



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**February 26, 2015**  
**9:30 a.m.**

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# CONVOCATION MATERIAL

*PUBLIC COPY*

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## CONVOCATION AGENDA February 26, 2015

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**Convocation Room – 9:30 a.m.**

### **Treasurer's Remarks**

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

- **Confirmation of Draft Minutes of Convocation – [January 29, 2015](#)**
- **Motion – [Appointment](#)**
- **Report of the Director of Professional Development and Competence – [Deemed Call Candidates](#)**

#### **[Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report \(P. Schabas\) \[Tab 2\]](#)**

- Human Rights Monitoring Group Requests for Intervention  
*For Information*
- Public Education Equality and Rule of Law Series Calendar 2015

#### **[Tribunal Committee Report \(R. Anand\) \[Tab 3\]](#)**

- In camera Item  
*For Information*
- Tribunal Office Quarterly Statistics

#### **[Audit and Finance Committee Report \(C. Bredt, P. Wardle\) \(in camera\) \[Tab 4\]](#)**

#### **[Law Society Awards Committee Report \(W. McDowell\) \(in camera\) \[Tab 5\]](#)**

#### **[Paralegal Award Selection Committee Report \(C. Corsetti\) \(in camera\) \[Tab 6\]](#)**

#### **[Report of the LL.D. Advisory Committee \(W. McDowell\) \(in camera\) \[Tab 7\]](#)**

#### **Strategic Planning Steering Group Update (C. Hartman) (in camera)**

#### **REPORTS FOR INFORMATION ONLY**

#### **[Professional Regulation Committee Report \(M. Mercer\) \[Tab 8\]](#)**

- 2014 Annual Report of the Complaints Resolution Commissioner
- Alternative Business Structures Working Group Report
- Professional Regulation Division Quarterly Report
- Judicial Complaints Report

#### **[Heritage Committee Report \(C. Backhouse\) \[Tab 9\]](#)**

- Report on the Work of the Committee

#### **[Report from The Action Group on Access to Justice \(TAG\) \[Tab 10\]](#)**

Lunch – Benchers' Dining Room

**Tab 1**

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 26, 2015

MOVED BY:

SECONDED BY:

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

DRAFT

MINUTES OF CONVOCATION

Thursday, 29<sup>th</sup> January 2015  
8:45 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong (by telephone), Backhouse (by telephone), Boyd (by telephone), Braithwaite, Bredt, Burd (by telephone), Callaghan, Campion, Corsetti, Dickson, Doyle, Earnshaw, Elliott (by telephone), Epstein, Eustace (by telephone), Evans, Falconer, Ferrier, Finkelstein (by telephone), Furlong, Go, Gold (by telephone), Goldblatt, Gottlieb, Haigh, Hare, Horvat (by telephone), Krishna (by telephone), Lawrie, Leiper, Lem, Lerner, Lippa, MacLean, Manes (by telephone), McGrath, Mercer, Murchie, Pawlitza, Porter, Potter, Rabinovitch, Richardson (by telephone), Richer, Ross, Rothstein, Scarfone (by telephone), Schabas, Sheff, Sikand, Silverstein, H. Strosberg, Sullivan, Swaye, Wardle, Wright (by telephone) and Yachetti (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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TREASURER'S REMARKS

The Treasurer welcomed viewers watching the webcast of Convocation.

The Treasurer expressed condolences to the family of Edward L. Greenspan, Q.C. who passed away on December 24, 2014.

The Treasurer acknowledged the 40<sup>th</sup> anniversary of lay benchers as members of Convocation, and referred to a paper on the website on the history of lay benchers at Convocation.

The Treasurer noted the bencher election webcast held on January 19, 2015 which attracted over 600 viewers.

The Treasurer reminded benchers that tomorrow is the close of nominations for the Law Society awards.

The Treasurer reminded Convocation of the upcoming event on February 12, 2015 to present the inaugural Human Rights Award to The Honourable Irwin Cotler, PC, O.C., M.P.

The Treasurer updated Convocation on the work of the Working Group on Challenges Faced by Racialized Licensees.

The Treasurer congratulated the new lawyers called to the Bar in Toronto on January 23, 2015 and congratulated The Honourable Karen M. Weiler, the honorary Doctor of Laws recipient.

The Treasurer announced the following as luncheon guests: The Honourable Alexandra Hoy, Associate Chief Justice of Ontario, James Kirkpatrick Stewart, Deputy Prosecutor Elect of the International Criminal Court and Arif Virani, Counsel at the Ministry of the Attorney General in the Constitutional Law Branch.

The Treasurer advised that the Government and Public Affairs Report would be deferred to February Convocation.

MOTION – CONSENT AGENDA

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

Carried

DRAFT MINUTES OF CONVOCATION – Tab 1.1

The draft minutes of Convocation of November 28, 2014 were confirmed.

MOTIONS – Tab 1.2

Motion - Appointment – Tab 1.2.1

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

Carried

Motion – Annual General Meeting – Tab 1.2.2

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

Carried



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SECRETARY'S REPORT TO CONVOCATION – Tab 1.3

Re: Conduct of the 2015 Bencher Election

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

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE –  
Tab 1.4

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

Carried

TRIBUNAL COMMITTEE REPORT

Mr. Anand presented the Report.

Re: Proposal for Three-Year Review of Tribunal Model

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the proposal set out in the Report respecting the three-year review of the Tribunal model required in the 2012 Tribunal Report to Convocation.

Carried

Mr. Anand provided a report for information on the activities of the Law Society Tribunal.

*For Information*

- Tribunal Office Quarterly Statistics

PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Re: Ending of Two Licensing Exemptions

It was moved by Ms. Corsetti, seconded by Ms. McGrath, that Convocation approve the amendments to By-law 4 set out in the motion at Tab 3.1.1 to end the licensing exemptions for:

- a. the Canadian Registered Safety Professionals; and
- b. Appraisal Institute of Canada.

Carried

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

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Requests for Intervention

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

- a. Lawyer Narges Mohammadi – Iran – letters of intervention and public statement presented at Tab 4.1.1.
- b. Lawyers Vitaliy Moiseyev and Tatiana Akimtseva – Russian Federation – letters of intervention and public statement presented at Tab 4.1.2
- c. Lawyer Dr. Amin Mekki Medani – Sudan – letters of intervention and public statement presented at Tab 4.1.3.

Carried

POINT OF PERSONAL PRIVILEGE

Ms. Ross rose on a point of personal privilege to acknowledge the 70<sup>th</sup> anniversary of the liberation of the Auschwitz concentration camp.

Re: Reports for Information

Ms. Leiper spoke to the Public Education Equality and Rule of Law Series Calendar events, and the Diversification of Career Paths in Law Report by Professor Fiona M. Kay, for information.

*For Information*

- Report of Professor Fiona Kay, *The Diversification of Career Paths in Law Report*
- Public Education Equality and Rule of Law Series Calendar 2015

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Professional Development and Competence Department Annual Resource and Program Report

Mr. Goldblatt spoke to the Report for information.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Alternative Business Structures Working Group Report

Mr. Mercer spoke to the Report for information.

Re: Firm Regulation and Compliance-Based Regulation

Mr. Mercer spoke to the Report for information.

CHIEF EXECUTIVE OFFICER'S REPORT

Mr. Lapper, Chief Executive Officer, presented his report for information.

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*REPORTS FOR INFORMATION ONLY*

AUDIT AND FINANCE COMMITTEE REPORT

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

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

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

PROFESSIONAL REGULATION COMMITTEE REPORT

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

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

CONVOCATION ROSE AT 1:00 P.M.

Tab 1.2

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT CONVOCATION ON FEBRUARY 26, 2015

That Avvy Go be appointed to the Challenges Faced by Racialized Licensees Working Group.

**Tab 1.3**

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

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

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, February 26<sup>th</sup>, 2015

ALL OF WHICH is respectfully submitted

DATED this 26<sup>th</sup> day of February, 2015



**CANDIDATES FOR CALL TO THE BAR**  
**February 26<sup>th</sup>, 2015**

**Transfer from another province (Mobility)**

Marie-Eve Jacqueline Sylvie Gingras  
Thomas Alan Pearse  
Stephania Ann Sikora

**L3**

Yanick Joseph Daniel Martin Charbonneau  
Sarah Beatrice Leonne Fortier

**Licensing Process**

Laura Marguerite Graham  
Manpreet Kaur Hansra  
Laurianne Penn  
Elaine Tan

**TAB 2**



## **Report to Convocation February 26, 2015**

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

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

**Purposes of Report: Decision and Information**

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

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### **For Decision**

Human Rights Monitoring Group Request for Interventions..... **TAB 2.1**

**For Information** ..... **TAB 2.2**

Public Education Equality and Rule of Law Series Calendar 2015

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on February 12, 2015. Committee members Julian Falconer, Chair, Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee, Constance Backhouse, Howard Goldblatt, Jeffrey Lem, Marian Lippa, Barbara Murchie, Judith Potter and Susan Richer participated. Sandra Yuko Nishikawa, Chair of the Equity Advisory Group also participated. Staff members Josée Bouchard, Janice LaForme, Diana Miles, Zeynep Onen, Ekua Quansah, and Grant Wedge also attended. Professor Michael Ornstein, York University, attended to make a presentation.

**TAB 2.1**

**FOR DECISION**

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS**

2. **That Convocation approve the letters and public statements in the following cases:**
  - a. **Lawyer Waleed Abu al-Khair – Saudi Arabia – letters of intervention presented at [TAB 2.1.1](#).**
  - b. **Lawyer Sukhrat Kudratov– Tajikistan – letters of intervention and public statement presented at [TAB 2.1.2](#).**

**Rationale**

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

**Key Issues and Considerations**

4. The Monitoring Group considered the following factors when making a decision about the arrest, continued detention and severe sentence of human rights lawyer Waleed Abu al-Khair:
  - a. there are no concerns about the quality of sources used for this report;
  - b. the Law Society has received correspondence from Lawyers’ Rights Watch Canada and Amnesty International regarding this case;
  - c. the Law Society of Upper Canada intervened in Waleed Abu al-Khair’s case in October 2014. The Law Society also intervened in cases of other lawyers in Saudi Arabia in January 2008 and December 2014;
  - d. the arrest, continued detention and severe sentence of human rights lawyer Waleed Abu al-Khair falls within the mandate of the Monitoring Group.
5. The Monitoring Group considered the following factors when making a decision about the arrest and sentence of human rights lawyer Sukhrat Kudratov:
  - a. there are no concerns about the quality of sources used for this report;

- b. the arrest and sentence of lawyer Sukhrat Kudratov falls within the mandate of the Monitoring Group.

## KEY BACKGROUND

### KINGDOM OF SAUDI ARABIA – THE ARREST, CONTINUED DETENTION AND SEVERE SENTENCE OF HUMAN RIGHTS LAWYER WALEED ABU AL-KHAIR

#### Sources of Information

- 6. The background information for this report was taken from the following sources:
  - a. Amnesty International;<sup>1</sup>
  - b. British Broadcasting Corporation (“BBC”);<sup>2</sup>
  - c. Front Line Defenders;
  - d. Gulf Centre for Human Rights (“GCHR”);<sup>3</sup>
  - e. Lawyers’ Rights Watch Canada (“LRWC”);<sup>4</sup>
  - f. Human Rights Watch;<sup>5</sup> and,
  - e. U.S. Department of State.<sup>6</sup>

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1 Amnesty International is an independent and democratically-run organization. The movement’s mission and policies, and its long-term directions, are all set by Amnesty members. Amnesty representatives from around the world gather every two years to set policy at the International Council Meeting (ICM). The Council also elects an International Executive Committee which ensures that the ICM’s decisions are carried out. Where Amnesty International is formally organized in a particular country, such as in Canada, Amnesty members set policy and key priorities within the framework of the worldwide movement. Amnesty International’s work is always being assessed by its members and staff in the light of changing world circumstances. When major changes in policy and approach are needed, Amnesty members make the final decision.

2 The BBC, founded in 1922, is one of the world’s most respected sources for news. It has been a global service since 1932.

3 The GCHR was founded in 2011. It is an independent, non-profit NGO, with offices in Beirut and Copenhagen. The GCHR provides support and protection to human rights defenders working in the six Gulf Cooperation Council member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), and to those working in Iran, Iraq, Yemen and Syria. It receives guidance from an Advisory Board composed of regional and international human rights defenders, including academics and lawyers.

4 LRWC was incorporated as a non-profit organization on 8 June 2000. It is a committee of Canadian lawyers that promotes human rights and the rule of law by providing support internationally to human rights defenders in danger. LRWC promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. Their work includes: campaigning for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy; producing legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and, working in cooperation with other human rights organizations.

5 Human Rights Watch is a charitable organization that first began in 1978 with the creation of Helsinki Watch, which was designed to support citizens groups within the Soviet bloc to monitor government compliance with the 1975 Helsinki Accords. Related “Watch Committees” arose to address human rights abuses in the Americas, Asia, Africa, and the Middle East. In 1988, the organization formally adopted the all-inclusive “Human Rights Watch” name. In 1997, Human Rights Watch shared the Nobel Peace Prize for its efforts that contributed to banning landmines internationally. Human Rights Watch investigates abuses by using traditional on-the-ground fact-finding, supplemented by new technologies in fact-finding research, to defend the rights of people worldwide.

## Background

7. The following information served as the basis for the Law Society's intervention in Waleed Abu al-Khair's case in October 2014.
8. Waleed Abu al-Khair is a prominent human rights lawyer, activist, and the founder and director of Monitor for Human Rights in Saudi Arabia.<sup>7</sup> Waleed Abu al-Khair was awarded the Olof Palme Memorial Fund Prize in 2012 for his work.<sup>8</sup>
9. On 4 October 2013, Saudi authorities arrested Waleed Abu al-Khair for hosting a weekly discussion group for reformists.<sup>9</sup> Reports indicate that he was brought before the Specialized Criminal Court in Riyadh on 6 October 2013, facing a number of charges, including "breaking allegiance to and disobeying the ruler", "disrespecting the authorities", "offending the judiciary", "inciting international organizations against the Kingdom" and "founding an unlicensed organization."<sup>10</sup>
10. On 29 October 2013, a different criminal court in Jeddah sentenced him to three months in prison on similar charges.<sup>11</sup> On 6 February 2014, the Court of Appeal upheld that sentence and conviction.<sup>12</sup>
11. Reports indicate that after he served his sentence, Waleed Abu al-Khair was then detained on 15 April 2014 for "criticising and insulting the judiciary"; "assembling international organisations against the Kingdom"; "creating and supervising an unlicensed organisation, and contributing to the establishment of another"; and, "preparing and storing information that will affect public security."<sup>13</sup> On 6 July 2014, the first instance Specialized Criminal Court in Jeddah sentenced Waleed Abu al-Khair to 15 years in prison, a 15 year ban on travel, and a fine of 200,000 Saudi riyal (almost CDN \$60,000).<sup>14</sup>
12. The U.S. Department of State has expressed its concern over the duration of the sentence, travel ban, and steep fine.<sup>15</sup> The organizations listed in this report believe that these

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6 The U.S. Department of State, created in 1789, is the federal executive department responsible for the United States' international relations. The Department of State was the first executive department established.

7 "Saudi Arabia – Human rights lawyer Waleed Abu Al-Khair subjected to ill-treatment and imprisoned with criminals", Gulf Centre for Human Rights (21 July 2014), online: <<http://gc4hr.org/news/view/702>> [GCHR].

8 "Update – Saudi Arabia: Mr Waleed Abu Al-Khair receives lengthy prison sentence and travel ban", *Front Line Defenders* (7 July 2014), online: <<http://www.frontlinedefenders.org/node/26509>> [FLD].

9 "Saudi Arabia: Jailed for Hosting Discussion Group", *Human Rights Watch* (4 October 2013), online: <<http://www.hrw.org/news/2013/10/04/saudi-arabia-jailed-hosting-discussion-group>> [HRW].

10 "Saudi Arabia jails lawyer and human rights activist in ongoing crackdown on dissent", *Amnesty International* (16 April 2014), online: <<http://www.amnesty.org/en/news/saudi-arabia-waleed-abu-al-khair-2014-04-16>> [Amnesty].

11 *Amnesty*.

12 *Ibid.*

13 *FLD*.

14 *Ibid.*

15 U.S. Department of State, *Sentencing of Saudi Human Rights Lawyer Waleed Abu al-Khair* (Press Statement) (7 July 2014), online: <<http://www.state.gov/r/pa/prs/ps/2014/07/228840.htm>>.

charges are 'trumped up', and appear to be punishing peaceful activism.<sup>16</sup> A spokesperson for Human Rights Watch noted that the crackdown in Saudi Arabia "on peaceful human rights activists makes a mockery of its membership in the UN Human Rights Council in Geneva, whose members are expected to promote and protect the very rights that Saudi authorities are trampling underfoot."<sup>17</sup>

13. Furthermore, the GCHR brings forward additional concerns, noting that Waleed Abu al-Khair "is the only human rights defender in Buraiman prison and his ill-treatment and detention are in violation of the UN Convention of Civil and Political Rights as well as the UN Standard Minimum Rules for the Treatment of Prisoners in [...] section 8 (c) which states that 'Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence.'"<sup>18</sup>
14. The arrest, continued detention, and severe punishment of Waleed Abu al-Khair stands in contrast to Saudi Arabia's responsibilities under international law, and as a current member of the United Nations Human Rights Council. Organizations are calling for his release and an end to the crackdown on human rights activists in Saudi Arabia.

## Update

15. Reports indicate that on 12 January 2015, Waleed Abu al-Khair's sentence was upheld upon appeal by the Specialized Criminal Court ("SCC") in Riyadh. The judge ordered that Waleed Abu al-Khair must serve the full 15 year prison sentence because he has refused to apologize for his "offences".<sup>19</sup>
16. It is reported that Waleed Abu al-Khair is being detained in the Briman prison in Jeddah. He has stated that he has been physically and psychologically tortured during his detention.<sup>20</sup> He has also been denied access to medical care and to dietary accommodations required to manage his diabetes.<sup>21</sup>
17. Organizations such as Amnesty International and Lawyers' Rights Watch Canada have called for Waleed Abu al-Khair's immediate and unconditional release.

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16 "Saudi activist Waleed Abu al-Khair sentenced to prison", *BBC* (7 July 2014), online: <<http://www.bbc.com/news/world-middle-east-28200195>> [BBC].

17 *Ibid.*

18 GCHR.

19 "Urgent Action: Sentence Against Human Rights Defender Upheld", *Amnesty International* (13 January 2015), online: < <http://www.amnesty.org/en/library/asset/MDE23/003/2015/en/73bc8b2c-cf3f-4b4a-bab0-532713949020/mde230032015en.html>> [Urgent Action].

20 *Ibid.*

21 "Saudi Arabia: Waleed Abu al-Khair [sic] Sentenced to 15 Years in Jail | Letter", *Lawyers' Rights Watch Canada* (22 January 2015), online: < <http://www.lrwc.org/saudi-arabia-waleed-abu-al-khair-sentenced-to-15-years-in-jail-letter/>> [LRWC]



## REPUBLIC OF TAJIKISTAN – THE ARREST AND SENTENCE OF HUMAN RIGHTS LAWYER SUKHRAT KUDRATOV

### Sources of Information

18. The background information for this report was taken from the following sources:
- a. Front Line Defenders;
  - b. Human Rights Watch (“HRW”);<sup>22</sup>
  - c. International Bar Association’s Human Rights Institute (“IBAHRI”)<sup>23</sup>;
  - d. The Observatory for the Protection of Human Rights Defenders;<sup>24</sup> and,
  - e. Jurist.<sup>25</sup>

### Background

19. The following information has been reported about Sukhrat Kudratov.
20. Sukhrat Kudratov is a human rights lawyer who is well-known for defending opposition activists, victims of police torture and religious extremists.<sup>26</sup> In 2011, Sukhrat Kudratov was the recipient of the Bureau for Human Rights and Rule of Law’s Human Rights Defender of Tajikistan award. He is the lawyer for the independent news agency “Asia-Plus” and he is the deputy director of the opposition Social Democratic Party.<sup>27</sup>
21. Reports indicate that on 21 July 2014, Sukhrat Kudratov was arrested in his office and charged with three criminal offences, including attempted bribery of a judge. It is believed that he is being targeted as a result of his human rights work, which includes defending

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22 Human Rights Watch is a charitable organization that first began in 1978 with the creation of Helsinki Watch, which was designed to support citizens groups within the Soviet bloc to monitor government compliance with the 1975 Helsinki Accords. Related “Watch Committees” arose to address human rights abuses in the Americas, Asia, Africa, and the Middle East. In 1988, the organization formally adopted the all-inclusive “Human Rights Watch” name. In 1997, Human Rights Watch shared the Nobel Peace Prize for its efforts that contributed to banning landmines internationally. Human Rights Watch investigates abuses by using traditional on-the-ground fact-finding, supplemented by new technologies in fact-finding research, to defend the rights of people worldwide.

23 The International Bar Association’s Human Rights Institute (IBAHRI) works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

24 International Federation for Human Rights (FIDH) created the Observatory for the Protection of Human Rights Defenders (OBS) in 1997, in partnership with the World Organisation Against Torture (OMCT). The objective of this programme is to intervene to prevent or remedy to situations of repression against human rights defenders. The action of this programme is based on the conviction that the strengthening of cooperation and solidarity in favour of human rights defenders and their organisations contribute to breaking their isolation and to reinforcing their protection and security.

25 JURIST (<http://jurist.org>) is a web-based legal news and real-time legal research service powered by a mostly-volunteer team of over 60 part-time law student reporters, editors and Web developers led by law professor Bernard Hibbitts at the University of Pittsburgh School of Law in Pittsburgh, Pennsylvania, USA. JURIST is produced as a public service for the continuing legal education of its readers and law student staffers, and uses the latest Internet technology to track important legal news stories and materials and present them rapidly, objectively and intelligibly in an accessible, ad-free format.

26 “Tajikistan: The Sentencing of Mr. Sukhrat Kudratov” (23 January 2015), online: <<https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/tajikistan/16847-tajikistan-sentencing-of-mr-sukhrat-kudratov> >[The Observatory]

27 *Ibid.*

Zaid Saidov, an opposition activist, who was arrested in November 2013 after announcing the creation of a new opposition party.<sup>28</sup> Zaid Saidov was sentenced to 26 years in prison in December 2013. Sukhrat Kudratov's arrest took place six days after he issued a public letter addressed to foreign parliaments, governments, embassies and international human rights organizations drawing their attention to the human rights violations committed during Zaid Saidov's trial and to the ongoing persecution of Zaid Saidov's legal team.<sup>29</sup> Human Rights Watch notes, "Following a November visit to Tajikistan, the International Commission of Jurists (ICJ) stated that it had credible information that the charges against Kudratov were 'linked to his representation of a client, contrary to international standards on the independence of lawyers.'"<sup>30</sup>

22. It is reported that Sukhrat Kudratov is the second of Zaid Saidov's lawyers to be detained. In March 2014, Fakhriddin Zokirov, was charged with fraud. He was released after eight months on the condition that he would no longer defend Zaid Saidov.<sup>31</sup>
23. Reports indicate that on 13 January 2015, Sukhrat Kudratov was sentenced to nine years in a penal colony for bribery and fraud.<sup>32</sup> He is also prohibited from performing any activities as a lawyer upon completion of his prison term.<sup>33</sup>
24. Sukhrat Kudratov has announced that he will appeal the verdict.<sup>34</sup> The Supreme Court of Tajikistan must decide on his appeal by 23 February 2015.<sup>35</sup>
25. A number of human rights organizations have called for Sukhrat Kudratov's immediate release and for the Tajik government to take steps to ensure the independence of the legal profession and security of individual lawyers.

## FOR INFORMATION

### HUMAN RIGHTS AWARD

26. On February 12, 2015, the inaugural Law Society of Upper Canada's Human Rights Award was awarded to the Honourable Irwin Cotler. The coverage of the award ceremony is available online at <http://www.lawsocietygazette.ca/news/irwin-cotler-accepts-law-societys-first-human-rights-award/>.

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28 *Ibid.*

29 *Ibid.*

30 "Tajikistan: Human Rights Lawyer Imprisoned" (14 January 2015), online: <<http://www.hrw.org/news/2015/01/14/tajikistan-human-rights-lawyer-imprisoned>> [*Human Rights Watch*]

31 *The Observatory supra* note 26.

32 *Ibid.*

33 "Tajikistan: Update – Human Rights Lawyer Mr. Shukhrat Kudratov sentenced to nine years' imprisonment" (16 January 2015), online: <<http://www.frontlinedefenders.org/node/27931>> [*Frontline Defenders*]

34 *Ibid.*

35 "Sentencing of prominent human rights lawyer in Tajikistan of concern to IBAHRI" (29 January 2015), online: <<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=81c26e2d-821d-4036-b261-3bc978a8aa65>>

TAB 2.1.1

## PROPOSED LETTERS OF INTERVENTION

### WALEED ABU AL-KHAIR

King Salman bin Abdul Aziz Al-Saud  
The Custodian of the Two Holy Mosques  
Office of His Majesty the King  
Royal Court, Riyadh  
Kingdom of Saudi Arabia

Your Majesty:

**Re: The arrest, continued detention and severe punishment of human rights lawyer  
Waleed Abu Al-Khair**

I write on behalf of the Law Society of Upper Canada\* further to our letter of 6 October 2014, to voice our continued concern over the arrest, detention and severe punishment of Waleed Abu Al-Khair. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Waleed Abu al-Khair is a prominent human rights lawyer, activist, and the founder and director of Monitor for Human Rights in Saudi Arabia. He was awarded the Olof Palme Memorial Fund Prize in 2012 for his work.

