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LET RIGHT PREVAIL

The Law Society of
Upper Canada

Barreau
du Haut-Canada



ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES
DE L'ONTARIO

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2010 Nominations Requested



Law Society Medals

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



Lincoln Alexander Award

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



Laura Legge Award

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

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

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

Those nominated in past years but not recognized may be nominated again.
The deadline for nominations is February 26, 2010.

TREASURER'S MESSAGE

Supporting and maintaining professional competence

The *Civility Forum* is a series of meetings I have begun chairing across the province to discuss civility and the administration of justice.

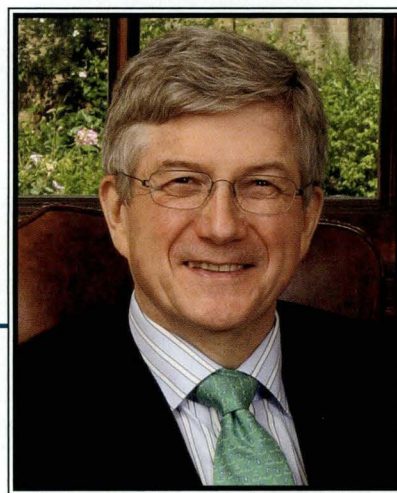
I was pleased and encouraged by the response to the first two meetings in November. We met with lawyers, paralegals and articling students in Sudbury and Ottawa, and I want to thank all those who took the time to attend, as well as those members of the judiciary and the bar who served as guest panellists at the sessions. At both meetings, we had a full and open discussion of the issues surrounding civility and professionalism, which I believe will lead to concrete proposals on how we can work to improve standards in these important areas.

As we go to press, we will have held a meeting in Windsor, and there are eight further meetings in various centres

scheduled for the first quarter of 2010. I hope that as many lawyers, paralegals and articling students as possible attend these sessions to contribute to this important and timely debate.

Professional competence

The maintenance and enhancement of lawyer and paralegal competence is an integral part of the Law Society's mandate to regulate in the public interest. The Law Society undertakes a number of initiatives and activities to support lawyers and paralegals in their efforts to maintain their professional standards and to monitor compliance with those standards.



Treasurer W.A. Derry Millar

MESSAGE DU TRÉSORIER

De l'aide pour maintenir la compétence professionnelle

Le *Forum sur la politesse* est une série de rencontres que je préside depuis peu dans toute la province afin de discuter de politesse et d'administration de la justice.

J'ai été touché par le succès des deux premières rencontres en novembre. Nous avons rencontré des avocats, des parajuristes et des stagiaires à Sudbury et à Ottawa et je tiens à remercier tous ceux et celles qui ont pris le temps de venir, ainsi que les juges et les avocats qui ont agi comme panélistes. Aux deux rencontres, nous avons discuté ouvertement des questions concernant la politesse et le professionnalisme, et je crois que de cette discussion naîtront des propositions concrètes pour améliorer les normes dans ces deux champs importants.

Au moment de mettre sous presse, nous aurons tenu une autre rencontre à Windsor. Huit autres séances sont prévues dans

divers centres durant le premier trimestre de 2010. J'espère que les avocats, parajuristes et stagiaires profiteront en grand nombre de ces rencontres pour contribuer à ce débat important qui tombe à point nommé.

Compétence professionnelle

Pour réglementer les professions dans l'intérêt public conformément à son mandat, le Barreau du Haut-Canada doit veiller à maintenir et à améliorer les compétences des avocats, des avocates et des parajuristes. Le Barreau a entrepris de nombreuses initiatives et activités pour aider les avocats et les parajuristes à maintenir leurs normes professionnelles et à s'y conformer.

Au cours des cinq à sept dernières années, le Barreau a mis au point des outils au service des avocats et, depuis 2007, des parajuristes, afin de les aider à améliorer la gestion de leur pratique. Parmi ces outils, les programmes d'inspection de la

Over the last five to seven years the Law Society has developed a number of tools to assist lawyers and, since 2007, paralegals to improve their practices. Most notable of these initiatives are the spot audit, practice review and practice audit programs. In recent months the Society has focused attention on the role that post-call learning plays in professional competence.

Continuing professional development

Post-call continued learning should form an integral part of professional competence of lawyers and paralegals throughout their careers.

At the October meeting of Convocation, the Professional Development & Competence and Paralegal Standing Committees jointly recommended consultation on their proposal to introduce a continuing professional development (CPD) requirement for lawyers and paralegals.

The proposed model requires 12 hours of CPD annually for lawyers and paralegals in the 100 per cent fee-paying category. The report describes an approach that appreciates the importance of flexibility, accessibility and affordability. I urge you to read the report and provide your written comments on this important initiative by January 15, 2010.

Paralegal election

The first-ever election of paralegal members to the Paralegal Standing Committee will occur in March 2010. This will mark a major milestone in the implementation of paralegal regulation. Nominations for the five paralegal positions on the committee are open until January 18, 2010. The paralegal members of the committee will join eight benchers – five lawyers and three lay people. Two of the paralegals will be elected by the lay and paralegal members of the committee to serve as benchers. The committee is responsible for developing and recommending policies related to the governance and regulation of licensed paralegals in the public interest.

We have had an active fall term in Convocation. Benchers have considered many important issues. I want to thank my colleagues at the Law Society for their work and support over 2009.

On behalf of the Law Society of Upper Canada, I extend best wishes for a happy holiday season. ■



pratique et les vérifications ponctuelles se distinguent le plus. Au cours des derniers mois, le Barreau s'est concentré sur le rôle que joue l'apprentissage après l'assermentation dans la compétence professionnelle.

Perfectionnement professionnel permanent

L'apprentissage après l'assermentation devrait aller de pair avec la compétence professionnelle des avocats et des parajuristes durant toute leur carrière.

À la réunion du Conseil d'octobre, le Comité du perfectionnement professionnel et le Comité permanent des parajuristes ont recommandé de mener une consultation sur une exigence éventuelle de perfectionnement professionnel permanent (PPP) auprès des avocats et des parajuristes.

Selon le modèle proposé, les avocats et les parajuristes qui sont dans la catégorie de cotisation à 100 pour cent devront suivre 12 heures de PPP chaque année. Le rapport décrit une approche très souple tenant compte du budget et de l'accessibilité. Je vous incite à le lire et à nous faire part de vos commentaires par écrit sur cet important projet d'ici le 15 janvier 2010.

Élection des parajuristes

La toute première élection des membres parajuristes du Comité permanent des parajuristes aura lieu en mars 2010. Il s'agit d'une étape majeure dans la mise en vigueur de la réglementation des activités des parajuristes.

Les mises en candidature aux cinq postes de parajuristes du Comité sont ouvertes jusqu'au 18 janvier 2010. Les membres parajuristes du Comité se joindront à huit conseillers et conseillères – cinq avocats et trois non-juristes. Deux des parajuristes seront élus par les membres non-juristes et parajuristes du Comité pour agir à titre de conseillers ou conseillères. Le Comité est chargé de développer et de recommander des politiques visant la gouvernance et la réglementation des parajuristes titulaires de permis dans l'intérêt public.

L'automne du Conseil était fort occupé. Les conseillers et conseillères ont analysé de nombreux enjeux importants. Je veux remercier mes collègues du Barreau pour leur travail et leur appui en 2009.

Au nom du Barreau du Haut-Canada, je vous souhaite de joyeuses fêtes. ■



The practice management review: a quality assurance program that works for lawyers and paralegals

“Overall, my experience with the practice review program was tremendous,” says Thomas Arnold, a partner in the three-lawyer firm, Arnold Foster LLP, who experienced a practice review. “During my time with the practice reviewer, we concentrated on measures not only to minimize potential liability issues, but also to maximize my productivity and office management.”

When Convocation adopted random practice management reviews in 2006, the program was described as a means to promote the competence of the profession by ensuring that practitioners comply with the established standards.

“We turned our minds to ways we could enhance quality assurance within the profession,” says Diana Miles, director of Professional Development and Competence. “Self-regulation and the rights and obligations that come with that status were foremost in our minds. It had become clear that a positive public perception of a regulator’s actions was essential to continued support of self-regulation.” Existing peer review models of other professional regulators were considered, including the Institute of Chartered Accountants, the College of Physicians and Surgeons of Ontario and Le Barreau du Québec.

“At the time the random practice review program started, we saw that the practice environment was evolving and there were new pressures facing lawyers, including a rapid expansion of demand, diminished time for reflection and heightened expectations from clients,” says Leslie Greenfield, manager of the practice review program. “The program speaks to all of this – it promotes our

mandate of protecting the public interest, while supporting the profession as well.”

What is quality assurance?

By definition, quality assurance ensures compliance with clearly established standards developed by an organization. Two key principles of any quality assurance program are “fit for the purpose” and “right the first time.” Quality assurance measures are planned and systematic actions developed to reassure the client of the quality of the service provided. As part



Quality Assurance:
Practice Management Review Program

Quality Assurance: Practice Management Review Program

of the Law Society's quality assurance program, the random practice review helps lawyers to ensure their work habits and management systems make them fit for the purpose of the profession: to help their clients access justice.

The program defined

The Law Society's quality assurance program includes:

- Spot audits, which began in 1998, and focus strictly on law firms' financial filing and record-keeping;
- Practice reviews for lawyers, which look at general practice management

systems and include random and focused reviews; and

- Practice audits, which began in 2008, and focus on general practice management systems, including financial systems, for paralegals.

Prior to the introduction of random practice management reviews, lawyers were selected for focused reviews as a result of referrals from complaints, discipline, investigation or the spot audit program, where there are reasonable grounds to believe that the lawyer may be failing to meet standards of professional competence.

Random reviews now make up the majority of practice management reviews undertaken annually. Projections for 2009 suggest 400 reviews will be undertaken. Random practice reviews aim to eliminate mistakes in the formative years of private practice, so lawyers in the first eight years from their call to the bar are

A reference resources for common deficiencies

1. Lack of written office policies

- Hatoff, Howard I., *Law Office Policy and Procedures Manual*, (Chicago: American Bar Association, 2006)
- Dimitriou, Demetrios, *Law Office Procedures Manual for Solos and Small Firms 3rd Ed.*, (Chicago: American Bar Association, 2005)

2. Time dockets not maintained regularly

- Practice Management Guidelines >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> Time Management >> s. 7.4.5 and 7.6.1
- "Taking your Financial Pulse: Meaningful Financial Analysis for a Profitable Solo and Small firm" 2nd Annual Solo and Small Firm Conference and Expo, 2007, Tab 2
- "PPC Law and Understanding your Bottom Line" Solo and Small Firm Conference and Expo, 2008, Tab 15

3. No retainers

- Practice Management Guidelines >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> File Management >> s. 7.4.5 and 7.6.1
- Client Communication, s 2.1 to 2.9

- Conflicts of Interest >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> FAQs Knowledge Tree >> Joint Retainers
- www.practicepro.ca >> Practice Aids >> Checklists & Precedents >> Retainer Agreements

4. No systematic checking for conflicts

- Conflicts of Interest >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> FAQs Knowledge Tree >> Conflicts Checking Systems
- Managing Booklets, Managing Conflicts of Interest
- Rule 2.04, Rules of Professional Conduct
- Conflicts of Interest Toolkit, CBA Task Force, www.cba.org >> Member Resources >> Hot Topics >> Conflicts of Interest >> Conflicts of Interest Toolkit

5. Phantom clients

- Client Service and Communication >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> Client Service and Communication
- Managing Booklets, Managing the Lawyer/Client Relationship
- www.lsuc.on.ca >> Resource Centre >> Practice Resources

selected for review. As of January 2009, the program adopted a more risk-based approach in the selection criteria based on the percentage of firms represented in Law Society conduct matters and LAWPRO negligence claims for the entire profession. This change in policy has led to an increase in the number of sole practitioners and lawyers in small law firms selected for a practice management review.

"The practice of law in a sole or small firm is vastly different than a larger firm for many different reasons," says Arnold. "All lawyers, but small firm lawyers in particular, constantly have in the back of their minds the fear of making an error, which can lead to a claim against them. The program's purpose is to proactively assist lawyers, such as myself, by providing them with tools and recommendations to reduce potential liability issues before they arise."

"We are taking a proactive approach to quality assurance," says Kerry Boniface, practice review counsel. "We are not just hoping that the lawyers are meeting minimum standards of professional competence, we are actively ensuring it. And where possible, we want to give lawyers the tools to help them do their best." From the very positive responses, it is evident that the program is doing just that. Results of a voluntary survey of lawyers who have had their practices reviewed show that 93 per cent found the process constructive and helpful, and 100 per cent commented positively on the professionalism of the reviewers.

An innovative approach

A significant difference between the quality assurance programs conducted by Le Barreau du Québec or the College of Physicians and Surgeons of Ontario and

the Law Society, is the team of full-time reviewers employed as practice review counsel. The benefits of keeping reviewers on staff are that a consistent standard is developed among the reviewers and there is an opportunity for reviewers who come from different backgrounds to share ideas and experience. In addition, while the spot auditors are a team of accountants, the practice management reviewers are all legal practitioners, so the process has a consultative quality to it. "This review is a helpful process for the profession, for the public, but just as importantly, for the lawyers," says Boniface.

Boniface was drawn to the position of counsel for the practice review program because of her interest in education and practice management. "I was always interested in how, with a managed approach, we could better leverage our time." Since she started as practice

>> FAQs Knowledge Tree >> Non-Engagement Letter and Non-Engagement Letter Checklist

- Conflicts of Interest Toolkit, CBA Task Force, www.cba.org >> Member Resources >> Hot Topics >> Conflicts of Interest >> Conflicts of Interest Toolkit

6. Retainers are deficient in terms of content

- www.practicepro.ca >> Practice Aids >> Checklists and Precedents >> Sample Retainer Agreements
- Managing Booklets, Managing the Lawyer/Client Relationship
- www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Real Estate Practice Resources
- Section 28.1(8) of the Solicitors Act and Regulation 195/04

7. Key client and matter information not maintained in client files

- Practice Management Guidelines, www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> File Management
- By-Law 7.1

8. No contingency plans in place / Power of attorney not granted to lawyer colleague to manage practice and trust account in the event of an emergency

- Financial Management >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> Financial Management >> s. 4.18
- www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Guide to Closing your Practice and Practice Locums
- Managing Booklets, Managing Practice Interruptions and Vulnerabilities Worksheet
- Management and Administration: The Essential Form Book: Volume IV; Disaster Planning & Recovery/Risk Management & Professional Liability Insurance

9. Inadequate data file security

- Technology Management >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> Technology >> s. 5.1 to 5.12
- Managing Booklets, "Managing the Security and Privacy of Electronic Data in a Law Office" and "Managing Business Interruptions and Disaster Planning"

10. File organization - pleadings, correspondence and other documents are not kept in the file in an organized fashion

- File Management >> www.lsuc.on.ca >> Resource Centre >> Practice Resources >> Practice Management Guidelines >> File Management

review counsel, she says the team of reviewers has grown and evolved significantly to include lawyers with diverse practice experiences. In the 200 or more reviews that she has conducted, Boniface has seen all different types and styles of practice.

