interviews with 100 attorneys in the Denver Metropolitan area, Reichman and Sterling (2002) analyzed the decisions made by women lawyers making job moves. They found women lawyers move more frequently, move earlier in their careers, and are more likely to move downward than men. Reichman and Sterling (2002:961) argue:

Women’s ‘choices’ reflect their ability to accumulate professional assets balanced against the pull of the family. Women described their disappointing experiences with work assignments, lack of recognition of their abilities, problems they experienced while trying to find an influential mentor. The stories about work that

we gathered suggest that choice may be as much about the push away from work as it is about the pull of the family.

Reichman and Sterling's study (2002) alerts us to the possibility that women lawyers' job changes, particularly exits out of law practice, may be generated by something other than simply individual choices. More recent work suggests that women become discouraged with barriers to upward mobility and only then 'choose' to leave their professional workplaces to invest energies in home and family (Williams and Richardson 2010).

Other studies of the legal profession offer further caution when leaping to the conclusion that women are leaving law to care for their children. In a survey of lawyers in Calgary, Alberta, Wallace (2001) found women are less likely to want to leave the practice of law compared with men. Her research revealed an interesting twist on the work-family conflict or work-life model (Glavin and Schieman 2012; Laurijssen and Glorieux 2013) by focusing on enticements to stay, rather than pressures to leave (Wallace 2001). Her study demonstrates that intrinsic and professional job rewards and work demands significantly influence lawyers' dissatisfaction and desire to leave law. It appears that when women lawyers' work is sufficiently challenging and service-oriented, while not overly conflicting with their non-work life, women are more satisfied with and committed to the practice of law (Wallace 2001). Wallace (2001) further found that neither marital status nor the presence of preschool-aged children triggered lawyers' job dissatisfaction or their desire to leave law, a finding that is contrary to various studies suggesting that young children amplify time demands and pressures of practicing law, especially for women (Brockman 2001; Kay et al. 2006; Leiper 2006; Reichman and Sterling 2002). Wallace (2001) suggests that her findings may reflect the growing use and ability of lawyers to pay for childcare and domestic services that may help alleviate family demands. As she notes, "Contrary to the assumption that professionals who have young children experience more work-family-strain, the

high earnings associated with practicing law may make it possible to purchase goods and services that help parents cope with their childcare responsibilities” (Wallace 2001:140).

In sum, while there appears to be some support for the argument that work-family conflict pressures women with children to pursue paths outside private practice, there is growing skepticism of the claim that women ‘opt out’ of their careers to stay home with their children. We explore one possible impact of children on women lawyers’ careers by testing the following hypothesis:

*Hypothesis 4:* The presence of children in the home is positively related to women leaving private practice.

### **The Structure of Practice Environments: Billable Hours and Time Rigidity**

These challenges to the argument that women are ‘opting out’ from professional careers as a result of work-family conflict have shifted research away from the rhetoric of personal choice to a focus on rising time pressures as unsustainable for professionals (Moen et al. 2011; Percheski 2008). Scholarship increasingly examines factors such as inflexible workplaces, labour market instability, men’s contributions to housework and other reasons why women may exit professional careers (Boushey 2008).

Men and women lawyers experience professional work and families as ‘greedy institutions’ – institutions that demand undivided loyalty (Seron 1996) and excessive hours (Rhode 2001). In professional careers such as law, individuals work long hours to demonstrate their dedication. In private practice, lawyers with top billable hours receive financial bonuses and gain reputations as dedicated and valued assets of the firm. Private practice is dominated by “engrained cultural beliefs and practices around work time and face time as indicators of work commitment, productivity, and quality” (Moen et al. 2011:72). Compounding this problem, the

time commitment required of professional work has escalated in recent years (Jacobs and Gerson 2004), ratcheting up the strains on employees in managing all aspects of their lives (Moen and Yu 2000). As Moen and colleagues (2011:89) observe, “The boundedness of working time is evaporating, with information technologies, job pressures, and mounting expectations expanding many jobs across space and time such that they spill over into weeknights and weekends, further contributing to employee stress.” Studies of the legal profession attest to these time pressures. For example, in a study of University of Michigan law school graduates, Dau-Schmidt et al. (2009) found that the demand for long hours in legal practice contributed to work-life balance issues, particularly for women. Work time creeps beyond long hours at the office to invade personal life via information technologies and assumptions of around-the-clock availability on the part of professionals. The resulting high levels of ‘negative spillover’ from work to home have been shown to predict turnover (Armstrong et al. 2007; Jones et al. 2007; Moen and Huang 2010).

In response to the turnover generated through excessive time demands, researchers and law practitioners have advocated for increased flexibility in the hours required at work (Furlong 2013; Makin 2009; O’Brien 2006). Some argue that greater employee flexibility can promote retention, reducing intentions to quit, especially for professionals with chronic overloads and time strains (Armstrong et al. 2007; Firth et al. 2004; Hill et al. 2006; Kelly and Moen 2007). Work schedule flexibility offers a bridge between the work and family roles and lends professionals greater ability to manage competing demands (Moen et al. 2011). This flexibility involves being able to arrange work schedules and taking time off work for personal business. Flexible work schedules have been associated with higher organizational commitment and job satisfaction (Scandura and Lankau 1997), as well as lower stress and lower work-family conflict

(Armstrong et al. 2007). Furthermore, research shows that the perception of one's employer as 'family friendly' reduces turnover (Raskin 2006). We examine the impact of flexible schedules on turnover.

*Hypothesis 5:* The availability of flexible work schedules will decrease the risk of leaving private practice.

### **The Economy, Market for Legal Services, and Turnover**

Beyond the hierarchical structure and rigid policies of law firms, broader economic factors may also play an important role in shaping turnover. A sizeable body of literature suggests economic factors, including wage compression (Heyman 2008) and unemployment rates (Couch and Fairlie 2010; Griffeth et al. 2000; Park and Sandefur 2003), influence turnover. Although economic conditions are salient, their impact may vary. Periods of both economic decline and prosperity may prompt an increase in job movement, though for different reasons.

Poor economic conditions at the time of career launch may lead law graduates to change jobs in an effort to land a more desirable or secure position. If, following law school, the graduate settled for a job that offered practice experience, though was not their preferred job or in the work setting they hoped for, then they may actively seek improved job prospects. During tough economic times, they may also quit their initial job as a pre-emptive move against being terminated through law firm downsizing or dissolution of the firm partnership. Alternatively, junior lawyers may find themselves let go prematurely, the casualty of working in areas of law without sufficient demand during a recession, or denied partnership in firms struggling to weather economic storms. On the other hand, when the economy is prosperous, there may be a high tendency of professionals to change jobs – even to take career risks by making the jump between sectors of practice in an effort to explore vastly different work settings. Research shows

professionals are more likely to express turnover intentions when they perceive that there are other acceptable employment opportunities (Lambert et al. 2001). Furthermore, when job openings are widespread, government and corporate employers may be more willing to hire from outside and to bring in lawyers seeking to change roles or practice domains (Fields et al. 2005).

We suspect that during prosperous economic times, the more common mobility pattern is one of job movement within private practice, that is, a migration of lawyers across firm settings, as lawyers jockey for lucrative posts in desirable firms to advance careers within private practice (Forrier, Sells, and Synen 2009). To a lesser extent, job moves may also involve lawyers traversing sectors to explore diverse work contexts, with the option of returning to private practice while the market is strong. In contrast, during difficult economic periods, we expect that the flow of legal talent is primarily out of private practice to other sectors and even out of law practice entirely.<sup>2</sup> This out-flow is largely the product of forced attrition as law firm associates encounter weak prospects of making partner and sole practitioners struggle with a shortfall of business. We pose the following hypothesis, targeting economic climate at the time of entry to practice as critical to early job moves:

*Hypothesis 6: A high unemployment rate at time of career entry is positively related to leaving private practice.*

### **Career Interrupted**

The presence of a gap between jobs may be particularly impactful on careers. The notion of the 'ideal worker' (Kelly et al. 2010; Williams 2000) and the dominant model of career progression includes requirements for linearity and continuity (Sirianni and Negrey 2000). Yet, women have traditionally experienced interrupted, nonlinear careers due largely to family

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<sup>2</sup> It is likely that government and corporate employers also face cutbacks during economic decline and junior lawyers seeking entry may find these career paths blocked or limited. Hence, the flow in tough economic times may largely consist of an exodus from law rather than leaps to non-private practice sectors of law.

commitments (Fondas 1996). These interruptions are sometimes short in nature, as in the case of a maternity leave of a few weeks or months, and on other occasions more lengthy, as in the case of a departure for several years to care for young children. Although it may be more feasible for younger cohorts to pursue careers while raising children than it was for older cohorts, professional women with children remain less likely to work full-time or long hours than are male colleagues without children (Percheski 2008). Women may find themselves blocked from certain jobs or sectors, or they may be dismissed following maternity leaves – in either scenario, women may need to adapt and pursue less conventional career paths. As Mallon and Cohen (2001:219) observe, traditional career theory “has never adequately captured the rhythms of women’s working lives, nor moved beyond male career patterns as the implicit norm.”

Yet, the presence of career interruptions or nonlinear career patterns may be of central importance to women’s equality in professions. Interruptions from work during the course of one’s career may carry a stiff penalty. Human capital theory (Becker 1990) reasons that a professional’s human capital decreases or at best stagnates during interruptions, especially interruptions as a result of unemployment or unpaid work activities (such as staying home to raise children or caring for elderly parents). As Theunissen and colleagues (2011:113) observe, “Outside the context of wage employment, job specific and organization specific experience diminishes, becomes outdated or is rendered obsolete. Previously acquired skills, when not regularly practiced, are subject to processes of atrophy and depreciation.” In contrast, interruptions for other education or other types of paid work may offer gains. For example, interruption for educational reasons may enhance earnings (Beblo and Wolf 2002). Also, interruption for self-employment may be viewed favourably by future employers who may perceive self-employment as signaling self-direction and an entrepreneurial aptitude (Neifert



2006). Apart from its signaling value, future employers may also see entrepreneurial work as an opportunity to attract previous business contacts and clients of the entrepreneur (Theunissen et al. 2011).

Less attractive to future employers are individuals who experienced gaps between jobs for non-paid work experiences, such as travel, raising children, illness, or unemployment. Studies suggest that employers interpret these sorts of employment interruptions as a signal of low work commitment (Kunze 2002). Time without paid work, even though the individual may engage in volunteer or community service work, may be interpreted as a sign that the person is not dependable or lacks ambition, which in turn may be seen as an indicator that the individual will be unreliable and lack productivity upon return to work (Spivey 2005; Theunissen et al. 2011). Some studies reveal that women who take child-related career breaks could pay a further penalty because, within the class of women who interrupt their career, employers discriminate against those who interrupt their career for family-related reasons (Arun, Arun, and Borooah 2004; Williams 2000). The cost for women returning to law practice following child-related career breaks may be a stagnation of salary or they might not be able to return to the same type of job, resulting in depressed wages (Arun et al. 2004). These reduced employment prospects and wage declines following parental leaves or career interruptions for raising children are often referred to in the social science literature as the 'family penalty' (Tremblay 2013) or 'motherhood penalty' (Budig and Hodges 2014; Killewald and Bearak 2014). We test two hypotheses related to leaves from private law practice:

*Hypothesis 7a:* Taking a parental leave will increase the risk of leaving private practice.

*Hypothesis 7b:* Taking time away from the practice of law (for purposes other than a parental leave) will increase the risk of subsequently leaving private practice.

## Data, Sampling, and Survey Design

Data for this study come from *The Career Diversity Survey*, an innovative cross-sectional survey of lawyers conducted in the province of Ontario. In the Canadian context, Ontario is an ideal setting in which to study legal careers because the province is home to nearly half (41%) of the nation's lawyers (Kay and Brockman 2000; Kay, Hagan, and Parker 2009). The province is home to the country's largest corporate law firms, based primarily in Toronto, and home to a large concentration of government lawyers at both the federal (Ottawa) and provincial (Toronto) levels, as well as a diversity of law practice settings in smaller cities and towns. We conducted the survey in the autumn of 2009. The sample consisted of a stratified random sample of lawyers from the membership records of the Law Society of Upper Canada. The sample was stratified by gender to include equal numbers of men and women called to the Ontario Bar between 1990 and 2009. This near-twenty year cohort was selected for two reasons. First, we aimed to pay close attention to the formative career years, a period characterized by considerable job turnover. Second, the junior cohort of lawyers offers a contemporary comparison to a longitudinal survey of Ontario lawyers conducted with the preceding fifteen-year cohort. This earlier cohort of lawyers (1975 to 1990 bar admissions) entered law practice during a period in which Ontario's legal profession, for the first time, included a sizeable number of women lawyers among its membership (5% in 1975 to 22.5% in 1990). The more recent, contemporary cohort of lawyers (1990 to 2009 bar admissions) entered law practice during a period that saw women's representation in law continue to rise (23.5% in 1991 to 38.2% in 2009),<sup>3</sup> as well as a growing presence of racial and ethnic minority group members.<sup>4</sup>

<sup>3</sup> Personal correspondence with Josée Bouchard, Equity Advisor, Law Society of Upper Canada, 11 July 2012.

<sup>4</sup> The Law Society of Upper Canada reported that 12.9% of the candidates in the licensing admission process self-identified as racialized community members. By 2012 this percentage was up to 24%. See: The Law Society of Upper Canada. 2013. *The Changing Face of the Legal Profession: Fact Sheet*. Toronto, ON: The Law Society of Upper Canada; <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491913> [Accessed 1 May 2014]. In

The 2009 questionnaires were mailed directly to respondents' places of employment. The survey, with two reminders (a postcard and follow-up letter and questionnaire), received a 47% response rate (N=1,270). The survey was specifically designed to provide information on labour force behaviour and education. The unique format of the survey included a work history calendar, summarizing job changes across time. Participants were asked to provide a complete account of their career histories, describing the core features of their current and previous positions and also of the organizations in which they were employed (Dobrev 2005).

For each job episode, respondents were asked to provide information on their professional position and start and end dates, with monthly precision in dates. Consequently, a respondent's employment history consists of a continuous sequence of employment episodes interrupted by periods of unemployment and labour market inactivity. The two-page work history calendar directed respondents chronologically through mutually exclusive states (see also Manzoni et al. 2010). For the employment spells, information was gathered on job characteristics such as starting and ending salaries, nature of position, full- or part-time work, the types of organization where they worked, number of lawyers at all locations of the organization, and location (city, province/state, and country). This survey design instrument provides a more accurate calculation of the duration of each job than other methods of recall (Park and Sandefur 2003).

In addition, the survey incorporated questions about life outside law, including dates of marriages and cohabitation, dissolution of unions (separation, divorce), births (and adoptions) of children, and timing of parental leaves. The survey also included several sections dedicated to specific themes, including: (1) education and professional training, (2) current professional

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2009 the Law Society in Ontario introduced questions asking lawyers to self-identify on annual lawyer reports and change of status surveys by demographic categories (including, gender, racialized communities, Francophones, and Aboriginal peoples). See: The Law Society of Upper Canada. 2009. *Annual Report*. Toronto: Law Society of Upper Canada; [www.lsuc.on.ca/workArea/DownloadAsset.aspx?id=5022](http://www.lsuc.on.ca/workArea/DownloadAsset.aspx?id=5022) [accessed 1 May 2014].

responsibilities, (3) exits and returns to practice, (4) mentoring and networks, (5) pro bono work, (6) social, political and community participation, and (7) family responsibilities and well-being.

We restructured the professional work calendar data into an event history format where a single spell accounts for each job held by each participant during his or her career since law school graduation. We then calculated these spells as person-month units. This format of data collection is ideal for the statistical technique of survival analysis that we conduct in this report. Particularly important for our research is that participants were asked to indicate if and when they changed professional positions and when such changes involved transitions from initial career entry in private law practice to movement out of private practice.

### Measurement of Variables

Our analysis includes several independent variables to test the hypotheses outlined above. One of our main goals is to explore how departures from private practice vary across time. We therefore included a measure of *time intervals*. We established the duration of employment with an organization along several two-year interval spans, resulting in nine time periods: 0-24, 25-48, 49-72, 73-96, 97-120, 121-144 months, and finally 145 months or more (reference category). Among our demographic and family variables, we included *gender* (1=female), *racial minority* (1=minority),<sup>5</sup> *marital status* (1=married or cohabiting), and having *children* (1=children).

We tapped legal education through three variables. *Elite law school* is commonly classified in studies of lawyers in the U.S. where law school hierarchies are dramatically distinct (Sterling,

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<sup>5</sup> Respondents were asked to self-identify across a range of characteristics. Respondents were asked if they self-identified among the following racialized / person of colour / ethnic origin groups: Arab, Black (e.g., African-Canadian, African, and Caribbean), Chinese, East-Asian (e.g., Japanese, Korean), Latin American, Hispanic, South Asian (e.g., Indo-Canadian, Indian Subcontinent), West Asian (e.g., Iranian, Afghan), Aboriginal, and White. Categories were collapsed to include those who self-identified among the racialized minority groups versus self-identification as white. It would be preferable to compare different ethnic/racial groups (for example, African-Canadians versus Asian Canadians). However, the small number of racial minority group members in the sample (approximately 13% of the sample) required that we combine groups.

Dinovitzer, and Garth 2007). However, in the Canadian context, law school hierarchies are much flatter and there is a lack of consensus over what constitutes 'elite' among law schools. Ontario law schools have also assumed different tuition and growth strategies in recent years. For example, the University of Toronto has the most costly tuition fees in the province and chose to limit the size of entering classes, making it one of the smaller law schools (it had been among the largest in the 1990s). In contrast, the University of Ottawa opted to hold its tuition to one of the lowest in Ontario while growing in size – both were strategies in an effort to improve access to justice.<sup>6</sup> One of the few rankings of law schools is produced by *MacLean's* magazine. The ranking places the University of Toronto first among Canadian common law schools based on elite firm hiring, national reach, Supreme Court clerkships, faculty hiring, and faculty journal citations. We employ this ranking as our metric of *elite law school* (1=University of Toronto).<sup>7</sup> Average law school *grades* were coded along a seven-point scale as follows: 1=D [50-59%], 2=C [60-64%], 3=High C (C+) [65-69%], 4=B [70-74%], 5=High B (B+) [75-79%], 6=A [80-89%], 7=High A (A+) [90-100%]. Another variable measured respondents' assessment of the foundation with which law school provided them. Respondents were asked to indicate their level of agreement or disagreement (1=strongly disagree and 7=strongly agree) with six statements about their legal education: (1) Law school prepared me well for my legal career, (2) Law school teaching is too theoretical and unconcerned with real life practice, (3) I wish I had received more business training in law school, (4) I consider my law degree to have been a good career investment, (5) If I had to do it over again, I would still choose to have gone to law school, and (6) Law school provided me with good information technology skills. Two of these items (2 and

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<sup>6</sup> Personal correspondence with Professor Constance Backhouse, Faculty of Law, University of Ottawa, 22 August 2010.

<sup>7</sup> See <http://www.macleans.ca/education/universityandcollege/2013-law-school-rankings/> [accessed 17 April 2014].

3) were reverse-coded for consistency of direction. Respondents were also asked how satisfied they were with opportunities to develop numerous professional capabilities during law school. Respondents were provided with a list of nine items that they scored along a 7-point Likert-style scale (1=very dissatisfied to 7=very satisfied). These items included: (1) legal analysis, (2) problem solving, (3) working with business and financial concepts, (4) exercising ethical judgment, (5) working as a member of a team, (6) advocacy, (7) negotiation, (8) familiarity with transactional work, and (9) international opportunities. The full set of law school evaluation criteria were then incorporated into a unified scale called *law foundations* (with a Cronbach's alpha coefficient ( $\alpha$ ) of 0.82).<sup>8</sup> A final interval measure tapped the level of *debt* by the end of law school (range \$0 to \$135,000; average=\$24,081.85).

*Areas of law* were coded as business law (including corporate and commercial, intellectual property, bankruptcy, tax, and insurance), litigation, people law (including administrative law, adjudication and/or mediation, estates, wills and trust, family law and divorce, employment and labour relations, and real estate) and criminal law, following the work of Gorman (2006).

*Billable hours* asked lawyers to report approximately how many hours they billed (a rough estimate) during the last fiscal year. *Client recruitment* tapped whether lawyers had primary responsibility for clients of the firm (coded 0) or clients they bring in (coded 1). We also assessed whether lawyers have responsibility for relations with one or more of the *major clients* of the firm (1=major clients).

Next, we captured the initial organizational setting in terms of organizational size, workplace benefits, geographic location, and economic climate at the time of entry to law. We

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<sup>8</sup> Different standards for an acceptable level of internal consistency (reliability) of items have been suggested, with lower limits ranging from 0.5 to 0.7 (Pedhazur and Schmelkin 1991). The scale for *law foundations* therefore has acceptable internal consistency since the estimated alpha coefficient is well above the range of suggested lower limits.

asked lawyers to describe their first job in private practice as either: *solo practice* (solo=1) or law firm. We then coded the size of firms in terms of: *small firms* of less than 10 lawyers, *small mid-sized firms* of 10 to 19 lawyers, *large mid-sized firms* of 20 to 49 lawyers, *large firms* of 50 to 149 lawyers, and *very large firms* of 150 and more lawyers. We entered solo practice and the various firm size variables as a series of dummy variables in the regression models. In addition, we inquired about work benefits, specifically the *flexibility of hours* afforded at the early career stage. We asked lawyers whether their job offered flexible work hours (on a full-time basis) (coded 0=no; 1=yes). Lawyers reported whether they started off their careers in the Greater Toronto area (*Toronto*=1) or elsewhere. We also included in our analysis a measure of the *unemployment rate* at the time each cohort was admitted to the Ontario Bar (range=5.7 to 10.9).

In addition, we included a set of variables intended to assess facets of job satisfaction. We measured *job satisfaction* in terms of two dimensions. *Extrinsic job satisfaction* asked lawyers to rate their level of satisfaction with five aspects of their job: (1) income, (2) opportunities for promotion, (3) whether they are rewarded reasonably given the market for legal services, (4) whether they are rewarded reasonably given the responsibility they have, and (5) whether they are rewarded reasonably in view of their experience ( $\alpha = .89$ ). This scale used a Likert-style response set of five items, scored from 1=strongly disagree to 5=strongly agree. A second facet of job satisfaction, *intrinsic job satisfaction*, asked lawyers to assess the extent to which: (1) the work is intellectually challenging, (2) the work gives them a sense of accomplishment, (3) they look forward to coming to work, (4) the job allows them to use their legal skills, and (5) they find real enjoyment in their work ( $\alpha = .86$ ). This scale employed the same 5-point Likert-style response set. We differentiate between extrinsic and intrinsic job satisfaction because prior research demonstrates the importance of separating out dimensions of job satisfaction rather than

using a global measure of job satisfaction (Dinovitzer and Garth 2007; Dinovitzer et al. 2004; Hagan and Kay 2007; Hull 1999).

We also sought to include a measure of *disadvantage*. Some of these items appear to represent discrimination, while others hint at exclusion or disrespectful comments, behaviours and expressions that while creating disadvantage, may not be intended as direct acts of discrimination. We asked respondents to assess the frequency with which they experienced various events during their career as a lawyer. These included: (1) assigned tasks you think are beneath your skill/experience, (2) not being invited to work with particular senior lawyers in your firm or office, (3) excluded from social gatherings, (4) denied work when you expressed an interest, (5) received comments about your physical appearance, (6) received derogatory comments about your family status, (7) received disrespectful remarks by judges or other lawyers, (8) received rude or inappropriate remarks by clients, and (9) received a lack of support by office or firm staff. Respondents were asked to rate each item along a scale from 1=never, 2=rarely, 3=occasionally, 4=routinely, to 5=frequently. We recoded each item as 0=never or rarely experienced this treatment and 1=occasionally, routinely or frequently experienced this treatment. Items were then combined into a scale (standardized) ( $\alpha = .71$ ). We developed this unique measure because studies of promotion and retention often do not include measures of sexual discrimination or treatment that is disadvantaging (Noonan and Corcoran 2004:147). However, research suggests these perceived experiences are significant obstacles to women's full integration to the profession (Epstein 2004; Hunter 2002; Ietswaart 2003; Sommerlad 2006; Thornton 1996; Wilder 2007).

Finally, we included two measures designed to tap aspects of career breaks. The first, *parental leave*, measures whether the lawyer reported taking a parental leave during the course



of their career. The second, *time away*, measures whether the respondent reported taking time away from the practice of law for reasons other than a parental leave.<sup>9</sup> Table 1 (see Appendix A) lists the operationalization and descriptive statistics of the variables used in our analysis.

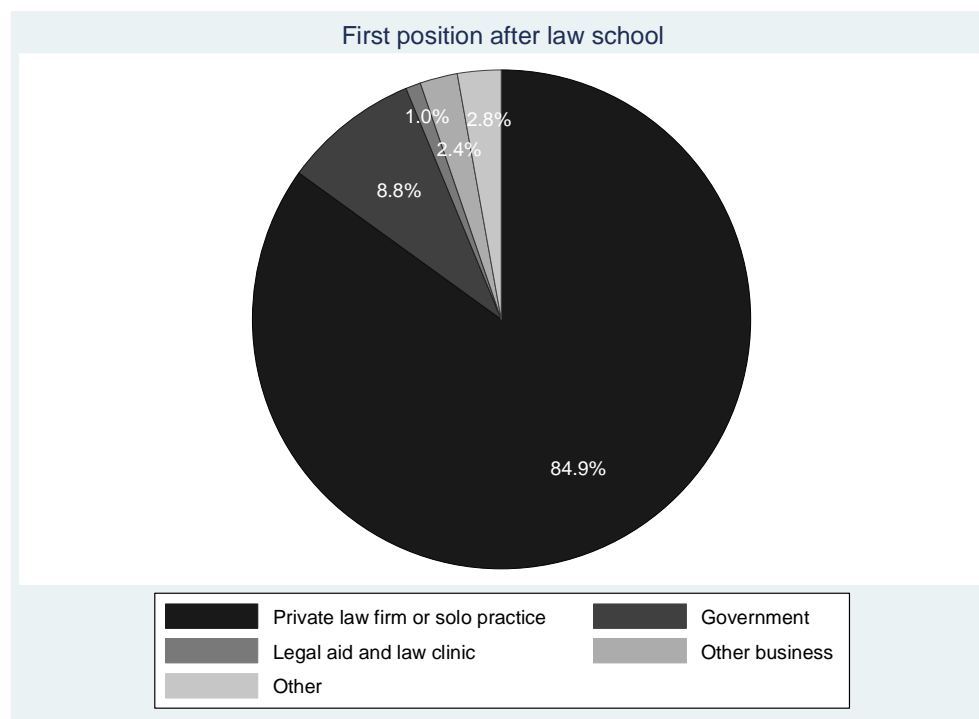
## ***Quantitative Results***

### **Descriptive Analyses**

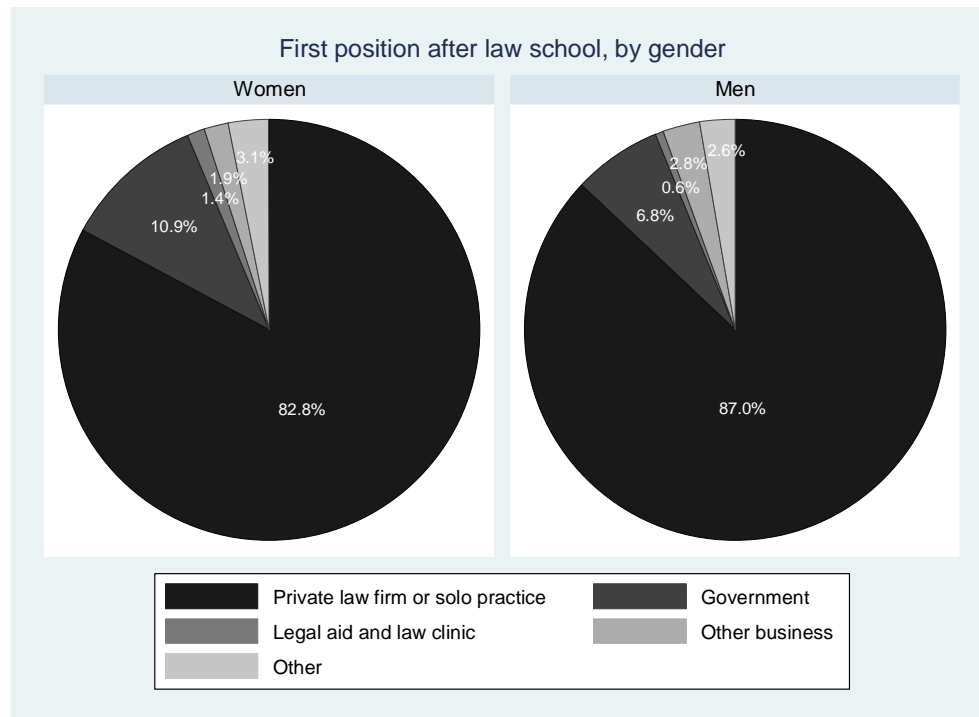
Among our full sample of 1,270 law graduates, the majority of law graduates launched their careers in the private practice of law (85%). Within private practice, 92% entered law firms as associates. Two percent started as partners, establishing firms with colleagues or joining an existing practitioner in partnership. The remaining 6% began their careers working as sole practitioners. While the majority of law graduates entered private practice, other law graduates began their careers in various lines of work. About 8.8% worked in government, 1% in Legal Aid and law clinics, 2.4% in other businesses (including professional service firms), and 2.8% in other settings (this includes military, labour unions, non-profit organization, and other settings). Figure 1 displays these distributions across positions, post-graduation.

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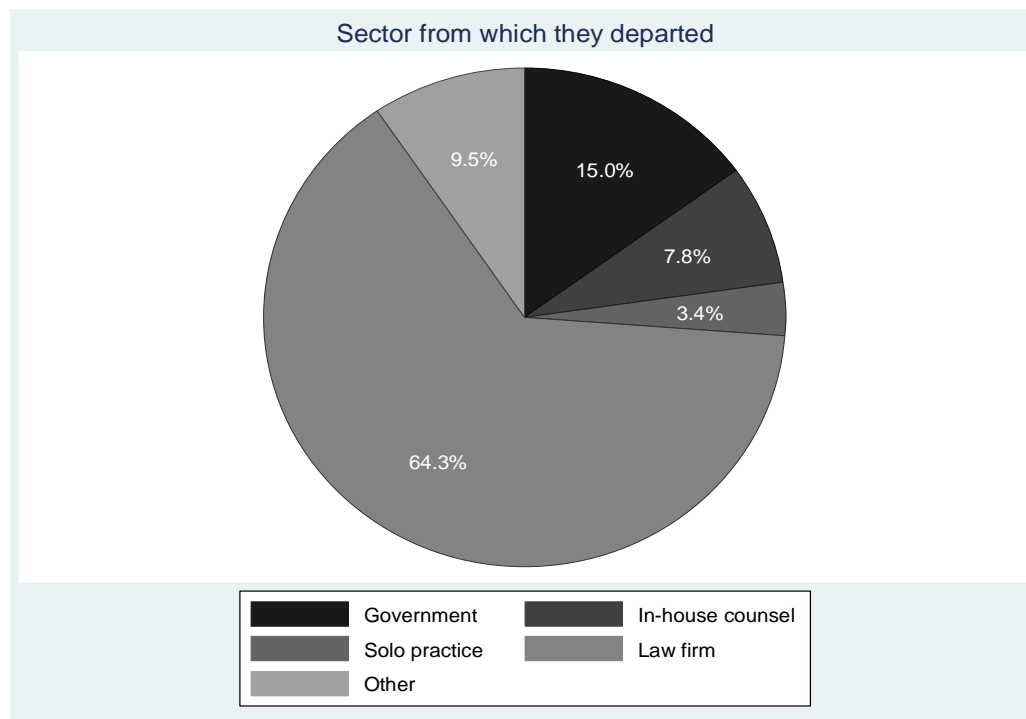
<sup>9</sup> These included: military service, attending to family responsibilities, holding one or more full-time jobs in the paid workforce, full-time volunteer work, attending graduate school, travel for personal enjoyment, and other reasons.

