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LA REVUE DES JURISTES DE L'ONTARIO

*Quality
Assurance*



LET RIGHT PREVAIL

The Law Society of
Upper Canada

Barreau
du Haut-Canada

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ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES
DE L'ONTARIO

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IMPORTANT NOTICE:

Private Practice Refresher Program begins January 1

STARTING JANUARY 1, MEMBERS INTENDING TO RETURN TO PRIVATE PRACTICE MAY BE SUBJECT TO THE NEW PRIVATE PRACTICE REFRESHER PROGRAM (PPRP).

The PPRP is a self-study, module-based refresher program designed for members returning to private practice after an absence from that status of 48 months over the past five years.

The self-study program includes eight modules that focus on practice management, professional responsibility and client relationships. Each module can be completed in three to four hours; six modules include a written assessment.

Designed to recognize the diverse experience acquired by members while out of private practice, the program requires completion of only certain modules, depending on each member's work history. Guidelines developed in consultation with the profession will help determine which modules are mandatory.

Members who have not been in private practice for at least twelve months of the previous five years, and who wish to move to Category A, will be required to complete an application outlining their work history.

Case-by-case assessments will then be made as to which, if any, of the program's eight modules the member must successfully complete before returning to private practice. There are no costs associated with the PPRP.

How the PPRP will work:

Members will fall into one of three categories:

Category A: those who have been in private practice (i.e., are eligible for and required to have errors and omissions insurance)

Category B: those who are not in Categories A or C

Category C: those who are retired

Private Practice Refresher Program modules:

Time management: does not include a written assessment

File management: includes a written assessment

Financial management: includes a written assessment

Client relationships/communications: includes a written assessment

Technology and equipment: includes a written assessment

Professional management: includes a written assessment

Personal management: does not include a written assessment

Professional responsibility: includes a written assessment

TREASURER'S MESSAGE

Bencher Election 2007

ONE OF THE MOST IMPORTANT EVENTS FOR THE LAW SOCIETY IN 2007 WILL BE THE ELECTION OF ITS NEW GOVERNING BOARD AT THE END OF APRIL.

As members of the bar in Ontario, each of us has the privilege of belonging to an independent profession. The independence of the bar, of which our right of self-governance is a component, is an essential attribute of a democratic society.

With the privilege of self-governance comes significant responsibility.

Benchers, as elected members of Convocation, strive to preserve and build public confidence in our profession's ability to effectively govern itself by fulfilling the Law Society's mandate to protect and advance the public interest.

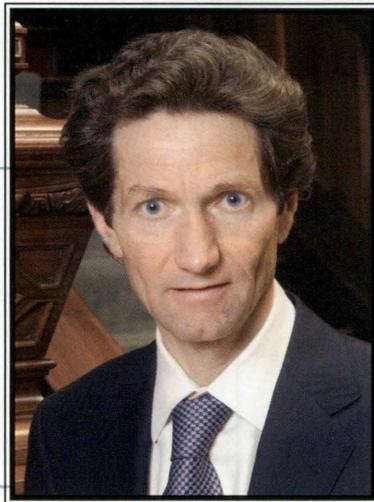
Benchers develop policy and strategy to deal with the major issues facing the profession.

As Treasurer, I encourage all members to become involved in the bencher election process this year, by nominating qualified candidates or standing for election themselves, and by voting. All are important roles.

The contribution of lawyers to the regulation of the profession in the public interest is of critical importance to the privilege of self-governance. The diversity of the legal profession and the range of activities undertaken by lawyers in Ontario provide the foundation for an effective governing body.

On being a Bencher

Forty members of the legal profession – 20 from Toronto and 20 from outside Toronto – will be elected to contribute their time, hard work and judgment as benchers of the Law Society.



**Treasurer
Gavin MacKenzie**

MESSAGE DU TRÉSORIER

Élection des conseillers et conseillères en 2007

L'ÉLECTION D'UN NOUVEAU CONSEIL D'ADMINISTRATION À LA FIN D'AVRIL SERA L'UN DES ÉVÉNEMENTS LES PLUS IMPORTANTS DU BARREAU EN 2007.

En tant que membres de la profession juridique en Ontario, chacun de nous a le privilège d'appartenir à une profession indépendante. L'indépendance du barreau, dont notre droit à l'autogouvernance est une composante, constitue un droit essentiel à une société démocratique.

Avec le privilège de l'autoréglementation, viennent de grandes responsabilités.

Les conseillers et les conseillères, qui sont les membres élus du Conseil, travaillent à préserver et à cultiver la confiance du public dans l'habileté de la profession à bien se gouverner tout en remplissant le mandat du Barreau visant la protection et la promotion de l'intérêt public.

Les conseillers et conseillères élaborent des politiques et des stratégies pour aborder les problèmes majeurs qui se posent à la profession.

Comme trésorier, j'encourage tous les membres à jouer un rôle dans le processus d'élection de 2007, soit en proposant des candidatures, soit en posant la leur, et en participant au scrutin. Ce sont tous des rôles importants.

Ce que font les juristes pour la profession dans l'intérêt public revêt une importance capitale lorsqu'il s'agit du privilège de s'autogouverner. La diversité de la profession juridique et les activités entreprises par les juristes de l'Ontario constituent les fondations d'un organe directeur efficace.

Être conseiller ou conseillère

Quarante membres de la profession – 20 de Toronto et 20 de l'extérieur de Toronto – seront élus pour donner de leur temps, pour travailler fort et pour offrir leur jugement en tant que conseillers et conseillères du Barreau.

Being a bencher means having a direct say in the regulation of the profession, helping to improve the overall governance of the Law Society and helping members of the legal community adjust to the changes we will inevitably face.

Being a bencher means contributing to the public good.

Being a bencher also means professional and personal sacrifice. Benchers devote long hours of service to the Law Society. In addition to Convocation, which entails at least nine meetings a year, there are discipline hearings, committee meetings, task force and working group meetings, and at least five Call to the Bar ceremonies – three in Toronto and one each in London and Ottawa.

There is also travel time to consider. It is estimated that the total time benchers spend on Law Society business is about 30 days per year.

Serving one's profession as an elected representative is a great honour. Having served 11 years as bencher and ten months as Treasurer, I place great value on the opportunity to play a role in meeting the challenges we all face. I wholeheartedly encourage lawyers from all communities, practice and work areas, firm sizes, and geographic locations to participate in the governance of our profession in the public interest.

I would also like to take this opportunity to thank all current benchers for their hard work and commitment to the Law Society, the profession and the public. They are to be commended for their tremendous sense of duty and for their many accomplishments during the term of the current bench.

For more information about Bencher Election 2007, see the back page of this issue. ■

Être conseiller ou conseillère signifie se faire entendre dans la réglementation de la profession, aider à améliorer la gouvernance globale du Barreau et aider les membres de la communauté juridique à s'ajuster à tous les changements inévitables.

Être conseiller ou conseillère signifie contribuer au bien public.

Être conseiller ou conseillère représente également des sacrifices professionnels et personnels. Les conseillers et conseillères consacrent de longues heures au service du Barreau. Outre le Conseil, qui tient au moins neuf réunions mensuelles, il y a les audiences disciplinaires, les réunions de comité, de groupe d'études et de travail, et au moins cinq cérémonies d'assermentation – trois à Toronto, une à London et une à Ottawa, sans oublier tous les déplacements. On estime que les conseillers et conseillères passent en tout environ 30 jours de l'année aux affaires du Barreau.

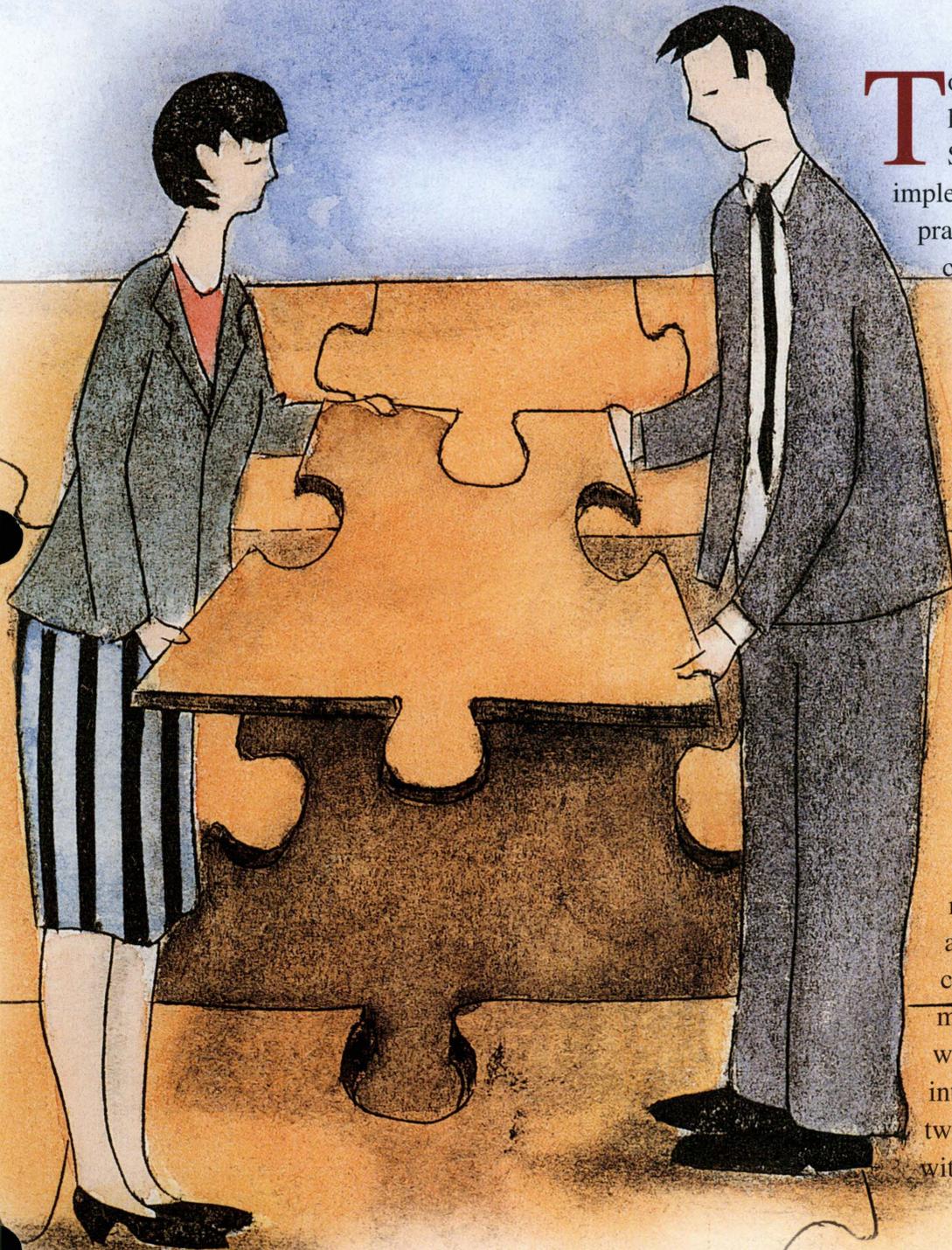
C'est un grand honneur de servir sa profession comme membre élu. J'ai moi-même servi pendant 11 ans comme conseiller et dix mois comme trésorier, et je chéris cette chance de participer à relever nos défis. J'encourage de tout cœur les juristes de toutes les communautés, en exercice privé ou non, sans égard à la taille du cabinet ou à la situation géographique à participer à la gouvernance de la profession dans l'intérêt public.

De plus, je voudrais profiter de cette occasion pour remercier tous les conseillers et conseillères actuels de leur travail et de leur engagement envers le Barreau, la profession et le public. Ils et elles méritent notre reconnaissance pour leur grand sens du devoir et leurs nombreuses réalisations dans le cours de leur mandat.

Pour plus de renseignements sur l'élection des conseillers et conseillères de 2007, lire la page au dos de ce numéro. ■

Gavin MacKenzie

Law Society expands quality assurance program to help more lawyers build better legal practices



To help lawyers build better legal practices, the Law Society is preparing to implement in 2007 an expanded practice review program that combines a proactive and preventive practice management component with the remedial approach currently in place. The expanded program is a vital initiative to improve quality assurance within the profession.

“Quality assurance is the bedrock that ensures strong competence within the profession,” says Diana Miles, Law Society Director, Professional Development and Competence. “By helping more members maintain or attain a high level of competence in their practice management procedures, we’re also serving the public interest – so we’re fulfilling two key parts of our mandate with this initiative.”

Quality assurance focuses on ensuring compliance with established standards and also entails ongoing analysis and improvements to the components that make up professional practice.

To oversee quality assurance in the profession, the Law Society annually conducts 1,000 audits through its Spot Audit Program in addition to a number of "focused practice reviews," which are remedial in nature.

These quality assurance initiatives were thoroughly reviewed recently by the Law Society's Professional Development, Competence and Admissions Committee. The Committee found that in 2005, the

management reviews for lawyers in the early stages of their careers to complement the existing "focused practice reviews" and spot audits. Convocation approved that recommendation this past spring.

Like the highly successful Spot Audit Program, the Practice Management Review Program is designed to be flexible and to assist members in evaluating their practices and improving their skills and competencies. A typical review is expected to take less than one day to complete.

"The Practice Review Management Program is also similar to the Spot Audit Program in that it will provide the

claims, and demonstrating to the public that the self-governing legal profession takes seriously its mandate to ensure high standards of competence.

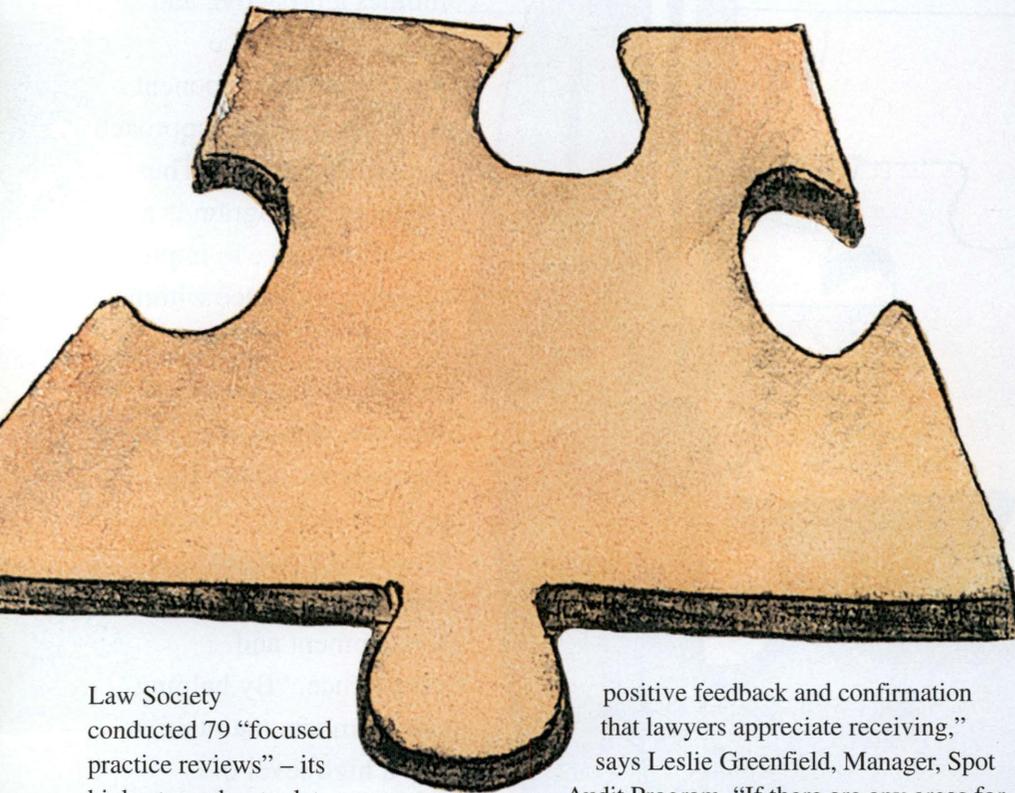
The Law Society expects the expanded practice review program to help improve lawyers' practices and business operations, as well as to help identify, early on, any potential pitfalls.

The goal is to conduct 250 reviews in 2007, 400 in 2008 and then 500 in 2009, when the program will be evaluated. Of these, as many as 80 per year will be the "focused practice reviews," which will remain a primary component of the program.

The secondary component, which the Law Society plans to phase in gradually, will be reviews of members selected at random from those who are in the first eight years of private practice. Discipline and insurance data indicate this is the high-risk stage and the time during which practice techniques are formed.

"Complaints against lawyers tend to peak between the eighth and 14th year of practice and then decline," says Miles. "By reviewing lawyers' practices before they reach that stage in their career, we hope to identify weaknesses and help lawyers to correct problems early on. Ultimately, our goal is to improve quality assurance standards and practice management techniques across the profession."

When it comes to quality assurance, the legal profession lags behind many others, such as the medical profession, the engineering profession and the accounting profession. "Lawyers are actually at the bottom of the rung when it comes to mandating quality assurance processes," Miles says. "Although we do quality improvement and provide continuing legal education, currently there is no followup to ensure that what lawyers learn is being applied in their practice."



Law Society conducted 79 "focused practice reviews" – its highest number to date.

The Committee also found that although "focused practice reviews" were restricted to members with a significant history of complaints, lawyers in private practice generally could benefit from periodic reviews of their practice management techniques.

Based on their findings, the Committee recommended introducing practice

positive feedback and confirmation that lawyers appreciate receiving," says Leslie Greenfield, Manager, Spot Audit Program. "If there are any areas for improvement and workable recommendations, we want to help lawyers find them so they can have better practices."