The review process

"A review involves an exchange with the lawyer. It is an educational process with a focus on how best to integrate essential practice management systems in the particular practice being reviewed. Although there are minimum standards, how these standards are effectively implemented will vary from practice to practice," says Boniface. However, she says the initial response from the lawyer is often one of nervousness or apprehension. "Often lawyers say that they are the winners of some unlucky draw, but I try to convey to them that this is really a great service to their practice, and that I am there to be of assistance, to help establish the best business and management practices for each review I conduct. Lawyers may start with some reservations, but in my experience they have been collegial, have welcomed me

into their offices, and ultimately, most see the value it can add."

"The random practice review was not threatening in any respect, and in fact was informative and very thorough," says Patricia Nelson, a sole practitioner at Nelson Family Law. "It was made abundantly clear to me that the reviewer was available to me for questions or concerns from the day of the review and into the near future."

The random review process consists of a three-hour interview that goes over the *Basic Management Checklist* in detail. The checklist is a practice analysis tool which helps both the reviewer and the lawyer identify possible deficiencies in the lawyer's practice and gives them some points of focus for their subsequent meeting. "If we all took the 15 minutes that it takes to complete the *Basic Management Checklist*, or blocked time to consider practice management issues, our practices would be improved," Boniface urges.

The whole of the lawyer's processes are reviewed, including the general environment of the office, client communications, financial dealings, technology, the lawyer's commitment to professional development, as well as time management, where the reviewer ensures that each lawyer has adopted a balanced lifestyle. "Part of ensuring that lawyers are meeting the minimum requirements to a sound practice is making sure that they are balancing their work well so they don't burn out. I've even had a lawyer get in touch with me to say 'my spouse would like to thank you'," Boniface says.

A consultative process

The afternoon consists of a thorough review of several client files, while preserving client confidentiality. The whole of the client file is reviewed, from the numbering and labelling of files to the actual content, including legal

Areas of Inquiry and Focus of Written Report:

General Background
Client Service and Communication
File Management
Financial Management
Technology
Professional Management
Time Management
Personal Management
Files Reviewed
Legal Knowledge
Skills and Abilities in Applying Legal Knowledge

knowledge of each of the files. "This discussion always has the lawyer's best interests at heart," says Boniface. "If I can't tell from the file that the proper information is being documented, I will talk to the lawyer about what he or she *ought* to be doing to preserve their practice."

The review of the files is a way of mapping the lawyer's current and past work. "It's less a test of their legal knowledge, and more a constructive look at their practice to ensure they are meeting the minimum practice management requirements. I ask: 'Do these files show that the lawyer is providing options and recommendations to clients, and are they documenting their work?'"

Lawyers are given recommendations to enhance their business practices. These can range from strategic planning to the mundane. "Take financial management for an example," says Boniface. "We look at whether lawyers are monitoring their work in progress and receivables, whether they are undertaking monthly

Possible Review Outcomes:

- Close: no significant deficiencies.
- Followup letter: requires lawyer or paralegal to submit proof that deficiencies have been addressed to the satisfaction of the Law Society.
- Re-review: deficiencies are serious enough to warrant a further review to ensure they are remedied.
- Consent order: requires a lawyer or paralegal to remedy deficiencies within a certain time, and then a followup review.

reconciliations and keeping their trust accounts in order. But we also talk to them about their fee structure and whether they are capturing all their time on files so that they can assess which types of files are profitable. This can lead them to make a strategic decision on whether to take on more of that kind of work.”

On the other end of the scale is an issue like closing files. “Often, I see firms that are closing files alphabetically as opposed to by closed file number,” she says. “A small change can save a lot of administrative time, but if firms want to maintain their current filing system and habits, and there is no perceived risk to the client, then I am satisfied that they are satisfied with their systems.” Nelson is very content with a change that was recommended to her. “They made the helpful recommendation of having my clients sign a non-engagement letter, which I implemented immediately and still use,” she says.

Positive feedback

When asked what the attitude of most lawyers was upon completion of the review, Boniface says, “Sometimes we are the first people who have given these lawyers any constructive feedback about their practice, and they are relieved to hear that they are doing a good job. Often we can close a gap in their systems which may prevent a claim or complaint. Whenever we can give this constructive feedback, that is value added to their practice.” In fact, the vast majority of lawyers either meet established practice management standards or will have met those standards by the second visit.

“I embrace and endorse the whole process; I think it’s a helpful and proactive program that the Law Society has,” says Nelson. Arnold is left with a positive feeling as well. He says, “It is comforting to know that the Law Society is there to assist lawyers, not just regulate and punish them, which is a misconception that lawyers may have.” ■

Spot Audits

Spot audits are conducted to measure the integrity of law firm financial filing, and assess ongoing compliance with financial record-keeping requirements and the *Rules of Professional Conduct*. A primary goal – which reflects a proactive, remedial approach – is to provide on-site guidance aimed at helping law firms correct any minor deficiencies with their record-keeping practices before they lead to serious non-compliance or misconduct issues. The spot audit program has proven to be an excellent resource for lawyers to ensure that they are operating effectively in the management of their practices.

The majority of the 1,000-plus spot audits completed annually are either selected randomly or by risk-based selection criteria. The exception is newly formed sole practices which are audited after one year of practice. Convocation has recently approved the expansion of the spot audit program to ensure that all firms undergo a spot audit every five years. The spot audit has a very high satisfaction rate among lawyers who have completed it: 93 per cent found the process constructive; 98 per cent found the audit report useful; and 100 per cent found their auditor’s conduct professional and helpful.

The quality assurance program as a whole has proven advantageous to firms, and the spot audit program has very measurable benefits. Statistics show that newly formed firms who received a spot audit have significantly increased their longevity over those that have not.

Practice Audits

The Law Society began providing practice audits for licensed paralegals in November 2008, and will conduct audits on approximately 75 paralegals in 2010. All licensed paralegals are eligible for selection.

Practice audits are a proactive and preventive resource. The intention of the audit is to support the goal of licensed paralegals to be efficient, effective and competent in their work practices. Practice audits focus on the practice management systems for client service and communication, financial management, technology, professional management, time management and personal management.

Practice audits are remedial in nature and are similar to a consultation session. The paralegal and the reviewer work together throughout the process to develop the best practice strategies to meet competency standards.

In 2008, a *Paralegal Basic Management Checklist* was developed. This is a self-assessment tool that assists paralegals to identify their strengths and any areas of improvement, and is used when conducting paralegal practice audits. This tool can be accessed on the Law Society website (http://www.lsuc.on.ca/media/basic_management_checklist_paralegal.doc) and used for personal knowledge and business enhancement. A *Paralegal Bookkeeping Guide* was also developed in 2008 and is available at no charge at the Resource Centre on the Law Society website (<http://rc.lsuc.on.ca/jsp/bookkeepingGuide/paralegal.jsp>).

The Law Society's Highest Honours

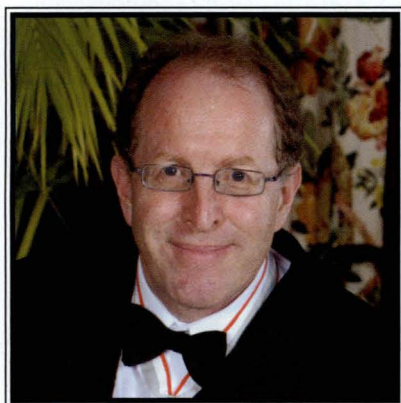
THE LAW SOCIETY MEDAL WAS ESTABLISHED IN 1985 AND IS PRESENTED TO LAWYERS WHOSE SERVICE REFLECTS THE HIGHEST IDEALS OF THE PROFESSION. THIS YEAR'S RECIPIENTS ARE PROFESSOR NICHOLAS C.M. BALA, GEORGE BIGGAR, ELIZABETH C. GOLDBERG, J. DOUGLAS GRENKIE, Q.C., PETER K. HRASTOVEC, PATRICIA D.S. JACKSON AND SUSAN M. VELLA.

This year, the recipient of the Laura Legge Award – which recognizes an Ontario woman lawyer who has exemplified leadership within the profession – is Janet A. Leiper. The recipient of the Lincoln Alexander award – given to a lawyer who has demonstrated a commitment to the public and its well-being through community service – is Sandra Thomas.

“To fulfil our mandate, it is necessary to provide mentorship and leadership to those who follow us. We also have a

responsibility to promote the values and traditions upon which the legal profession was built,” said Treasurer W. A. Derry Millar at the ceremony held in Convocation Hall at Osgoode Hall. “In publicly honouring these lawyers, we are not only recognizing the contributions they have made, but we are identifying them as role models to other members and reaffirming the public’s confidence and trust in our profession.”

Remarks of the recipients upon receiving their awards follow.



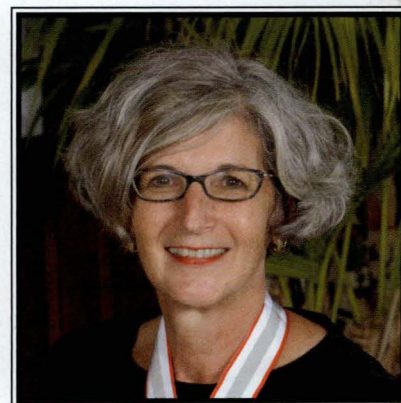
Professor Nicholas C.M. Bala

“This award is a particular honour since I am not a traditional member of the Law Society. I am a law professor. The academy is the youngest and most ungovernable branch, but it shares a concern with the other two – the judiciary and the practising bar – to improve the quality of justice and ensure the future of the profession. By recognizing my contributions, you recognize all law professors and our contribution to the profession. I see myself as a member of the family law bar, albeit only an honorary one. By honouring me you are recognizing the contributions of all members of the family law bar.”



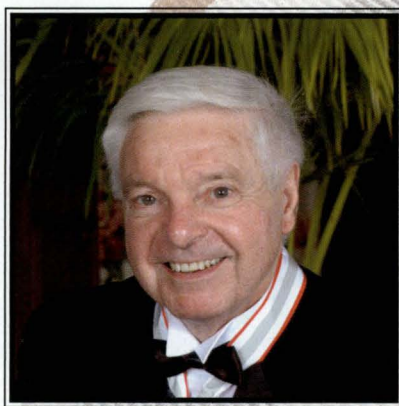
George Biggar

“I want to praise the Law Society for recognizing so many of us today for public service and for legal work in the public interest. It is enormously encouraging to all of us working as lawyers in the public sphere and especially to my colleagues at Legal Aid. I want to say how wonderful it is to be recognized for doing what you love. I have been very lucky to have enjoyed a career in law, working to advance the rule of law – a principle in which I wholeheartedly believe. And to get this award on top of it all, it’s perfect.”



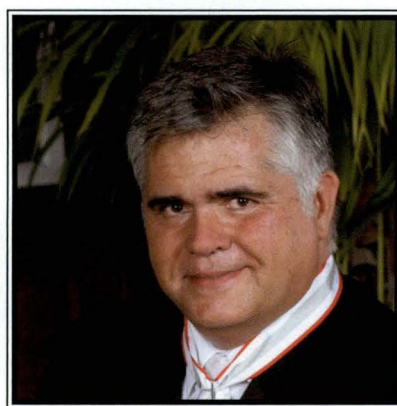
Elizabeth C. Goldberg

“I am very pleased to be receiving the Law Society Medal. Lawyers who are public servants are most often anonymous and yet the work that they do is so important to the public interest in protecting the rule of law. I have been inspired and impressed by the dedication to principle, integrity and professional excellence that is daily on display in the public service. The profession and the public should be very proud of their contributions, and I would like to say thank you. I think that this honour belongs to all of us.”



J. Douglas Grenkie, Q.C.

"I enjoy practising law because it is fun; you are helping people in your community. I enjoy the extra legal volunteer activities because it is fun; you are meeting and learning with your peers and trying to improve the law. I enjoy working in the local community because it too is fun; you are making your community a better place to live. I appreciate this award and it is recognition of all the efforts of all small-town lawyers. I intend to continue the practice of law so long as I am having fun, and I see no end to that."



Peter K. Hrastovec

"The best part of the practice of law has been the many relationships I have enjoyed over the years. Law gives that to all of us who practise – the opportunity to open doors, to go through them and bring others along for a journey that is unique, exciting, purposeful and ever challenging. I have been able to meet some pretty decent people I call clients who were kind enough to allow me to assist them, in some particular cases, during their darkest hours. I thank them for the gift of our relationship and their desire to allow me to act the part of counsel, and I am greatly indebted to the Law Society for allowing me the privilege of practising law."



Patricia D.S. Jackson

"I am now in perhaps the richest period of my professional training, which is now in the hands of the large number of remarkably talented – and younger – lawyers with whom I work. I mean no disrespect to those who guided me through my early years in the profession when I say that I regularly learn more and depend on them even more than my earlier mentors – a kind of 'reverse mentoring' – which leads me to know that the future of the profession is in very good hands."



Susan M. Vella

"I am deeply honoured by this award and wish to thank the Law Society for bestowing it upon me. I am so privileged to be associated with those lawyers who have been awarded the Law Society Medal in the past years, and those with whom I stand today. I wish to acknowledge the women and men who have survived sexual trauma and other forms of unspeakable abuse for their courage in demanding and pursuing justice. After all, at the end of the day, it is the people we represent who give us the opportunity to be the best advocates we can possibly be."

Laura Legge Award



Janet A. Leiper

"Being the first woman in a position of leadership is important. I am glad that our legal community marks our firsts. Until we have a first woman Treasurer, first woman judge, first woman chief justice, we risk filling that mental space with assumptions about what a leader ought to look like. What I cherish in all of you who are here is that you model an ethic of care and compassion, in addition to legal ability. You reminded me to reaffirm why I love what I do: because of the precious ability to add to the sum of fairness and dignity in how legal institutions operate, and to remove some of the fear and uncertainty that most people feel when they are charged, investigated or prosecuted. You are all part of what makes this an ethical profession."

Lincoln Alexander Award



Sandra Thomas

"I would like to thank the Law Society for presenting me with this very distinguished award. I have always admired The Honourable Lincoln Alexander for his courage in addressing issues and his commitment to community service. As a result, I am humbled and I'm distinctly honoured to have been chosen as this year's recipient of the award presented in his name. I believe that I originally inherited my interest in community service from my parents. As a general practitioner in Toronto from 1963 until the 1980s, my father never hesitated to help someone in need when he was able to, whether it was to encourage children to pursue higher education, or to help people with business plans or ideas, give advice or fundraise. I firmly believe that 'to whom much is given, much is expected.' I think there are many ways that we as lawyers could contribute to the community."