In our letter of 6 October 2014, the Law Society expressed concern about reports that Waleed Abu al-Khair had been arrested, detained and subsequently sentenced to imprisonment as a result of engaging in legitimate human rights work.

The Law Society presently writes to voice its continued deep concern as a result of reports that on 12 January 2015, Waleed Abu al-Khair's sentence was upheld upon appeal by the Specialized Criminal Court in Riyadh. The judge ordered that Waleed Abu al-Khair must serve the full 15 year prison sentence because he has refused to apologize for his offences.

It is reported that Waleed Abu al-Khair is being detained in the Briman prison in Jeddah. He has stated that he has been physically and psychologically tortured during his detention. Reports also indicate that Waleed Abu al-Khair has been denied access to medical care and to dietary accommodations required to manage his diabetes.

The Law Society notes that the *Universal Declaration of Human Rights* under Article 3 gives everyone the right to life, liberty, and security of person. Waleed Abu al-Khair has the right to access medical care and to be provided with dietary accommodations for his medical condition.

The Law Society is deeply concerned about situations where lawyers are targeted in the legitimate exercise of their duties. As a current member of the UN Human Rights Council, Saudi Arabia should be aware of international human rights instruments, including the *Universal Declaration of Human Rights*, which state that respect for human rights is essential to advancing the rule of law. Article 16 of the *United Nations Basic Principles on the Role of Lawyers* states “governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely; and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”. Article 18 states “lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions”.

Moreover, Article 23 states:

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

The Law Society urges the government of Saudi Arabia to:

- a. release Waleed Abu al-Khair immediately, as he is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Waleed Abu al-Khair;
- c. provide Waleed Abu al-Khair with regular access to his lawyer, family, his physician and adequate medical care;
- d. guarantee all the procedural rights that should be accorded to Waleed Abu al-Khair, and other human rights defenders in Saudi Arabia;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct or ill-treatment in the arrest, detention, and sentencing of Waleed Abu al-Khair, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- f. guarantee that adequate reparation would be provided to Waleed Abu al-Khair if found to be a victim of abuses;

- g. put an end to all acts of harassment against Waleed Abu al-Khair, as well as other human rights defenders in Saudi Arabia;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

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

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

cc:

Dr. Walid bin Mohammed bin Saleh Al-Sama'ani  
Minister of Justice of the Kingdom of Saudi Arabia  
University Street, Riyadh 11137  
Saudi Arabia

HRH Prince Saud Al-Faisal bin Abdulaziz Al-Saud  
Minister of Foreign Affairs of the Kingdom of Saudi Arabia  
Nasseriya Street, Riyadh 11124  
Saudi Arabia

H.E. Ambassador Naif Bin Bandir Alsudairy  
The Royal Embassy of Saudi Arabia  
201 Sussex Drive  
Ottawa, ON, Canada

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

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

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

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

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

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

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

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

Dear [Name],

**Re: The arrest, continued detention and severe punishment of human rights lawyer  
Waleed Abu Al-Khair**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to King Salman bin Abdul Aziz Al-Saud, King of Saudi Arabia, expressing our deep concerns about Waleed Abu al-Khair's arrest, continued detention, and severe punishment.

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

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

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

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

Letter to be sent to:

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

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



TAB 2.1.2

## PROPOSED LETTERS OF INTERVENTION

### SUKHRAT KUDRATOV

His Excellency Mr. Enomali Rahmmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

#### **Re: The arrest and sentence of human rights lawyer Sukhrat Kudratov**

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

Sukhrat Kudratov is a human rights lawyer who is well-known for defending opposition activists, victims of police torture and religious extremists. In 2011, Sukhrat Kudratov was the recipient of the Bureau for Human Rights and Rule of Law's Human Rights Defender of Tajikistan award. He is the lawyer for the independent news agency "Asia-Plus" and he is the deputy director of the opposition Social Democratic Party.

Reports indicate that on 21 July 2014, Sukhrat Kudratov was arrested in his office and charged with three criminal offences, including attempted bribery of a judge. Groups have raised concern that Sukhrat Kudratov is being targeted as a result of his human rights work, which includes defending Zaid Saidov, an opposition activist, who was arrested in November 2013 after announcing the creation of a new opposition party. Sukhrat Kudratov's arrest took place six days after he issued a public letter addressed to foreign parliaments, governments, embassies and international human rights organizations drawing their attention to the human rights violations committed during Zaid Saidov's trial and to the ongoing persecution of Zaid Saidov's legal team.

It is reported that Sukhrat Kudratov is the second of Zaid Saidov's lawyers to be detained. In March 2014, Fakhridin Zokirov, was charged with fraud. He was released after eight months on the condition that he would no longer defend Zaid Saidov.

On 13 January 2015, Sukhrat Kudratov was sentenced to nine years in a penal colony for bribery and fraud. He is also prohibited from performing any activities as a lawyer upon completion of his prison term. Reports indicate that Sukhrat Kudratov has announced that he will appeal the verdict. The Supreme Court of Tajikistan must decide on his appeal by 23 February 2015.

In concern over these reports, the Law Society of Upper Canada urges your Excellency to consider Articles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*.

Article 16 states:

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

Moreover, Article 23 states:

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

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

- a. release Sukhrat Kudratov immediately, as he is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Sukhrat Kudratov;
- c. provide Sukhrat Kudratov with regular access to his lawyer, family, physician and medical care;
- d. guarantee all the procedural rights that should be accorded to Sukhrat Kudratov and other human rights lawyers and defenders in Tajikistan;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Sukhrat Kudratov in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- f. guarantee that adequate reparation would be provided to Sukhrat Kudratov if found to be a victim of abuses;
- g. put an end to all acts of harassment against Sukhrat Kudratov as well as other human rights lawyer and defenders in Tajikistan;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

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

cc:

Mr. Shomurod Rustam  
Minister of Justice of the Republic of Tajikistan  
Shotemur Street, 27  
Dushanbe 734025  
Republic of Tajikistan

Mr. Sirojiddin Aslov Muhridinovich  
Minister of Foreign Affairs of the Republic of Tajikistan  
Sheroz Street, 33  
Dushanbe 734001  
Republic of Tajikistan

H.E. Mr. Mahmamin Mahmaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10017  
USA

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

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

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers Rights Watch Canada

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

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

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

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

## **Proposed Public Statement**

### **The Law Society of Upper Canada Expresses Concern about the Arrest and Sentence of human rights lawyer Sukhrat Kudratov in Tajikistan**

The Law Society of Upper Canada is deeply concerned about the arrest and sentence of human rights lawyer Sukhrat Kudratov in Tajikistan.

Sukhrat Kudratov is a human rights lawyer who is well-known for defending opposition activists, victims of police torture and religious extremists. In 2011, Sukhrat Kudratov was the recipient of the Bureau for Human Rights and Rule of Law's Human Rights Defender of Tajikistan award. He is the lawyer for the independent news agency "Asia-Plus" and he is the deputy director of the opposition Social Democratic Party.

Reports indicate that on 21 July 2014, Sukhrat Kudratov was arrested in his office and charged with three criminal offences, including attempted bribery of a judge. Groups have raised concern that Sukhrat Kudratov is being targeted as a result of his human rights work, which includes defending Zaid Saidov, an opposition activist, who was arrested in November 2013 after announcing the creation of a new opposition party. Sukhrat Kudratov's arrest took place six days after he issued a public letter addressed to foreign parliaments, governments, embassies and international human rights organizations drawing their attention to the human rights violations committed during Zaid Saidov's trial and to the ongoing persecution of Zaid Saidov's legal team.

It is reported that Sukhrat Kudratov is the second of Zaid Saidov's lawyers to be detained. In March 2014, Fakhriddin Zokirov, was charged with fraud. He was released after eight months on the condition that he would no longer defend Zaid Saidov.

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

- a. release Sukhrat Kudratov immediately, as he is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Sukhrat Kudratov;
- c. provide Sukhrat Kudratov with regular access to his lawyer, family, physician and medical care;
- d. guarantee all the procedural rights that should be accorded to Sukhrat Kudratov and other human rights lawyers and defenders in Tajikistan;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Sukhrat Kudratov in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- f. guarantee that adequate reparation would be provided to Sukhrat Kudratov if found to be a victim of abuses;
- g. put an end to all acts of harassment against Sukhrat Kudratov as well as other human rights lawyer and defenders in Tajikistan;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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Dear [Name],

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

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

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

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Letter to be sent to:

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- Mary Lawlor, Executive Director, Front Line Defenders

- Vincent Forest, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the High Commissioner for Human Rights
- Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales



## TAB 2.2

### PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR 2015

#### INTERNATIONAL WOMEN'S DAY – TAB 2.2.1

**Topic:**

An intergenerational and interdisciplinary dialogue on women's experiences of sexual violence. The discussion will focus on: the impact of changes in the law of consent; whether our public conversations about high profile cases have changed over the years; and differences in activism and law reform efforts as each generation has sought to address the prevalence of sexual violence against women.

**Date:** March 5, 2015

**Location:** Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

**Time:** Panel 500 p.m. – 7:00 p.m.

**Reception:** 7:00 – 8:30 p.m.

**Confirmed Speakers:**

- Mary Eberts, Law Office of Mary Anne Eberts
- Farrah Khan – Counsellor, Barbra Schlifer Commemorative Clinic
- Lenore Lukasik-Foss – Executive Director, SACHA - Sexual Assault Centre (Hamilton & Area)
- Melanie Randall – Associate Professor, Faculty of Law, Western University
- Lisa Taylor – Assistant Professor, Ryerson School of Journalism

#### LA JOURNÉE INTERNATIONALE DE LA FRANCOPHONIE

**Keynote speakers:** Kelly Burke, sous-ministre adjointe  
Louise Gauvreau, gestionnaire principale, Langues officielles  
Jean-Marc Michalik, ancien champion de boxe poids-lourd ;, et  
Charles Jean Sucsan, directeur des Communications et des projets spéciaux à l'Office des Affaires francophones.

**Date :** March 19, 2015

**Location:** Law Society of Upper Canada

**Time:** 6:00 p.m. – 8:00 p.m.

#### HOLOCAUST REMEMBRANCE DAY

**Date:** April 15 & 16, 2015 (TBC)

**Location:** Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

**Time:** 4:30 p.m. – 8:00 p.m. (TBC)

#### DIVERSE CAREERS FOR WOMEN IN LAW

**Date:** May 7, 2015

**Location:** Convocation Hall

**Time:** TBC

#### **ASIAN AND SOUTH ASIAN HERITAGE MONTH**

**Date:** May 12 or 19, 2015 – TBC

**Location:** Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

**Time:** 4:30 p.m. – 8:00 p.m. (TBC)

#### **ACCESS AWARENESS FORUM**

**Date:** June 4, 2015

**Location:** Donald Lamont Learning Centre

**Time:** 4:30 p.m. – 8:00 p.m. (TBC)

#### **NATIONAL ABORIGINAL HISTORY MONTH**

**Date:** June 19, 2015-TBC

**Location:** Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

**Time:** 4:30 p.m. – 8:00 p.m. (TBC)

#### **PRIDE WEEK**

**Date:** June 23, 2015

**Location:** Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

**Time:** 4:30 p.m. – 8:00 p.m. (TBC)

PUBLIC EDUCATION SERIES  
INTERNATIONAL WOMEN'S DAY EVENT

# Sexual violence against women: the more things change, the more they stay the same?

In honour of **International Women's Day**, join the Law Society and partner organizations for an intergenerational and interdisciplinary dialogue on women's experiences of sexual violence. The discussion will focus on: the impact of changes in the law of consent; whether our public conversations about high profile cases have changed over the years; and differences in activism and law reform efforts as each generation has sought to address the prevalence of sexual violence against women.

A reception will follow the panel discussion.

## March 5, 2015

Osgoode Hall, 130 Queen St. W., Toronto\*

Panel discussion: 5:00-7:00 p.m., Donald Lamont Learning Centre

Reception: 7:00-8:30 p.m., Convocation Hall

*\*also available via webcast*

*Please enter through east-side doors facing Nathan Phillips Square.*

## RSVP

This public event is free, but space is limited. Please register at the following link, by **March 2**: <http://www.lsuc.on.ca/iwd-registration/>

[equityevents@lsuc.on.ca](mailto:equityevents@lsuc.on.ca) | 416-947-3413 | 1-800-668-7380, ext. 3413

*Photographs taken at this public event will be used in Law Society of Upper Canada print and online publications.*



ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

L'ASSOCIATION DU  
BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien



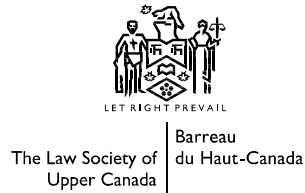
Women's Law  
Association of Ontario



LEAF FAÉJ

Women's Legal  
Education and  
Action Fund

Fonds d'action et  
d'éducation juridiques  
pour les femmes



**TAB 3**

## **Report to Convocation February 26, 2015**

---

### **Tribunal Committee**

#### **Committee Members**

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

**Purpose of Report: Decision  
Information**

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

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*In Camera* Item

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Tribunal 2014 Fourth Quarter Statistics

**TAB 3.2**

## **COMMITTEE PROCESS**

1. The Committee met on February 12, 2015. Committee members Raj Anand (Chair), Jack Braithwaite, Christopher Bredt, Robert Burd, Adriana Doyle, Lee Ferrier, Alan Gold, Barbara Murchie, Linda Rothstein and Baljit Sikand participated. Tribunal Chair David Wright and staff members Grace Knakowski, Lisa Mallia and Sophia Spurdakos also attended.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

**TAB 3.2**

**FOR INFORMATION**

**TRIBUNAL 2014 FOURTH QUARTER STATISTICS**

17. The Tribunal's quarterly report for the fourth quarter of 2014 is set out at [TAB 3.2:1: 2014 Q4 Final](#) for information.
18. Ongoing collection and reporting of Tribunal operational statistics enable the Tribunal to monitor issues, needs and implementation of the new model and provide the Committee and Convocation with relevant Tribunal information.



TAB 3.2.1

Law Society  
Tribunal  
Statistics

2014

October 1 to December 31

**Fourth Quarter  
Report**

**Law Society Tribunal Statistics  
Third Quarter Report (October 1 – December 31, 2014)**

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**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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**FILES OPENED**

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

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

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Files</b>	<b>38 (48)</b>	<b>33 (41)</b>	<b>35 (44)</b>	<b>42 (46)<sup>1</sup></b>	<b>148 (179)</b>
Lawyer	28	27	30	35	120
Paralegal	10	6	5	7	28
<b>Hearing Files</b>	<b>36 (41)</b>	<b>25 (38)</b>	<b>28 (39)</b>	<b>36 (41)</b>	<b>125 (159)</b>
Lawyer	26	22	25	29	102
Paralegal	10	3	3	7	23
<b>Appeal Files</b>	<b>2 (7)</b>	<b>8 (3)</b>	<b>7 (5)</b>	<b>6 (5)</b>	<b>23 (20)</b>
Lawyer	2	5	5	6	18
Paralegal	0	3	2	0	5

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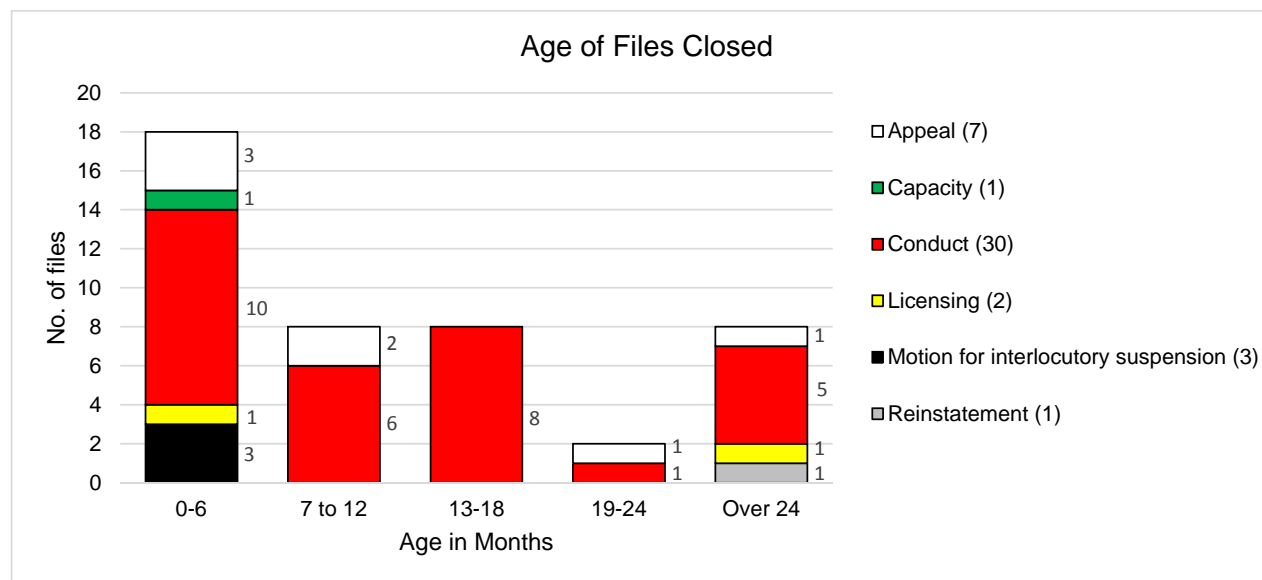
<sup>1</sup> Numbers in parentheses are 2013 figures.

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

**FILES CLOSED**

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

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Files</b>	<b>44 (31)</b>	<b>52 (38)</b>	<b>40 (41)</b>	<b>44 (46)</b>	<b>180 (156)</b>
Lawyer	32	41	32	37	142
Paralegal	12	11	8	7	38
<b>Hearing Files</b>	<b>35 (26)</b>	<b>47 (34)</b>	<b>33 (34)</b>	<b>37 (40)</b>	<b>152 (134)</b>
Lawyer	24	36	26	33	119
Paralegal	11	11	7	4	33
<b>Appeal Files</b>	<b>9 (5)</b>	<b>5 (4)</b>	<b>7 (7)</b>	<b>7 (6)</b>	<b>28 (22)</b>
Lawyer	8	5	6	4	23
Paralegal	1	0	1	3	5



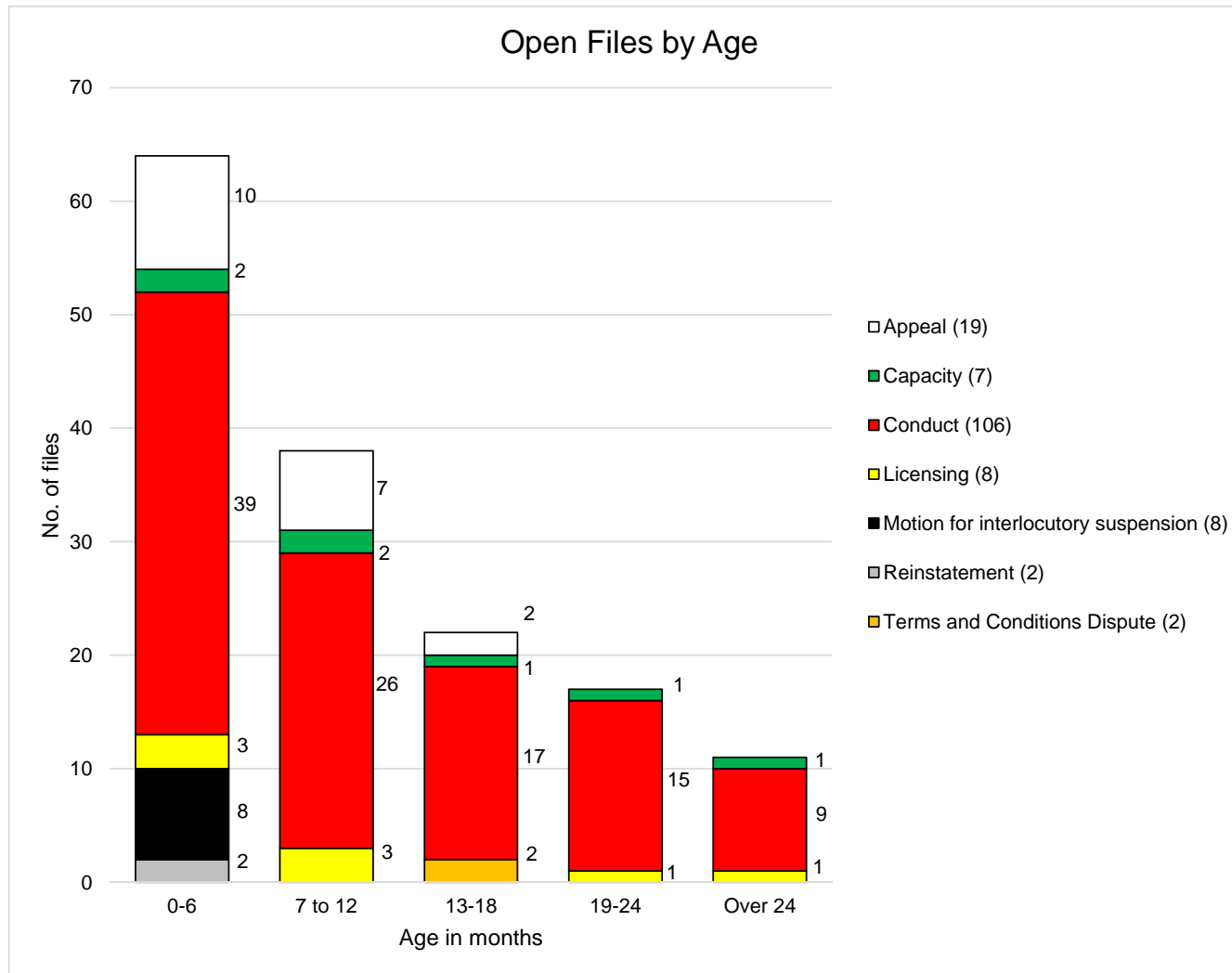
Law Society Tribunal Statistics  
Third Quarter Report (October 1 – December 31, 2014)

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## OPEN FILES AT QUARTER END

	Q1	Q2	Q3	Q4
<b>Total Files</b>	<b>179 (173)</b>	<b>155 (179)</b>	<b>151 (182)</b>	<b>152 (186)</b>
Lawyer	150	132	131	132
Paralegal	29	23	20	20
<b>Hearing Files</b>	<b>162 (146)</b>	<b>135 (153)</b>	<b>131 (157)</b>	<b>133 (162)</b>
Lawyer	134	116	116	115
Paralegal	28	19	15	18
<b>Appeal Files</b>	<b>17 (27)</b>	<b>20 (26)</b>	<b>20 (25)</b>	<b>19 (24)</b>
Lawyer	16	16	15	17
Paralegal	1	4	5	2

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**



**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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

1. File A, a licensing application, was filed in June 2009. Several motions were heard. The hearing on the merits commenced in July 2011 and concluded in July 2014. The panel reserved its decision. Age of file: 67 months.
2. File B, a conduct application, was filed in September 2009. At the request of the parties, the hearing on the merits commenced in April 2011. The notice of application was dismissed in April 2013. The licensee filed a motion for costs in October 2013. The motion commenced in January 2014 and continued in September 2014. Written submissions on costs are due in January 2015 and a hearing is scheduled in March 2015. Age of file: 41 months.
3. File C, a conduct application, was filed in May 2010. The hearing commenced in March 2011. A motion to quash the proceedings was filed in January 2012 and heard in March and April 2012. The panel delivered its decision on the motion in November 2012 recusing themselves from the hearing and received submissions on costs. The panel's decision on costs was delivered in March 2013. In April 2013, the matter returned to the proceeding management conference (PMC) and the licensee filed a motion for a stay of the proceedings pending the outcome of a court matter. The motion was dismissed in December 2013 and the hearing commenced in February 2014. Continuation dates are scheduled into June 2015. Age of file: 56 months.
4. File D, a conduct application, was filed in October 2010. Several motions were heard. The hearing on the merits commenced in July 2012. The panel made a finding in September 2012 and penalty submissions were scheduled to be heard in January 2013 but a motion to dismiss the notice of application was filed. The motion was heard in April 2013 and the panel's decision denying the motion was released in June 2013. The hearing resumed and concluded in July 2014. The panel's decision on penalty and costs was released in August 2014. Issuance of a reprimand by the hearing panel is pending as the licensee has indicated an intention to appeal. Age of file: 51 months.
5. File E, a conduct application, was filed in September 2011. Both parties filed motions, which were heard in 2012. The hearing on the merits commenced in March 2013 and continued through to September 2013. The panel's decision on finding was released in September 2014. The penalty hearing occurred in November 2014 and written submissions were received in December 2014. The panel reserved. Age of file: 39 months.
6. File F, a conduct application, was filed in November 2011. The licensee is subject to an interlocutory suspension order. The hearing commenced in September 2012 and continued until July 2013. The panel's decision on finding was released in August 2014. A penalty hearing is scheduled in January 2015. Age of file: 37 months.
7. File G, a conduct application, was filed in January 2012. The licensee brought a motion to dismiss the application in February 2012. The motion was heard in July 2013 and dismissed in August 2013. The licensee commenced an application for judicial review after receiving the reasons for decision in November 2013. The Divisional Court quashed the application for judicial review in March 2014. The hearing commenced in April 2014 and concluded in June 2014. The panel's decision on finding was released in October 2014. A penalty hearing is scheduled in February 2015. Age of file: 35 months.
8. File H, a conduct application, was filed in February 2012. The file was before the PMC throughout 2012 and into 2013. The hearing commenced in December 2013 and continued through to October 2014. The panel reserved. Age of file: 33 months.
9. File I, a capacity application, was filed in May 2012. The Law Society filed a motion that was heard and granted in December 2012. Hearing dates are to be set. Age of file: 32 months.