**Figure 1. First professional position after graduation from law school**

At the start of careers in law, there are both similarities and differences in areas of employment between genders (see Figure 2 below). Among our cohort of lawyers (called to the Ontario Bar between 1990 and 2009), the vast majority of men and women started their careers in private practice (87% of men and 83% of women). Within private practice, similar percentages of men and women started as sole practitioners (7.6% of men and 5% of women), associates in law firms (92% of men and 94% of women), and as law firm partners (0.4% of men and 0.9% of women). A slightly greater percentage of women (11%) compared to men (7%) started their careers as government employees. Other differences are also modest. For example, 1.4% of women and 0.6% of men started out in Legal Aid or law clinics, and 1.9% of women and 2.8% of men started their careers in other business settings (e.g., professional service firms and in-house counsel) ( $\chi^2=9.017$ ,  $p=.06$ ).

**Figure 2. Law school graduates' first professional positions, by gender**

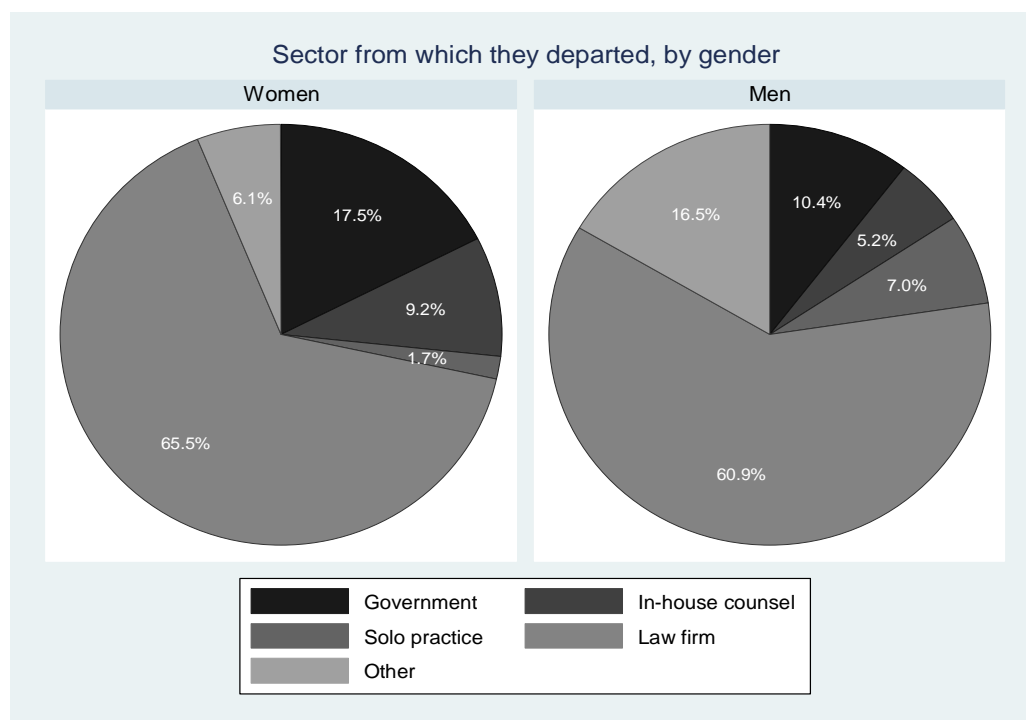
We also explored the sectors from which lawyers left the practice of law during the course of their careers to date. In total, 344 of the lawyers in our sample (27%) had at some point in their careers so far left the practice of law, either for a period of time or more permanently (see Figure 3 below). The largest share of lawyers left from private practice (67%), followed by government employment (15%). Nearly 8% of lawyers who had left law practice departed from work as in-house counsel, while another 9.5% departed from other settings (including community legal clinics, community or non-profit organizations).

**Figure 3. Sectors from which lawyers left the practice of law**

The places of departure vary between men and women (see Figure 4 below). A similar percentage of men and women reported leaving from private practice (68% of men and 67% of women). When we examine law firms and solo practice, we find a larger percentage of women left from law firms (65.5% compared with 60.9% of men), while a larger percentage of men left from solo practice (7.0% of men compared with 1.8% of women). A larger percentage of women left from government work (17.5%) compared with their male counterparts (10.4%). In addition, a larger percentage of women who left law practice reported leaving from in-house counsel positions (9.17%) compared with their male colleagues (5.2%). In contrast, a larger share of men (16.5%) left from other settings (including community legal clinics, community or non-profit organizations) compared with women leaving this sector (6.1%). The differences between men

and women and the sectors from which they departed law practice are statistically significant ( $\chi^2=18.887, p<.001$ ).

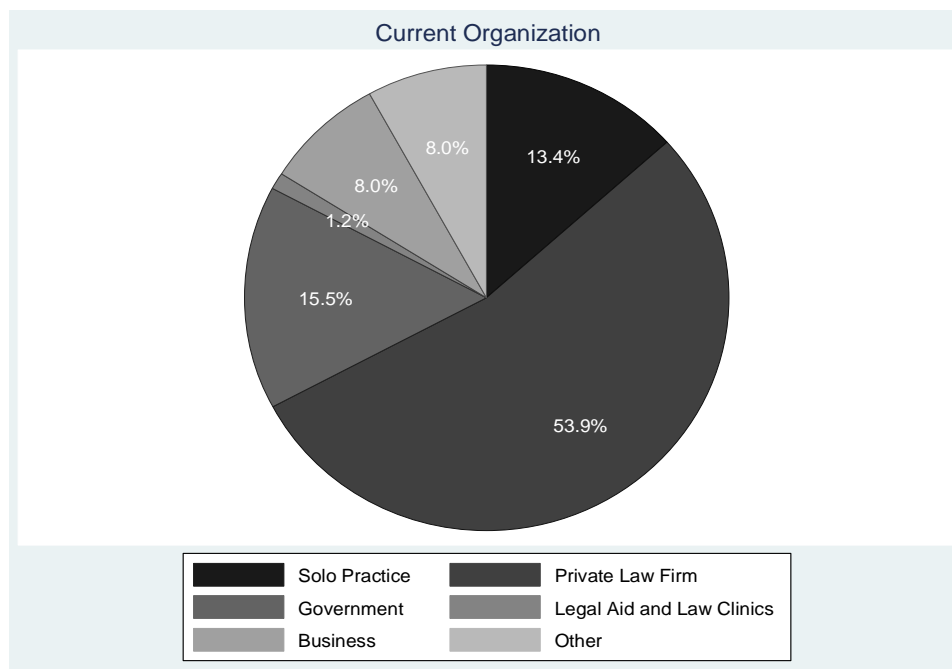
**Figure 4. Sectors from which lawyers left the practice of law by gender**



Finally, we examined the organizational settings in which lawyers in our sample are working presently (at the time of the 2009 survey) (see Figure 5 below). The largest share of law graduates reported currently working in private law firms (54%). Another 13% reported working as sole practitioners. In total, 67% of the sample worked in private practice at the time of the survey (this represents a decline of 18% in the share of lawyers working in private practice compared with the percentage working in private practice at the time entry to law practice). In addition, 15.5% of the lawyers in our survey are currently working in government, 1.2% in Legal

Aid or law clinics, 8% in business, and 8% in other settings (This includes accounting firms, banking/finance, management consulting, education institutions, and other settings).

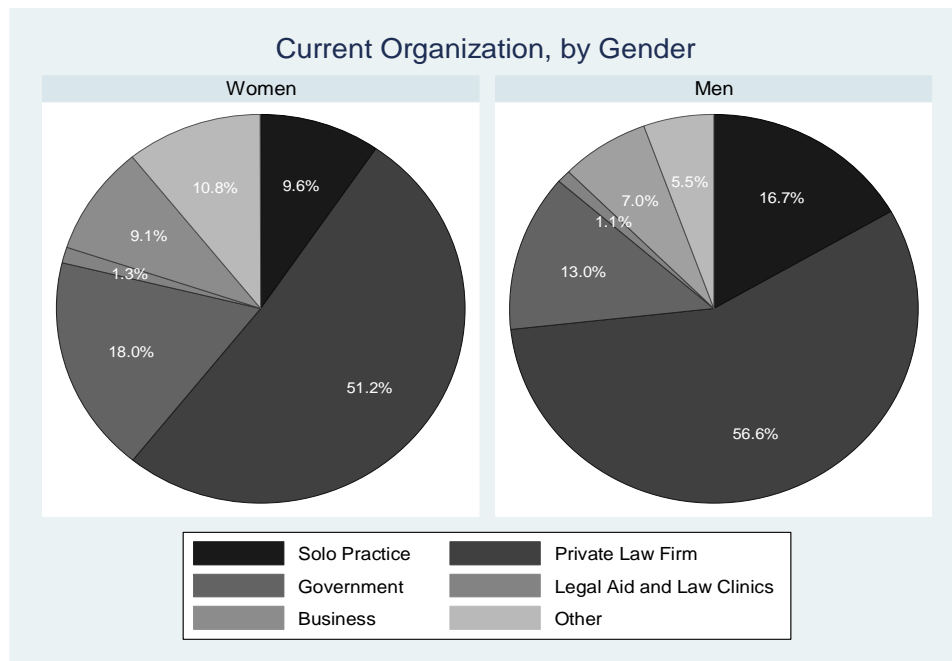
**Figure 5. Contemporary Organizational Settings**



When we examine gender differences across contemporary work settings (see Figure 6 below), we find men are slightly more likely to be presently working in law firms (56.6%) than women (51.2%), as well as in solo practice (16.7% of men work as sole practitioners compared with 9.6% of women). In contrast, women were more likely to report that they worked in government (18%) than were men (13%). More similar percentages of men and women worked in Legal Aid and law clinics (1.1% of men and 1.3% of women), in business (7% of men and 9% of women), though a slightly higher percentage of women reported working in other settings

(10.8%) compared with their male counterparts (5.6%). Again, the gender differences in contemporary practice settings are statistically significant ( $\chi^2=30.485$ ,  $p=.001$ ).

**Figure 6. Contemporary Organizational Settings, by gender**



We also asked law graduates who have left law practice and have not returned to tell us why they left and have not returned. Respondents were provided with a list of 24 possible options and they were encouraged to check all that applied. For this reason, responses do not add to 100%. A total of 39 women and 31 men responded to this question (approximately 6% of the respondents in the survey were no longer practicing law at the time of the survey). The most common responses reported were leaving for a better work environment (19 women and 13 men), leaving for more compatible hours (18 women and 11 men), dissatisfied with practice area (17 women and 10 men), leaving for a better job (e.g., higher pay, better benefits, more

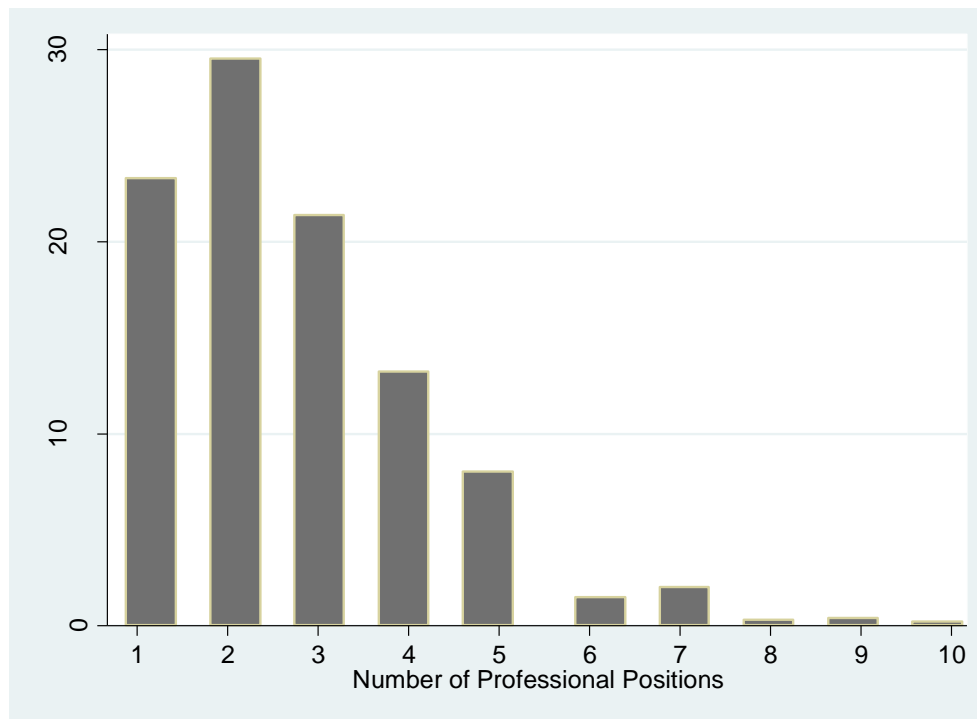
prestigious firm or organization, faster track, more responsibility) (16 women and 9 men), to better accommodate family needs (12 women and 9 men), and finally, dissatisfaction with assignments (11 women and 7 men).<sup>10</sup>

One of the most interesting observations in our data is just how much mobility there is within legal careers (see Figure 7 below). The lawyers in this study were called to the bar during the 19 years prior to the 2009 survey. This 19-year cohort of lawyers is now in their early to mid-career stages. Among those lawyers who started their careers in private practice, the average number of professional positions held to date was three positions. The average does not tell the whole story, however. Approximately 21% of lawyers starting out in private practice had held exactly three professional positions at the time of the survey. A sizeable percentage had held fewer positions: 23% had held one position and 30% had held two positions. A sizeable proportion of lawyers had also held more than three professional positions over their careers: 13% had four, 8% had five and 5% had six to ten positions over the course of their careers so far. There is no statistically significant difference between the average number of professional positions held by women and men.

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<sup>10</sup> Counts rather than frequency percentages are reported here due to the small number of cases.



**Figure 7. Number of professional positions over the career span to date**

The number of professional positions held reflects various job changes. Some of these changes consisted of: (1) movement within a law firm from associate to partner, (2) movement laterally and upward between law firms, (3) departures from law firms to establish independent law offices (e.g., sole practitioners), and (4) movement out of private law practice. In our report, we focus attention on this last form of job movement.

The movement between professional positions is not always seamless and many lawyers took time away from the practice of law during their careers – either between jobs or during their tenure with employers. Among lawyers in our study who started their careers in private practice, 39% of women and 16% of men reported having taken time away from the practice of law since

graduating from law school ( $\chi^2=59.22, p<.001$ ). During the time away from law practice, respondents pursued several possible activities. The most common activity listed by women was attending to family responsibilities (44%). In contrast, only 11% of men reported attending to family responsibilities during time away from law practice. Among men, the most common activities during time away from law practice were attending graduate school (23%) and travel for personal enjoyment (23%). Only 8% of women reported attending graduate school and 6% identified traveling during these periods away from law practice. Furthermore, a larger proportion of men (17%) compared with women (5%) reported holding full-time jobs during their time away from law practice. About 5% of women and men lawyers reported illness as the reason for their time away from law practice. The gender differences in activities undertaken during time away from law practice are statistically significant ( $\chi^2= 47.72, p<.001$ ).

Surprisingly, a sizeable share of lawyers left private practice during their careers. In our sample of the 994 lawyers starting out careers in private practice, 299 (32%) had left private practice at some point by the time of our 2009 survey. Women were more prevalent among the departed: 36% of women who started in private practice exited compared to 28% of men ( $\chi^2=7.47, p<.01$ ). We are interested to learn more about these lawyers who left private practice. We explore the factors influencing this exodus in the next section using techniques of event history analysis.

### **Techniques of Event History Data Analysis**

We restructured the data in an event history format where a single spell accounts for each job held by each respondent during his or her labour force experience since graduation from law school. These spells were then divided into person-months segments. Particularly important for our research is that respondents were asked to indicate if and when they changed jobs and when

such changes involved transitions between private practice and moves to non-private law practice (or out of the practice of law entirely). To specify the risk sets for the transitions out of private practice, we generated a single data-file, with person-months for individuals launching their careers in the private practice of law. The resulting data file contained 85,330 person-month spells.

In order to examine the rates of exiting private practice, we employ hazard models, which estimate the log of job mobility as a linear function of a vector of explanatory variables and duration terms. Rather than choosing a specific parametric form for the transition rate, we utilize the piecewise constant exponential model. This model imposes the fewest shape assumptions on the baseline distribution (Park and Sandefur 2003:246). The piecewise exponential model offers the flexibility of the Cox proportional hazard model, with the added advantage of being able to estimate the shape of the hazard function (Mills 2011). This is why some scholars argue it is the ideal model (Blossfeld, Golsch, and Rohwer 2007). The basic idea of the model is to fracture the time axis into time periods and allow the transition rates to fluctuate between time periods, but maintain constant rates within each of these specified intervals (Blossfeld and Rohweeer 1995). The mobility rate from the first job can be expressed as follows:

$$h(t) = \exp(c_p + Z\beta),$$

where  $c_p$  is a constant coefficient varying with each time period and  $Z$  is a vector of covariates, and  $\beta$  is an associated vector of coefficients assumed to be constant across time periods.

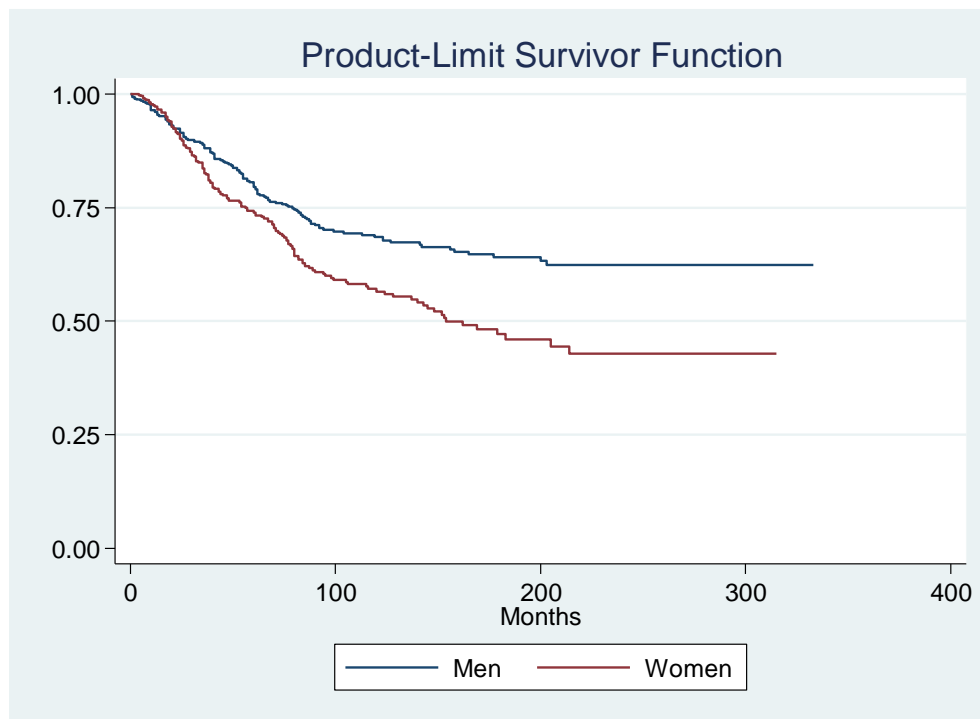
Following the notation of Blossfeld and Rohweeer (1995), the vector of covariates in this model does not contain a separate constant.<sup>11</sup>

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<sup>11</sup> Note that this notation does not set the reference period to zero but it includes estimates of all coefficients for all time intervals. If the reference period is set to zero, the piecewise exponential model can be expressed as follows:  $h(t) = \exp(a + c_{p-1} + Z\beta)$ , where  $a$  is a constant and there are  $p - 1$  coefficients for time periods (see Park and Sandefur 2003:356).

Before entering into a discussion of the effects of demographic, human capital, organizational context and individual attributes on job mobility, we describe the overall gender differences in the process of moving out of private practice, using the life-tables method to generate estimates for the hazard functions and medial residual lifetimes for various time ranges of exit from private practice. These estimates were calculated for the overall sample and were stratified by the key independent variables (Kramer and Berg 2003). The product-limit (or Kaplan-Meier) estimation method of the survivor function provides a general description of the process under study and is useful for graphically comparing survivor functions among two or more groups (Blossfeld and Rohwer 1995). The survivor functions show the proportions of lawyers who still remain in private practice over time.

In Figure 8, we plot the survivor functions (product-limit estimations) for men and women. The survival function, in this context, is essentially the rate of retention within private practice. Across the different time trajectories, the survival curve for men is higher and relatively gentler in its decline than for women, indicating that men leave private practice more slowly than women. In other words, the rate of exit is dramatically faster among female lawyers, as revealed by the steep survival function among women in our sample. The lines for both men and women reveal the high degree of movement out of private practice within the first eight years (100 months) following bar admission. This is the case for both men and women, though women's high rates of exit (lower survival functions) continue in the years following.

**Figure 8. Product-Limit Survivor Function**

While this description based on survival functions offers a revealing picture of overall gender differences in job mobility out of private practice, it does not control for individuals' resources, organizational context, job satisfaction or the impact of job interruptions during the early career years. Next, we explore multivariate survival models to assess the relative effects of determinants of job mobility out of private practice specified by our earlier review of the research literature.

### Multivariate Analysis

In our multivariate analysis, we nest regression models to examine the utility of various explanations for gender differences in leaving private practice. The baseline model shows the relationship between the passage of time in private practice and the risks of departure. The

second model introduces the effect of demographic and family variables on leaving private practice. In subsequent models, we add education variables and professional responsibility measures (Model 3), organizational context (Model 4), and finally, job satisfaction and career interruptions indicators (Model 5). Nesting the regression models allows us to see which theoretical explanations account for the relationship between gender and leaving private practice (Dryfhout and Estes 2010). We turn next to examining the findings from our statistical analysis.

Table 2 presents the multivariate results of our piecewise exponential event history analysis predicting exits from private practice. These coefficients can be converted to hazard ratios. In most cases, the hazard ratio is easily interpreted as the relative shift in the hazard rate that is associated with a one-unit change in the variable (Cleves et al. 2010:131). In the piecewise exponential model, we assume that the rate of mobility varies across time periods, but remains constant in each time period. In order to examine the change in rates over duration in a job, we divided the time in the first job into several time intervals. Based on the exploratory analyses of the distribution of job transitions across early labour market tenure (measured in months) and to maximize model fit, we established the duration of the tenure pieces along the following two-year breakpoints, resulting in nine pieces within which the rate is constrained to be constant but varies otherwise (Dobrev 2005:809). The time periods are: 0-24 months (first 2 years in practice), 25-48 months (years 3-4), 49-72 months (5-6 years), 73-96 months (7-8 years), 97-120 months (9-10 years), 121-144 months (11-12 years), and finally, 145 months or more (13 to 19 years) (reference category).

Examining the sets of estimates pertaining to duration terms in job moves out of private practice (see Model 1 of Table 2), we see that the log of the baseline hazard rates elevated throughout the first eight years of practice compared with later time frames. Interpreting

coefficients is easiest if one examines the hazard ratios (Simply exponentiate the coefficient and then subtract a value of one.). In general, a hazard ratio greater than one implies an increased risk (probability and timing combined) of attrition, while a hazard ratio of less than one implies a decreased risk. For example, in the first time interval, when lawyers are within the first two years of their careers, their hazard of leaving private practice is 187% greater than later in their careers (after twelve years in practice) ( $\beta=1.055$ , hazard ratio=2.871,  $p<.001$ ). This level rises in the second time interval, years 3 to 4, reaching a peak of 264% ( $\beta=1.293$ , hazard ratio=3.644,  $p<.001$ ). The hazard of leaving, while still high, falls slightly to 208% in years 5 to 6 ( $\beta=1.123$ , hazard ratio=3.075,  $p<.001$ ), and then rises again to a hazard of 238% in years 7 to 8 ( $\beta=1.217$ , hazard ratio=3.377,  $p<.001$ ). After year eight, the hazard of leaving private practice falls from statistical significance and we see what looks like greater stability in terms of staying with private practice. A sizeable proportion of this cohort (bar admissions 1990 to 2009) is still in the earlier years of their careers and a longer-term follow-up on their careers is necessary to track longer-term pathways. Nonetheless, these data reveal that the hazards of leaving private practice are elevated early on in careers (consistent with Hypothesis 1). This timing of increased hazards of leaving is possibly in concert with the schedule of contract renewals, mid-tenure track evaluations, and ultimate partnership decisions. Certainly, it appears many lawyers opt to leave private practice after only a short period of time. Studies of single job spells tend to show a bell-shaped pattern, where risks increase after an initial time interval and then decrease monotonically (Booth, Francesconi, and Garcia-Serrano 1999; Park and Sandefur 2003). In our study, the risks of leaving are highest in the early career years. That risk is sustained at a high level for at least 6 to 8 years, with elevated peaks in the periods of years 3 to 4 and years 7 to 8.

In Model 2, we see that women are significantly more likely to leave private practice ( $\beta=.413$ , hazard ratio=1.512,  $p<.001$ ) (consistent with Hypothesis 2). In this case, women face a hazard of leaving private practice 51% greater than men (recall that women are coded as 1 and men are coded as 0). None of the three other demographic and family variables had statistically significant impacts on the hazard of leaving private practice. However, it should be noted that racial minority group members represented a small fraction of our sample (less than 13%), and various ethnic and racial groups were combined into a single category. This may have diluted effects associated with specific ethnic/racial groups. Also, it is important to note that many of the lawyers in this sample were still relatively young and perhaps were yet to start families. Therefore, this study does not accurately capture the impact of having children on professional careers.

Model 3 adds education effects. There are no statistically significant effects on the hazard of leaving private practice across law schools, grades earned during law school, or based on the quality of preparation provided by law school training (as assessed by respondents). Nor did the amount of law school debt appear to influence whether individuals stayed in or left private practice during the early career years. Where differences emerge is with reference to areas of law practiced. Those lawyers working in the area of people law (e.g., social welfare, administrative, wills and estates, family, labour law, and real estate) are less likely to make an exit from private practice ( $\beta=-.410$ , hazard ratio=.663,  $p<.01$ ) than those in other areas of law. Meanwhile, lawyers working in litigation ( $\beta=-1.143$ , hazard ratio=.319,  $p<.001$ ) are 68% less likely to leave private practice. Lawyers billing higher hours are less likely to leave private practice ( $\beta=-.001$ , hazard ratio=.999,  $p<.001$ ). Not surprisingly, lawyers who are successful early in their career at recruiting clients ( $\beta=-.019$ , hazard ratio=.982,  $p<.001$ ) and who represent major clients of the



firm ( $\beta=-1.335$ , hazard ratio=.263,  $p<.001$ ) are also less at risk of leaving private practice (consistent with Hypothesis 3c). It is important here to note that women are less likely than their male colleagues to have primary responsibility for bringing in new clients to the firm and women are also less likely to have responsibility for relations with one or more of the major clients of the firm (see Table 1 in Appendix A). Including these clientele variables in the model reduces the gender difference in leaving private practice below levels of statistical significance ( $\beta=.118$ , hazard ratio=1.126,  $p=.332$ ).

In Model 4, we examine the effects of characteristics of organizational settings on job moves out of private practice. Lawyers that launched their careers working as sole practitioners are 52% less likely to leave private practice than lawyers working in the small mid-sized firms of 10 to 19 lawyers ( $\beta=-.743$ , hazard ratio=.476,  $p<.05$ ). When we examine variation across firm sizes, however, we find lawyers are no more at risk of leaving one size of firm than another. Although the research literature emphasizes the importance of organizational supports, such as flexible hours for the retention of professionals (Armstrong et al. 2007; Moen et al. 2011), our results show no statistically significant relationship between organizations offering flexible full-time hours and individuals' risk of leaving private practice (counter to Hypothesis 5). Model 4 also introduces larger contextual factors of urban setting and economic climate. We find lawyers are no more likely to exit private practice whether they started their careers in the large urban center of Toronto or other cities or towns in Ontario. Similarly, launching one's career during poor economic (or more prosperous) times appears to have little impact on future transitions out of private practice (counter to Hypothesis 6).

In Model 5, we introduce job satisfaction and experience measures. Extrinsic job satisfaction (e.g., satisfaction with income, opportunities for promotion, and being fairly

rewarded in view of market and experience level) is an important factor in reducing lawyers' risk of leaving private practice ( $\beta = -.270$  hazard ratio = .763,  $p < .001$ ). Consistent with Hypothesis 3a, individuals starting out in settings rich with promotional and financial opportunities move 24% more slowly out of private practice. In contrast, intrinsic job satisfaction (e.g., satisfaction with intellectual challenge of work, sense of accomplishment through work, looking forward to coming to work, job allows them to use their legal skills, and find real enjoyment in their work) does not have the same 'holding power.' Counter to Hypothesis 3b, intrinsic satisfaction fails to have a statistically significant effect on retention or departures from private practice. It appears that extrinsic sources of job satisfaction, such as satisfaction with earnings and promotions, are particularly powerful retainers of legal talent in private practice.

In Model 5, we also introduce a measure of disparate or disadvantaging experiences in the practice of law. Lawyers who report experiences that in some way place them at a disadvantage or marginalize them from opportunities to advance professionally are more likely to exit private practice ( $\beta = .190$ , hazard ratio = 1.209,  $p = .06$ ), leaving 21% more quickly than those who did not report similar experiences (consistent with Hypothesis 3d). This effect borders on statistical significance at the 0.06 level. These negative experiences appear to be correlated with gender, with 29% of women in our sample reporting having experienced behaviors that disadvantaged them in their careers, while 20% of men reported having these experiences ( $t$ -test = -6.200,  $p < .001$ ). Finally, in this model, we introduce the effects of interruptions on careers. Parental leave had no statistically significant effect on the hazard of exiting private practice (counter to Hypothesis 7a). We also assessed the impact of taking time away from law practice. Consistent with Hypothesis 7b, having taken time away from law (for reasons other than a parental leave) moves lawyers out of private practice more quickly ( $\beta = .638$ , hazard ratio = 1.893,  $p < .001$ ).

**Table 2. Piecewise Exponential Hazard Estimates of Leaving Private Practice (N=940)**

	Model 1 $\beta$	Model 2 $\beta$	Model 3 $\beta$	Model 4 $\beta$	Model 5 $\beta$
<b><i>Time Intervals<sup>a</sup></i></b>					
<i>Years 0-2</i>	1.055***	.908***	.177	.119	.085
<i>Years 3-4</i>	1.293***	1.193***	.554*	.508	.484
<i>Years 5-6</i>	1.123***	1.024***	.494	.461	.431
<i>Years 7-8</i>	1.217***	1.151***	.729*	.712*	.691*
<i>Years 9-10</i>	.120	.070	-.236	-.245	-.255
<i>Years 11-12</i>	.243	.209	-.029	-.028	-.065
<b><i>Demographics &amp; Family</i></b>					
Gender		.413***	.118	.084	-.254
Racial minority		.153	-.111	-.052	-.070
Married		-.179	-.048	-.009	-.002
Children		-.069	.080	.072	-.070
<b><i>Education Background</i></b>					
Elite law school			-.079	-.051	-.060
Grades			.101	.085	.113
Law school foundations			-.094	-.080	.016
Law school debt			.000	.000	.000
<b><i>Human Capital</i></b>					
<i>Areas of law:</i>					
Business law			-.246	-.299*	-.226
Litigation			-1.143***	-1.195***	-1.095***
People law			-.410*	-.397*	-.330
Criminal law			.253	.207	.365
Billable hours			-.001***	-.001**	-.000*
Recruiting clients			-.019***	-.020***	-.018***
Major clients			-1.335***	-1.355***	-1.229***
<b><i>Organizational Setting</i></b>					
Solo practice				-.743*	-.789*
Small firm				-.090	-.097
Mid-sized firm (20-49)				.356	.349
Large firm (50-149)				.010	.017
Very large firm (>150)				-.097	-.057
Flexible hours				.056	.073
Greater Toronto Area				-.192	-.106
Unemployment rate at call				-.005	.007
<b><i>Job Satisfaction and Disadvantage</i></b>					
Extrinsic satisfaction					-.270***
Intrinsic satisfaction					.139
Disadvantage					.190†
<b><i>Career Interruptions</i></b>					
Parental leave					.072
Time away					.638***

<sup>a</sup>The comparison category is 13 to 19 years.<sup>b</sup>The comparison category is small mid-sized firms of 10 to 19 lawyers.†  $p=0.06$ ; \*  $p<0.05$ ; \*\*  $p<0.01$ ; \*\*\*  $p<0.001$  (two-tailed tests).