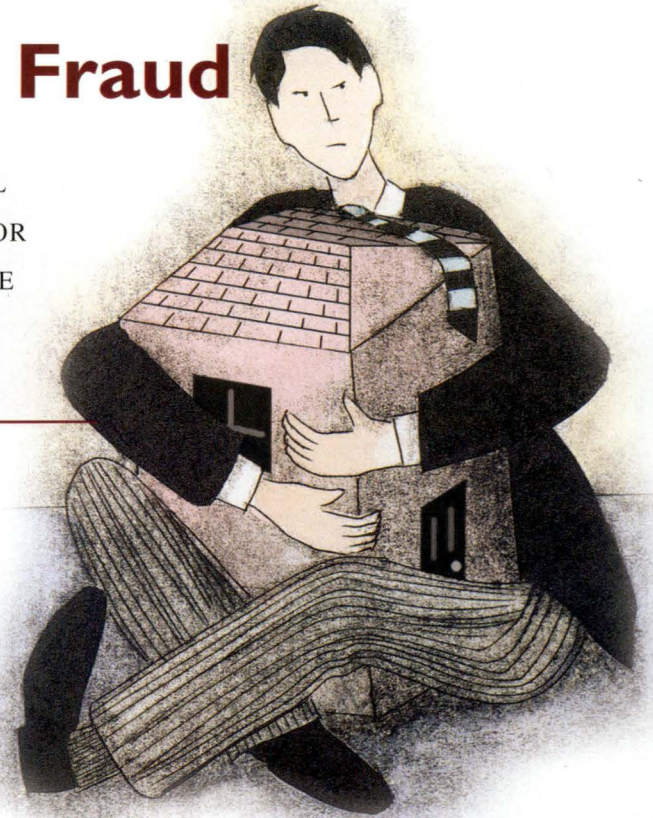
Update on Mortgage Fraud

DESPITE A CONCERTED EFFORT TO COMBAT IT, REAL ESTATE FRAUD CONTINUES TO POSE CHALLENGES FOR THE NUMEROUS STAKEHOLDERS IN THE REAL ESTATE AND FINANCIAL SERVICES INDUSTRIES, AS WELL AS THE LAW SOCIETY.

As has been noted in past issues of the *Gazette*, real estate lawyers should be vigilant for indicators of fraud whenever they are retained in real estate and/or mortgage transactions.

While **title fraud** – the fraudulent transfer of title from a true registered owner – is a serious concern, the far more prevalent manifestation of real estate fraud as observed by the Law Society is mortgage fraud.

Mortgage fraud (sometimes referred to as “value fraud”) is the act of borrowing money from a lender in a mortgage transaction under false pretenses, usually with respect to the purchase price of a property. It is common in a fraudulent mortgage transaction for a lender to be misled about the true purchase price of the property that is being offered as security for the loan.



Mortgage fraud usually involves tricking a mortgage lender into advancing more funds than a property is worth, typically to the detriment of the lender. It is not unusual in a fraudulent mortgage transaction for the purported borrower to be a straw person using false, and sometimes stolen, identification.

Applying your professional judgment

Lawyers are retained by the parties to a real estate transaction to apply their professional judgment to all aspects of the retainer as it may affect their clients. This includes the lender client. Lawyers should familiarize themselves with the possible indicators of mortgage fraud and adopt measures to ensure that they do not become the tools or dupes of unscrupulous clients or third parties associated with their clients.

Subject to certain exceptions, the Law Society's *Rules of Professional Conduct* now prohibit lawyers from acting for both the vendor and the purchaser on a transfer of title to real property. Where the exceptions apply, or where the lawyer is acting for a purchaser and a mortgage

lender, the lawyer must be particularly vigilant not to favour the interests of one client over others.

If a lawyer has suspicions about whether he or she may be assisting the client in fraud or illegal conduct, the lawyer cannot disregard these suspicions. The lawyer must make reasonable inquiries to obtain information about the client and the subject matter and purpose of the retainer. The lawyer should make a record of these inquiries.

There will be situations where, in order to meet ethical obligations, the lawyer will have no option but to withdraw from representing the client.

Avoid being duped by unscrupulous clients – watch for red flags!

Here are some obvious red flags that should prompt questions and due diligence in real estate transactions. The fact that one or more of the following appears in any transaction does not necessarily mean that the transaction is improper, or that a fraud is being perpetrated. However, when a real estate and/or mortgage transaction exhibits one or more of these (or other) red flags, a lawyer should apply extra diligence.

- ▶ The mortgage advance exceeds the balance due on closing.
- ▶ Credits which are not referenced in the purchase agreement or in amendments to the purchase agreement are granted to the purchaser for purported reasons including the following:
 - ▶ additional deposit
 - ▶ gift
 - ▶ promissory note
 - ▶ renovations and repairs
 - ▶ vendor take-back mortgage
 - ▶ rebate for legal fees or land transfer tax
 - ▶ rebate for real estate commission.
- ▶ Credits are granted to the purchaser in an amendment to the purchase agreement that have not clearly been disclosed to the lender.
- ▶ The purchase price of the property has escalated substantially over a relatively short period of time.
- ▶ The lender is effectively advancing more than 95 per cent of the purchase price where the mortgage is insured.
- ▶ The purchaser provides no or minimal funds on closing, such that only the mortgage advance is required to complete or substantially complete the purchase.
- ▶ Closing funds come in the form of a cheque or bank draft drawn from a source that indicates that the source may not be the purchaser.
- ▶ The purchase agreement (and any amendments to the agreement) indicate that the deposit is payable directly to the vendor rather than to the vendor's real estate broker or lawyer.
- ▶ There is third-party involvement including instructions, directions, client identification and information coming from a third party, or alternatively, directions to report to or pay excess mortgage proceeds to a third party.
- ▶ The same purchasers, vendors, real estate agency or mortgage broker are present in multiple transactions.
- ▶ The lawyer is asked to make a last-minute registration under a power of attorney.
- ▶ The lawyer is asked to complete a transaction in a short period of time.
- ▶ The lawyer is offered higher than usual legal fees for acting on the transaction.

Lessons for lawyers: some sample mortgage fraud scenarios

SCENARIO #1:

RESALE AND ADDITIONAL DEPOSIT

On December 8, a purchase agreement is entered into between a purchaser and vendor providing for a purchase price of \$389,900 and a deposit of \$500 payable to the vendor's solicitor. The same real estate broker represents both the vendor and the purchaser.

Lawyer A acts for the vendor. Lawyer B acts for the purchaser and lender.

A mortgage loan is arranged for \$370,405 and the lender agrees to make a net advance (after deducting fees and insurance) of \$360,405.

A title search conducted by Lawyer B indicates that the vendor had originally purchased the property on November 17 of the same year for \$256,000.

Lawyer B does not advise the lender that the property was purchased less than one month earlier for \$256,000.

On December 20, the parties sign an amendment to the purchase agreement, which is not prepared by either lawyer and which provides that the purchaser will pay a further deposit of \$18,500 directly to the vendor on or before December 25.

On December 30, Lawyer B receives a facsimile transmission containing two receipts. The first indicates that the purchaser paid a further deposit of \$14,000 directly to the vendor on December 20. The second receipt indicates that the purchaser paid a further deposit of \$18,500 to the vendor on December 24.

Lawyer B does not advise the lender that deposits are being paid to the vendor instead of to the broker. Lawyer B also neglects to advise the lender that

additional deposits (\$14,000 and \$18,500) are being paid.

The balance due on closing according to the Statement of Adjustments is \$356,900. The purchaser is credited with deposits totalling \$33,000 (\$500 + \$14,000 + \$18,500).

On closing, the lender advances \$360,405 to Lawyer B in trust.

The mortgage advance of \$360,405 is greater than the \$356,900 balance due on closing. The purchaser does not pay any funds on closing.

Lawyer B closes the transaction on January 4 and registers a transfer from the vendor to the purchaser indicating consideration of \$389,900. Lawyer B also registers a mortgage in favour of the lender in the principal amount of \$370,405.

The mortgage goes into default on April 1 and the property is later sold under power of sale for \$260,000.

SUSPICIOUS FEATURES OF THIS TRANSACTION

- The initial deposit of \$500 was extremely low.
- The purchase agreement was amended to provide for further deposits payable directly to the vendor rather than to the real estate broker or the vendor's lawyer.
- The property was purchased less than one month earlier for a sum substantially less than the sale price in this transaction.
- The purchaser was not required to pay any funds on closing.
- The mortgage advance exceeded the balance due on closing and the purchaser was paid excess monies on closing.

Lawyer B had a duty to act in the best interests of both clients in the retainer, and to disclose all information that might be reasonably considered

material to the lender's decision to lend or not. In this scenario, Lawyer B failed to advise the lender that:

- The mortgage advance of the lender was greater than the balance due on closing.
- The property had increased in value by \$133,900 in approximately one month.
- The lender's \$370,405 loan to the purchaser was being secured against a property that, one month earlier, was worth \$256,000.
- The purchase agreement had been amended.
- Further deposits were being paid prior to closing, directly to the vendor.
- The \$370,405 mortgage registered on title for the lender represented almost 104 per cent of the \$356,900 balance due on closing.

SCENARIO #2: PROPERTY FLIP

On January 20, a purchase agreement is entered into between Vendor A and Purchaser A which provides for a purchase price of \$315,000, with a deposit of \$1,000 payable to Vendor A. Lawyer A acts for Purchaser A. The closing date is set for February 6.

On January 20, a second purchase agreement is entered into by Purchaser A (acting as Vendor B) and Purchaser B. The purchase price of the property according to the second agreement is \$493,000, with a deposit of \$10,000 made payable to Vendor B. Lawyer A acts for Vendor B and Lawyer B acts for Purchaser B and the lender. The closing date for the second transaction is set for February 6, like the first transaction.

A mortgage loan is arranged for \$478,350 and the lender makes a net advance (after deducting fees and insurance) of \$468,350.

Lawyer A electronically signs the first transfer on behalf of Purchaser A indicating consideration of \$315,000, and submits it for electronic registration on February 6 at 11:15 a.m.

Lawyer A and Lawyer B sign the second transfer on behalf of Vendor B and Purchaser B indicating a consideration of \$493,000

and submit it for electronic registration on February 6 at 3:30 p.m. Lawyer B signs the mortgage on behalf of Purchaser B and submits it for electronic registration on February 6 at 3:30 p.m. The proceeds of sale from the second transaction, on the direction of Vendor B, are paid to various parties, who are not parties to the transaction.

SUSPICIOUS FEATURES OF THIS TRANSACTION

- The Lawyer for Vendor B is instructed to make the proceeds of the sale payable to third parties with no apparent relationship to the transaction or entitlement to the funds.
- There was a substantial escalation in the purchase price of the property over a very short period of time.
- Deposits were paid directly to the vendors.

continues on page 16

Scenario #2: Property Flip

Continued from page 15

Lawyer A had a duty, in the face of the red flags, to investigate whether the transaction was *bona fide* and to withdraw if necessary. Lawyer B, who was representing the lender in the transaction, had a further duty to inform the lender of the facts that were material to its interests, including the following:

- In the purchase agreement governing the second transaction, which was disclosed to the lender, the vendor (Vendor B) was not the owner of the property at the time of execution.
- The property had increased in value by \$178,000 in approximately one month.
- The lender's \$478,350 loan to the purchaser was being secured against a property that, a few hours earlier, was transferred for a consideration of \$315,000.

SCENARIO #3:

CLOSING FUNDS IN THE FORM OF A "DAYLIGHT LOAN"

A purchase agreement is entered into between a purchaser and a vendor regarding a property for a purchase price of \$500,000. The agreement provides for a deposit of \$10,000 payable to the vendor's real estate broker.

Lawyer A represents the vendor, and Lawyer B represents the purchaser and lender.

The lender agrees to loan \$475,000 toward the transaction and (after deducting fees and insurance) advances \$465,000 on closing. The balance due on closing, which the lender expects to be paid from the personal funds of the purchaser, is \$25,000.

Lawyer A sends a direction re: funds to Lawyer B directing that the balance due on closing – \$25,000 – be paid by certified cheque to a person who is not a party to the transaction.

The day before closing, Lawyer B meets with the purchaser and receives a bank draft in the amount of \$25,000 representing the balance due on closing. There is a notation on the bank draft indicating that the source of the funds is the same person to whom Lawyer B has been directed to pay closing funds by Lawyer A.

The deal closes and Lawyer B sends a cheque to Lawyer A for \$25,000, made to the order of the named payee.

SUSPICIOUS FEATURES OF THIS TRANSACTION

- The \$25,000 was a "daylight loan," loaned over a period of 24 hours, by the third party to the participants in the real estate transaction.
- The third party receiving the closing funds was the same third party who was the source of the closing funds.
- The purchaser, in effect, took title with no personal equity contribution other than the deposit, assuming that the deposit was real.
- The actual consideration in the transaction does not include the \$25,000 that was loaned and repaid within 24 hours.

Lawyer B had a duty to inform the lender of the facts that were material to its interests, including the following:

- The purchaser was using funds to close the transaction from a non-personal source.
- There appeared to be a \$25,000 'in-and-out' amount that may not have formed part of the consideration for the transaction and, if not, then the actual purchase price was \$475,000 (\$500,000 less \$25,000), assuming the deposit to have been real.
- The lender's \$475,000 loan to the purchaser represented 100 per cent of the actual purchase price.

SCENARIO #4:

DISGUISED REFINANCING BY CHURNING

A vendor has bad credit and needs to pay off a mortgage of \$200,000. Many prospective lenders have refused applications to refinance.

The vendor enters into a purchase agreement with a purchaser, who is the child of the vendor but does not share the same surname as the vendor, in which a purchase price of \$350,000 is agreed. The agreement provides for a \$50,000 deposit directly to the vendor.

The vendor and purchaser retain the same lawyer, which is permitted under the Two-Lawyer Rule because of the “related persons” exception set out in Rule 2.04.1(3) of the *Rules of Professional Conduct*.

The lawyer also represents the lender in the transaction, who agrees to advance \$300,000 to the purchaser.

The lawyer is directed to prepare a trust agreement providing that the purchaser will only be holding title to the property

as a trustee for the vendor who is to remain, at all times, the beneficial owner.

On closing, the lawyer is directed to prepare a transfer from the beneficial owner (vendor) to the trustee (purchaser).

After deducting fees and insurance, the lender advances \$290,000 on closing. The balance due on closing taking into account the advance of \$290,000 and the deposit of \$50,000 is \$10,000. The lawyer is advised by the parties that the balance due on closing was paid directly by the purchaser to the vendor.

The lawyer receives the \$290,000 mortgage advance and is instructed to use it to pay the \$200,000 mortgage on title. The lawyer does so and is directed to pay the remaining \$90,000 to the vendor.

A month after registering the transfer and the mortgage, the lawyer is instructed to register a transfer from the trustee (purchaser) to the beneficial owner (vendor) for nil consideration. The

vendor at all times remains in the property and takes over the mortgage payments to the lender using the \$90,000 generated through the churning of the property.

SUSPICIOUS FEATURES OF THIS TRANSACTION

- The deposit was high and paid directly by the purchaser to the vendor.
- The transaction was not at arm's length.
- The closing funds were paid directly by the purchaser to the vendor.
- The trust agreement provided that the vendor would remain the owner of the property, whereas the lender was led to believe that the purchaser was acquiring title.

The lawyer had a duty to inform the lender of the facts that were material to their interests, including the following:

- The transaction was not at arm's length and the lawyer was directed to transfer title in accordance with a trust agreement.
- The lawyer was acting for all parties to the transaction.
- The property was being “churned” without the vendor losing title in an effort to obtain mortgage funds from the lender, who was misled into believing that the property was being sold to an arm's length purchaser at fair market value.