**Law Society Tribunal Statistics**

**Third Quarter Report (October 1 – December 31, 2014)**

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10. File J, a conduct application, was filed in September 2012. The licensee filed a motion to dismiss the application in November 2012. The motion was withdrawn in March 2013. In August 2013 the Law Society filed a motion to adjourn the matter *sine die*, which was granted. The panel's decision on finding was released in September 2014. A penalty hearing is to be scheduled. Age of file: 27 months.
11. File K, a conduct application, was filed in November 2012. In May 2013, the file was joined with two other applications, filed in January 2013 and April 2013 respectively. The hearing was scheduled to commence in October 2013 but was adjourned to allow the licensee to obtain additional evidence. In November 2013 the hearing on the merits commenced and a fourth matter was joined. A recusal motion was heard in April 2014. The panel's reasons, released in July 2014, recused themselves from one of the four matters. The hearing of the remaining three matters resumed in August 2014 and was completed in December 2014. The panel reserved.



**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Opened</b>	<b>8 (9)</b>	<b>8 (5)</b>	<b>8 (14)</b>	<b>8 (12)</b>	<b>32 (40)</b>
Lawyer	3	7	7	7	24
Paralegal	5	1	1	1	8
<b>Total Closed</b>	<b>12 (7)</b>	<b>13 (11)</b>	<b>5 (7)</b>	<b>11 (11)</b>	<b>41 (36)</b>
Lawyer	8	8	3	10	29
Paralegal	4	5	2	1	12

**OPEN SUMMARY FILES AT QUARTER END**

	Q1	Q2	Q3	Q4
<b>Total Files</b>	<b>21 (23)</b>	<b>16 (17)</b>	<b>17 (24)</b>	<b>15 (25)</b>
Lawyer	14	14	16	14
Paralegal	7	2	1	1

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

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

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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

The yearly total of the “No. of Lawyers / Paralegals” will not equal the sum of the “No. of Lawyers / Paralegals” in Q1 to Q4 because the yearly total counts lawyers and paralegals that appeared in more than one quarter only once.

	Q1	Q2	Q3	Q4	Yearly Total
	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals	No. of Lawyers / Paralegals
<b>Proceeding Management Conference (PMC)</b>	68 (52)	43 (78)	48 (67)	<b>48 (72)</b>	<b>127 (141)</b>
Lawyers	57	35	44	44	109
Paralegals	11	8	4	4	18
<b>Hearing Division</b>	65 (50)	56 (58)	49 (43)	<b>69 (61)</b>	<b>161 (146)</b>
Lawyers	51	43	40	57	127
Paralegals	14	13	9	12	34
<b>Appeal Management Conference (AMC)</b>	5 (11)	3 (7)	4 (7)	<b>9 (5)</b>	<b>15 (18)</b>
Lawyers	4	3	4	8	13
Paralegals	1	0	0	1	2
<b>Appeal Division</b>	13 (7)	8 (10)	7 (8)	<b>7 (10)</b>	<b>26 (27)</b>
Lawyers	13	5	5	5	21
Paralegals	0	3	2	2	5

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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

Files heard on more than one occasion by the Tribunal within a quarter are counted each time the file proceeds before the Tribunal. The yearly total of the "No. of Files" will not equal the sum of the "No. of Files" in Q1 to Q4 because the yearly total counts files that appeared in more than one quarter only once.

	Q1		Q2		Q3		Q4		Yearly Total	
	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered	No. of Files	No. of Times Files Considered
<b>PMC</b>	<b>73 (55)</b>	<b>119 (91)</b>	<b>46 (83)</b>	<b>77 (162)</b>	<b>50 (72)</b>	<b>74 (114)</b>	<b>50 (78)</b>	<b>68 (139)</b>	<b>144 (155)</b>	<b>338 (506)</b>
Lawyer	61	93	37	55	46	68	46	64	125	280
Paralegal	12	26	9	22	4	6	4	4	19	58
<b>Hearing Division</b>	<b>76 (56)</b>	<b>111 (72)</b>	<b>67 (65)</b>	<b>88 (93)</b>	<b>57 (51)</b>	<b>71 (69)</b>	<b>80 (68)</b>	<b>107 (87)</b>	<b>190 (168)</b>	<b>377 (321)</b>
Lawyer	61	89	54	66	47	58	67	92	152	305
Paralegal	15	22	13	22	10	13	13	15	38	72
<b>AMC</b>	<b>5 (11)</b>	<b>11 (13)</b>	<b>3 (7)</b>	<b>5 (9)</b>	<b>4 (7)</b>	<b>4 (11)</b>	<b>9 (5)</b>	<b>14 (6)</b>	<b>15 (18)</b>	<b>34 (39)</b>
Lawyer	4	9	3	5	4	4	8	12	13	30
Paralegal	1	2	0	0	0	0	1	2	2	4
<b>Appeal Division</b>	<b>13 (7)</b>	<b>13 (9)</b>	<b>8 (11)</b>	<b>9 (12)</b>	<b>7 (8)</b>	<b>7 (10)</b>	<b>7 (10)</b>	<b>8 (11)</b>	<b>26 (29)</b>	<b>37 (42)</b>
Lawyer	13	13	5	6	5	5	5	5	21	29
Paralegal	0	0	3	3	2	2	2	3	5	8

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

**TOTAL HEARINGS SCHEDULED AND VACATED**

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

	Q1	Q2	Q3	Q4	Cumulative
<b>Hearing Division hearings scheduled<sup>4</sup></b>	121 (82)	96 (107)	81 (88)	109 (108)	407 (385)
Lawyer	99	69	69	95	332
Paralegal	22	27	12	14	75
<b>All Hearing Division hearing time vacated</b>	29 (14) 24% (17%)	15 (23) 16% (22%)	11 (24) 14% (27%)	13 (27) 12% (25%)	68 (88) 17% (23%)
Lawyer	28	10	11	12	61
Paralegal	1	5	0	1	7
<b>Some Hearing Division hearing time vacated</b>	9 (8) 7% (10%)	17 (10) 18% (9%)	7 (10) 9% (11%)	12 (11) 11% (10%)	45 (39) 11% (10%)
Lawyer	8	15	5	12	40
Paralegal	1	2	2	0	5
<b>Appeal Division hearings scheduled<sup>5</sup></b>	15 (14)	9 (16)	7 (13)	12 (15)	43 (58)
Lawyer	14	6	5	8	33
Paralegal	1	3	2	4	10
<b>All Appeal Division hearing time vacated</b>	1 (1) 7% (7%)	0 (2) 0% (13%)	0 (2) 0% (15%)	4 (4) 33% (27%)	5 (9) 12% (16%)
Lawyer	1	0	0	3	4
Paralegal	0	0	0	1	1

<sup>4</sup> This includes proceeding management conference motion hearings.

<sup>5</sup> This includes appeal management conference motion hearings.

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

**REASON FOR VACATED HEARINGS<sup>6</sup>**

All hearing time vacated	Q1		Q2		Q3		Q4 <sup>7</sup>	
	L	P	L	P	L	P	L <sup>8</sup>	P
Party / counsel / representative unavailable / ill	8		5		5		5	
Counsel / representative newly retained / to be retained	5		2	1	2			
Party to obtain / provide additional evidence	4							
Witness unavailable	4			1			1	
Seized panel member unavailable / ill	2		3		1			
Hearing completed ahead of time estimated			2				2	
Parties requested more time to prepare			1		1		2	
Agreed statement of facts ("ASF") expected / signed	1				1		1	
Licensee is subject of other matters	1						1	
Request to have applications heard together	1						1	
Religious observance					1			1
Submissions to be made in writing							2	
Appeal abandoned							1	1
Counsel / representative removed from record		1						
Licensing application abandoned			1					

<sup>6</sup> A hearing may have been vacated for more than one reason.

<sup>7</sup> This column represents the number of times the reason resulted in a vacated hearing.

<sup>8</sup> L = lawyer, P = paralegal.

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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Some hearing time vacated	Q1		Q2		Q3		Q4	
	L	P	L	P	L	P	L	P
ASF expected / signed	2		4		1		6	
Hearing completed ahead of time estimated	1		5	1	1	1	2	
Party / counsel / representative unavailable / ill	2		2	1	1	1	1	
Seized panel member unavailable / ill			1		1		2	
Counsel unprepared			2					
Witness unavailable		1					1	
Party to bring motion	1							
Party to obtain / provide additional evidence	1							
Licence revoked in another proceeding			1					
Duty counsel unavailable					1			

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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**CALENDAR DAYS SCHEDULED AND VACATED**

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

Reasons for vacated calendar days are noted on page 16.

	Q1	Q2	Q3	Q4	Cumulative
<b>Number of available calendar days</b>	62 (61)	63 (64)	63 (63)	<b>61</b> (61)	<b>249</b> (249)
<b>Hearing Division calendar days scheduled</b>	60 (55)	62 (59)	59 (55)	<b>59</b> (54)	<b>240</b> (223)
<b>Hearing Division calendar days vacated</b>	4 (3) 7% (5%)	4 (7) 7% (12%)	3 (6) 5% (11%)	<b>7</b> (3) <b>12%</b> (6%)	<b>18</b> (19) <b>8%</b> (9%)
<b>Appeal Division calendar days scheduled</b>	18 (15)	13 (11)	13 (11)	<b>19</b> (14)	<b>63</b> (51)
<b>Appeal Division calendar days vacated</b>	1 (1) 6% (7%)	0 (1) 0% (9%)	0 (1) 0% (9%)	<b>2</b> (4) <b>11%</b> (29%)	<b>3</b> (7) <b>5%</b> (14%)

**Law Society Tribunal Statistics**  
**Third Quarter Report (October 1 – December 31, 2014)**

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**REASON FOR AND RESULTING VACATED CALENDAR DAYS**

<b>Reason</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4<sup>9</sup></b>
Witness unavailable	3-3			1-1
AMC not required	1-1			1-1
ASF expected / signed	1-1			1-2
Hearing completed ahead of time estimated	1-1	1-1	2-2	
Licensee counsel newly retained / to retain counsel	1-1			
Motion abandoned	1-1			
Seized panel member unavailable / ill	1-1		1-1	
Counsel unprepared		2-3		
Parties requested more time to prepare				2-1
Licensee is subject of other matters				1-2
Party / counsel / representative unavailable / ill				1-1
Religious observance				1-1
Submissions to be made in writing				1-1
Appeal abandoned				1-1

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<sup>9</sup> The first figure in this column represents the number of times a panel accepted this reason. The second figure represents the resulting vacated calendar days. The number of calendar days vacated shown on this page may be greater than the calendar days vacated as reported on page 15 because more than one matter may have been scheduled to be heard on the same day and all were vacated; so one calendar day may have been vacated for more than one reason and for more than one matter.



**Law Society Tribunal Statistics**  
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**PARTIES' ADJOURNMENT REQUESTS**

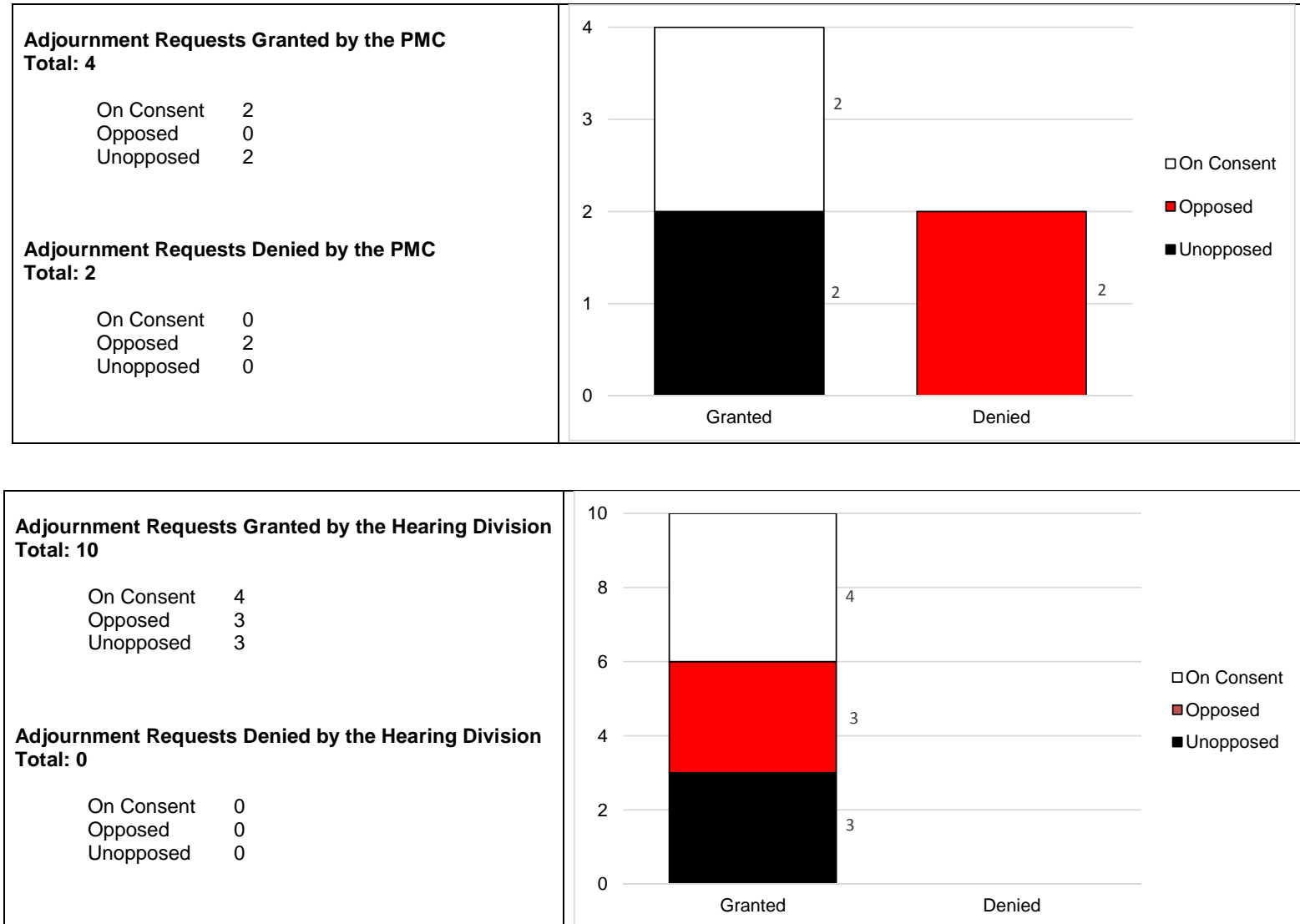
The following table lists the number of adjournment requests to the Law Society Tribunal in this quarter. Adjournment requests reported below may relate to matters scheduled to be heard during this quarter or in a subsequent quarter.

Adjournment request made to		Requests								
		Q1		Q2		Q3		Q4 <sup>10</sup>		Cumulative
		L	P	L	P	L	P	L	P	
PMC	Granted	6 (4)	0 (1)	3 (10)	0 (1)	6 (13)	0 (1)	4 (7)	0 (3)	19 (40)
	Denied	1 (1)	0 (1)	0 (0)	0 (0)	1 (1)	0 (0)	2 (1)	0 (1)	4 (5)
Hearing Division	Granted	15 (6)	2 (0)	6 (11)	3 (2)	7 (7)	3 (2)	10 (17)	2 (2)	48 (47)
	Denied	3 (2)	1 (0)	2 (0)	2 (1)	1 (0)	0 (0)	0 (3)	1 (0)	10 (6)
AMC	Granted	0 (1)	1 (0)	0 (0)	0 (0)	0 (2)	0 (0)	1 (0)	0 (1)	2 (4)
	Denied	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Appeal Division	Granted	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	1 (0)
	Denied	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)

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

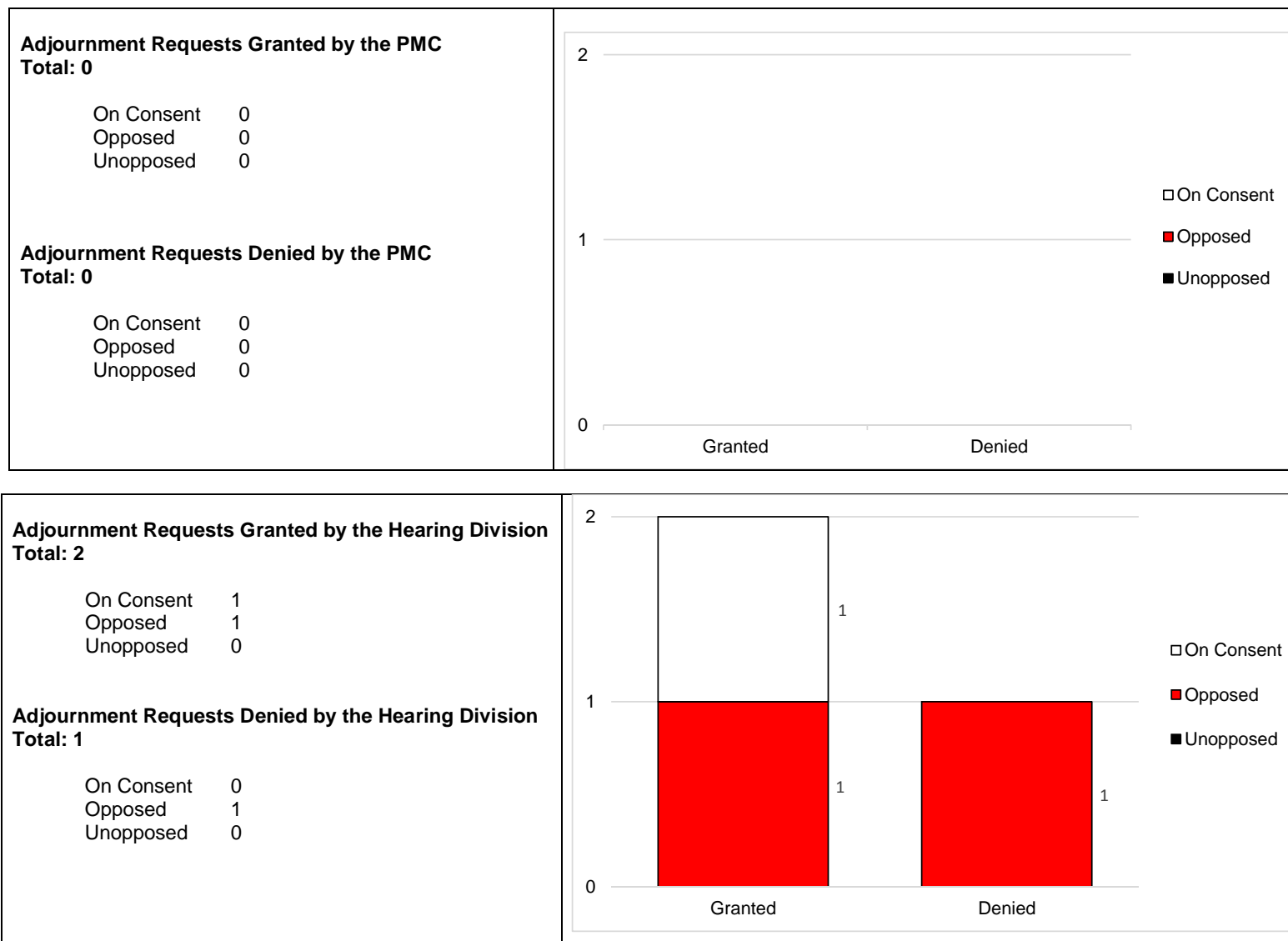
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**PARTIES' POSITION ON ADJOURNMENT REQUESTS (LAWYER MATTERS)**



**Law Society Tribunal Statistics**  
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**PARTIES' POSITION ON ADJOURNMENT REQUESTS (PARALEGAL MATTERS)**



Law Society Tribunal Statistics  
Third Quarter Report (October 1 – December 31, 2014)

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TRIBUNAL REASONS PRODUCED AND PUBLISHED<sup>11</sup>

	Q1	Q2	Q3	Q4	Cumulative
<b>Written reasons produced</b>	39 (41)	55 (31)	53 (34)	<b>36 (36)</b>	<b>183 (142)</b>
Lawyer	31	48	41	34	154
Paralegal	8	7	12	2	29
<b>Written reasons published</b>	41 (37)	43 (36)	46 (34)	<b>38 (36)</b>	<b>168 (143)</b>
Lawyer	35	36	37	35	143
Paralegal	6	7	9	3	25
<b>Oral reasons produced</b>	35 (20)	14 (20)	20 (16)	<b>24 (27)</b>	<b>93 (83)</b>
Lawyer	30	8	18	22	78
Paralegal	5	6	2	2	15
<b>Oral reasons published</b>	21 (16)	1 (17)	13 (0)	<b>17 (12)</b>	<b>52 (45)</b>
Lawyer	17	0	9	15	41
Paralegal	4	1	4	2	11

<sup>11</sup> The number of reasons produced does not equal the number of reasons published because some reasons produced in a quarter may not be published or will be published in a subsequent quarter.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*



**TAB 8**

## **Report to Convocation February 26, 2015**

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### **Professional Regulation Committee**

#### **Committee Members**

Malcolm Mercer (Chair)  
Susan Richer (Vice-Chair)  
Paul Schabas (Vice-Chair)  
Robert Armstrong  
John Callaghan  
John Campion  
Cathy Corsetti  
Seymour Epstein  
Robert Evans  
Julian Falconer  
Patrick Furlong  
Carol Hartman  
Jacqueline Horvat  
Brian Lawrie  
Jeffrey Lem  
William C. McDowell  
Ross Murray  
Jan Richardson  
Heather Ross

**Purpose of Report: Information**

**Prepared by the Policy Secretariat  
(Margaret Drent (416-947-7613))**

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Professional Regulation Division Quarterly Report.....	<a href="#">Tab 8.4</a>

### **COMMITTEE PROCESS**

1. The Professional Regulation Committee (“the Committee”) met on February 12, 2015. In attendance were Malcolm Mercer (Chair), Susan Richer (Vice-Chair), John Callaghan (by telephone), John Campion, Cathy Corsetti, Seymour Epstein, Patrick Furlong, Carol Hartman, Jacqueline Horvat, Brian Lawrie, Ross Murray, Jan Richardson, and Heather Ross. Staff members attending were Zeynep Onen, Jim Varro, Naomi Bussin, and Margaret Drent.
2. Bernard Morrow, the Complaints Resolution Commissioner, presented his 2014 annual report. Miriam Weinfeld and Lisa Steinberg attended the meeting with Mr. Morrow.



**FOR INFORMATION**

**ANNUAL REPORT OF**

**THE COMPLAINTS RESOLUTION COMMISSIONER**

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

**Annual report**

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.
4. The report of the Commissioner, Bernard Morrow, is attached as **TAB 8.1.1**.
5. Mr. Morrow and two members of his staff attended the Committee's February 12, 2015 meeting to discuss the report. The report was also considered by the Paralegal Standing Committee on February 11, 2015.

Tab 8.1.1

## Annual Report of the Complaints Resolution Commissioner

January 1, 2014 – December 31, 2014

Submitted by Bernard Morrow,  
Complaints Resolution Commissioner

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**A. Introduction**

I began my appointment as Commissioner on April 1, 2014. I was preceded by Mr. Stindar Lal, who held the position of Commissioner from April 1, 2010 to March 31, 2014. I have enjoyed an interesting and rewarding first year as Commissioner. I am submitting this Report for the 2014 calendar year.

**B. Law Society Act and By-Law 11**

The Complaints Resolution Commissioner (hereinafter referred to as the “Commissioner”) is appointed by Convocation pursuant to Section 49.14 of the *Law Society Act, R.S.O. 1990, ch. L.8* (hereinafter referred to as the “Act”). The role and responsibilities of the Complaints Resolution Commissioner are set out in Sections 49.14 to 49.19 of the *Act* and are attached to this Report as Appendix 1. The *Act* also outlines the administrative responsibilities of the office of the Commissioner.

Part 1 of By-Law 11<sup>1</sup> (hereinafter referred to as “By-Law 11”), made pursuant to Section 62 of the *Act*, a copy of which is attached to this Report as Appendix 2, elaborates on the role and functions of the Commissioner.

Pursuant to Section 3 of By-Law 11, the Commissioner is required to submit to the Professional Regulation Committee of the Law Society of Upper Canada (hereinafter referred to as the “Law Society”) an Annual Report “upon the affairs of the office of the Commissioner during the immediately preceding year.”

**C. Complaints Resolution Commissioner’s Functions**

By-Law 11 provides the Commissioner with two distinct functions, the Complaints Resolution function and the Complaints Review function.

**Complaints Resolution Function**

The Complaints Resolution function provides the Commissioner with the statutory authority to perform a formal resolution role. It allows the Law Society, with the consent of the complainant and licensee, to refer a matter to the Commissioner for resolution, prior to the file being investigated or referred to the Proceedings Authorization Committee.

The Commissioner has broad discretion to determine the process for the resolution function. While the resolution function has been available for implementation since 2007, to date, the Commissioner has only been called upon to perform the review function.