In Table 3, we examine these models separately for men and women. Some interesting gender differences emerge. First, in terms of timing, there appears to be a distinctive pattern among male lawyers. Men's risks of leaving private practice are significantly elevated across the first eight years in practice (see Baseline Model). When the full set of variables is included (see Full Model), two peaks emerge in the risks of leaving private practice. Men's risks of leaving private practice are greatest in years 5 to 6 ( $\beta=1.204$ , hazard ratio=3.332,  $p<.001$ ) and, to a lesser extent, in years 7 to 8 ( $\beta=1.097$ , hazard ratio=2.994,  $p<.001$ ). Five to six years out of law school, men are 233% more likely to leave private practice than if they were to stay in private practice beyond twelve years. Men are still nearly 200% more likely to leave private practice in years 7 to 8 compared with lawyers who remain beyond twelve years. For men, it appears that departures from private practice occur in the time frame immediately leading up to partnership decisions. The same cannot be said of female lawyers' exit timing. Initially, in the baseline model, women appear more likely to leave early (in years 3 to 4) and around the timing of partnership decisions (years 7 to 8). However, once explanatory variables are introduced in the full model, none of the time intervals remain statistically significant. This suggests that women's departures from private practice are not clustered near the timing of contract renewals or partnership decisions. Rather, women's exits from private practice appear to be more dispersed across time and influenced by factors other than organizational timelines.

Another difference between the exit pathways of men and women is that legal education variables have no discernible effect on women's exits. However, higher law school grades among male lawyers increase the hazard of leaving private practice ( $\beta=.245$ , hazard ratio=1.278,  $p<.05$ ). There are further gender differences across areas of law practice. Men who practice in the area of business law are 36% less likely to leave private practice than men working in other

areas of law ( $\beta = -.441$ , hazard ratio = .644,  $p < .05$ ). In contrast, practicing business law has no statistically significant effect on exit rates among women. For both men and women, working in the area of litigation reduces the risk of leaving private practice, though this effect is more pronounced among men. Male litigators are 83% less likely to leave private practice than men working in other areas of law ( $\beta = -1.741$ , hazard ratio = .175,  $p < .001$ ). Female litigators are 50% less likely to leave private practice than women working in other areas ( $\beta = -.695$ , hazard ratio = .499,  $p < .05$ ).

For men, billable hours and clientele responsibilities are important factors in retaining them in private practice. Men who bill more hours, actively recruit new clients and work for major clients of the firm have lower hazards of leaving private practice. Billable hours do not have a significant effect on women's retention or departure from private practice. However, clientele responsibilities encourage women to stay. Women who successfully recruit clients and hold responsibility for major clients of the firm are significantly less likely to depart private practice (as noted earlier, women are less likely to have or be assigned these responsibilities). Further gender differences emerge with reference to organizational settings. While male sole practitioners are 66% less likely to leave private practice than men working in law firms of 10 to 19 lawyers ( $\beta = -1.090$ , hazard ratio = .336,  $p < .05$ ), the same is not the case for women. Rather, no statistically significant effects emerged for women across solo practice and firms of varying sizes.

Attitudinal measures reveal some intriguing gender differences. For both women and men, extrinsic job satisfaction is critical to retention in private practice. Women who report high extrinsic job satisfaction are 31% less likely to leave private practice ( $\beta = -.377$ , hazard ratio = .686,  $p < .001$ ), while men who are highly satisfied are 25% less likely to leave ( $\beta = -.285$ , hazard

ratio=.752,  $p<.01$ ). However, intrinsic job satisfaction does not offer women the same staying power in private practice. Meanwhile, for men, high intrinsic satisfaction actually increases the hazard of leaving private practice ( $\beta=.290$ , hazard ratio=1.336,  $p<.05$ ).

Perhaps more intriguing than job satisfaction are lawyers' reports of their experiences with behaviours or statements that either discriminated against them or created a situation that placed them at a disadvantage. Interestingly, although women were more likely to experience these behaviours than were men (29% of women and 20% of men), men who experienced these behaviours are significantly more likely to leave private practice as a result ( $\beta=.362$ , hazard ratio=1.436,  $p<.05$ ). There is no statistically significant effect on women's hazard rate of exiting private practice.

Finally, we consider the effects of interruptions during professional careers. Parental leaves have a curious effect on departures from private practice. Although other studies show parental leaves wield damaging effects on the careers of women (Arun et al. 2004; Tremblay 2013), including increased risks of leaving private practice (Kay et al. 2013), analyses of the recent cohort (1990 to 2009 bar admissions) do not show a similar statistically significant effect on women's careers. Although our data reveal women, more often than men, take parental leaves (39% of women compared with 9% of men;  $t\text{-test}=-11.362$ ,  $p<.001$ ), still half of the women were without children (50% remained childless at the time of the survey). In contrast, the majority of men (63%) were fathers by the time of the 2009 survey ( $t\text{-test}=4.200$ ,  $p<.001$ ). Women in our sample were also relatively young (median age=37 years) and some may have postponed or foregone having children. Although few men in our sample had taken parental leaves (9%), for those men who did, they incurred an 83% increase in their risks of leaving private practice ( $\beta=.606$ , hazard ratio=1.833,  $p<.05$ ). This finding is consistent with research that demonstrates

men face stigma associated with taking advantage of available workplace policies, such as family leave (Rudman and Mescher 2013) or reduced work hours (Coltrane et al. 2013), resulting in the perception by others that they are 'not serious' about their work (Vandello et al. 2013). Finally, for both women and men, experiencing periods of time away from law practice, for purposes other than parental leaves, dramatically increases their risk of subsequently leaving private practice. Taking time away from the practice of law increased women's risk of leaving private practice by 108% ( $\beta=.731$ , hazard ratio=2.077,  $p<.001$ ) and men's risk of leaving by 112% ( $\beta=.749$ , hazard ratio=2.115,  $p<.001$ ).

**Table 3. Piecewise Exponential Hazard Estimates of Leaving Private Practice, Men and Women Separately**

	Men (N=487)		Women (N=453)	
	Baseline Model	Full Model	Baseline Model	Full Model
	$\beta$	$\beta$	$\beta$	$\beta$
<b>Time Intervals<sup>a</sup></b>				
Years 0-2	1.634***	.604	.444	-.531
Years 3-4	1.535***	.743	.953**	.150
Years 5-6	1.822***	1.204**	.367	-.328
Years 7-8	1.552***	1.097*	.862**	.353
Years 9-10	.251	-.030	-.077	-.460
Years 11-12	.665	.533	-.149	-.543
<b>Demographics &amp; Family</b>				
Racial minority		.250		-.418
Married		.143		-.152
Children		-.096		.057
<b>Education Background</b>				
Elite law school		-.132		-.035
Grades		.245*		.036
Law school foundations		-.063		.062
Law school debt		.000		.000
<b>Human Capital</b>				
<i>Areas of law:</i>				
Business law		-.441*		.056
Litigation		-1.741***		-.695*
People law		-.317		-.131
Criminal law		.339		.429
Billable hours		-.001**		-.000
Recruiting clients		-.012**		-.026***
Major clients		-1.411***		-1.150***
<b>Organizational Setting</b>				
Solo practice		-1.090*		-.898
Small firm		-.515		.278
Mid-sized firm (20-49)		-.064		.466
Large firm (50-149)		-.124		-.004
Very large firm (>150)		-.427		.091
Flexible hours		.006		.244
Greater Toronto Area		-.335		.043
Unemployment rate at call		-.000		.001
<b>Job Satisfaction and Disadvantage</b>				
Extrinsic satisfaction		-.285**		-.377***
Intrinsic satisfaction		.290*		.016
Disadvantage		.362*		.099
<b>Career Interruptions</b>				
Parental leave		.606*		-.168
Time away		.749***		.731***

<sup>a</sup>The comparison category is 13 to 19 years.<sup>b</sup>The comparison category is small mid-sized firm of 10 to 19 lawyers.\*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$  (two-tailed tests).



These statistical analyses tell part of the story. Our data enable us to see the significant impact of demographics, professional development, workplace responsibilities and organizational attributes, among other factors, on career pathways out of private practice. But how do lawyers themselves understand these transitions and investments they have made during their careers? We turn next to explore the comments and explanations shared by participants in our study. The survey design offered numerous opportunities for participants to expand on their work and life experiences, particularly regarding transitions out of private practice and returns to private practice. Before turning attention to our qualitative results, we provide a final table to summarize the results of our hypothesis-testing (see Table 4 below).

**Table 4. Summary of Hypotheses and Results**

<b>Hypotheses</b>	<b>Results</b>
<i>1:</i> The greatest risk of job moves out of private practice will occur during the early years (2 to 8 years) of practice experience.	Support
<i>2:</i> Women are more likely than men to leave private practice.	Support
<i>3a:</i> High extrinsic job satisfaction (e.g., level of satisfaction with: income, opportunities for promotion, whether they are rewarded reasonably given the market for legal services, given the responsibility they have, and in view of their experience) is negatively related to leaving private practice.	Support
<i>3b:</i> High intrinsic job satisfaction (level of satisfaction with the extent to which: the work is intellectually challenging, the work gives them a sense of accomplishment, they look forward to coming to work, the job allows them to use their legal skills, and they find real enjoyment in their work) is negatively related to leaving private practice.	No support (counter for men)
<i>3c:</i> The opportunity to work with major clients of the firm is negatively related to leaving private practice.	Support
<i>3d:</i> Experiences of discrimination and disadvantage are positively related to leaving private practice (These experiences include: being assigned tasks perceived to be beneath one's level of skill or experience, not being invited to work with particular senior firm lawyers, excluded from social gatherings, denied work when expressed an interest, received comments about one's physical appearance, received derogatory comments about one's family status, disrespectful remarks by judges or other lawyers, rude or inappropriate comments by clients, and a lack of support by office or firm staff)	Support (men only)
<i>4:</i> The presence of children in the home is positively related to women leaving private practice.	No support
<i>5:</i> The availability of flexible (full-time) work schedules will decrease the risk of leaving private practice.	No support
<i>6:</i> High unemployment at time of career entry is positively related to leaving private practice.	No support
<i>7a:</i> Taking a parental leave will increase the risk of leaving private practice	Support (men only)
<i>7b:</i> Taking time away from the practice of law (for purposes other than a parental leave) will increase the risk of subsequently leaving private practice.	Support

## ***Qualitative Results***

Within our survey, respondents were provided with opportunities to discuss their experiences in the practice of law and to elaborate on their responses to specific questions. These data offer a rich source of commentary on matters ranging from strategies for managing childcare and mentoring colleagues, to supports suggested for a successful return to law practice.

We begin with a discussion of issues related to work-life balance among lawyers, with particular attention to the law firm environment, how spheres of work and family are managed by lawyers, and the challenges associated with coordinating work and family responsibilities. There were various opinions on the subject of work-life balance. For example, some respondents contended that work-family conflict is an inherent feature of the legal profession. Other respondents, however, maintained that work-life balance is possible while pursuing a career in law.

Following a discussion of work-life balance, we move on to explore job transitions. Here, we examine the connection between transitioning out of private practice to other legal settings and the desire to achieve work-life balance. This discussion builds on the previous section of work-life balance as a primary concern for many lawyers within private practice and in other settings of legal work. We also touch on the transition back to private practice following a temporary absence, as well as re-entry intentions among lawyers who have exited law practice. We include comments regarding accommodations that can be offered within law firms to enable a good work-life balance and to retain lawyers. Work-life balance is not the only factor contributing to job transitions out of private practice, and we explore several other factors underlying this transition.

The final part of this qualitative analysis considers the changes suggested by our respondents that may improve organizational structures within private law firms. We focus on

four themes: (1) the provision of flexible hours and work arrangements, (2) proposals for training and mentoring, (3) departure from or modification to the billable hour structure, and (4) efforts to achieve gender equality. Flexible work arrangements and professional development (through training and mentoring) are suggestions that would make the transition back to private practice easier for lawyers seeking to return. The billable hour structure and gender inequality are issues that extend beyond assisting returns to private practice. Our discussion addresses structural concerns of relevance not only to returning lawyers but also to all of those currently in the legal profession. Together, these themes highlight concerns and recommendations from our respondents as to how to improve the climate within private practice.

### **Work-Life Balance**

This theme chronicles the complaint among many lawyers in our survey that work-life imbalance remains a pressing concern in today's legal profession. Respondents also raised concerns regarding a disproportionate impact on women of work-life balance struggles. However, not all respondents indicated a work-life imbalance, but rather emphasized harmony between their work and family lives.

Respondents repeatedly expressed how pressures within the practice of law and responsibilities in their family lives often competed. Several lawyers shared their general observations of the state of law firms when it comes to work-life balance:

*New people coming into private practice need to truly understand that client satisfaction is key in a business and sometimes work-life balance suffers.*

*It is difficult in these early years of legal practice to maintain an active balance between a successful legal practice and one's personal life. Senior lawyers lose sight of how difficult the first few years of practice can be, so expectations can be too high for both the quality of work a new associate will produce, as well as the volume of work they can manage effectively.*

*The structure of private practice makes it incredibly difficult for women to manage both their careers and family responsibilities. ... The private practice of law is fundamentally incompatible with the responsibilities most women who chose to have children have. My sense is until that practice/structure in the private firm setting changes, women will continue to leave in droves – or, as in my case make choices to avoid that setting altogether. My sense is that the demands private practice puts on men also systematically contributes to their partners' (in life) career choices since family comes to rely on their incomes and cannot rely on their presence.*

*Partnership admission criteria are a form of structural discrimination against women. You cannot bill 1750 hours and do 300 PB hours and still see your kids. If you want to see your kids, you won't make partner. I love my work. I hate the fact law is 30 years behind the rest of the world.*

These passages acknowledge the presence of competing work-life pressures. These comments underscore a reality of work-life imbalance within the legal profession, particularly within law firms. Two contrasting perspectives are reflected in the statements. The first is that new lawyers must understand that work-life imbalance will be the state of affairs. The alternate view is that the failure of the law firm to provide a reasonable work-life balance is a challenge to be rectified. Further, these responses raise the issue of competing time demands as falling disproportionately on women. An imbalance between work and familial life may negatively impact the professional mobility of female lawyers. Other respondents suggested work-life imbalance is the reason “*why women leave*” or that personal experiences with discrimination are something with which “*other women would agree*.”

Taken together, these opening passages set the stage for acknowledgement of work-life balance concerns. These comments reveal how conflicts between career and personal life carry significant career (e.g., discrimination in partnership selection) and personal (e.g., having children) sacrifices. We turn now to comments from other respondents, drawing more specifically on their own personal experiences of a discord between law practice and family life.

This next lawyer provided a brief synopsis of her career:

*I'm not sure my life experience and attitudes are common enough to be useful to you. This is my legal career. I went to law school at the age of 43 and was called at 48. I have been self-employed – first as a sole practitioner and later as a partner in a criminal law firm that has been very successful. I have no children, work too hard, have been married for 44 years and should retire. I can afford to but don't want to. Work I do defines me. I am selfish and have always been fortunate enough to have the skills to do what I choose to.*

This quote affords a glimpse into one lawyer's career and life pathways. A noteworthy element from this passage is the idea that her work “defines” her. In a similar stream of thought, another respondent wrote of regret at decisions made:

*If I had to do it all again, I would have worked harder at marriage than career, had babies, done a Ph.D. and not moved to Toronto. I love my current job but hate my life when I take the time to think about it. I would never do law again. It is all I have and the only thing that defines me. How sad.*

This lawyer also emphasizes that law “defines” who they are. Given the opportunity, this individual would have selected an alternate career that permitted the time and flexibility to enhance their marriage and have children. This reflection on life as a lawyer raises questions about the ability to obtain and sustain a work-life balance while pursuing a legal career. With career all-encompassing, other aspects of one's life tend to be placed second.

The following quotes draw on personal experiences and attempts to navigate through work-life conflicts. Respondents shared their attempts to achieve a work-life balance within their legal careers:

*It seems like you have to select between your family and law. Even in house, there isn't time for both. Either my husband is mad that I am late again and my job accuses me of leaving early! I make everyone mad.*

As in-house counsel, this respondent communicates the need to choose between one's legal career and family life. This passage emphasizes that work-life imbalance causes a significant level of tension with spouses and colleagues. When asked about managing childcare, the same in-house counsel responded:

*Daycare with nanny and help from friends for pick up and drop off. This is the hardest part of my life. ... What can I tell you... that law is an amazing and intellectually stimulating career. But law is demanding of those who select this career. It is a war of attrition. People pay us to take care of their problems, to right wrongs, to advise them and help them chart their course. I am expected to be perfect in execution, knowledgeable in all fields of law and deliver these services under increasingly shortened timelines. When I started, it all seemed possible but add on a sick mother, a husband and a toddler. I don't see any of them enough. How can I be a great lawyer and a great mother/wife? This is where I struggle. This is why women leave – because the choice is difficult and the billable hour/work day that you do is compared to others without similar circumstances. As one lawyer said “People don't have part time problems and that is why part time doesn't work in the law.” It is NOT the art/practice of law that is difficult. It is the expectation that we are to work every hour of every day. I don't know how to change this and I can't wait as my son continues to grow and I want to be there for him now.*

This passage is a powerful comment on work-life balance that targets the root of the matter. As a profession, law is certainly demanding, but “*it all seemed possible.*” However, once one must coordinate multiple schedules in different spheres of life the situation becomes, at times, unsustainable.

The following two quotes extend this theme by highlighting the frustrations associated with navigating these competing demands of work and family:

*I am in private practice with 2 young kids. This is not a sustainable or happy lifestyle. Unfortunately, career wise, it comes at the cusp of partnership. It's very disappointing to realize that I can't “have it all” – not without making major personal sacrifices that affect my family. I wish I knew this better when I first started.*

*The profession has a long way to go to make room for women, parenting adults, people with disabilities, etc. I learned after the first term of first year that I would struggle in the profession as a mature student, a woman, and a woman who was single-parenting two kids. The schedule is unforgiving. The workload responsibilities, each of which builds on the other in terms of a successful career – but which I was unaware at the time. Doing the very best you can under the circumstances, balancing and juggling a host of issues besides the school work or workload doesn't count. That will always be disappointing to me. I have found both the school experience and my work experience in law so unfriendly. I didn't fit, and after a certain point, refused to try to fit. All in all, a career limiting move.*

These two respondents, each with unique family situations, have similar experiences of disappointment and “*struggle*” in managing both career and family. In the first quote, the respondent views the current imbalance as unpleasant and believes career-based decisions will negatively impact family life. In the second quote, the lawyer remarks on the inadequacy of law school programs to make students fully aware of how demanding legal careers really are. Work-related pressures and a highly demanding work schedule are issues many associates are not fully aware of upon entry into law practice. However, expectations of long hours and around-the-clock (and weekend) availability are firmly embedded in the organizational culture of many law firms. From the perspective of this second respondent, there has been little compassion for commitments outside of work. For this respondent, her career selection has brought considerable frustration, stress and disappointment when it comes to extending life beyond the practice of law.

The following three comments build on the discussion of work-life imbalance, drawing attention to the work environment of law firms:

*If I had chosen to remain childless it would have been easier for me to advance. It is difficult to spend as much time as I need to at work and as I'd like to at home. There are no positive role models for me at my firm, male or female. No one has an ideal work-life balance, many have unhealthy ways to cope with stress. I have not specifically been held back because I am female, but I lose out on opportunities to socialize informally with some senior male partners and I am not given the same opportunities (informal mentorship, powerful formal mentors, plum file assignments, client contact, etc.) as many male colleagues. I wish someone had told me earlier that realistically you just cannot have it all.*

*I am youngest of 3 lawyers, the other 2 partners are male. Organization and management of staff and business fall to me – the woman. I have accepted the responsibilities and have family responsibilities whereas the men are cared for by partners/spouses. I feel as a woman, I have to work more at home and that it doesn't count as being important to workload at office. If home life, having and raising children affects work – too bad, work harder and don't complain. I know other women would agree.*

*I think law firms should offer more family friendly roles for professional women like those offered by consulting/accounting firms (e.g., Research roles, article writing,*



*recruiting, etc.) ... I think having a law degree is a good basis to move into many other areas, including business, education or government all of which potentially offer greater work-life balance than traditional law firms. I think that to have established the career I originally envisioned, I would have had to (a) not had children, (b) forced my husband to step-down his career or (c) completely out-sourced child-rearing. Every time I meet a highly successful woman with children I interview her on her secrets of success. I think you really do have to "work like a man" and "get a fabulous nanny who drives." My advice to younger women would be to not have children until you make partner and be prepared to accept the "Mommy track" if you go part-time. However, it should be acknowledged that this is not a bad thing if you want to be involved in your children's lives while still keeping a foot in the door. The key is to feel like you have choices and that the work you do is valued even if you are not doing it 60 hours a week.*

There is considerable detail in these passages. For example, both the first and third respondents allude to the fact that their legal careers would have been significantly different had they remained childless. The decision to have children has resulted in career sacrifices, namely lost opportunities for upward mobility. Each respondent expresses a connection between work-life balance and differential impacts on women in the legal profession. The first comment denies any explicit discrimination based on being a woman. She suggests discrimination takes place through reduced work-based opportunities and limited networking, the result of others assuming she lacks career commitment. The second respondent, also a woman, points to an increased workload compared with her male colleagues, particularly administrative work. She also notes gender inequalities in the home. Specifically, she manages most of the household and familial responsibilities, while spouses of her male colleagues perform those duties. The third respondent suggests how firms can offer greater opportunities for women (and men) working to balance career and family. However, while she emphasizes the perception of choice, there is an underlying tone of limited opportunities. For example, her advice to new female associates is to delay starting a family until after partnership decisions and that family choices will impact career

advancement. These quotes also offer insight into the differential opportunity structures available to men and women (particularly those with children).

Building on the theme of gender inequality, the following respondents suggested work-life balance has roots in wider societal concerns:

*The balance between work and home life as a working mother of three has been of huge significance to me. I have come to realize that while there are systemic issues at work, the greater issues, and the ones that cause me greater concern are the societal pressures and expectations of women (including the expectations we place upon ourselves). Partly in response to these issues my personal life is difficult to categorize ... Having recently changed jobs after my kids reached school age – the issues surrounding maternity leave don't apply to my current position though there certainly were issues in the past (e.g., keeping your job for you was considered accommodation enough).*

*Society in general devalues the choice to stay home and care for family members. This is not a criticism of the legal profession, but society as a whole.*

Here, the matter of attending to familial responsibilities is placed in a broader context of gender expectations and the devalued status of childcare in society.

This next comment raises other aspects relevant to the discussion of work-life balance. Specifically, the passage below addresses apprehension over starting a family. This female respondent has actively delayed having children because of perceived hostility toward women who have children at her firm.

*My biggest concern at this stage of my life and career is how having a child will affect my work. I am worried about taking a 12 month maternity leave, leaving my clients with other members of the firm and about what will be left upon my return. Partners have made negative comments about others associates taking maternity leave and I understand that someone who returned from maternity leave was “squeezed out” when she came back by not giving her work, or providing the “dog files” or lower rate files. These concerns have caused me some stress and made me delay plans to have a child.*

Her concerns associated with receiving similar “negative comments” or being “squeezed out” have caused her to postpone having children. Another lawyer summarized concerns over starting

a family as follows: *"It is very difficult to manage career work-life balance working 60-80 hrs/week. I can't imagine how this will be possible if I have a family. Something must be done!"*

This theme is continued by another lawyer:

*As it stands, the practice of law is a draining; exhausting and difficult way to make a living. I wouldn't recommend it to anyone. ... I honestly believe that the practice of law is a fairly miserable way to make a living. I love "the law" but maybe I just like the rest of my life (when I had one) more. I'm not sure that is a bad thing but it is certainly not encouraged in this profession. I look around and I see broken marriages and substance abuse issues. I don't want that.*

This respondent emphasizes that the pressures, stress and inevitable concerns are not just associated with starting a family and childrearing, rather these issues extend throughout the life-course, impacting relationships and personal health. The above respondent has made the decision to devote attention to nurturing familial relationships, but her concerns remain with reference to the profession.

Not all respondents communicated problems with the achievement of a work-life balance:

*At this stage in my life, I am extremely satisfied with my career and life. I have a good work life balance and take time for myself at the gym. I worked constantly in my 30s at law and in the non-profit community of which I thoroughly enjoyed. Now is the time to focus on myself and my family and work and in this order. If I won the lottery, I would still come into work every day and enjoy doing so.*

This female lawyer clearly enjoys not only the practice of law, but also the personal and family life she has developed. It appears that career was given precedence early on in order to establish desired professional achievements. Now, she is able to devote time to herself and family. This sequential ordering of commitments raises questions of the ability to actively balance multiple spheres of life simultaneously. Another female lawyer reflected:

*It is difficult to assess whether I'd "do it all again." In some ways the very difficult years in private practice allowed me to arrive where I am which is a very satisfying job with lots of diverse issues, challenges and interest balanced against a more work-life culture which is quite remarkable. I could never have predicted it to bring me here – but having arrived, I guess I'm pleased with the results.*

This quote suggests that the early years in practice were very demanding for this lawyer, but she was able to achieve a better work-life balance at a later career stage. Another lawyer, working to better balance both professional and personal life, stated:

*I very much enjoy being a lawyer. I will soon be off on maternity leave with my first child (I intend to take off 9 months but that is for financial reasons not because of any pressure by my employer to take less than 1 year) and it saddens me to be leaving my practice and transferring my files to the other associates. I feel that I cannot advance in my career past associate until I have my children (I intend to have another child). Therefore, my career aspirations to make partner are delayed unlike my male counterparts. I want a family so I accept my making partner (and being able to focus on my career and build and maintain client relations) will have to wait. I am confident though that I can be a great mother and lawyer and be successful in private practice.*

The above respondent is expecting a baby and is in the process of planning her parental leaves and career pathway after becoming a parent. Planning for two children, she is strategic in her decision-making and anticipates that career mobility will be delayed. There is an acknowledgment of difficulty with work-life balance particularly in the early stages of one's career. The assumption is that balance will be achieved and sustained eventually. In this case, she is “*confident*” she will balance both career and family.

Striving to achieve and maintain a work-life balance while working as a lawyer is a concern expressed by many of our respondents. The concerns associated with work-life balance can be quite personal and result in the delay of either career mobility or familial commitments. The effects of work-life imbalance within the legal profession are suggested to disproportionately impact women, forcing some lawyers to make difficult choices in terms of career and family priority, and causing significant stress for many. Numerous lawyers reported making sacrifices – either postponing or foregoing children or accepting delayed promotions. Several lawyers commented that in order to manage work and family commitments they opted to

prioritize different realms (family or career) at different points along the life-course. Those who contended that they have, and are satisfied with, work-life balance were often communicating this from a more advanced career stage.

We turn our attention next to job transitions. Difficulty retaining skilled lawyers is related to challenges associated with achieving a healthy balance between career and family. Many of the participants in our survey emphasized that, to some degree, position and career change decisions were impacted by the search for work-life balance within the legal profession.

### **Career Transitions**

In this next section, we examine career paths in terms of the types of professional positions held and the context and timing of job changes. Numerous lawyers in our study reported that their decision to pursue a career outside of the private firm setting has brought them improved work-life balance:

*I am happy with my law career and while there are never enough hours in the day, my work/life balance based on compensation is satisfactory. I could make a lot more money in a LAW FIRM but would not see my child grow up. Working IN HOUSE and getting an MBA were the BEST decisions I ever made.*

*My friends in private practice seem to be facing much bigger hurdles and sky high levels of stress... I consider myself very fortunate as I love my job, and enjoy a good work-life balance. I do not see myself practicing anywhere else than in government, and if I hadn't been able to join the Department of Justice, I would likely not be practicing law today. (I would probably be part of the civil service, in a non-legal job).*

*If private practice was more conducive to family-work balance I would be more inclined to practice in that environment. I am forced to trade off a "substantial income" for time with my family. ... I am very proud of my academic accomplishments but the debt load that I have had to deal with has been difficult and has held me back from enjoying life more fully. I love my job and chose it because I knew that I wanted a family and time to spend with them; however, it has been a sacrifice financially.*

*I chose to work in a legal clinic as it provides a better work/home life balance. The drawbacks are lower pay and a stigma amongst other legal professionals that I am*

*somehow less of a lawyer for working with the marginalized in a legal clinic setting. I am not seen to be doing "real" law.*

*I left private practice to go in-house because it was impossible for me to strike a work-life balance at a large firm. As the women in my peer group are having children, they increasingly are dissatisfied with the hours and lifestyle. Private practice in large firms needs to change.*

*Prefer to be adjudicator, more flexible hours/life style to deal with family responsibilities – 4 children.*

The comments from lawyers working outside private practice were generally favorable, as the quotes above indicate. Consistently, respondents wrote that these practice domains allowed them to better devote time to family. However, there is evidence in these comments that these career tracks also entail sacrifice (e.g., less remuneration, lower reputation). The first three quotes above directly compare lawyers' own experiences of work-life balance to what they perceive to be possible within private practice.

Other work environments, either as an initial career point of entry or the result of movement out of private practice, often offer greater work-life balance. Appreciation for this improved quality of life and better balance is expressed in the following two quotes:

*I strongly feel that I may have the best legal job in the province in terms of interesting work, control of my work, work/life balance, compensation, office relationships, work recognition and overall job satisfaction. This job is 500% better than private practice and I simply adore it more than words can describe!*

*I feel lucky to be working in the setting I currently am and doing the type of work I'm currently doing. I feel that working as a prosecutor and for the government is rewarding and fulfilling in numerous ways. I feel I am usually able to balance my work and non-work life. I am very grateful not to be engaged in "billing" and I, frankly, find the practice of billing appalling. I also feel that I will be supported in my decision, if I make it, to have children and go on one or more maternity leaves.*

Having selected a career path outside of private practice from the beginning, this female lawyer compared her satisfaction to that of her peers:

*Overall, I am satisfied with the decision I made as an articling student to practice law with the federal government. I have enjoyed the public law issues and found it to be intellectually stimulating. Government work has also allowed me to achieve a better home/work life balance than most of my peers in private practice, and for this I am hugely thankful.*

Taken together, these passages suggest work-life balance is possible within the legal profession, but this balance is more likely acquired outside of law firm settings. The opportunity to achieve work-life balance motivates some to pursue careers outside private practice. An emphasis on billable hours negatively impacts the ability to achieve work-life balance in private practice and serves as a motivational factor in leaving private practice. Although these passages do not reveal the timing of transitions out of private practice, what is evident is why many have decided to establish careers in other settings: a quest to achieve work-life balance and general satisfaction across all spheres of life. One lawyer stated: “*Left private practice and moved in-house to be able to spend more time with my children.*” Many job transitions within the profession are associated with family commitments. Below, we explore several examples of these transitions.

An early experience can trigger the decision to exit private practice:

*I do not think I would have the same level of satisfaction with my practice had I stayed in the large law firm. Creating my own work environment permitted me to have flexible work hours around my childcare responsibilities. I would not have had this option without the financial support of my spouse. As a young, pregnant woman during my articling year (at a large law firm) I experienced the best and the worst. My concerns about flexibility and questioning of commitment to work drove me to consider other options.*

The above female lawyer suggests that very early experiences in a large law firm contributed to her decision to transition away from that environment. Similarly, another female lawyer commented:

*I think law school never prepared me for working in private practice. I worked at a distinguished civil litigation firm and, as a female, I found I could rarely trust other women in my office. My mentor crushed me with work. I have always been an individual who prided myself with participating in extra-curricular activities and*

*who worked out regularly. When I began work, a number of these activities stopped. I can tell you that I lost a sense of who I was. I transferred in house nearly a year after my call to the bar. Although I find that the money is not as high, the work/life balance makes up for it. In all likelihood, I will never return to private practice again. I just wish law school provided better preparation for my experiences in private practice.*

This lawyer, who started out in a law firm, determined within one year that this career path was not sustainable for her. Following considerable sacrifices to her personal well-being, she transitioned away from the private firm to an in-house counsel position. Family commitments are one component of much larger concerns regarding personal well-being and balance that, for this lawyer, superseded a career in private practice. In the passage below, another lawyer also started out in a law firm and then moved on early in his career:

*I learned early on in my career that working for some else was not for me. Also, the firm environment with its necessity for billing was not for me. I wanted greater control of my time, even more so after my children were born. What is most important to me is being a good father and husband to my girls and wife. If I were to do it again I would not choose a career in law and I would likely discourage my girls from entering the profession. My wife, a stay-at-home mother who left a large firm in private practice feels the same way. The money is not worth it.*

Experiencing work in a private firm was not compatible for this male lawyer and his career expectations. A priority for this respondent was having an active role in family life. The lack of satisfaction within the firm environment, for this lawyer, has prompted him to discourage his daughters from entering the profession altogether. We are also given a glimpse into the career changes that were made by his wife. She too started out practicing in a large law firm and left the practice of law to stay home to care for their children. The husband and wife in this case, both lawyers, have made significant transitions regarding their respective legal careers in an effort to achieve manageable work schedules and time with their children.