The importance of checking identification

Lawyers should always remember the importance of obtaining and keeping photo identification of their clients. The Law Society has observed the use of false identification in many mortgage fraud investigations. Lawyers must comply with the client identification and verification rules set out in By-Law 7.1 and should use care in following the instructions of lender clients.

If a lawyer is concerned about the identity of another lawyer acting in a real estate transaction, then the lawyer should check that the address and phone number of the other lawyer matches the information on file with the Law Society. Simply go to the Law Society's online member directory at: www.lsuc.on.ca.

Lawyers may also contact the Law Society at 416-947-3315 or 1-800-668-7380, ext 3315.

2009 Lawyer and Paralegal Annual Report

E-filing

The popularity of e-filing continues to grow, with 75 per cent of lawyers choosing to file their 2008 Lawyer Annual Report using this method. This represents an increase of five per cent over the previous year.

For paralegals, e-filing was set up at the outset as the primary mechanism for submitting the Paralegal Annual Report. This has resulted in an e-filing rate of over 90 per cent for the 2008 reporting year.

There are many reasons to choose e-filing over traditional paper filing. In addition to its reduced impact on the environment, the processing and administrative costs of e-filing are significantly less than those associated with paper filing. Mailing costs are also eliminated by taking advantage of the e-filing option.

How to access e-filing

If you have submitted a valid email address to the Law Society, we will send you a message shortly before the end of December with a link to our "Application for Access" page. To gain access to e-filing, you will need to create a password.

Please note: passwords from previous years cannot be used; a new password is required for each filing year.

Once access has been granted, re-entering your password will bring you to the actual e-filing site. Lawyers will be directed to the new Lawyer Annual Report e-filing site, and paralegals to the Paralegal Annual report site.

E-filing can also be used to notify the Law Society of changes to contact information.

Voluntary self-identification

The Law Society has a duty to protect the public interest and to facilitate access to justice for the people of Ontario. Access to justice involves not only how and where one accesses legal services, but from whom legal services are received, and will be enhanced by a profession that reflects the public it serves

For this reason, the Law Society is including a voluntary question in the 2009 Lawyer and Paralegal Annual Reports, asking lawyers and paralegals of Aboriginal, Francophone and equality-seeking communities to self-identify for statistical purposes.

All information will be held confidentially in accordance with the requirements of human rights and privacy legislation.



The Law Foundation of Ontario

Building a better foundation for justice in Ontario

Your Form 1

Remember to fill out your Form 1 for The Law Foundation of Ontario when filing your Lawyer Annual Report or Paralegal Annual Report this year.

Form 1 allows the LFO to ensure that interest generated on all lawyers' and paralegals' mixed trust accounts is received. This revenue supports many activities that enable community participation in the justice system, promote excellence in the legal professions, and enhance access to justice for all Ontarians.

How to File

Electronically

Visit the **Resource Centre** of the Law Society of Upper Canada's website and access the **Fees, Filing, Insurance** section. Access to electronic filing and more detailed instructions are available under **e-forms**.

By Mail

A hard copy of Form 1 is included in the mailed packages of the Lawyer Annual Report and Paralegal Annual Report.

If you did not receive a copy of Form 1, please call The Law Foundation of Ontario at (416) 598-1550.

For more information on the LFO visit www.lawfoundation.on.ca

The demographic information collected will be a valuable tool to help us monitor the progress of diversity within the legal profession, and to allow us to make changes to programs and services to meet the needs of our diverse membership, as well as initiatives to further enhance the diversity of the profession.

The Law Society is committed to enhancing equity and diversity in the legal profession. Since the 1997 *Bicentennial Report* was adopted, a wide range of initiatives have been undertaken, including the Equity and Diversity Mentoring Program, the Retention of Women in Private Practice Working Group, the Aboriginal Consultation, as

well as the Aboriginal Elders' Student Supports.

Client Identification and Verification Requirement

Also new for 2009 is a question asking lawyers to report on their compliance with the client identification and verification requirements set out in By-Law 7.1.

The new client identification and verification requirements were approved by Convocation on April 24, 2008 and came into effect on December 31, 2008. These amendments are contained in Sections 20-27 of By-Law 7.1. The requirements are based on a Model Rule

developed by the Federation of Law Societies of Canada and have been implemented to enhance lawyers' "know your client" responsibilities and to help prevent fraud and criminal activity. Law societies across Canada have implemented the Model Rule within their regulatory regimes to create a national, uniform standard for client identification and verification requirements.

Our Client Service Centre staff is available to answer any questions you may have about e-filing or the new questions at 416-947-3315 (or toll free within Ontario at 1-800-668-7380 ext. 3315). The CSC can also assist you in making changes to address or contact information. ■

The Law Society Portal is Coming!

The Law Society is set to launch a portal in June 2010 that will provide lawyers and paralegals with an online option for reporting changes to business and personal information, as well as submitting status changes. The portal will provide lawyers and paralegals with a secure facility to make changes to personal information while eliminating opportunities for fraud. The online Change of Information submission will speed up the processing time it takes to make the changes to the Society's database.

Registration for the portal will require all users to have a unique email address registered with the Law Society. If you haven't provided Membership Services with an email

address, or if you currently share an email address, you won't be able to register for access to the portal. The Membership Services department will need your name, Law Society number and your unique email address for the portal to be accessible to you.

As the portal is established, there will be future developments including online billing and payments of annual fees.

For your convenience, please photocopy this page and submit it to Membership Services to update your email address for access to the portal:

NAME:

LAW SOCIETY NUMBER:

EMAIL ADDRESS:

TYPE (Home or Business):

SIGNATURE: **DATE:**

Membership Services
The Law Society of Upper Canada
130 Queen Street West, Toronto, ON M5H 2N6
Fax - 416-947-3924

Nathalie Des Rosiers au service des droits et libertés

DEPUIS LE 1^{er} JUILLET 2009, M^e NATHALIE DES ROSIERS EST AVOCATE GÉNÉRALE ET DIRECTRICE EXÉCUTIVE DE L'ASSOCIATION CANADIENNE DES LIBERTÉS CIVILES (L'ASSOCIATION). ELLE ÉTAIT AUPARAVANT VICE-RECTRICE À LA GOUVERNANCE À L'UNIVERSITÉ D'OTTAWA DONT ELLE AVAIT ÉTÉ DOYENNE DE LA FACULTÉ DE DROIT, SECTION DE DROIT CIVIL DE 2004 À 2008, ET AVAIT ASSUMÉ LA PRÉSIDENTE DE LA COMMISSION DU DROIT DU CANADA DE 2000 À 2004.

Diplômée en droit de l'Université de Montréal et détentrice d'une maîtrise en droit de l'Université Harvard, elle est membre du Barreau du Québec et du Barreau du Haut-Canada, dont elle a reçu en 1999 la Médaille et en 2004, un grade honorifique de docteur en droit.

L'Association maintenant présidée par M^e Des Rosiers a été formée en 1964 par un groupe de citoyens basés à Toronto qui craignaient un projet de loi provincial visant à augmenter de façon draconienne les pouvoirs de la police. Après avoir gagné leur cause, ces citoyens ont continué à défendre les libertés de la population dont la menace à la démocratie que l'avenir leur réservait commençait à poindre.

Depuis, l'Association s'est prononcée sur des centaines d'enjeux comme la censure au cinéma, les droits des assistés sociaux de ne pas se faire harceler par les fonctionnaires, l'enseignement forcé de la religion dans les écoles ou le droit de manifester dans les lieux publics.

Dans son nouveau rôle d'avocate générale, M^e Des Rosiers, qui succède à M^e Alan Borovoy en poste depuis 1968,



M^e Nathalie Des Rosiers

admet avoir du pain sur la planche. Cependant, comme lui, les questions de libertés civiles lui tiennent à cœur, témoin son parcours professionnel en droit constitutionnel.

Pour M^e Des Rosiers, les associations de protection des droits civils sont de plus en plus essentielles. Les juristes ont le devoir, à son avis, de rester vigilants,

particulièrement face aux demandes accrues de mesures de sécurité.

L'Association qu'elle dirige maintenant est là pour inciter à plus d'imputabilité des gouvernements et des organismes non gouvernementaux, et pour agir avant qu'il n'y ait des plaintes pouvant se retrouver devant les tribunaux. « Il s'agit d'agir en amont pour éduquer les décideurs sur tous les aspects des enjeux », affirme-t-elle.

Parmi les grands dossiers actuels, l'Association canadienne des libertés civiles travaille sur les questions de sécurité nationale et d'imputabilité de la police. « La police exige plus d'accès à la vie des gens pour des questions de sécurité, mais nous voulons qu'elle réponde de ses actions. Il existe de grands dangers pour la justice sociale qui, on le voit, est facilement brimée par des pouvoirs sans limites », dit-elle. Un autre cheval de bataille est la discrimination sur la base du statut. « Ce dossier est un nouveau territoire pour l'Association. Il porte sur la grande question de la définition de citoyenneté. Après tout, qu'est-ce qu'un citoyen ? Le droit de vote doit-il être réservé aux citoyens ? Quels sont les devoirs et les responsabilités d'un citoyen ? Et quels sont les devoirs du gouvernement envers ceux-ci ? ». M^e Des Rosiers cite par exemple cette citoyenne canadienne dont les fonctionnaires n'ont pas reconnu le passeport au Kenya ou ce citoyen canadien captif dans une prison à Cuba. « Nous voulons savoir à quoi un citoyen peut s'attendre en tant que tel et s'il faut absolument mobiliser les médias pour se faire entendre. » Cette analyse, dit-elle, exigera de comprendre comment

les décisions sont prises et quels sont les enjeux, les ressources financières et où en sont les relations internationales. Au bas mot, comment se protège-t-on en tant que citoyen?

Un monde de libertés qui rétrécit

Nathalie Des Rosiers a entamé sa croisade en faisant publier entre autres une lettre d'opinion dans le journal *Le Devoir* de Montréal décrivant les limitations juridiques qui se terrent sur le site olympique des Jeux d'hiver à Vancouver. Expliquant que « dans le cadre de la prévention et de la sécurité nécessaires à des Jeux exemplaires », la liberté d'expression est menacée. Par exemple, des caméras sont installées un peu partout dans la ville et risquent d'y rester au-delà de la période des Jeux. Il y a sur le site des « aires de libertés d'expression » et la police a interrogé des gens qui avaient critiqué la tenue des Jeux à Vancouver. M^e Des Rosiers

soutient que « la visibilité internationale doit aussi mettre en valeur l'héritage constitutionnel du Canada, dont la liberté d'expression ».

L'Association canadienne des libertés civiles est devenue un organisme national qui fait des représentations devant les tribunaux à titre d'intervenant et devant les législatures pour discuter des lois éventuelles avec les gouvernements. L'Association assure un volet de formation du public dans les écoles élémentaires jusqu'à l'université pour tenter de freiner la réduction de nos libertés civiles. Elle est financée par des membres payants et compte diverses sections dans tout le pays et, pour conserver sa pleine liberté, ne sollicite ni n'accepte de fonds des gouvernements.

M^e Des Rosiers réitère que l'Association a toujours besoin de plus de membres pour contrer l'indifférence qui peut facilement s'installer avec le confort.

Elle est d'avis qu'il faut rester vigilant et qu'il faut une voix forte pour soulever les passions sans enfreindre la loi, comme le préconisait son prédécesseur Alan Borovoy. Elle invite donc les avocats et avocates de l'Ontario à se joindre au groupe pour contribuer au système de freins et contrepoids nécessaire dans une démocratie comme la nôtre et pour empêcher les abus de pouvoir car « les tentations de restreindre les libertés civiles sont nombreuses et constantes », comme l'a déjà dit M^e Borovoy.

« Il est crucial de parler au nom des autres avant de perdre la voix », conclut M^e Des Rosiers en paraphrasant le poème de Martin Niemöller, « Quand ils sont venus chercher les communistes, je n'ai rien dit parce que je n'étais pas communiste, les syndicalistes ... les juifs... les catholiques... Puis ils sont venus me chercher, et il ne restait personne pour protester ». ■

La fraude et les aventures de M^e Raymond Gouin

M^e Raymond Gouin est avocat en Ontario depuis 1978 et exerce entre autres le droit immobilier, successoral, commercial et corporatif à Ottawa. Pour se changer les idées et affûter son sens de la réflexion, il écrit. C'est ainsi qu'il a publié en 2008 un premier polar sur toile de fond véridique intitulé *Justice sans appel* à Eastview, aux Éditions de la francophonie. L'histoire se déroule en 1965 dans le Vanier natal de M^e Gouin et tourne autour du personnage de Lucien Rivard, célèbre criminel québécois. M^e Gouin explore au moyen de l'écrit les questions qu'il a abordées durant ses études en philosophie sur le bien et la justice.

Sa proximité à des affaires de fraude durant sa carrière a aussi inspiré son goût pour le roman. Cependant, dans un roman, M^e Gouin peut décider de l'issue de l'histoire : dans sa pratique, il n'est pas aussi aisé de contrôler des personnages qui n'ont aucun scrupule à exploiter les faiblesses du système pour s'enrichir malhonnêtement. Heureusement, son expérience lui a montré à reconnaître les escrocs aux premiers signes et à se protéger, et ainsi à protéger sa

clientèle. Voici quelques anecdotes, avec pseudonymes, tirées de la vraie vie de M^e Gouin, qui devraient pouvoir servir d'avertissement à tous les professionnels du droit immobilier.

Contes immoraux

M^e César, un avocat d'Ottawa, représente un acheteur dans l'achat d'un immeuble résidentiel de quatre logis. M^e César conseille à l'acheteur, M. Brutus, de faire son emprunt à la banque Ixe et obtient 105 000 \$ pour financer son achat de 135 000 \$. M^e César s'occupe du processus. Quatre mois plus tard, M. Brutus rencontre M. Innocent et lui vend son immeuble pour 400 000 \$ n'y ayant pourtant fait aucune amélioration majeure. Une fois encore, c'est M^e César qui agit dans l'affaire. Seul un employé de la banque sait qu'il s'agit du même édifice, mais complice, il n'en informe pas ses supérieurs. La banque Ixe accepte donc de financer la transaction. Petite parenthèse : bien sûr, depuis mars 2008, le *Code de déontologie* interdit le double mandat dans le droit immobilier, mais les fraudeurs ont d'autres tours dans leur sac pour en arriver au même point.

M. Innocent est heureux de sa bonne affaire, du moins le croit-il jusqu'à ce qu'il se rende compte que les loyers ne suffisent plus à rembourser sa dette hypothécaire et qu'il perde la propriété. Par la suite, l'épouse de M. Innocent se sépare de lui et retient les services de M^e Gouin parce que la Banque Ixe la poursuit. Il fait des recherches très fouillées et découvre que l'avocat avait déjà été poursuivi par une autre banque. À partir de là, il met à jour la complicité de l'avocat, du vendeur et d'un employé de la Banque Ixe qui approuvait les prêts. Petite anecdote : privé de son *modus operandi*, l'employé de la banque est devenu courtier hypothécaire à son compte!