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<sup>1</sup> By-Law 11 was made May 1, 2007, and was most recently amended June 26, 2014.

### **Complaints Review Function**

By-Law 11 also provides the Commissioner with the authority to review a complaint if a complainant requests that the Law Society refer a reviewable complaint to the Commissioner for review.

Subsection 4 (1) of By-Law 11 identifies those complaints that may be reviewed by the Commissioner. It provides that a complaint may be reviewed if:

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

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

Subsection 5 (3) of By-Law 11 requires the complainant to request a review within 60 days of being notified of the Law Society's decision to close the file.

### **Standard of Review**

By-Law 11 Subsection 7 (2) requires the Commissioner to apply a standard of reasonableness in reviewing the Law Society's investigation of a complaint. This standard of review requires the Commissioner to determine whether the Law Society's consideration of a complaint and its resulting decision to take no further action with respect to the complaint was reasonable. The Commissioner's role is similar to that of an ombudsman where a degree of deference is given to the body over which the ombudsman has oversight.

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

Section 49.19 of the *Act* states "A decision of the Commissioner is final and is not subject to appeal."

**D. Composition of the Office**

The office of the Commissioner is currently staffed with one part-time Counsel, who is also responsible for managing the office, and one full-time Counsel. Counsel participate in the reviews, providing the Commissioner with legal advice when required. The office is also staffed with a Senior Coordinator and an Administrative Assistant, who perform a variety of tasks, including the scheduling of Review Meetings, fielding stakeholder inquiries and preparing communications.

**E. Complaints Review Process****Notice to the Complainant**

Upon being advised by the staff of either the Complaints Resolution Department or the Investigations Department of the Professional Regulation Division that a complaint file is being closed without a referral to the Proceedings Authorization Committee for other action, including disciplinary action, the complainant is notified that the Law Society's decision to close the complaint may be reviewed by the Commissioner.

**Format of the Review Meeting**

By-Law 11, Subsection 8 (1) provides that the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

By-Law 11, Subsection 8 (2) provides that:

Where practicable, the Commissioner will meet with each complainant, and the Commissioner may meet with each complainant [...] by telephone, electronic or other communication facilities [in order to allow] all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Until the end of December 2011, all meetings were scheduled as in-person meetings. However, if the complainant was unable or unwilling to attend an in-person meeting, the complainant was provided with the opportunity to participate in a teleconference meeting or, alternatively, to request a review based on the written materials.

In December 2011, in order to meet the growing demand for reviews, a form entitled the "Request for Review by the Complaints Resolution Commissioner" (the "form") was introduced. The form provides the complainant with three format options for the Review Meeting: in-person, by teleconference or in-writing (based on the written material contained in the Law Society's file). When the written option is selected the complainant often submits detailed written material with the form. Attached to this Report, and marked as Appendix 3, is a copy of the form. Also attached, and marked as Appendix 4, is a copy of the Information Sheet, which explains the review process to the complainant.

Since the introduction of the form, there has been an increase in the number of requests for review based on the written materials.

### **Location of In-person Meetings**

The majority of in-person Review Meetings have been held in Toronto. In December 1997, in an effort to provide greater accessibility to the process for those complainants who reside outside of the Toronto area, Convocation approved the holding of Review Meetings in centers outside of Toronto. Currently, in addition to Toronto, in-person meetings are also held approximately once a year in Ottawa and London, based on demand.

### **Processing Requests for Review**

Upon receipt of a request for review, the office of the Commissioner sends the complainant a letter of confirmation and notifies the investigating department of the request for review. The Professional Regulation Division then provides written notice of the request for review to the licensee. However, pursuant to Subsection 8 (4) of By-Law 11, the licensee who is the subject of the complaint is not entitled to participate in the review process.

The applicable investigating department of the Law Society is responsible for preparing the materials for the review. A bound copy of all pertinent materials, referred to as the Document Book, is prepared for use at the Review Meeting. The Document Book usually includes the Law Society's closing letter or report, copies of all relevant materials submitted by the complainant and either the licensee's written response or a synopsis of it. Once the Document Book is completed, it is reviewed by the office of the Executive Director, and then delivered to the Senior Coordinator at the Commissioner's office. Upon receipt of the bound materials, the Senior Coordinator schedules the Review Meeting. The office of the Commissioner sends a letter to the complainant, setting out the scheduled date, time, manner in which the meeting will proceed and, if in person, place where the meeting will be held. A copy of the Document Book, for the complainant's use during the meeting, is enclosed with the letter. A copy of the Document Book is also provided to the Commissioner and to Counsel to the Commissioner, for review, in advance of the meeting.

Documents that fall within the confidentiality provisions of Subsection 49.12 (1)<sup>2</sup> of the *Act* are also provided to the Commissioner and Counsel to the Commissioner. The type of information considered confidential includes:

- (a) Law Society record of information relating to the licensee;
- (b) evidence from third parties which is protected by confidentiality or solicitor-client privilege;
- (c) solicitor-client information, when the complainant is not the client or the information is in respect of other clients.

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<sup>2</sup> 49.12 (1) A benchers, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part.

## Review Meeting Schedule

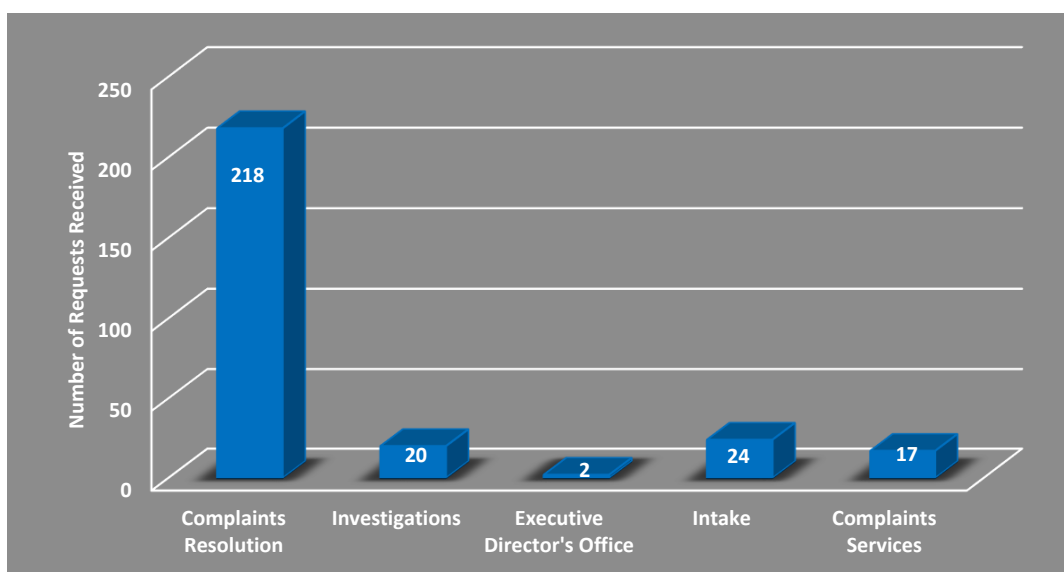
In 2014, for the most part, the Commissioner met with four complainants on each review day, with two meeting days held bi-weekly. In some instances, while the meeting is only with one complainant, more than one file is reviewed as some complainants submit multiple complaints to the Law Society. The number of in-person, teleconference and written reviews is set out in the statistical information included in this Report.

## F. Statistical Information

What follows is relevant statistical information on the “affairs of the office of the Commissioner” for the current year and for the two previous years, for comparison purposes.

### Number of Requests for Review

**Table 1 – CRC Requests Received by Department in 2014**



In 2014, there were 281 requests for review. Table 1, above, provides a breakdown of the departments from which the requests for review were received.

As indicated earlier in this Report, Subsection 4 (1) of By-Law 11 provides that a review is only available when the merits of a complaint have been considered by the Law Society. This Subsection of By-Law 11 has been interpreted to mean that the Commissioner can only review those files that have been investigated under the authority set out in Section 49.3 of the *Act*. These files relate generally to complaints that have been referred to the Complaints Resolution Department or the Investigations Department and exclude files that have been closed by Complaints Services and the Intake Department.



Notwithstanding, as Table 1 indicates, the office of the Commissioner receives a number of requests for review on files closed by Complaints Services and the Intake Department. When the office of the Commissioner receives a request for review of a complaint closed by either Complaints Services or the Intake Department, the complainant is advised that the Commissioner does not have the jurisdiction to review the matter and the complainant is referred back to the department that notified the complainant of the file closing for a further response. The department Manager then reviews the file and if the Manager believes that the file should remain closed, the complainant is so notified. If the complainant still remains dissatisfied, the file is forwarded to the appropriate Executive Director for review.

In 2014, requests for review were received for 21 files that were also outside the Commissioner's jurisdiction for a variety of reasons, including the expiry of the 60 day time period for requesting a review, the discontinuance of the investigation, or the referral of the file to the Proceedings Authorization Committee. In such circumstances, the complainant is notified in writing of the reason for the Commissioner's lack of jurisdiction to review the matter. Of these 21 files received in 2014, 13 were investigated by the Complaints Resolution Department, six by the Investigations Department and two by the Executive Director's office.

After eliminating those files where a review was beyond the Commissioner's jurisdiction, the Commissioner had 219 requests for review in 2014. In 2013 there were 310 requests for review received, and after eliminating those files where the request was beyond the Commissioner's jurisdiction, there were 223 requests for review to process. In 2012 there were 295 requests for review received, and after eliminating those files where the request was beyond the Commissioner's jurisdiction, there were 260 requests for review to process.

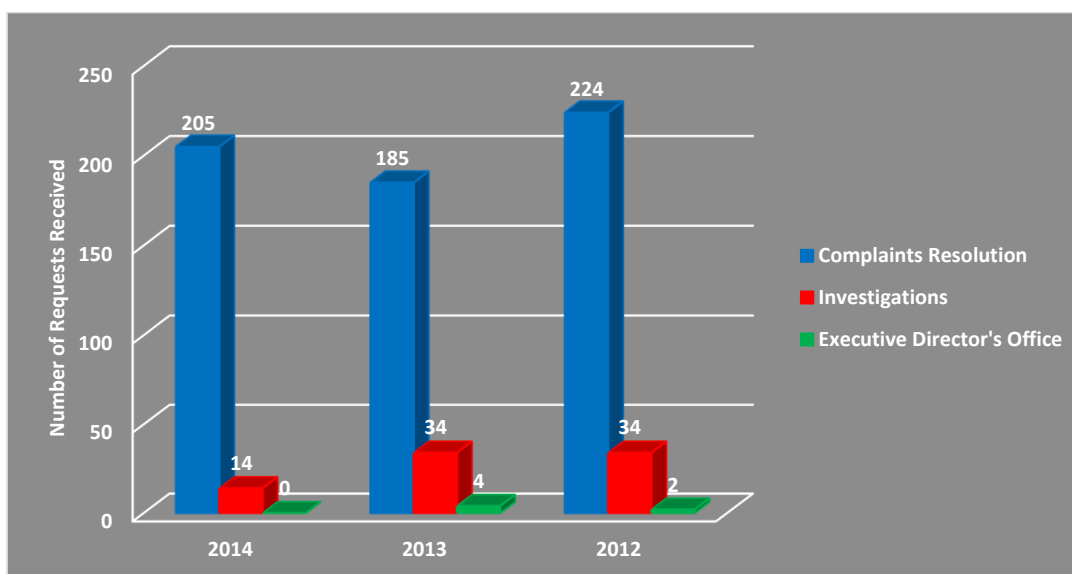
**Table 2 - Comparison of Requests Received by Department from 2012 to 2014**

Table 2, above, provides a comparison of requests for review received by department from 2012 through 2014. It does not include those files where the request was beyond the Commissioner's jurisdiction.

### **Number of Reviews Conducted**

From January 1, 2014 to December 31, 2014, 198 files were reviewed by the Commissioner. During 2013, 205 complaint files were reviewed and in 2012, 242 files were reviewed.

Of the 198 files reviewed in 2014, 96 involved requests for review received in 2014, 101 related to requests received in 2013 and one involved a request received in 2012. Of the 205 reviews conducted in 2013, 86 were received in 2013, 117 were received in 2012 and two were received in 2011. Of the 242 reviews conducted in 2012, 110 were received in 2012, 130 were received in 2011 and two requests were received in 2010.

### Format of Review Meetings Conducted

**Table 3 – Comparison of Format of Review Meetings Held in 2014, 2013 and 2012**

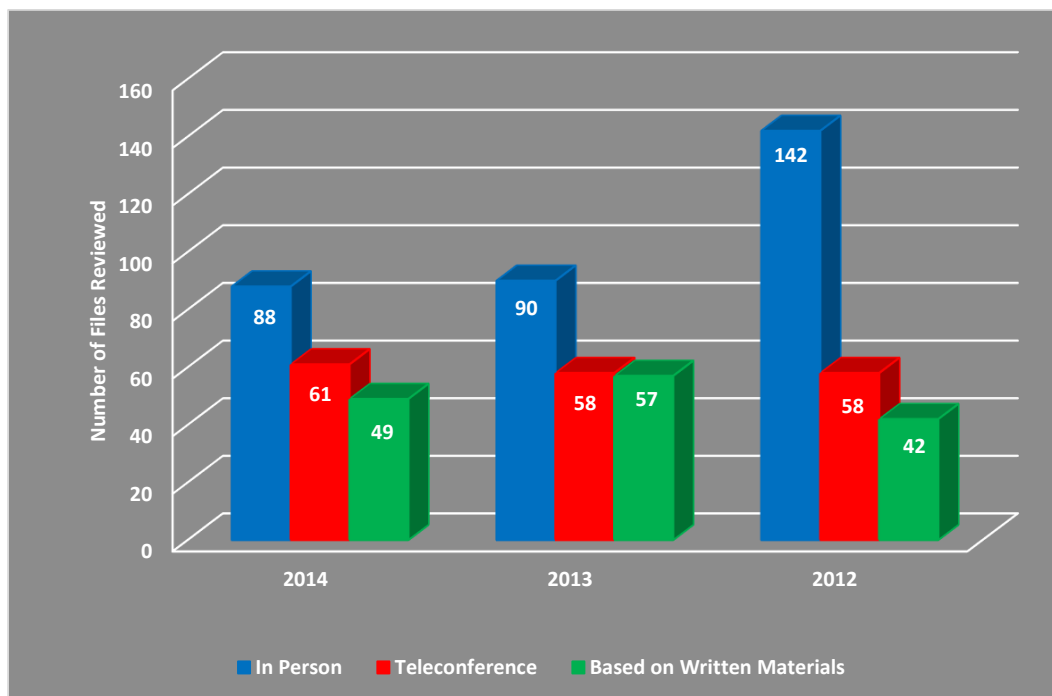


Table 3, above, indicates that during 2014, of the 198 files reviewed, 88 (44%) were reviewed by way of in-person meetings, 61 (31%) were conducted by teleconference and 49 (25%) proceeded based on the written material.

From January 1, 2013 to December 31, 2013, of the 205 files reviewed, 90 (44%) were reviewed by way of in-person meetings, 58 (28%) were conducted by teleconference and 57 (28%) proceeded based on the written material.

During 2012, of the 242 files reviewed, 142 (59%) were reviewed by way of in-person meetings, 58 (24%) were conducted by teleconference and 42 (17%) proceeded based on the written material.

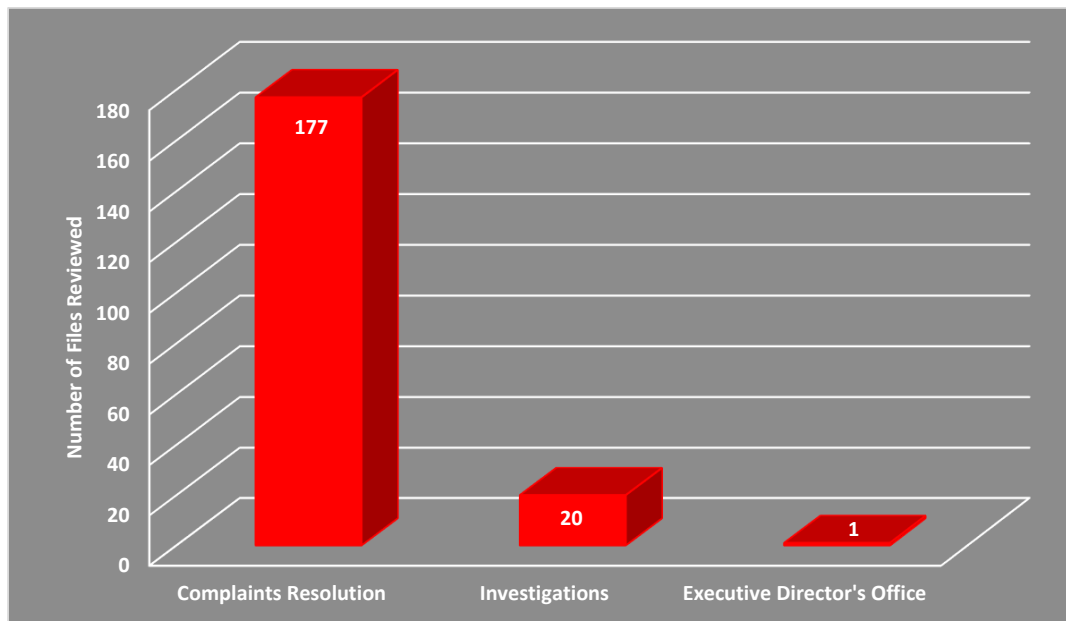
**Department that Conducted the Investigation*****Table 4 – CRC Reviews Conducted in 2014 by Department***

Table 4, above, identifies the department that conducted the investigation of those files reviewed in 2014.

As Table 4 demonstrates, of the 198 files reviewed in 2014, 177 were investigated by the Complaints Resolution Department, 20 were investigated by the Investigations Department and one was investigated by the Executive Director's Office.

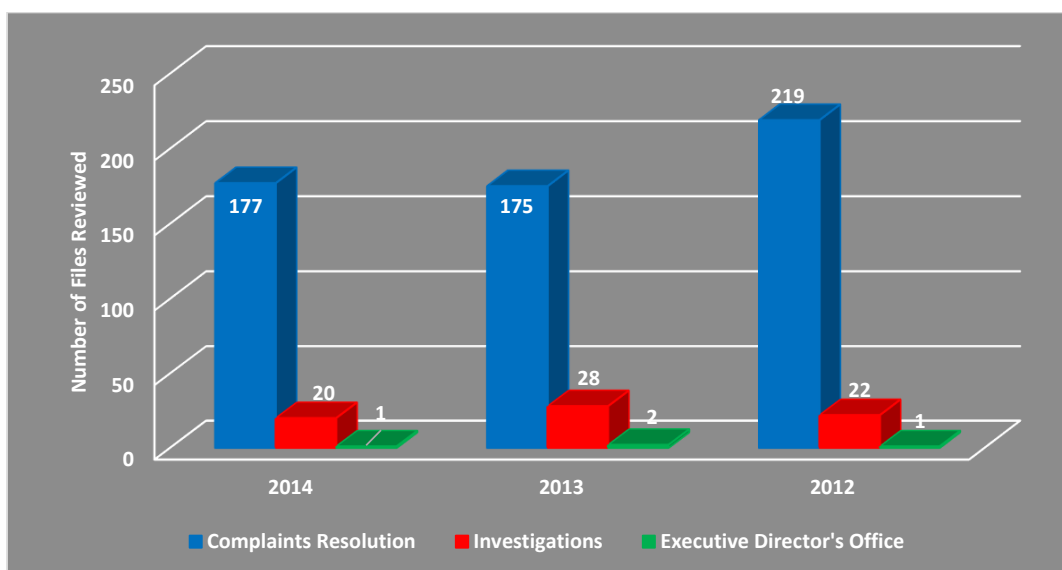
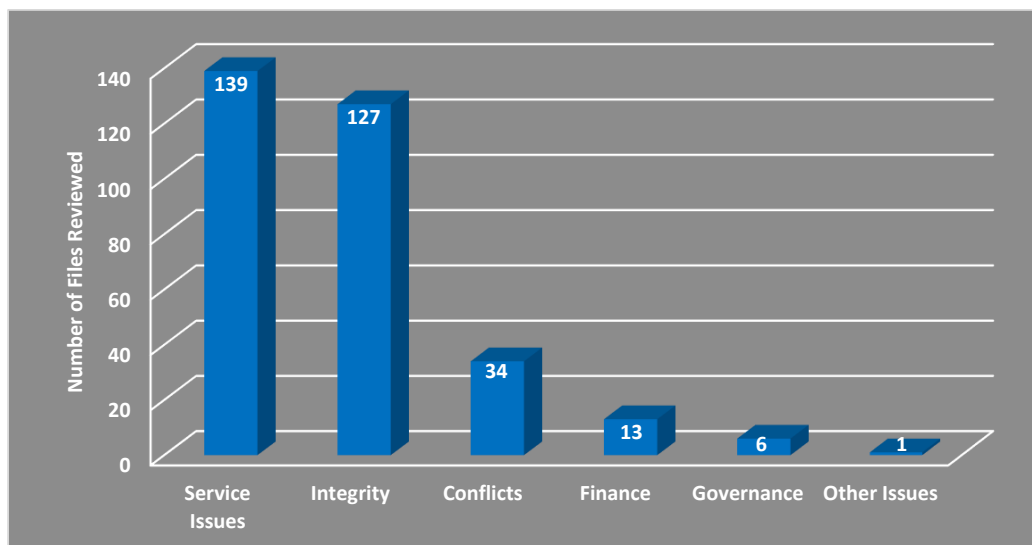
**Table 5 – Reviews Conducted in 2014, 2013 and 2012 by Department**

Table 5, above, provides a statistical comparison by department of the complaints reviewed in 2014, 2013 and 2012. The far left portion of Table 5 also captures the statistical data conveyed in Table 4 for 2014.

In 2013, of the 205 files reviewed by the Commissioner, 175 were investigated by the Complaints Resolution Department, 28 were investigated by the Investigations Department and two files were investigated by the Executive Director's office.

In 2012, of the 242 files reviewed, 219 were investigated by the Complaints Resolution Department, 22 were investigated by the Investigations Department and one file was investigated by the Executive Director's office.

**Predominant Issues Identified in the Cases Reviewed*****Table 6 - Predominant Issues Identified in each of the 2014 Files Reviewed***

In its investigations, the Law Society tracks the regulatory issues raised in each complaint file. Based on the Law Society's categorization, Table 6, above, identifies the six predominant issues for complaint files reviewed in 2014, displaying the number of files in which each issue was raised.

The current case management system may record more than one "predominant issue" in each file, resulting in the total number of issues identified exceeding the number of files reviewed.

**Table 7 – Predominant Issues Identified for Files Reviewed in 2014, 2013 and 2012**

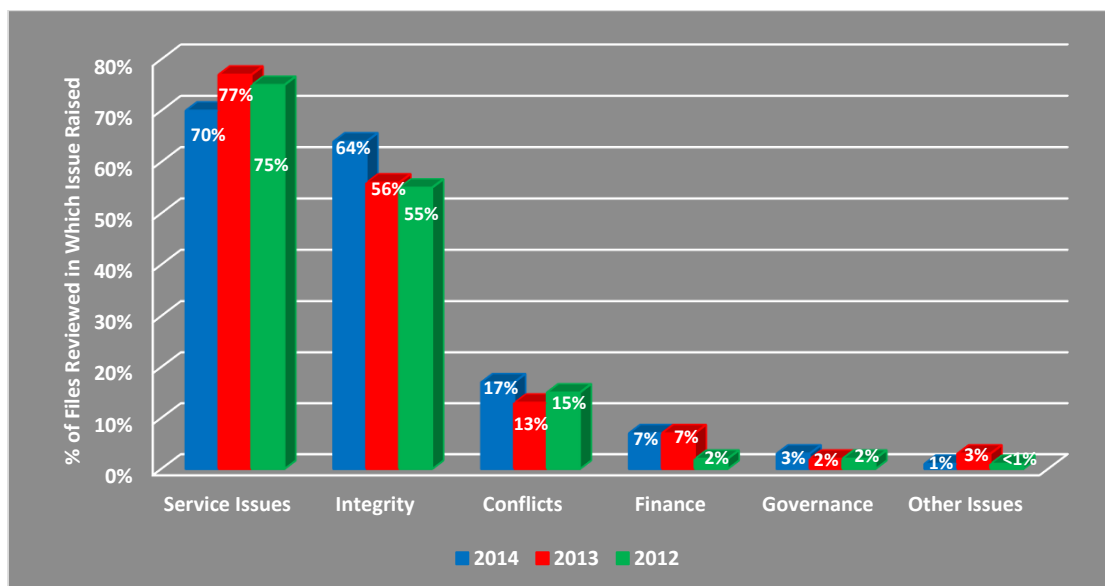


Table 7, above, provides a statistical comparison, by percentage, of the predominant issues raised in the files reviewed in 2014, 2013 and 2012. For example, service issues were raised in 70% of the files reviewed in 2014, 77% of the files reviewed in 2013 and 75% of the files reviewed in 2012.