The objectives of the program include providing practical mentoring and advice to new lawyers, raising awareness of the available practice resources and tools, preventing complaints and liability

Quality assurance safeguards the independence of the bar

The concern, says Miles, is that if law societies don't take steps to ensure that members of the profession maintain a high level of competence, the government could one day step in and the legal profession could lose its traditional privilege of self-regulation. It's a concern faced by other professions, such as the medical profession, which has had some recent high-profile cases involving physician negligence.

Issues of standards in the profession have also been raised recently at the Supreme Court of Canada. In *Finney v. Barreau du Quebec* [2004] 2 SCR 19, the top court found the Barreau tardy in dealing with an incompetent lawyer, and that this tardiness resulted in the lawyer's client suffering damages. The court found the Barreau's action did not meet its mandate to protect the public.

The Law Society's move to improve its assurance measurement began in the

1990s with modifications to the Spot Audit Program, which was established in 1988.

In 1999, the *Law Society Act* was further amended to allow the Law Society to conduct a review of lawyers' practices to determine if they meet minimum competence levels. That gave rise to the remedial "focused practice reviews," and now the move to add the proactive, preventive practice management reviews of lawyers in the early stages of their career. ■

How the Practice Management Review Program will work

When it comes to managing a law practice, each lawyer has his or her own style and preferences. There are, however, many commonalities that can be assessed. For example, lawyers might use different "tickler" or conflict-checking systems, but there are some common elements that each lawyer should have in place.

The Practice Management Review Program is designed to be, above all, workable and practical. Members will be advised in advance that they have been selected for a review and will be given the name of the reviewer. The reviewer will then contact the member and arrange to meet at a convenient time.

At the meeting, the reviewer will go over the lawyer's practice management techniques using the Law Society's Practice Review Basic Management Checklist. It's an 18-page questionnaire that canvasses lawyers on eight areas:

Law firm practices: includes business issues such as the lawyer's main practice areas, policies the lawyer has in place governing confidentiality, conflicts of interest, tracking limitation periods and how the lawyer delegates and assigns work to staff.

Client service and communication: includes issues such as retainers, acting for multiple parties, communicating clearly with clients, returning clients' calls and carrying out clients' instructions. (This area is one of the two that account for most complaints made to the Law Society.)

Time management: includes practices such as the maintenance of to-do lists and desk diaries. (This is the second area that accounts for most complaints.)

File management: includes practices such as logging phone calls and tracking and creating files.

Financial management: includes items such as fixed hourly rates, time dockets and invoicing.

Technology: includes a look at the type of computer systems and software a lawyer has in place.

Professional management: includes CLE, library resources, professional affiliations and how a lawyer keeps abreast of changes.

Personal management: includes issues of lawyer satisfaction.

After examining all of these areas, the reviewer will write a report and sit down with the lawyer to go over it. Any weaknesses will be highlighted so the lawyer can modify his or her practice accordingly.

At the end of the review, there are six possible outcomes:

1. Close the review file: If there are no deficiencies or where any shortcomings have been addressed.
2. Monitoring: The lawyer must provide proof that any deficiencies have been addressed to the Law Society's satisfaction.
3. Undertaking: The lawyer must agree to remedy deficiencies within a specific timeframe.
4. "Re-Review": Deficiencies are serious enough to warrant a further review to ensure they have been fixed.
5. Focused Practice Review: The member is referred to remedial assistance to fix identified competence deficiencies.
6. Formal investigation: Applies in situations where the review discloses misconduct or failure to meet standards of professional competence.

Peer assessments and reviews in other professions

ENSURING THAT SOMEONE IS COMPETENT TO PRACTISE HIS OR HER PROFESSION IS A NECESSARY TASK, BUT NOT AN EASY ONE. IT'S ONE THAT MOST SELF-REGULATED PROFESSIONS CONTINUE TO GRAPPLE WITH AS THEY LOOK FOR THE PERFECT FORMULA FOR DETERMINING WHO IS AND WHO ISN'T MAKING THE GRADE.

The College of Physicians and Surgeons of Ontario calls its well-established and successful equivalent program a "peer assessment program," while the Institute of Chartered Accountants of Ontario and the Barreau de Québec call their programs "practice inspections." Their common goal is to enhance the quality of their members' services to clients by providing constructive feedback.

The following is a brief look at how these organizations handle the issue of competence:



THE
COLLEGE
OF
PHYSICIANS
AND
SURGEONS
OF
ONTARIO

The College of Physicians and Surgeons in Ontario, which oversees the province's 23,000 active physicians, relies on peer assessment.

Last year, doctors assessed almost 700 of their peers' practices. Of these, about half were randomly selected. As well, just over 100 reassessments were conducted to confirm whether practice improvements had been implemented. Another 200 were doctors over the age of 70 and still practising. The profession funds this assessment program.

The peer assessors are practising physicians who have been reviewed themselves and who are trained in what to ask and look for. A physician who is selected for a peer assessment completes a questionnaire describing his or her practice.

When it can, the College selects an assessor whose practice mirrors that of the doctor being assessed. The doctor is told who the assessor will be. It is up to either the doctor or the assessor to raise any issues of conflict.

The parties agree upon a mutual date for the assessment. The assessor attends the doctor's office and reviews the doctor's patient charts. At the end of the assessment, the doctors discuss the findings before a report is sent to the College. A doctor is given the opportunity to respond to the report if further action is deemed necessary.

If significant problems are identified, a doctor may be sent for a focused practice review, which is a one-day seminar hosted by a university. The doctor must pay the \$3,700 cost as well as the \$1,400 cost for each subsequent visit an assessor is required to make.

The Institute of Chartered Accountants of Ontario (ICAO),

the provincial regulatory body for accountants, inspects 800 firms a year – including, for educational purposes, all practices in their first year of operation. Thereafter, the frequency of inspections varies, but is not less than once every three years.

A firm selected for inspection must complete a planning questionnaire. Firms can elect to be inspected by a full-time inspector employed by the ICAO or by a part-time inspector, usually a practising accountant.

The firm receives written confirmation of the inspection date as well as the name of the inspector and may object to the appointment of the inspector on the grounds of bias or conflict of interest.

The inspector reviews the practice's quality control system and files using specially developed software that generates a report with findings and recommendations. Next, members of the firm being inspected review the report and add their comments.

A "detail reviewer" looks over the report and may add or delete comments in consultation with the inspector. The accountant or practice under review can address any concerns with the report. The report is then submitted to the Practice Inspection Committee, which issues a decision letter that either closes the file or recommends further action. Reviewees bear the cost of the inspection at the rate of \$165 per hour.



Chartered
Accountants
of Ontario

Satisfaction (almost) guaranteed: Spot Audit Program has a 98% satisfaction rate among lawyers who've completed it

WHEN RICHARD TSAI LEFT A MULTI-LAWYER FIRM TO START UP HIS OWN LAW PRACTICE, HE FOUND THAT ONE OF HIS BIGGEST CHALLENGES WAS PUTTING IN PLACE THE NECESSARY ACCOUNTING AND BUSINESS SYSTEMS.

Barreau du Québec

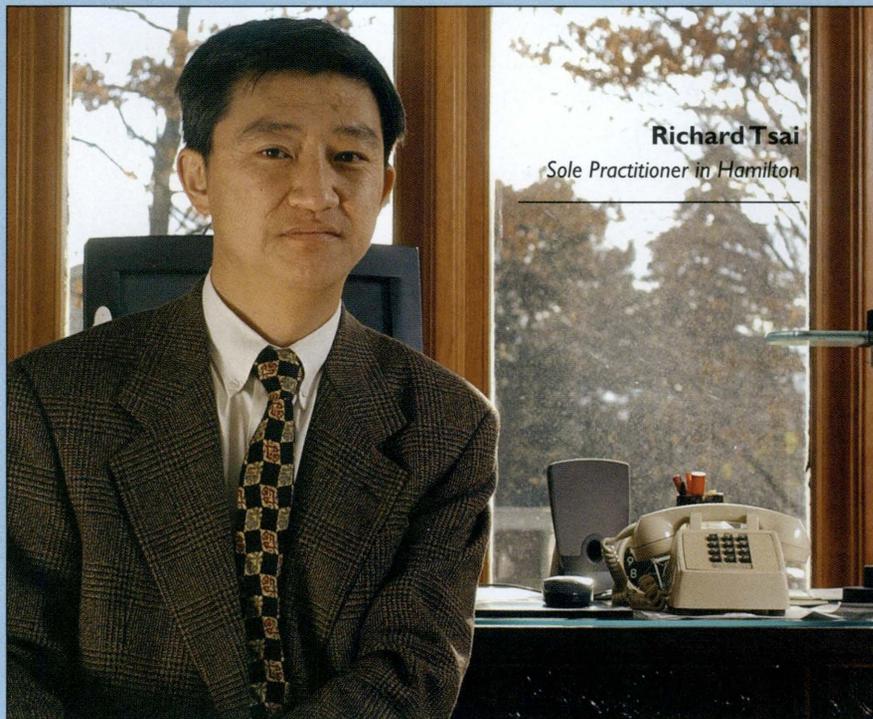


The Barreau du Québec conducts about 770 annual random inspections and 15 focused inspections of the province's lawyers. The cost is borne by the profession.

Firms that have not been inspected for a period of four to five years are selected and a list of 1,000 to 1,500 firms is generated. A self-evaluation guide that must be completed and returned is sent to each member in the firm. Based on the responses, the Barreau makes recommendations and draws up a list of 750 to 800 lawyers it will visit.

Each lawyer is given the inspector's name and the inspection date. The Barreau attempts to match the inspector's age and type of practice to that of the lawyer under review.

The inspector reviews the lawyer's files, questionnaires, books and records, then writes a report and files it with the Barreau, which sends the recommendations to the lawyer, who has six months to correct any deficiencies. ■



Richard Tsai
Sole Practitioner in Hamilton

Since he had previously worked in a multi-lawyer firm where other departments handled these systems, Tsai didn't have much experience with them. As a new sole practitioner, however, the job of building a strong law firm infrastructure fell to him.

"Starting a practice and creating accounting systems were both new to me," says Tsai. "When you set up your own practice ... you do what you think works best."

When the Law Society of Upper Canada flagged him for a routine spot audit earlier this year, Tsai was given the opportunity to see how his systems stood up to the scrutiny of an outsider.

"The audit helped me identify a more effective way to do my legal accounting," he says. "It was good to have someone with experience provide practical advice and point out a few things. And the person who came to my office set a very positive tone – she spent time personally consulting with me to make sure not just that my books were in good order, but to find a more expeditious and efficient way to do my bookkeeping. In the end, I was able to cut some unnecessary banking costs."

Another member, Ian Gavaghan, found himself in a similar situation to Tsai's when he set up a small law practice in Kingston, Ontario after a career at a large Toronto law firm and

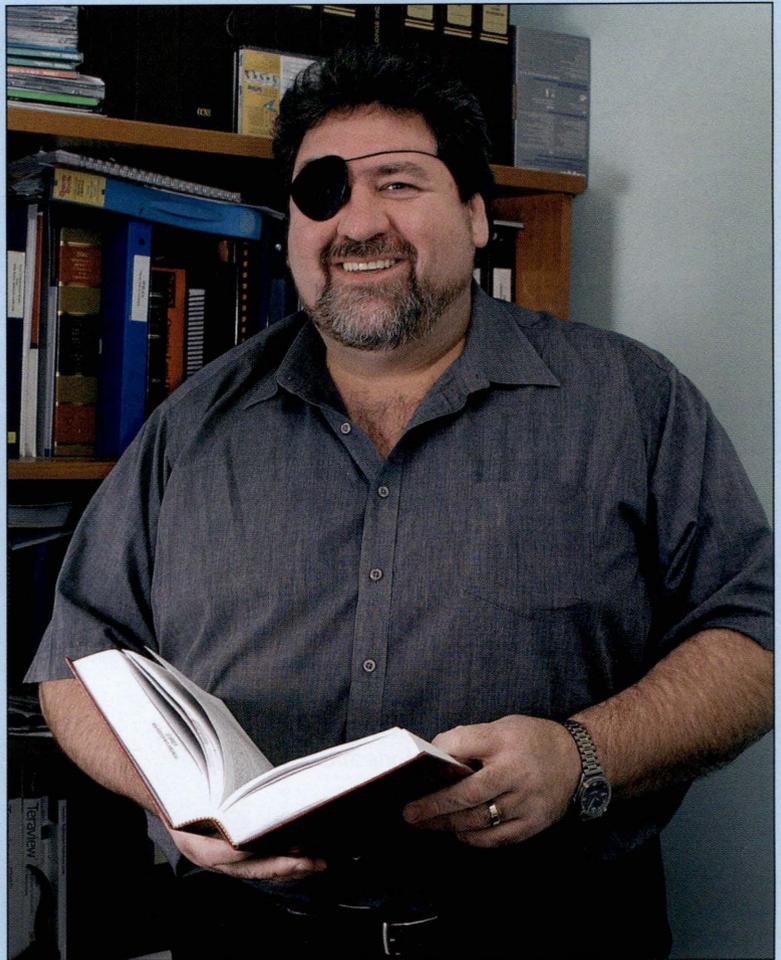
as a general counsel. Gavaghan knew his way around an Excel spreadsheet, so he picked up the *Law Society of Upper Canada's Bookkeeping Guide*, used his computer skills and built his own accounting system.

"I didn't know much about small-scale private practice accounting systems," he says. "I needed to have some validation that what I was doing worked."

That validation came in the form of a spot audit by the Law Society. "It was a useful process for me. Someone who had experience with a wide variety of accounting systems came in for half a day and gave me a lot of helpful feedback. That's what you need when you're in private practice in a small firm. You simply don't have the different kinds of expertise around you that you do in a large firm."

Tsai's and Gavaghan's positive experiences with the Spot Audit Program, which audits 1,000 lawyers per year, are not unusual: A recent survey of all the lawyers who have completed the program found an extremely high satisfaction rate: 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. ■

Ian Gavaghan
Sole Practitioner in Kingston



“ What lawyers say about the Spot Audit Program ”

“A discussion of solutions, not just problems...”

“It was nice to get confirmation that I had been complying with all the Rules and Regulations.”

“The auditors gave us usable ideas for improving our procedures.”

“The auditor explained things very well, which made the process very constructive.”

“I think it is a good process to ensure your financial records are being kept correctly.”

“We found the tips and feedback we received to be invaluable and expect them to assist us in not making errors in the future.”

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

Quality Assurance and the Client Service Centre

A PRIMARY OBJECTIVE OF THE LAW SOCIETY'S CLIENT SERVICE CENTRE (CSC) SINCE ITS INCEPTION IN 1999 HAS BEEN TO PROVIDE GOOD VALUE TO LAW SOCIETY MEMBERS, TO THE PUBLIC AND TO OUR INTERNAL PARTNERS. SO WHEN THE LAW SOCIETY SET THE GOAL OF BECOMING A "BEST IN CLASS" ORGANIZATION, THE CSC WAS READY.



Member Membre

**National
Quality
Institute**

**Institut
national
de la qualité**

The CSC demonstrates its commitment to providing value in a wide variety of ways:

First, the department offers a single point of access to most of the services and information requested by callers, correspondents and visitors to the Law Society.

Second, it has reduced the Law Society's operational costs by aligning administrative tasks with the employees best qualified and trained to perform them.

Third, it promotes efficiency by grouping similar types of tasks and processes within specific business units rather than having them scattered throughout the organization.

With the concept of value firmly in mind, CSC management has put into place a stringent set of quality control standards and monitoring mechanisms. Comprehensive tracking databases, call management

software and efficiency reports were implemented in all CSC business units.

The CSC also undertook an examination of what other organizations were doing to provide concrete proof to stakeholders that they were truly providing "Best in Class" service. The answer for many of these organizations, the examination revealed, was the Progressive Excellence Program (PEP) offered through the National Quality Institute (NQI).

An independent Canadian organization, the NQI's purpose is to help organizations achieve and sustain excellence through continuous quality monitoring and improvement.

The Law Society joined the NQI in 2005, and in July of that year, the CSC earned formal recognition for its efforts in the form of PEP Level 1 certification.