M^e Gouin raconte une autre histoire de trio infernal mettant en jeu un agent immobilier, un évaluateur et un avocat. Dans les années 70, un agent immobilier, appelons-le M. Talus, trouve un client crédule, M. Carpon, pour acheter un immeuble à 100 000 \$. Il lui propose de faire une offre de 150 000 \$. La banque demande une évaluation que l'évaluateur complice falsifie. La banque prête donc 75 pour cent du montant de l'achat proposé, soit 112 500 \$. L'avocat complice prépare l'état des rajustements et sur papier ajoute un boni bidon à la fermeture de la transaction de 50 000 \$. Encore une fois, les loyers que perçoit M. Carpon ne suffisent pas et son hypothèque se trouve en défaut. Par la suite, le crime est découvert, mais avant que la justice n'ait pu prouver le complot, l'évaluateur meurt. L'agent a tout de même perdu sa licence et l'avocat a été radié.

D'innombrables possibilités

M^e Gouin conclut de ces anecdotes qu'il faut garder l'œil ouvert et le bon sur les innombrables possibilités de fraude. Les fraudeurs peuvent recourir à toutes sortes de scénarios et il faut savoir détecter les manifestations de leur créativité. L'avocat doit pouvoir flairer la fraude. Il raconte que dans les années 80, une chaîne alimentaire avait embauché un agent immobilier pour lui trouver le site idéal. L'agent un peu véreux a offert une somme ridicule à une vieille dame pour sa propriété. Elle a embauché M^e Gouin qui, connaissant la valeur des biens immobiliers dans le secteur, a fait quadrupler l'offre. La vieille dame a ainsi reçu la valeur marchande de sa propriété. Ce sont des cas où les avocats peuvent facilement protéger les personnes vulnérables en faisant les recherches d'usage et en suivant leur instinct.

En conclusion, M^e Gouin rappelle aux avocats et avocates que le Barreau les surveille de près et que quand un avocat a fraudé une succession pour quelque quatre millions de dollars il n'y a pas si longtemps, ce sont tous les avocats de l'Ontario qui ont dû payer la note par le biais d'une forte hausse de leur cotisation à LAWPRO. Il incombe donc à tous et à toutes de faire preuve de diligence pour lutter contre la fraude. LAWPRO propose d'ailleurs de nombreuses publications sur le sujet et sur les alarmes à reconnaître pour que les avocats ne tombent pas dans le panneau, car eux aussi peuvent être victimes de fraude!

Le travail des commissaires

LE COMMISSAIRE AUX LANGUES OFFICIELLES, M. GRAHAM FRASER, A RÉCEMMENT PUBLIÉ UN RAPPORT SUR L'ÉTAT DES LOIS ET DES DROITS LINGUISTIQUES ENTRE 2007 ET 2009 AU CANADA.

Ce rapport, publié tous les deux ans, traite des principales décisions des tribunaux liées aux langues officielles et des événements survenus en matière de droits linguistiques. Il traite, entre autres, des droits à l'instruction dans la langue de la minorité et de l'accès à l'enseignement en anglais au Québec. À ce propos, la Cour suprême du Canada a récemment rendu sa décision dans *Québec c. Nguyen*, entrouvrant ainsi la

porte des écoles publiques anglaises à tous et toutes sans restrictions. Cette décision visait le phénomène des enfants majoritairement allophones inscrits temporairement dans des écoles privées de langue anglaise pour passer ensuite facilement dans le système anglais subventionné, contournant ainsi les règles relatives à la langue d'enseignement au Québec. Bien que le plus haut tribunal ait convenu de la

validité du choix politique de donner l'enseignement en français à tous les élèves du Québec, il a déclaré inconstitutionnels les articles de la loi qui ne reconnaissaient pas le passage dans ces écoles dites « passerelles » et a donné un an au gouvernement québécois pour revoir sa loi. Décriée au Québec, cette décision est bien accueillie par les Franco-ontariens puisqu'elle permet de tenir compte de l'immigration francophone et de faciliter l'enseignement en français des non-ayants droit en Ontario.

De retour au rapport du commissaire : on y trouve également un aperçu de la cause *Small et Ryan c. Nouveau-Brunswick* (ministre de l'Éducation), dans laquelle le gouvernement avait

annoncé la décision de supprimer le programme d'immersion précoce en français. Cette décision a donné lieu à une contestation judiciaire et la Cour du Banc de la Reine a déclaré que la décision était injuste et déraisonnable puisque le ministre n'avait pas lancé un débat approfondi. La Cour a annulé la décision de mettre progressivement fin au programme et a renvoyé l'affaire au ministre. Le gouvernement a par la suite annoncé des modifications à ses plans originaux.

Le rapport comporte également une section sur les droits linguistiques dans l'administration de la justice et plus particulièrement sur le droit à une audience bilingue en Ontario avec l'affaire *Belende c. Patel*. Dans cette affaire, M. Belende demandait un report de son audition à une date ultérieure à laquelle un juge bilingue serait

suprême du Canada dans l'affaire *R. c. Beaulac*, le juge a déclaré que le droit à une instance bilingue était plus qu'un droit procédural, mais bien un droit fondamental. L'affaire a été renvoyée devant la Cour supérieure pour être entendue par un juge bilingue. On peut lire dans le rapport qu'un des problèmes liés à cette affaire demeure le fait qu'il y a pénurie de juges bilingues dans les salles d'audience de l'Ontario, surtout à Toronto.

Rapport du Commissaire des services en français

À ce propos, le Commissaire des services en français de l'Ontario, M^e François Boileau, a publié son deuxième rapport annuel en octobre, dans lequel il fait des recommandations notamment pour le secteur de la justice.

Il préconise des mesures pour améliorer l'accès à la justice en ciblant trois domaines : les lacunes dans l'administration de l'appareil judiciaire, le manque de juges bilingues et l'absence de critères pour la traduction des règlements. Le Commissaire recommande entre autres la formation d'un comité tripartite comptant des membres de la magistrature, des membres du barreau et des praticiens de la communauté francophone afin d'identifier des pistes d'action qui permettront de faire des avancées dans le dossier des juges bilingues dans certaines régions. Ce comité aurait aussi le mandat de rechercher des moyens pour parfaire les connaissances en

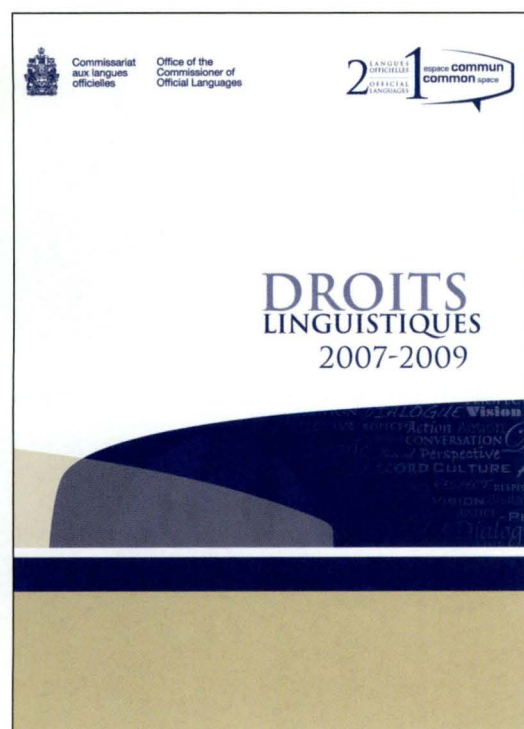
droits linguistiques de tous les membres de la magistrature en Ontario afin d'éviter des situations comme celle, par exemple, de M. Belende. Le commissaire recommande aussi au procureur général de faire adopter des critères clairs,

simples et publics pour guider les ministères dans la traduction des règlements et d'établir une liste des règlements à faire traduire en priorité.

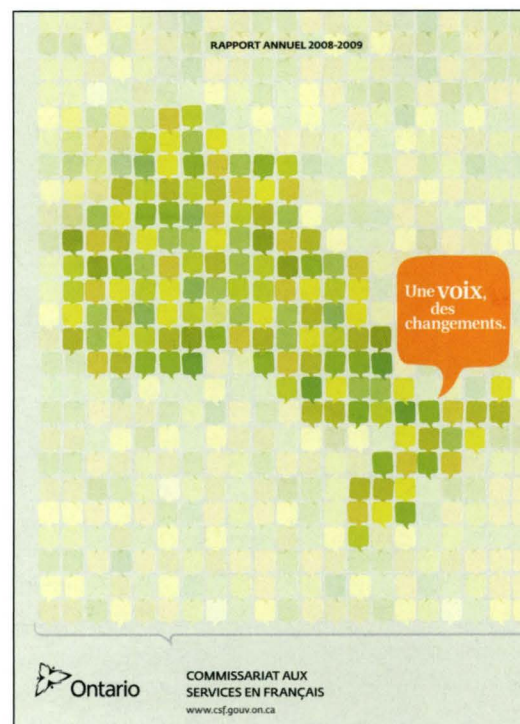
Pour lire le rapport du Commissaire Boileau dans son intégralité, allez à www.csf.gouv.on.ca/fr.

Droits linguistiques

Par ailleurs, le rapport du Commissaire Fraser contient bien d'autres décisions que celles mentionnées dans le présent article. On y décrit par exemple les droits linguistiques dans les instances civiles instruites par la Cour suprême au Yukon, le bilinguisme législatif et judiciaire en Alberta (où la *Loi linguistique de 1988* indique que toutes les lois et tous les règlements peuvent être publiés uniquement en anglais), le droit de témoigner dans la langue officielle de son choix ou l'accès à des services de qualité égale (*Desrochers c. Canada (Industrie)*). Pour le consulter, allez au www.ocolclo.gc.ca/html/index_f.php. ■



disponible. Sa demande a été rejetée et M. Belende a invoqué en appel une violation de son droit à une instance bilingue, ce dont le juge Rouleau de la Cour d'appel de l'Ontario a convenu. Citant la décision rendue par la Cour



CONVOCATION October 2009 Highlights

Consultation on continuing professional development requirement

Convocation approved the report recommending consultation on a proposal for a continuing professional development (CPD) requirement for lawyers and paralegals. *(See report on page 30.)*

Strong fiscal management supports expanded programs

Convocation approved the 2010 budget which strengthens its regulatory processes and maintains supports to the profession, including the popular Parental Leave Assistance Program. The budget provides for a modest increase of \$33 to the annual fee for both lawyers and paralegals. *(See report page 28.)*

Bencher expense reimbursement policy approved

Convocation approved a new bencher expense reimbursement policy to provide improved direction on travel, meal and accommodation expenses.

Appointments

Law Society Director of Membership and Complaints Services, Terry Knott, was appointed to the board of directors of the Ontario Lawyers' Assistance Program. ■

LibraryCo Inc. budget approved

Convocation approved the 2010 LibraryCo Inc. budget, which requested Law Society funding of \$6.9 million. The budget includes grants to county libraries totalling \$5.8 million, an increase of two per cent over 2009.

September 2009 Highlights

Civility Forum invitation

Lawyers, paralegals and articling candidates are invited to participate in a province-wide series of meetings to discuss the importance of civility and professionalism in the administration of justice. Treasurer W. A. Derry Millar will lead the discussion, supported by a panel of regional members of the judiciary and the bar. *(See report page 27.)*

Visit our website for full Convocation reports:

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



Law Society thanks Attorney General for his work on legal aid

Convocation endorsed the comments of the Alliance for Sustainable Legal Aid (ASLA) in their letter to the Honourable Chris Bentley, Attorney General of Ontario. Convocation thanked the Attorney General for his work to increase Legal Aid Ontario's funding. (See report page 38.)

LAWPRO insurance premiums

Convocation accepted LAWPRO's report outlining the Law Society's professional liability insurance program for 2010. The base premium for professional liability insurance coverage for Ontario lawyers in 2010 will be \$2,950 per lawyer.

Post-call professional development requirement to commence January 1, 2011

Convocation approved a change in the commencement date for the 24-hour professional development requirement for new lawyers. The requirement will commence on January 1 of the year immediately following a lawyer's call to the bar, beginning January 1, 2011. The date was changed from June 10, 2010 to harmonize reporting dates and address other administrative concerns.

The requirement for lawyers to take 24 hours of professional development within the first 24 months of entry into private practice was one of several recommendations of the Licensing and Accreditation Task Force final report adopted by Convocation in September 2008.

Summary hearing process expansion approved in principle

Convocation approved an expansion of the summary hearing process to provide that a single member of the Hearing Panel may hear cases involving failure to report to LAWPRO and breaches of By-Law 8 [Reporting and Filing Requirements]. By-Law 8 includes certain reporting and filing requirements such as the requirement to notify the Law Society of bankruptcy or insolvency.

To implement this decision, Ontario Regulation 167/07 will have to be amended to add these two new matters to those in the regulation that may be heard by a single benchner. The regulation provides that as an exception to the requirement for a three-member panel, a single member of the Hearing Panel may hear certain cases, including those that are straightforward or time sensitive. The summary hearing process was first approved by Convocation in 2005.

Appointments

The following benchers were appointed to the Inter-Jurisdictional Mobility Committee: Paul Henderson (Chair), Glenn Hainey (Vice-Chair), Thomas Conway, Carl Fleck and Susan McGrath.

Benchner Carl Fleck was appointed to the Access to Justice and Professional Regulation Committees.

Benchner Lawrence Eustace was appointed to the Professional Development and Competence Committee.

A series of appointments were made to the hearing panel. A list is available in Convocation News on the Law Society website. ■

New benchers elected



Lawrence Eustace

◀ New benchner Lawrence Eustace of Fort Frances was elected to replace Melanie Aitken who resigned in September.

New benchner Carl Fleck of Point Edward was elected to replace Joanne St. Lewis who resigned in June. ▶



Carl Fleck

Roll-call votes

September 24, 2009

LAWPRO Report

Mr. Caskey presented the Report.

It was moved by Mr. Caskey, seconded by Mr. Wright, that Convocation approve the 2010 program of insurance offered by LAWPRO set out in the Report. Carried. Vote: For – 46, Against – 1, 3 Abstentions.

October 29, 2009

Re: Consultation on Continuing Professional Development (“CPD”) Requirement

It was moved by Ms. Pawlitza, seconded by Mr. Dray, –

1. That Convocation approve for consultation with lawyers and paralegals the joint report of the Professional Development & Competence Committee and the Paralegal Standing Committee (“the Report”) regarding a continuing professional development requirement.
2. That Convocation approve a consultation period from October 30, 2009 to January 15, 2010.
3. That Convocation approve the following consultation plan:
 - a. The Law Society will provide notices to lawyers and paralegals in the *Ontario Reports*, the monthly e-Bulletin, the monthly Paralegal UPDATE and the Law Society website advising of the Report, providing a link to it, and seeking written input by January 15, 2010.
 - b. The Law Society will undertake electronic communication with lawyers and paralegals in “Convocation Updates” and in three email communications dedicated to the CPD issue and the Report, to be sent out to lawyers and paralegals on November 1, 2009, December 1, 2009 and January 4, 2010.
 - c. The Report will be sent to legal organizations and associations seeking their written submissions by January 15, 2010. If organizations/associations request, Law Society representatives may meet with them to answer questions on the Report.
 - d. The Law Society will conduct teleseminars on the Report during November and December, 2009 to elicit feedback directly from lawyers and paralegals, the dates and times to be included in the notices to lawyers and paralegals.
4. That following the completion of the consultation period, the Committees will provide Convocation with a final Report on a proposed CPD requirement for consideration at February 2010 Convocation. Carried. Vote: For – 40, Against – 2, 1 Abstention. ■

Abdul Chahbar appointed as Justice of the Peace

The Law Society congratulates Bencher Abdul Chahbar on his appointment as a Justice of the Peace of the Ontario Court of Justice in Western Ontario.