### Results of the Reviews Conducted in 2014

**Figure 1 (1) - Review Results 2014**

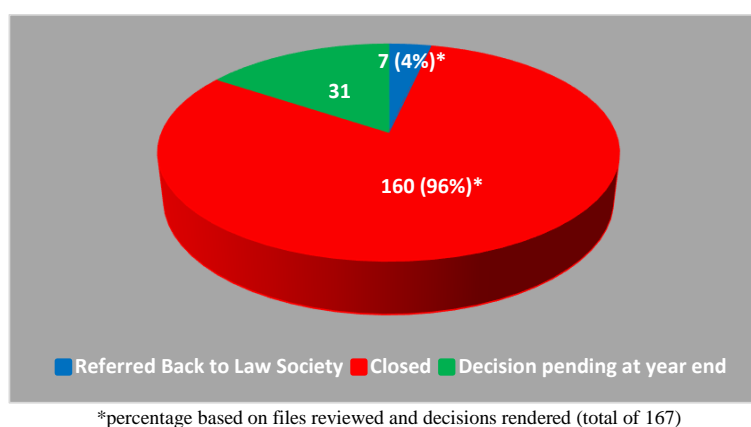


Figure 1 (1), above, depicts the results of the 198 files reviewed by the Commissioner in 2014.

Of the 198 files reviewed in 2014, decisions were rendered in 167 files. Of those 167 decisions, seven were sent back to the Law Society. In four of these files, the Commissioner was not satisfied that the decision to close the matter was reasonable and he referred these complaint files back, pursuant to Subsection 7 (2) (b) of By-Law 11, with a recommendation for further action. With respect to the remaining three files, while the Commissioner found the Law Society's decision to close those complaint files to be reasonable based on the evidence available to the Law Society at the time of closing, the Commissioner referred the file back for either a review of new evidence, pursuant to Subsection 7 (1) of By-Law 11, and/or in order to address Law Society practice concerns.

The Commissioner identified practice issues in order to support the Law Society's efforts to serve the public interest. For instance, the Commissioner identified concerns in a number of closing letters relating to the absence of adequate reasons to support the outcome reached in the investigation.

In addition, Counsel to the Commissioner and Counsel to the Executive Director have worked together to address and improve practices and procedures between the Law Society's Professional Regulation departments and the office of the Commissioner. Counsel to the Commissioner have also worked on an informal basis with the Managers of the Professional Regulation departments to clarify issues and address concerns in advance of Review Meetings. For example, when additional material was received from a complainant well in advance of a scheduled Review Meeting, that material was provided to the department manager and/or the investigator for consideration prior to the Review Meeting for further consideration. In addition, in other cases, informal resolutions have been achieved after the Review Meeting was completed, eliminating the need to formally refer a matter back to the Law Society for further action. These mutually cooperative practices and procedures have promoted a more efficient and effective transfer of files and has allowed for greater efficiency and consistency in the review process.



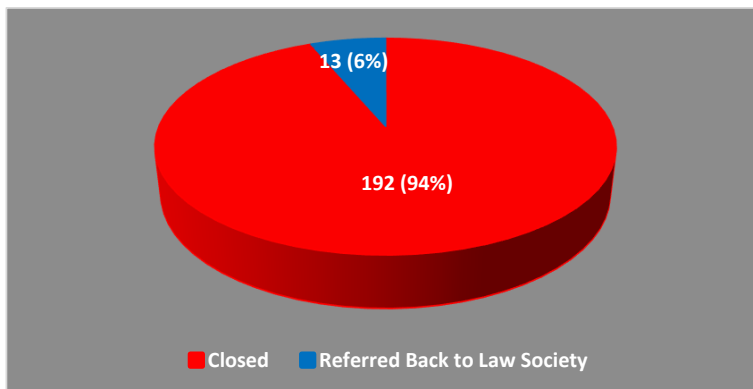
**Results of Reviews Conducted in 2013*****Figure 1 (2) - Review Results 2013***

Figure 1 (2), above, reflects the results of the 205 files reviewed by the Commissioner in 2013.

As shown in Figure 1 (2), during 2013, of the 205 decisions rendered, 13 files (6%) were referred back to the Law Society, with a recommendation for further action.

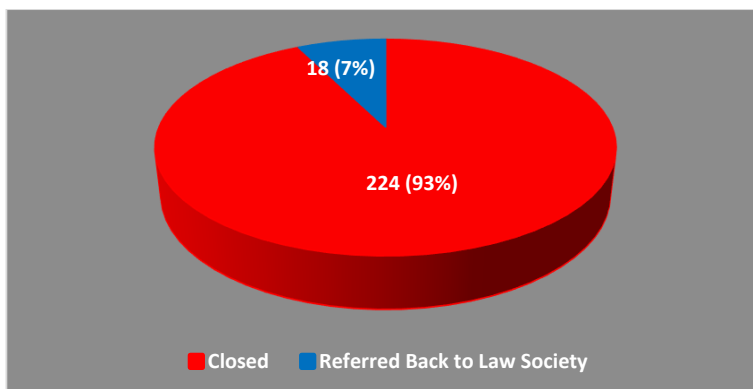
**Results of the Reviews Conducted in 2012*****Figure 1 (3) - Review Results 2012***

Figure 1 (3), above, reflects the results of the Review Meetings conducted in 2012.

As shown in Figure 1 (3), during 2012, of the 242 files reviewed, 18 (7%) were referred back to the Law Society, with a recommendation for further action.

**Executive Director's Response to Files Referred Back to the Law Society in 2014**

Although seven files were referred back to the Law Society, three of those files did not require a response from the Executive Director as the Commissioner had referred the files back for considerations related to practice issues. Accordingly, the response from the Law Society is not depicted for those three files.

***Figure 2 (1) – Executive Director's Response to Files Referred Back in 2014***

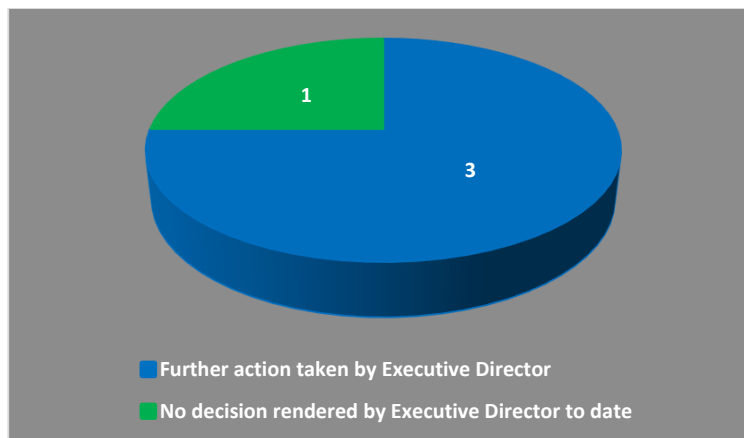


Figure 2 (1), above, reflects the Law Society's response to the four files that were reviewed by the Commissioner in 2014 and referred back to the Law Society pursuant to Clause 7 (2) (b) of By-Law 11, with a recommendation for further action.

As indicated in Figure 2 (1), of the four decisions referred back with a recommendation for further action pursuant to Clause 7 (2) (b) of By-Law 11, the Executive Director agreed to take further action on three of the files. The Executive Director's decision remains pending in the fourth file.

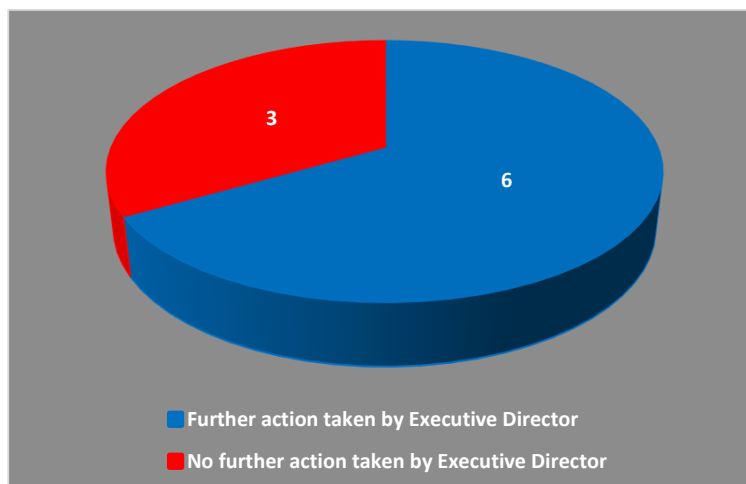
**Executive Director's Response to Files Referred Back to the Law Society in 2013*****Figure 2 (2) – Executive Director's Response to Files Referred Back in 2013***

Figure 2 (2), above, reflects the Law Society's response to the files that were reviewed by the Commissioner in 2013 and referred back to the Law Society with a recommendation for further action.

Of the 13 decisions referred back in 2013, four did not require a response from the Executive Director as the Commissioner referred these files back for other considerations. They are, therefore, not depicted in Figure 2 (2), above. Of the nine decisions sent back with a recommendation for further action pursuant to Clause 7 (2) (b) of By-Law 11, the Executive Director agreed to take further action on six of the files and declined to take any further action with respect to the other three files.

**Executive Director's Response to Files Referred Back to the Law Society in 2012*****Figure 2 (3) – Executive Director's Response to Files Referred Back in 2012***

Figure 2 (3) reflects the Law Society's response to the files that were reviewed by the Commissioner in 2012 and referred back to the Law Society with a recommendation for further action.

Of the 18 decisions referred back in 2012, nine did not require a response from the Executive Director as the Commissioner referred these cases back for other considerations. They are, therefore, not depicted in Figure 2 (3), above. Of the nine decisions referred back with a recommendation for further action pursuant to Clause 7 (2) (b) of By-Law 11, the Executive Director agreed to take further action on five of the files and declined to take any further action with respect to the other four files.

### **G. Age Tracking of Files Closed in 2014**

Following the submission of the Annual Report for the year ending December 31, 2013, the Professional Regulation Committee requested statistical data regarding the average time for advancing a file through the Complaints Review process. What follows is the information gathered in this regard during the 2014 calendar year. A comparison with the results from 2013, the first year the data was collected, is also included.

The tables below capture the aging of files from the date a request for review was received to the date the file was closed in the Commissioner's office.

### **In-person and Teleconference Reviews**

There were 127 reviews completed in 2014 and 148 reviews completed in 2013 by in-person meetings and teleconferences.

<b>Average Age</b>	<b>2014 (days)</b>	<b>2013 (days)</b>
<b>Average age from the receipt of the request to the date the Commissioner's decision was released</b>	<b>230</b>	<b>265</b>
(a) Average age from the date the request for a review was received to the date the Professional Regulation Department (PRD) was notified of the request	5	5
(b) Average age from the date that PRD was notified of the request to the date the document books were received in the Office of the Commissioner	111	125
(c) Average age from the date the document books were received to the date the review meeting was first scheduled	11	19
(d) Average age from the date the review meeting was first scheduled to the date the review meeting was held	70	88
(e) Average age from the date the review meeting was held to the date the Commissioner's decision was released	33	28

<b>Median Age</b>	<b>2014 (days)</b>	<b>2013 (days)</b>
<b>Median age from the receipt of the request to the date the Commissioner's decision was released</b>	<b>224</b>	<b>246</b>
(a) Median age from the date the request for a review was received to the date PRD was notified of the request	1	2
(b) Median age from the date that PRD was notified of the request to the date the document books were received in the Office of the Commissioner	96	121
(c) Median age from the date the document books were received to the date the review meeting was first scheduled	2	3
(d) Median age from the date the review meeting was first scheduled to the date the review meeting was held	58	77
(e) Median age from the date the review meeting was held to the date the Commissioner's decision was released	34	26

### In-Writing Reviews

There were 40 reviews conducted based on written materials in 2014 and 57 reviews conducted based on written material in 2013.

<b>Average Age</b>	<b>2014 (days)</b>	<b>2013 (days)</b>
<b>Average age from the receipt of the request to the date the Commissioner's decision was released</b>	<b>213</b>	<b>240</b>
(a) Average age from the date the request for review was received to the date PRD was notified of the request	12	10
(b) Average age from the date that PRD was notified of the request to the date the document books were received in the Commissioner's office	99	127
(c) Average age from the date the document books were received to the date the Commissioner's decision was released	101	103

<b>Median Age</b>	<b>2014 (days)</b>	<b>2013 (days)</b>
<b>Median age from the receipt of the request to the date the Commissioner's decision was released</b>	<b>195</b>	<b>236</b>
(a) Median age from the date the request for review was received to the date PRD was notified of the request	1	3
(b) Median age from the date that PRD was notified of the request to the date the document books were received in the Commissioner's office	96	137
(c) Median age from the date the document books were received to the date the Commissioner's decision was released	94	84

**No Jurisdiction Files**

In 2014, a total of 63 files were closed on the basis that the Commissioner did not have the jurisdiction to review the file, for a variety of reasons<sup>3</sup>. The average age from receipt of the request to review to the date the complainant was notified of the lack of jurisdiction was five days, and the median age was nine days.

In 2013, a total of 78 files were closed on the basis that the Commissioner did not have the jurisdiction to review the file, for a variety of reasons. The average age from receipt of the request to review to the date the complainant was notified of the lack of jurisdiction was 12 days, and the median age was seven days.

**Files Withdrawn**

In 2014, of the six review files closed before a review was conducted, two were withdrawn by the complainant and four were withdrawn following a managerial review by the investigating department. The average age was 163 days and the median age was 174 days.

In 2013, of the 11 review files closed before a review was conducted, three were withdrawn by the complainant and eight were withdrawn following a managerial review by the investigating department. The average age of a file was 169 days and the median age was 130 days.

**Active Inventory as of December 31, 2014**

There were 153 files as of December 31, 2014 in the office of the Commissioner's active inventory:

- A review date had been scheduled in 2015 for 33 of those files.
- The review materials in 75 files were being prepared by the Law Society.
- The review materials had been received and the files ready to be scheduled for a review in five files.
- Nine files were being held in abeyance.
- 31 decisions on files reviewed in 2014 were pending.

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<sup>3</sup> Note that, in one file, the request for review was received in 2013. In the remaining files, the requests for review were received in 2014.

## **H. Observations and Recommendations**

During my year as Commissioner, it has been both a pleasure and privilege to meet with complainants and to listen to their concerns. The opportunity for complainants to engage in direct face-to-face dialogue to discuss their complaints appears to be greatly valued. This is reflected by the large percentage of complainants who select the in-person meeting format and the positive written feedback we have received from these complainants after the conclusion of the complaints review process. It is apparent that, when given a choice, many complainants still prefer to have an in-person meeting, even when advised that the review will proceed more expeditiously if done either by teleconference or in-writing.

Since the establishment of the Commissioner's office, most of the files reviewed have been investigated and closed by the Complaints Resolution Department, which does not often have the opportunity to meet with the complainant in-person. Therefore, an in-person meeting with the Commissioner may be the complainant's only opportunity to voice his or her concerns in-person. A discussion with the Commissioner also avails the complainant with an opportunity to ask questions about the Law Society's process, including the investigation process generally, the particular investigation in question and the resulting outcome. To illustrate, it is often difficult for a lay person to appreciate the difference between a breach of the *Rules of Professional Conduct* and a claim in negligence. A Review Meeting conducted in-person (or by teleconference) can afford the Commissioner with a valuable opportunity to discuss this distinction, and other important issues, that the complainant may not have fully understood or appreciated after having completed the Law Society's investigation process.

In addition, since verbally communicating with the Commissioner permits an open dialogue between the complainant and the Commissioner, the amount of detail required in the Commissioner's letter to the complainant is often reduced in cases where an in-person (or teleconference) meeting has been conducted. Conversely, the Commissioner's letter following a review based solely on the written materials generally requires the recitation of all relevant facts and a consideration of all objections set out in the complainant's written submissions. As well, we find that communication from the complainant is more frequent following a review based solely on the written materials, which may be attributable, in part, to my ability to clarify issues and manage the complainant's expectations during an in-person or teleconference meeting.

In addition to fulfilling the complaints review function, my role has provided me with the opportunity to engage in a productive ongoing dialogue with the Executive Director of Professional Regulation regarding systemic concerns and suggestions for improvement with the Law Society's investigations process. I am pleased to report that the Executive Director of Professional Regulation has encouraged and been very receptive to this feedback. Feedback has included the following:

- **Ensure thoroughness, consistency and uniform standards in Law Society closing letters**

Closing letters issued by Complaints Resolution tend to be more detailed and thorough than those issued by the Investigations department, particularly with regard to the discussion of the regulatory issues, analysis of the issues and the reasons supporting the outcomes reached for each issue. Since providing feedback, we initially noticed more files being pulled for managerial review. More recently, we have noticed a significant improvement in the level of detail in closing letters issued by the Investigations department. We are also beginning to see greater consistency in letter writing standards across departments.

- **Provide better explanation of remedial action (Best Practices Information and a Caution) and its implications**

We have found through our meetings with complainants that many do not properly grasp the meaning of remedial action, such as, Best Practices Information and a Caution. In a couple of instances, complainants had thought that in receiving Best Practices Information the licensee was being commended for their actions. Closing letters need to be clear that where Best Practices Information or a Caution is given, this is considered to be serious remedial action by the Law Society.

As well, where remedial action has been taken for more than one regulatory issue, the closing letter must address the specific regulatory issue and the remedial response for that issue.

I would also propose creating a page on the Law Society website that fully explains the different forms of remedial action.

- **Provide better explanation of the difference between professional misconduct and negligence in Law Society communications**

Many complainants do not understand the difference between professional misconduct and negligence. I have discussed this issue with the Executive Director of Professional Regulation and proposed the creation of a one-page fact sheet to accompany Law Society closing letters to explain the differences between professional misconduct and negligence and circumstances where an overlap may exist. I would also suggest the creation of a page on the Law Society website that provides this information.

- **Create web page on Law Society website that more fully canvasses the possible outcomes of a complaint**

Currently, the sections titled “FAQs about the Complaints Process” and “The Complaints Process: How it Works” of the Law Society’s website provide brief descriptions of the possible outcomes of a complaint. In line with my specific suggestions above, I recommend that the Law Society dedicate a section of its website to a detailed discussion of the various possible outcomes of a complaint, including remedial action (Best Practices Information and a Caution) and formal discipline. Alternatively, I would suggest adding more information to the



aforementioned sections of the Law Society website about remedial action options and formal discipline.

## FOR INFORMATION

**ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP REPORT**

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## Introduction

6. This report by the Alternative Business Structures (ABS) Working Group provides a summary of the responses received following the September 2014 release of *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper* (Discussion Paper).

## Background

7. The ABS Working Group has been considering ABS issues since 2012.
8. An alternative business structure may include:
  - a. permitting some form of investment in firms by individuals not licensed by the law society; and/or
  - b. firms offering legal services together with other services for clients through licensees and other professionals.
9. In the course of its review, the ABS Working Group has held or participated in a series of meetings with individuals with ABS expertise and legal organizations and associations across Ontario. The ABS Working Group reported on these meetings in its report to January 2015 Convocation. An updated list of meetings is at [Tab 8.2.1](#).
10. In September 2014 the Law Society released the Discussion Paper to seek input from the public, the legal community and others interested in ABS. The ABS Working Group appreciates the feedback received through written responses to the Discussion Paper.
11. The responses are thoughtful, detailed, and clearly convey the importance of the ABS issues to the respondents. The responses will greatly assist the Working Group in its ongoing study of ABS.
12. This input will inform the ABS Working Group's next steps, discussed at the end of this report. The ABS Working Group expects that its ongoing study of ABS issues will continue through 2015 and into 2016.

## Overview of Responses to the ABS Working Group's Discussion Paper

13. The Law Society received over 40 responses to the Discussion Paper from individuals and legal and other organizations.
14. The majority of responses advanced a specific view regarding whether ABSs should be permitted in Ontario in some form. Many responses passionately expressed opposition to any ABSs being introduced in Ontario. Most responses expressed major concerns with introducing certain types of ABSs in Ontario, such as publicly listed law firms and other types of law firms owned entirely by non-licensees, or such entities that may engage in certain areas of practice, such as real estate law or personal injury law. A number of

submissions, including the submissions received from law students, expressed strong support for introducing some level of ABS in Ontario, with appropriate regulatory oversight. Many respondents expressed a need for greater information about ABSs generally, and requested that the Law Society engage in further study, discussion and consultation before any final decisions are made.

15. The responses revealed a range and nuance in positions with respect to ABSs. Some prefer the *status quo* to any form of ABSs at this time. Some others oppose unrestricted non-lawyer ownership of law firms, and majority non-lawyer ownership levels, but would consider minority ownership levels that are relatively minor, such as a 25% non-lawyer ownership. Similarly, while some ABS proponents submit that full liberalization of Ontario's permitted business structures is necessary, others strongly maintain that while permitting some degree of ABS would be in the public interest, there are certain areas of law, such as real estate law and personal injury law, where the public interest would be better served by prohibiting ABS entrants.
16. This report is organized according to major themes disclosed in the responses to the Discussion Paper and identifies strengths and opportunities as well as concerns and risks arising from the responses. Certain comments from respondents are included with attribution. A list of respondents who provided submissions for public attribution appears at [Tab 8.2.2](#). These submissions are available online at <http://lsuc.on.ca/abs/>.

## 1) ABS and Innovation in the Delivery of Legal Services

### A) Strengths and Opportunities

17. Several responses suggested that ABSs should facilitate innovation in the delivery of legal services. According to some responses, currently permitted structures limit innovation, and ABSs are necessary to modernize the delivery of legal services. These respondents expressed the views that the current permitted models are limiting and restrict competition that innovation will happen, that the only questions are how and when such innovation will occur, and that legal services are *already* being delivered in alternative ways which will continue to develop, but that the regulatory response has fallen behind.
18. Some responses cautioned that if regulatory reforms are not undertaken to permit innovative business models to emerge, innovation will occur in the unregulated sphere, which is not in the public interest.<sup>1</sup> Moreover, failing to adopt ABS would leave Canadian firms at a comparative disadvantage, and would threaten its place in the global legal market (Grant Thornton).

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<sup>1</sup> The extent of this change is described in various different responses. For example, the Canadian Defence Lawyers note that horizontal integration is occurring already but outside of the law firm sphere, and that legal services formerly provided by insurance defence firms are being performed in-house by in-house, or completed by accounting firms that own "e-discovery entities".

19. Responses noted that current permitted business structures limit the ability of law firms to (1) increase access to capital, (2) attract non-legal expertise, (3) develop new technologies, and (4) deliver legal services through different structures.

*(1) Enhancing Access to Capital*

20. Some responses noted that Ontario law firm structures may only be capitalized through partner investments in the firm, and through obtaining financing based on work-in-progress. This limits the amount of capital that a firm can obtain, makes it difficult to “lock-in” capital, and exposes firms (and clients) to increased risks associated with cash-flow issues arising should many partners leave a firm quickly or should the firm experience a down-turn.
21. ABSs permitting external ownership to non-lawyers would enable firms to “lock-in” capital more easily, which would insulate firms from cash-flow difficulties, and enable them to invest in technology, innovation and people (Cognition LLP, Granton).
22. Two firms (Cognition LLP and Conduit Law) indicated that regulatory barriers prevented or currently prevent them from structuring their practices in forms they view as preferable. For example, Cognition LLP advised that its ability to expand its in-house technological innovations is constrained by its inability to obtain external capital through alternative means. Some responses indicated that they would give serious consideration to embracing some level of non-lawyer ownership, or would already have done so had it been permissible to do so.

*(2) Attracting Non-Legal Expertise*

23. Some responses suggested that one benefit of ABS could be the enhanced use of non-lawyer expertise. Non-legal professionals may already work with lawyers and paralegals through MDPs; some ABS proponents submitted that further liberalization would be necessary for the full benefits of MDPs to be realized. Business, marketing and technology experts could use their skill sets towards delivering legal services. At times the suggestion is that lawyers and paralegals could use non-lawyer ownership in order to attract top non-legal expertise. One submission suggested that non-legal expertise is necessary to bring new thinking to the challenge of facilitating access to justice.

*(3) Developing New Technologies*

24. Responses strongly in favour of adopting ABS in Ontario see ABSs as a means of facilitating technological innovation to enhance the delivery of legal services. ABS supporters suggested that business structure and/or technological innovation is not an end in itself, but rather should bring several benefits, including the following:
  - a. Lowering the cost of delivering legal services, thereby facilitating access to justice;
  - b. Streamlining business processes to deliver enhanced (faster, improved, and/or less expensive) legal services;
  - c. Innovation in the ways to deliver legal services could reach individuals and businesses which previously did not seek professional legal services;

- d. Enhanced use of technology could enable law firms to develop greater predictability of cost and outcomes for clients; and
  - e. Enhanced law firm systems which could significantly reduce the risk inherent in legal practice while increasing client satisfaction.
25. ABS proponents suggest that transformational innovations require affordable capital, and that external capital is necessary for such innovations to occur.

*(4) Developing New Legal Service Delivery Structures*

26. Responses raised several different legal service models which could occur through ABS, including the following:

(i) Enhanced “One-Stop Shop” Models

27. Some responses suggested that ownership restrictions limited the development of the current form of MDPs in Ontario (Conduit Law). Responses noted that “one-stop shops”, such as those in England & Wales could make it easier for individuals to access legal services, and expand the market for legal services. As described further below, some responses indicated that a “one-stop shop” could lead to more tailored, appropriate and affordable professional services, including legal services in family law.