Finally, while some lawyers shift within the legal profession, others have moved out of law practice altogether. For instance, one lawyer wrote:



*I permanently left the practice of law in 2004. ... An unfriendly and often uncivilized career. Little respect for work/life balance.*

Some lawyers provided detailed accounts of their decision to leave and, in so doing, emphasize the work-life balance dilemma:

*Once I had children, my career became less important to me but I struggle with it because I have high expectations of myself which I have a hard time balancing re: being a great spouse, mother and lawyer/employee seems almost unattainable. It was after my second mat leave that I decided to leave private practice. A partner called me into his office on a Friday afternoon so excited by a new deal (and I loved working with this person) and wanted me to lead the team on diligence commencing the next morning and I thought – no I have swimming lessons – sorry! I am now the epitome of the sandwich group dealing with ailing parent(s); administering an estate and juggling kids' schedules. I'm too tired to focus on my career. Any extra time is spent trying to look after my mental and physical health and well-being; which should be more of a priority. I have told myself that any ambitions for my career will pick up as my kids hit their late teens, I approach my 50s and if I still have the interest, I will go for it, but for now I'm staying in, keeping my head down and riding these waves until (hopefully) things get calmer. I'm not dissatisfied with my career, it is a matter of juggling responsibilities, and the responsibilities at work fall behind those of family.*

Family commitments, including care of elderly parents and young children, led this female lawyer to exit private practice. The suggestion above is that her departure from private practice may be a temporary move and that a transition back might be possible at a later life stage. The difficulties involved in balancing various familial commitments across generations, while working long hours in a demanding career, led this lawyer to place priority on family and personal well-being and to leave private practice. The inability to attend to all of these items in an equal fashion presents a dilemma for some individuals, particularly women, in the legal profession. This theme was expressed by another female respondent:

*I had to stop practicing when I had my children- I took 5 years off to raise 3 babies to school age...1<sup>st</sup> child – I had to return to work after 3 months or lose my job – My mom came to live in and care for baby for 6 months – then switched to daycare. Twins born less than 18 mo later – so couldn't afford care for 3 babies at the pay I*

*could earn – too stressful – so stayed home until they were all in JK/and gr. 1... I wouldn't give up the kids – but it has been non-stop stress and exhaustion since they were born. At one point I determined I could not do both jobs well, so I had to leave law to cope with the time demands of 3 small children. Even as teenagers, the time demands mean I can't be a lawyer at my full capacity. ... I truly don't think it is possible to be a woman and have more than one child and continue to be a lawyer working to your full capacity. It is still mainly the mother who will be called by the caregiver or school if there is a problem/sickness/injury with the child, and the woman continues to do most of the work in the house. I have continuously had to scale back my work as a lawyer to accommodate the household and child-caring demands on me. I don't know how to change this. My only way to cope was to work for myself so I could control my own hours and work from home as necessary. When I worked in law firms (medium sized) there was no psychological support for women who had babies and almost no financial supports. The attitude was very much "why are you inconveniencing us like this?"— which is unavoidable when the main purpose of the firm is to earn as much money as possible.*

As the above passage indicates, the pressures associated with attempting to balance both career and family eventually led to a temporary exit from private practice. This lawyer points out that family demands intensify as families grow beyond one child. She notes that while childcare demands are intense during the infant and pre-school years, childcare demands continue and change with school-age children and adolescent years. She addresses a lack of support for work-life balance in private law firms, recognizing that this stems largely from the organizational culture internal to law firms, a culture driven by the profit goal "*to earn as much money as possible.*" She states that the bulk of family responsibilities continue to fall on the mother figure, suggesting a lack of accommodation and support for women both in their professional and personal lives. The intensity and heavy workload within each realm intensify the work-life imbalance for female lawyers in law firms. Another female lawyer builds on this theme:

*My treatment by partners as an associate changed markedly from the time I announced my pregnancy to the time I resigned my position after returning from my maternity leave:*

- *Assigned less interesting work*
- *Attempt to pay me less (less salary and less bonus)*
- *Less confidence in my abilities*

*This experience was shared by another female associate at the firm who also left.*

In the above instance, a job transition was made after her return to private practice following a maternity leave. This respondent reports a pattern of subtle shifts in treatment that appeared once she started a family. For this lawyer, private practice was unaccommodating, even punitive toward family commitments. This experience triggered her exit from the law firm, a pattern similar in nature to the experiences of other lawyers noted above.

Two patterns emerge regarding work-life balance in our survey. First is the observation of a difficulty achieving a work-life balance within private practice due to pressures to work long hours with intense work demands. This can lead some lawyers to exit private practice and pursue other career opportunities. Second, the law firm environment appears designed not to accommodate family life, perhaps assuming a model where a full-time stay-at-home spouse attends to children (and the care of elderly parents). It may be possible that beyond lacking accommodations, the structure of work routines and expectations within firms may even work to push lawyers with family responsibilities out of the law firm.

Some departures from private practice came about when lawyers anticipated an incompatibility between work and family roles. Lawyers, anticipating that work-life balance will not be possible in private practice, decide to find other work environments that offer a more reasonable and predictable work schedule. This point is made clear in the following quote:

*In anticipation of having children, I left private practice. ... I selected myself out of private practice because I knew it would not be compatible with family and for year I worked in less remunerative positions because the hours and stress was less. Only now am I feeling that it is possible to refocus on my career.*

Another individual, in response to whether they changed their sector of practice as a result of having a child, stated: “*I did this prior to/in anticipation of having a child.*” In these cases, transitions out of private practice were a pre-emptive move to accommodate family life.

One trend we uncovered was that of a transitioning out of private practice temporarily. The following quotes provide further insight into this pattern.

*I am currently at home with our child. We have decided that I will take a couple of years to be at home – this made sense as my husband makes a much higher income than I currently do.*

In this instance, the intent is to return to the legal career following a period of two years.

Whether this will take place and what shape her career will take is unknown at this stage, but the intent to transition back is clear. Another woman communicated her intention to return to private practice following a maternity leave. She also shared her concerns regarding life in private practice:

*I am currently on maternity leave. We plan on hiring a nanny when I go back to work in February. ... Answering some of these questions has been difficult as they do not currently reflect my position as a full time associate on maternity leave planning to return full time in a few months. I cannot comment on what it is like to have a child and work, I can only guess how it will be. But I do know that 2 other women in my department went on mat leave at the same time as I did and I am the only one returning. One left to go in-house and the other left the practice of law. The message right now is that you can't be a mother and work at a large law firm. The billable hour is killing us. I plan on returning to work because I don't think it would be fair to myself or the practice of law if I didn't at least try being a mother and a lawyer at a large law firm. But the moment I feel my family is suffering at all at the hands of my career I will be leaving my job. Too much power has been handed to the clients at these large firms. Now that all of the large firms boast about 24 hrs access to their lawyers the clients expect and demand that instant response. We need to take back some control. I was asked by my firm to provide a major client with my home phone number, cell phone number, home e-mail, etc. and I refused. I have a Blackberry – the client can e-mail me or leave a message on my phone at work – both of which I get on my Blackberry. That is enough. We need to take back some of our personal life or we are all going to burn out and leave the practice.*

Other respondents discussed their experiences in transitioning back to private practice. For example:

*I left the practice of law because it is very difficult to provide the level of parenting that was important to me to young children while being a lawyer. I returned when all three children were in school full-time.*

Another individual, in response to the question of managing childcare, stated: “*I left full-time workforce for 7 years. Worked part-time then returned full-time.*” These responses indicate that it is possible to return to law practice after a gap of several years. Another respondent described the transition his wife went through when she left private practice to pursue teaching at a university law school:

*Had my wife, who used to be a practicing lawyer, not decided to start teaching law, it would have been extraordinarily difficult for both of us to remain in full-time practice. In life, you make compromises. My wife compromised her career to have a family. She bore the brunt of the childcare. I earned many times what she earned, so I “brought home the bacon” so to speak. Now that the boys are out of the house, she went back to do her SJD, which she completed last year. As a 56 year old, she is now concentrating again on her career, after a 25-year period of placing career second. It is too late for her to consider practice, so she is going the academic administration route and is now the [position] at [a college]. Before I became a practicing lawyer, I had been a law professor at [a Canadian University] and [a University overseas].*

In this case, a return took time (approximately 25 years according to the above passage), but it was possible to return to a law-based career. However, in this case the return was to administration in legal education rather than the private practice of law.

A temporary leave for the purpose of prioritizing family needs demonstrates the difficulty of investing time heavily in both career and family simultaneously. However, this strategy of a temporary leave also suggests that the possibility for return to law practice exists. The respondent below detailed her transition back to a legal job with the government following a temporary (although “lengthy”) parental leave:

*As a mother of four young children, I am faced with having to choose to work or not – a lack of part-time opportunities prevents me from working. ... I have recently returned to the practice of law after a very lengthy maternity/parental leave. I would not have chosen to return to work at this time except that if I had not, I would have lost my position in government. The job I have was and is my “dream” job. While I am currently working part-time, it is more than I can do. I am required to work four days a week, whereas I am only able to work two days a week given the responsibility I have to look after a busy family with four young children. I am facing the unfortunate reality that I cannot practice law at all because the part-time work is*

*not part-time enough and once I leave, I will not be able to return to government because of closed hiring practices imposed by my own professional association (the OCAA). I am also unlikely to be able to get into private practice because of the lengthy absence from the practice of law. I know so many other women my age who have left the practice of law because it is unaccommodating of family responsibilities. The sad reality seems to be that if you are a woman who wants to have children and actually be around to look after them (rather than rely on daycares, nannies and others to look after them for very lengthy hours), the practice of law will not accommodate you. Therefore, we disappear quietly, and our places are taken up by young and fresh young women who have not yet had to make these choices. Unless things change, and they are unlikely to do so because the women being affected are leaving rather than fighting, the practice of law will continue to suffer as will women lawyers. The women who do achieve senior levels in law are often not sympathetic to change because (a) they do not have children or (b) have had to sacrifice so much in their family lives that they do not view the current situation as negative (e.g., They may have had only a six week maternity leave compared to the current 12 months).*

This lawyer draws attention to barriers for those seeking to return to law practice (in this case, government employment). She notes that attempts to enter private practice, following a temporary absence, may be fraught with hurdles. Additionally, she points out the failure to retain women with families and their replacement by “*fresh young women who have not yet had to make these choices.*” However, it is not only the law firm environment that presents work pressures and obstacles regarding work-life balance. The ability to balance work and family commitments as a government lawyer can be difficult. Although she has returned to her legal career following a temporary absence, work pressures and blocked opportunities continue to present challenges.

Another story of transition also reveals concern over the impact of job dissatisfaction on career continuity:

*I stayed home with my son on maternity leave until he was 10 months old. Then, I decided not to return to private practice, and started working as a legal editor/research lawyer from home, hired a babysitter. My son went to daycare when he was 1.5 years old. I started working in-house for a legal publishing firm when he turned 2. ... Before I became a mother, I thought that I would be happy pursuing my career goals, while my children were being raised by nannies and babysitters.*

*However, when my son was born, I realized that I would not be comfortable with such arrangements. As a result, I (and a number of other women with a similar mindset) are working in an organization where the atmosphere and the hours of work are great. We are supported when we need to work from home when our children are sick and when we need to leave the office at a reasonable time in order to pick our children up from daycare. However, we're barely using our legal training and experience, and are getting paid just a bit above a sophisticated administrative assistant. I feel that I'm wasting here my education from a top law school, my clerkship and experience in working at a national level firm. None of us are satisfied with the path our careers have taken, but it is very difficult to find a middle ground between our current jobs and private practice (where you work 24/7, evenings and weekends, with an unpredictable schedule), as work in government and regulatory agencies, etc. is difficult to find. I am not sure how the present state of things could be changed.*

Working outside of the private firm environment, this lawyer was able to return to work.

However, as she details, while this return may allow for work-life balance and flexibility, the new work also involves sacrifices in terms of limited use of her legal education and substantially less pay.

To this point, the discussion has focused on those who have made a job transition, primarily for reasons related to family. Some lawyers transitioned to legal careers outside private practice and others left private practice temporarily or permanently in an effort to gain better control over schedules related to personal and family life. Others who remain in private practice communicated a desire to make a transition to other work settings:

*Work-life balance is atrocious in private practice, especially national law firms. I will soon be leaving private practice because of this issue and because I have received little support from my firm with respect to an issue I have been having involving a partner who does not understand the concept of work-life balance. While the compensation is wonderful, and the work experience rewarding at my law firm job, no amount of money is worth the lack of a life outside of work.*

This particular passage emphasizes dissatisfaction with the respondent's current private practice environment and the intention to exit due to a lack of work-life balance. The above respondent is

not alone in their desire to exit the private law firm environment. Several lawyers described their intentions to exit private practice:

*Every day I think about leaving the practice of law. I like what I do and my firm has tried to be supportive, but for what I earn, this may as well be a hobby. I feel like something has to change, but I can't find the time to figure out how. I'm winning awards, writing, speaking, getting great new clients – things seem to be going well – except that part of me wants to chuck it all. I'm less happy than I used to be and I see pressures getting worse – aging in laws, sick friends, and I wonder if we really need to work so hard, and under so much stress. There has to be a better way.*

*I may leave my current employer to open my own practice. Not because it will result in fewer hours, but more flexible hours.*

*I would say generally that I enjoy and am optimistic about my job as a lawyer, but the hours and work/life balance are absolutely terrible. I worry that I may decide to leave a firm and a career that I enjoy because too much is expected of me in terms of hours.*

*I work in a Bay St. firm and have 2 small children. I struggled to give 100% to both work and family until I was exhausted and burnt out. The firm allowed me to take a leave of absence for seven months, from which I have just returned. The damage is done, though. This leave and my mat leaves (and the fact that I wanted to see my kids occasionally!), I think, weakened client and mentoring relationships and caused some to question my commitment to the firm. Firms still seem to be focused on billing rather than talent, and married to a model that involves a ladder to partnership only. I am planning to leave private practice within a year.*

The quote directly above, in particular, emphasizes impacts of family leaves on careers and the challenges associated with career-based pressures and workloads. While this female lawyer was able to take a temporary leave, there is the sense that this has impacted her career through a shift in opportunities upon return and her perceived role and status within the firm. The intention, then, is to leave her current position. The following male lawyer's perspective also hints at an intention to make a career change in the not-so-distant future:

1. *A career in law can make it difficult to build strong personal relationships with a life partner, family and friends, because they do not understand the competing demands for one's time.*
2. *We talk about work-life balance, however in private practice, work will always interfere whether during weekends, vacation, evenings if one is going to be*



*accessible to clients. This pressure arises from the demands of high billable targets and client development.*

3. *While I want to have a family and children I fear that I will always struggle with being an absentee husband and father, due to work commitments.*
4. *I do expect to make a career change in the coming future.*

Whereas many respondents indicated shifts to in-house, government, solo practice environments or other positions, the lawyer below reported that she enjoys flexible work arrangements within private practice:

*I am one of several lawyers which I know who work from home, and we agree that we have done so to remain involved with childcare and raising a family and to achieve more of a balance between work and other aspects of our lives. Many of the issues faced by lawyers who practice in a traditional firm environment are not applicable to those of us who work from home, and I have a sense that on the whole, lawyers who work from home are happier with their circumstances compared to lawyers who work in more traditional settings. Among the lawyers I know who work at home, the rationale for doing so has generally been lifestyle-based (more independence, more time with family, an explicit decision to share child rearing and parenting, etc.). Lawyers who work at home have developed common strategies to accommodate challenges that are perhaps unique: more client screening, early and explicit adoption of technology, intentional development of mentoring relationships with senior lawyers in their practice area, etc.*

Of particular interest in this passage is that a greater work-life balance can be established when the law firm is accommodating of particular arrangements. This degree of flexibility was not commonly reported by our respondents. However, the above example demonstrates strategies toward improving work-life balance in the private practice of law. Others communicated similar examples of flexibility:

*I am fortunate to work at a law firm that allows me the freedom to work at home, set my own hours and schedule, and that does not have extremely high billable targets. If not for that flexibility, I would not be in private practice. I enjoy working with my clients and have developed a group for which I do most of my work. The greatest dissatisfaction is with the state of the legal profession. It is not the work itself but the other lawyers who make it stressful. It is a constant battle, usually for no good reason. Fortunately, I work with a good group of people and have a good support system.*

*I have been incredibly fortunate to work in two firms in different parts of the country who were willing to provide flexibility to a mother of 3 who enjoys working. The financial rewards may not have been extraordinary but certainly very good in relation to other part-time opportunities...Despite working part-time I have become very efficient and productive at work which allows this opportunity. I think there are other such opportunities available if people are prepared to look and compromise on compensation to achieve a work family balance.*

The options of reduced hours or part-time work appear to flourish in some organizational contexts – particularly in firms that have fostered flexibilities in concert with employees' desires to have a better harmony with their family life, while willing to accept trade-offs (e.g., reduced salary). This theme was discussed further by the following respondent:

*I work about 15 billable hours/week – paid hourly – target set by me. The flexibility is great but there are tradeoffs:*

- *On most files I do the work of a junior lawyer*
- *No chance of advancement in this current situation*
- *Not given challenging work or the opportunity for leadership*
- *No chance to increase income*
- *Difficult to see my peers advancing*
- *No benefits – do not qualify as I do not work 21 hours per week.*

*However, the tradeoffs are worth it as I have time for my children and feel very little guilt regarding work. Very happy my department has been flexible. I feel that I still have a foot in the door.*

It is important to note that reasons for transitioning to another job with a different law firm or to settings outside private practice extend beyond work-life balance:

*I left a large firm to work at a smaller firm with more flexible arrangements.*

*I left my past firm and found present one based upon lifestyle issues and ability to serve the public again.*

*I very recently (2 months ago) changed jobs. I moved from a mid-sized law firm to one with 3 lawyers. Previously, I was an employee with a salary and billing targets. Now I practice in association (although I am very much a part of the firm) to the extent that I earn a % of billed and collected work with a modest draw for the first few months while I work on generating income. There is plenty of work to do and I have a lot of support from the other lawyers/staff. There is also plenty of new work I am generating. On the other hand my responsibilities for firm committees and assisting with firm management are much decreased. This is assisting me greatly to focus on the practice of law when I'm at work instead of managing various*

*workplace issues and going to firm events, sitting on committees, etc. Although I am now accountable for my income, my stress is much reduced because I don't have to feel badly about not meeting targets. I set my own targets and I have a lot more clarity on setting priorities. By the same token, if I was going to have children, I would have to self-fund. I was contemplating leaving private practice but for me the move to a small law office with an existing client base, senior lawyers to act as mentors and experienced staff support has been a successful move. Now I am no longer thinking of leaving private practice.*

These examples indicate movement between firms. Numerous comments on job transitions came from lawyers who had made moves from large law firms to small firms. While specific reasons for doing so varied, many explanations made reference to a desire for better balance in career and life (e.g., “flexible arrangements” and “lifestyle issues”). Others who exited private practice and continued legal work in other settings also communicated various reasons for doing so:

*I left Bay Street due to pressures of long hours and client development. I'm pleased to be working in government. The hours are far more reasonable and the work is interesting. Although I'm not earning nearly as much as my Bay Street peers, I suspect I have a much more fulfilling life.*

*Not interested in private practice (billable hours, shilling for clients) but frustrated in government.*

*Enjoy freedom of no billable hours and doing what I do while still using my legal background.*

*I am quite happy with my decision to leave private practice and to join the federal government – unless the entire “private practice” model (including billing targets, sexual discrimination, lack of opportunities) changes dramatically, I do not plan to return. ... When I left private practice, I was completely disillusioned and frustrated with the practice of law and was ready to leave it all together. Joining the government was my “last ditch effort” to keep practicing and I am just delighted with this career change. I was a litigator and now I am a legislative counsel, advising on and drafting regulations. The level of stress has decreased exponentially. I just wish the salary was better!*

*I enjoy policy development. It may be hard to transition after long absence. ... My career may not have turned out how I planned but in some ways it has turned out better than planned. Too often we focus on the goal of money and respect and getting ahead opposed to making a difference and having an impact. My current position allows me to have a tremendous impact with good pay and gives me the free time for family and to pursue outside interests in volunteer and political activities.*

There is certainly evidence of satisfaction and happiness as a result of career changes. A number of reasons were cited as prompting the change, but respondents often wrote of the overarching theme of balance. A high level of satisfaction was reported, particularly in new jobs where lawyers were able to continue to apply their expertise. In sum, lawyers in our survey have made career transitions within and external to private practice. These changes were made, for example, to achieve work-life balance, as well as in response to work-based pressures and dissatisfaction with the practice of law. Others anticipated pressures and an incompatibility with family roles and made a decision to leave private practice. Finally, some lawyers returned to private practice or another law-based professional position following a temporary absence or parental leave, and have faced challenges in the process.

Next, we move on to explore some of the changes to practice environments recommended by lawyers in our study. Lawyers, some of whom had left private practice, offered numerous suggestions for changes to law firms. In particular, respondents detailed various types of supports that could assist individuals with their return to private practice. We turn next to examine these suggestions.

### **Desired Changes in Law Firms**

In this section, we highlight four main areas identified by respondents in our survey as areas where change is needed in law firms. These include: (1) the provision of flexible hours and work arrangements, (2) proposals for training and mentoring, (3) departure from or modification to the billable hour structure, and (4) efforts to achieve gender equality. Often multiple suggestions were put forward by our respondents, indicating that areas of reform overlap and, together, these changes would improve the law firm structure. Work-life balance remains a persistent issue on the agenda. For example, in some cases the suggestion for flexible work

arrangements and removal of the billable hour structure were tied to concerns for sustaining harmony between work and family life. This section concludes with a focus on striving toward gender equality. For numerous respondents, concerns related to work-life balance, billable hour targets and other matters are presumed to disproportionately impact women.

## **Flexible Arrangements**

While some respondents were cynical regarding the possibility of returning to private practice (e.g., *“Nothing could make me return to private practice. I didn’t like it, and am glad I left”*), others provided thoughts on strategies for improving the work context of private practice. To begin, the concept of *“flexibility”* emerged as a significant theme. This has been touched on earlier in relation to the law firm environment, namely that flexibility in hours and work arrangements within firms can improve work-life balance and retention of valued employees. Flexibility is raised again here through respondents’ discussions of desired supports and changes to the firm environment. This theme was expressed in a number of ways. First, some respondents were quite frank in their observations, suggesting the need for: *“flexible work hours”* and *“flexible work arrangements.”* Others offered a little more detail:

*I am currently in the practice of law at a private law firm. Certain initiatives such as flex-time, working from home and reduced hours may assist myself and other female colleagues continue in private practice.*

*Flexible hours for those with childcare responsibilities.*

In response to whether a return is likely, the following respondent stated:

*Possibly if firm offered reasonable pay and benefits with flexible work arrangements including hours reduced or part-time, work from home, no requirement to market the firm or entertain clients or work for chunks of time with months off.*

The availability of flexible hours may ease the return to private practice. For another lawyer, *“Flex hours and part-time have helped”* with the return to private practice. Respondents

documented the utility of having a flexible work environment in place. This theme was raised earlier in the context of how flexibility contributes to the attainment of a work-life balance. Not all law firms offer part-time hours and flexible schedules, or perhaps in some cases these arrangements are 'on the books' but not encouraged. The issue of flexibility in schedules remains an area of improvement for firms.

Some respondents explored the idea of flexibility through other means. For example, one respondent stated: "40 hour work week – no joke," while another similarly commented: "*more respect for 9-6 work day.*" These responses suggest that predictability of hours, even if hours are long, would allow for a smoother coordination with family roles (including, for example, childcare provisions) and personal life.

For some lawyers, the full-time work week seemed to extend beyond a 40 to 50 hour work week, and there was unpredictability about when these demands may take place from week to week. Many respondents communicated disdain for the pressures to work beyond a regular full-time work schedule, including having to work weeknights and weekends, to the point of being available for work "24/7" in some cases.

The following lawyer did not suggest ways to improve, but described the current state of the private law firm:

*Further, I believe lawyers should take back control of their lives. Too often, they allow clients to control the hours they work and expect them to be available 24/7. There is no way someone expects to reach his/her family dentist/doctor at 3 AM, and there is no reason why lawyers should allow their clients to think it's o.k. to reach them at these times. I believe that practicing 20-25 years ago would have been better. I do not expect to be actively practicing law in the next 5 years.*

The above lawyer does not work in a law firm any longer and may leave law practice altogether in the coming years. Through her detailed description, she emphasizes how time demands are

unreasonable and stressful. Bearing these observations in mind, the suggestions for “*more regular hours*” seems reasonable and may allow for a more enjoyable work environment.

Also present in a number of comments is an emphasis on “*part-time opportunities*.” This issue is connected to the potential for flexible work arrangements. Suggestions pertaining to workplace policies for part-time work included: “*More part-time, alternative law career opportunities*,” “*Opportunities for part time practice*,” and “*More options for part-time careers in the legal profession in order to accommodate family responsibilities*.” Several respondents argued that opportunities for part-time work would draw them back to private practice. These comments most often, though not exclusively, came from women in the study:

*More part-time practices for working mothers, more flexible arrangements and ability to work from home without stigma.*

A preference for flexibility also surfaced in comments pertaining to the need for work-life balance. When work-life balance is a possible achievement, respected and even encouraged by the firm, a return to private practice is more likely. For example:

*Greater work/life balance*

*Better (e.g., more reasonable/realistic) work-life balance.*

*Better work-life balance – esp. for a mother with young children.*

*Better work-life balance for women in private practice with children.*

*More support for young lawyers so that they can start having children earlier.*

*More realistic sense of division between work life and private life. Work-life balance needs to be improved.*

*The practice of law in private firms needs to adapt to women’s needs to take time off to have children and then raise them while balancing a practice.*

*More focus on work life balance in private practice and less stigma for women and men who have children and take time off to care for them.*

Clearly, the ability to achieve and sustain a work-life balance within private practice would draw some lawyers back to private practice. These comments call on law firms to develop means for enhanced work-life balance in an effort to attract former associates (and partners) to return to private practice. Respondents offered various comments on this topic:

*I have left practice temporarily on maternity leave. Resources which help in dealing with balancing work and family life would be useful.*

*Childcare would have been great. Reference for a good house cleaner.*

*Better hours that allow for work-life balance.*

*Better paying jobs that allow for a private life – I didn't work so hard at school for so long to have to work 15 hour days in order to earn enough to pay off my debt!! ... Young lawyers should not have to choose between working long hours to earn enough to pay off school debts and having a private life.*

*The legal profession needs to recognize that children get sick (e.g., mothers need to take time off work or work from home), have to be picked up at 6 p.m. from daycare, and want to spend time on the weekends with their Moms. I am not sure how this could be achieved.*

*In my experience, private firms pay lip service to the importance of maintaining a work-life balance. I would like to see the profession take actions towards implementing a work-life balance, instead of just talking about it.*

While not specifically asked *how* to make this happen, the comments above suggest it is not always clear-cut in terms of how to put these suggestions into action. The second quote above indicates that assistance with childcare would have been helpful, while the third quote refers to the need for “*better hours*.” The final two quotes both acknowledge that how to best achieve these goals is unclear, but actions must be taken to improve workplace conditions. Generally, there is a desire for “*support in trying to achieve work-life balance within a law firm*.” One respondent offered a solution to the dilemma of achieving a work-life balance, one that focuses on shifting gender-role expectations with reference to parental leaves:



*Good luck with this but until men step up and battle for their rights to parental leave nothing about the work/life balance will change in private practice.*

There is work to be done in order to offer improved work-life balance in the context of law firm practice settings. For now, a few of the above suggestions (e.g., availability of part-time and flexible hours, predictable full-time hours, and less invasion of time at home by work demands) may be individual steps toward achieving the ultimate goal of work-life balance.

### **Training and Mentoring**

A second theme to emerge is training and related opportunities for professional development as helpful tools for lawyers seeking to return to private practice. For one respondent, *“The Private Practice Refresher Course was helpful, but more hands-on training re: accounting and business practices would have been nice.”* Others followed suit with their suggestions for: *“Refresher courses on substantive matters in private law practice”* and *“An intensive refresher course in current legislation, rules of professional conduct, best practices, and recent case law, similar to the BAC I took in my articling year.”* The establishment of refresher training varied from specific courses to general assistance with establishing practice. The suggestions continued with thoughts such as: *“Courses for re-writing the bar exam,”* *“Remedial legal education,”* and the availability of *“mentorship.”* Arguably, the presence of these resources could promote the return of lawyers who have left (or are on leaves from) private practice. As well, training resources could serve as an indication to lawyers preparing to leave private practice for a period of time that there are support systems in place for them to manage their return.

*“Networking”* was also a suggestion from many respondents. This support may improve access to jobs within private law firms as well as opportunities to recruit clients. Specifically, opportunities to network with colleagues and to *“develop clientele networks”* were discussed as

support systems that would encourage lawyers to return to private practice firms. For example, one lawyer stated:

*Networking with similarly positioned individuals with similar experiences; support from firms and genuine indication that I would not be treated differently or stigmatized.*

In sum, respondents emphasized the utility of professional development courses to facilitate re-entry for those seeking to return to private practice. Lawyers in our survey also underscored the importance of mentoring networks to lawyers returning to private practice. In particular, as lawyers ramp up to speed with changes in the law, technological innovations and develop and renew clientele and collegial networks, these resources may be invaluable.

### **Departure from or Modifications to the Billable Hour Structure**

Another suggested area for improvement for law firms is a change in the billable hour structure. This was summarized succinctly by one respondent:

*Something needs to be done about billable targets; billable hours and the difficulty in having a family in this profession.*

There was a range presented among comments in terms of how best to approach this matter. For example, some respondents suggested the removal of this system altogether, as demonstrated in the following statements: “No billable hours targets” and “Remove billable hour system.”

Another respondent elaborated:

*I think the billable hour is contributing to the lack of retention of women in private practice. Quality of work should be rewarded, not quantity. Male lawyers with less household responsibilities have more time to linger at the office and bill more. Get rid of the billable hour.*

Others fell short of calling for an end to billable hours and, instead, suggested a shift in the billable hour structure:

*Reduced billable hours target for commensurate reduction of salary BUT maintaining role within firm in respect of business development, recruiting, etc.*

The above quote represents an argument similar to those calling for flexibility of hours in law firms. Here, it is the reduction of billable hour targets that would create a more ideal situation inside private practice. The following comment, which elaborates on the billable hour system, also alludes to the impact upon women:

*I do blame a great deal of women's issues in the law on the billable hour structure. Lawyers are valued based on the # of hours billed because that's the only way firms make money.*

One final comment regarding the current work structure of law practice speaks to a broader social issue that affects both men and women:

*I think part of the trouble with the practice of law is symptomatic of a deeper social issue – the development of our society into work-focused society. It's my speculation various factors have contributed to the increase over the last few decades in the importance of work (jobs, careers) as a central or dominating part of many people's lives. Nothing with that per se on an individual level, except that in a competitive environment such as law, where money is largely made by the billable hour, it creates a very unpleasant macro-environment in which survival in certain areas of law by necessity requires lengthy work hours. This is hands-down the feature I most hate about the legal profession. The legal culture, and the competitive reality, is simply not conducive toward a 9-to-5 style work environment that allows room for substantial outside interests, family commitments, being a large part of your children's lives, etc. This is not only an issue for women lawyers (e.g., mothers) but for male lawyers as well. Solution? I see none absent a cultural shift in thinking, which may or may not ever occur.*

According to this respondent, tension is rooted in a conflict between current law firm demands and lawyers' family lives. This lawyer argues that the solution to the competition, pressure and billable hour structure of the law firm rests largely in change on a grand scale. The argument that this is also a cultural issue draws attention beyond the law firm structure.