Mr. Chahbar was appointed a lay bencher by the Attorney General in 1996 and was reappointed in 2003 and 2007. During his time at the Law Society, he was an active member of Convocation serving on a number of committees including as vice-chair of the Finance and Audit Committee, vice-chair of the Audit Committee, vice-chair of the Lawyers Fund for Client Compensation Committee, a member of the Government Relations Committee, and a director of the board of LAWPRO.

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

	Attendance		Motions*	
	Sept. 24	Oct. 29	Sept. 24	Oct. 29
Aaron, Robert	✓	✓	F	A
Anand, Raj	✓	✓	F	F
Backhouse, Constance	✓	✓	F	F
Banack, Larry	✓	✓	F	F
Boyd, Marion	✓		F	
Braithwaite, Jack	✓	✓	F	F
Bredt, Christopher	✓	✓	F	F
Campion, John	✓	✓	F	F
Caskey, James	✓	✓	F	F
Chahbar, Abdul Ali	✓		F	
Chilcott, W. Dan		✓		F
Conway, Thomas		✓		F
Crowe, Marshall	✓		F	
Daud, Aslam	✓		F	
Dickson, Mary Louise	✓	✓	F	F
Dray, Paul		✓		F
Elliott, Susan	✓		F	
Epstein, Seymour	✓		Ab	
Eustace, Lawrence	✓	✓	F	F
Fleck, Carl	✓	✓	F	F
Go, Avvy	✓		F	
Gold, Alan	✓	✓	F	F
Gottlieb, Gary L.		✓		A
Hainey, Glenn	✓		F	
Halajian, Jennifer	✓		A	
Hare, Susan	✓	✓	F	F
Hartman, Carol	✓	✓	F	F
Heintzman, Thomas G.	✓	✓	F	F
Henderson, Paul	✓	✓	F	F
Hunter, George				
Krishna, Vern	✓	✓	F	F
Lawrie, Brian	✓	✓	Ab	F
Legge, Laura				
Lewis, Doug	✓	✓	F	F
MacKenzie, Gavin	✓	✓	F	F
Marmur, Dow	✓		F	
McGrath, Susan	✓	✓	F	F
Minor, Janet	✓	✓	F	F
Pawlitza, Laurie	✓	✓	F	F
Porter, Julian	✓	✓	F	F
Potter, Judith	✓	✓	F	F
Pustina, Nicholas J.	✓	✓	F	F
Rabinovitch, Jack	✓	✓	F	F
Robins, Sydney	✓		F	
Rock, Allan				
Ross, Heather	✓	✓	F	F
Rothstein, Linda	✓	✓	F	F
Ruby, Clayton	✓	✓	F	F
Sandler, Mark	✓	✓	F	F
Scace, Arthur				
Schabas, Paul	✓	✓	F	F
Sikand, Baljit	✓	✓	F	F
Silverstein, Alan	✓	✓	Ab	F
Simpson, William	✓	✓	F	F
Strosberg, Catherine	✓	✓	F	F
Strosberg, Harvey				
Swaye, Gerald	✓	✓	F	F
Symes, Beth	✓	✓	F	F
Tough, Bonnie				
Wright, Bradley	✓	✓	F	Ab
Millar, Derry (Treas.)	✓	✓		

Non-voting benchers in attendance:

September 24, 2009 –

P. Copeland, P. Furlong, D. Murphy, R. Murray.

October 29, 2009 –

A. Feinstein, D. Murphy, R. Murray, J. Wardlaw.

*Motions A=against F=for Ab=abstain

Civility tour generates interest in legal community

TREASURER W. A. DERRY MILLAR HAS held the first few sessions of the Civility Forum, a province-wide series of meetings to discuss the importance of civility and professionalism in the courts and in practice.

"The objective of the meetings is to provide an open forum to promote dialogue within the profession on the importance of civility," said the Treasurer. "We want to encourage people to attend so that we can discuss how lawyers, paralegals, the Law Society and the judiciary can take a proactive approach to raising the standards of professionalism."

Lawyers, licensed paralegals and articling students are welcome to attend and join the Treasurer in the discussions, facilitated by Alan Stitt of ADR Chambers. Each meeting has a panel of guest speakers comprised of local members of the judiciary, regional senior practitioners and staff from the Law Society Professional

Regulation division. Meetings are free and are held from 5 p.m. to 7 p.m. with refreshments being served.

The first three sessions were held in Sudbury, Ottawa and Windsor. All were well attended, with paralegals and an excellent cross-section of the local bar participating. ■



Dates for 2010 meetings are:

January 11 – Barrie	January 26 – Kitchener-Waterloo
January 12 – Mississauga	February 3 – London
January 14 – Hamilton	February 8 – Thunder Bay
January 18 – Oshawa	February 16 – Toronto

Details of the specific locations are available on the Law Society website.

There is no cost to attend. Lawyers, paralegals and articling students are asked to register for the session they choose to attend through the e-transactions website at <http://ecom.lsuc.on.ca/civilityforum/>.

The Articling Registry is in full swing

Since the summer, the Law Society has been contacting all 8,500 private law firms in the province to conduct an articling survey. The qualitative telephone survey is designed to assess the scope of articling placements across Ontario and the Law Society is grateful to those firms that have taken the time to complete the survey.

Practitioners are being asked if they have ever hired an articling candidate or if they have considered implementing an articling program in their law office. They are also asked to provide reasons why they have not hired an articling candidate and what supports they would require to facilitate implementing an articling program in their office.

The survey also provides the opportunity to tell firms about non-traditional articling structures they may not be aware of, or may not have considered, including joint articles and part-time articles. For joint articles, two or more articling principals can agree to share a student-at-law for

the articling period; they can split the time by 2.5 days a week at each firm or one week at one firm and the next at the other. The firms can submit joint or individual education plans, and normally share the articling candidate's salary.

Speaking with practitioners has provided an opportunity to raise awareness of the new Articling Registry which was launched on the Law Society website in June 2009. The registry is a recruitment and job search tool that is available to law firms, legal organizations, law students and licensing candidates. Using the registry, firms can post available articling positions and search articling candidates' profiles, and candidates can use the registry as a tool in their job search to review articling opportunities. The registry also helps smaller firms outside of major urban centres to locate law students or licensing candidates who are interested in available articling positions.

Strong fiscal management supports expanded programs

CONVOCATION APPROVED A 2010 BUDGET THAT STRENGTHENS ITS REGULATORY PROCESSES AND MAINTAINS SUPPORTS TO THE PROFESSION, INCLUDING THE POPULAR PARENTAL LEAVE ASSISTANCE PROGRAM. THE BUDGET PROVIDES FOR A MODEST INCREASE OF \$33 TO THE ANNUAL FEE FOR BOTH LAWYERS AND PARALEGALS.

"We are pleased to keep the annual fee increase for 2010 to a minimum, while continuing to support our core responsibilities and strengthening our commitment to quality assurance by increasing the frequency of our spot audits and practice reviews," says the Law Society's Chief Executive Officer Malcolm Heins. "With a moderate \$33 increase, we are still able to enhance services yet maintain an annual fee that is 2.6 per cent lower than the annual fee for lawyers in 2001. The Law Society is in a strong financial position, thanks to our conservative fiscal management over the last decade."

Highlights of the 2010 budgets for lawyers and paralegals include:

- An additional \$1,355,000 is devoted to support the expanded spot audit and practice review programs.
- An increase of \$623,000 in the Professional Regulation lawyer budget, which is primarily due to the rise in the volume and complexity of complaints.
- A total of \$733,000 from the 2009 paralegal budget is being carried over to cover ongoing good character hearings for grandparented applicants.
- A savings of \$188,000 due to a reduction in the number of Convocation and Committee days.
- A total of \$540,000 is dedicated to the Parental Leave Assistance Program for sole and small firm lawyers.
- Licensing process fees of \$2,400 for lawyers and \$1,075 for paralegals remain unchanged.

"The Society's focus continues to be on maintaining and enhancing programs that support effective governance in the interest of the public," says Law Society Treasurer W. A. Derry Millar. "The Law Society has diligently managed its resources over 2009, despite volatile economic conditions, such that our 2010 budget is realistic and sustainable." ■

NOTICE TO THE PROFESSIONS

Recent by-law amendments

Convocation made a number of amendments to Law Society rules and by-laws at its September and October meetings.

September 2009

By-Law 3 amended

By-Law 3 [Benchers, Convocation and Committees] was amended to include the procedure for the first election of paralegal members of the Paralegal Standing Committee and paralegal benchers. Convocation approved the election procedure at its June 2009 meeting.

By-Law 6 amended

By-Law 6 [Professional Liability Insurance] was amended to provide for an exemption from the payment of insurance premium levies for a lawyer otherwise exempt from the payment of levies whose practice is restricted to the provision of pro bono legal services for LAWPRO-approved Pro Bono Law Ontario programs. This exemption had previously been approved by Convocation.

By-Law 15 amended

By-Law 15 [Certified Specialist Program] was amended to reflect changes to the 'recent experience' requirement of the Certified Specialist program approved at April 2009 Convocation.

October 2009

By-Law 6.1 amended

By-Law 6.1 [Continuing Legal Education] was amended to reflect Convocation's decision at its September meeting to change the commencement date for the 24-hour professional development requirement for new lawyers. The date was changed from June 10, 2010 to January 1 of the year immediately following a lawyer's call to the bar, beginning January 1, 2011.

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

Highlights of the 2010 Budget

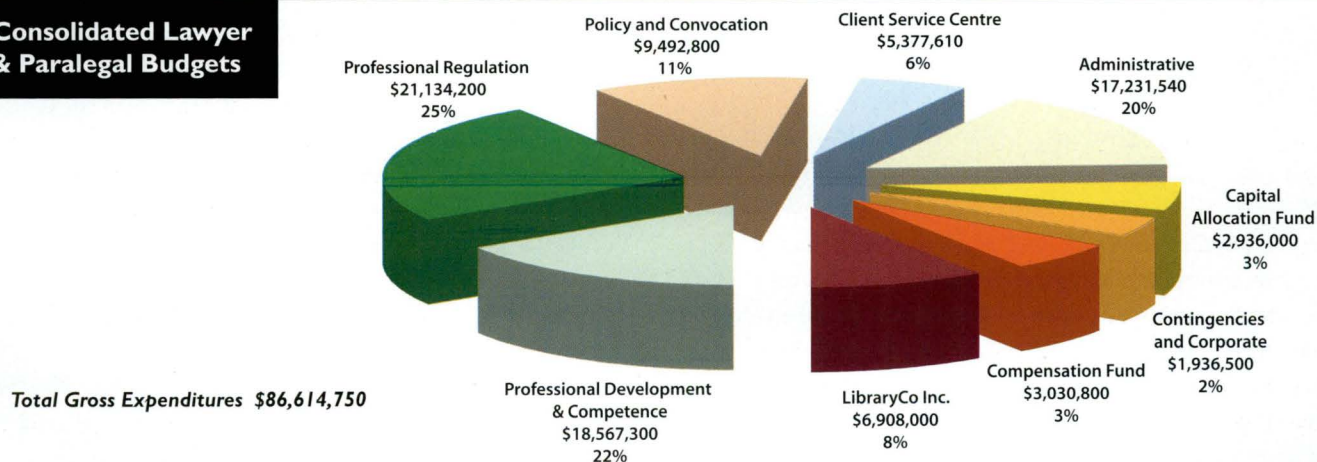
- ◆ In 2010, lawyers will pay an annual fee of \$1,736, a \$33 increase from 2009.
- ◆ In 2010, paralegals will pay an annual fee of \$933, a \$33 increase from 2009.
- ◆ Licensing Process fee for lawyers unchanged for 2010 at \$2,400.
- ◆ Licensing Process fee for paralegals unchanged for 2010 at \$1,075.

2010 Annual Fees		Lawyers			Paralegals		
COMPONENTS	2010	2009	CHANGE	2010	2009	CHANGE	
General Fee	\$ 1,211	\$ 1,212	(\$ 1)	\$ 685	\$ 710	(\$ 25)	
Compensation Fund	\$ 257	\$ 226	\$ 31	\$ 183	\$ 145	\$ 38	
LibraryCo Inc.	\$ 203	\$ 220	(\$ 17)	—	—	—	
Capital	\$ 65	\$ 45	\$ 20	\$ 65	\$ 45	\$ 20	
Total	\$ 1,736	\$ 1,703	\$ 33	\$ 933	\$ 900	\$ 33	

Law Society Annual Fee – Lawyers



Consolidated Lawyer & Paralegal Budgets



Profession's input requested on proposed continuing professional development requirement

DEVELOPING QUALITY ASSURANCE MEASURES TO ASSIST LAWYERS IN MAINTAINING AND ENHANCING THEIR COMPETENCE HAS BECOME INCREASINGLY INTEGRAL TO REGULATION IN THE PUBLIC INTEREST.

In recent years, the Law Society has paid particular attention to providing supportive tools and introducing preventive requirements, such as the practice management review program, to aid practitioners.

Other Canadian law societies including British Columbia, Saskatchewan and New Brunswick, as well as Le Barreau du Québec, have lately approved and/or introduced continuing professional development (CPD) requirements. Generally, except for Québec, the requirement is for an average of 12 hours of CPD annually. As law societies work to harmonize their processes to create national approaches wherever possible, it is important for the Law Society to consider whether greater harmonization in this area is in the public interest.

Accordingly, as part of its ongoing quality assurance efforts and in light of national initiatives, Convocation approved the Professional Development and Competence and Paralegal Standing Committees' joint report recommending a consultation with lawyers and paralegals on a proposed CPD requirement.

Proposed model

The committees concluded that the CPD requirement should be flexible, cost-effective for practitioners and directed primarily at the development of a lawyer or paralegal's career. The proposed definition of CPD is:

Continuing professional development is the maintenance and enhancement of a lawyer or paralegal's professional knowledge, skills, attitudes and ethics throughout the individual's career.

The proposed requirement is 12 hours of CPD annually. As the program is primarily intended for the maintenance and enhancement of the competence of those who practise and provide services to the public, it will apply to practising lawyers and paralegals, defined as those in the 100 per cent fee paying category, as well as certain lawyers (life members) who

are practising law and exempt from paying fees. The policy would include exemptions from the requirement to accommodate special needs and circumstances.