(ii) Technology-based and Process Engineered Legal Service Models

28. Several responses noted that technology plays an increasingly important role in how legal services are and should be delivered, and that ABS offers a way to attract both technological talent and external capital to the field. Some responses suggested that greater technical expertise is required for the delivery of certain legal services than is presently available under current models (LaBuik). Moreover, non-lawyers may be able to bring new ways of thinking for delivering legal services in Ontario (LaBuik). Permitting non-lawyer / paralegal ownership could attract technology experts to the field. Access to external capital could enable ABSs to develop technology innovations.
29. Proponents of using ABS to develop technology-based and process engineered legal services suggested that technological investment is necessary to enhance the provision of legal services, and that improved technology and systems will improve efficiencies, reduce error and generally increase the quality of legal services delivered. However, transformative technologies sometimes require intense capital investment.
30. Responses suggested particular technology-based and process engineered legal services which could emerge in Ontario were ABS permitted, including:
- a. A model that uses technology and data to reduce risk and deliver fixed fee legal services to clients such as that offered by Riverview Law, an ABS in England and Wales (Kowalski);
  - b. Personal injury or other legal services delivered through more streamlined processes (Kowalski);

- c. Online legal service providers such as LegalZoom;
- d. The emergence of law firm “online boutiques”;
- e. Legal data storage businesses; and
- f. Law firms dedicated to assessment and predictive analysis to assist clients in considering risks.

(iii) Branding / Marketing Driven Models

- 31. Some responses also suggested that ABSs could facilitate new branding / marketing innovations. For example, LawPRO noted that a law firm franchise model could be “exciting”.
- 32. In sum, proponents of ABS as a catalyst for innovation see innovation as leading to new opportunities for lawyers and paralegals, enhanced lawyer and paralegal competency, improved quality of legal services delivered, and better access to legal services for Ontarians. They believe that by being a first mover in ABS, Ontario could become a hub for new, innovative law firms and legal-oriented businesses. Access to capital and technical expertise is necessary for such innovations to occur.

**B) Concerns and Risks**

- 33. Several responses raised questioned whether ABS is necessary to achieve innovations in the delivery of legal services. These highlighted that innovation is already taking place in Ontario’s legal systems without ABS. The Ontario Trial Lawyers Association (OTLA), the Criminal Lawyers Association (CLA), the Ontario Bar Association (OBA) and the Southwest Region Women’s Law Association, for example, noted that innovation is already occurring in law firm settings without needing to turn to external ownership through ABS. OBA noted that its membership did not report having experienced barriers (such as access to capital) as a result of the existing regulatory framework that would prevent them from practicing law in an optimal way or from addressing unmet legal needs. OTLA noted that firms such as Cognition LLP and Conduit Law already exist in Ontario, and operate within the current regulatory framework. In certain practice areas such as real estate, third party software and technologies have been embraced which have fundamentally transformed the practice. Ontario’s Courts are also starting to take innovative steps such as holding paperless trials. OTLA further notes that companies such as U.S. based LegalZoom and California-based Rocket Lawyer have emerged without any steps being taken by the regulator.
- 34. Some responses, such as the County of Carleton Law Association (CCLA) and the County & District Law Presidents’ Association (CDLPA), suggested that the Law Society could provide enhanced guidance on appropriate use of technology to stimulate greater use of technology within the professions.
- 35. Several responses questioned whether the purported innovation benefits of ABS have been overstated. In addition to already seeing innovation occurring without ABS, some responses stated that ABS innovation will not benefit the public until innovations are undertaken by our Courts and legal system.

36. The OBA, and in particular in-house counsel members of the OBA ABS Working Group, emphasized the urgency of innovation that allows lawyers to respond to corporations who require specialized legal services, flexible fee arrangements, and cost effectiveness to mitigate risk. However, the OBA Working Group questioned whether regulatory change to permit ABS is required to facilitate innovation and modernization. Increasingly, lawyers are using technology both internally and to interact with clients. There are also cloud-based collaborative efforts between lawyers alongside non-legal retail services.
37. The OBA Working Group also expressed concern about the impact of large scale service delivery in smaller communities, as this was perceived as limiting practice options. Currently, general practitioners are often able to provide service that generates little or no profit as an access to justice benefit to their communities. The OBA is concerned about the disappearance of lawyers who provide non-commoditizable services in criminal and family law as a result of the implementation of ABS.
38. OTLA, CLA and others further note that there is no evidence that any innovation reducing the cost of delivering legal services will necessarily lead to savings for consumers, rather than leading to the provider enjoying increasing profits.

## **2) ABS and Access to Justice**

### **A) Strengths and Opportunities**

39. Supporters of introducing ABS note that ABS may be part of multifaceted efforts to facilitate access to justice. Conduit Law's Peter Carayiannis stated that "Failure to act risks bring[ing] the profession into disrepute as failing to grasp the crisis at hand and a failure of the vision and courage necessary to modernize the profession."
40. A number of ABS proponents see clear access to justice benefits arising directly from ABS, even if they are not transformational in nature. In response to claims by some ABS opponents that there have been no demonstrable access to justice benefits through ABS, Mitch Kowalski compared and contrasted two similarly oriented social justice law firms which had mandates to provide legal services to vulnerable populations. In Australia, Salvos Law is a law firm owned by the Salvation Army comprised of a commercial law firm and a pro bono firm, with the profits of the former subsidizing the work of the latter. Its external ownership model is prohibited under Ontario's current regulatory regime. Salvos Law received the Australian Law Firm of the Year Award in 2014. Mr. Kowalski contrasted this to Pivot Legal, a British Columbia based law firm, which sought to serve both paying and non-paying clientele. Pivot Legal LLP ultimately failed, which Mr. Kowalski attributes to a lack of affordable capital and business management expertise.
41. Some responses also highlight what the authors view as access to justice being facilitated through new ABS entrants in the retail legal services sector in England & Wales. Mr. Kowalski, the Law Students' Society of Ontario (LSSO), and others note that innovative models such as the Co-Op enhance access to justice. As noted above, LawPRO suggested that an ABS model that enabled the emergence of a franchise model could be "exciting".



42. In addition, some ABS proponents suggested that innovation and ABS could increase the pool of Ontarians choosing to access legal services (Granton, Ledgerwood).
43. Some ABS proponents offered specific recommendations for new structures which could enhance access to justice, including, for example:
  - a. Multi-disciplinary family law firms which could provide counselling, legal services, and other related professional services as necessary (Audet and Picard, further described below in the discussion of Family Law generally);
  - b. Student pro bono clinics providing legal advice to entrepreneurs and innovators (Centre for International Governance Innovation);
  - c. “Storefront” law firms providing legal services to vulnerable populations by harnessing the expertise of senior counsel and junior lawyers who would benefit from mentoring while delivering access to justice (John Hollander).
44. The OBA suggests that allowing family members to obtain non-voting shares would better allow lawyers in small and medium sized firms to operate financially viable practices while providing affordable legal services, particularly in smaller practice centres.

## B) Concerns and Risks

45. Several submissions explored Nick Robinson’s article *When Lawyers Don’t Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism* to frame comments related to ABS and its potential impacts (if any) on access to justice.<sup>2</sup>
46. Several responses suggested there is no evidence that the introduction of ABSs in other jurisdictions has facilitated access to justice. Others suggested that ABSs should only be introduced if it can be shown that they will enhance access to justice.
47. Some responses raised the concern that outside ownership would lead to direct and/or indirect pressures which would result in firms having less opportunity to take on certain types of matters such as pro bono matters and matters involving a higher risk of success due to a heightened concern for the firm bottom line, as well as matters which raise contentious issues out of fears that an ABS, and its “brand” may be tarnished by being associated with the cause of its client. Under these scenarios, ABS would harm rather than help facilitate access to justice.
48. Some responses questioned whether ABS is a proper tool to seek to enhance access to justice, or whether the regulatory burden may be disproportionate to any benefits. Among these responses, certain individuals suggested alternatives to ABS to facilitate access to justice, including, for example:

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<sup>2</sup> Nick Robinson, [When Lawyers Don’t Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878), (August 27, 2014). HLS Program on the Legal Profession Research Paper No. 2014-20, online at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2487878](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878).

- a. Focusing access to justice solutions on the better use of paralegals and existing human capital and expanding the paralegal scope of practice to provide legal services in certain areas where there are unmet legal needs (CCLA; Côté et al.; Women's Paralegal Association of Ontario);
  - b. Levying the profession (as was done to establish CanLII) to develop technological solutions aimed at enhancing access to justice. Lawyer funded initiatives, such as the automation of certain legal steps, or development of easy to use online legal forms, would facilitate access to justice for Canadians without sacrificing lawyer law firm ownership (Chasse).
49. Finally, some responses, such as those from CDLPA and the Waterloo Region Law Association, suggest that the Law Society should not lead on access to justice initiatives, including through initiatives such as ABS, as the problems stem from other, larger systemic forces, such as declining resources and funding for Ontario's courts and public legal aid system.

### **C) “ABS+”**

50. Several submissions indicated that access to justice should be the central consideration before ABSs are considered for introduction in Ontario. Responses across the range of perspectives cite Mr. Robinson, who concluded that:

For policymakers the goal should not be deregulation for its own sake, but rather increasing access to legal services that the public can trust delivered by legal service providers who are part of a larger legal community that sees furthering the public good as a fundamental commitment. Carefully regulated non-lawyer ownership may be a part of achieving this larger goal, but only a part.<sup>3</sup>

51. Law professor David Wiseman suggests that ABSs risk only providing trickle down benefits to Ontarians living in poverty because when their legal needs are distinct from those of paying clients, ABS innovations will not serve them, and may even widen power imbalances between the most poor and others experiencing civil needs. However, he suggests that the Law Society has the power to focus its regulatory lens on how ABSs could be designed to benefit those living in poverty. He suggests that the Law Society explore “ABS+”, a principled approach to ABS that would consider ABS with respect to how it may be harnessed to benefit Ontarians living in poverty. He proposes that the Law Society consider ABS+ as well as other potential regulatory options, and ultimately select those reform options that show the most promise to facilitate access to justice for Ontario's most poor.

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<sup>3</sup> Robinson, at page 53.

### **3) ABS and Regulation**

#### **A) Strengths and Opportunities**

52. ABS proponents submitted that a responsive modern regulator should adopt ABS and that the regulator can develop practical solutions to regulatory challenges. For example, both LawPRO and the LSSO submitted that Ontario could adopt the express hierarchy of duties for publicly listed entities first adopted in Australia (should Ontario accept such levels of outside ownership). As LawPRO explained, the entity's interests "must be subordinated to the interests of the clients, the rule of law and the administration of justice."
53. As noted above, some responses, such as those from Cognition LLP and LawPRO note that the public would benefit from bringing unregulated areas into the regulated sphere.
54. Two responses noted that ABS may provide the Law Society and legal professionals in Ontario with a partial solution to the regulatory and practical difficulties raised by a graying bar. Mitch Kowalski noted that a liberalized legal services sector in Ontario may offer senior lawyers looking to retire with a viable exit strategy. The "storefront model" approach may provide a means for senior lawyers to wind down existing practices, focus on public interest law, and facilitate knowledge transfer to the next generation of lawyers (Hollander).

#### **B) Concerns and Risks**

55. Numerous responses raise several concerns about potential regulatory impacts of introducing ABS. Several responses raise the concern that non-lawyer ownership or participation in law firms beyond permitted Multi-Disciplinary Partnerships may lead to the loss of self-regulation because a co-regulatory or government regulatory regime would be necessary for effective ABS regulation. Some responses noted that ABS emerged in Australia and England & Wales, jurisdictions where lawyers had already lost the privilege of self-regulation. Some responses expressed concern that if Ontario follows the ABS route, non-lawyer ownership could lead to the loss of effective regulatory control by the Law Society, making it difficult to respond to criticisms that others (such as government or another entity) would be better placed to regulate. With non-lawyer owners, and non-lawyer participants actively involved in the market for delivering legal services, it is feared that the Law Society might lose the privilege of self-regulation.
56. Some responses also expressed the concerns that:
  - a. The costs of regulating ABS would exceed the benefits of permitting them;
  - b. A Canadian response to ABS should avoid a regulatory "patchwork" if possible ; and
  - c. Once full ABS is permitted, it becomes harder to undo the decision.

#### 4) ABS, Ethics and Professionalism

##### A) Strengths and Opportunities

57. Proponents of ABSs generally submitted that while there are ethical and professionalism issues that would arise in the context of ABSs, these concerns are manageable. Responses note that the “sky has not fallen” in jurisdictions where ABS have been permitted. There are practical regulatory means of addressing professionalism concerns (LawPRO, LSSO, Granton).
58. Responses identified a various ways to safeguard legal ethics and professionalism should ABSs be introduced, such as introducing “ethical infrastructure” requirements as undertaken in England and Wales and Australia where ABSs are permitted. One response suggested that concerns about lawyers in an ABS owing duties to shareholders are overstated, as Canadian law does not establish an independent duty to shareholders, but rather has established a far broader “best interests of the corporation” requirement, which may include a range of considerations (Granton, citing *People’s Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at para. 42). However, if a duty to shareholders exists, some responses suggested this could be met by setting out an express hierarchy of duties for publicly listed entities (described above).

##### B) Concerns and Risks

59. Most responses commented on the impacts that ABS might have on professionalism. Many responses expressed concerns that external ownership would lead to a shift to business and profit motives taking precedence over professional duties, such as the lawyer’s fiduciary duty to the client, to maintain client confidentiality, to safeguard solicitor-client privilege and to avoid conflicts of interest.
  - (i) *Profits vs. Professionalism*
60. Several responses were concerned that ABSs would amount to a “corporatization” of law, which would both threaten professionalism by shifting law firm priorities towards profits over client interests, and by reducing the quality of legal services being provided in certain sectors.
61. Several responses cautioned that external ownership could have several detrimental effects on the professions. External ownership could lead to a decrease in pro bono and low profit practices due to focus on profit maximization. Lawyers and paralegals may face increased pressure to take the most profit-maximizing courses of action even if this conflicts with the best interest of their clients. The profits pressure could therefore have real impacts on clients who depend on lawyers for independent legal advice. If legal advice is not independent, or does not appear to be so, this impacts both the quality of legal services being provided and the public perception of the justice system.
62. The CLA and OTLA both provided examples of how an ABS model may reduce the quality of legal services being offered in particular sectors. They suggested that a push to

commoditize services to increase profits could inappropriately disaggregate legal work. In personal injury, complex legal work might be pushed onto law clerks and junior counsel. In the criminal law setting, the use of technology and support staff might replace certain lawyer-client interactions, to the detriment of the trust relationship. The OBA was concerned about the challenges that would be faced by lawyers in practicing in business models premised on limited time spent with the client.

*(ii) Confidentiality*

63. Many responses expressed the concern that client confidentiality may be more difficult to protect in ABS environments. There might be pressure by shareholders to learn about client matters in order to make investment decisions. The provision of multiple services may make confidential client information vulnerable to disclosure to non-legal branches of the entity.

*(iii) Solicitor-Client Privilege*

64. The concerns with respect to confidentiality equally apply with respect to solicitor-client privilege. Several responses, such as that of The Advocates Society, stressed that the necessary infrastructure would need to be put in place to ensure that client information received in the course of providing legal services are not disclosed to the non-lawyer owners of the ABS.
65. In addition to the above, the CLA noted that commoditization could have inadvertent consequences on the professional trust relationship. Solicitor-client privilege is based on trust. This is developed between the lawyer and the client. But if technologies, staff supports and other business processes are introduced, the client may feel that the firm's interest is not aligned with his or her own, which may erode the trust relationship.

*(iv) Conflicts*

66. Several responses indicated that the risk of conflict lies at the core of the ABS discussion, and many expressed concerns about the increased risk of conflicts arising in ABS structures. Several responses (including CDLPA, OTLA, OBA and others) referred to Nick Robinson's article and the examples of conflicts which may emerge in ABSs, and how there may be conflicts inherent to the structure of certain ABSs. For example, as Mr. Robinson notes, there may be inherent conflict in an insurance company owning a law firm practicing in insurance related areas. There may be other indirect, difficult conflicts to address, such as a large company acquiring a law firm and then using it to shape the common law to support its interests.
67. Some authors noted the difficulty in regulating certain conflicts, and questioned whether the Law Society has sufficient knowledge, expertise, or jurisdiction to address the types of conflicts which could arise in multidisciplinary ABSs which may also be owned by outside interests.

68. Several responses, including responses favourable to ABS and responses opposed to them, recognized that not all ABS structures should necessarily be permitted in Ontario. For example, plaintiff side personal injury boutique firm McLeish Orlando suggested that "Jurisdictions adopting non-lawyer ownership should consider implementing bans or strict regulations" against non-lawyer ownership where the risks of conflict are high, such as in personal injury, title insurance and real estate law.
69. The CCLA provided concrete examples of inherent conflicts which should be prohibited, such as a title insurer owning a real estate law firm, or an insurer (which has an interest in keeping settlement values low) acquiring a plaintiff side personal injury firm.
70. LawPRO similarly cautioned that while restrictions as to who can provide legal services must be proportionate to the regulatory objective to be achieved, in certain areas of the law, such as in real estate, discussed further below, there are valid regulatory objectives which should lead to the decision to prohibit ABSs.

*(v) Market Consolidation*

71. CDLPA submits that market consolidation is a further lawyer professionalism issue. It frames the concern as follows:

While much has been written about the Slater & Gordon model, what has not been adequately addressed, in CDLPA's estimation, is the impact such a massive and powerful legal entity has had on the legal services market in the smaller centers in which they have set up shop, either by acquisition of a local firm or by moving into town. Consolidation of legal services, particularly in smaller centers, is a professionalism issue that is of great importance and concern to CDLPA. If a Slater and Gordon type firm came into a community such as Belleville or Owen Sound, offering a vast array of different services backed by huge advertising dollars and deep pocket capital, what would it mean to the local bar and, for the public, what would it mean for choice in legal service providers? It is difficult to envision how limiting choice in legal service providers is either good for the profession or good for the public.

72. This view was shared by some other respondents, including the CCLA.
73. Concerns related to the potential impacts of market consolidation were also raised regarding specific practice areas, as described further below.

## **5) ABS and Legal Sectors in Ontario**

### **A) Strengths and Opportunities**

74. ABS proponents suggest that ABSs can grow the market for legal services and provide new opportunities for lawyers and paralegals. ABS delivery of legal services may enhance

consumer confidence and consumer choice. "One-stop shop" structures can provide a more convenient, appropriate and affordable suite of services for clients.

## **B) Concerns and Risks**

75. Responses raised several different concerns about the impacts of ABS on Ontario's legal services markets. The Essex Law Association noted that it is difficult to consider the impact of ABS, as impacts will vary by type of firm, location, firm size and other factors, and will depend on what kind of ABSs are permitted. Some submissions suggested that ABSs would favour large law firms (see Chasse, for example). Responses from the personal injury bar cautioned that ABSs would lead to consolidation of personal injury firms in Ontario, which would be anti-competitive and against the public interest. Others (such as CDLPA) and the OBA, as noted above, cautioned that ABSs could lead to the end of sole and small firms, which would be detrimental to access to justice.
76. The Federation of Asian Canadian Lawyers noted that to the extent that there are a disproportionate number of licensees from equity seeking groups in sole or small firms, and ABS may lead to consolidation, ABS may have a disproportionate impact on these licensees.

## **C) ABS and Perspectives on Particular Practice Areas**

### ***Criminal Law***

77. The Law Society received responses from the CLA and the CCLA that specifically addressed criminal law. These responses opposed efforts to commoditize criminal law practices.
78. The CLA maintained that the highly individualized services provided by criminal lawyers cannot be easily commoditized, that "Fighting for rights and freedoms is not profitable" and that the role of the criminal lawyer is generally inconsistent with the ABS model. It expressed concern that permitting ABS structures could have several unintended consequences. For example, as described above, a commoditized process which replaces certain lawyer-client interactions with other processes may lead to an erosion of trust that is essential for the criminal lawyer to provide services.
79. In addition, the CLA asserted that the purported benefits of ABSs, such as innovation, flexibility in delivery mechanisms and enhancing access to justice, are already being met by dedicated criminal lawyers, and the benefits of ABSs appear to be overstated. It concluded that instead of focusing on ABSs to facilitate access to justice, regulatory resources should focus on appropriate legal aid funding.

### ***Family Law***

80. The Law Society received two submissions from Ottawa area family law practitioners and comments specifically related to family law from the CCLA.

81. The individual responses suggested that ABS would enhance access to justice because offering a suite of services through a “one-stop shop” model would more effectively triage issues, provide the appropriate type(s) of professional services as required and when required. The quality of services would improve by virtue of being integrated. It was further suggested that by focusing on the emotional and other aspects of a family law dispute and other factors before engaging in an adversarial legal process, an ABS model could help shift parties towards earlier resolution of their disputes, which would greatly assist the well-being of adults and children involved in family law matters.
82. The CCLA recognized these views, and that there are clear unmet legal needs in family law, but ultimately suggested that there is a lack of evidence that ABSs would enhance access to justice in this area. It suggested that the benefits of integrating legal and other services in family law might be better achieved by the Law Society providing enhanced guidance regarding the already permitted multi-disciplinary practice structure.
83. The Ontario College of Social Workers and Social Service Workers (“OCSWSSW”) provided general comments in response to the Discussion Paper. It noted that there are generally no restrictions on the business structure in which social work and/or social service work can be performed, but that if practicing in corporate form, it must be a professional corporation.

### ***Personal Injury Law***

84. The Law Society received submissions from OTLA, McLeish Orlando LLP, and Gordon Harris from the plaintiff personal injury side and comments from several others regarding this area of practice.
85. The responses received from the personal injury bar stated that there is no access to justice issue in personal injury law; the contingency fee system ensures that all in need of counsel are able to find a lawyer or paralegal. They therefore maintain that ABS is unnecessary in Ontario, so far as personal injury claims are concerned. They further note that in Australia and England and Wales the immediate impact of ABS was the consolidation of plaintiff personal injury firms, and that such consolidation would not be in the public interest in Ontario. They express concerns about inherent conflicts that could arise, such as an insurer acquiring an insurance defence law firm, and the difficulty in regulating the full impacts of such conflicts occurring.
86. As described above, there is a further concern expressed by some responses that external ownership and a corresponding increased emphasis on profits would lead to a decrease in the quality of legal services being delivered due to inappropriate delegation, increased pressure to settle cases early to reduce risk, and a reduction in representation for high risk and pro bono matters.
87. The plaintiff personal injury bar also expresses concern that ABSs would lead to increased risks of unethical behaviours within the sector. It could lead to fee sharing in areas where there are conflicts. It could lead to increased advertising targeting injured persons, and a



risk of unethical and unseemly advertising as well. Such negative impacts, it is suggested, would be increasingly difficult for the Law Society to regulate when the ABS may be owned by a large entity and/or by non-lawyers.

### ***Real Estate Law***

88. The Law Society received responses from the Barrie Real Estate Lawyers Association, the CCLA, CDLPA, Stewart Title, and LawPRO which focused exclusively or in part on the potential impacts of ABS being introduced in real estate law. The responses all suggest that ABS should not be permitted in real estate law. There is no access to justice issue with respect to the provision of real estate legal services. The cost of retaining independent counsel as a vendor or purchaser is generally incidental compared to the cost of the real estate property being conveyed.
89. Moreover, as LawPRO notes, liberalization in this area could have unintended major consequences, such as an erosion of Ontario's titles registry system, and increased costs to consumers in the long term. As LawPRO explains, independent lawyers are vital to Ontario's real estate transfer system. There is an important public policy need to maintain Ontario's land registry system. There are also genuine issues regarding conflicts in this area. Currently, lawyers' duties currently ensure that parties receive independent legal advice with respect to the transaction and purchasers have choice of title insurance. A shift to a U.S. style real estate model would require increased regulation to address conflicts between the various professionals and service providers in real estate, and resulting "reverse competition" (such as rebates, kickbacks, and commissions) which would lead to higher costs to consumers.
90. CDLPA suggested that the Law Society could develop mandatory guidelines for real estate fee advertising so that quotes clearly distinguish between legal services and disbursements, which would enable consumers to compare rates directly (but also opposed ABS in this area).

### **Respondents' Recommendations for Next Steps**

91. Respondents provided some guidance for the Law Society's next steps in considering ABS, including that the ABS Working Group:
  - a. Continue to communicate with the professions and the public as it continues to explore ABS. This should include further consulting with all stakeholders, and particularly in regions where there are higher levels of licensees from equity seeking groups;
  - b. Clearly articulate what issues ABS may address, and consider alternatives to ABS options which may exist to address the issues identified;
  - c. Provide further clarity on the differences between the four models presented in the Discussion Paper, and continue to assess the potential impacts of each;<sup>4</sup>
  - d. Further explain what access to justice benefits, if any, ABS could bring to Ontario;

---

<sup>4</sup> Both LawPRO and CDLPA, for example, question whether a 49% outside ownership model would in fact necessarily safeguard licensee majority control over a business structure.

- e. Consider the kinds of complaints against licensees/firms in ABS permitting jurisdictions, and whether there have been specific complaints raised by equity-seeking groups;
  - f. Consider other alternatives to ABSs to modernize and enhance both regulation and the delivery of legal services;
  - g. Regardless of whether ABS are permitted, continue to consider cross-jurisdictional challenges to Law Society regulation.
92. LawPRO suggested some areas for further exploration and consideration for the implementation of ABS in Ontario. It recommends that if the Law Society introduces some form of ABS to Ontario, then it should adopt the approach taken in England and Wales by the Solicitors Regulatory Authority (SRA), which enables the regulatory to pre-approve (or deny) applications for ABS licenses. LawPRO also advises that careful consideration would need to be given to insurance or financial assurance considerations. In particular:
- a. Consideration will need to be given to whether LawPRO will be insuring lawyers or the provision of legal services by approved entities.
  - b. ABSs should be required to buy primary insurance from LawPRO. Otherwise, among other drawbacks, over time there would be a reduction of the pool of insured, which could threaten the viability of the program, and that the risk data obtained through a single insurer could be weakened.
  - c. Additional insurance or bonds may be necessary to protect innocent consumers against risks associated with "complex combinations of services with varying business risks and trends."
  - d. Client service continuity plans should be developed as part of the regulator's approach to ABS. Individual ABSs, like other law practices, may fail. ABS entities should be required to develop plans in case of failure to protect clients receiving legal services from the ABS.
  - e. Further consideration should be given to whether "technology-based services" will come within the Law Society's sphere, and if so, whether they are meant to be insured.