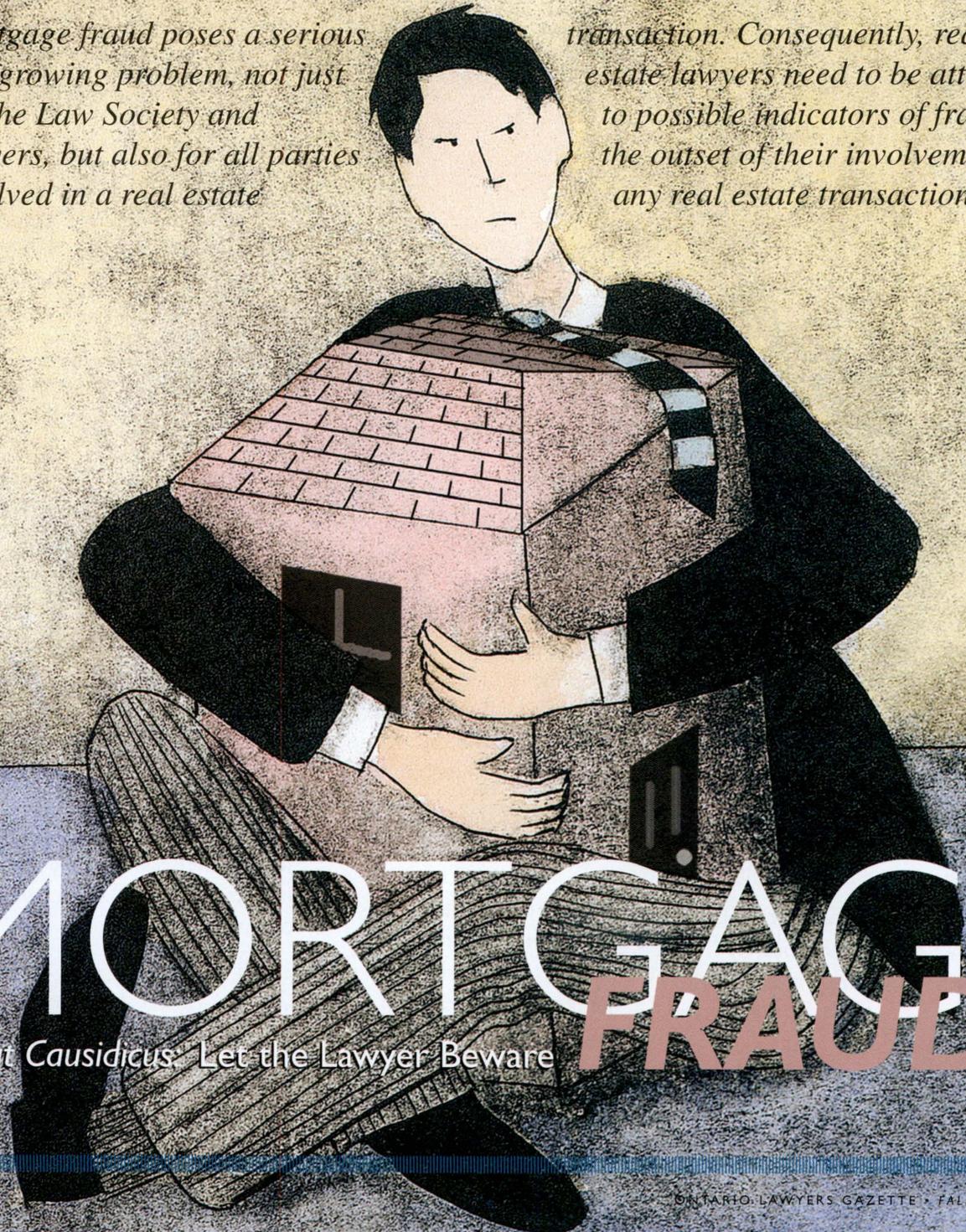
"The program helps us identify strengths and opportunities for further development, provides us with meaningful recognition of our efforts, and verifies our levels of achievement along the way. In other words, it gives us a tangible assessment and measurement of our pursuit of excellence," says CSC Director Terry Knott. "And for our team, achieving excellence isn't just a goal; it's an ongoing commitment." ■

MORTGAGE FRAUD

Mortgage fraud scenarios that may help lawyers identify red flag indicators

Mortgage fraud poses a serious and growing problem, not just for the Law Society and lawyers, but also for all parties involved in a real estate

transaction. Consequently, real estate lawyers need to be attuned to possible indicators of fraud at the outset of their involvement in any real estate transaction.



MORTGAGE FRAUD

Caveat Causidicus: Let the Lawyer Beware

In most cases, mortgage fraud involves the use of false identities (as in title fraud) and the artificial inflation of property values (value fraud).

Title fraud occurs when a property is fraudulently transferred from its true registered owner and/or a fraudulent mortgage is registered on the property. In these types of transactions, the true registered owner's identity is often misappropriated by the fraudster.

Sometimes in these transactions, the identity of the purchaser or mortgagor is also falsified. Fraudsters may pose as purchasers, or may appropriate and use the identities of lawyers to secure mortgage loans on properties for fictitious purchasers.

In such cases, false contact information and photo identification is provided to the lawyer by the client.

Title Fraud Scenario: Identity Theft

The fraudster's uncle owned his home free and clear. The fraudster told Lawyer A that his uncle wanted to transfer his home to his son, the fraudster's cousin, who, coincidentally, had the exact same name as the fraudster.

The fraudster told Lawyer A that his uncle was ill and unable to come to the lawyer's office to sign the papers.

The fraudster brought Lawyer A a forged authorization that he claimed his uncle had signed. Lawyer A arranged to transfer the uncle's property into the fraudster's name, believing it was being transferred to the fraudster's cousin.

Lawyer A had known the fraudster for a long time, so didn't mind helping him out with this family matter.

Value fraud occurs when the value of a property is inflated to deceive a mortgage lender in order to obtain a higher mortgage amount than would otherwise be available.

Occasionally, there are elements of both title fraud and value fraud in one transaction. While it may not always be possible for the lawyer to spot a fraudulent transaction, there are steps the lawyer can take to help manage risk and identify fraudulent transactions.

It is essential that lawyers familiarize themselves with the possible indicators of mortgage fraud and take steps within their practices to ensure they do not become the tools or dupes of unscrupulous clients – or third parties associated with the clients.

To help lawyers recognize possible red flag indicators of fraud in transactions, the Law Society's mortgage fraud investigation team has compiled the following scenarios. Some are based on real cases the team has investigated.

The fraudster then went to the bank and mortgaged his uncle's property for \$250,000, using Lawyer B to place the mortgage.

The mortgage went into default and the uncle and his lawyer looked

to Lawyer A for an explanation. The uncle explained that he had no children and had not spoken with his nephew, the fraudster, for many years.

COMMENTS:

- Lawyer A should not have allowed the fraudster to take documents away from the office to have them signed.
- Lawyer A should have insisted that the uncle and cousin provide instructions directly.
- Lawyer A should have reviewed the documents with the uncle and cousin and obtained identification from them prior to completing the transaction.
- Lawyer A should have insisted on following the formalities regarding the review and signature of documents – regardless of the fact that the transaction involved members of the same family and involved a person with whom the lawyer had a longstanding relationship.
- Lawyer B might have questioned why the client had not placed the mortgage at the same time that the Transfer was registered and why the client was retaining a different lawyer to do the mortgage transaction.

*Caveat
Causidicus:
Let the
Lawyer
Beware*

Value Fraud Scenario: Resale and Additional Deposit

An Agreement of Purchase and Sale was entered into between a purchaser and vendor at a purchase price of \$189,900 on December 8. The agreement provided for a deposit of \$500 payable to the vendor's solicitor. In this case, the same real estate broker represented both the vendor and the purchaser.

Lawyer A acted for the purchaser and also on behalf of the bank regarding a first mortgage to assist on the purchase. Lawyer B acted for the vendor.

The title search conducted by Lawyer A indicated that the vendor had originally purchased the property on November 17 for \$106,000 and that Lawyer B also acted on that purchase and on behalf of the bank regarding the first mortgage.

Lawyer A did not advise the bank that the property had been sold less than one month earlier for \$106,000.

On December 20, the parties signed an Amendment to the Agreement of Purchase and Sale, which was not prepared by either lawyer and which provided that the purchaser would *pay the vendor directly* a further deposit of \$12,500 on or before December 25.

On December 30, Lawyer A received a fax containing two receipts. The first indicated that the purchaser had paid a further deposit of \$14,000 directly to the vendor on December 20. The second receipt indicated that the purchaser had paid a further deposit of \$12,500 to the vendor on December 24.

Lawyer A did not advise the bank that deposits were being paid to the vendor instead of the broker. Nor did Lawyer A advise the bank that additional deposits (\$12,500 and \$14,000) were being paid.

The balance due on closing on the Statement of Adjustments was \$163,108.71. The purchaser was credited with deposits totaling \$27,000 (\$500 plus \$14,000 plus \$12,500).

On closing, the bank advanced mortgage funds in the net amount of \$170,367.19 to Lawyer A, in trust.

The mortgage advance of \$170,367.10 was greater than the balance due on closing of \$163,108.71. The purchaser did not pay any funds on closing.

Checking identification

If a lawyer is concerned about the identity of another lawyer acting in a real estate transaction, 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.

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

Lawyers should always remember the importance of obtaining and keeping photo identification of their clients in their files.

Lawyer A closed the transaction on January 4 and registered a Transfer Deed of Land from the vendor to the purchaser indicating a consideration of \$189,900 and a mortgage in favour of the bank in the principal amount of \$175,182.75.

The mortgage went into default on April 1 and the property was later sold under Power of Sale for \$130,000.

COMMENTS:

The following are some of the red flag indicators that – if identified – could have alerted the lawyer involved in the transaction.

- The initial deposit of \$500 was extremely low.
- The Agreement of Purchase and Sale was amended to provide for further deposits payable *directly to the vendor* rather than to the real estate broker.
- The property was sold 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 A 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 to lend. In this scenario, Lawyer A failed to advise the bank that:

- The property had been sold approximately one month earlier for a sum that was \$83,900 *less than the purchase price* in this transaction.
- The Agreement of Purchase and Sale had been amended.
- Further deposits were being paid prior to closing directly to the vendor.
- The amount payable on closing was less than the mortgage advance.

Value Fraud Scenario: Property Flip

An Agreement of Purchase and Sale was entered into on January 20, between Purchaser A and Vendor A, for a purchase price of \$115,000 with a deposit of \$1,000 made payable to the vendor.

There was no agent for the purchaser or vendor, and Lawyer A acted for both parties.

The closing date was originally set for February 6. The transaction was completed on February 7.

On January 20, an Agreement of Purchase and Sale was entered into by Purchaser A (now Vendor B) and Purchasers B at a gross sale price of \$493,000, with a deposit of \$10,000 made payable to Vendor B.

Again, there was no agent for the purchasers or vendor, and Lawyer A acted for all parties – including the bank – with respect to the mortgage.

The closing date was also originally set for February 6 and the transaction was completed on February 7.

An acknowledgment was signed by Vendor B and Purchasers B, acknowledging that Purchasers B were paying \$378,000 *more* than Vendor B was paying for the property.

A mortgage was obtained for \$455,901.75 and the bank made a net advance of \$442,558.86.

Lawyer A electronically signed the first Transfer indicating a consideration of \$115,000 for both Vendor A and Purchaser A, and submitted it for electronic registration on February 7.

Lawyer A signed the second Transfer indicating a consideration of \$493,000 on behalf of both Vendor B and Purchasers B and submitted it for electronic registration on February 7.

Lawyer A signed the Charge on behalf of Purchasers B and submitted it for electronic registration on February 7.

Both Transfers were registered the same day, within minutes of each other, for two different amounts.

continued on page 16

Continued from page 15

The proceeds of sale from the second transaction, on the direction of Vendor B, were paid to various parties, who were *not* parties to the transaction. 

This entire transaction became the subject matter of a complaint to the Law Society by the mortgagee. The complaint led to a Law Society Discipline action against Lawyer A.

COMMENTS:

The following are some of the red flag indicators that – if identified – could have alerted the lawyer involved in the transaction.

- Both transactions were private sales.
- There was a substantial escalation in the sale price of the property over a very short period of time.
- Deposits were paid *directly to the vendors*.
- The lawyer was asked to act for all parties (vendors, purchasers, lender) in two transactions involving some of the same parties and closing on the same day at different sale prices.
- The lawyer was instructed to make the proceeds of sale payable to third parties who were not parties to the transaction.
- Lawyer A was also acting for the bank in the second transaction, but failed to advise the bank of the red flag indicators of fraud set out in the scenario. ■

Apply Professional Judgment

Lawyers are retained by the parties to a real estate transaction to apply their professional judgment to all aspects of the transaction as it may affect their clients. This includes the mortgagee client.

While the Law Society's *Rules of Professional Conduct* allow lawyers in some circumstances to act for more than one party to a real estate and/or mortgage transaction, the lawyer undertaking such a retainer, including acting for a purchaser and a mortgage lender, must be vigilant not to favour the interests of one client over those of the other clients in the retainer.

If a lawyer has suspicions about whether he or she may be assisting the client in fraud or illegal conduct, the lawyer cannot turn a blind eye. In such circumstances, the lawyer should make reasonable inquiries to obtain information about the client, the subject matter and purpose of the retainer, and 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.

MORTGAGE FRAUD

Caveat Causidicus: Let the Lawyer Beware

Avoid being duped by unscrupulous clients:

Red flags that should prompt questions and due diligence when dealing with real estate transactions

To help lawyers recognize potential fraudulent transactions, the Law Society's mortgage fraud investigation team has compiled a list of significant indicators or "red flags" that should prompt further review of any transaction in which they appear.

While this list of indicators is not exhaustive, it summarizes many of the major issues/concerns the team has seen in its investigations of lawyers for mortgage fraud and related allegations.

The fact that one or more of the following red flags 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 red flags, a lawyer should apply extra diligence.

Lawyers have a duty to advise their clients, including lenders, of any information discovered through the evolution of the transaction that in the lawyer's reasonable opinion would affect the decision of the clients to complete the transaction. Lawyers must use their professional expertise in advising their clients about all aspects of the transaction.

- Two or more Agreements of Purchase and Sale for the same property and closing on the same day – or within a few days of one another, at different sale prices.
- Substantial escalation in the sale price of a property over a relatively short period of time.
- Short closings, coupled with excessive urgency to complete the transaction.
- The same lawyer acting for all parties, except the legitimate vendor.
- Instructions and information, such as title information, coming from a third party.
- The purchaser provides no or minimal funds on closing, such that only the mortgage advance is required to complete the legitimate purchase.
- The purchase funds come through a last-minute "gift letter," "promissory note," or second mortgage, or some other source or arrangement – and this fact is not already known to the lender and is not part of the mortgage commitment and instructions to the solicitor.
- The presence of the same purchasers, vendors, real estate agency and mortgage broker in multiple transactions.
- The lawyer receives an unusual volume of transactions from the same purchasers, vendors, real estate agency and mortgage broker.
- The lawyer is offered higher than usual legal fees for acting on transactions.
- The client does not wish to sign an acknowledgment and direction authorizing the lawyer to electronically sign and register a document.
- Last-minute registrations under Power of Attorney.
- Last-minute transfers contemplating "Trustee" arrangements such as "Trustee to beneficial owner" at NIL consideration, followed immediately by the registration of a mortgage and the advance of mortgage proceeds.
- The lawyer is instructed to address or send the reporting letter to a third party.
- Agreements of Purchase and Sale, and/or amendments to Agreements of Purchase and Sale in which deposits are payable directly to the vendor and not to the real estate agent or the vendor's lawyer.
- Additional deposits or other credits to the purchaser contained in amendments to the Agreement of Purchase and Sale and/or not supported by written agreement.
- The net mortgage advance received exceeds the balance on closing on Statement of Adjustments.
- The lawyer receives instructions to pay excess mortgage proceeds to third parties not related to the transactions. ■

SPOTLIGHT ON

Complaints Resolution team works to provide effective solutions

EVERY YEAR, THE COMPLAINTS RESOLUTION TEAM RESPONDS TO THOUSANDS OF COMPLAINTS RECEIVED BY THE LAW SOCIETY.

The team, which is part of the Law Society's Professional Regulation division, has six complaints resolution counsel, six complaints resolution officers, an administration team of four, and a manager and senior counsel/assistant manager. Each team member brings a wide variety of skills and experience to his or her position and

takes the Law Society's public protection mandate very seriously.

"Our primary role is to investigate less serious breaches of the *Rules of Professional Conduct*," explains Hershel Gross, Manager, Complaints Resolution. "This means that the allegations of misconduct, if proven true, would probably not result in a formal discipline

prosecution. Part of our approach is to work toward a voluntary resolution between the complainant and the member."

Many complainants are vulnerable and have limited resources, he notes. "Their complaints are often more about the legal system in general than their lawyers. They don't understand the system, or what a lawyer can reasonably achieve."

"What we do here is very important. We deal with the real problems of real people, and try to help them," adds Sharon Seenath, Senior Counsel and Assistant Manager for the department.

"Complaints are serious matters that go straight to the heart of professional regulation. All have to be dealt with, and there has to be an appropriate regulatory response. This means that

With the right approach, most lawyers can avoid complaints

A combination of clear communication and common sense can help most lawyers avoid being the subject of an unhappy client's complaint to the Law Society. No one knows that better than members of the Law Society's Complaints Resolution staff, who investigate complaints involving less serious breaches of the *Rules of Professional Conduct*.

"It's so important to try and return client calls as soon as possible as a first step to avoiding complaints," says Complaints Resolution Officer Debbie Mosaheb. "The majority of complaints that I see have to do with the failure of lawyers to communicate with their clients."

It's also important for members to respond promptly to the Law Society, as their regulatory body, when they are advised that a complaint has been filed against them. "Cases progress much more smoothly and quickly when lawyers co-operate in a timely way. It's

critical to maintain civility at all times, even with 'difficult' clients or lawyers."

Communicate Regularly

"Practising good communication is a key factor in avoiding complaints," adds fellow Complaints Resolution Officer Eva Markowski. "It's important for lawyers to be transparent and clear about what they can do for a client. A good lawyer has nothing to hide, so they should share information with their clients regularly."

Lawyers also have to be aware of the enormous impact their actions can have on clients, particularly if they don't communicate regularly or respond to queries, she says.

Markowski, who worked in several law firms and another regulatory body before joining the Law Society, encourages members to contact clients when possible – even if they have to delegate a staff member to do so. "The more 'difficult' or 'stressed out' a client is, the more communication is necessary," she says. "Sometimes they just need to be reassured."

"It's very important to advise clients of what you can and cannot do for them and to keep them in the loop," says Complaints Resolution Counsel Bruce Dunsmuir. "Clear communication can ensure that a client has realistic expectations when hiring a lawyer, and

each team member carries a large caseload.”