## **Achieving Gender Equality**

A final theme related to recommended changes for law firms deals with the presence of gender inequality and discriminatory practices. Problems related to practices and structures that

disadvantage women as lawyers have been raised elsewhere in this analysis. For example, respondents wrote of excessive hours, inflexible schedules and the billable hour structure as particularly difficult for women with children. In fact, one respondent suggested these factors are responsible “*for a great deal of women’s issues in the law.*”

Some respondents elaborated at length on their observations of gender inequality in the legal profession, particularly within law firms. The following respondent commented on her own personal experiences:

*I am, in general, very dissatisfied in my career and with my working environment. Although I am technically a partner in my firm (with one other older male partner) this means little except I can take responsibility for everything that goes wrong, but I have very little real authority. I am routinely given work by my partner with unreasonable time deadlines. He tends to come and go as he pleases, taking on work while he is in the office and then delegating it all to me, while he goes golfing or on one of his many other excursions. I also find some clients do not wish to meet with me in lieu of him because they do not feel I am as qualified, when in actuality my partner usually comes to me to end up solving the issue. I also find some clients come with a very negative attitude and no matter how clear you are or what you do they feel you are trying to rip them off. Then to top it all off, you have to deal with old male lawyers and in one situation in which I had argued a point very successfully with an older male lawyer and when he could not come up with a comeback he then proceeded to verbally attack me and tell me I was nothing but a “little girl who doesn’t know what she is talking about.” In short, it is still very much a man’s profession (at least in a small firm environment). The only reward is the money and the occasional thankful client. Knowing what I know now, I would never pursue a law career if given a chance to do it over!*

Other respondents spoke directly to the issue of being, as women, outsiders in the practice of law:

*Sometimes I notice a “boys club” – certain senior lawyers only work with male associates; social evenings and at establishments I wouldn’t feel comfortable going to as a female, etc. Religious affiliations can also cause cliques in large law firms.*

*It is still mainly “Old Boys club” the attitude needs to change.*

*The older, male, senior partners at my firm are good people but have no concept of modern day management practices or the needs of anyone from a diverse background. The office is not accessible to the disabled, not friendly to women or*

*others of racially diverse backgrounds and, most frustrating, there are few policies or formal meetings to try and discuss these issues. Senior partners meet privately over a beer to make ad hoc decisions on all aspects of the firm. It is inaccessible for associates who do not live like them.*

*In respect of gender, my view is that the business model applied to law firms makes success a lot more difficult for women. Compensation based on the ability to attract clients does not take into account the disadvantage that women may face in attracting new clients. For the majority of files that I work on, I receive instructions from middle-aged men – with whom it is largely impossible to socialize if you are a young woman. I feel that I am at a terrible disadvantage when it comes to procuring new work which means all of my work comes from senior lawyers in the firm.*

The second and third quotes above speak primarily to practices that disadvantage women.

According to these respondents, the practice of law is structured in a manner that is not accommodating of diverse groups. Part of the problem lies with the “*model*” in place, as well as the culture and organizational structure that appear to promote an “*old boys club*.”

Some observations regarding discrimination were grounded in discussions of work-life balance:

*The biggest challenge to women in the law is to allow and ensure for equality with men. That means requiring firms to allow for paid or topped up parental leave for men. If our firm is an example all the women whom have had children have taken full parental leave with a generous top up and not been taken off partnership track during their leaves. Notwithstanding, a large number of new dads not one has taken any parental leave. This would be extremely frowned upon in our firm. To make these issues about women does an extreme disservice to everyone both men and women. We should be focusing on allowing both sexes to achieve a proper work/life balance and de-stigmatizing those that choose to have one.*

*The pressures of billing are too high and there is a glass ceiling for women. Women are forced to take a not real mat leave for fear of losing their practice/status in the firm... I am in private practice in a “good firm” which provides flexibility, but rewards characteristics that men in my firm have. I have a 2 year old and I am 5 months pregnant and at a crossroads in my career. Thinking how am I going to hack it, having two small children and the intense practice of law, with all the pressures. Most of my law school friends with small children have left litigation or law all together. All the men at my firm with children have wives that stay at home. Is this realistic to expect women can survive in litigation, who want to be parents?*

Again, we see the connection between the structure of the legal profession and gender-based discrimination. It appears that the traditional career model in law is not accommodating of the lives of women with children and men who seek to be actively involved in family life. And, as the two lawyers below observed, the matter extends beyond gender:

*As an ethnic minority practicing law, I sometimes find it discouraging to see that not as many lawyers of different backgrounds are in Bay Street. However, I accept this as a reality and try to practice law at the highest level and work diligently to pursue justice on behalf of my clients. I find that sometimes the practice of law involves more than just being a good lawyer. Although I strongly believe in my skills and ability as a lawyer, I sometimes feel that I may not have the social network to become the lawyer I wish to be. Again, I recognize this apparent impediment as just the reality of the profession and will work that much harder to realize all of my career goals.*

*I worked at large law firms almost 10-15 yrs ago and felt that at the time being “of colour” and a woman was a double whammy. I notice now that firms are more diverse and in fact I think large law firms are more woman and race friendly. I am concerned that there is a ghettoization of women in in-house legal positions where we are asked to work as long hours for less compensation than our male counterparts.*

The second quote above points to the “ghettoization of women” into in-house positions, while both quotes bring attention to issues of the intersection of race and gender, with compounding negative effects for women of colour.

The existence of discrimination was summarized succinctly by a male lawyer:

*I have been somewhat lucky in this regard, but young lawyers deserve more credit and should be treated with greater respect. I am a male, but I have witnessed the sometimes insurmountable hurdles women unjustly face – in addition to the above. Major changes are necessary to correct this patent unfairness.*

His observation is that women tend to face obstacles that men do not in their legal careers. To address this, it is clear that “major changes” are required and we turn to suggestions below.

Addressing and alleviating the issue of gender inequality is not an easy task, particularly given observations of broader gender inequalities in housework, childcare, care of elderly

parents, and expectations regarding which gender ought to take parental leave. Tackling gender inequality within law firms requires attention to broader patterns of gender inequality in our society. For the lawyer quoted below, providing accommodations for leaves to care for children and provisions for job sharing may not be sufficient to successfully overcome gender inequality in the legal profession:

*While I applaud the Law Society's efforts in addressing the negative impact maternity leave and childcare obligations have on the careers of female lawyers, it does nothing to address the underlying problem. It is the attitude of the males in the profession – which borders on misogyny in some circumstances, and is the real cause of female lawyers choosing to leave the profession. This attitude is prevalent among male lawyers of all experience levels, from the newly minted law school graduate to the senior lawyer. Unfortunately, it is exacerbated by male members of the judiciary, who seem to feel all powerful over the female lawyer by calling them derogatory names in the courtroom, or by being condescending or overly hostile. I have witnessed male judges engage in such practices; heard a female colleague being called a “Tinkerbell” in open court and had similar negative experiences in the courtroom and in chambers. Such behavior should bring the administration of justice into disrepute, but it does not, because it is acceptable for the old boys network to engage in such conduct. I am a female lawyer who chose law as a second career. Prior to law school, I worked in an industry dominated by males. I worked in a business with 30 men – and I was the sole female. I was never treated with such disrespect and disdain in all those years, nor experienced that until I joined the legal profession. My female colleagues who have neither childcare nor familial obligations feel the same way as I. It is the male lawyer that needs to change. Providing for job sharing or extended leave benefits will do nothing in breaking down the barriers women experience daily within the profession.*

The above comment suggests that attitudes held by male lawyers, as well as the culture within law schools and law firms, need to change dramatically.

Several respondents put forward a variety of suggestions toward advancing gender equality:

*Equal treatment of all lawyers despite race, or gender. More women and minorities in large firms, as benchers and as judges. A formal mentorship program for those under-represented in the profession.*

*Courses for older male lawyers (partners and management) on how to mentor, adopt forward-looking and flexible policies and work arrangements, how to correct institutional systems which are obstacles for young women.*

*Mandatory reporting of diversity/gender stats; creation of best practices for firms to promote diversity.*

*Promotion of female associates to partnership.*

*Regardless of what is stated publicly criminal law is an old boys' network locally and will likely remain so until senior male lawyers retire – golf, sports events etc. exclude females from male associations socially.*

*Systemic and attitudinal change is required. Women must involve themselves in management of any firm and in client development. Men must create more flexible arrangements for women lawyers with young children. Mentors are essential to champion women lawyers.*

*Be less sexist! This is a systematic change though. I am one female in a group of male juniors and even when I "keep up with the boys" I don't get any recognition from the partners. It is frustrating sometimes.*

These suggestions range from having greater visibility of minority groups in certain positions (e.g., judges), to courses for senior firm members, to new policies and shifted attitudes, to centralized reporting of human resource information in firms and other settings. According to one respondent, it is unclear whether change and general recommendations for law firms will be accomplished "*because so much change is needed.*" Some of the above suggestions may prove effective. Yet, several respondents in our survey remained skeptical of reform that falls short of a complete overhaul of the system.

As a final comment, one lawyer praised the positive direction their firm has followed:

*I would also say that I am proud of our firm, I believe we are a true meritocracy. Talented lawyers are promoted and pay and power are allocated according to performance and effectiveness. We are mindful that still women are underrepresented at the senior ranks but that is changing gradually over time. We have flexibility for our lawyers to ease up somewhat during child raising years and still remain fully valued members of our firm. This applies also for other reasons – health issues, family crises, etc. Ultimately we must remember that law is for us in*



*large part a business, and it is in our interest to make it possible for all of our valued lawyers to find a comfortable and sustainable balance in their lives.*

This quote demonstrates one organization's active stance toward achieving gender equality and reveals the possibility for change and action.

In this qualitative section of the report, we have addressed several themes raised by the participants in our survey. First, we teased out concerns regarding the achievement of a work-life balance within the private law firm environment. While a work-life imbalance was also common in other legal settings, the private law firm appeared of particular concern in the majority of comments offered by survey participants. We explored how individuals manage their balancing act and the challenges they encounter throughout their careers. Second, we turned attention to job transitions, including career pathways, as well as the motivations for job moves and the timing of transitions. A significant factor involved in job changes, particularly across sectors of practice, was the achievement of work-life balance. Although not the only motivational factor, the presence of imbalance between work and family spheres had a strong influence on many of the lawyers in our survey that had left private practice. In this discussion, we also highlighted transitions back to private practice, elaborating on respondents' concerns and obstacles to this return. Finally, we concluded the section with attention to proposed changes. Respondents provided considerable detail on the types of changes they wish to see implemented in law firms, including those that would facilitate re-entry to private practice. This discussion highlighted four main topics: (1) the provision of flexible hours and work arrangements, (2) proposals for training and mentoring, (3) departure from or modification to the billable hour structure, and (4) efforts to achieve gender equality.

Interwoven throughout this section were two main themes: (1) work-life balance, and (2) gender inequality. These two themes surface throughout respondents' discussions of law firms

and organizational culture, challenges faced in the practice of law, departures from and re-entry to private practice, and desired changes to law firms. The concerns and challenges associated with work-related pressures and balancing work and family appear to have a disproportionate and negative impact on female lawyers. Concerted effort is needed to dismantle barriers and remove discriminatory practices in order to retain female lawyers in private practice and to improve work-life balance for all lawyers.

## Conclusions

The majority of contemporary law graduates who began their careers in private practice no longer follow the traditional model of a career characterized by continuous employment and a direct path to partnership within a single law firm. More common are careers paths that include job changes across firms, across sectors of the profession, and with intervals of unemployment or time away from law practice invested in further education, travel, full-time work outside law practice, or raising children. Women are at greater risk of leaving private practice than their male colleagues with whom they entered private practice following law school. New lawyers are most likely to leave private practice during the early career years, with a peak in departures at about seven to eight years after entering private practice. This pattern is, however, distinctively male. Women's departures from private practice are also elevated during the early career years, but the pattern is better described as an early rapid exodus followed by an ongoing stream of women leaving private practice over the years.

Background factors connected to legal education appeared generally unrelated to subsequent career movement out of private practice. Factors including graduation from an elite law school, amount of law school debt and graduates' assessments of how well law school prepared them for a career in law did not appear to shape job moves out of private practice. One

exception was law school grades. For men, successful academic performance in law school smoothed movement across sectors of the profession. Male lawyers with high law school grades were more inclined to step out from private practice. Perhaps high grades build confidence, marketability and signal productive human capital, easing job moves across sectors, though it is curious that grades do not have the same currency for women (interestingly, women had, on average, higher law school grades than their male counterparts).

Turning our attention to human capital and organizational settings, we found that certain areas of law held greater retention for lawyers in private practice. Not surprisingly, lawyers working in litigation were less likely to leave private practice compared with lawyers working in other areas of law. Men working in the area of business law (including corporate and commercial, intellectual property, bankruptcy, tax, and insurance) were also at lower risk of leaving private practice compared with men in other areas of law. However, women engaged in business law did not experience this same pull to stay in private practice. Clientele responsibilities were important factors in keeping men and women in private practice. Regardless of gender, lawyers that were primarily responsible for recruiting new clients to the firm (rather than servicing existing clients) and that had responsibility for a major client of the firm were far less likely to leave private practice than lawyers that lacked these responsibilities. Meanwhile, billing long hours lowered men's risk of leaving private practice, but had no similar effect on women's risk of leaving.

Further gender differences emerged in the context of organizational size. Men working as sole practitioners were less likely to leave private practice than men working in smaller mid-size law firms (10 to 19 lawyers). In contrast, for women, neither firm size nor whether they started their careers in solo practice affected their risk of leaving private practice. Furthermore, for both

men and women in our sample, the organizational provision of flexible full-time hours appeared insufficient to stem the flow from private practice. Three points are to be noted. First, lawyers in this sample (2000-2009 bar admissions) are still relatively young and many have yet to start families. Flexible working hours may be a more pressing concern for lawyers juggling childcare and family commitments outside a demanding legal practice. Second, it may be that organizational policies such as availability of flexible full-time hours offer an attractive incentive for lawyers considering a move between law firms (Armstrong et al. 2007; Reskin 2006), but these policies may be insufficient for lawyers contemplating a move out of private practice. Our analysis examined leaving private practice rather than job turnover between firms. Third, a more desirable option to entice lawyers to stay in private practice is schedule flexibility with reduced hours – for example, half-time or three-quarter time. Our study examined full-time flexible hours. However, the ability to slightly flex full-time hours, by working evenings or weekends to make up for an afternoon departure or late morning start, may simply not be the elasticity lawyers are seeking to manage family life and career in private practice.

For both men and women, job satisfaction is critical to retention in private practice. Extrinsic job satisfaction (e.g., satisfaction with remuneration, opportunities for promotion, and being fairly rewarded in view of the market and one's level of experience) offered a powerful pull to stay in private practice. However, intrinsic job satisfaction (e.g., satisfaction with intellectual challenge of work, sense of accomplishment through work, the opportunity to use one's legal skills in the job, and taking enjoyment in one's work) failed to hold lawyers in private practice. In fact, for men, intrinsic job satisfaction increased their risk of leaving private practice. Perhaps male lawyers, satisfied with the substance of legal work but unhappy with particular aspects of their law firm (e.g., billing quotas, work demands or management approach) opt to

pursue practicing law in other settings, such as in-house counsel, government or in new business ventures outside private law practice.

Professional development opportunities are powerful levers to keep junior lawyers in the private practice of law. Developmental opportunities demonstrate a firm's investment in junior lawyers and build lawyers' competence while integrating them into a full range of professional responsibilities. As noted, lawyers that were actively involved in recruiting clients and dealing with major clients of the firm were far less likely to leave private practice than those without these responsibilities. On the other side, lawyers that felt marginalized and experienced mistreatment by other legal professionals (e.g., assigned tasks beneath their skill level, denied work after expressing an interest, excluded from social gatherings, or receiving derogatory or disrespectful comments from other lawyers or judges) were at greater risk of leaving private practice. Interestingly, although women were more often the recipients of adverse treatment, it was men that were more likely to leave private practice as a result of these negative experiences. Future research needs to further explore women's resilience against disparate and discriminatory treatment. Perhaps women compare themselves not with their male colleagues in law but with women in lower status occupations or with earlier generations of women in the legal profession and, therefore, women do not respond to mistreatment by quitting private practice. Alternatively, it may be that after years of investment in legal education and professional training, women feel little choice but to endure difficult work environments. Thus, it may be that women recognize the reality of unfair and discriminatory treatment and are simply "lumping it" (Engel 2013:294), opting to stay on in private practice despite less than inclusive work environments. Regardless of women's professional comparisons and expectations of others, behaviours that marginalize or

demean women may take their toll by way of women's levels of job satisfaction, earnings, and promotions (Armstrong et al. 2007; Kay et al. 2008).

Finally, we considered the impact of interruptions on careers in private practice. Parental leaves have a curious effect on departures from private practice. Although several studies show parental leaves wield damage on the careers of women (Arun et al. 2004; Tremblay 2013), our analysis did not reveal a similar negative effect on women's legal careers. Rather, we found the increased risk of leaving private practice surfaced among men who had taken parental leaves. This finding contrasts with our recently published study of an earlier cohort of Ontario lawyers (a cohort of 1975 to 1990 bar admissions). In our study of the early fifteen-year cohort, we found parental leaves moved women out of private practice 37% more quickly, while parental leaves had no impact on men's risk of leaving private practice (Kay et al. 2013:1252). It is possible that many of the women in our current study, a sample of recent bar admissions, had yet to start families. At the time of the survey, 50% of the women remained childless (compared with 37% of men,  $t\text{-test}=4.200$ ,  $p<.001$ ). Women in our sample were also relatively young (median age=37 years at the time of our survey) and it is likely many were yet to have children, some postponed having children, and others may have foregone having children altogether.<sup>12</sup> This means that for some women in our sample, there were yet to have children and experience the encumbrance of work-family conflict. Even for women with young children, the professional after-effects of parental leave and potential job changes were perhaps yet to manifest. It is therefore premature to conclude that parental leaves have no impact on women's transitions out of private practice.<sup>13</sup> A

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<sup>12</sup> The median age was 37 years for women and 39 years for men. The age range for lawyers in our sample was 25 to 67 years.

<sup>13</sup> We conducted additional analyses, exploring the impact of a composite measure of survey questions that tapped the perceived adverse career impacts of having children. This scale included items such as: questioning of commitment to work, loss of clients, loss of challenging work assignments, delay in promotion, and loss of income. The multivariate analysis revealed a statistically significant increase in the rate of departures from private practice associated with adverse consequences of having children. This finding suggests that measures that assess simply

follow-up study of the same cohort, perhaps ten to fifteen years hence, would better estimate the longer-term impact of parental leaves, as well as other interruptions, on job moves within and from private practice. Future work should introduce time-varying covariates, specifically the timing of birth in addition to timing of job changes. It is possible that women make career moves, including job changes across sectors of law practice (and out of law practice) in *anticipation* of having children. This is suggested by several lawyers in the qualitative section of the report. Unpacking the timing of job moves relative to the birth (or adoption or step-parenting) of young children may be critical to understanding the timing of women's job moves.

Nonetheless, it is noteworthy that a slightly larger percentage of men in our contemporary (1990-2009 bar admissions) cohort of lawyers had taken parental leaves (9%) compared with the earlier (1975-1990) cohort (4%) (Kay et al. 2013:1244). Yet, for those men who elect to use this workplace benefit, they are at greater risk of leaving private practice. This finding is consistent with research that demonstrates men face stigma associated with taking up available workplace policies, such as family leave (Rudman and Mescher 2013) or reduced work hours (Coltrane et al. 2013). The result is often the perception by others, especially supervisors and managers, that they are 'not serious' about their work (Vandello et al. 2013).

For both women and men lawyers, taking time away from law practice (for purposes other than parental leave) increased their risk of leaving private practice. Women were more likely to experience these gaps in their careers and for longer durations than their male counterparts; women were also more likely to spend the time attending to the care of young children, while men more often entered graduate school, travelled, or worked on a full-time basis

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whether professionals have children or have taken parental leaves fall short in their effort to capture the context and differential impacts of children on careers. Future work needs to examine more closely lawyers' experiences of having children across various work contexts.

in positions outside the practice of law. Further research needs to explore the consequences of different types of engagements during periods away from the practice of law. Do lawyers who take time away from law practice to pursue other paid work (e.g., in politics, corporate business, or in pursuits related to their practice domains, for example, commercial real estate or banking) return to private practice and accelerate their career progress as a result of the business acumen that they have accrued and the ability to bring in new clientele from these professional networks? Do lawyers who take time out from law practice to pursue further education (e.g., MBA, Masters of Law, or other postgraduate programs) return to the professional level from which they left, or do they advance quickly to elevated posts within private practice as a result of their new credentials? Are some credentials career-enhancers, while others are viewed as a diversionary path from conventional career progression in law? What are the consequences for lawyers who, during their interval away from the practice of law, invested energies in volunteer or community service work, travel, raising children, or whose absence was the result of illness or unemployment? Are some interruptions viewed less favourably by law firm management and thus apt to carry diminished salaries and delayed or stunted advancement up career ladders (Theunissen et al. 2011)? Research also needs to examine the impact of the duration of time away from law practice. Do longer periods pose obstacles for a professional's ability to renew clientele relationships and regain footing on career ladders?

Our qualitative analysis of the rich comments written by participants in our survey offered further insight into the processes generating departures from private practice. Our analysis provided a more nuanced understanding of the nature of work-life conflicts, particularly the often relentless, unpredictable and invasive time demands in private practice. Numerous lawyers in our study admonished the billable hour system of evaluation used in law firms. Others



described strategies adopted in an effort to harmonize family responsibilities with demanding careers. Their detailed comments regarding job changes revealed the attractions of work settings outside private practice, as well as the pressures pushing lawyers out from private practice. This push/pull dynamic was more commonly reported by women. Some women left after having one or more children, sometimes as a short term strategy to managing family demands, with the intent to return to private practice in a few years. Others left in anticipation of having children and encountering an incompatibility between family life and career. Yet, not all accounts expressed disappointment or reproached private practice. Some lawyers wrote of achieving work-life balance in firms that were innovative in their approach to schedule flexibility, reduced hours, and supports for lawyers with young children or elder care responsibilities. Many of the lawyers in our survey, including both those continuing to work in private practice and those who had left, wrote of their love for the law, their fascination with legal problem-solving, and the pleasure they took in providing quality legal services to their clients. Participants in our study also provided extensive feedback as to the changes they would like to see take place in law firms. These included: flexible hours, improved mentoring and training, modification or departure from the billable hour system, and targeted efforts to achieve gender equality.

Three limitations of this paper must be noted. First, the data are cross-sectional in nature and therefore limit our capacity to make causal inferences. For example, job satisfaction was measured at the time of the survey, rather than during every professional position for each participant in the survey. It is possible, even probable, that some lawyers had moved to new jobs where they found improved intrinsic job satisfaction. In this context, high intrinsic job satisfaction may be the outcome of a job move rather than the precursor to making that move. Longitudinal data tracking work histories with attitudinal assessments in each job, duration of

unemployment spells and timing of children would provide a more rigorous test of our hypotheses.

Second, it useful to note that job changes may not be the product of lawyers' own decision-making. Job changes may also consist of quits as pre-emptive moves to avoid the impact of downsizing, partnership denials and partnership dissolutions (Couch and Fairlie 2010; Park and Sandefur 2003), or job changes may be as casualties of a difficult economic time. During an economic downturn the likelihood of losing a job involuntarily (e.g., being fired or laid off) increases, whereas the likelihood of finding an alternative job decreases, dissuading professionals from actively seeking new employment. Therefore, a high unemployment rate can be expected to have a positive effect on involuntary job moves but a negative effect on voluntary movement (Park and Sandefur 2003). Of course, differentiating between voluntary and involuntary job moves is a daunting task. For example, in troubled economic times, periods of rising risk and constraint, voluntary/involuntary turnover distinctions are increasingly blurred. Yet, regardless of the economy, some lawyers might leave their jobs for more attractive employment opportunities, for improved work-life balance, or through dissatisfaction with the nature of their legal work or the firm's work environment. Other lawyers quit in anticipation of being let go, or else are encouraged by management to leave "voluntarily" because their prospects for retention and advancement are weak (Moen et al. 2011:74). In addition, individuals may choose to describe their departure from a firm as motivated by the opportunity for self-employment or an enticing offer from a competing organization, corporate or government when, in fact, they were being pushed out following poor work appraisals, failure to meet targeted billable hours, or restructuring within the firm (the result of firm mergers or partnership dissolutions). Taken together, the distinction between voluntary and involuntary departures may

be less salient than the evidence that women are at greater risk of leaving private practice than men and for different reasons.

Third, it is likely that job moves are influenced profoundly by the economic climate at the time of job changes – such as a sudden collapse of economic markets or a period of growth in particular fields of law such as bankruptcy law, mergers and acquisitions, or real estate law. Therefore, future research would benefit from incorporating economic indicators measured at regular intervals rather than once at the time of career entry. Also, it is worth noting that the experiences of our contemporary cohort (1990 to 2009 bar admissions) differ from an earlier cohort of Ontario lawyers (1975 to 1990 bar admissions). In the case of the earlier cohort (Kay et al. 2013), a sizeable proportion of lawyers entered practice during the recession of the late-1980s and the poor economic climate was a significant force in driving young lawyers out of private practice. In the case of the more recent cohort, whose work histories are the basis for the present study, less than 10% (9.3% of the sample) entered practice after 2007 when another sharp market fall transpired, starting in 2008. It is likely that our survey, conducted in 2009, is premature to capture the full impact of the recent economic turmoil for lawyers' attrition from private practice.

In conclusion, our study demonstrates that retention of women in private practice continues to be a pressing concern for gender equality in the legal profession. Women leave private practice at a higher rate than men after launching their careers. The timing of these moves also varies by gender. For men, the timing of departures from private practice intersects closely with partnership decisions while, for women, departures are less synchronized with career ladders and appear to be driven by other factors. The retention of lawyers, both women and men, in private practice is enhanced through lawyers' satisfaction with salaries, promotion prospects

and developmental opportunities (such as working with major clients of the firm, on challenging cases and with senior lawyers, as well as through experiences of being treated with respect by fellow legal professionals). Lawyers that felt they were overlooked for developmental opportunities and were the recipients of derogatory and disrespectful remarks by colleagues, judges and clients, were at elevated risk of leaving private practice. Interestingly, though women were more often disadvantaged on these counts, it was men who were likely to exit private practice in response to these slights. Finally, men who took advantage of parental leave benefits were at increased risk of leaving private practice, suggesting that policies intended to be gender-neutral may nonetheless carry gender-specific impacts, with greater stigma for men pursuing unconventional parenting roles. In the final analysis, the emerging diversification of careers – the remarkable departure from the once typical linear, continuous career with a single employer in private law practice – may not reflect growing accommodation of diverse groups, such as women and racial minorities, to the profession. Rather, the diversification of careers in law may in part be the product of blocked mobility and persistent gender inequalities that drive women out from conventional private law practice.

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**APPENDIX A: TABLE 1. Operationalization and Measurement of Study Variables**

Independent Variables	Description	Men (N = 491)		$\chi^2$	Women (N = 453)	
		Mean (%)	SD		Mean (%)	SD
<b>Demographics &amp; Family</b>						
Racial minority	0 = white; 1 = racial minority	.13	.33		.14	.34
Married	0 = not married or cohabiting; 1 = married or cohabiting	.84	.37	***	.74	.44
Children	0=no children; 1=has children	.63	.48	***	.50	.50
<b>Educational Factors</b>						
Elite law school	0 = other law schools; 1 = University of Toronto	.13	.34		.14	.34
Grades in law school	Self-reported average law school grades. Coded on a 7-point scale: 1=D [50-59%], 2=C [60-64%], 3=High C (C+) [65-69%], 4=B [70-74%], 5=High B (B+) [75-79%], 6=A [80-89%], 7=High A (A+) [90-100%]	4.83	.96	***	5.02	.81
Law school foundation	Respondents scored their level of agreement or disagreement (1=strongly disagree to 7=strongly agree) with 6 statements about legal education: (a) Law school prepared me well for my legal career, (b) Law school teaching is too theoretical and unconcerned with real life practice, (c) I wish I had received more business training in law school, (d) I consider my law degree to have been a good career investment, (e) If I had to do it over again, I would still choose to have gone to law school, and (f) Law school provided me with good information technology skills. Items b and c were reverse-coded for directional consistency. Respondents were also asked how satisfied they were with opportunities to develop professional capabilities during law school. Respondents scored 9 items on a 7-point (1=very dissatisfied to 7=very satisfied): (a) legal analysis, (b) problem solving, (c) working with business and financial concepts, (d) exercising ethical judgment, (e) working as a member of a team, (f) advocacy, (g) negotiation, (h) familiarity with transactional work, and (i) international opportunities. The full set of 15 law school evaluation criteria were incorporated into a scale ( $\alpha = .82$ ).	4.24	.76	**	4.18	.82

Law school debt	Reported by respondents in dollars. Range = \$0 to \$135,000.	22,567.08	25,719.63	*	25,723.69	25,551.33
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[Continued]

TABLE 1. Cont'd

Independent Variables	Description	Men (N = 491)		$\chi^2$	Women (N = 453)	
		Mean (%)	SD		Mean (%)	SD
<i>Human Capital</i>						
<i>Areas of law:</i>						
Business law	0 = else; 1 = corporate and commercial, intellectual property, bankruptcy, tax, and insurance	.29	.45		.27	.45
Litigation	0 = else; 1 = civil litigation	.16	.36		.14	.35
People law	0 = else; 1 = administrative law, adjudication and/or mediation, estates, wills and trust, family law and divorce, employment and labour relations, and real estate	.26	.44		.29	.45
Criminal law	0 = else; 1 = criminal law	.10	.30	*	.07	.25
Billable hours	Hours billed approximately during the last fiscal year	1,530.81	408.95	*	1,488.19	352.80
Client recruitment	0 = lawyer has primary responsibility for clients of the firm; 1 = lawyer has primary responsibility for bringing in new clients	28.70	36.99	***	18.98	32.25
Major clients of the firm	0 = does not have responsibility for relations with one or more of the major clients of the firm; 1 = has responsibility for relations with one or more of the major clients of the firm	.48	.50	***	.32	.47
<i>Organizational Setting</i>						
Solo practice	0 = firm; 1 = sole practitioner	.07	.25	†	.04	.21
Small firm	0 = else; 1 = less than 10 lawyers	.32	.47	**	.25	.43
Small mid-size firm	0 = else; 1 = 10–19 lawyers	.10	.30		.12	.33
Large mid-size firm	0 = else; 1 = 20–49 lawyers	.13	.33		.12	.32
Large firm	0 = else; 1 = 50 or more lawyers	.11	.32		.13	.34
Flexible schedule	0 = no; 1 = flexible schedule available with full-time hours	.58	.49		.59	.49
Greater Toronto Area	0 = elsewhere; 1 = Greater Toronto area (GTA)	.55	.50		.56	.50
Unemployment rate at call	Range = 5.7 to 10.9	7.66	1.50	*	7.49	1.31

[Continued]

TABLE 1. Cont'd

Independent Variables	Description	Men (N = 491 )		$\chi^2$	Women (N = 453)	
		Mean (%)	SD		Mean (%)	SD
<b>Job Satisfaction</b>						
Extrinsic	Level of satisfaction with 5 aspects of one's job: income, opportunities for promotion, whether they are rewarded reasonably given the market for legal services, given the responsibility they have, and in view of their experience, coded from 1=strongly disagree to 5=strongly agree ( $\alpha$ = .89); scale standardized in regression	3.69	.90	***	3.43	.97
Intrinsic	Level of satisfaction with the extent to which the work is intellectually challenging, the work gives them a sense of accomplishment, they look forward to coming to work, the job allows them to use their legal skills, and they find real enjoyment in their work, coded from 1=strongly disagree to 5=strongly agree ( $\alpha$ = .86); scale standardized in regression	3.85	.74		3.85	.78
Disadvantaging treatment	0 = has never or rarely experienced treatment that placed them at a disadvantage; 1 = has experienced treatment that placed them at a disadvantage (occasionally, routinely or frequently). Scale includes 9 items: (a) assigned tasks you think are beneath your skill/experience; (b) not being invited to work with particular senior lawyers in your firm or office; (c) excluded from social gatherings, (d) denied work when you expressed an interest, (e) received comments about your physical appearance; (f) derogatory comments about your family status, (g) disrespectful remarks by judges or other lawyers; (h) rude or inappropriate remarks by clients, and (i) a lack of support by office or firm staff; scale standardized in regression; ( $\alpha$ = .71); scale standardized in regression	.20	.20	***	.29	.24
<b>Career Interruptions</b>						
Parental leave	0 = none taken; 1 = taken at least one parental leave	.09	.29	***	.39	.49
Time away	0= none taken; 1= time taken away from the practice of law	.16	.37	***	.38	.49

† $p = .06$ ; \*  $p < 0.05$ ; \*\* $p < 0.01$ ; \*\*\* $p < 0.001$  (two-tailed tests).