### **Next Steps in the Law Society's Study of ABS**

93. The ABS Working Group will continue to reflect on the detailed responses it has received to date as it continues to consider ABS.
94. Next steps will involve assessing the feedback summarized in this report, considering how to frame the issues for continuing dialogue with the professions and others on the subject, and organizing those discussions later in 2015.
95. No recommendations will be forthcoming from the Working Group to Convocation until those discussions have occurred and further consideration is given to what is received from this next phase of consultation.

**LIST OF ABS MEETINGS  
APRIL 2014 - JANUARY 2015**

Date	Event	Law Society Representative(s)
April 17, 2014	Joint ABS Working Group and Priority Planning Meeting with Andrew Grech, Managing Director, Slater & Gordon	n/a
April 29, 2014	Treasurer's Liaison Group	Susan McGrath
May 20, 2014	CDLPA Spring Conference	Susan McGrath and Malcolm Mercer
May 30, 2014	OTLA Spring Conference	Peter Wardle James Scarfone
June 2, 2014	CBA First Annual Ethics Forum	Malcolm Mercer
June 9 and 10, 2014	Canadian Law Leadership Forum Program  "Regulatory Limitations on the Practice of Law: Lessons from Key Jurisdictions"	Malcolm Mercer
June 13, 2014	OBA Council	Susan McGrath and Malcolm Mercer
June 16, 2014	ABS Working Group meeting with Professor Gillian Hadfield	n/a
June 17, 2014	Crown Summer School	Treasurer Minor Malcolm Mercer
August 26, 2014	Advocates Society Board of Directors	Susan McGrath and Malcolm Mercer
September 18, 2014	OTLA Board of Directors	Susan McGrath and Malcolm Mercer
October 3, 2014	AJEFO Congress	Robert Lapper, Carol Hartman, Margaret Drent
October 16, 2014	Toronto Lawyers Association	Susan McGrath and Malcolm Mercer
October 16, 2014	Barrie Real Estate Lawyers Association	Alan Silverstein, Joe Sullivan, Robert Evans
October 20, 2014	Frontenac Law Association	Malcolm Mercer and Susan Elliott

October 28, 2014	Equity Advisory Group (EAG)	Susan McGrath
November 5, 2014	Hamilton Law Association (ABS information session)	Susan McGrath and Malcolm Mercer Joe Sullivan James Scarfone
November 18, 2014	County of Carleton Law Association Board of Trustees	Malcolm Mercer and Constance Backhouse
November 19, 2014	Federation of Asian Canadian Lawyers	Peter Wardle
December 5, 2014	OBA Program "ABS Abroad: Key Insights from the United Kingdom and Australia"	Malcolm Mercer Peter Wardle
January 20, 2015	Waterloo Region Law Association ABS Town Hall	Susan McGrath Malcolm Mercer Ross Earnshaw
January 21, 2015	County of Carleton Law Association ABS Town Hall	Adriana Doyle James Scarfone Malcolm Mercer

Tab 8.2.2

## LIST OF SUBMISSIONS RECEIVED

### INDIVIDUALS

Akazaki, Lee

Audet, Julie

Audet, Julie and Picard, Nathalie

Ball, James

Botsford, Blair

Chasse, Ken

Joint Submission:

Brendt, Lorne

Callaghan, Paula

Cote, Christal

Castonguay, Tania

Alysia Middleton

Minor, Kayla

Schmidt, Linda

Sheffer, Cheryl

Sabourin, Denis

Criger, Janis

Gehl, Nicholas

Granton, Joseph

Harris, Gordon

Hollander, John

Kowalski, Mitch

LaBuik, Devon

Ledgerwood, Liam

Lipinski, Baruch  
Teitel, Murray

Wiseman, David

## **LAW FIRMS**

Cognition LLP

Conduit Law

McLeish Orlando

## **ORGANIZATIONS**

Barrie Real Estate Lawyers Association

Canadian Defence Lawyers

Centre for International Governance Innovation (CIGI)

County of Carleton Law Association

Criminal Lawyers Association

Equity Advisory Group Working Group on Alternative Business Structures

Essex Law Association

Federation of Asian Canadian Lawyers (FACL)

LawPRO

Law Students' Society of Ontario (LSSO)

Ontario Bar Association

Ontario Trial Lawyers Association

Southwest Region Women's Law Association

The Advocates' Society

The County District Lawyers Presidents' Association

Waterloo Region Law Association

Women's Paralegal Association of Ontario

## **REGULATOR**

Ontario College of Social Workers and Social Service Workers

**Tab 8.3**

**FOR INFORMATION**

**EXECUTIVE DIRECTOR'S REPORT REGARDING JUDICIAL COMPLAINTS**

96. Attached as **Tab 8.3.1** is the report of the Executive Director of the Professional Regulation Division providing an analysis of the judicial complaints received by the Law Society to December 31, 2014, since the implementation of the Civility Complaints Protocols between the Society and the Ontario Courts. This report was also reviewed by the Paralegal Standing Committee on February 11, 2015.





Tab 8.3.1

## PROFESSIONAL REGULATION

### Report: Update on Judicial Complaints

Prepared by: Zeynep Onen, Executive Director, Professional Regulation

Date: 16 January 2015

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#### INTRODUCTION

This memorandum provides a brief analysis of the judicial complaints received by the Law Society since the implementation of the Civility Complaints Protocols between the Society and the Ontario Courts (the “Protocols”) to 31 December 2014.

The Protocols were developed by the Law Society in consultation with the Chief Justices of the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice. Formalized in September 2009, the Protocols set out a procedure for trial judges and justices of the peace to refer incidents of misconduct to the Law Society. They also provide for a process whereby judges can request that lawyers receive mentoring from a panel of senior members of the bar.

#### Number of Complaints Received

While the Protocols were not finalized until in and around 31 March 2010, the Law Society and the Courts began following these Protocols in the late summer, early fall of 2009. Hence, complaints from judges which were received after 1 September 2009 are considered to be part of this joint endeavour and are the focus of this memorandum.

Between 1 September 2009 and 31 December 2014, the Law Society received **124 complaints** from judges in various courts (“judicial complaints”): 5 were received in 2009; 32 were received in 2010, 20 were received in 2011, 21 were received in 2012 and 26 were received in 2013 and 20 were received in 2014. The following chart sets out the number of judicial complaints received in Professional Regulation, by calendar year, since 2000.<sup>1</sup>

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<sup>1</sup> In and around September 2009, when the Protocols were developed, a unique way to identify these complaints was developed in Professional Regulation’s case management system, IRIS. However, prior to that time, there was no ability to identify complaints received from judges. For this memorandum, IRIS complaints opened between 1 January 2000 and 1 September 2009 were identified as judicial complaints if the complainant or additional

YEAR	NUMBER OF COMPLAINTS
2000	1
2001	3
2002	2
2003	3
2004	13
2005	10
2006	1
2007	3
2008	5
2009*	18
2010	32
2011	20
2012	21
2013	26
2014	20

\* Note that 13 complaints were received prior to the implementation of the Protocols

### Analysis of the Judicial Complaints Received Post-Implementation of the Protocols

An analysis of the 124 judicial complaints received since 1 September 2009 reveals the following information.

#### (a) Types of Licensees

- 84 complaints were made against 78 lawyers;
- 26 complaints were made against 24 paralegal licensees;
- 1 complaints was made against 1 paralegal applicant;
- 1 complaint was made against 1 lawyer applicant; and
- 12 complaints were made against 12 non-licensees.

#### (b) Originating Court and Process Followed

Originating Court	Complaints Received in the Law Society		
	Total #	# Received through the CEO's Office	# Received Directly from the Judge
<b>Ontario Court of Justice</b> <i>In Toronto</i>	<b>36</b> 21	17	19

complainant in the case was identified as a judge. Those complaints which were lodged by someone on behalf of a judge have not been included as there is no way they could be identified.

Originating Court	Complaints Received in the Law Society		
	Total #	# Received through the CEO's Office	# Received Directly from the Judge
<i>Jurisdictions outside Toronto</i>	15		
<b>Superior Court of Justice</b> <i>In Toronto</i> <i>Jurisdictions outside Toronto</i>	83 41 42	32	51
<b>Divisional Court</b>	1	0	1
<b>Court of Appeal for Ontario</b>	1	1	0
<b>Federal Court of Canada</b>	2	2	0
<b>Manitoba Court of Queen's Bench</b>	1	1	0
<b>TOTAL</b>	<b>124</b>	53	71

**(c) Mentoring**

In 15 cases (involving 14 licensees), the referring court made a formal request for mentoring.

- In 7 cases, it was determined that mentoring was not appropriate.
- In 7 cases, it was determined that mentoring was appropriate.
- In 1 case, the determination of whether mentoring was appropriate had not been made as at December 31, 2014.

In 3 other cases (2 involved the same licensee), it was also determined that mentoring was appropriate, although a formal request for mentoring was not made by the referring court.

**(d) Open/Closed**

Process	# of open complaints	# of complaints in abeyance	# of closed complaints
Intake	1	0	12
Investigations	22	1	56
Discipline	9 (re 7 licensees)	0	20 (re 18 licensees/applicants)
Director's Office – Prosecutions	0	0	3
<b>TOTAL</b>	<b>32 complaints</b>	<b>1 complaints</b>	<b>91 complaints</b>

Of the 7 licensees currently in Discipline:

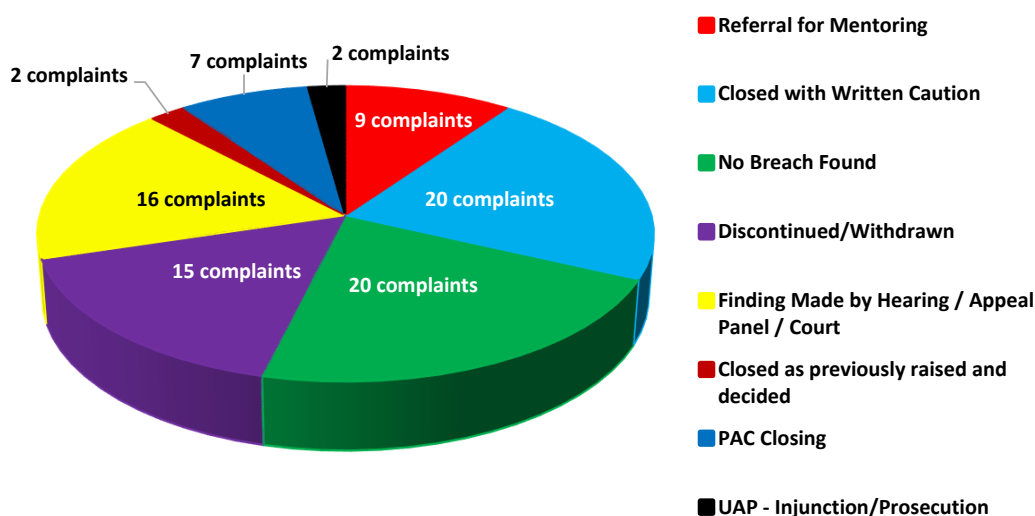
- 1 is subject to an interlocutory suspension order;
- 5 are not entitled to practise for other reasons (e.g. current discipline or administrative suspension, retired, etc.)

With respect to the status of the active 7 licensee matters in Discipline

- 2 matters are pending PAC,
- 4 matters (3 conduct matters; 1 capacity matter) are in the hearings process,
- In 1 matter (conduct), the Law Society's appeal to the Appeal Division was successful and a new hearing was ordered. That hearing has been adjourned *sine die* pending the licensee's appeal to the Divisional Court.

•

The following chart provides a breakdown of the dispositions for the 91 complaints that have been closed:



## (e) Timeliness

### (i) Closed Cases

With respect to the judicial complaints that have been closed:

- The average age of the 12 cases closed in Intake was 88 days. With respect to the 10 cases in which the licensee was referred for mentoring, the age at closure ranged from 3 days to 151 days and averaged 101 days.
- The average age of the 56 cases closed in Investigations was 282 days.
- The average age of the 18 matters (involving 20 cases) closed in Discipline was 975 days at the time of closure.

**(ii) Active Cases**

With respect to 34 active cases:

- There was 1 active case in the Intake Department, in which mentoring was being arranged. It was 26 days old as at 31 December 2014.
- The average age of the 23 active cases in Investigations as at 31 December 2014 was 427 days (i.e. from date of case creation).
- The average age of the 7 active licensee matters (involving 9 cases) in Discipline as at 31 December 2014 (from date of case creation) was 1140 days.

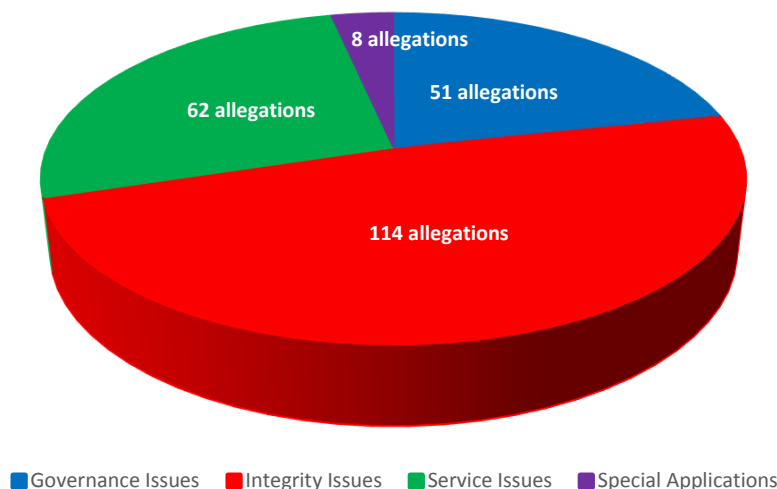
**(f) Area of Law**

The following chart breaks down the 124 judicial complaints by area of law:

Area of Law	# of Complaints	% of Judicial Complaints
Civil Litigation	50	40%
Criminal/Quasi-Criminal	44	35%
Matrimonial/Family Law	25	20%
Estates/Wills	2	2%
Administrative/Immigration	3	3%

**(g) Types of Complaints**

In the 124 judicial complaints received as at 31 December 2014, there have been a total of 235 allegations raised. The following graph shows the number of allegations by case type (Governance Issues, Integrity Issues, Service Issues and Special Applications) that have been received:



Integrity issues (114 allegations) were raised in 82 (66%) of the judicial complaints received as at 31 December 2014 and included:

- 52 allegations (46%) of counseling/behaving dishonourably
- 25 allegations (22%) of misleading
- 23 allegations (20%) of incivility

Services issues (62 allegations) were raised in 55 (44%) of the judicial complaints received as at 31 December 2014. Forty-five (45) of the 62 allegations (88%) were for failing to serve a licensee's client.

Governance issues (51 allegations) were raised in 42 (34%) of the judicial complaints received as at 31 December 2014 and included:

- 13 allegations (35%) were for practicing under suspension
- 13 allegations (25%) related to practicing outside the scope of a paralegal's licence / improper advertising
- 13 allegations (25%) concerned the unauthorized practice by a non-licensee or failing to prevent unauthorized practice.

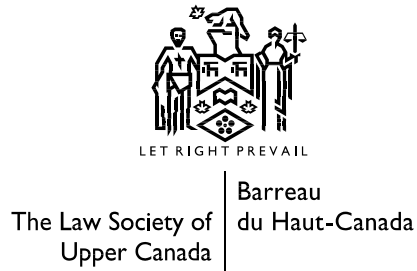
Eight (6%) of the judicial complaints received as at 31 December 2014 involved special application issues, all of which raised capacity issues.

**FOR INFORMATION**

**PROFESSIONAL REGULATION DIVISION**

**QUARTERLY REPORT**

97. The Professional Regulation Division's Quarterly Report (fourth quarter 2014), provided to the Committee by Zeynep Onen, the Executive Director of Professional Regulation, appears at [Tab 8.4.1](#). The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period October to December 2014. The report was also considered by the Paralegal Standing Committee on February 11, 2015.



# **The Professional Regulation Division**

## **Quarterly Report** October - December 2014



The Law Society of Upper Canada  
The Professional Regulation Division  
Quarterly Report (October 1 – December 31, 2014)

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## **The Quarterly Report**

The Quarterly Report provides a summary of the Professional Regulation Division's activities and achievements during the past quarter, October 1 to December 31, 2014. The purpose of the Quarterly Report is to provide information on the production and work of the Division during the quarter, to explain the factors that may have influenced the Division's performance, and to provide a description of exceptional or unusual projects or events in the period.

## **The Professional Regulation Division**

Professional Regulation is responsible for responding to complaints against licensees, including the resolution, investigation and prosecution of complaints which are within the jurisdiction provided under the *Law Society Act*. In addition the Professional Regulation provides trusteeship services for the practices of licensees who are incapacitated by legal or health reasons. Professional Regulation also includes the Compensation Fund which compensates clients for losses suffered as a result of the wrongful acts of licensees.

See Appendices for a case flow chart describing the complaints process as well as a description of the Professional Regulation division processes and organization.

The Law Society of Upper Canada  
The Professional Regulation Division  
Quarterly Report (October 1 – December 31, 2014)

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**PROFESSIONAL REGULATION  
QUARTERLY REPORT  
DECEMBER 31, 2014**

**OVERVIEW**

During 2014, Professional Regulation received 4781 new cases. While these are referenced as complaints, they include investigations relating to applicants with good character issues, and matters commenced by the Law Society based on information that has come to our attention.

The number of new matters in 2014 was almost exactly the same as in 2012, and 259 cases fewer than in 2013. There is no apparent reason for the approximately 5% reduction in the number of new cases between 2013 and 2014. The nature of the caseload, including types of complaints and areas of practice to which they refer, were proportionately similar. There was also no procedural or communications change that would explain the difference.

During 2014 more cases were closed than were received. 4922 cases were closed in the period. The resulting inventory of all complaints at the end of 2014 was 3300. As noted earlier, in 2013 the Law Society received a larger than expected number of new cases and these were for the most part received in the first half of that year. The current inventory of cases still reflects this influx of cases as they move through the process to completion.

During 2014 additional attention was focused on completing cases in a timely manner in the investigation stages of the process. Case aging at this stage can be caused by a number of factors including the volume of work for the investigator, however it is most often due to a number of factors beyond the control of the Law Society. These include:

- Newer complaints received in the course of the existing investigation
- The need to coordinate related investigations concerning several licensees
- Case complexity due to the nature of the complaint or the number of complaints
- Delay occasioned as evidence is obtained from third parties including financial institutions, and other witnesses, where cooperation is not required
- The need to obtain expert opinions and reviews
- Case was previously in abeyance or closed at the request of the complainant, or due to a prosecution of the licensee for failure to cooperate with the Law Society
- Policy considerations requiring analysis in unusual or unique cases

Older cases are closely monitored. During 2014, both the Complaints Resolution and the Investigations departments have succeeded in reducing the proportion of older cases in their inventory, and further reductions are expected in 2015. (See pages 16, 21 and 22).

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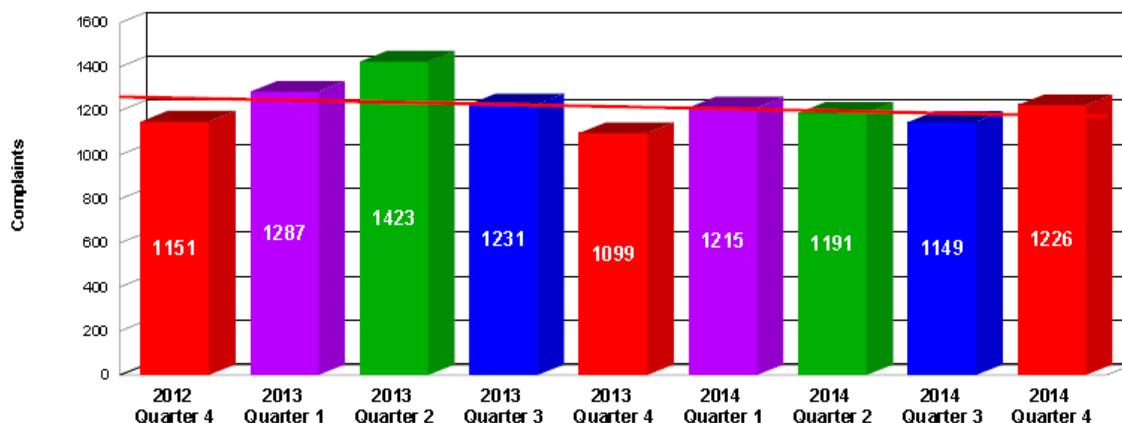
## **SECTION 1**

### **DIVISIONAL PERFORMANCE DURING THE QUARTER**

The Law Society of Upper Canada  
The Professional Regulation Division  
Quarterly Report (October 1 – December 31, 2014)

## PERFORMANCE IN THE PROFESSIONAL REGULATION DIVISION

**Graph 1A: Complaints<sup>1</sup> Received in the Division**



### Detailed Analysis of Complaints Received in the Division

	2012	2013	2014
<b>Complaints against Lawyers</b>	3820	3896	3734
<b>Lawyer Applicant Cases ★</b>	99	115	115
<b>Complaints against Licensed Paralegals</b>	480	584	543
<b>Paralegal Applicant Cases ★</b>	155	205	180
<b>Complaints against Non-Licensees/Non-Applicants*</b>	228	240	209
<b>TOTAL</b>	4782	5040	4781

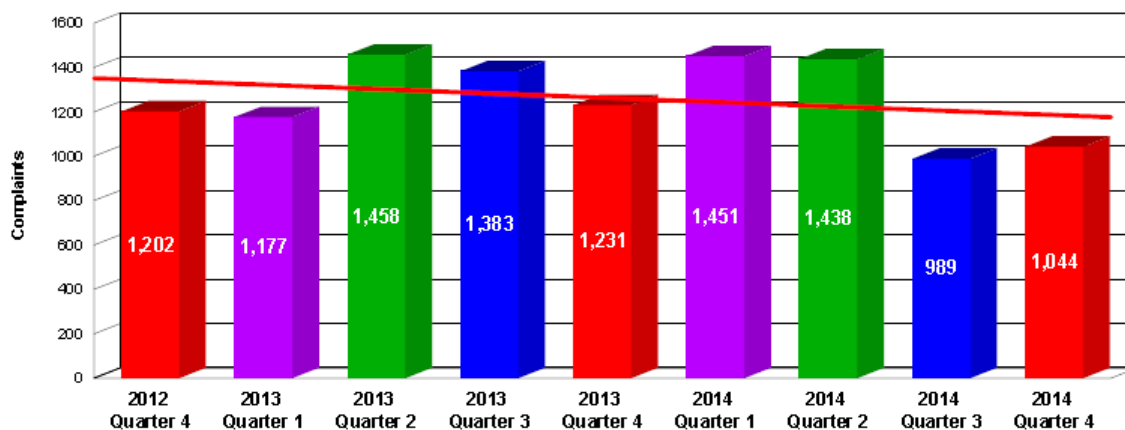
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 3.4.

<sup>1</sup> Includes all complaints received in PRD from Complaints Services.

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**Graph 1B: Complaints Closed<sup>2</sup> in the Division (by Quarters)**



#### Detailed Analysis of Complaints Closed in the Division

	2012	2013	2014
<b>Complaints against Lawyers</b>	3932	4174	3813
<b>Lawyer Applicant Cases ★</b>	88	122	112
<b>Complaints against Licensed Paralegals</b>	486	487	570
<b>Paralegal Applicant Cases ★</b>	163	206	195
<b>Complaints against Non-Licensees/Non-Applicants*</b>	259	260	232
<b>TOTAL</b>	4928	5249	4922

★ Applicant cases include good character cases and UAP complaints

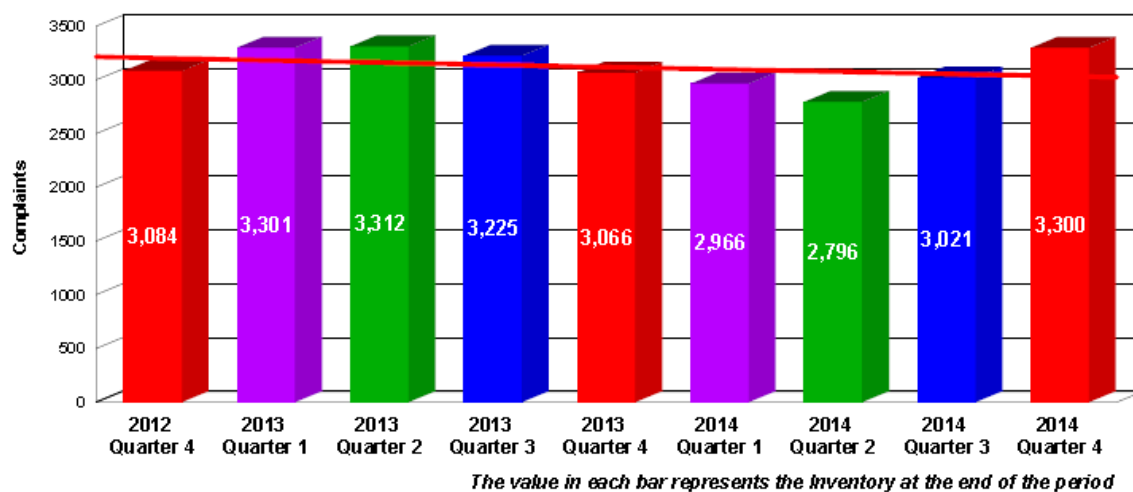
\* For a complete analysis of UAP complaints see section 3.4.