Complaints Resolution Administrative Assistant Jenny Trivino estimates that she and her fellow administrative assistants receive an average of eight calls per hour, each and every day. She says that each person deals with anywhere from 70 to 90 active files at a time, including a lot of emotionally charged phone calls from complainants.

“It’s very important to be patient and sympathetic, yet be able to maintain objectivity and composure, she says. “The work can be stressful at times, but when I am able to assist a complainant, or help a member realize there is a better way to do things through best practices, I really feel like I’ve made a difference.”

because legal services are largely ‘invisible,’ it’s important to provide clients with something tangible by communicating on a regular basis.”

Dunsmuir, who was in a small private practice firm for 26 years prior to joining the Law Society, focuses mainly on complaints relating to family and real estate law. “I know what a reasonable quality of service is, and this helps when reviewing complaints,” he says. “I also understand the practical problems that lawyers in small firms experience, and this insight can be helpful in resolving complaints.”

Complaints Resolution Counsel Lai-King Hum, a former litigator with many years of experience in both large and boutique firms, says that most lawyers understand the Law Society’s role in dealing with complaints. And while not all may agree with the

How it Works

Complainants are sent an acknowledgment letter after the complaint has been assigned to a staff member. Lawyers who are the subject of the complaint are also contacted following the assignment, unless there are special circumstances. The turnaround time varies from case to case. Some complaints can be closed within a day; others may take up to a year. The department closes approximately 1,700 cases annually.

Only about two per cent of the cases handled by Complaints Resolution staff proceed to formal hearings. Most of these cases are the result of lawyers failing to co-operate with the Law Society in investigating complaints. ■

findings or advice provided by the Complaints Resolution team, the majority of members comply.

She notes that in many of the cases she handles, members have failed to effectively manage the expectations of their clients. “It’s important for members to explain things in a way that is appropriate to the abilities of their clients. Take the extra time to know who you’re dealing with, and respond within a reasonable timeframe.”

Hum advises members to obtain clear client instructions and to document everything. “Above all,” she says, “commit to only what you can deliver.” ■

Avoiding client complaints: the Complaints Resolution team’s top tips

- ◆ Communicate with your client and document all communication.
- ◆ Respond to client inquiries within a reasonable timeframe.
- ◆ Promptly fulfil undertakings relating to your practice.
- ◆ Outline fees and disbursements at the beginning of a file, so there is no confusion.
- ◆ Define the terms of retainers (including any limitations).
- ◆ Document your client’s instructions.
- ◆ Provide a final written summary to clients.
- ◆ Fulfil professional financial obligations by promptly paying bills relating to your practice.
- ◆ Maintain civility at all times with your clients, colleagues and the Law Society, which can also file complaints.
- ◆ Don’t dabble in practice areas you’re unfamiliar with.
- ◆ Bill clients at reasonable and regular intervals, so the client is informed of the ongoing costs.

The Ontario Lawyers' Assistance Program: A New Vision in Lawyer Care

The Ontario Lawyers' Assistance Program (OLAP) offers peer support and short-term counselling. An agreement with a national provider of employee assistance programs ensures counselling services are available across the province to lawyers, judges, law students and their immediate families regarding issues affecting their ability to function optimally – **addictions, stress and burnout, mental health issues and process addictions (gambling, internet).**

OLAP is the combination of two successful programs that have served the legal community well for a long number of years – the Ontario Bar Assistance Program and LINK. Each of these programs offered its individual specialty of peer support and professional counselling. They have now been combined into one organization that provides an integrated and responsive program – OLAP.

The board of directors is representative of peer support lawyers, funders and legal organizations in Ontario, including the Criminal Lawyers' Association, the County and District Presidents' Association, the Women's Law Association, The Advocates' Society, the Canadian Judges' Conference, and the Ontario Bar Association, as well as the Law Society of Upper Canada and LAWPRO. Funders remain independent of the process.

The cornerstone of OLAP is **Confidentiality.** (See *Rules of Professional Conduct* 6.01 (3) and the attached commentary.)

Callers can discuss any problem with OLAP without the program's obligation to report unless the conduct relates to criminal activity affecting a client's interest, such as trust account defalcation, or immediate danger of harm to self or another person.

There is a single point of entry to the program to access either peer support and/or counselling. Simply call **905-238-1740 or 1-877-576-6227 toll-free** to speak to OLAP staff.

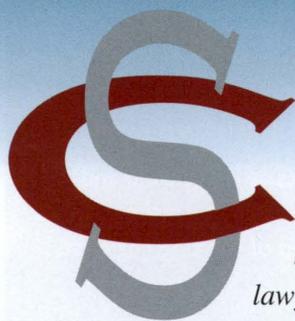
The OLAP staff includes: Program Manager Leota Embleton, who has a Masters of Social Work and is a certified addictions counsellor as well as a marriage counsellor; Case Manager Doron Gold, who is a lawyer with personal coach training; and Volunteer Executive Director John Starzynski, who is a retired lawyer and volunteer counsellor with personal experiences of bipolar mood disorder.



ONTARIO LAWYERS' ASSISTANCE PROGRAM
905-238-1740 or toll-free at 1-877-576-6227

OLAP UNDERSTANDS LAWYERS
OLAP REACHES OUT TO LAWYERS

Congratulations to our newest Certified Specialists



The Law Society of Upper Canada is pleased to announce that the following lawyers have achieved the Certified Specialist designation. Certified Specialists have met established standards of experience and knowledge requirements in designated areas of law and have maintained exemplary standards of professional practice.

Bankruptcy and Insolvency Law

E. Patrick Shea, Toronto

Construction Law

Paul A. Ivanoff, Toronto

Corporate and Commercial Law

Albert Edward Robinson, Owen Sound
David F. Smith, Barrie

Environmental Law

Stanley David Berger, Toronto

Estates and Trusts Law

Kimberly Ann Whaley, Toronto

Labour Law

John Lawrence Stout, Toronto

Municipal Law

Anna Kinastowski, Toronto
Leo F. Longo, Toronto

Real Estate Law

Douglas Richard Downey, Orillia

The entire list of Certified Specialists can be found in the online Directory of Certified Specialists at www.lsuc.on.ca.

Visit the Member Resource Centre at www.lsuc.on.ca to learn more about the Certified Specialist Program, or phone us at 416-947-3315 or 1-800-668-7380, ext. 3315. ■



Mark your calendar for these important dates in 2007

JANUARY 2007

- January 1 2007 annual Law Society membership fees due.
- January 1 Foreign Legal Consultants' annual renewal fee due for FLCs approved prior to April 2003. Failure to pay fee will result in expiry of licence. FLCs approved after April 2003 must pay annual renewal fee on anniversary month of approval.
- January 15 Pre-Authorized Monthly Payment Plan application due.
- January 25 Convocation.
- January 31 Affiliations 2006 annual filing report (Form 32B) due.
- January 31 Multi-Discipline Partnership annual filing report (Form 25B) due.
- January 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.
- January 31 Lawyer Referral Service subscription fees due.
- January 31 LAWPRO 2006 Fourth Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

FEBRUARY 2007

- February 9 2007 Bencher Election – Nomination forms due.
- February 22 Convocation.
- February 23 Deadline for nominations for the 2007 Law Society Medal and the Lincoln Alexander Award.

MARCH 2007

- March 1 LAWPRO Lump Sum Payment Discount deadline. Cheques must be dated and received by this date to qualify for the \$150 per lawyer discount on the LAWPRO insurance premium.
- March 29 Convocation.
- March 31 2006 Member's Annual Report (MAR) due.

APRIL 2007

- April 26 Convocation.
- April 30 2007 Bencher Election – Ballots must be received by 5:00 p.m.
- April 30 LAWPRO 2007 Real Estate and Civil Litigation Levy Surcharge annual exemption form due.
- April 30 LAWPRO 2007 First Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

MAY 2007

- 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 9 Law Society Annual General Meeting.
- May 25 Convocation.
- May 31 Final date to file Multi-Discipline Partnership annual filing report (Form 25B). 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 (Form 32B). Failure to file by this date will result in referral for suspension on or about this date.

JUNE 2007

- June 28 Convocation.

JULY 2007

- July 31 Final date to file the Member's Annual Report (MAR). Failure to file by this date will result in referral for suspension on or about this date.
- July 31 LAWPRO 2007 Second Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

SEPTEMBER 2007

- September 15 LAWPRO CLE Premium Discount deadline: Complete the online declaration by this date to receive the CLE premium credit on your 2008 insurance premium.

OCTOBER 2007

- October 1 Professional Corporation annual renewal application and fee due.
- October 31 LAWPRO 2007 Third Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

NOVEMBER 2007

- November 1 LAWPRO E-filing Deadline. LAWPRO renewal applications for 2008 professional liability insurance must be e-filed by this date to be eligible for the \$50 per lawyer e-filing discount. E-filing Deadline.
- November 8 Final deadline to submit LAWPRO renewal application for 2008 professional liability insurance.

DECEMBER 2007

- December 31 Certificate of Authorization for Professional Corporations who fail to renew by this date will expire.

L'attrait des États-Unis pour les juristes canadiens

La *Revue des juristes de l'Ontario* s'est entretenue avec l'avocate ontarienne Véronique Malka Nasser, qui exerce le droit de l'immigration au New Jersey dans le cabinet Nachman & Associates, pour aider ceux qui désirent s'installer aux États-Unis ou qui viennent vivre au Canada depuis les États-Unis.



**M^e Véronique
Malka Nasser**

M^e Malka Nasser est diplômée de l'Université McGill où elle a fait son droit civil et sa common law. Elle a travaillé comme chercheuse pour la Cour d'appel du Québec et pour le Congrès juif canadien dans des causes de poursuite de criminels de guerre nazis portées devant la Cour suprême du Canada. Elle a également fait un stage dans un cabinet à Londres, en Angleterre. De toute évidence, les frontières pour M^e Nasser Malka servent à être repoussées, mais pas au détriment des enfants, et elle est reconnue pour son travail sur les dossiers d'enlèvement international d'enfants sous la Convention de la Haie. M^e Malka Nasser a combiné son expérience en droit de la

famille, particulièrement en procédures de divorce, avec une formation en droit international. Elle raconte qu'encouragée par le doyen de la faculté de droit de McGill, M^e Toope, elle avait été acceptée à la maîtrise à l'Université de Lund, près de la Cour internationale de la Haie, du temps que Louise Arbour en était la présidente. Cependant, un heureux événement, la naissance de sa fille, lui a fait prendre un autre chemin.

M^e Malka Nasser a longtemps consacré son temps et son énergie à la cause de l'accès à la justice bilingue en Ontario. En tant que membre de l'AJEFO, elle a organisé des cyclothons et autres campagnes de sensibilisation. Elle a même comparu à Queen's Park

pour défendre le bilinguisme des règlements législatifs devant des comités de l'Assemblée législative.

En 2003, elle a déménagé aux États-Unis pour s'y installer avec son mari américain et elle prévoit de faire son Barreau de New York lorsque ses enfants seront plus grands. En plus de sa pratique privée et de son rôle de mère, elle continue d'écrire des textes sur les sujets qui la passionnent et dont elle veut partager l'information avec tous les juristes intéressés. Cependant, lorsqu'elle est allée vivre aux États-Unis, elle a eu fort à faire pour continuer d'exercer le droit et pour offrir ses services sur le marché international.

Les avancements technologiques de notre société encouragent effectivement ce genre de mobilité, mais les obstacles sont nombreux. M^e Malka Nasser a dû elle-même en affronter plusieurs et, dit-elle, c'est le cas de quiconque détient un diplôme en droit civil du Québec, ou un diplôme en common law d'une province canadienne, et qui espère exercer au-delà de nos frontières. En fait, les barreaux de plusieurs États des É.-U. requièrent un diplôme en droit d'une université reconnue par l'Association du Barreau américain. En d'autres mots, explique M^e Malka Nasser, « les barreaux veulent un diplôme américain ou *Juris Doctorat*. Malheureusement, le diplôme LL.B., bien que basé sur la même common law que les États-Unis, n'est pas facilement reconnu en Amérique. Seuls les États de New York, du Massachusetts et de la Californie sont prêts à l'accepter, et encore, seulement s'il provient de certaines universités canadiennes, comme McGill à Montréal. De plus, les avocats canadiens qui viennent exercer dans l'un de ces trois États doivent passer l'examen du Barreau applicable, sans oublier que les examens de ces États comptent parmi les plus difficiles. »

M^e Malka Nasser soutient cependant que certains États américains reconnaissent désormais les compétences des juristes canadiens, non pas en fonction de leurs diplômes d'études en droit, mais plutôt selon une nouvelle catégorie de juristes qui apparaît sur les rôles : celle des conseillers juridiques étrangers.

Aux États-Unis, les journaux publient de plus en plus d'annonces de postes dans cette spécialité. M^e Malka Nasser observe que pour satisfaire à la demande de leurs clients internationaux, les grands

cabinets comptent maintenant de nombreux conseillers juridiques étrangers.

Elle explique que dans les États de New York et du New Jersey, par exemple, la demande de certification se fait auprès du tribunal de la Cour suprême. Elle est soumise par écrit, avec preuves à l'appui afin de démontrer le droit de l'avocat d'exercer à l'étranger, ainsi que les preuves de bonnes mœurs. Aucune comparution n'est nécessaire. Les frais initiaux pour cette licence sont de 500,00 \$ en moyenne. Voici donc une

bonne façon de pouvoir continuer sa pratique en dehors du Canada, sans avoir besoin de payer des frais de pratique élevés ou de passer des examens de Barreau difficiles.

Par ailleurs, le Barreau du Haut-Canada offre déjà la certification de conseiller juridique étranger. Dès 1988, le Barreau avait une politique sur les conseillers juridiques étrangers, et le processus a été officialisé avec l'adoption du Règlement administratif 39 en avril 2003. Ce programme compte déjà 82 avocats autorisés à exercer en Ontario. ■

Être sourd et francophone en Ontario

La Fondation Trillium de l'Ontario a accordé récemment une subvention à l'Association ontarienne des sourds (Ontario Association of the Deaf) pour des projets visant à aider les communautés francophones et autochtones sourdes de l'Ontario. D'après M^e Jennifer Jackson, directrice générale de l'Association, il est difficile pour les sourds francophones de cette communauté d'avoir accès à divers services dont les services juridiques, qui sont actuellement offerts aux francophones qui entendent bien. Les services sociaux et juridiques sont déjà rarement offerts aux sourds anglophones, et la situation est pire pour les malentendants francophones.

La subvention Trillium tombe donc à point pour aider l'OAD à s'attaquer à ce problème. M^e Jennifer Jackson a délégué Evelyne Gounetenzi à ce projet. Mme Gounetenzi a partagé avec la *Revue des juristes* son interprétation des faits relatifs à son projet pour souligner le besoin de cette clientèle désavantagée à de nombreux points de vue sur le plan des services.

L'Association ontarienne des sourd(e)s francophones estime à environ 3 000 sourds francophones en Ontario, ce qui en fait une minorité à l'intérieur de la communauté des sourds.

Les moyens de communication parmi les personnes sourdes francophones sont divisés. Par exemple, explique Mme Gounetenzi, ce ne sont pas tous les sourds qui s'identifient à la communauté québécoise de la LSQ. Il existe



M^e Jennifer Jackson et Evelyne Gounetenzi

donc très peu de services pour la communauté de LSQ.

Il devient d'autant plus difficile pour les francophones de s'engager dans les activités d'organisations de personnes sourdes en raison d'un manque d'accès aux services, car ces organisations offrent surtout des services en ASL et très peu en LSQ, pourtant nécessaires aux francophones qui veulent obtenir des services et des conseils juridiques. L'AOSF est en fait la seule organisation francophone en

Ontario qui pourrait faire quelque chose en la matière, mais en est incapable vu ses ressources extrêmement limitées. Par ailleurs, les interprètes de LSQ sont difficiles à recruter. Il est donc nécessaire de donner aux sourds francophones plus de moyens pour préserver la langue des signes québécois dans la communauté.

Grâce à la subvention de la Fondation Trillium, l'OAD espère sensibiliser les deux communautés et les aider à mieux se connaître. La somme de 244 100 \$, échelonnée sur 28 mois, permettra de présenter des ateliers de direction fondés sur les compétences et culturellement adaptés, dans le but d'offrir aux personnes sourdes francophones, autochtones et métisses des possibilités de travailler et de participer à la vie de leur communauté, et permettra aussi l'établissement d'une clinique juridique où les personnes sourdes pourront obtenir des services dans leur langage (LSQ) grâce à des interprètes qui les aideront à mieux comprendre la procédure judiciaire. ■

Des exemptions qui font plaisir au Barreau

DANS CE QUI REPRÉSENTE UN PROGRÈS considérable pour la profession juridique au Canada, le gouvernement fédéral a déposé des modifications à la loi fédérale sur le recyclage des produits de la criminalité de façon qui touche la relation avocat-client et l'autorité d'autoréglementation de la profession.

L'article 10.1 du projet de loi C-25, modifiant la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* exempte les conseillers juridiques ou les cabinets d'avocats des articles de la loi qui les obligeaient auparavant à déclarer toute opération financière effectuée ou tentée dans le cours d'activités susceptibles d'avoir été liées à des infractions de recyclage des produits de la criminalité, entre autres.