A minimum of 25 per cent of the CPD is to be taken in ethics, professionalism and/or practice management as both Law Society complaints and LAWPRO insurance statistics regularly reveal that the primary issues relate to client and practice management rather than weakness in knowledge of substantive law. Further, ethical issues are becoming increasingly complex and require continuous consideration both generally and in relation to the specific practice context within which lawyers and paralegals work.

To monitor compliance, lawyers and paralegals will be required to report annually that they have fulfilled the requirement and the Law Society will verify compliance through random audits of a selection of lawyers and paralegals. Those who do not comply will be subject to administrative suspension.

Proposed eligible activities

The model permits a wide range of eligible activities in recognition of the realities of practice, budgetary limits and the fact that individuals learn in a variety of ways. The proposed eligible activities are as follows:

- a) Attendance in person, online or by telephone, at continuing education programs and courses, either original or archived:
 - i) To qualify, there must be an opportunity to interact with colleagues and instructors – this may include the ability to ask questions directly or indirectly, such as the ability to email a question to the content provider during the online presentation.
 - ii) To fulfil the interaction requirement, two or more participants must be involved at the same time.
 - iii) Includes but is not restricted to:
 - legal organization/association programs
 - in-house programming provided in:
 - government
 - corporate or other non-private legal employment environments
 - private law firms
 - Law Society CLE programs
 - participation in a study group of two or more participants
 - mentoring – both the mentor and the recipient of the mentoring are entitled to claim the hours spent on

matters related specifically to substantive law, practice management or professionalism and ethics, and skills development, to a maximum of six hours of the requirement.

- b) Completion of an online or self-study course (distance learning offered by an institution resulting in accreditation, such as LL.M. or certificate courses):
 - i) For an online or self-study course to be eligible, a formal assessment must be conducted at the conclusion of the course.
 - ii) Formal assessment results must be made available to the Law Society, if requested.
- c) Teaching law-related* content (to a maximum of six hours of the annual requirement):
 - i) One hour of teaching will equal three hours of reporting credit to take into account preparation time.
 - ii) The audience can consist of a variety of attendees, not exclusively lawyers or paralegals.
 - iii) Chairing a program or course is an eligible activity (maximum allowable credit equals the total hours spent in chair capacity only)
- d) Writing law-related* books or articles (to a maximum of six hours of the annual requirement):
 - i) Must be intended for other than personal use (e.g. for publication, paper for CPD program).

**Law-related means in furtherance of the definition of CPD and would not generally include presentations to clients.*

How the requirement might be met

The following examples illustrate low cost and accessible ways to satisfy the annual requirement:

- a) Two (or more) lawyers or paralegals establish a bi-monthly two-hour CPD session to discuss recent case law developments in their practice area. They take turns 'developing' the program, one taking responsibility to determine the case(s) or issues to discuss. They consider ethics, professionalism and/or practice management issues for 25 per cent of each of those sessions. They could, for example, use the materials the Professional Development and Competence department includes regularly in the *Ontario Reports* on practice management or ethics, or articles the OBA includes in its *Briefly Speaking*. They keep a record of the issues discussed (six CPD sessions x two = 12 hours with 25 per cent requirement met).
- b) A lawyer in a firm with an in-house CPD program meets the 12-hour requirement by attending 12 one-hour lunchtime sessions to address issues coming within the CPD definition. Provided the sessions embed professionalism, ethics or

practice management in 25 per cent of the content, the CPD requirement is likely met at no cost.

- c) A junior practitioner seeks out a senior practitioner in the community and asks if she or he will act as a mentor to discuss issues related to substantive law and ethics, professionalism and/or practice management. They meet bi-monthly for at least 30 minutes. Each can claim the mentoring time that comes within the definition to a maximum of six hours. Both then each attend one live all-day program or, if travelling to live CLE is difficult, participate in a few shorter telephone programs. ■

► Consultation details

Lawyers and paralegals are encouraged to review the full report, participate in a teleseminar and provide written comments on the recommendations.

The full report is available on the Law Society's website at: http://www.lsuc.on.ca/media/convoc09_joint_report.pdf.

► Teleseminars

The Law Society will hold a teleseminar session for paralegals on November 30, 2009 and teleseminar sessions for lawyers on December 2, 2009 and December 7, 2009 to provide information and receive comments on the report. All programs take place from 5 pm to 6:30 pm.

Attendance at the teleseminar sessions is free of charge, but registration is required.

Details may be obtained at:

<http://ecom.lsuc.on.ca/cpdconsultations>.

► Written comments

Written comments on the report must be received no later than **January 15, 2010**. Please direct them to:

Sophia Sperdakos, Policy Counsel
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

ssperdak@lsuc.on.ca
phone: 416-947-5209
facsimile: 416-947-7623

Update on Justicia

A YEAR AFTER IT WAS LAUNCHED, THE JUSTICIA PROJECT HAS PROVEN ITS SUCCESS WITH A LENGTHY AND EVER-GROWING LIST OF PARTICIPATING FIRMS AS WELL AS A SUBSTANTIAL LIST OF ACCOMPLISHMENTS.



COMMITTED TO
JUSTICIA
ON S'Y ENGAGE

As of November 2009, 55 medium and large-sized firms had signed on to the project, each committed to achieving ambitious goals in four core areas: monitoring gender demographic progress, flexible work arrangements, networking and business development, and mentoring and leadership skills development for women.

Project participants have been very active, most recently producing for participating firms a number of resources including a self-assessment tool, a new parent toolkit template, a guide for law firms when preparing for a lawyer's pregnancy or parental leave, and guides to assist law firms in the development of pregnancy and parental leave policies for associates and partners. The resources are posted on the Justicia

portal and are available to all participating firms for reference, download and customization.

The Justicia Project is a three-year pilot project arising from the Retention of Women in Private Practice Working Group Report. It involves representatives from medium and large-sized firms working together, and with the Law Society, to identify and adopt principles and best practices that promote the retention and advancement of women.

Firms interested in joining the Justicia Project should contact Josée Bouchard, Equity Advisor, by telephone (416) 947-3984, or email jbouchar@lsuc.on.ca.

Parental Leave Assistance Program gets rave reviews

"PHENOMENAL" IS THE WORD LAWYER JONAH ARNOLD USES WHEN ASKED TO DESCRIBE THE LAW SOCIETY'S NEW PARENTAL LEAVE ASSISTANCE PROGRAM (PLAP).

The fund, which covers expenses associated with maintaining a practice during a maternity, parental or adoption leave, enabled him to take a three-month leave when his second son was born – without having to worry about how he would pay his office overhead costs.

PLAP is a three-year pilot program launched by the Law Society earlier this year to enable more lawyers to stay in practice following the birth or adoption of a child. (See page 33 for details on eligibility and coverage.)

The new program is one of nine recommendations from the Law Society's Retention of Women in Private Practice Working Group designed to help new parents who are sole practitioners or partners in small firms.

Since PLAP came into effect last March, 39 applicants have been approved and many have now completed their parental leaves. Of these participants, 29 were females and 10 were males. A total of 30 were sole practitioners, while the remaining nine were partners in firms of five or fewer lawyers.

Valuable bonding time

Arnold, who practises in a two-person Toronto firm specializing in dental malpractice, Weinman, Arnold LLP, says that in addition to providing a benefit to cover his office overhead expenses, the program also enabled him to experience valuable bonding time with his newborn son, which was important because his wife, who is also self-employed, wasn't able to take much of a leave.

Arnold's partner picked up his practice to ensure his clients' needs were being met while he was away. The fact that he took his leave over the summer, a traditionally slower time of year for the firm, was also fortuitous.

"I wouldn't have been able to do this before. The Parental Leave Assistance

Program really helps us sole and small practitioners,” says Arnold. “I commend the Law Society on this initiative and would be willing to pay more in dues to pass on this program to others. It really helps the family unit, and what is good for the family is also good for clients.”

A life saver

Toronto lawyer and first-time mom Penny Rounis says PLAP was a tremendous help. “It was a life saver. It would have been harder to take a leave without the program,” the sole practitioner explains.

“The money really helped – because you have to keep things going, for example, paying office rent – while you’re away. I just wish it had been around for women before me.”

Rounis’ practice focuses on wills, real estate and some corporate work, so she was able to refer potential clients to other lawyers. Some clients with wills and corporate matters were happy to wait until she returned from her leave in August.

“I would absolutely recommend the program to other lawyers,” says Rounis, who is now back at her office, practising part-time.

Encourages others to use program

Kevin Palframan, a sole practitioner in Ottawa, also took a parental leave of three months after the birth of his third child. Like Rounis, he had no partner to take on his files. He left a voicemail message on his phone and where possible, referred clients with urgent matters to other lawyers.

Like Arnold, he took his leave during the summer, which is a traditionally slower time for his practice.

Palframan says he found the program very helpful in covering his office overhead costs – including rent, phone

bills, professional liability insurance and Law Society dues. “It’s a great program,” he says. “I would not have been able to do it without the financial support it provides.”

He says he hopes that other lawyers will use the program. “I’m on my own and I was comfortable with taking the time off, and I hope others will as well. None of my clients were inconvenienced by my leave.

“It’s all about spending time with your family,” he adds. “I missed several ‘first moments’ with my other children. There was nothing like this before for sole practitioners like me.”

Support of profession is important

Apple Newton-Smith, a Toronto criminal lawyer, who had her third child in late July, says the program has been helpful and the benefits are about equal to her overheads as a sole practitioner.

While on leave, Newton-Smith was lucky to have a supportive network of colleagues – fellow criminal lawyers – who could assume her court work and to whom she could refer matters.

“A leave is expensive to take,” she explains. “The program has been helpful and it’s very valuable, but it’s not just the money, it’s the idea of support – the sense that we are supported by the profession – which is also important,” she explains.

For the criminal defence bar, where the vast majority of lawyers are sole practitioners, taking time off to have children can appear to be a financial impossibility, she says. “If the program lets women who would otherwise feel that they could not afford to stay in private practice have children and take the three months offered through the program, then it is a success,” she adds. ■

How PLAP works

The Law Society’s Parental Leave Assistance Program (PLAP) is available to women and men lawyers who meet the eligibility criteria. It provides financial benefits to those who are in firms of five lawyers or less, who do not have access to other maternity parental or adoption benefits under private or public plans. Anyone eligible for Employment Insurance is not eligible for the Law Society’s parental leave benefit.

Under PLAP, the Law Society provides a fixed sum of \$750 a week to eligible applicants for up to 12 weeks, to maximum of \$9,000 per leave, per family unit. The funds cover expenses associated with maintaining a practice during a maternity, parental or adoption leave.

More information, including answers to frequently asked questions, is available in the **Parental Leave Assistance Program** section of the Law Society website at www.lsuc.on.ca. For general inquiries, please contact the Resource Centre toll-free at 1-800-668-7380, ext. 3315, or 416-947-3315, or email plap@lsuc.on.ca.

Licensed paralegals in Ontario have an opportunity to participate in the first-ever election of five paralegal members of the Law Society's Paralegal Standing Committee in March.

The five paralegals will be elected at large in a province-wide electronic election. Online voting will take place throughout March 2010, ending at 5 p.m. EST on March 31.

Candidates must be nominated by at least five licensed paralegals. Nominations will close on January 18, 2010. Nomination forms and information packages are available on the Law Society website.

Once the paralegal members are elected, the five paralegal members and three lay bench members of the committee will select two paralegals to serve as benchers.

"Today, we have more than 2,500 licensed paralegals in the province, and

2010 PARALEGAL Standing Committee ELECTION

THE LAW SOCIETY OF UPPER CANADA

we encourage them to nominate their colleagues and to make sure they vote in this important election," says Law Society Treasurer W. A. Derry Millar. "Through the Paralegal Standing Committee, paralegals have a prominent role in the governance of their profession."

Paralegal education program audits

As part of the regulatory process to ensure compliance with standards and competencies, the Law Society is launching audits of accredited paralegal education programs.

The audits will be conducted in two parts – documentation review and site

visits where Law Society representatives will meet with program directors, senior administrators, faculty and students. They will also observe classes in session and speak to field placement co-ordinators.

All accredited school programs are scheduled to be audited within the first three years of receiving accreditation, and at least once every five years after that. An Audit Policy Framework for Accredited Paralegal Education Programs is available on the paralegal pages of the Law Society's website at www.lsuc.on.ca.

Accredited colleges

The paralegal program offered by St. Clair College of Applied Arts and Technology has been accredited by the Law Society, increasing the number of accredited college programs to a total of ten.

Institutions that currently offer a legal services program and want to ensure that their 2010 graduates are eligible for licensing must obtain accredited status on or before June 30, 2010. ■

CDLPA News

CDLPA Chair's Award for Achievement

Lynda Lamb, president of the Dufferin Law Association, has received the inaugural CDLPA Chair's Award for Law Association Achievement. In presenting the award, Randall Bocock, former chair of CDLPA, noted that Lynda and the Dufferin Law Association have demonstrated how a law association of less than 70 members can excel through focus and determination. "Their local CLE programme highlights the need for professional development and reflects the fact that practitioners prefer to have initiatives delivered locally by the members of the bar (and the bench) known and respected by them. In short, they've done an astounding job and are an example for all associations," said Bocock.

The chair's award will be presented at the end of each 18-month CDLPA president's term to the law association that has achieved notable success in advocacy, programming and services on behalf of practising lawyers within a county or district.

Lamb shared her association's achievements with 46 county and district law presidents at the CDLPA Fall Plenary in Guelph.

Using library staff expertise

On October 22, Bocock spoke at the Conference of Law Association Libraries about the CDLPA Information Exchange Platform [www.cdlpa.org] and asked for the support of library staff for practising lawyers.

"Practising lawyers will benefit from the help of library staff on how to become better electronic resource users. Our traditional bias for print media has to be put aside in favour of electronic-based research platforms," he said.

"Library staff can help lawyers to improve the quality of representation that their clients receive, which ultimately impacts the quality the access to justice that Ontarians receive."



New chair elected

Robert Zochodne was elected as the chair of the County and District Law President's Association (CDLPA). Zochodne has a civil litigation practice in Oshawa and a satellite office in Thunder Bay. The chair of the Association is elected for an 18-month term.

Personal quality assurance

Quality assurance is a method for promoting competence through a set of clearly established standards, giving the user of a service the confidence that it will satisfy certain minimum requirements.



On a personal level, quality assurance involves continuous self-improvement in a way that will positively affect one's performance at work.

This is an extensive undertaking: to maintain high quality standards in the workplace, you must make continual personal improvements as well.

Often lawyers have characteristics that are typical of, and even necessary within the profession: we can be perfectionists, conscientious, we may feel we need control, and we are often used to delaying gratification. We need approval and often are plagued with self-doubt.

In your quest to achieve the goal of quality assurance within our own work, we need to have the energy to achieve quality both physically and emotionally, and to know how to look for signs of personal impairment or distress.

If you think you are beginning to exhibit addictive behaviours, look at the spectrum of substance use (such as alcohol and drugs) from use to misuse to dependence. Do you use every day? Do you think about your next use during or immediately after use? Do you plan your day around using? Do you do the same things over and over again, expecting a different outcome? For process addictions – sex, internet, gambling – is your abuse ruining your life? Have there been consequences to your personal behaviour like relationship breakdowns, subpar work performance, or even with the law? Are you spending large amounts of money to feed your addiction?