Tab 4.2.2

## **PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR 2015**

### **HUMAN RIGHTS AWARD PRESENTATION TO THE HONOURABLE IRWIN COTLER, PC, OC, MP & RECEPTION – See TAB 4.2.2**

Date: February 12, 2015  
Location: Donald Lamont Learning Centre and Upper and Lower Barristers' Lounge  
Time: Ceremony: 4:30 p.m. to 5:30 p.m. (Donald Lamont Learning)  
Reception: 5:45 p.m. to 7:00 p.m. (Upper and Lower Barristers' Lounge)

### **BLACK HISTORY MONTH – See TAB 4.2.3**

**Title: From “Hands Up! Don’t Shoot!” to “I Can’t Breathe” — Is the Air Clearer North of the Border?**

**Date:** Tuesday, February 17, 2015  
**Panel discussion:** 5:30 - 7:30 p.m., Donald Lamont Learning Centre  
**Reception:** 7:30 - 9:00 p.m., Convocation Hall

#### **Summary:**

Recently, nationwide protests, “die ins” and marches in the U.S. have escalated dialogue about police brutality. More generally, there has been a focus on how the criminal justice system — beginning with the police — interacts with the Black community. In honour of Black History Month, the Canadian Association of Black Lawyers and the Law Society invite you to a panel discussion with criminal justice, policing and community response experts who will talk about these issues in the Canadian context.

#### **Confirmed Speakers:**

- Bencher Julian Falconer, Falconers LLP
- Jamil Jivani, Founder, Policing Literature Initiative and articling student, Torys LLP
- Kike Roach, Barrister and Solicitor
- Peter Sloly, Deputy Chief, Community Safety Command, Toronto Police Service
- Professor Scot Wortley, Associate Professor of Criminology, University of Toronto

The panel will be moderated by the Honourable Justice Donald McLeod, Ontario Court of Justice.



## INTERNATIONAL WOMEN'S DAY

**Topic:** An intergenerational and interdisciplinary dialogue on sexual violence against women, including: whether changes in the law of consent have had an impact, whether media and others have responded to high profile cases differently over the years, and the ways that activism has changed as each generation has sought to address sexual violence against women. Given your work with the Sexual Assault Centre of Hamilton & Area (SACHA), we thought that you would be a wonderful addition to this panel.

Date : March 5, 2015  
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
Time: Panel 500 p.m. – 7:00 p.m.  
Reception: 7:00 – 8:30 p.m.

### Confirmed Speakers:

- Mary Eberts, Law Office of Mary Anne Eberts
- Lenore Lukasik-Foss – Executive Director, SACHA - Sexual Assault Centre (Hamilton & Area)

## LA JOURNÉE INTERNATIONALE DE LA FRANCOPHONIE

Keynote: Jean-Marc Michalik – Les jeux Pan Am et Parapan et la francophonie  
Date : March 19, 2015  
Location: Law Society of Upper Canada  
Time: 6:00 p.m. – 8:00 p.m.

## HOLOCAUST REMEMBRANCE DAY

Date: April 14, 15 & 16, 2015 (TBC)  
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
Time: 4:30 p.m. – 8:00 p.m. (TBC)

## DIVERSE CAREERS FOR WOMEN IN LAW

Date: May 7, 2015  
Location: Convocation Hall  
Time: TBC

## ASIAN AND SOUTH ASIAN HERITAGE MONTH

Date: May 12 or 19, 2015 – TBC  
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
Time: 4:30 p.m. – 8:00 p.m. (TBC)

### **ACCESS AWARENESS FORUM**

Date: June 4, 2015  
Location: Donald Lamont Learning Centre  
Time: 4:30 p.m. – 8:00 p.m. (TBC)

### **NATIONAL ABORIGINAL HISTORY MONTH**

Date: June 19, 2015 -TBC  
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
Time: 4:30 p.m. – 8:00 p.m. (TBC)

### **PRIDE WEEK**

Date: June 23, 2015  
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
Time: 4:30 p.m. – 8:00 p.m. (TBC)

PUBLIC EDUCATION SERIES

BLACK HISTORY MONTH EVENT:



# From “Hands Up! Don’t Shoot!” to “I Can’t Breathe” — Is the Air Clearer North of the Border?

Recently, nationwide protests, “die ins” and marches in the U.S. have escalated dialogue about police brutality. More generally, there has been a focus on how the criminal justice system — beginning with the police — interacts with the Black community. In honour of Black History Month, the Canadian Association of Black Lawyers and the Law Society invite you to a panel discussion with criminal justice, policing and community response experts who will talk about these issues in the Canadian context.

A reception will follow.

## Save the Date: Tuesday, February 17

Osgoode Hall, 130 Queen St. W., Toronto

Panel Discussion: 5:30 – 7:30 p.m.

Reception: 7:30 – 9:00 p.m.

## RSVP

This public event is free, but space is limited.

Please register at the following link, by February 12:

[www.lsuc.on.ca/BHM](http://www.lsuc.on.ca/BHM)

[equityevents@lsuc.on.ca](mailto:equityevents@lsuc.on.ca) | 416-947-3413 | 1-800-668-7380, ext. 3413

*Photographs taken at this public event will be used in Law Society print and online publication.*



Canadian Association of Black Lawyers

L'Association des Avocats Noirs du Canada

# The Law Society of Upper Canada



## Inaugural recipient of the Law Society's Human Rights Award:

### The Honourable Irwin Cotler, PC, OC, MP

The Honourable Irwin Cotler, PC, OC, MP, will receive the inaugural Law Society Human Rights Award on February 12, 2015.

Mr. Cotler was selected by Convocation on October 30 to receive the award in recognition of his long and illustrious career as an outspoken advocate for human rights — both at home and abroad.

Established in 2013, the award recognizes outstanding contributions to the advancement of human rights and/or the promotion of the rule of law provincially, nationally or internationally. It is granted biannually.

Mr. Cotler has served as an esteemed law professor, legal scholar and mentor, international human rights lawyer and Member of Parliament for Mount Royal (1999 – present). From 2003 to 2006, he held the country's most esteemed justice portfolios as Minister of Justice and Attorney General of Canada. Mr. Cotler was recently named "2014 Parliamentarian of the Year" by his fellow Members of Parliament.

#### February 12 Details:

**Ceremony** – 4:30 to 5:30 p.m. in the Lamont Learning Centre

**Reception** – 5:45 to 7:00 p.m. in Upper and Lower Barristers Rooms

Please register by e-mail at [equityevents@lsuc.on.ca](mailto:equityevents@lsuc.on.ca), or by telephone at 416-947-3413 by **February 5, 2015**



## Barreau du Haut-Canada



### **Premier récipiendaire du Prix des droits de la personne du Barreau :**

### **L'honorable Irwin Cotler, CP, OC, député**

La trésorière du Barreau du Haut-Canada, M<sup>e</sup> Janet E. Minor, est heureuse d'annoncer que l'honorable Irwin Cotler, CP, OC et député recevra le premier Prix des droits de la personne du Barreau.

M<sup>e</sup> Cotler a été choisi par le Conseil le 30 octobre pour recevoir le prix en reconnaissance de sa longue et illustre carrière d'ardent défenseur des droits de la personne au pays et à l'étranger.

Créé en 2013, le Prix des droits de la personne reconnaît les contributions exceptionnelles à la défense des droits de la personne ou à la promotion de la primauté du droit aux paliers provincial, national ou international. Il est remis tous les deux ans à des particuliers pour leur dévouement à ces principes sur une longue période ou pour un seul acte de service exceptionnel.

M<sup>e</sup> Cotler est un professeur de droit respecté, un expert en droit et un mentor, un avocat des droits de la personne internationaux et le député fédéral de Mont-Royal (1999 – présent).

De 2003 à 2006, il a dirigé les portefeuilles de la justice les plus importants du pays à titre de ministre de la Justice et de procureur général du Canada. Pendant son mandat, il a institué la première initiative nationale de justice contre le racisme et la haine et il a engagé la première poursuite en vertu de la *Loi canadienne sur les crimes contre l'humanité et les crimes de guerre* pour incitation à commettre un génocide au Rwanda. Tout récemment, M<sup>e</sup> Cotler a été nommé « Parlementaire de l'année » pour 2014 par ses collègues députés.



*Le prix sera remis dans le cadre d'une cérémonie publique spéciale à Osgoode Hall le 12 février 2015. Les détails relatifs à la cérémonie seront publiés au cours de la nouvelle année.*

**REPORT TO BE PROVIDED  
PRIOR TO CONVOCATION**

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*



**TAB 8**

**Report to Convocation  
January 29, 2015**

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**Audit & Finance Committee**

**Committee Members**

**Christopher Bredt (Co-Chair)**

**Peter Wardle (Co-Chair)**

**Adriana Doyle (Vice-Chair)**

John Callaghan

Susan Elliott

Seymour Epstein

Michelle Haigh

Vern Krishna

Judith Potter

James Scarfone

Alan Silverstein

Catherine Strosberg

**Purpose of Report: Information**

**Prepared by the Finance Department**

**Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**



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LibraryCo Inc. Financial Statements for the nine months ended September 30, 2014	<a href="#">TAB 8.1.2</a>

## COMMITTEE PROCESS

1. The Audit & Finance Committee ("the Committee") met on January 14, 2015. Committee members in attendance were Chris Bredt (co-chair), Adriana Doyle (vice-chair), John Callaghan, Susan Elliott (phone), Seymour Epstein, Michelle Haigh, Vern Krishna (phone), Judith Potter (phone), James Scarfone (phone), Alan Silverstein and Catherine Strosberg (phone). Bob Evans also attended.
2. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Elliot Spears, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.
3. Also attending were Kathleen Waters, President and CEO and Steve Jorgensen, CFO of LAWPRO.

**FOR INFORMATION**

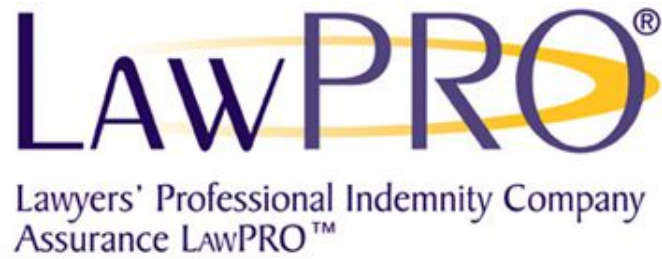
**TAB 8.1**

**TAB 8.1.1**

**FOR INFORMATION**

**LAWYERS PROFESSIONAL INDEMNITY COMPANY  
FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2014**

4. Convocation is requested to receive the third quarter financial statements for LAWPRO for information.



***Report to the  
Audit and Finance Committee  
of  
The Law Society of Upper  
Canada***

***January 14, 2015***



## ***Report to the Audit and Finance Committee – Law Society January 14, 2015***

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#### ***LAWPRO***

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## ***KEY POINT SUMMARY***

- ***LAWPRO has sufficient assets to discharge its claims and other liabilities.***
- ***At September 30, 2014, LAWPRO held investment assets totaling \$616.3 million, inclusive of cash and cash equivalents and investment income due and accrued. These funds have been invested in accordance with the Company's investment policy. LAWPRO was in compliance with its policy during the nine months ended September 30, 2014 (see pages 11 and 12).***
- ***LAWPRO's net income for the nine months ended September 30, 2014 was \$14.1 million compared to a budgeted income of \$4.7 million and a net loss of \$9.7 million for the same period in 2013. During the nine months ended September 30, 2014 LAWPRO experienced a total comprehensive income of \$14.9 million, which reflects an increase in unrealized gains of \$0.8 million on its surplus investments, compared to a budgeted income of \$1.3 million and an income of \$6.2 million for the same period in 2013.***
- ***Overall, earned premiums on the mandatory program were substantially at expected levels. Investment income of \$21.2 million for the nine months of 2014 was higher than budgeted levels by \$7.2 million and the results for the same period in 2013 by \$10.5 million, the key difference being \$7.2 million of realized gains as well as a \$1.6 million increase in unrealized gains in the matched portfolio in the current year.***
- ***Claims and adjustment expenses for the nine months ended September 30, 2014 were \$4.9 million lower than budget due to favourable development in prior Fund Years in the E&O program. General expenses for the nine months ended September 30, 2014 were \$0.5 million higher than the same period in 2013, though \$0.4 million lower than budget.***
- ***LAWPRO is in compliance with all regulatory requirements regarding solvency and filing of financial information. A summary of LAWPRO's position with respect to standard insurance ratios as at September 30 is included on page 10.***

**Lawyers' Professional Indemnity Company****STATEMENT OF FINANCIAL POSITION**

Stated in thousands of Canadian dollars

**UNAUDITED**

	<b>As at September 30 2014</b>	<b>As at December 31 2013</b>
<b>Assets</b>		
Cash and cash equivalents	16,178	14,525
Investments	596,718	575,039
Investment income due and accrued	3,423	2,136
Due from reinsurers	564	309
Due from insureds	2,385	2,027
Due from the Law Society of Upper Canada	26,491	-
Reinsurers' share of provisions for:		
Unpaid claims and adjustment expenses	43,434	40,487
Unearned premiums	1,816	-
Deferred policy acquisition expenses	895	-
Other receivables	1,832	1,419
Other assets	2,982	2,758
Property and equipment	2,402	2,193
Deferred income tax asset	4,763	4,543
<b>Total assets</b>	<b>703,883</b>	<b>645,436</b>
<b>Liabilities</b>		
Provision for unpaid claims and adjustment expenses	462,591	447,912
Unearned premiums	30,628	749
Unearned reinsurance commissions	383	-
Due to reinsurers	1,656	591
Due to insureds	47	66
Due to the Law Society of Upper Canada	-	3
Expenses due and accrued	1,915	1,526
Income taxes due and accrued	1,496	4,312
Other taxes due and accrued	347	402
	<b>499,063</b>	<b>455,561</b>
<b>Equity</b>		
Capital stock	5,000	5,000
Contributed surplus	30,645	30,645
Retained earnings	143,156	129,076
Accumulated other comprehensive income	26,019	25,154
	<b>204,820</b>	<b>189,875</b>
<b>Total liabilities and equity</b>	<b>703,883</b>	<b>645,436</b>



**Lawyers' Professional Indemnity Company****STATEMENT OF PROFIT OR LOSS**

Stated in thousands of Canadian dollars

**UNAUDITED**

<b><u>For nine months ended September 30</u></b>	<b><u>2014</u></b>	<b><u>2013</u></b>
<b>Revenue</b>		
Gross written premiums	120,810	111,885
Premiums ceded to reinsurers	<u>(7,213)</u>	<u>(7,044)</u>
Net written premiums	113,597	104,841
(Increase) decrease in unearned premiums	<u>(28,063)</u>	<u>(25,812)</u>
Net premiums earned	85,534	79,029
Net investment income	21,208	10,712
Ceded commissions	<u>1,357</u>	<u>1,187</u>
	<b><u>108,099</u></b>	<b><u>90,928</u></b>
<b>Expenses</b>		
Gross claims and adjustment expenses	77,530	92,781
Reinsurers' share of claims and adjustment expenses	<u>(3,489)</u>	<u>(2,921)</u>
Net claims and adjustment expenses	74,041	89,860
Operating expenses	12,359	11,898
Premium taxes	<u>2,730</u>	<u>2,532</u>
	<b><u>89,130</u></b>	<b><u>104,290</u></b>
<b>Profit (loss) before income taxes</b>	<b><u>18,969</u></b>	<b><u>(13,362)</u></b>
Income tax expense (recovery) - current	5,109	(3,316)
- deferred	<u>(220)</u>	<u>(357)</u>
	4,889	(3,673)
<b>Profit (loss)</b>	<b><u>14,080</u></b>	<b><u>(9,689)</u></b>

**Lawyers' Professional Indemnity Company****STATEMENT OF COMPREHENSIVE INCOME**

Stated in thousands of Canadian dollars

**UNAUDITED****For nine months ended September 30**

	<b>2014</b>	<b>2013</b>
<b>Profit (loss)</b>	<b><u>14,080</u></b>	<b><u>(9,689)</u></b>
Other comprehensive income, net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit plans, net of income tax expense (recovery) of \$0 [2013: (\$0) ]	-	-
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<i>Available-for-sale assets</i>		
Net changes unrealized gains (losses), net of income tax expense (recovery) of \$2,023 (2013: \$3,216)	5,613	8,926
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$1,887) [2013: (\$1,203) ]	(5,232)	(3,336)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of \$175 (2013: \$222)	484	614
<b>Other comprehensive income</b>	<b>865</b>	<b>6,204</b>
<b>Comprehensive income</b>	<b><u>14,945</u></b>	<b><u>(3,485)</u></b>

**Lawyers' Professional Indemnity Company****STATEMENT OF CHANGES IN EQUITY**

Stated in thousands of Canadian dollars

**UNAUDITED**

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
<b>Balance at December 31, 2012</b>	<b>5,000</b>	<b>30,645</b>	<b>122,663</b>	<b>12,981</b>	<b>171,289</b>
Total comprehensive income for the year	-	-	5,933	12,653	18,586
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	480	(480)	-
<b>Balance at December 31, 2013</b>	<b>5,000</b>	<b>30,645</b>	<b>129,076</b>	<b>25,154</b>	<b>189,875</b>
Total comprehensive income for the year	-	-	14,080	865	14,945
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	-	-	-
<b>Balance at September 30, 2014</b>	<b>5,000</b>	<b>30,645</b>	<b>143,156</b>	<b>26,019</b>	<b>204,820</b>

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY  
REPORT TO AUDIT AND FINANCE COMMITTEE - LAW SOCIETY OF UPPER  
CANADA  
MANDATORY E&O INSURANCE PROGRAM  
NINE MONTHS ENDED SEPTEMBER 30, 2014**

**PREMIUMS**

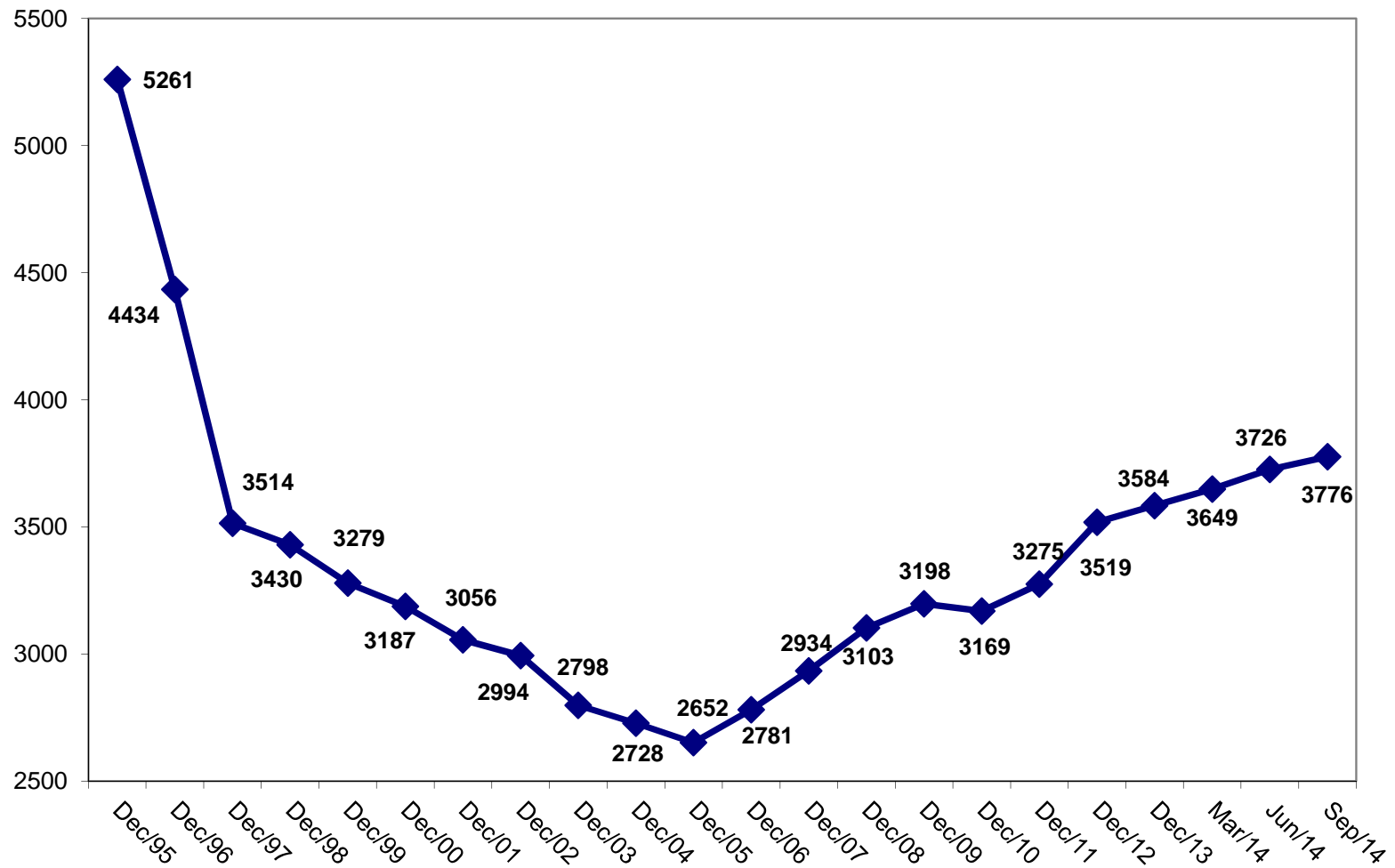
- The 2014 Ontario mandatory professional liability program performed substantially as expected. Overall, written premiums were in line with budgeted levels. At September 30, 2014, there were 24,929 full-time equivalent practitioners, a level which has already surpassed the budgeted amount of 24,847.
- For the nine months of 2014, transaction levies were \$1.7 million below budget, compared to \$0.8 million below budget in 2013.
- The retrospective rating arrangement in its insurance contract with the Law Society, which was significantly restructured commencing in 2010, resulted in no additional premium recorded in 2014.

**CLAIMS & ADJUSTMENT EXPENSES**

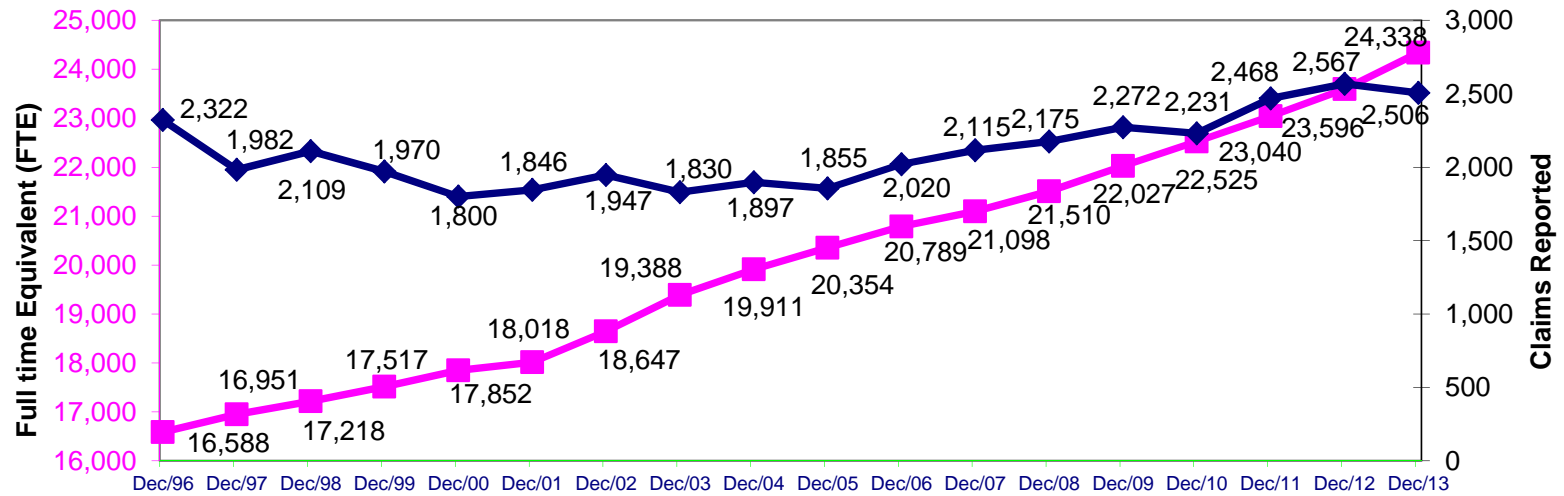
- In the first nine months of 2014, there were 1,491 new 2014 fund year claim files reported compared with 1,496 new 2013 fund year claim files reported during the same period in 2013.
- The number of files remaining open at September 30, 2014 was 3,776, higher than the 3,608 files remaining open at September 30, 2013.
- For all fund years, 1,859 new files were opened through September 30, 2014 and 1,667 closed. The comparable figures for the nine months ended September 30, 2013 were 1,799 claims opened and 1,710 closed.

On an aggregate basis, in the first nine months of 2014 there has been a significant net favorable development on claims of prior years (in particular fund years 2009, 2011, 2013 offset somewhat by a large unfavorable development for the fund year 2010.) Regarding prior year development, in the same period in 2013, there was a significant net unfavourable development on claims of prior years (in particular fund year 2007 and 2009 through 2012, offset somewhat by a large favourable development for fund year 2008).

## Open Claims (for fund years 1995 and forward)



Claims Reported & Full Time Equivalents by Fund Year



Claims reported per 1,000 FTE

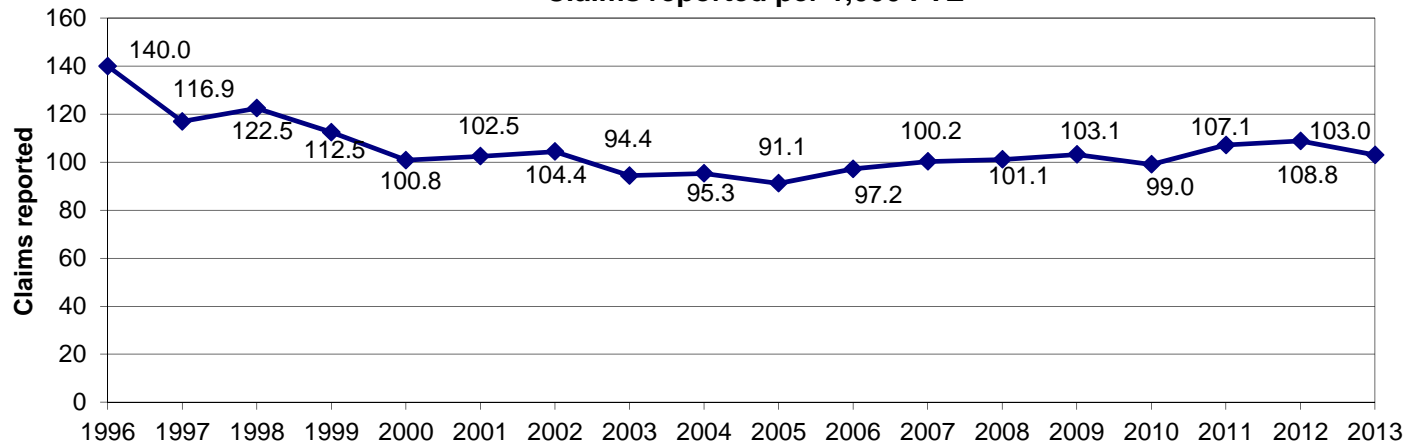


Exhibit 12 – INSURANCE RATIOS<sup>1</sup>

TEST	RECOMMENDED RANGE	SEP 2014	DEC 2013	SEP 2013	DEC 2012
<b>I. Solvency Ratios</b>					
<b>1. Minimum Capital Test</b>					
(Measures the excess of capital available to capital required based on a risk-based capital adequacy framework and is used to determine capital adequacy of a company.)	Preferred: 220-230% Minimum: 180%	248%	233%	202%	223%
<b>2. Loss reserves to equity</b>					
(Measures unpaid claim and adjustment reserves as a percentage of surplus and provides a simple test of the leveraged position of the company.)	Preferred: < 225% Maximum: 250%	205%	215%	251%	230%
<b>II. Other Select Ratios</b>					
<b>1. Liabilities as a % of liquid assets</b>					
(Liabilities as a percentage of Cash and other liquid assets-measures company's ability to meet its financial demands.)	Preferred: < 80% Maximum: 105%	74%	70%	79%	72%
<b>2. Net premiums written as a % of surplus</b>					
(Net risk ratio measures the company's ability to absorb financial shocks. The higher the ratio of premiums to surplus, the greater is the potential risk borne by the company in relation to the surplus available to absorb loss variations.)	Preferred: < 80% Maximum: 100%	55%	56%	62%	61%
<b>3. Return on equity</b>					
(Measures an insurer's net income as a percentage of equity. The higher the ratio, the greater the return to shareholders per unit of invested capital. Sustainability of earnings is more important than periods of high returns followed by periods of low returns or losses.)	Greater than 0% <sup>2</sup> , Net income	10%	3%	(8%)	(1%)
	Comprehensive Income	11%	10%	(3%)	2%
<b>4. General expense ratio</b>					
(Measures an insurer's general expenses, excluding commissions, as a percentage of net earned premiums.). This ratio should be maintained at lower than or equal to comparable small insurance companies.	Up to small insurance company benchmark (27% as at Dec 2013)	18%	19%	18%	20%
<b>5. Optional business segment</b>					
(Excess program and TitlePLUS title insurance) is planned to operate on a break-even or better basis.	Greater than \$0 (stated in \$'000s)	1,451	993	2,292	(753)

**Note:**

- The above metrics reflect the Risk Appetite Statement approved by the Board of Directors on June 25, 2014.
- Sufficient to maintain/grow MCT.

Better Than Range
Within Range
Outside of Range

LAWPRO & LAWPRO POST 2007

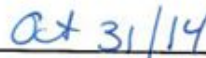
**COMPLIANCE**



As of and for the quarter ending September 30, 2014, we hereby certify that to the best of our knowledge the investments in the Lawyers' Professional Indemnity Company portfolio were in compliance, based on our records which are issued on a trade date basis, in accordance with the Investment Policy Statement dated January 1, 2014.



Deborah Lewis, CFA  
First Vice President



Date:



- Confidential -





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www.letkobrosseau.ca

1800 McGill College  
Suite 2510  
Montréal, QC H3A 3J6  
Canada  
(514) 499-1200  
(800) 307-8557  
(514) 499-0361

November 4, 2014

145 King Street West  
Suite 2101  
Toronto, ON M5H 1J8  
Canada  
(647) 426-1987  
(800) 307-8557  
(647) 426-1587

Lawyer's Professional Indemnity Company  
C/O Ms Kathleen A. Waters, President & CEO  
250 Yonge Street, Suite 3101  
P.O. Box 3  
Toronto, Ontario  
M5B 2L7

**SUBJECT: COMPLIANCE CERTIFICATE**

Dear Ms. Waters,

This is to confirm that, at the end of each month of the quarter ending September 30<sup>th</sup>, 2014, Letko Brosseau was in compliance with the requirements of the Statement of Investment Policies and Procedures, effective January 1<sup>st</sup>, 2014. To the best of our knowledge, we have no reason to believe that we were not in compliance with all such requirements at any other time during such period.

Should you require additional information, please do not hesitate to contact us at your convenience.

Regards,

Peter Letko  
Letko Brosseau & Associates Inc.  
PL/mn

**TAB 8.1.2**

**FOR INFORMATION**

**LIBRARYCO INC.**

**FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2014**

5. Convocation is requested to receive the third quarter financial statements for LibraryCo Inc. for information.

**LIBRARYCO INC.  
FINANCIAL REPORT  
For the nine months ended September 30, 2014**

**KEY POINT SUMMARY**

**Overall Results**

6. Results for the third quarter identify a deficit of \$178,432 compared to a budgeted deficit of \$241,074. The positive variance from budget of \$62,642 is spread across most expense categories.

**Revenues**

7. The Law Society grant (line 1) is the lawyer-based fee that is transferred to LibraryCo. This transfer includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was \$5.6 million and matched budgeted amounts for the period.
8. The Law Foundation of Ontario grant (line 2) is provided to LibraryCo to subsidize the purchase of electronic resources and the amount received equalled the amount budgeted.