La loi de 2000 sur le recyclage des produits de la criminalité (blanchiment d'argent) assujettissait les juristes aux mêmes obligations que les établissements financiers, les comptables et autres intermédiaires financiers. La Fédération

des ordres professionnels de juristes, bien qu'étant d'accord avec les principes de base de la loi, s'est opposée aux exigences de déclarations pour les juristes parce qu'elles violaient les principes constitutionnels fondamentaux de loyauté envers les clients, associée à l'indépendance du Barreau. La Fédération trouvait que l'intérêt public serait mieux servi si les barreaux réglementaient eux-mêmes le risque du blanchiment d'argent par les juristes. La Cour suprême s'est déclarée d'accord avec la Fédération.

Depuis, tous les barreaux ont adopté le règlement de non-versement en espèces qui interdit aux avocats et avocates d'accepter 7 500 \$ et plus de clients ou de tierces parties (sauf en situation exceptionnelle). En Ontario, les juristes témoignent de leur conformité à ce règlement (qui fait maintenant partie des règlements administratifs 18 et 19) dans leur Déclaration annuelle. Et selon le *Code de déontologie*, les avocats et avocates doivent être conscients de la légalité des

opérations de leurs clients et de toute activité suspecte en cours de mandat.

Par ailleurs, la Fédération est en train de mettre au point un règlement modèle sur l'identification des clients et des exigences de vérification pour traiter des propositions du gouvernement fédéral à cet égard. Ce modèle exigera des juristes de tenir des registres qui vérifient adéquatement l'identité de leurs clients. Les registres ne pourraient être divulgués à la police que sur ordonnance d'un tribunal, par exemple.

Le directeur général du Barreau, M^{re} Malcolm Heins, qui a représenté le Barreau au comité sur le blanchiment d'argent de la Fédération, s'est dit très heureux des modifications qui, à son avis, protègent l'indépendance de la profession juridique et nous rapprochent d'une entente avec le gouvernement sur un sujet qui nous préoccupe tous – empêcher les criminels d'utiliser les avocats et avocates pour faciliter le blanchiment d'argent. ■

En bref

Le Barreau approuve une politique sur les congés parentaux et de grossesse dans les cabinets

Ce guide porte sur les avantages sociaux pour le personnel et les associés qui veulent passer du temps avec leur nouveau-né ou enfant adopté.

Règles de pratique et procédure

La règle 3 a été modifiée pour tenir compte de la décision de juin 2006 de rendre publiques les instances sur la compétence et la capacité.

Budget 2007 approuvé

Le Barreau augmente de 6 % la cotisation pour soutenir ses fonctions de réglementation, mais la prime de base de LAWPRO sera 100 \$ de moins qu'en 2006.

Le Barreau envoie des lettres d'intervention sur les violations des droits de la personne qui visent les juristes

Ces lettres sont le fruit des recommandations du groupe de surveillance des droits de la personne du Barreau établi en mars 2006.

Le Barreau participera à la création d'une nouvelle commission du droit de l'Ontario

Le Conseil a appuyé la nouvelle commission sur laquelle le Barreau, le procureur général et d'autres partenaires travailleront.

Nominations

M^{re} Thomas Heintzman a été nommé au comité d'autorisation des instances et comme vice-président du comité de réglementation professionnelle.

La défense de l'équité au Barreau du Québec

À L'INSTAR DE CINQ AUTRES BARREAUX canadiens, dont le Barreau du Haut-Canada, le 15 juin 2006, le Barreau du Québec se dotait d'une conseillère à l'équité en la personne de M^e Fanie Pelletier. Le Barreau est le premier ordre professionnel au Québec à créer un poste de conseiller à l'équité. Au Canada, de tels postes ont été créés au sein des barreaux de la Colombie-Britannique, de l'Alberta, de l'Ontario, de la Nouvelle-Écosse et du Manitoba.

Il existait au Québec des comités sur les communautés culturelles ainsi que sur les femmes dans la profession, et les constats de ces derniers ont mené à la création du poste de conseillère afin de mieux protéger le public en promouvant l'accès à la justice et à la défense du droit à l'égalité.

Dans une entrevue avec le Journal du Barreau du Québec, M^e Pelletier affirme vouloir travailler sur la prise de conscience de la profession en la sensibilisant, en l'éduquant et en encourageant un milieu ouvert à la diversité et exempt de discrimination ou de harcèlement. Tout comme le Barreau du Haut-Canada, le Barreau du Québec élaborera des politiques modèles sous la direction de M^e Pelletier qui serviront d'outil pour les cabinets et autres employeurs. Elle travaillera également à la recherche de données et les communications avec d'autres barreaux et associations juridiques.



M^e Fanie Pelletier

Barreau du Québec

Pour M^e Pelletier, comme pour les autres conseillers à l'équité, il en va du droit à l'égalité et de l'absence de discrimination. Elle parle aussi de diversité en termes de représentation dans la profession. Dans tous les ressorts, les conseillères et conseillers doivent combattre la discrimination systémique, intentionnelle ou non, et l'apparente indifférence à la cause du système et des processus. Des barrières en cours de carrière s'ajoutent à celles qui se trouvent à l'entrée de la profession.

M^e Fanie Pelletier déclare vouloir commencer par recueillir des données sur la situation des membres issus de communautés culturelles (que nous appelons ici, au Barreau du Haut-Canada, les communautés en quête d'égalité), par le biais de la déclaration annuelle et par des campagnes de sensibilisation

pour combattre l'incompréhension des gens qui auraient peur d'être identifiés à leur détriment. Elle entend également travailler sur un programme de mentorat pour jumeler des étudiants et étudiantes de l'école du Barreau issus des

communautés ethniques avec un mentor dans la même situation, mais qui a franchi les étapes et surmonté les barrières.

L'objectif de M^e Fanie Pelletier est de voir une profession juridique représentative de la société en général et où tous et toutes puissent mener une carrière satisfaisante sans égard à leur situation personnelle, familiale ou leur origine.

Dans l'article consacré à M^e Pelletier, le Journal du Barreau du Québec a fait état de la féminisation de la profession. Ainsi, la population juridique est constituée de 44 % de femmes, et de 60 % de femmes chez les avocats de dix ans et moins de pratique, ce qui fait de ce Barreau le plus féminisé du Canada.

Les autres barreaux qui comptent des postes en matière d'équité sont celui de la Colombie-Britannique, avec M^e Kuan Foo, celui de l'Alberta avec M^e Susan Billington, celui de la Saskatchewan avec M^e Kirsten Logan, celui de la Nouvelle-Écosse avec M^e Sherida Hassanali, celui du Manitoba avec M^e Marilyn Billinkoff et bien sûr, celui de l'Ontario avec M^e Josée Bouchard.

Ces postes visent à offrir une lentille stratégique, des directions et des conseils sur tous les aspects de l'équité dans la profession juridique, à défendre les communautés qui sont traditionnellement désavantagées et à préparer du matériel pédagogique en la matière. Chaque programme, à sa façon, porte son attention sur des enjeux qui aident la profession juridique à mieux comprendre le bénéfice de l'équité et de la diversité. Les juristes qui s'acquittent de ce mandat travaillent de près avec des comités de leur barreau sur des sujets tels que les relations avec les races, l'équité entre les sexes, la rétention des juristes marginalisés ou des femmes dans la profession, et offrent des programmes de mentorat pour faire le lien avec la relève. ■

CONVOCATION December Highlights

Governance Task Force Interim Report

Convocation approved recommendations of the Governance Task Force to improve procedures for the Treasurer's election. The recommendations deal with electronic voting, the nomination process, the voter's list and breaking a tie. Convocation also approved a recommendation to create a process by which certain matters may be placed on Convocation's agenda. The by-laws will be amended at a future Convocation to reflect the changes.

Appointments

New bencher Avvy Go was appointed to the Equity and Aboriginal Issues Committee and the Access to Justice Committee.

Benchers James Caskey, Carole Curtis, Anne Marie Doyle, Laura Legge and Julian Porter were

appointed to the Law Society Medal/Lincoln Alexander Award Committee.

Benchers Carole Curtis, Anne Marie Doyle, Laura Legge and Julian Porter were appointed to the LL.D. Advisory Committee.



Avvy Go

November 23 Highlights

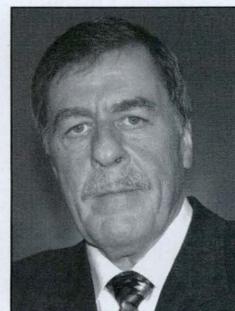
New benchers welcomed

Convocation welcomed newly appointed paralegal benchers Paul Dray and Brian Lawrie and newly elected bencher Avvy Go.

Go was elected from the City of Toronto electoral region to fill a vacancy created by Laurence Pattillo's appointment as judge of the Superior Court of Justice. Dray and Lawrie were recently appointed paralegal benchers by Attorney General Michael Bryant. Dray is a former lay bencher.



Paul Dray



Brian Lawrie

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.



Abraham Feinstein

Paralegal Standing Committee appointment

Bencher Abraham Feinstein was appointed to the Paralegal Standing Committee to replace Laurence Pattillo, who was appointed to the Bench.

Paralegal Standing Committee established

The Paralegal Standing Committee was established with Convocation's approval of By-Law 9.1 [Paralegal Standing Committee]. The establishment of the Committee is one of the first steps in implementing the regulation of independent paralegals.

Task Force on the Rule of Law and the Independence of the Bar Final Report

The Task Force presented its final report at November Convocation, including a Statement of Principles on the Rule of Law and the Independence of the Bar.

The Task Force's report is to be published together with academic papers commissioned by the Task Force explaining the critical importance of an independent bar to a free society. The volume will serve as a reference work on all aspects of the importance of an independent legal profession.

The Law Foundation has approved funding to publish the materials in book form in both official languages.

More information about the work of the Task Force will be included in the next issue of the *Ontario Lawyers Gazette*.

Celebration of the 175th Anniversary of the official opening of Osgoode Hall

The Law Society will mark the 175th Anniversary of the first Convocation at Osgoode Hall with a series of celebratory events that will begin in February and run through October. During this time, **exhibits of the history of the building and its grounds** will be featured, along with a commemorative plaque, special banners and postcards. This focus on the history of Osgoode Hall will culminate in an event spotlighting the history of the legal profession in Ontario – a **Legal**

History Symposium. Papers presented at the Symposium will be published. The budget for the celebration was approved at November Convocation. More information will be available on the Law Society's website in January.

Motion tabled

The motion, Amendment to By-Law 6 respecting the election of the Treasurer, was tabled.

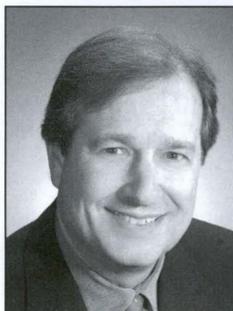
By-Law 16 [Professional Liability Insurance Levies] amended

By-Law 16 was amended to reflect the Territorial Mobility Agreement approved by Convocation in June 2006.

By-Law 5 [Election of Benchers] amended

Minor housekeeping amendments were made to By-Law 5.

APPOINTMENTS



Neil Finkelstein

Bencher Neil Finkelstein was appointed to the Board of Governors of the Law Commission of Ontario.

Bencher Mark Sandler was appointed as a trustee on the Board of



Mark Sandler

Trustees of the Law Foundation of Ontario.

Bencher Janet Minor was appointed to the Ontario Lawyers' Assistance Program Board of Directors. ■



Janet Minor

November Highlights

SPECIAL CONVOCATION – NOVEMBER 9

Law Society to participate in creation of new Law Commission of Ontario

The Law Society will participate with the Attorney General and other partners in the creation of a new Law Commission of Ontario based on a proposal unveiled by the Attorney General earlier this year. Convocation voted to support the new Law Commission at a special meeting on November 9.

The work of the Law Commission will advance legal research, increase knowledge of the administration of justice in the province, and identify ways to enhance access to justice.

The proposed model for the Commission involves a partnership of the Law Society,

the Ontario government, the Law Foundation of Ontario (LFO), Osgoode Hall Law School and the Deans of Ontario's seven law schools. Under the proposed governance structure, the Law Society will hold one seat on the Commission's governing board and one seat on the Advisory Board that will advise on research projects.

The LFO previously approved a grant application for the Commission. The Law Society will continue negotiations with all parties according to the terms set out in the application.

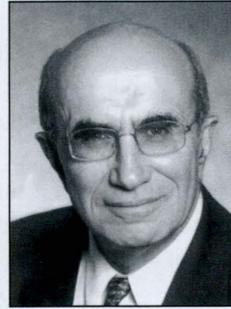
Appointments

Bencher Thomas Heintzman was appointed a member of Proceedings Authorization Committee and Vice-Chair of the Professional Regulation Committee.

Bencher Earl Cherniak was appointed Chair of the Proceedings Authorization Committee and Bencher Beth Symes was appointed Vice-Chair of the Proceedings Authorization Committee. ■



Thomas Heintzman



Earl Cherniak



Beth Symes

October Highlights

2007 BUDGET APPROVED: Law Society fee increase necessary to support regulatory mandate

Convocation approved its 2007 budget with a six per cent increase in lawyers' annual fees to invest in critical enhancements to its regulatory programs. The 2007 fee for a practising lawyer will increase by \$92 to \$1,601, offset by LAWPRO's base insurance premium decrease of \$100. (For more information, see page 31.)

Paralegal Standing Committee Appointments

Convocation appointed seven benchers to the new Paralegal Standing Committee: two lay benchers (non-lawyers) and five elected benchers (lawyers). An eighth bencher will be appointed at a future Convocation. The Committee will also include five paralegal members to be appointed by the Attorney General. Two of the appointed paralegals will also be appointed benchers.

Consultations on establishment of Law Commission of Ontario to continue

Convocation expressed support for a Law Commission of Ontario and voted to continue consultations with the Attorney General regarding the terms of the Commission's establishment.

Law Society to send out letters of intervention regarding human rights violations that target lawyers

The Law Society will send letters to a number of organizations as interventions in cases of human rights violations that target lawyers.

The letters are to be sent based on recommendations from the Law Society's Human Rights Monitoring Group, which monitors and recommends responses to human rights violations that target members of the profession and the judiciary as a result of the discharge of their professional duties.

The Law Society established the Human Rights Monitoring Group in March 2006.

Rules of Professional Conduct amended

Rules 1.02 and 3.02(4) of the *Rules of Professional Conduct* were amended to clarify the meaning of 'associate' and 'associates' and to clarify how the terms are to be used in law firm names. Rule 3.03(1) was amended to permit law firms to include names of retired and deceased members of the firm, identified as such, on their letterhead. These amendments were approved in principle at September Convocation.

Adjudicator Code of Conduct Approved

An Adjudicator Code of Conduct developed by the Tribunals Committee

was approved by Convocation to act as a guide for benchers sitting on Law Society Hearing and Appeals panels. The Code will also act as a reference for members of the profession presiding over French language hearings.

Bencher Election 2007

The report on Bencher Election 2007, which included recommendations regarding the Law Society's involvement in candidate communication with members, was referred to the Equity and Aboriginal Issues Committee.

Appointment

Bencher Mark Sandler was appointed Vice-Chair of the Hearing Panel effective October 26, 2006.

By-Laws 5 and 24 amended

In June 2006, Convocation approved the introduction of a practice management review program to begin in 2007. By-Law 24 was amended to reflect Convocation's approval of the criteria upon which a member may be selected to participate in a practice management review.

Section 18 of By-Law 5 was amended by adding "other than a temporary member/qui ne sont pas membres temporaires" after "members/membres."

Motion to amend By-Law 6

The Motion to amend By-Law 6 respecting the election of the Treasurer was referred to the Governance Task Force. ■

Law Society approves model policy for law firms: Pregnancy and parental leaves and benefits for professional legal staff and equity partners

THE LAW SOCIETY HAS DEVELOPED A model policy to act as a guide for law firms and other organizations in providing leaves and benefits to professional legal staff and equity partners wishing to spend time with their newborn or newly adopted children. The model policy can be used by law firms of all sizes, legal clinics and other organizations.

The Law Society has developed several model policies to assist in the development of policies and programs aimed at promoting equity and diversity in all aspects of the legal profession. These model policies are available on the Law Society's *Equity and Diversity web page*.

Rules of Professional Conduct to be amended

Convocation agreed in principle to amend the *Rules of Professional Conduct*. Rules 1.02 and 3.02(4) are to be amended to clarify the meaning of 'associate' and 'associates' and to clarify how the terms are to be used in law firm names. Rule 3.03(1) is to be amended to permit law firms to include names of retired and deceased members of the firm, identified as such, on their letterhead.

Recommendations for promoting diversity in bench election approved

Convocation approved a series of recommendations to promote diversity in the bench election, including developing a guide on strategies to run for election based on the results of interviews with elected benchers.

LAWPRO insurance premiums

Convocation accepted LAWPRO's report outlining changes to the Law Society's professional liability insurance program for 2007. The base premium for professional liability insurance coverage for Ontario lawyers in 2007 will be \$2,600 per lawyer. This is \$100 less than in 2006.

By-laws 5 and 17 amended

By-law 5 – Election of Benchers was amended to reflect changes to the bench election process approved by Convocation in June 2006.

The Member's Annual Report, Form 17a of By-Law 17, was amended to simplify and clarify questions on the Form.

Rules of Practice and Procedure amended

Rule 3 of the *Rules of Practice and Procedure* was amended to reflect the decision made by Convocation in June 2006 to hold competence and capacity proceedings in public. ■

Appointments

Benchers Vern Krishna was appointed to the Professional Development, Competence and Admissions Committee.

Benchers Bob Aaron was appointed as the Law Society's representative on the Canadian National Exhibition Association.



Vern Krishna



Bob Aaron

Guidelines for adjudicators respecting oral/written reasons for decision adopted

Convocation adopted guidelines for Law Society adjudicators to consider when assessing whether to provide Reasons for Decision orally or in writing. Law Society benchers sit as adjudicators on Law Society Hearing and Appeal Panels.