Depression or bi-polar disorder may present symptoms such as disrupted sleep and concentration, a poor or overactive appetite, extreme weight changes,

fatigue, uncontrolled spending, inappropriate sexual adventures, rapid mood changes, thoughts of suicide, trouble making decisions, agitation, apathy, and compulsive eating, smoking or drinking. If you think you can see a pattern of any of these behaviours in your everyday actions, it is important to address them now before the quality of work that you do, as well as the quality of your personal life, is adversely affected.

Physically, there are a few basic rules to follow in order to take care of your body and to be able to perform your best in the workplace. Without some simple self-care, you will lack the focus or drive to assure quality in every project that you acquire.

Some things to try in your personal life include keeping a confidant who you can share your achievements and

challenges with; knowing when to say no to demands that are too much; taking time for yourself daily; and leaving work at the workplace.

Perhaps the most important step is to get professional help when you need it and, if you are not sure if you need help, have an assessment.

Without taking care of yourself, you will never be able to perform optimally and your work will suffer. OLAP can help.

The Ontario Lawyers Assistance Program is a 24-hour, peer support and counselling program that offers help to lawyers, law students and their immediate families with issues of stress, burnout, addictions and mental wellness concerns. You may contact OLAP at 1-877-576-6227 or visit the website at www.olap.ca. You may reach the Volunteer Executive Director, John Starzynski, at 1-877-584-6227 or john@olap.ca. ■

Stanley G. Fisher the first recipient of the Catzman Award

Stanley G. Fisher, Q.C. was awarded the first annual Catzman award, honouring those who have demonstrated a high degree of professionalism and civility in the practice of law at the Opening of the Courts in Toronto on September 14, 2009. The award was created in memory of the late Justice Marvin Catzman.

The Catzman family, together with The Advocates' Society and the Chief Justice of Ontario's Advisory Committee on Professionalism, congratulate Mr. Fisher on his exemplary integrity and civility in his practice of law. A permanent plaque in the Court of Appeal will display his name and the names of the future recipients of this annual award.

Mr. Fisher was called to the bar in 1961 and currently works at Heenan Blaikie LLP, specializing in commercial litigation.



35th Annual Ontario Bar Association Institute of Continuing Legal Education

It has been said before and holds true: change is the only constant and this year's Ontario Bar Association Institute of Continuing Legal Education will embrace change as its theme.

Institute 2010 builds on the 34 years of success in bringing together lawyers from across the province to learn about recent significant developments in law and practice; to exchange practice tips and experience; to share pragmatic solutions to challenging problems; to learn about effective strategies and best practices; to reflect on emerging legal issues; and to take away invaluable papers, precedents and checklists for future reference.

Under the leadership of new co-chairs Janice Vauthier of Vauthier, Paivalainen

(Thunder Bay) and Andrew Pinto of Pinto Wray James LLP (Toronto), **Institute 2010** will not only deliver timely, relevant, quality CLE, but also provide a forum for OBA members and non-member colleagues to renew acquaintances and network with their peers.

Institute 2010 will offer 20 full and half-day CLE programs, as well as its ever-popular tradeshow showcasing the latest in legal, financial, consumer and lifestyle products and services for lawyers. The program will be held on February 16, 2010 at the Royal York Hotel in Toronto.

The Institute's Criminal Justice program with exhibitors will be held February 20, 2010 at the OBA Conference Centre.

While the list of distinguished practitioners, academics, members of judiciary, government representatives and other experts who participate in the Institute changes from year to year, as well as the topics considered, what is constant is the dedication, commitment and willingness of over 275 chairs and speakers to share their professional time and expertise at one of the profession's most unique CLE events.

As always, **Institute 2010** will be good value and accessible to all members through a registration fee offering multiple program and distance discounts. **Institute 2010** will also feature an online micro-site to provide every registrant with access to all materials.

Since 1995, the OBA has been proud to make a substantial donation to the SickKids Foundation on behalf of speakers, volunteers and members. To date, contributions have totalled in excess of \$150,000 which helps the Foundation fund infrastructure and support the essential work of physicians, researchers and scientists, all which helps change the lives of some of our most vulnerable – sick children.

Looking for great opportunities to learn, network and be heard? Join us for **Institute 2010**. Pre-register today at www.oba.org/Institute2010. ■

BLG partner Carole Brown is the new president of the OBA

The Ontario Bar Association is pleased to announce the election of Carole Brown, partner at Borden Ladner Gervais LLP, as the president for the 2009/2010 year.

Carole has previously worked as officer, executive member and council member, and member of the Governance and Awards Committees. She says, "The OBA truly represents 'the voice of the profession' in its entirety. We think big, think inclusive and are sensitive to the needs of the public and of all of our membership."

She will be working with Lee Akazaki of Gilberston Davis Emerson LLP, the recently elected vice-president.



Tuesday, February 16, 2010
(All Programs)

The Fairmont Royal York,
100 Front Street West, Toronto

Saturday, February 20, 2010
Criminal Justice Program

OBA Conference Centre,
20 Toronto Street, Toronto

The Heritage Committee hosts Lord Reading Club dinner

As part of the Law Society Heritage Committee's Diversifying the Bar: Lawyers Make History project, the Society hosted a discussion and dinner with former members of the Reading Law Club and the Lady Reading Club on September 10, 2009. The club, named after the first Jewish Lord Chief Justice for England, was established in 1947 in response to the Lawyers Club restriction of membership to white Christian male lawyers under 40.

Over dinner, the participants reminisced about the clubs and provided valuable insight into the anti-Semitism Jewish lawyers faced in the legal profession and Canadian society at large between the 1940s and 60s when these lawyers began their careers.

The Law Society Heritage Committee's chair, Constance Backhouse, welcomed the participants with a reference to the importance of their stories:

"We can record the clubs' stories in the hope that future generations can learn



from what you experienced and avoid the prejudices and racism that should have no place in the legal profession or in society at large."

In addressing the participants at dinner, the Treasurer noted:
"You were subjected to attitudes and actions that had no place in a society that had just fought a war against the evils of Nazism and no place in a profession whose members and whose regulator were expected to uphold principles of justice, fairness and the public interest. It is a testament to your

strength, courage and fortitude that despite everything you persevered and excelled."

In 1964, the Lawyers Club extended automatic membership to all male members of the Reading Law Club. With the original impetus for the Club removed, it gradually ceased activities. The Lady Reading Club, whose members were the wives of Reading Law Club members, continued to raise funds for scholarships for law school and bar admission students until the 1970s. ■

Osgoode Society celebrates 30th anniversary

The Osgoode Society for Canadian Legal History celebrates its 30th anniversary this year, and held an all-day symposium on Canadian legal history on October 30, followed by a dinner at Osgoode Hall. The symposium was attended by nearly 100 people, and Professor John Beattie, the eminent English legal historian from the University of Toronto, delivered the keynote speech at the dinner.

The Osgoode Society was founded by The Honourable Roy McMurtry, O.C. in 1979, who remains the current president. Mr. McMurtry noted that over the last three decades the society has published 78 books and interviewed over 500 people for its oral history programme – and both of these achievements far outstrip those of any other legal history society in the world.

Take our Kids to Work at Osgoode Hall 2009

On November 4, 270 grade 9 students and their parents or guardians gathered in the Lamont Learning Centre at Osgoode Hall for Take our Kids to Work, a nationwide job-shadowing experience organized by the Learning Partnership.

Another 150 participants joined via live webcast. This was the first year the day was open to participants province-wide.

Six speakers gave students an overview of the steps to becoming a lawyer or a paralegal, what it means to work in the field of law and the range of professional options available after graduation. Presenters included Cettina Cornish and Stephen McClyment of the Law Society; the Hon Madam Justice Mavin Wong from the Ontario Court of Justice; Erinn O'Marra, Assistant Crown Attorney for the Region of Peel; Michael Lacy from Lacy Barristers; and Alyssa Manning from Vandervennen Lehrer.

This was the fourth time the Law Society has hosted this program.

LIFE MEMBERS

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

The Honourable J. C. L. Scime, Hamilton
Robert Philip Preszler, Toronto
Conrad Proulx, Sturgeon Falls
John Paul Roche, Toronto

John Charles Savchuk, Burlington
Louis Mostyn, Q.C., Toronto (Correction from the Summer 2009, Vol. 13, No. 2 issue of the *Ontario Lawyers Gazette*.)

JUDICIAL APPOINTMENTS

Federal Court of Canada

The Honourable Chief Justice Pierre Blais
(effective September 10, 2009)

Superior Court of Justice

Effective July 30, 2009

The Honourable Mr. Justice Scott K. Campbell
The Honourable Mr. Justice Martin S. James
The Honourable Madam Justice Wendy L. MacPherson

Effective August 1, 2009

The Honourable Madam Justice Helen Pierce

Effective September 9, 2009

Case Management Master Robert N. Beaudoin

Effective September 25, 2009

Case Management Master Robert Muir

Ontario Court of Justice

Effective August 12, 2009

The Honourable Regional Senior Justice Marc Bode, North West Region

Effective September 30, 2009

The Honourable Mr. Justice Mitch Hoffman

The Honourable Mr. Justice Barry Martin Tobin

Law Society thanks Attorney General for his work on legal aid

At their September meeting, Convocation endorsed the comments of the Alliance for Sustainable Legal Aid (ASLA) in their letter to the Honourable Chris Bentley, Attorney General of Ontario. Convocation thanked the Attorney General for his work to increase Legal Aid Ontario's funding.

Dear Minister:

ASLA members appreciate the dedicated work you have put into the achievement of additional funding for legal aid, culminating in \$150 million expendable over four years, in the absence of any federal contribution. Although we remain concerned that greater funding is required to address Legal Aid's immediate and long-term needs, we are committed to working with you to ensure the new funds start to bring about significant improvements to the provision of legal aid and are best used to serve the needs of the vulnerable in Ontario.

We believe the principles necessary to ensure this result include,

- An equitable distribution of the new funds among the areas of service.
- A fair implementation process to ensure that the interests of clients are protected and that existing services are not reduced.
- An evaluation that assesses improvements and expansion to services offered, not funds expended.
- Focusing the expenditures on initiatives that support and promote front line legal services and advice, to ensure that lawyers remain engaged in the provision of legal aid services.

We look forward to working with you on the details of implementation.

Yours very truly,

Raoul Boulakia, Chair, Alliance for Sustainable Legal Aid

The members of ASLA are the Association of Community Legal Clinics of Ontario, The Advocates' Society, the County and District Law Presidents' Association, the Criminal Lawyers' Association, the Family Lawyers' Association, the Law Society of Upper Canada, the Ontario Bar Association, and the Refugee Lawyers' Association.

Mark your calendar for these important dates in 2010

January 2010

- Jan. 1** 2010 Annual Fees due.
- Jan. 1** Foreign Legal Consultants' annual renewal fee and form due for FLCs approved prior to April 2003. Failure to pay fee and submit form will result in expiry of licence. FLCs approved after April 2003 must pay the annual renewal fee and file the renewal form on the anniversary month of approval.
- Jan. 18** Pre-Authorized Monthly Payment Plan (PAP) application due.
- Jan. 28** Convocation.
- Jan. 31** Affiliations annual filing report due.
- Jan. 31** Multi-Discipline Partnership annual filing report due.
- Jan. 31** Certified Specialist annual fee and annual certification report due. Failure to submit report and payment by this date will result in revocation of certification.
- Jan. 31** Lawyer Referral Service subscription fees due.
- Jan. 31** LAWPRO 2009 Fourth Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

February 2010

- Feb. 9** LAWPRO Lump Sum Payment Discount Deadline. Cheques must be dated and received by this date to qualify for the \$50 per lawyer discount on the LAWPRO insurance premium.
- Feb. 25** Convocation.
- Feb. 26** Deadline for nominations for the 2010 Law Society Medal, the Lincoln Alexander Award and the Laura Legge Award.

March 2010

- Mar. 26** Convocation.
- Mar. 31** 2009 Lawyer Annual Report due.
2009 Paralegal Annual Report due.

April 2010

- Apr. 22** Convocation.
- Apr. 30** LAWPRO 2010 Real Estate and Civil Litigation Levy Surcharge annual exemption form due.
- Apr. 30** LAWPRO 2010 First Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

May 2010

- May 1** Final date to pay annual Law Society membership fees. Failure to pay fees will result in referral for suspension on or about this date.
- May 5** Law Society Annual General Meeting.
- May 27** Convocation.
- May 31** Final date to file Multi-Discipline Partnership annual report. Failure to file by this date will result in referral for suspension on or about this date.
- May 31** Final date to file Affiliations annual report. Failure to file by this date will result in referral for suspension on or about this date.

June 2010

- June 24** Convocation.

July 2010

- July 29** Final date to file the 2009 Lawyer Annual Report or Paralegal Annual Report. Failure to file by this date will result in referral for suspension on or about this date.
- July 31** LAWPRO 2010 Second Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

September 2010

- Sept. 15** LAWPRO CLE Premium Discount deadline: Complete the online declaration by this date to receive the CLE premium credit on your 2011 insurance premium.

October 2010

- Oct. 1** Professional Corporation annual renewal application and fee due.
- Oct. 31** LAWPRO 2010 Third Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

November 2010

- Nov. 2** LAWPRO e-filing deadline. LAWPRO renewal applications for 2011 professional liability insurance must be e-filed by this date to be eligible for the \$25 per lawyer e-filing discount.
- Nov. 9** Final deadline to submit LAWPRO renewal application for 2011 professional liability insurance.

December 2010

- Dec. 31** Failure to renew the Certificate of Authorization for Professional Corporations by this date will result in expiry of Certificate.

Women Lawyers' Symposium – Fostering and Celebrating Success

A Forum to Equip, Inspire and Support Women Lawyers
in Private Practice in Ontario

February 5, 2010 ■ 9:00 a.m. – 5:00 p.m.

ATTEND

Join us Live in Ottawa
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support designed for you.

Co-chaired by: **Fay Brunning, Sack Goldblatt Mitchell LLP**
Lise S. Parent, Parent Carr

Meeting the enormous expectations of your legal career can seem overwhelming, especially in light of your family and personal obligations. The first annual Women Lawyers' Symposium, co-sponsored by The Law Society of Upper Canada and the County of Carleton Law Association, will help you to renew your engagement with the practice of law.

You will meet other women who have tackled the same challenges, and who have found the inspiration to continue working in the profession and are now thriving as lawyers. Among the many speakers, The Honourable Madam Justice Louise Charron of the Supreme Court of Canada will share stories and lessons from her life and career; and Dr. Mamta Gautam, Specialist in Physician Health and Work-Life Balance Coaching, will offer strategies on how you can fulfill your professional obligations in a healthy, positive way.

Join us for this special event presented live in Ottawa at the beautiful National Arts Centre.

If you are attending via webcast, you can watch the full morning session unfold from the convenience of your own home or office computer. In the afternoon, you will be able to observe one of the workshops pertaining to women practising in small firms or as sole practitioners.

**For more information about this program, and to register,
visit our website at <http://ecom.lsuc.on.ca/cle>**



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

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