**Expenses**

9. Total expenses were \$6,350,564 compared to a budgeted total of \$6,406,970.
10. Administration (line 6) of \$395,775 represents the service fee paid to the Law Society and equals budget.
11. Professional fees (line 7) are higher than budget by nearly \$3,000 as budget had not been provided for the facilitator for the strategic planning session.
12. Other head-office expenses (line 8) are lower than budget for the period by approximately \$12,000 primarily as a result of underspending for publication expenses within LibraryCo, 1-800 line charges, professional development, web initiatives and miscellaneous expenses.
13. Electronic product expenses of \$739,000 (line 10) were paid in February and are within budget.
14. Group benefits and insurance (line 11) are lower than budget by nearly \$17,200 as group benefits premiums were budgeted prior to the premium increase being finalized at a slightly lower rate. Expected savings for the year are estimated at approximately \$20,000.

15. Other centralized expenses (line 12) are lower than budget by nearly \$25,000 primarily because of publications, COLAL meeting expenses, COLAL continuing education, staff & travel, and courier/postage costs with most of these variances a result of timing differences rather than savings in the current year although courier costs have decreased as a result of the recent evaluation and replacement of courier providers.
16. County and District law libraries grants (line 14) are over budget by \$1,800 due to the late adjustment for the Manitoulin grant which was approved by the Board after initially not being included in the 2014 budget.
17. Capital and special needs grants (line 16) of \$25,000 were paid to Thunder Bay in April 2014 to assist with moving costs as planned. Capital and special needs grants are under budget by \$4,300 as computer grants do not follow a pattern.

#### **Balance Sheet**

18. Cash and short-term investments (line 1) have decreased by \$139,200 due to operating deficits and an increase in prepaid expenses.
19. Prepaid expenses (line 3) primarily represents the Directors and Officers Insurance Policy for the Associations which was paid in May.
20. Accounts payable and accrued liabilities (line 5) are \$8,200 higher than 2013 as the September charges for publications and CDs is \$7,500 higher than in 2013.
21. The General Fund has decreased by \$141,600 over the last 12 months in line with the budget for the period which used the General Fund to finance expenses. Based on estimated savings for 2014, a projected balance of \$141,000 in the General Fund is expected at the end of 2014. The 2015 budget includes funding of \$100,000 from the General Fund effectively depleting it.
22. The Reserve Fund has a balance at the end of September of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with Board policy.

**LIBRARYCO INC.****Schedule of Actual and Budgeted Revenues and Expenses****Stated in Dollars****For the nine months ended September 30****Unaudited**

	<b>2014 Actual</b>	<b>YTD Budget</b>	<b>Variance</b>	<b>Annual Budget</b>
<b>REVENUES</b>				
1 Law Society of Upper Canada grant	5,623,890	5,623,896	(6)	7,498,700
2 Law Foundation of Ontario grant	542,000	542,000	-	542,000
3 Other Income	6,242	-	6,242	-
4 <b>Total revenues</b>	<b>6,172,132</b>	<b>6,165,896</b>	<b>6,236</b>	<b>8,040,700</b>
<b>EXPENSES</b>				
<b>Head office/administration</b>				
5 Salaries and benefits	106,839	108,870	2,031	155,000
6 Administration	395,775	395,775	-	527,700
7 Professional fees	16,468	13,500	(2,968)	18,000
8 Other	38,304	50,325	12,021	61,100
9 <b>Total Head office/administration expenses</b>	<b>557,386</b>	<b>568,470</b>	<b>11,084</b>	<b>761,800</b>
<b>Law Libraries - centralized purchases</b>				
10 Electronic products and services	739,332	740,000	668	740,000
11 Group benefits and insurance	232,871	250,050	17,179	333,000
12 Other	74,577	99,575	24,998	158,400
13 <b>Total Law Libraries - centralized purchases</b>	<b>1,046,780</b>	<b>1,089,625</b>	<b>42,845</b>	<b>1,231,400</b>
14 County and District law libraries - grants	4,710,697	4,708,875	(1,822)	6,278,500
15 Capital and special needs grants	35,701	40,000	4,299	45,000
16 <b>Total County and District Law Libraries Expenses</b>	<b>4,746,398</b>	<b>4,748,875</b>	<b>2,477</b>	<b>6,323,500</b>
17 <b>Total expenses</b>	<b>6,350,564</b>	<b>6,406,970</b>	<b>56,406</b>	<b>8,316,700</b>
18 <b>Deficit</b>	<b>(178,432)</b>	<b>(241,074)</b>	<b>62,642</b>	<b>(276,000)</b>

*This statement includes the revenues and expenses of the LibraryCo entity only.*

**LIBRARYCO INC.**  
**Balance Sheet**  
**Stated in Dollars**  
*As at September 30*  
**Unaudited**

	2014	2013
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash and short-term investments	707,798	847,008
2 Accounts receivable	20,189	19,220
3 Prepaid expenses	51,755	46,897
4 <b>Total Assets</b>	<b>779,742</b>	<b>913,125</b>
<b>Liabilities, Share Capital and Fund Balances</b>		
<b>Liabilities</b>		
5 Accounts payable and accrued liabilities	75,038	66,830
6 <b>Total Liabilities</b>	<b>75,038</b>	<b>66,830</b>
<b>Share Capital and Fund Balances</b>		
7 Share capital	200	200
8 General fund	204,504	346,095
9 Reserve fund	500,000	500,000
10 <b>Total Share Capital and Fund Balances</b>	<b>704,704</b>	<b>846,295</b>
11 <b>Total Liabilities, Share Capital and Fund Balances</b>	<b>779,742</b>	<b>913,125</b>

*This Balance Sheet includes the financial resources of the LibraryCo entity only.*

**LIBRARYCO INC.****Statement of Changes in Fund Balances****Stated in Dollars*****For the nine months ended September 30***

	<b>2014</b>		<b>2013</b>	
	General Fund	Reserve Fund	<b>Total</b>	<b>Total</b>
1 Balance, beginning of year	382,936	500,000	<b>882,936</b>	<b>971,188</b>
			-	-
2 Deficit	(178,432)	-	<b>(178,432)</b>	<b>(125,093)</b>
3 <b>Balance, end of period</b>	<b>204,504</b>	<b>500,000</b>	<b>704,504</b>	<b>846,095</b>

*This statement includes the fund balances of the LibraryCo entity only.*



**TAB 9**

## **Report to Convocation January 29, 2015**

---

### **Professional Development & Competence Committee**

#### **Committee Members**

Howard Goldblatt (Chair)  
Barbara Murchie (Vice-Chair)  
Alan Silverstein (Vice-Chair)  
Raj Anand  
Constance Backhouse  
Jack Braithwaite  
Robert Burd  
Mary Louise Dickson  
Ross Earnshaw  
Larry Eustace  
Peter Festeryga  
Susan Hare  
Vern Krishna  
Michael Lerner  
Marion Lippa  
Virginia MacLean  
Judith Potter  
Nicholas Pustina  
Jack Rabinovitch  
Joe Sullivan  
Gerald Swaye  
Peter Wardle

**Purpose of Report: Information**

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



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PD&C Department Annual Resource and Program Report

**TAB 9.1**

## **COMMITTEE PROCESS**

1. The Committee met on January 15, 2015. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Alan Silverstein (Vice-Chair), Constance Backhouse, Jack Braithwaite, Mary Louise Dickson, Ross Earnshaw, Larry Eustace, Susan Hare, Michael Lerner, Marian Lippa, Virginia MacLean, Judith Potter, Nicholas Pustina, and Joe Sullivan attended. Staff members Diana Miles and Sophia Sperdakos also attended.

TAB 9.1

## INFORMATION

### PROFESSIONAL DEVELOPMENT AND COMPETENCE DEPARTMENT ANNUAL RESOURCE AND PROGRAM REPORT

2. The PD&C Department Annual Resource and Program Report is set out at [TAB 9.1.1: Annual Resource Report](#) for Convocation's information.
3. This report informs Convocation about the operational implementation of approved Professional Development & Competence policies and the extensive work done within the Professional Development & Competence Department.



## **Professional Development and Competence Division Resource and Program Report**

FOR INFORMATION ONLY

Diana C. Miles  
Executive Director  
Professional Development and Competence  
(416) 947-3328  
dmiles@lsuc.on.ca

**January 2015**

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## PROFESSIONAL DEVELOPMENT AND COMPETENCE DIVISION

The Professional Development and Competence (PD&C) Division supports policy development and operational implementation for all activities, products and programs related to practice management and supports, continuing professional development, legal information services, the lawyer and paralegal licensing processes, and post-licensing quality assurance.

The Department focuses on the relationship between pre- and post-call substantive, procedural, practice management and professional responsibility competencies within the profession and strives to create a platform of services that assists lawyers and paralegals to maintain viable practices and provide competent service.

### LICENSING AND ACCREDITATION: LAWYER LICENSING

The following chart indicates the number of candidate registrations, and the number of L1 licences issued in the past five years of the Licensing Process. The Process is governed by the three-year rule which requires a registered lawyer candidate to be called to the bar within three years from the time of their entry into a licensing year. For the calendar year 2014, there were 2,357 candidates newly registered in the licensing process.

Year	Registrants	Licensed
2010	1,863	1,625
2011	1,949	1,707
2012	2,073	1,873
2013	2,211	1,995
2014	2,357	2,121

### Articling Program

#### National/International Articles

Candidates may complete up to ten months of articles outside of Ontario (national) or outside of Canada (international). The total number of candidates who completed articles outside of Ontario is as follows:

Licensing Year	National Articles	International Articles
2010	18	22
2011	16	16
2012	18	16
2013	19	16
2014	29	15

## Exemption from Articles and the Professional Conduct and Practice Course

In 2009, candidates became eligible to apply for and be granted a full exemption of articles if they have practice experience in a common law jurisdiction that exceeds 10 months. The majority of candidates who receive exemptions have gained their experience in the US, India, Nigeria, Australia, the United Kingdom and Pakistan.

Candidates who are exempted from articles must successfully complete a mandatory three-day course. The Professional Conduct and Practice course provides instruction on professional responsibility and practice management topics in an Ontario context using panel presentations, roundtable discussions and interactive case studies. In 2014, 137 candidates attended the course for a total of 630 exempted articling candidates who have completed the mandatory course since inception.

There have been 12 sessions of the Professional Conduct and Practice course since it began in May 2009:

Year	May	December	Total
<b>2009</b>	22 attendees	19 attendees	41 attendees
<b>2010</b>	51 attendees	45 attendees	96 attendees
<b>2011</b>	42 attendees	53 attendees	95 attendees
<b>2012</b>	54 attendees	53 attendees	107 attendees
<b>2013</b>	77 attendees	82 attendees	159 attendees
<b>2014</b>	71 attendees	61 attendees	132 attendees

Candidates exempted from articles must also successfully complete the two Licensing Examinations. As a result of this significant reform, candidates exempted from articles could be eligible for a call to the bar within six months depending on the timing of their receipt of the Certificate of Qualification from the National Committee on Accreditation.

## Pathways Pilot Project

In 2014, the PD&C Division has been heavily engaged in the implementation of each of the components of the Pathways Pilot Project, which has resulted in significant changes to the Law Society's licensing processes and protocols. The key components include:

- a) Creation of a Law Practice Program (LPP) as a path to licensing;
- b) Enhancements to the Articling Program as a path to licensing;
- c) Implementation of an evaluation framework for the pilot project.

The development work with respect to each of these components has been both time sensitive and substantial. Work on these individual projects within the Pathways Pilot has been very intensive, taking significant time and effort of the licensing team and an extended group of the PD&C team.



## **Enhancements to the Articling Program**

The Law Society's enhancements to the Articling Program consist of new reporting requirements designed to ensure fulfillment of the experiential training competencies and promote consistency in all placements. All Articling Principals are required to file an Experiential Training Plan at the beginning of the placement. Both candidates and principals must file a report on the candidate's exposure to the experiential training competencies by the end of the placement. And finally all principals must now formally evaluate and report on candidate performance of five core tasks, including activities related to client communication, matter management and advocacy.

To support these new administrative requirements, the Licensing and Accreditation team developed and launched the new online Articling Program Reporting Tool in July 2014. The tool was developed under a very tight timeframe and included consultation with articling principals from a variety of practice sectors and geographic areas of Ontario.

Feedback from the profession has been overwhelmingly positive and compliance with the new reporting requirements has been very high. As of December 31, 2014, approximately 96%, or 1,454 out of 1,516 placements have filed Experiential Training Plans.

## **Law Practice Program (LPP)**

The Law Practice Program launched in September at Ryerson University in English and the University of Ottawa in French. A total of 243 candidates are enrolled in the program. The LPP consists of a four-month training course followed by a four-month work placement. The training course involves a virtual law firm model to support development of practical lawyering and practice management skills through a variety of file based assignments and simulated client interactions. Members of the profession have been engaged in the LPP as instructors, assessors and mentors.

The training course component concluded at the end of December and candidates will be commencing work placements by the end of January. Work placements are situated in a variety of settings and locations across Ontario, many of which do not typically offer articling positions, such as in-house legal departments, legal clinics, and public interest groups. Candidates are also completing work placements in traditional settings such as law firms and government.

## **LICENSING AND ACCREDITATION: PARALEGAL LICENSING**

The following chart indicates the number of candidate registrations, and the number of P1 licenses issued in the past five years in the Licensing Process. The Licensing Process for paralegal candidates is governed by the three-year rule which requires a registered paralegal candidate to complete licensing requirements within three years from the time of their entry into a licensing three-year term. For the calendar year 2014, there were 1768 candidates newly registered in the licensing process.

Year	Registrants	Licensed
2010	1,087	894
2011	1,278	757
2012	1,416	1,051
2013	1,600	1,344
2014	1,768	1,414

The Integration Licensing Process for the Exempted Group/Collection Agents which commenced on October 1, 2010, formally closed on May 31, 2014. A total of 311 candidates providing legal services in-house at a variety of government, non-government and non-profit entities, were licensed as paralegals through this process.

### **Paralegal College Program Accreditation – New Standards for 2015**

As part of its mandate to govern and regulate paralegals, the Law Society accredits paralegal education programs that have been approved by the Ministry of Training, Colleges and Universities (MTCU). Institutions must submit a detailed application package and participate in a rigorous audit process in order to demonstrate that the program's curriculum, infrastructure and systems support the accreditation criteria. The Law Society provides the Ministry with copies of accreditation approvals or denials of all college programs, with reasons, and liaises with the Ministry on accreditation issues as required.

As of December 31, 2014, PD&C has approved the accreditation of 28 paralegal college programs at 45 college campus locations throughout Ontario. Applications continue to be received and reviewed by the accreditation team, including resubmissions from colleges that have revised their program content and re-applied.

Following Convocation's approval of more stringent standards for accreditation and governance of paralegal college programs in February 2014, the Licensing and Accreditation team has been engaged in communicating the new requirements to college administrators via direct mail, website notices, and an information session held at the Law Society with over 80 attendees from community colleges, private career colleges and representatives from the MTCU. All accredited programs will be required to comply with the new standards by September 2015.

The audit process for accredited college paralegal programs began in November 2009. Audits consist of a documentation review and a two-day site visit at the institution to observe classes and facilities, and meet with program administrators, faculty and students. As of the end of December 2014, the paralegal accreditation team has conducted 32 college program audits at 43 of the 45 campus locations where programs are offered. Audit and reporting processes are conducted in a standardized, fair and transparent manner, with a draft audit report to be sent to colleges for clarification prior to the report being finalized. Under the current framework, all colleges will be audited within three years of the date of their accreditation and at least once every five years thereafter.

## **Expansion of Paralegal Licensing Examination**

PD&C continues to prepare for the expansion of the paralegal licensing examination to include substantive areas of law, as approved by Convocation in the fall of 2012. In 2014, the licensing team worked with psychometricians and members of the professions to create, revise and validate over 400 substantive, procedural and practice management examination question items in preparation for their incorporation into the first offering of the expanded paralegal licensing examination in August 2015. In addition, PD&C utilized a network of experienced lawyers and paralegals to write over 50 new chapters for the examination study materials and self-study supports that will be provided to candidates.

## **CONTINUING PROFESSIONAL DEVELOPMENT**

### **CPD Accreditation and Policy Development**

As a result of the two-year review of the CPD requirement in May 2013, PD&C implemented a number of enhancements to the accreditation process beginning in January 2014, including an Accredited Provider framework. Under this framework, 58 education providers have received approval to deliver professionalism content without the requirement for individual program accreditation. Providers were approved based on a demonstrated track record of quality programming for lawyers and/or paralegals, familiarity with the accreditation criteria for professionalism hours, and usage of best practices in adult learning and professional development. The current list of Accredited Providers includes major providers such as the Ontario Bar Association, Osgoode Professional Development and The Advocates' Society as well as a number of law firms.

These policy and process changes have resulted in a reduction in the volume of applications by approximately 65% compared to 2013, such that PD&C was able to reduce its staff complement in this area by two full-time equivalent positions early this year. In 2014, 2,296 applications for accreditation were processed, compared to 6,288 in 2013. This includes 1,248 applications for program accreditation and 1,048 applications from members seeking accreditation of activities such as teaching, writing, mentoring and study groups.

The following table provides information only on program activity within which professionalism content appears; it does not reflect any substantive program activity. The previous year's numbers are provided for comparison purposes.

**Applications for Program Accreditation – 2014**

<b>Category of Provider</b>	<b>Applications Received</b>	<b>Applications Approved</b>
Education Providers (OBA, Advocates' Society, etc.)	146	138
Law Firms In-House	213	188
Professional Associations	290	260
Government In-House	163	153
Colleges and Universities	43	35
Private	397	345
<b>Total</b>	<b>1,252</b>	<b>1,119</b>

**Applications for Program Accreditation – 2013**

<b>Category of Applicant</b>	<b>Applications Received</b>	<b>Applications Approved</b>
Education Providers (OBA, Advocates' Society, etc.)	755	741
Law Firms In-House	926	908
Professional Associations	844	808
Government In-House	521	163
Colleges and Universities	43	43
Private	815	725
<b>Total</b>	<b>3,904</b>	<b>3,725</b>

The 1,048 applications received for accreditation of activities, as opposed to formal education programs, are broken down as follows:

<b>Activity Type</b>	<b>Number of Applications Received</b>	<b>Number of Applications Accredited</b>
Teaching	580	461
Writing/Editing	18	8
Mentoring/Articling	265	264
Study Groups	179	175
Other	6	5
<b>Total</b>	<b>1,048</b>	<b>913</b>

## CPD Programs and Products

In 2014, PD&C produced 143 programs, including 85 live programs, 51 replays and 7 e-Courses. E-Courses are a new CPD format, offering members an opportunity for interactive, self-paced learning in various practice areas. In November, CPD launched its first 6 courses on ethical issues in key areas of the law, as well as a simulation game for lawyers and paralegals on Opening Your Practice. The courses each provide 1.5 hours of professionalism content. The promotional video for the e-Courses has had more than 1,600 views on YouTube and more than 2,600 e-Courses have been sold to date. Six additional courses are scheduled for release in 2015.

In 2014, the Law Society began charging a fee of \$25-\$50 for professionalism-only programs which were previously free of charge. The organization did hold two free programs on the amended *Rules of Professional Conduct*. Registrations for professionalism programs represented 32% of registrations in 2014 versus 58% in the previous year. Although total registrations dropped by 28% in 2014, registration levels for fee-based programs increased by 25% compared to the previous year.

CPD provides members with a variety of flexible options for fulfilling their CPD requirement. Members can attend most programs in person or via live webcast. Since the CPD Requirement was introduced in 2011, there has been a continual shift away from live attendance in favour of online viewing. In 2014 only 27% of registrants attended in person. Scheduled CPD programs all contain an interactive component, either in the form of a question and answer period, a poll of the audience or a live online chat. As many more members are viewing their CPD programs online there has also been an increase in members registering as a group and watching together. CPD offers discounts to support group sessions. In 2014, registration revenue was reduced by 16% through discounts provided to groups of learners.

## Registration History

	2010	2011	2012	2013	2014
Registration for paid programs (all formats)	19,785	33,504	36,118	37,449	46,828
Registration for free programs (all formats)	n/a	60,732	47,582	51,244	9,460
Registration for \$25/\$50 programs	n/a	n/a	n/a	n/a	7,175
Total number of registrants	19,785	94,236	83,700	88,693	63,463
Total number of programs (all formats)	94	164	145	149	143
Average registrations at CPD programs	210	575	577	595	444

Members have a variety of post-program products from which to choose to obtain CPD program content. The formats have changed dramatically over the last several years, with printed copy sales continuing to decline and online viewing increasing. The move away from free professionalism programs has also had an impact on post-program on demand purchases. In 2013, 63%, or over 10,000 on demand purchases, were for free of charge products.

CPD works with the Law Association Librarians to arrange local group replay sessions. In 2014, 14 counties scheduled a total of 240 sessions, with a total of 747 members participating across the province.

### **Live In-Person and Webcast Programs**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Number of live in-person programs	64	114	78	72	72
Number of registrants	6,554	14,306	9,562	8,595	9,517
Average registrations	102	125	123	119	132
Number of live webcasts and replay programs	65	150	137	144	136
Number of registrants	7,084	67,072	60,331	63,622	40,720
Average registrations	109	447	440	442	299

The CPD team works closely with volunteer lawyers and paralegals to develop programs for members across a variety of practice areas and different levels of experience. Each year, 25% of program presenters are new to Law Society CPD. In addition to 2-day Summit programs in the major practice areas and the well-known 6-Minute series, approximately 30% of the programs produced in 2014 were entirely new issues and content.

These new content programs included the following: Indigenous Law Issues, Representing Clients before the Social Benefits Tribunal, Understanding Pensions in Family Law, Tips from the Bench for Junior Lawyers, Achieving Court Approval of Settlements Affecting Parties Under Disability, Real Estate and the Elderly Client, Forensic Science and the Criminal Law, and Mental Health in the Workplace.

**Post Program Products**

	2010	2011	2012	2013	2014
On Demand (video stream, MP4)	1,510	4,946	13,832	16,476	13,226
Printed Publications	9,590	8,313	7,546	6,770	5,129
PDF Publications	1,434	1,521	1,816	775	1,112
CPD Program/Course Materials	5,718	5,818	9,287	7,764	4,314
<b>Total</b>	18,252	20,598	32,481	31,785	23,781

In 2014, the most popular CPD programs were dominated by free of charge offerings. They are as follows:

Program Name	Format	Registrations
Update on the Amended Rules of Professional Conduct for Lawyers – <b>free of charge</b>	Webcast	7,580
Update on the Amended Rules of Professional Conduct for Paralegals – <b>free of charge</b>	Webcast	1,878
11 <sup>th</sup> Annual Real Estate Summit – 2 Days	Live in-person and Webcast	1,198
Writing to Win: Pitfalls to Avoid - <b>\$50</b>	Live in-person and Webcast	1,070
22 <sup>nd</sup> Annual Immigration Law Summit – 2 Days	Live in-person and Webcast	1,070
The Six-Minute Real Estate Lawyer 2014	Live in-person and Webcast	1,048
8 <sup>th</sup> Annual Family Law Summit 2014 – 2 Days	Live in-person and Webcast	944
17 <sup>th</sup> Annual Estates and Trusts Summit	Live in-person and Webcast	881
Understanding Financial Statements – Parts 1 & 2	Live in-person and Webcast	746
The Oatley McLeish Guide to Motor Vehicle Litigation 2014 – 2 Days	Live in-person and Webcast	736

## PRACTICE MANAGEMENT

### Practice Management Helpline

The Practice Management Helpline (PMH) provides licensees with assistance and insight regarding the application of the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and other Law Society regulations. The service is confidential and the Helpline strives to return all calls within 24 hours.

Representatives screen the call, assist the caller to identify the issue(s), refer the caller to existing resources such as articles, professional development programs, the online FAQs, and other resources (including transferring the call to other more appropriate departments for additional information or recommending alternatives for additional support, such as LAWPRO, Legal Aid, Teranet, etc.) and escalate the call to counsel, if necessary. Counsel will discuss the ethical issues, applicable legislation, potential options and the advantages and disadvantages of each option with the caller.

In 2014, the Practice Management Helpline received approximately 7,251 inquiries from licensees for an average of over 600 calls per month. Of the calls that were received, 85% were handled by representatives, meaning the question could be answered by reference to existing resources, and fifteen per cent were answered by counsel, meaning an interpretation of the *Rules of Professional Conduct* or a discussion of ethical issues was required.

The calls received as at December 31, 2014 can be broken down by size of practice:

### PMH Calls from Lawyers

Size of Practice	Number of Calls	Percentage of Total
Sole Practitioner	2,791	45.8
Small Firms (2 to 5)	1,527	25.0
Medium firms (6 to 10)	371	6.1
Larger firms (more than 10)	634	10.4
Other	767	12.6
<b>Total</b>	<b>6,090</b>	<b>100</b>



**PMH Calls from Paralegals**

Size of Practice	Number of Calls	Percentage of Total
Sole Practitioner	623	53.7
Small Firms (2 to 5)	213	18.4
Medium firms (6 to 10)	36	3.0
Larger firms (more than 10)	23	2.0
Other	265	22.8
<b>Total</b>	<b>1,160</b>	<b>100</b>

The majority of lawyers who called the Helpline in 2014 defined their primary areas of practice (more than 30% of their practice) as real estate law and civil litigation. The most frequent calls from lawyers by practice management issue were:

- Conflicts of Interest
- Lawyer Annual Report
- Trust Accounts
- Confidentiality
- Withdrawal from Representation
- Client Identification and Verification
- File Ownership/Transfer
- Books and Record Keeping
- Client Property
- Referral Fees and Fee Splitting

The majority of paralegals who called the Helpline in the same period defined their primary areas of practice as Small Claims Court and *Provincial Offences Act* matters. The most frequent calls from paralegals by practice management issue were:

- Paralegal Scope of Practice
- Trust Accounts
- Conflicts of Interest
- Confidentiality
- Withdrawal from Representation
- Paralegal Annual Report
- Delegation and Supervision
- Practice Arrangements
- Advertising/Marketing
- File Ownership/Transfer

## Practice Management Resources

In 2014, PD&C completed an intensive review of all lawyer and paralegal practice management resources to ensure their currency, relevance to the profession and effectiveness in the Law Society's newly streamlined website environment. Convocation's decision to revise the *Rules of Professional Conduct* and *Paralegal Rules of Conduct* to align with the Federation of Law Societies' *Model Code of Conduct* further necessitated a sweeping review of and revision of all resources, including over 300 individual pages and 10 practice guides, in English and French.

By tracking frequently asked questions, the Helpline identifies areas of concern within the lawyer and paralegal professions and responds to those concerns by developing new resources and relevant information pieces through the e-Bulletin and Manage Your Practice section of the Law Society Web site. In response to feedback from members, 12 new Technology Practice Tips were developed in 2014. The Technology Practice Tips are podcasts that provide practical information on a variety of issues in MP3 format and are also transcribed. The latest podcasts include tips on email encryption, anonymous browsers, phishing and ransomware.

## Practice Mentoring Initiative

The Mentoring Initiative connects licensees to mentors where the caller's issue or matter falls outside the mandate of the Helpline. To be matched with a mentor, the licensee must have a unique and complex legal or procedural issue that the lawyer or paralegal has been unable to resolve through his or her own research. Though the program does not offer a traditional long term mentoring relationship, mentors are available for a focused discussion about the licensee's issue.

There are currently 173 lawyers and 7 paralegals on the Practice Mentoring roster, representing a number of practice areas. In 2014, only 18 lawyers were matched with a mentor. There were no mentor requests from paralegals.

## CERTIFIED SPECIALIST PROGRAM

In order to qualify for the Certified Specialist Program, a lawyer must meet the following criteria:

- practised for a minimum of seven years prior to the date of the application
- substantial involvement in the specialty area during five of the seven years, i.e.,
  - mastery of substantive law, practices and procedures, and
  - concentration of practice in the specialty area;
- complied with the professional development requirements; and
- complied with the professional standards requirements.

The number of certified specialist lawyers in the profession has changed only marginally in the past 10 years and remains low at approximately 2.5% of practising lawyers.

	2010	2011	2012	2013	2014
Number of Specialists	714	775	763	766	797
Specialists in Toronto Area	402	443	442	459	460
Specialists outside Toronto	312	332	321	307	337
Number of Specialty Areas	15	15	15	15	15

The following chart breaks down the number of certified specialists by practice area in 2014.\*

Areas of Specialization	Number of Specialists
Bankruptcy and Insolvency Law	10
Citizenship and Immigration Law	54
Civil Litigation	301
Construction Law	35
Corporate and Commercial Law	23
Criminal Law	96
Environmental Law	39
Estates and Trusts Law	39
Family Law	66
Health Law	18
Intellectual Property Law (Trademark/Patent/Copyright)	43
Labour Law	24
Municipal Law	33
Real Estate Law	26
Work Place Safety and Insurance Law	11

*\*The total number of specialists in this chart is slightly greater than the total number of specialists in 2014 (first chart above) as some specialists are certified in more than one area of law.*

In 2014, PD&C began the development of a new Aboriginal Law specialty area, as approved by Convocation in June 2013. A working group consisting of practitioners and subject matter experts has been established to assist with the creation and validation of practice experience competencies and learning criteria. Development of this new area is scheduled to continue in 2015.

The ongoing program maintenance and promotional activities for the Certified Specialist program continue to be completed within an operating budget that maintains costs at the lowest possible levels. The program is supported by one full-time coordinator who is assisted by legal counsel in PD&C as required.

## LEGAL INFORMATION

The Legal Information team supports research and information needs of Law Society licensees and staff. Lawyers and paralegals access the Great Library's large print collection and electronic databases, as well electronic resources available from within the library on the Great Library and licensees' personal computers. While the Great Library is the Law Society's primary legal research resource for paralegals, lawyers also use the Great Library's services through their local law associations.

### Reference Questions Answered

Lawyers and paralegals ask reference librarians for assistance with legal research. The Reference team works primarily with Toronto-based lawyers, articling candidates, and law firm administrators. The team answered nearly 21,000 questions in 2014, down slightly from approximately 23,500 in 2013. They frequently provide lawyers, paralegals, and law association library staff with electronic documents and have sent nearly 37,000 electronic pages via e-mail in response to requests from around the province.

### Growing Digital Library

Convocation's historic minutes and transcripts are now publicly available thanks to a collaboration between PD&C's Corporate Records and Archives and Great Library teams. Since February 2014, those interested in the official actions of Convocation can research back to 1988 – all minutes prior to 1988 are *in camera* - and access the documents as PDFs. The expert information staff have added metadata so that relevant documents will surface more easily if someone is searching for a particular activity or work by a committee.

<b>Title</b>	Minutes of Convocation: September 23, 1988
<b>Contributor</b>	Law Society of Upper Canada, Admissions Committee, Finance Committee, Special Committee on Citizenship Requirements, Special Committee on Foreign Lawyers, Discipline Committee, Professional Conduct Committee, Legal Aid Committee, Legal Education Committee, Clinic Funding Committee, Libraries and Reporting Committee, Unauthorized Practice Committee, Public Information Committee, Legislation and Rules Committee, Compensation Fund Committee, Professional Standards Committee, County and District Liaison Committee, Research and Planning Committee, Special Committee on J. Shirley Denison Bequest
<b>Notes</b>	Includes: Motions - Appointments - Committee reports - Call to the Bar - Orders: Stephen Lawrence Cappe, Herbert Sterling Stewart, Michael Alan Weller, Gregory Peter Linton Vanular, Allan Ian Wexler.
<b>Date</b>	1988-09-23

*Example of metadata added by information staff to make using the Minutes easier*

The same team is now working on the Professional Rules Handbooks. These publications stretch back to the 1960s and have only been available in print format until they were digitized by Corporate Records and Archives. Systems and reference staff from the Great Library are now preparing the documents so that a researcher who wants to understand what a particular rule looked like at a given time will be able to find it in the digital library. The Handbooks will be available in the first half of 2015.