Roll-Call votes

October 26, 2006

It was moved by Mr. Ruby, seconded by Ms. Curtis, that Convocation ask the Government Relations Committee to re-negotiate the proposal for the Law Commission. Carried. Vote: For – 23; Against – 22; 1 Abstention.

Re: 2007 Budget

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the Law Society budget for 2007 and the amount of \$1,601 as the annual fee. Carried. Vote: For – 42; Against – 1.

November 9, 2006

Re: Law Commission of Ontario

It was moved by Mr. Caskey, seconded by Ms. Pawlitza, that Convocation approve the Law Society's participation in the proposal for a Law Commission of Ontario including making a \$100,000 contribution each year for five years. Carried. Vote: For – 26; Against – 16; 1 Abstention.

November 23, 2006

Report of the Task Force on the Rule of Law and the Independence of the Bar

Mr. Finkelstein presented the Report of the Task Force.

It was moved by Mr. Gottlieb, seconded by Mr. Aaron, that the title of the Report be amended to be the Report of the Task Force on the Rule of Law and the Independence of the Legal Profession. Lost. Vote: Against – 46; For – 1.

December 8, 2006

Re: Setting of Convocation's Agenda

It was moved by Ms. Ross, seconded by Mr. Gottlieb, that the following words in the motion be removed "to be considered in camera unless the Treasurer determines otherwise." Lost. Vote: Against – 32; For – 11. ■

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

	Attendance					Motions*				
	Sep 28	Oct 26	Nov 9	Nov 23	Dec 8	Oct 26		Nov 9	Nov 23	Dec 8
						1	2			
Aaron, Robert	✓	✓	✓	✓	✓	F	F	A	A	F
Alexander, Andrea	✓	✓	✓	✓	✓	A	F	F	A	F
Backhouse, Constance	✓	✓	✓	✓	✓	F	F	A	A	A
Banack, Larry		✓	✓	✓	✓	A	F	F	A	A
Bobesich, Gordon	✓		✓		✓			A		F
Campion, John	✓	✓	✓	✓	✓	A	F		A	A
Carpenter-Gunn, Kim	✓	✓	✓	✓	✓	F	F	F	A	A
Caskey, James	✓		✓	✓	✓			F	A	A
Chahbar, Abdul Ali	✓	✓	✓	✓	✓	A	F	F	A	A
Cherniak, Earl	✓	✓	✓	✓	✓	A	F		A	A
Chilcott, W. Dan				✓	✓				A	A
Coffey, Andrew	✓	✓	✓	✓	✓	A	F	F	A	A
Copeland, Paul	✓	✓	✓	✓	✓	F	F	A	A	F
Crowe, Marshall	✓	✓	✓	✓	✓	F	F	A	A	F
Curtis, Carole	✓	✓	✓	✓	✓	F	F	A	A	F
Dickson, Mary Louise	✓	✓	✓	✓	✓	A	F	F	A	A
Doyle, Anne Marie	✓		✓	✓	✓			F	A	A
Dray, Paul	✓	✓	✓	✓	✓	A	F	F	A	A
Eber, Sy	✓	✓	✓	✓	✓	A	F	F	A	A
Elliott, Susan		✓				A				
Feinstein, Abraham		✓		✓	✓	F	F		A	F
Filion, Richard	✓	✓	✓	✓	✓	F		Ab	A	A
Finkelstein, Neil		✓	✓	✓		A		F	A	
Finlayson, George D.	✓	✓	✓	✓		F		A		
Go, Avvy				✓					A	
Gold, Alan	✓	✓	✓	✓			F			
Gottlieb, Allan	✓	✓	✓		✓	A	F	F		A
Gottlieb, Gary L.	✓	✓	✓	✓	✓	F	A	A	F	F
Harris, Holly	✓	✓	✓	✓	✓	A	F	F	A	F
Heintzman, Thomas G.	✓	✓	✓	✓	✓	F	F	F	A	A
Henderson, Paul	✓	✓	✓	✓	✓	F	F	F	A	F
Hunter, George										
Krishna, Vern	✓	✓	✓	✓	✓	F	F	F	A	A
Lawrie, Brian				✓					A	
Legge, Laura	✓	✓	✓	✓	✓	F	F	A	A	A
Manes, Ronald		✓	✓	✓		A	F	F	A	
Martin, Robert		✓				F	F			
Millar, Derry	✓	✓	✓	✓		A	F	F	A	
Minor, Janet	✓	✓		✓	✓	Ab	F		A	A
Murray, Ross	✓	✓	✓	✓	✓	F	F	A	A	A
O'Brien, Brendan										
O'Donnell, Tracey	✓	✓		✓		A	F		A	
Pattillo, Laurie		✓				A	F			
Pawlitza, Laurie	✓	✓	✓	✓	✓	A	F	F	A	A
Porter, Julian				✓	✓				A	A
Potter, Judith	✓	✓	✓	✓	✓	F	F	A	A	A
Robins, Sydney	✓		✓	✓	✓			F	A	A
Rock, Allan										
Ross, Heather	✓	✓	✓	✓	✓		F	F	A	F
Ruby, Clayton	✓	✓	✓	✓	✓	F	F	A	A	A
St. Lewis, Joanne	✓	✓	✓	✓		F	F	A	A	
Sandler, Mark	✓	✓	✓		✓	A	F	F		A
Scace, Arthur										
Silverstein, Alan		✓	✓	✓	✓	F	F	A	A	A
Simpson, William	✓	✓	✓	✓		A	F	F	A	
Strosberg, Harvey										
Swaye, Gerald	✓	✓	✓	✓	✓	A	F	F	A	A
Symes, Beth	✓	✓	✓	✓	✓	F	F	A	A	A
Topp, Robert	✓	✓	✓		✓	F		A		A
Warkentin, Bonnie	✓	✓	✓	✓	✓	A	F	F	A	A
Wright, Bradley	✓	✓	✓	✓	✓	F	F	F	A	A
MacKenzie, Gavin (Treas.)	✓	✓	✓	✓	✓					

Non-voting benchers in attendance:

Sept. 28, 2006 – P. Furlong, A. Lawrence.
 Oct. 26 2006 – M. Boyd, A. Lawrence, D. Murphy, J. Wardlaw.
 Nov. 9, 2006 – A. Lawrence, D. Murphy.
 Nov. 23, 2006 – M. Boyd, A. Lawrence, D. Murphy, J. Wardlaw.
 Dec. 8, 2006 – P. Furlong, A. Lawrence, J. Wardlaw.

There were no motions in the September 28 Convocation requiring a roll-call vote.

*Motions A=against F=for Ab=abstain

LAW SOCIETY 2007 BUDGET

Law Society increases fees to support enhancements to regulatory programs

CONVOCATION RECENTLY approved the Law Society's 2007 budget, including a six per cent increase in lawyers' annual fees. As a result, the fee for a practising lawyer will increase by \$92 to \$1,601, offset by LAWPRO's base insurance premium decrease of \$100.

The need for an increase is primarily a result of pressures relating to costs of professional regulation, as well as additional programs approved by Convocation in 2006 for implementation in 2007.

The 2007 budget devotes an additional \$2.2 million to the Law Society's regulatory function. The increase is necessary to support the Society's efforts to improve the timeliness, fairness, transparency and effectiveness

of complaints processing – from the time a complaint comes into the Law Society to the final outcome of each matter.

This designated funding also includes special initiatives for increasing mortgage fraud investigations staff; continued implementation of the case management system; monitoring and enforcement of tribunal orders; and creation of a discipline history database to improve the public's access to disciplinary records.

As well, three new initiatives approved by Convocation in 2006 will be implemented in 2007: The practice review program will be expanded with the addition of a proactive and preventive practice management component to the

remedial approach currently in place. (See full story, page 5.)

A new initiative to retain women in private practice will be implemented. The Retention of Women in Private Practice Working Group will focus on designing and implementing strategies that respond to the socio-economic needs of women in small firms and sole practices, as well as strategies that medium and large law firms can use to retain women.

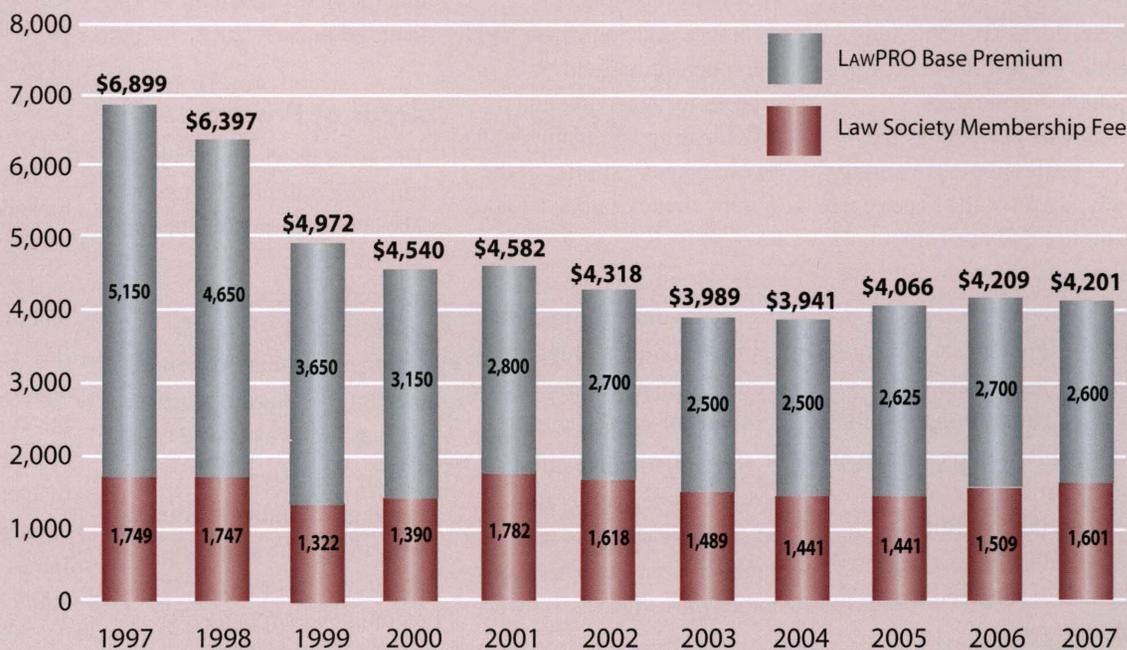
The Law Society has also committed to developing resources that support and nurture sole practitioners and small firms and ensure smaller communities across Ontario have appropriate access to legal services.

Further, law students will see their licensing process fees increase by \$150 to \$2,750 in 2007. Last year, student fees were reduced from \$4,400 to \$2,600 as a result of shortening the licensing process from the previous bar admission program. ■

Annual Fee Breakdown

COMPONENTS	2007	2006	CHANGE
General Membership Fee	\$1,102	\$1,015	\$87
Lawyers Fund for Client Compensation	\$200	\$200	–
County Law Libraries	\$224	\$219	\$5
Capital and Technology	\$75	\$75	–
Total	\$1,601	\$1,509	\$92

Combined Law Society and LAWPRO Premiums – 1997-2007



Legislation expands Law Society's regulatory powers to include independent paralegals

For more than 200 years, the Law Society has been regulating Ontario's legal profession in the public interest. On October 19, in a move to enhance consumer protection, the Ontario government passed Bill 14, *The Access to Justice Act*, which will expand the Law Society's regulatory powers to include independent paralegals.

The new legislation is the culmination of several years of consultation about the best approach to paralegal regulation. It follows the Law Society's agreement to take on this additional responsibility when asked to do so by the Attorney General in 2004. The act comes into effect on May 1, 2007.

"For many years, anyone could offer paralegal services in Ontario without any training, qualifications or insurance," explains Law Society Treasurer Gavin MacKenzie. "We were asked to consider expanding our public interest mandate to include independent paralegals because, as the legal profession's governing body, we have the experience, expertise and infrastructure required to provide effective regulation."

Treasurer MacKenzie notes the new legislation will provide better protection for consumers who receive legal advice from non-lawyers, because independent paralegals will now be regulated, educated, licensed and insured.

The legislation will also give the Law Society authority to regulate such things as advertising and "holding out" by paralegals, to help the public better understand the difference between the services offered by paralegals and those offered by lawyers.

"Like lawyers, paralegals will be required under the *Access to Justice Act* to adhere to licensing requirements and a code of conduct," says the Treasurer. "They will be required, as are lawyers, to carry insurance and contribute to a compensation fund. A process for receiving and investigating complaints will be established, similar to the system already in place for lawyers."

In addition, prospective paralegals must complete an approved college program, pass a licensing exam, and be deemed "of good character."

Special grandparenting provisions will apply for practising paralegals who qualify. After the legislation comes into effect, those who

have gained three years of work experience in permitted areas of practice within the last five years will have six months (until October 31, 2007) to apply for a licence. (The five years may be extended to seven years if accommodation is required under the Human Rights Code.) They will then be required to take an exam and to be deemed "of good character" in order to be licensed and regulated through the Law Society.

The Law Society expects that the first paralegals will be licensed in early 2008.

Areas of Practice

The areas in which paralegals can work will not change. These include matters before Small Claims Court, provincial boards and agencies, and *Provincial Offences Act* matters before the Ontario Court of Justice, such as highway traffic cases.

The Law Society's Paralegal Standing Committee will review the scope of practice and may, over time, recommend adjustments.

Paralegals will play a prominent role in their own regulation through the 13-member Paralegal Standing Committee, which will report to Convocation.

The Attorney General recently appointed the five paralegal members of the committee. Paul Dray, the committee chair, is a former lay bencher, past president and founder of the Prosecutors' Association of Ontario, and past president of the Professional Paralegal Association of Ontario. Other paralegal members are Brian Lawrie, founder, president and CEO of POINTTS Advisory Limited; Michelle Haigh, an independent paralegal; Margaret Louter, past vice-president and director of the Professional Paralegal Association of Ontario and past corporate secretary and director of the Institute of Law Clerks of Ontario; and Stephen Parker, the founding director and past president of the Professional Paralegal Association of Ontario.

Both Dray and Lawrie have been appointed paralegal benchers.

The committee also includes five elected benchers (lawyers) and three lay benchers (non-lawyers). So far, seven of these eight benchers have been appointed by Convocation: Andrea Alexander (lay bencher); James R. Caskey, Q.C.; Anne Marie Doyle (lay

bencher); Thomas G. Heintzman, O.C., Q.C.; Abraham Feinstein, Q.C.; William J. Simpson, Q.C.; and Bonnie R. Warkentin. The eighth bencher will be appointed to the committee at a future Convocation.

Regulatory Details

Between now and May 1, 2007, the Paralegal Standing Committee will be developing necessary details for the new regulatory model for Convocation's consideration and approval. In the meantime, all divisions within the Law Society are working diligently to ensure the organization is ready to assume all the necessary responsibilities when the legislation takes effect.

Members who have questions are encouraged to call the Law Society's Member Resource Centre at **416-947-3315** or **1-800-668-7380**.

Further details can also be found on the Law Society's website at www.lsuc.on.ca. The site will be updated regularly as new information becomes available.

"The Law Society is pleased to work with the government to implement this important public protection initiative," says the Treasurer. "We recognize the contribution that paralegals make toward enhancing access to justice and we look forward to working with this new group of professionals." ■

Law Society pleased with new anti-money laundering bill

IN A SIGNIFICANT DEVELOPMENT FOR CANADA'S LEGAL PROFESSION, THE FEDERAL GOVERNMENT HAS INTRODUCED AMENDMENTS TO FEDERAL ANTI-MONEY LAUNDERING LEGISLATION THAT RESPECT SOLICITOR-CLIENT PRIVILEGE AND THE SELF-REGULATORY AUTHORITY OF THE PROFESSION.

On October 5, the Minister of Finance introduced Bill C-25, which includes s. 10.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This section exempts lawyers, when they are providing legal services, from reporting suspicious or attempted suspicious transactions and other prescribed transactions.

The 2000 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* had made lawyers subject to the same reporting requirements as financial institutions, accountants and other financial intermediaries.

The Federation of Law Societies of Canada, the umbrella organization of the 14 Law Societies in Canada, concurred with the act's basic purpose and objectives. But it challenged the reporting requirements for lawyers on the grounds that they violated fundamental Canadian constitutional principles ensuring lawyers' undivided loyalty to their clients, consistent with the independence of the bar.

The Federation argued that it is in the public interest to address money laundering, as it relates to the legal profession, by having law societies regulate any risk the profession may present. The Supreme Court of Canada agreed with the Federation, and refused to stay an injunction that suspended the reporting requirements for legal counsel and law firms pending a hearing on the merits of the constitutional challenge.

Law Society of Upper Canada CEO Malcolm Heins serves as the Law Society's representative on the Federation's Anti-Money Laundering Committee. He says the Law Society is pleased with the new bill and with the work of the Committee, particularly

its development of key initiatives to assist in the fight against money laundering. "These initiatives were instrumental in helping us persuade the government that law societies and lawyers can and must be exempt from the act's reporting requirements."

One initiative developed by the Committee, the "Model No-Cash Rule," prohibits lawyers from accepting cash of \$7,500 or more from clients or third parties (except in very limited circumstances). It has been implemented by all Canadian law societies. In Ontario, lawyers must attest to compliance with the Rule (now part of By-Laws 18 and 19) on the Member's Annual Report. Companion amendments to the *Rules of Professional Conduct* emphasize a lawyer's responsibility to be alert to the legality of a client's transactions and unusual or suspicious activity within the retainer.

Another model rule, on client identification and verification requirements, is currently being developed by the Federation. It will address the federal government's proposals for such requirements in federal regulations.

This rule will require lawyers to keep records that properly verify the identity of their clients. Auditing and enforcement of the record-keeping requirements would remain with the law societies, and only by court order would client records be disclosed to other agencies, such as the police.

The Federation is continuing its discussions with the Department of Finance on the substance of new regulations on client identification and verification requirements, which are expected sometime before the end of the year. For more information, visit www.flsc.ca. ■

Are you a semi-retired or retired lawyer or do you have historical information about what it was like to be a lawyer in the province of Ontario? The Law Society's Heritage Committee wants to hear from you!

**The Heritage Committee's Sole and Small Firm Practitioners' History Project:
In quest of the history of Ontario's legal profession**



Toronto seminar (June 2005), back to front rows, left to right: Nicholas Pustina, Professor Constance Backhouse, James Wardlaw, Mary Lou Dingle, Steven Lukinuk, Aubrey Golden, George Speal, Fred Porter, Donald Sayles, John Nelligan, Kathleen Lickers, Jan van de Woerd, Maryka Omatsu, Donald Mann, David Guyer, David Bishop.

Six Nations lawyer Kathleen Lickers is writing about her late grandfather, Norm Lickers, who in 1938 was the first Aboriginal man to be called to the bar in Canada.

THE HISTORY OF THE WORLD is simply the record of man in quest of his daily bread and butter. ~ Hendrik Willem van Loon, Ph.D., Historian, *The Story of Mankind*

What was it like to earn your daily bread and butter as a lawyer in Ontario in earlier years?

That's the question the Law Society's Heritage Committee has been asking Ontario lawyers in an effort to help preserve some of the history of the province's legal profession for future generations.

Although the legal profession has had a lengthy and significant

role in Ontario, not a lot has been recorded about what it has been like to practise law in the province. (Lawyers are not alone in lacking historical records. Architects are embarking upon the same quest to preserve their profession's history.)

Because of this dearth, the Heritage Committee, led by Bencher and Professor Constance Backhouse, has decided to do something to contribute to the gathering and preserving of information about the history of Ontario's legal profession before it is lost to future generations.

The Heritage Committee's Sole and Small Firm Practitioners' History Project,



Ottawa seminar (November 2005), back to front rows, left to right: James O'Grady, Joseph Roach, Kenneth Binks, Wayne Spooner, John Nelligan, Dan Chilcott, Joseph Roach, Peter Newcombe, Professor Constance Backhouse.

so called because the vast majority of Ontario's legal profession has always been made up of sole and small firm practitioners, began with interviews of former Law Society Treasurers. Next, from June 2005 to October 2006, the Committee contacted potential contributors and held seminars with retired and semi-retired members of the Ontario Bar in Toronto, Ottawa and London.

At each seminar, Professor Backhouse, who teaches criminal law as well as courses on "law and society" at the University of Ottawa, and is currently researching and writing about legal history in Canada, "rallied the troops" to record their memories "for posterity."

Professor Backhouse, together with Sophia Sperdakos, who is the Law Society's Policy Counsel and has degrees in history, explained the project's objective and asked participants to send in historical newspaper clippings and photos – and to spread the word about the History Project throughout their part of Ontario.

They also started each participant's retrieval process by facilitating a discussion of their individual recollections. Although every story had commonalities – for instance, many remember making "about \$75 a week" – each also offered a unique perspective.

Gretta Grant, a first-generation Chinese Canadian who participated in the

Heritage Committee's London seminar on preserving Ontario's legal history, shared a little about what it was like to be one of the very few women and minorities who were beginning to break down the door of a profession dominated by men. She told the group she has seen many changes in the profession since she graduated from Osgoode Hall in 1946. For one thing, there were just five women in her class. "We were the OWLS – that stood for the Osgoode Women's Legal Association."

C. Owen Spettigue, who also participated in the London seminar, was born and raised in London and had a long career in the practice of real estate in nearby Leamington. The area is the greenhouse centre of North America. Spettigue remembers that clients "never came to the office without bags of tomatoes, cucumbers or peppers. Greenhouses were just a very small undertaking in the area when I first started my practice. Farmers watered by hand, tried to plant 1,500 plants to an acre and keep them nourished. Now, it's 10 and 12,000 plants to an acre, computer-run, plants automatically fertilized."

Spettigue also saw the practice of law, especially real estate, flourish similarly over the years. "Real estate is very important in Leamington; the population has grown from



London seminar (September 2006), back to front rows, left to right: Harry Momotiuk, Daniel Murphy, Paul Ross, Professor Constance Backhouse, Kim Little, David Evans, Jack Lesser, Owen Spettigue. Seated: Reg Lamon, Gretta Grant.

6,000 to 15,000. We have a nice bar of 10 to 12 lawyers in Leamington, what we call the South-Essex Bar. We all get along splendidly. We do our best for our clients, without back-door problems and without big egos. We're part of the community; our clients are also our friends."

Some of the lawyers who have attended the seminars have already sent in scrapbooks or historical photographs. A few have even started writing their memoirs. Toronto seminar participant George Speal, a retired lawyer who is also the former mayor of Kingston, has completed a full memoir of a hundred pages.

"We've heard so many interesting stories," says Professor Backhouse. "Yet we often hear the question, 'Would others really be interested in this?' We tell them that even the little things they did in their day-to-day practices are important to

write down – and will be even more so 100 years from now – not just to their descendants, but to other members of the profession, and to historians."

Guest speakers – historians and experts on memoir-writing – have given detailed advice and answered questions. Dr. Lillian Petroff of the Toronto Multi-Cultural History Society told Toronto seminar participants, "Just write about your life. Who are you? How did you become a lawyer? Write about your early life experiences, history of migration, settlement, housing, neighbourhoods, teachers; everything that makes you – you. History for the longest time has been written from the top-down. It's time to write from the bottom-up." (*For advice on how to begin writing your memoirs, or for more information about the Heritage Committee's History Project, visit <http://lsuc.on.ca/about/a/history/>.*) ■

Are you interested in mentoring students or new lawyers from diverse backgrounds and/or with disabilities?

THE LAW SOCIETY IS EXPANDING ITS Equity & Diversity Mentorship initiative for students and new lawyers to include a mentoring and peer support program tailored to the needs of students and lawyers with disabilities.

Lawyers from all backgrounds, with or without disabilities, are encouraged to apply to be volunteer mentors. The mentoring program pairs experienced lawyers with students from diverse backgrounds – including those with or without disabilities – who are seeking information and guidance about a career in law. Students are from high schools, universities and law schools. The program also matches mentors with new lawyers looking for professional guidance and advice in the early stages of their careers.

As mentors, experienced lawyers can contribute to the success of students or new lawyers by sharing their knowledge and providing advice and guidance on topics ranging from how to become a lawyer to the different areas of law practice. Mentors also help promote greater equity and diversity in their profession by helping to break down barriers to entry in the legal profession and by encouraging members from communities under-represented in the profession to pursue a career in law.

The tradition of mentoring runs deep in the legal profession. “Many lawyers point to the learning they gained during mentoring relationships as having been very helpful in setting them on successful career paths,” says Rudy Ticzon, the Law Society’s Community and Policy Advisor and Mentorship Program co-ordinator.

Through the program, high school and university students can get insights into the profession and find out how to become a lawyer. Law school students

and students-at-law can get information about the licensing process and guidance in preparing for job interviews and finding articling positions. Lawyers recently called to the bar can get advice on starting out as a lawyer and talk to an experienced practitioner about a specific area of practice.

“Where else can a student get this kind of access to information and advice? Students have told us that the knowledge they gain through the program is invaluable – and our mentors truly enjoy working with them,” says Ticzon. “A mentoring relationship can help a student build confidence and develop new skills.

It can also encourage a student to continue pursuing his or her post-secondary education plans.”

In addition to connecting students or new lawyers with experienced lawyers in private practice, the program can connect students with lawyers working as Crown attorneys in the courts, as counsel in different areas of government or in corporations.

Law Society staff also co-ordinate events such as career fairs and presentations at schools, which mentors can attend to share their knowledge about the legal system and profession.

To join or learn more about the program, visit the Law Society of Upper Canada’s website at www.lsuc.on.ca or contact the program co-ordinator at rticzon@lsuc.on.ca. ■

Louis Riel Day 2006 - November 16



Justice Todd Ducharme of the Ontario Superior Court of Justice, who is Métis, speaks at a reception commemorating Louis Riel Day 2006. The reception followed a panel discussion on the evolution of Métis and First Nations relations and was part of the Law Society’s Equity Public Education series.

Justice Ducharme noted that it has been 121 years since school teacher and human rights activist Louis Riel was hanged at the age of 41, and that this was a very tragic moment in the history of both the Métis nation and Canada. “Unfortunately, it has taken the government of Canada a very long time to recognize Louis Riel. [Nevertheless] we are here today to celebrate his life, and to celebrate the fact that the Métis nations did not die with him.”



Bencher Tracy O’Donnell of Helen Lake First Nation listens to Elder Vern Harper at the Louis Riel Day reception hosted by the Law Society.

First National Pro Bono Conference focuses on enhancing access to justice

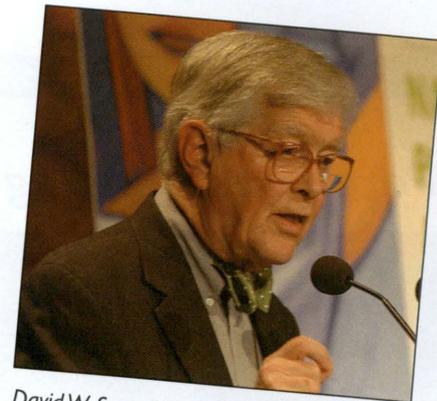
MORE THAN 160 LAWYERS FROM across the country participated in the first National Pro Bono Conference – “Building Bridges to Justice” – held in Toronto November 16 and 17.

Hosted by Pro Bono Law Ontario and Pro Bono Law of British Columbia, the event marked the first time in Canada that members of the private bar, legal aid providers, court staff and community groups from across the country have gathered to discuss ways pro bono can be used to address the unmet needs of low-income Canadians.

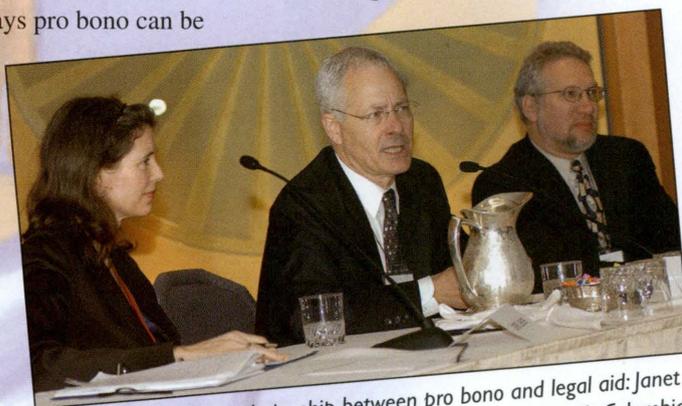
Keynote speakers included Chief Justice of Ontario Roy McMurtry, Ontario Attorney General Michael Bryant, and noted Ottawa lawyer David Scott, Q.C., of Borden Ladner Gervais LLP.

The conference provided three plenary sessions featuring panel discussions and 11 concurrent workshops that examined ways pro bono services are being provided in Canada.

Sessions focused on a wide variety of topics, including the use of technology to address rural and remote needs; policy development and best practices for large and mid-sized firms; children’s projects; court-based pro bono models; and



David W. Scott, Q.C., gives the keynote address at the first National Pro Bono Awards.



Panellists discuss the relationship between pro bono and legal aid: Janet Leiper, Chair, Legal Aid Ontario; Mark Benton, Legal Aid British Columbia; and Steve Scudder, American Bar Association Standing Committee on Pro Bono and Public Service, and Centre for Pro Bono.

partnerships with legal clinics and community groups.

Seasoned pro bono advocates provided participants with practical tools and ideas to use in their law firms, law associations, community organizations and courts. Lawyers and legal groups gained valuable insight and learned how to link with individuals and communities in need.

In addition, a special “marketplace” was held to introduce participants to community organizations that serve low-income Canadians. For more information, visit www.pblo.org. ■

First National Pro Bono Awards



McCarthy Tétrault LLP representatives accept their firm’s award from the Honourable Roy McMurtry, Chief Justice of Ontario (second from right): Christine Lonsdale; Gordon Baird; and CEO Iain Scott.

A highlight of the conference was the very first National Pro Bono Awards ceremony, held in conjunction with a dinner and reception. Some 250 people attended the special event.

The awards are a national celebration of the dedication and commitment of the many lawyers who give their time freely to represent those who need legal assistance, but cannot afford it.

McCarthy Tétrault LLP was one of three award recipients. The firm received an award for their leadership in pro bono activities in Ontario, including participating in at least seven separate projects organized through Pro Bono Law Ontario. They have also adopted a

national pro bono policy for their staff that includes counting pro bono time as part of a lawyer’s billable time, and they support staff-driven pro bono activities.

The two other award recipients were Calgary Legal Guidance – one of the oldest pro bono programs in Canada, and John-Paul Boyd, a Vancouver lawyer who is involved in a variety of pro bono and access to justice initiatives.

The conference was sponsored by the Law Foundation of Ontario, the Law Foundation of British Columbia and the Alberta Law Foundation. Special events were sponsored by Blake, Cassels & Graydon LLP, Borden Ladner Gervais LLP and McCarthy Tétrault LLP. ■

Paralegal Standing Committee's inaugural meeting



The Paralegal Standing Committee held its inaugural meeting at Osgoode Hall on December 5, 2006. The 13-member committee consists of five paralegals (two of whom were recently appointed paralegal benchers), five elected benchers (lawyers) and three lay benchers (non-lawyers).

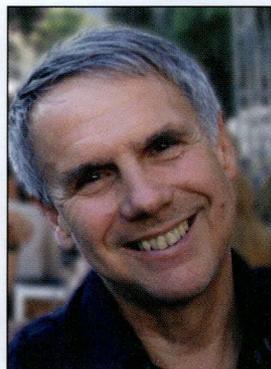
Shown here, from left to right: (front row) Margaret Louter and Anne Maire Doyle; (second row) Stephen Parker, Brian Lawrie and Michelle Haigh; (third row) Abe Feinstein, Thomas Heintzman, committee chair Paul Dray and William Simpson. Absent from this photo: Andrea Alexander, James Caskey and Bonnie Warkentin. (See related story on page 32.)

Osgoode Society appoints new Editor-in-Chief, remembers contributions of predecessor

UNIVERSITY OF TORONTO LAW Professor Jim Phillips was recently appointed Editor-in-Chief for the Osgoode Society for Canadian Legal History. (He had been Acting Editor-in-Chief since January.) Prior to becoming Editor-in-Chief, Professor Phillips published five volumes with the Osgoode Society, his latest an edited collection on Canadian constitutional thought.



Jim Phillips



Peter Oliver

York University History Professor Emeritus Peter Nesbitt Oliver, who served as Editor-in-Chief for the Osgoode Society from 1979 until this year, died of cancer on Sunday, May 14, 2006 at Toronto General Hospital. He was 66. Professor Oliver specialized in

the political, social and legal history of Ontario in the 19th and 20th centuries. He was the author of five books. During his tenure as Editor-in-Chief, the Osgoode Society published more than 65 books on all aspects of Canadian legal history. From 1971 to 1993, Professor

Oliver was also the associate editor of *The Ontario Historical Studies Series*, publishing 31 volumes. He was the recipient of numerous honours, including the Order of Ontario, the Queen's Jubilee Medal and the Guthrie Medal.

The Osgoode Society was established in 1979 to encourage and facilitate the writing and publication of works on Canadian legal history and to preserve Canada's legal past by recording its oral history. The Society has conducted approximately 450 interviews that have resulted in over 65,000 pages of transcripts held by the Ontario Archives. The Society is open to all and is supported by its membership as well as an annual grant from the Law Foundation of Ontario. For more information about the Society, see www.osgoodesociety.ca. ■

Law Society hosts reception for Commonwealth Magistrates' and Judges' Association delegates



ON SEPTEMBER 12TH, THE LAW Society hosted delegates from the Commonwealth Magistrates' and Judges' Association (CMJA) Conference, which was held in Toronto this year from September 10 to 15.

Every three years, the CMJA has a week-long conference where members of different jurisdictions assemble to discuss issues fundamental to the judiciary.

This was the 14th Triennial Commonwealth Magistrates' and Judges' Association Conference. Issues of corruption and gender violence were high on the agenda. ■

Pictured left to right: (front row) The Right Honourable The Lord Hope of Craighead, President, CMJA; The Honourable Beverley McLachlin (Chief Justice of Canada); (second row) Michael Lambert, Executive Vice President, CMJA; The Honourable Mr. Justice John R.R. Jennings, Superior Court of Justice; (third row) His Honour, Judge Keith Hollis, Director of Studies CMJA; Malcolm Heins, CEO, Law Society of Upper Canada; Mr. Julian Porter Q.C., Bencher/Law Society of Upper Canada; The Honourable Mr. Justice James Spence, Superior Court of Justice.

Law Society of Upper Canada named one of Canada's Top 100 Employers

FOR THE FOURTH CONSECUTIVE YEAR, *MACLEAN'S* MAGAZINE HAS named the Law Society one of the nation's top 100 employers.