The Great Library has contributed to other digital repositories as well. The Osgoode Hall Law School Library opened its digital repository this year and it incorporates digital copies of the Ontario Annual Statutes and Revised Statutes of Ontario. Both copies were provided by the Great Library's reference team. They had previously digitized the volumes and segmented them into chapters for internal use. When a lawyer or paralegal needed a legislative reference for historic research, the reference team was able to e-mail them the chapter. This resource is freely available to anyone doing Ontario legal research through the Osgoode Hall site. Corporate Records and Archives has also digitized the printed Minutes of Convocation. Working with the Internet Archive, the 25 volumes covering the period from the 1870s to the 1990s are now publicly available to researchers and can be downloaded either as PDFs or ebooks or viewed directly on the Internet Archive site:

<https://archive.org/search.php?query=collection%3Alawsocietyofuppercanada&sort=-publicdate>

AccessCLE now contains 10 years of CPD articles from Law Society educational events. The shift to free access after the article is 18 months old has generated significant interest. The site received over 85,000 visitors and more than 18,600 articles were downloaded in 2014.

## **Search Importance**

The Great Library's investment in its discovery search continues to pay off. The search software powers both the Infolocate research tool and the Law Society's Web search. It handled more than 707,000 searches in 2014, up from over 690,000 in 2013. In addition, the Voyager catalogue continues to be a main source for legal researchers finding books and electronic resources available from the Great Library and law association libraries. The catalogue was searched over 382,000 times in 2014.

## **SharePoint and Document Management**

The Law Society's adoption of Microsoft's SharePoint software has created a new opportunity for Corporate Records and Archives to assess the organization's management of electronic records. The team has worked with the Project Management Office responsible for SharePoint implementation to meet with Law Society staff teams and understand how they currently use and manage electronic records. This ongoing project will enable a review of gaps in the organization's records retention and management. Currently, only print records are managed by the organization according to the approved retentions policy.

## Rebooted Intranet

The Law Society's intranet was redesigned and launched by the Web Content Management team in 2014. It required renewal and the new look enabled the team to deploy both their design and development skills. The front page was significantly simplified and a greater emphasis was placed on search. Popular resources like the cafeteria menu, a perennial top visited intranet page, were displayed on the home page for easier access. The intranet will be redeveloped in 2015 using SharePoint and the team has offered their services to help build the new site.



## QUALITY ASSURANCE: SPOT AUDIT, PRACTICE MANAGEMENT REVIEW AND PRACTICE AUDIT PROGRAMS

The audit and review programs of the Law Society are an integral part of the Law Society's quality assurance activities in the public interest. These programs have also received extremely positive feedback from lawyers and paralegals. The programs are making a measurable impact on law practices and legal services practices, with sole and small firm sustainability significantly improved for those firms that receive an audit.

### Spot Audit Program: Lawyers

Spot Audit is a proactive quality assurance program that assesses a firm's compliance with financial record keeping requirements.

In 2014, the audit routines changed in accordance with Convocation's approval to streamline these activities. The Law Society had conducted a review of its operations with the intention of improving efficiency in the delivery of its programs. As a result, the Spot Audit program has refined its risk management strategy to focus on sole practitioners and two lawyer firms with a real estate practice, as they are the group of practitioners posing the

documented highest risk to the public. These firms will be audited every five years. The remaining lower risk sole practitioner and small firms (2-5 lawyers) will be audited every seven years, and the very low risk firms (mid-large sized firms) will be audited every ten years.

These changes to the Spot Audit program goals will generate savings of \$500,000 over 2014 and 2015, resulting in 230 fewer audits for 2014 and a further reduction of 170 audits in 2015.

The majority of the 2014 audit engagements found that the firm had either minor or no books and records' deficiencies (54%) or deficiencies that were readily remediated to the Law Society's satisfaction (32%).

Lawyers selected for an audit continue to report extremely high approval ratings for both the auditors (100%) and the overall experience (97%).

Some of the more significant books and records deficiencies are as follows:

<b>Books and Records Issues</b>	<b>Percentage Failed to Meet Requirements (%)</b>
Completeness of books and records	82
Completeness of client ID information	53
Inactive accounts managed	49
All cash receipts recorded	45
Currency of records	20
Transfer funds from trust account after delivery of fee bill	18
Maintained security over E-reg diskette	13

### **Practice Review Program**

A Practice Review addresses an individual licensee's practice activities and management. The Law Society now conducts four separate types of reviews of a practice:

- 1) **Focused Practice Review:** for licensees showing significant signs of deterioration in their practices as evidenced by increases in complaints and other indicia. The number of focused reviews varies, but is generally between 20 and 40 per year;
- 2) **Re-entry Review:** replaced the former Private Practice Refresher Program. Lawyers re-entering the private practice of law after a hiatus of five (5) years are required to undergo a review within 12 months from their return to practice as a sole or small firm practitioner. It is anticipated that the number of re-entry reviews for 2015 will be less than 20;

- 3) Practice Management Review (PMR): risk based random selection process of lawyers in their first eight years of practice, and which also ensures that those selected reflect the percentage of law firms presented in Law Society conduct matters, segregated by firm size (50% soles, 25% firms with 2 to 5 lawyers, etc.). Over 400 practice management reviews will be conducted in 2015;
- 4) Practice Audits (PA): combined financial audit and practice management review conducted on Paralegal practices. Over 75 originating practice audits, and an additional 50 revisits, will be conducted in 2015.

### **Practice Management Review Program: Lawyers**

Practice management reviews ensure that practitioners meet competency standards and identify areas for improvement in managing the lawyer's practice. Reviewers provide practical suggestions on how to maintain practice at optimal levels, leading to greater efficiencies, high quality service and greater lawyer and client satisfaction.

The Practice Management Review unit conducts over 400 original random reviews on individual lawyers and up to an additional 40-60 focused and re-entry to practice reviews per year.

In 2014, 530 practice management reviews were conducted (406 initial reviews plus 124 revisits). Approximately, 28% of initial attendances found that lawyers were not meeting standards of professional competence: sole practices at 38%; small firms at 26%; mid/large firms at 6%. As a result, a follow-up is required to assess the implementation of recommendations made in the initial reviewer's report.

Over 96% of lawyers that underwent a practice management review responded that they found the process to be constructive and value-added to managing their practice.

### **Common Practice Deficiencies: Lawyers**

The majority of law firms in Ontario are either sole practices or small firms (2 to 5 lawyers), making up approximately 94% of all law firms in the province. The following charts provide information on the breakdown of deficiencies found in practice reviews of sole and small firm lawyers in 2014 compared to 2009 when the program first initiated a risk based approach in selecting lawyers, based on the percentage of law firms represented in Law Society conduct matters and LawPRO negligence claims. The specifics of each deficiency, the recommendations to remediate and reference to resources, are made in the Reviewer's report to the lawyer for response.



Practice Activity	Percentage Failed to Meet Minimum Standards		
General Observations on Law Firm	2009	2014	Difference
Power of Attorney to another lawyer	78	76	( 2)
Written office manual	60	43	(17)
Written business arrangements	49	31	(18)
Contingency planning	34	25	( 9)
Data security	22	12	(10)
<b>Client Service and Communication</b>			
Written retainer agreements	44	31	(13)
Sufficiency of written retainers	34	39	5
Phantom clients	32	27	( 5)
Conflicts management	29	29	( - )
<b>File Management</b>			
Limitation periods and other key dates	27	16	(11)
Key information in files	25	9	(16)
Adequate documentation in file	17	22	5
File management system	12	9	( 3)
<b>Financial Management</b>			
Duplicate cash receipts	45	14	(31)
Books and records are current	24	16	( 8)
Manage financial health of the firm	23	21	( 2)
Trust reconciliations done monthly	18	9	( 9)

For many of these top practice management deficiencies, there has been a significant improvement for practitioners. A number of program initiatives have had a cumulative positive impact on making the membership more aware of the importance of effective practice management process in their firm and for their clients. The Review team had a presence at the annual Sole and Small Firm Conference and presented at many practice management CPD sessions. All have made a difference in getting the word out and making effective practice management top of mind.

### Spot Audit and Practice Management Review Revisits: Lawyers

A follow-up by an Auditor or Reviewer is required any time the lawyer (practice review) or law firm (spot audit) fails to meet minimal expectations of competence and the issues are significant enough (contrary to the public interest, could result in direct harm to clients) to warrant another visit to assure improvements have been made in the public interest. In some cases, a desk review would be conducted to assess the remediation implemented by the licensee. Under appropriate circumstances, this option is a more efficient application of our resources where compliance can be demonstrated

Of those lawyers who underwent a follow-up review, almost all of them (99%) were found to have implemented the recommendations from their initial practice management review report and were now meeting minimum competence standards.

Spot Audit History of Revisits for Sole and Small Firms	Number of Firms Audited	Follow-up Required	Follow-up Percentage(%) of Total
2010 – 2014	7,357	531	7
2005 – 2009	4,579	329	7

Practice Review History of Revisits for Sole and Small Firms	Number of Firms Audited	Follow-up Required	Follow-up Percentage (%) of Total
2012 – 2014	1,019	327	32
2009 – 2011	945	260	28

The rate of follow-ups in Practice Review for sole and small firms has slightly increased over the most recent three year period.

### Paralegal Practice Audits: Paralegals

Practice audits of paralegals mirror the format of practice management reviews for lawyers, with the goal of providing targeted advice to achieve effective and efficient practices.

In 2014, there were 141 practice audits of paralegal practices conducted (81 initial audits plus 60 revisits). The program has been well received by paralegals, with over 98% of those who underwent a practice audit finding it to be constructive and value added.

Since the inception of the Practice Audit Program in late 2008 to December 31, 2014, 51% of initial attendances found that paralegals were not meeting standards of professional competence and a follow-up would be required to assess the extent of remediation. This would be conducted through a revisit scheduled after 6 months. For some engagements, a desk review would instead be conducted as a more appropriate and efficient means to assess the paralegal's remediation.

Practice Audits	Number of Audits	Percentage Revisit (%)
Number of paralegals reviewed since inception	528	
Follow-up Review Required	272	51

The top ten practice management deficiencies found in conducting a practice audit of paralegal practices in 2014 and compared to 2009 (the first full year of the practice audit program), are:

Practice Activity	Percentage (%) Failed to Meet Minimum Standards		
	2009	2014	Difference
Power of Attorney to another legal services provider	87	54	(33)
Written business arrangements	75	21	(54)
Phantom clients	72	37	(35)
Written office manual	80	10	(70)
Time dockets	62	10	(52)
Conflicts management	60	46	(14)
Duplicate cash receipts	51	40	(11)
Books and records comply with By-Law #9	53	44	( 9)
Data security	37	24	(13)
File management	35	16	(19)

The type of practice management deficiencies found in paralegal practices is similar to those found in practice reviews of lawyers. The major difference is in the extent of failure in each of the categories where paralegal practices have failed to meet minimum competence standards. The percentage of practice management deficiencies in every one of these practice areas has declined significantly over the past five years.

## Audit Process

Audit or Review engagements require significant planning and follow through. In order to provide perspective on the extent of the activities conducted in PD&C on quality assurance processes, the following information outlines the breadth and scope of a typical engagement in the Spot Audit and Practice Review departments, providing a sense of the detail and effort each individual audit or review entails, why they are so successfully supporting improvements in members' practices and are so well received.

## General Summary of Practice Management Review Tasks and Timelines

### 1) Planning (4 to 7 hours)

Planning and due diligence by examining:

- Spot audit history of firm
- Practice review history of other licensees in the firm
- Lawyers/Paralegals' Annual Report
- Regulatory history and open cases
- Discipline flags
- Undertakings/Orders
- Practice status

Clearance from Professional Regulation, if there are any open regulatory matters, to avoid dual and possibly conflicting regulatory processes on the same member.

Contact licensee to schedule review, usually within 4 to 6 weeks:

- Provide an overview of the practice management review program, process, selection and expectation of licensee's involvement
- Advance preparation required (i.e., completion of Basic Management Checklist (BMC), financial records and documents, CPD)
- Letter is sent confirming scheduled attendance date and review process. Enclosed package includes applicable legislation and the BMC to be completed and returned prior to the attendance date.

## **2) Review Attendance (4 to 6 weeks from initial contact)**

- Timing – engagements typically commence between 9:00 a.m. and 9:30 a.m. and conclude between 3:30 p.m. and 5:00 pm. The total time for the attendance varies and is significantly impacted by the level of engagement of the licensee and whether the office is paperless (e.g. many inquiries from the licensee or many interruptions can affect the timeline and a paperless office requires a greater degree of participation by the licensee through the entire process). The licensee's active involvement is required for the interview (usually completed between 9 a.m. and 12 p.m.). The licensee must be available for questions during the paper file review (usually completed between 12 p.m. and 3 p.m.). The licensee must be available for the exit interview (typically ½ hour).
- Interview – Practice Reviewer reviews the completed BMC with the licensee to confirm and elaborate on the responses; reviews the physical organization of the work space, and how electronic information is managed. The discussion prompts real case examples of how various issues have been addressed in the practice.
- File Review – Five to seven files are selected for review. This may be a truly random selection if the licensee has independent carriage of his or her entire caseload, or if the licensee is a junior, the file selection may be guided by input from the licensee to ensure the files selected are reflective of the scope and nature of their practice. The licensee is asked to provide an overview of the files. The Practice Reviewer then conducts a detailed, independent review of the physical client files. The practice reviewer will ask to see additional files if they are not satisfied with the information provided.
- Financial Review – In each engagement, the Practice Reviewer will examine examples of dockets, invoices and will review the licensee's client trust ledger for inactivity. If a full financial review is being conducted, then the licensee is also asked to have available: last journal entry posted to General; last journal entry posted to Trust and a copy of the most recent Trust deposit slip; most recent completed Trust Reconciliation, the related Bank statements, cheques, and associated Client Trust Listing; Client Trust Ledger showing the balance in trust and the last transaction date; and licensee's Client summary listing.

- Exit Interview – Practice Reviewer addresses questions that arose from the file review; provides feedback; confirms recommendations which will be included in the report; leaves a copy of the PR Survey and two pamphlets which include additional Law Society resources.

### **3) Report Writing and Submission for File Review**

- Report is due 28 working days from date of attendance. On average, it takes between one and two days to draft, include references to relevant resources to assist the licensee, proofread, review related PMR reports for consistency and submit the draft with a recommended disposition.
- The file is then submitted to one of the Practice Review's Senior Counsel and Assistant Managers for review within three to four weeks' time from its submission. However, a file will be prioritized for immediate review if there are serious competence concerns.
- The Senior Counsel and Assistant Manager finalize the practice management review report containing an analysis and assessment of the practice, including recommendations for appropriate remedies.

### **4) Report Release and Opinion on Competence**

- The report is submitted to the licensee with a covering letter requesting a response within 8 weeks on the identified issues and requesting the provision of evidence of, or commentary on, the implementation of the recommendations.
- If the report is a final report, an opinion on competence will be rendered. If the report is an initial report, then a re-attendance will be scheduled after six months. The re-attendance will permit an assessment of the implementation of recommendations made in the initial report.
- If at the first attendance or following the second attendance the licensee is failing to meet the standards of competence as defined by section 41 of the *Law Society Act*, then, Practice Review may ask the licensee to enter into a Proposal Order or may be obliged to refer the matter to Professional Regulation.

## **Summary of Spot Audit Tasks and Timelines**

### **1) Audit Planning (approximately 3 to 4 hours)**

Planning and due diligence by examining:

- Spot audit history
- Practice review history
- Lawyer's Annual Report
- Regulatory history and open cases
- Discipline flags
- Undertakings/Orders
- Real estate insurance coverage

Clearance from Professional Regulation, if there are any open regulatory matters, to avoid dual and possibly conflicting regulatory processes on the same member.

Contact lawyer to schedule audit within two to three weeks:

- Provide an overview of the spot audit process
- Outline/discuss type of financial records and documents to be available for the audit
- Letter sent by email/facsimile confirming scheduled audit date and outlining the spot audit process, timelines and documents under review.

## **2) Audit Field Work (2 to 3 weeks from initial contact)**

Introductory meeting with the lawyer and any other person maintaining the books and records, to discuss the firm's financial management processes.

The audit is conducted following the guidelines and parameters set out in the Spot Audit Program.

The number of audit days is dependent on several factors, such as:

- Size of firm
- Type of practice
- Number of transactions
- Condition of financial records

On average, a simple audit (books and records) lasts one to two days, a complex audit (private mortgages and/or estates) lasts two to three days and, for the largest firms, as many as five days (two auditors in attendance).

At the beginning of the audit some time is spent with the lawyer, to establish rapport and to have upcoming audit questions answered in advance. The rest of the day is spent with the bookkeeper or a legal assistant, and the lawyer is only asked occasional questions during the audit.

If the lawyer does not have a bookkeeper present, the lawyer is asked to work with the auditor off and on, throughout the day.

Particularly for newly formed sole practices and small firm audits, sometime is usually spent during the day answering the lawyer's questions and discussing samples of journals and ledgers set out in the Bookkeeping Guide (an essential tool). This is critical due to the fact that these lawyers usually do not have staff or any bookkeepers, and have generally not maintained some or all of the required daily records themselves.

Often, even long-established firms' bookkeepers or lawyers have questions concerning books and records that they would like to have answered.

An exit meeting will then be conducted with the lawyer(s) and bookkeeper to discuss the audit findings. All deficiencies are communicated and solutions to rectify these concerns are presented. The Audit Report is provided to the lawyer.

Finally, the firm is provided with a Law Society information package including documents such as: (a) Spot Audit Process memorandum; (b) Unclaimed Trust Funds Application Form; (c) Land Transfer Tax Procedural Document; (d) The role of executor and solicitor with respect to Estate files; (e) Post Audit Survey; and (f) Bookkeeping Guide, among other supports that may be included as necessary and in light of the type of practice and any deficiencies noted by the auditor.

### **3) Finalize Report and Submit for Review**

Once the audit is completed, the final process of writing up the file commences. At this time, follow up with the lawyer on any outstanding documents will be conducted. During this stage the auditor ensures the working papers are in proper order, accurately referenced and all items of concern are properly documented. Usually this requires one day of effort, however, complicated audits can take a few days to finalize.

The file is then submitted to a Supervisor for review on a first in/first out basis. On average, a file will receive its full review within one to two months following submission. However, a file will be prioritized for immediate review if there are serious concerns of possible misconduct. In such situations, the Supervisor will consider escalating the file to Investigations.

The majority of audit engagements are found to have no or insignificant financial deficiencies and the file is then closed.

If the Supervisor decides that additional information and documentation is required from the lawyer to confirm the closure of financial issues (i.e., registration of discharged mortgages, monthly trust reconciliations), then the file is placed in “monitoring”. The average duration of an audit file in monitoring is two months. Approximately 35% of all files require monitoring.

In some cases, the financial issues are serious enough to warrant a re-audit in nine to 12 months to assess their remediation.

### **Spot Audit and Practice Review Educational Initiatives**

General aggregated information and trends on areas of deficiency encountered in reviews of lawyer and paralegal practices is exchanged with other areas of PD&C for the purpose of developing resources and tools that will assist practitioners to avoid/address these problems. Reviewers have presented to local law associations on key practice management deficiencies, the steps to remediate and a list of applicable resources.

Practice Review has worked with other PD&C departments to develop CPD programs on effective practice management processes. These seminars have been presented by experienced practice reviewers to various local law associations including the Estates Practitioners of Waterloo Region, County of Carleton Law Association (23<sup>rd</sup> Annual Institute of Family Law), The Canadian Association of Refugee Lawyers (Ottawa), the Ontario Bar Association (Toronto) and the Ontario Paralegal Association. In addition, outreach to paralegal practitioners included practice management and advocacy programming offered in London and Kanata, and a practice management primer through paralegal colleges in Kitchener and Toronto.

Spot Audit continues to be actively involved on a number of educational initiatives ranging from developing CPD courses and materials to presenting at CPD sessions on a variety of financial books and records topics to both lawyers and paralegals, providing their “on the ground” insights to ensure the resources are practical and user friendly.

### **Continuing Professional Development Compliance Audit Program**

The CPD compliance audit program's objective is to assess licensees' compliance with the documentation requirements as proof of their CPD reported activities, as per section 4 of By-Law 6.1. The CPD Audit program's goal is to conduct 1,000 CPD audits (lawyers: 900 and paralegals: 100) through a combination of desk audits and practice review engagements which assess a licensee's compliance to the Law Society's CPD documentation requirements.

Staffing complement for the CPD audits is included in the Practice Review and Practice Audits departments. For 2014, the team conducted 1,060 CPD compliance audits, comprised of 617 CPD desk audits and 443 audits integrated into practice reviews.

Approximately 96% of licensees were in full compliance with the Law Society's CPD record keeping requirements, 3% were in partial compliance, and less than 1% were not compliant.

Detailed and specific information were provided to licensees to assist them in ensuring full compliance with their CPD record keeping requirements for future reported professional development activities.





**TAB 10**

## **Report to Convocation January 29, 2015**

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### **Professional Regulation Committee**

#### **Committee Members**

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

**Purpose of Report: Information**

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

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Firm-Based Regulation and Compliance-Based Regulation [Tab 10.2](#)

## COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on January 15, 2015. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), Susan Richer (Vice-Chair), John Campion, Cathy Corsetti, Seymour Epstein, Robert F. Evans, Patrick Furlong, Carol Hartman (by telephone), Jacqueline Horvat, Brian Lawrie, Jeffrey Lem, William C. McDowell, Ross Murray, Jan Richardson (by telephone), and Heather Ross.
2. Staff members attending were Zeynep Onen, Grant Wedge, Elliot Spears, Jim Varro, Lesley Cameron, Naomi Bussin, and Margaret Drent.
3. Members of the Professional Development and Competence and Equity and Aboriginal Affairs Committees attended part of the meeting.

**FOR INFORMATION****ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP REPORT****Introduction**

4. This report describes the activities of the Alternative Business Structures (ABS) Working Group since the Working Group's report to Convocation in February 2014.
5. An alternative business structure may include:
  - a. permitting some form of investment in firms by individuals not licensed by the law society; and/or
  - b. firms offering legal services together with other services for clients through licensees and other professionals.

**Meetings Held with Legal Organizations**

6. Since February 2014, the Law Society of Upper Canada's ABS Working Group has held meetings which are described in greater detail in an appendix to this report at Tab 10.1.1.
7. The meetings held with legal organizations have offered the Working Group the opportunity to hear a variety of perspectives regarding the issues raised by ABS. These include the concern that ABS may accelerate consolidation in the legal services marketplace in certain sectors and questions regarding the feasibility of regulating non-lawyers and non-paralegals in an ABS given existing regulatory challenges. It has also been suggested that innovation is already taking place in the way paralegals and lawyers are delivering services, and regulatory amendment is unnecessary.
8. Other members of the profession have expressed support for the Law Society's continuing study of the issues raised by ABS and have indicated that in their view, ABS may be of assistance in their practice.

**Other Meetings**

9. As part of its ongoing study of ABS, the Working Group met with Andrew Grech, Managing Director of Slater & Gordon in April 2014. In a joint meeting held with the Priority Planning Committee, Mr. Grech provided some background regarding Slater & Gordon's activities in Australia as well as in England and Wales.
10. In June 2014 the Working Group met with Professor Gillian Hadfield, Kirtland Professor of Law and Professor of Economics at the University of Southern California. Professor

Hadfield presented some of her recent articles regarding the regulation of business structures and unmet legal needs.<sup>1</sup>

11. On October 15, 2014, the Working Group held a meeting with Malcolm Heins, Chair, Business Structures and Innovation Team, CBA Legal Futures Initiative and Allan Fineblit, Steering Committee member, CBA Legal Futures Initiative, and former CEO, Law Society of Manitoba. The CBA Legal Futures Report was issued in August, 2014 and contains 22 recommendations. Mr. Heins and Mr. Fineblit described various factors that informed the work of the CBA Legal Futures Initiative, including
  - a. the influence of technology on the provision of legal services;
  - b. international trade and market liberalization worldwide;
  - c. the approach adopted by competition regulators; and
  - d. significant increases in the Canadian lawyer population since 2000.
12. On November 27, 2014, the Working Group held a teleconference meeting with Steve Brooker, Manager, Consumer Panel, Legal Services Board (LSB), Professor Stephen Mayson, Honorary Professor of Law at University College London and frequent lecturer on the Legal Services Act 2007, James Meyrick, Regulatory Project Manager, LSB, and Neil Rose, editor, Legal Futures, an independent news website tracking the legal landscape in England and Wales ([legalfutures.co.uk](http://legalfutures.co.uk)).
13. Of the 10,571 solicitor firms in England and Wales, there are approximately 330 ABS firms in England and Wales.<sup>2</sup> In other words, ABS represents a small percentage of solicitor firms. The English guests also noted that a few ABS firms have been unsuccessful and in at least one case the firm was taken over by the regulatory authority.
14. During this meeting, the English guests expressed the view that it is difficult to provide a definitive analysis of the impact of regulatory liberalization in England and Wales because of the short time frame in which ABS has been in existence (the first ABS license was issued in March 2012). It was noted that other significant changes have taken place in the legal services marketplace during the same period, such as cuts to legal aid and a ban on referral fees in personal injury matters which came into force on April 1, 2013, and downward pressure on the cost of legal services. It is difficult to be clear about the cause and effect of the many changes experienced in the English marketplace.
15. Perhaps related to ABS, it is noteworthy that during the period 2011-2014, there has been a significant increase in the percentage of family law services offered at a fixed fee in

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<sup>1</sup> "The Cost of Law: Promoting Access to Justice through the (Uncorporate) Practice of Law", *International Review of Law and Economics* 39 (2014): 43-63; "Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets", *Daedalus* (2014).

<sup>2</sup> "ABSs 'should have to commit to pro bono work' as part of licensing process", *Legal Futures*, November 4, 2014, online at <http://www.legalfutures.co.uk/latest-news/abss-should-commit-pro-bono-work-part-licensing-process/print>. There were 10,571 solicitor firms in June, 2014. See [www.sra.org.uk/sra/how-we-work/reports/data/population\\_solicitors.page](http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page).

England and Wales (while fixed fees were available in 12% of family law matters in England and Wales in 2011, this percentage had increased to 45% in 2014).<sup>3</sup>

16. The Working Group is grateful to all of the guests who participated in meetings in 2014 for the time they have taken to respond to the Working Group's inquiries and to participate in its deliberations.

### **Literature Regarding the Impact of ABS in Other Jurisdictions**

17. The Working Group continued to monitor written material on the subject of ABS and review pertinent literature. As noted above, members of the Working Group have heard concerns expressed by members of the Bar regarding the possible impact of ABS in Ontario. Concerns are also discussed in a recent article by Nick Robinson considered by the Working Group ("When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism".<sup>4</sup> Mr. Robinson is a Post-Doctoral Research Fellow at the Program on the Legal Profession at the Harvard Law School.
18. In his article, Mr. Robinson suggests that
  - a. The actual impact of non-lawyer ownership is likely to be quite different than suggested by both the proponents and the opponents of non-lawyer ownership in material respects;
  - b. both proponents and opponents of non-lawyer-ownership have overlooked how the effects of non-lawyer ownership can be affected by variations in context, even though non-lawyer ownership will likely have very different impacts depending on the jurisdiction or the sector of the legal market at issue;
  - c. although non-lawyer ownership has resulted in new business models, there are some reasons to believe that these will not significantly increase access to legal services;
  - d. non-lawyer ownership leads to certain professionalism challenges which should be considered although the claims made by opponents of non-lawyer ownership are too sweeping.
19. The Working Group has included a link to Mr. Robinson's paper in the resources provided on the Law Society's dedicated ABS page.

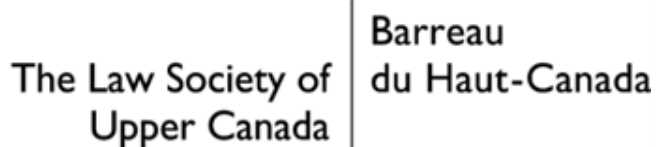
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<sup>3</sup> Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism", Harvard Law School Program on the Legal Profession Research Paper 2014-20, available for download at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2487878](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878), p. 25, footnote 152.

<sup>4</sup> Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism", Harvard Law School Program on the Legal Profession Research Paper 2014-20, available for download at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2487878](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878).

## **Next Steps**

20. The Working Group wishes to express its appreciation for the invitations it received from various legal groups and organizations to discuss the issues raised by ABS to date. The feedback received to date will be taken into consideration in the context of other responses to the Discussion Paper published for input in September 2014.
21. After review and discussion of all of the feedback received in response to the Discussion Paper, as well as at the in person meetings conducted to date, the Working Group will report to Convocation. This report will include a summary of all responses and is scheduled to be provided in February 2015.



**LIST OF ABS MEETINGS  
APRIL-DECEMBER 2014**

<b>Date</b>	<b>Event</b>	<b>Law Society Representative(s)</b>
April 17, 2014	Joint ABS Working Group and Priority Planning Meeting with Andrew Grech, Managing Director, Slater & Gordon	n/a
April 29, 2014	Treasurer's Liaison Group	Susan McGrath
May 20, 2014	CDLPA Spring Conference	Susan McGrath and Malcolm Mercer
May 30, 2014	OTLA Spring Conference	Peter Wardle James Scarfone
June 2, 2014	CBA First Annual Ethics Forum	Malcolm Mercer
June 9 and 10, 2014	Canadian Law Leadership Forum Program  "Regulatory Limitations on the Practice of Law: Lessons from Key Jurisdictions"	Malcolm Mercer
June 13, 2014	OBA Council	Susan McGrath and Malcolm Mercer
June 16, 2014	ABS Working Group meeting with Professor Gillian Hadfield	n/a
June 17, 2014	Crown Summer School	Treasurer Minor Malcolm Mercer
August 26, 2014	Advocates Society Board of Directors	Susan McGrath and Malcolm Mercer
September 18, 2014	OTLA Board of Directors	Susan McGrath and Malcolm Mercer
October 3, 2014	AJEFO Congress	Robert Lapper, Carol Hartman, Margaret Drent
October 16, 2014	Toronto Lawyers Association	Susan McGrath and Malcolm Mercer



<b>Date</b>	<b>Event</b>	<b>Law Society Representative(s)</b>
October 16, 2014	Barrie Real Estate Lawyers Association	Alan Silverstein, Joe Sullivan, Robert Evans
October 20, 2014	Frontenac Law Association	Malcolm Mercer and Susan Elliott
October 28, 2014	Equity Advisory Group (EAG)	Susan McGrath
November 5, 2014	Hamilton Law Association (ABS information session)	Susan McGrath and Malcolm Mercer Joe Sullivan James Scarfone
November 18, 2014	County of Carleton Law Association Board of Trustees	Malcolm Mercer and Constance Backhouse
November 19, 2014	Federation of Asian Canadian Lawyers	Peter Wardle
December 5, 2014	OBA Program "ABS Abroad: Key Insights from the United Kingdom and Australia"	Malcolm Mercer Peter Wardle

## FOR INFORMATION

### FIRM REGULATION and COMPLIANCE-BASED REGULATION

22. On February 27, 2014, Convocation approved further consideration of regulation of firms. Firm regulation would provide the authority to regulate firms in addition to the Law Society's current authority in the *Law Society Act*. Firm regulation can be used to support a more proactive, compliance-based regulatory approach for more effective regulation.
23. Convocation referred this proposal to the Professional Regulation Committee for consideration, in collaboration with the Professional Development and Competence and Paralegal Standing Committees. This report provides an update on the Committee's review of the issue.
24. After an initial review, the Committee determined that staff should develop a model for firm regulation for the Committee's consideration and comment. The Executive Director of Professional Regulation has begun work on developing the framework for the model, which will take into account Ontario licensee and firm demographics, best practices and outcomes in other jurisdictions that have implemented this type of regulation and the Law Society's current regulatory processes.
25. The following objectives will guide the development of the Law Society's framework:
  - a. To enhance public protection and public confidence in the Law Society and licensees through a focus on practice management principles and systems and firm management through firm policies and procedures; and
  - b. To regulate more efficiently and effectively through firm regulation, and
  - c. To permit greater autonomy of firm practise, guided by regulatory principles created by the Law Society.
26. A key part of the review will be to determine the rules that might apply to firms and other entities and how regulatory authority can most effectively be applied to firms.
27. A critical review of existing entity regulatory regimes in other jurisdictions, such as England and Wales and Australia, will help in assessing the appropriateness of these models and their components for Ontario. The review will also include consideration of available information from other Canadian jurisdictions that have the authority to regulate firms, including British Columbia, Saskatchewan and Nova Scotia.
28. This work is being done in tandem with the Committee's review of compliance-based regulation. Compliance-based regulation is an outcomes-focused approach according to

which the regulator sets out expected outcomes and provides flexibility to firms as to how the outcomes are achieved.

29. The Committee expects to receive a further progress report later this year.

**REPORT TO BE PROVIDED  
PRIOR TO CONVOCATION**