Employers are evaluated based on a standard set of criteria. The top 100 employers are profiled in the 2007 edition of *Canada's Top 100 Employers*, a best-selling guide to best practices in recruitment and retention. The organizations selected are considered best in their respective classes. This year more than 10,000 organizations were invited to apply. ■



Lawyers Feed the Hungry Program Founder Martin Teplitsky receives Guthrie Award

FOR HIS COMMITMENT to social justice causes and legal education, Martin Teplitsky, J.D., Q.C., LSM, was honoured with the Guthrie Award on November 8, 2006. His extensive volunteer work is in addition to his successful professional career as a counsel and mediator-arbitrator at Teplitsky Colson.



week. (The program is funded by the Law Society Foundation, donors and external fund-raising partners. The Law Society provides administrative and facilities services at no charge.)

Teplitsky is also a key founder of the Law in Action Within Schools (LAWS), Canada's first law-and-justice-themed high school program, which is funded by the Law Foundation of Ontario (LFO).

Teplitsky established the Lawyers Feed the Hungry Program eight years ago to feed the homeless and other people in need. The initiative operates three days per week out of the Osgoode Hall cafeteria and serves three hot meals as well as providing a bagged lunch on Thursdays for a total of 1,500 meals per

The Guthrie Award was created in 1996 in honour of former LFO Trustee and Chair, H. Donald Guthrie. Since its inception, the award has been bestowed upon individuals or organizations that make significant contributions to access to justice, demonstrate outstanding public service and generally represent excellence in the legal profession.

The LFO was established in 1974 to establish and maintain a fund for legal



Guthrie recipient Martin Teplitsky (left) with Professor Lorne Sossin, LFO Trustee.

education and legal research, legal aid, and the establishment, operation and maintenance of law libraries. The LFO awards grants to organizations for law-related projects and initiatives. For more information about the LFO, visit www.lawfoundation-on.org. ■

Law Society Foundation thanks its fund-raising partners in helping sustain the Lawyers Feed the Hungry Program

The Law Society Foundation would like to thank its external fund-raising partners for their efforts in organizing fund-raising events that help sustain the Lawyers Feed the Hungry Program. Although the Law Society holds an annual fund-raising event, we are dependent upon donors as well as the volunteer services provided by our partners, whether individuals or organizations. These include:

Michael Gary, who co-ordinated the second annual Buggy Golf Tournament, which raised over \$20,000. Next year's tournament will be held on June 19, 2007.

David Kirwin, Tracy Leckie, Dan Miller and Claude Pensa, who, in addition to assisting with the co-ordination of the London Lawyers Feed the Hungry Program, organized the third London Courthouse Rocks event, which raised nearly \$15,000. A fourth Courthouse Rocks event is anticipated for March 2007.

McCarthy Tétrault and its articling students, who, for the past several years, have held an annual Volleyball Tournament

to raise funds for the Toronto Lawyers Feed the Hungry Program. This year, they raised nearly \$12,000.

If you would like to contribute to the program, remember to look for the Law Society Foundation's 'orange' envelope with your annual fee billing. Information about making a donation or establishing a bursary through the Law Society Foundation may be obtained by contacting Brenda Albuquerque-Boutilier, Accounting Manager of the Law Society at (416) 947-3436 or balbuque@lsuc.on.ca.

The Law Society Foundation is a charitable organization. In addition to receiving donations and maintaining funds to provide meals to people in need, the Foundation provides financial assistance to law students in Ontario, receives donations for the restoration and preservation of lands and buildings of historic significance to Canada's legal heritage, and receives gifts of monument and legal memorabilia. For more information about the Law Society Foundation, visit www.lsuc.on.ca/about/a/foundation.

Administrative Suspensions & Reinstatements

The list below, which is current as of November 24, 2006 at 11:59 p.m., indicates Law Society members who have recently been reinstated following administrative suspensions or have been suspended for administrative reasons. The date shown is the member's year of Call to the Ontario Bar.

Administrative suspensions are made by summary order for non-payment of annual fees, errors and omissions insurance levies or surcharges, or failure to complete or file required forms, certificates or reports with the Law Society or LAWPRO.

Pursuant to the *Law Society Act* and By-laws 15, 16, 17 and 27, a summary order of suspension may be made where a required payment is not made or a required filing not completed

or filed within 120 days after it is due. A summary suspension, ordered by a summary disposition benchler, continues until the member makes the required payment or filing to the satisfaction of the Secretary, together with any reinstatement fee that may apply. A member subject to a summary order may appeal. If a suspension order for default of a payment or filing to the Society remains outstanding for more than 12 months, a summary disposition benchler may issue another order summarily revoking membership.

Members recently suspended by summary order, or now in default of a payment or filing obligation should contact the Society's Member Resource Centre. Phone (416) 947-3315; toll-free 1-800-668-7380; fax (416) 947-5263; e-mail records@lsuc.on.ca.

REINSTATEMENTS

BRITISH COLUMBIA

LULIC PETAR 2001 VANCOUVER BC

MANITOBA

BENTLEY JAMES LEONARD 1989 WINNIPEG MB

NORTHWEST TERRITORIES

GARDNER HARTLEY WAYNE 1997 YELLOWKNIFE NT

ONTARIO

MCKERROW ROBERT DONDALD 1974 AMHERSTBURG ON

EVANS LAUREL ANNE 1983 BURLINGTON ON

MARTIN ALEXANDRA MARY 2003 ETOBICOKE ON

SCOTT JAMES WILLIAM 1983 HAMILTON ON

WOTHERSPOON FIONA 1992 HAMILTON ON

HUTCHINSON DONALD EDWARD LIONEL 1990 MARKHAM ON

SINGER DARRYL 1993 MISSISSAUGA ON

KAZDAN JOSEPH FRANK 1976 NORTH YORK ON

BURKE MARY KATHERINE 2003 OTTAWA ON

GRANDBOIS DARRYL ALEXANDRE 1974 OTTAWA ON

MALONGA OMER 2004 OTTAWA ON

MORRIS DAVID ALEXANDER 1993 OTTAWA ON

REYNOLDS SAMUEL SCRYMGEOUR 1994 ST CATHARINES ON

HARVARD JOHN MILTON 1974 STRATHROY ON

GRIFFIN CLARENCE JUSTIN ASHLEY VINCENT MOHAMMED 1995 THUNDER BAY ON

BROOKS SYDNEY 1970 TIMMINS ON

AGUIRRE RICARDO MAX 1999 TORONTO ON

BAGAMBIERE DAVIES 1995 TORONTO ON

BOISSONNEAULT JEAN MARC 1983 TORONTO ON

BRUNER DAVID ALLEN 1986 TORONTO ON

HOPKINS LARON PAUL 1983 TORONTO ON

KATZ LEALA RONA BIRNBOIM 1992 TORONTO ON

MARINICH STEFANIE 2002 TORONTO ON

MONEM RAMI ALEXANDER 1998 TORONTO ON

NEWTON-SMITH APPLE CASEY 1999 TORONTO ON

PETERSON EDMUND 1987 TORONTO ON

RILEY PAUL ANTHONY 2004 TORONTO ON

STERN ARTHUR DAVID 1983 TORONTO ON

STRAUB LINUS PHILIPP FRITZ 1978 TORONTO ON

WYSOCKY WALTER 1981 TORONTO ON

JOSIC MICHELLE MARIE 1995 WINDSOR ON

QUEBEC

IANNUZZI PIETRO 2002 MONTREAL QC

MITCHELL BRIAN RANDALL 1987 MONTREAL QC

RUCCOLO LIA SARA STELLA 2005 MONT-ROYAL QC

USA

DONOSO IGNACIO ALBERTO 1995 UNITED STATES

SIRKIS PAUL JACOB 2002 UNITED STATES

INTERNATIONAL

KARIM MEHRIN SALIM 2001 UNITED KINGDOM

SUSPENSIONS

BRITISH COLUMBIA

JANISCH ALICE HASTINGS 1987 SECHELT BC

JANISCH HUDSON NOEL 1971 SECHELT BC

DILLON GREGORY DAVID 1999 VANCOUVER BC

BARENDIS HOWARD ARTHUR 1977 WEST VANCOUVER BC

JAMES THERESA IVY 2004 WEST VANCOUVER BC

NEWFOUNDLAND

KENNEDY CHRISTINA ROSE 2005 ST JOHN'S NL

NOVA SCOTIA

WHITTAKER LORIEANN 1998 TUSKET NS

GILLIS DONALD JOHN 2002 YARMOUTH NS

ONTARIO

SANDY KARRY ANNE 2002 BARRIE ON

BUTCHER LEROY ROGERS 2000 BRAMPTON ON

NOVAK GEORGE ALEXANDER 1990 BRAMPTON ON

INCH SUSAN ELIZABETH 1988 HAMILTON ON

ROSS ROBERT ALLAN 1982 KENORA ON

MC GEE JOHN LUKE 1993 LONDON ON

SOMMERFREUND JOSEPH FRIEDEL 1978 LONDON ON

DAWSON GARRY WAYNE 1975 MISSISSAUGA ON

GHALIOUNGUI JEAN MOENIS PAUL 1976 MISSISSAUGA ON

FARIES PATRICIA ANN 1998 MOOSE FACTORY ON

CUSHON JOAN MARIE 1989 NEWMARKET ON

MCSWEEN SELWYN 2003 NORTH YORK ON

ALLPORT JOHN NEWELL 1982 OAKVILLE ON

MIASEK JAROSLAW 2002 OAKVILLE ON

FULTON BRENT ALEXANDER 2002 OSHAWA ON

BEAUDOIN JOHN MARK 2003 OTTAWA ON

NOEL ERIC MARC ANDRE 1999 OTTAWA ON

JOHNSTON FRANCIS ADAM 1964 PETERBOROUGH ON

GREEN GLYNN RICHARD 1971 STONEY CREEK ON

KUCHAR GARY MORTON 1973 THORNHILL ON

STIGLER LEONARD 1997 THORNHILL ON

MACLAURIN KIRK ROBERT CHARLES 2001 THUNDER BAY ON

AARONS MELVA JANET 2003 TORONTO ON

ALLAN JOHN PHILIP MACGREGOR 2002 TORONTO ON

ATLIN BRAM ALEXANDER 2002 TORONTO ON

BAILEY WILLIAM BRUCE CURRIE 1981 TORONTO ON

FROST RICHARD STEPHEN 1997 TORONTO ON

KEYS MOLLY ANN 2003 TORONTO ON

KRAMA AHMED ABDALLA 2002 TORONTO ON

LEE CAMILLE DONNA 2001 TORONTO ON

LEWIS ROBIN KEVIN 1990 TORONTO ON

MOSS BENJAMIN 2001 TORONTO ON

NORDHOLM EDWIN BLISS 1987 TORONTO ON

RICHMON ABRAHAM ISAAC 1958 TORONTO ON

SAIDULLAH SA'AD AHMAD 2001 TORONTO ON

SCHUETZ CARL HEINRICH 1998 TORONTO ON

SECKER CHRISTIAN SIMON MICHAEL 1990 TORONTO ON

SMITH DAVID ANDREW CHARLES 2001 TORONTO ON

VENERUS RICHARD CHRISTIAN 2001 TORONTO ON

SUSPENSIONS

QUEBEC

HOLDEN KATHLEEN CHARLOTTE	2002	MONTREAL QC
MEDINA DAVID JOSEPH	2001	MONTREAL QC
PROULX RAYMOND MAURICE ALAIN	2000	MONTREAL QC

U.S.A

EINAV ARTHUR AVI	2003	UNITED STATES
KHATTAK NADIA NABI	2003	UNITED STATES
RUPARELL RAJEEV DEEPAK	2005	UNITED STATES
TOONE JENNIFER LYNNE	1997	UNITED STATES

SUSPENSIONS

INTERNATIONAL

FRIDAY GODWIN ELLIOTT LORAINÉ	1995	ST VINCENT/GRENADINES
MILKAU KATHERINE RUTH	2004	SPAIN
THOMAS JOHN	1998	UNITED ARAB EMIRATES ■

January & February 2007

The Law Society's Winter/Spring 2007 CLE calendar is filled with programs to keep you up-to-date on the latest developments in your area of law, presented in a variety of convenient learning formats to work with your busy schedule. Visit <http://ecom.lsuc.on.ca/cle> to view the program schedule and register for upcoming CLE events.

SUN	MON	TUES	WED	THUR	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	January		
SUN	MON	TUES	WED	THUR	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	Legal information and support designed for you.		

Register today at <http://ecom.lsuc.on.ca>

CLE PROGRAMS

11th Annual Intellectual Property Law – The Year in Review

January 11	9:00 a.m. – 12:30 p.m.	Toronto/Live Webcast
January 12	9:00 a.m. – 12:30 p.m.	Ottawa

Family Law – Dilemmas in Evidence

January 12	12:00 p.m. – 1:30 p.m.	Teleseminar
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Practice Gems – 3rd Annual Title and Off-Title Searching

January 17	9:00 a.m. – 11:00 a.m.	Toronto/ILN/Live Webcast
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The Professional Procrastinator – Motivating Yourself and Others

February 16	12:00 p.m. – 1:30 p.m.	Teleseminar
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The Annotated Guardianship Application

February 20	9:00 a.m. – 11:00 a.m.	Toronto/ILN/Live Webcast
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The Six-Minute Commercial Leasing Lawyer 2007

February 21	9:00 a.m. – 12:30 p.m.	Toronto/ILN/Live Webcast
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Advanced Roundtable in Insolvency and Corporate Restructuring

February 21	5:00 p.m. – 7:00 p.m.	Toronto
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Accident Benefits Under the Microscope – Advanced SABs for Law Clerks

February 23	9:00 a.m. – 1:00 p.m.	Toronto/ILN/Live Webcast
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Buying and Selling a Business – Key Issues in Planning and Execution

February 28	9:00 a.m. – 12:45 p.m.	Toronto/Live Webcast
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Nominations for the Law Society Medal 2007

Nominations are invited for the Law Society Medal and should be submitted in writing with current curriculum vitae and letters of support. Nominators should bear in mind the purpose of the award, which 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. Persons who have been nominated in past years, but not recognized, may be nominated again.

Lincoln Alexander Award

As part of the annual Law Society Medals ceremony, the Law Society presents the Lincoln Alexander Award to recognize an Ontario lawyer who has demonstrated longstanding 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.

Deadline for nominations is *February 23, 2007*.

Nominations should be submitted to:



Deidré Rowe Brown,
Office of the Treasurer / Bureau du trésorier
Osgoode Hall, 130 Queen St. West / 130, rue Queen Ouest
Toronto, Ontario M5H 2N6

Candidatures pour la Médaille du Barreau de l'an 2007

Le Barreau invite les membres à présenter la candidature de consœurs et confrères pour la remise de la Médaille du Barreau. Les mises en candidature doivent être soumises par écrit et accompagnées d'un curriculum vitae à jour et de lettres d'appui. La Médaille du Barreau reconnaît les services exceptionnels rendus par des membres de la profession dans un champ de pratique particulier, dans le milieu universitaire ou dans d'autres fonctions professionnelles. Ce prix couronne la conscience professionnelle, qu'elle se soit manifestée au fil des ans ou qu'elle soit le fait d'un acte exceptionnel qui traduit les idéaux les plus nobles de la profession. Il est possible de présenter de nouveau une candidature qui n'a pas été retenue par le passé.

Prix Lincoln Alexander

Dans le cadre de sa cérémonie de remise des médailles du Barreau, le Barreau décerne le prix Lincoln Alexander pour reconnaître l'engagement et les services de longue haleine d'une ou d'un juriste de l'Ontario envers la communauté au nom de la population de l'Ontario.

Le prix a été créé en 2002 pour rendre hommage à l'honorable Lincoln Alexander, C.P., C. C., O.Ont., c.r., ancien lieutenant-gouverneur de l'Ontario, député et ministre sur la colline parlementaire et récipiendaire de la Médaille du Barreau de 2002, pour souligner son dévouement envers la population et la communauté juridique de l'Ontario.

Prière d'envoyer les mises en candidature, d'ici le 23 février 2007, à :

THE LAW SOCIETY OF UPPER CANADA

Bencher Election

The Law Society of Upper Canada is mandated to govern the legal profession in the public interest. Benchers sit as members of Convocation to fulfil that mandate. The next bencher election will be held in **April 2007**.

Any member of the Law Society who is not a temporary member, and whose business address – or where the member has no business address, home address – is within Ontario, and whose rights and privileges are not suspended, may be a candidate for one of the 40 elected bencher positions. Candidates must be nominated by at least 10 members who are not temporary members and whose rights and privileges are not suspended. Original nomination forms must be received by the Law Society at Osgoode Hall by 5:00 p.m. on February 9, 2007.

The contribution of lawyers to the profession's governance in the public interest is of critical importance to the privilege of self-regulation. The diversity of the legal profession and the range of activities undertaken by lawyers in Ontario provide the foundation for an effective governing body. Lawyers from all communities, practice and work areas, firm sizes and geographic locations are encouraged to run in the bencher election.

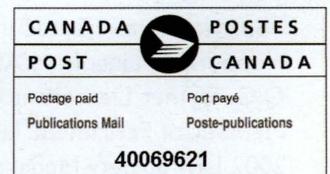
Nomination packages and more information about the bencher election are available on the Law Society's website at www.lsuc.on.ca. Nomination packages can also be requested by calling the Office of the Elections Officer at 416-947-3404 or 1-877-947-3404.



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6



NOTIFICATION OF CHANGE OF ADDRESS: return mailing label, amended accordingly, to the Client Service Centre, at the above address or contact LSUC at (416) 947-3318 or e-mail to records@lsuc.on.ca