<sup>2</sup>This graph includes all complaints closed in Intake, Complaints Resolution, Investigations and Discipline.

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**Graph1C: Total Inventory<sup>3</sup>**




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<sup>3</sup> This graph does not include active complaints in the Monitoring & Enforcement Department.



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## **SECTION 2**

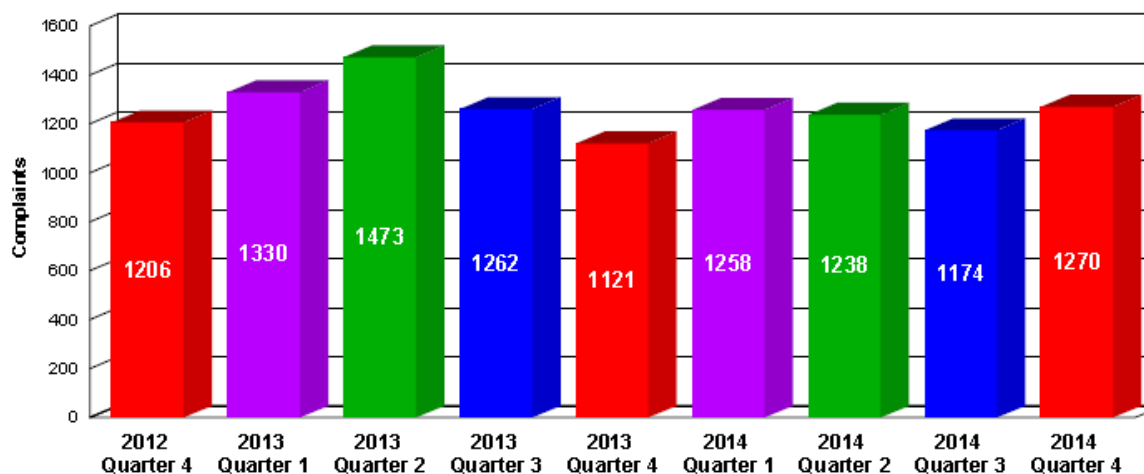
### **DEPARTMENTAL PERFORMANCE DURING THE QUARTER**

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## 2.1 – Intake

**Graph 2.1A: Intake - Input<sup>4</sup>**



The Intake department processes all new regulatory complaints. In Q4 2014, in addition to the 1226 new cases, Intake re-opened 44 complaints which met the threshold for re-opening a closed matter.

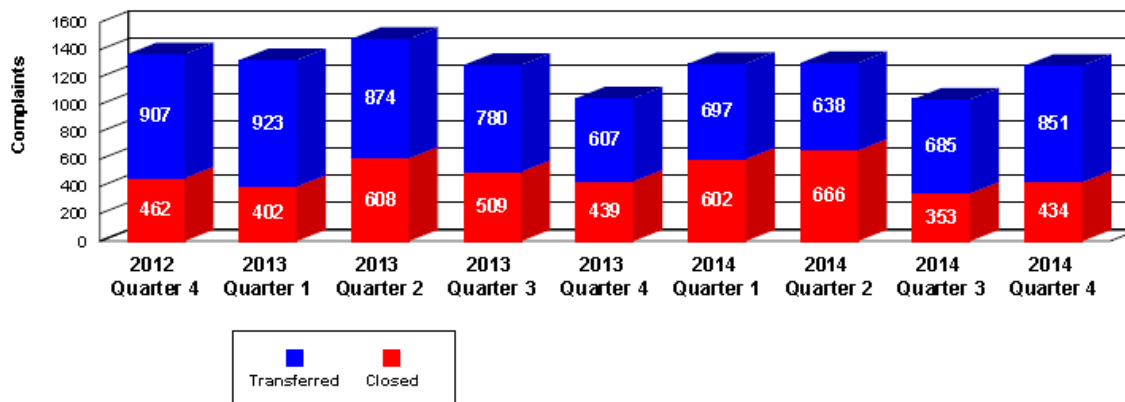
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<sup>4</sup>Includes new complaints received and re-opened complaints

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## 2.1 – Intake

**Graph 2.1B: Intake - Complaints Closed and Transferred Out**



### Detailed Analysis of Complaints Closed and Transferred From Intake

		2012		2013		2014	
<b>Complaints against Lawyers</b>	Closed	1431	3894	1524	3991	1561	3851
	Transferred	2464		2467		2290	
<b>Lawyer Applicant Cases★</b>	Closed	61	98	67	113	92	119
	Transferred	37		46		27	
<b>Complaints against Licensed Paralegals</b>	Closed	138	483	142	568	191	556
	Transferred	345		426		365	
<b>Paralegal Applicant Cases★</b>	Closed	80	157	114	197	135	188
	Transferred	77		83		53	
<b>Complaints against Non-Licensees/Non-Applicants*</b>	Closed	89	232	111	273	76	212
	Transferred	143		162		136	
<b>TOTAL</b>	Closed	1799	4865	1958	5142	2055	4926
	Transferred	3066		3184		2871	

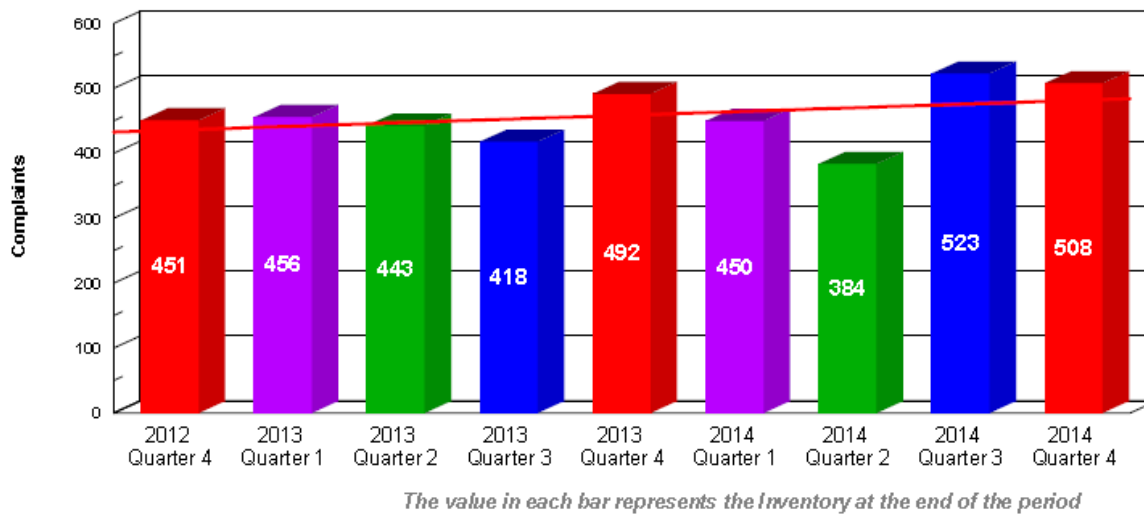
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 3.4.

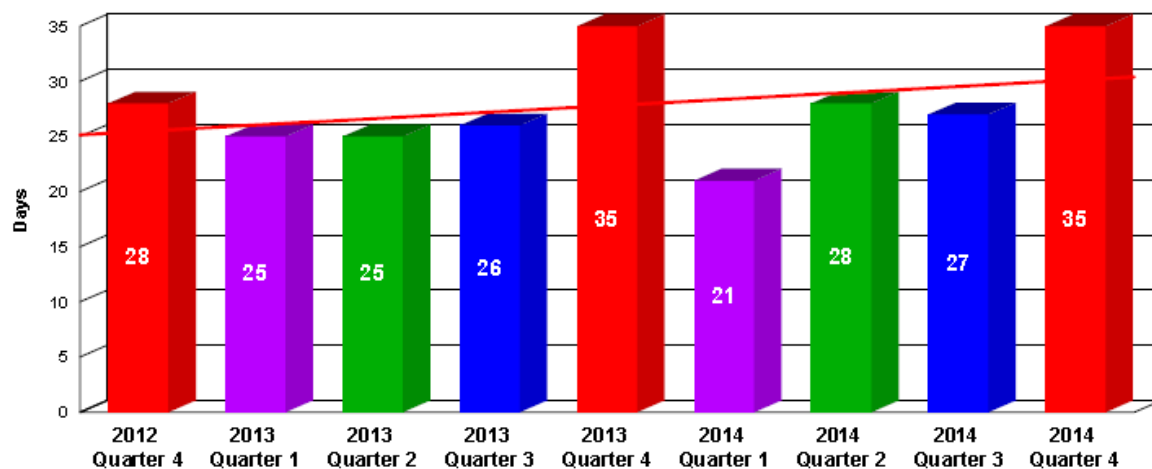
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## 2.1 – Intake

**Graph 2.1 C: Intake - Department Inventory**



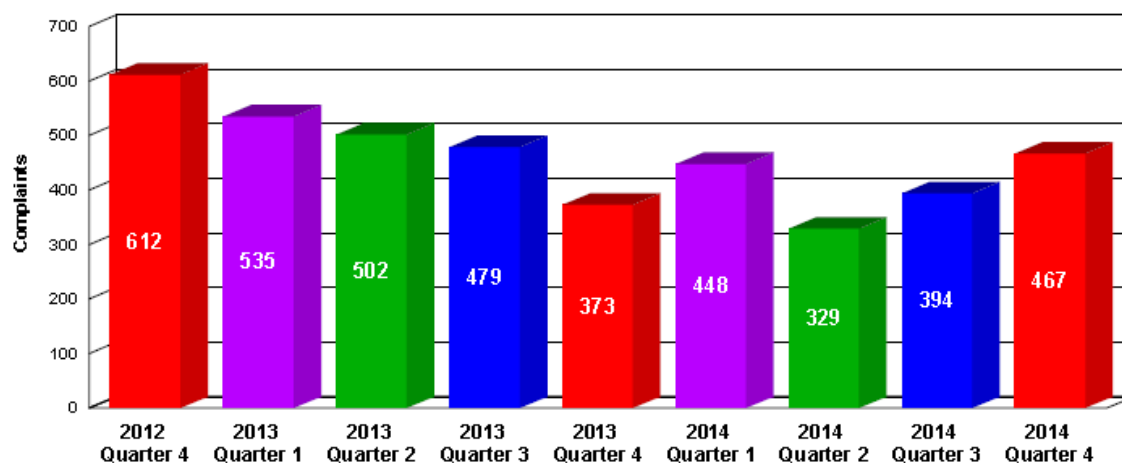
**Graph 2.1D: Intake - Median Age of Complaints**



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## 2.2 – Complaints Resolution

**Graph 2.2A: Complaints Resolution – Input<sup>5</sup>**



### Detailed Analysis of New and Re-opened Complaints in Complaints Resolution

	2012	2013	2014
<b>Complaints against Lawyers</b>	1736	1683	1426
<b>Lawyer Applicant Cases ★</b>	0	0	0
<b>Complaints against Licensed Paralegals</b>	163	205	210
<b>Paralegal Applicant Cases ★</b>	0	0	0
<b>Complaints against Non-Licensees/Non-Applicants*</b>	0	1	2
<b>TOTAL</b>	1899	1889	1638

★ Applicant cases include good character cases and UAP complaints

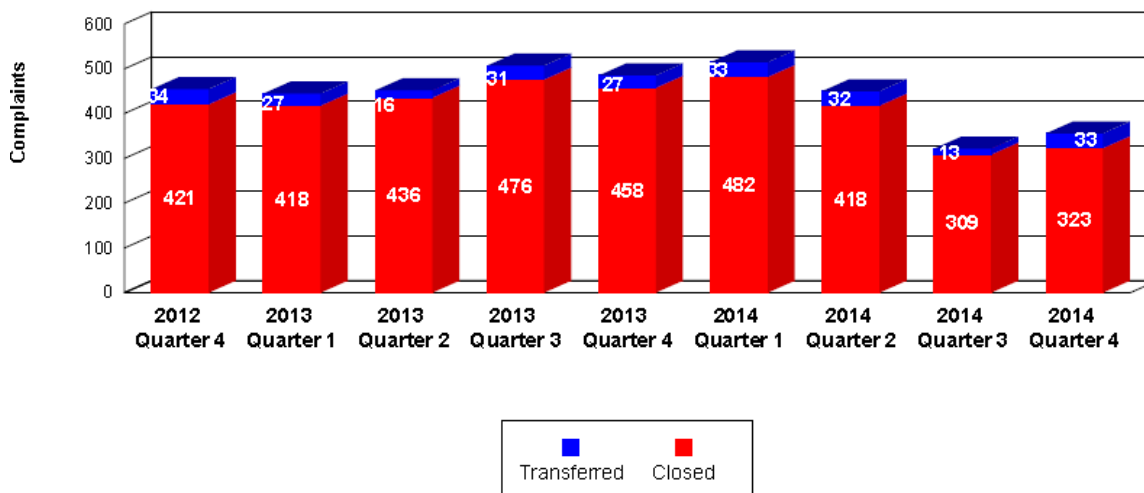
\* For a complete analysis of UAP complaints see section 3.4.

<sup>5</sup>Includes new complaints received into the department as well as complaints re-opened during the Quarter.

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## 2.2 – Complaints Resolution

**Graph 2.2B: Complaints Resolution - Complaints Closed and Transferred Out**



### Detailed Analysis of Complaints Closed and Transferred From Complaints Resolution

		2012		2013		2014	
<b>Complaints against Lawyers</b>	Closed	1623	1698	1626	1709	1364	1460
	Transferred	75		83		96	
<b>Lawyer Applicant Cases★</b>	Closed	0	0	0	0	0	0
	Transferred	0		0		0	
<b>Complaints against Licensed Paralegals</b>	Closed	146	154	162	179	168	183
	Transferred	8		17		15	
<b>Paralegal Applicant Cases★</b>	Closed	0	0	0	0	0	0
	Transferred	0		0		0	
<b>Complaints against Non-Licensees/Non-Applicants*</b>	Closed	0	0	0	1	0	0
	Transferred	0		1		0	
<b>TOTAL</b>	Closed	1769	1852	1788	1889	1532	1643
	Transferred	83		101		111	

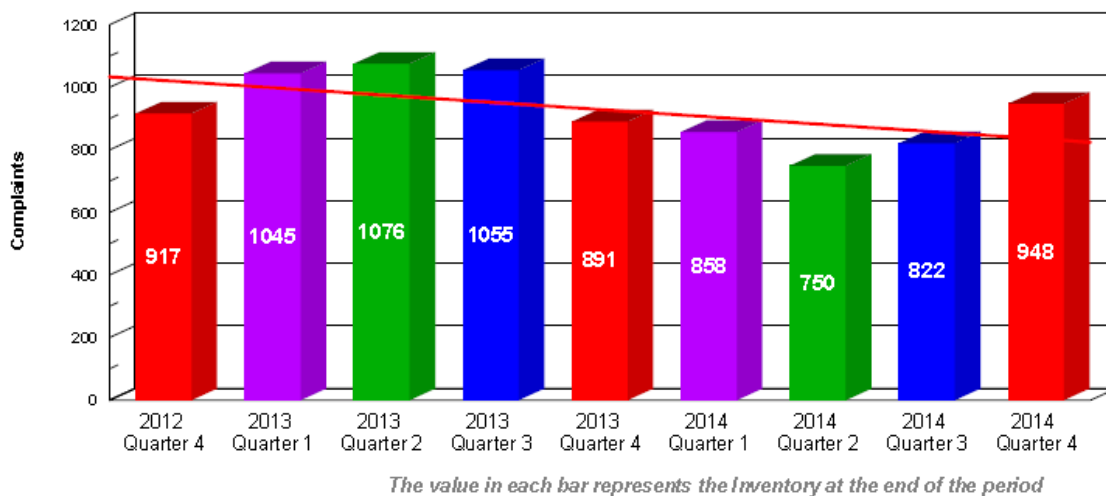
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 3.4.

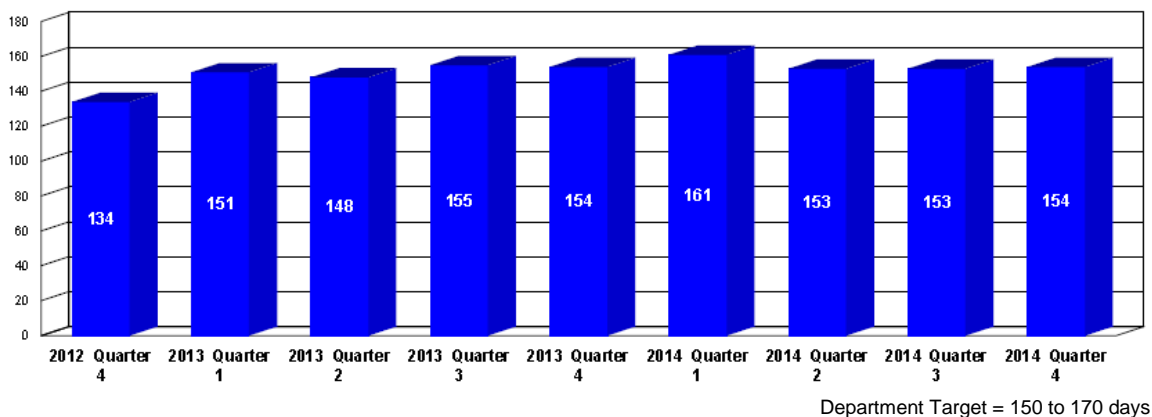
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## 2.2 – Complaints Resolution

**Graph 2.2C: Complaints Resolution – Department Inventory**



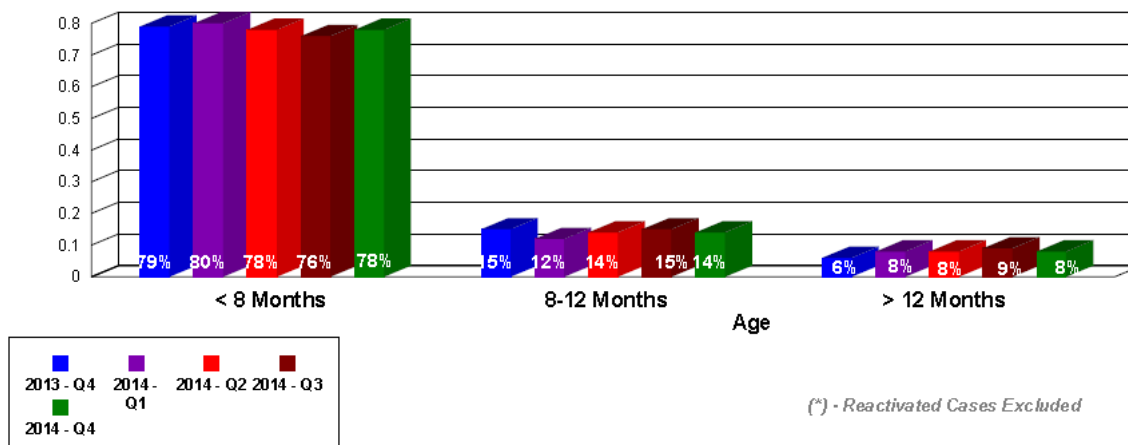
**Graph 2.2D: Complaints Resolution - Median Age of Complaints**



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## 2.2 – Complaints Resolution

**Graph 2.2E: Complaints Resolution – Aging of Complaints**



The chart below compares the department's age distribution of cases for the past 5 quarters

	<8 months	8 to 12 months	>12 months
<b>Q4 2013</b>	658 cases involving 600 subjects	124 cases involving 119 subjects	51 cases involving 43 subjects
<b>Q1 2014</b>	635 cases involving 584 subjects	96 cases involving 88 subjects	62 cases involving 53 subjects
<b>Q2 2014</b>	534 cases involving 487 subjects	100 cases involving 95 subjects	53 cases involving 42 subjects
<b>Q3 2014</b>	574 cases involving 521 subjects	114 cases involving 106 subjects	67 cases involving 54 subjects
<b>Q4 2014</b>	673 cases involving 620 subjects	120 cases involving 112 subjects	73 cases involving 60 subjects

Cases which have been in the process longer than 12 months are closely monitored. In almost all instances, the case is in this category due to reasons beyond the control of the Law Society. Cases are usually older than 12 months in Complaints Resolution for the following reasons:

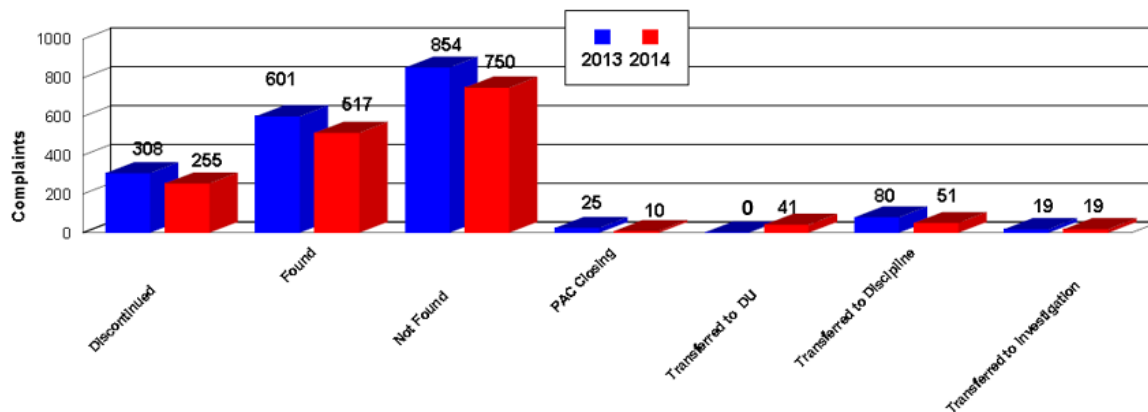
- Newer complaints against the lawyer/paralegal are received. In some cases existing cases await the completion of younger cases relating to the same licensee;
- Delays on the part of licensees in providing representations and in responding to the investigators' requests. In a number of instances, the Summary Hearing process is required;
- Delays on the part of complainants in responding to licensee's representations and to investigators' requests for additional information; and
- New issues raised by the complainant requiring additional investigation.



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## 2.2 – Complaints Resolution

**Graph 2.2G: Complaints Resolution - Complaints Closed by Disposition**



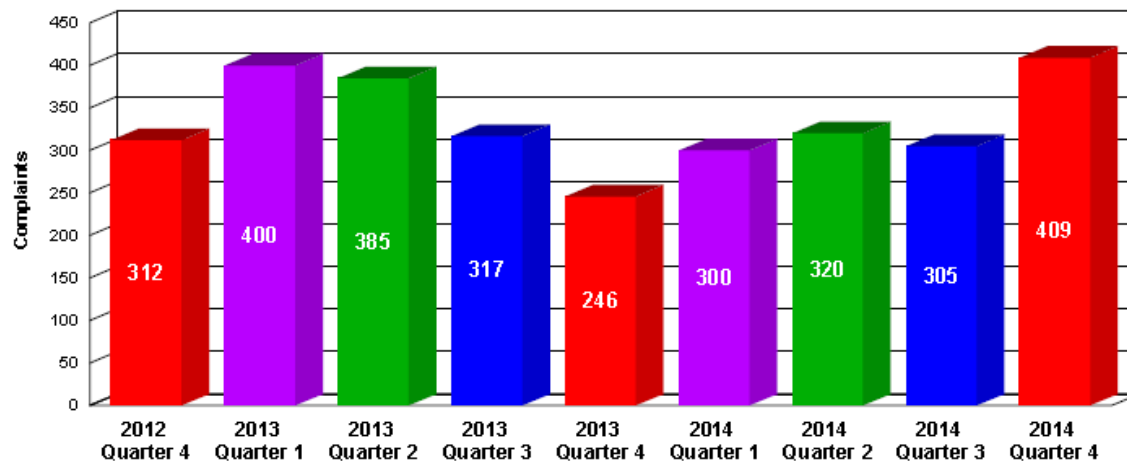
	2013 (% of total cases closed)	2014 (% of total cases closed)
<b>Discontinued</b>	17%	17%
<b>Found</b>	34%	34%
<b>Not Found</b>	48%	49%
<b>PAC Closing</b>	1%	1%
<b>Total cases closed</b>	100% (1788 cases)	100% (1532 cases)

A glossary of the individual disposition types included in each of the shown categories is available in Section 4, Appendix D.

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## 2.3 –Investigations

**Graph 2.3A: Investigations - Input**



### Detailed Analysis of New and Re-opened Complaints Received in Investigations

	2012	2013	2014
<b>Complaints against Lawyers</b>	796	823	927
<b>Lawyer Applicant Cases ★</b>	37	47	28
<b>Complaints against Licensed Paralegals</b>	190	230	192
<b>Paralegal Applicant Cases ★</b>	80	85	53
<b>Complaints against Non-Licensees/Non-Applicants*</b>	142	163	134
<b>TOTAL</b>	1245	1348	1334

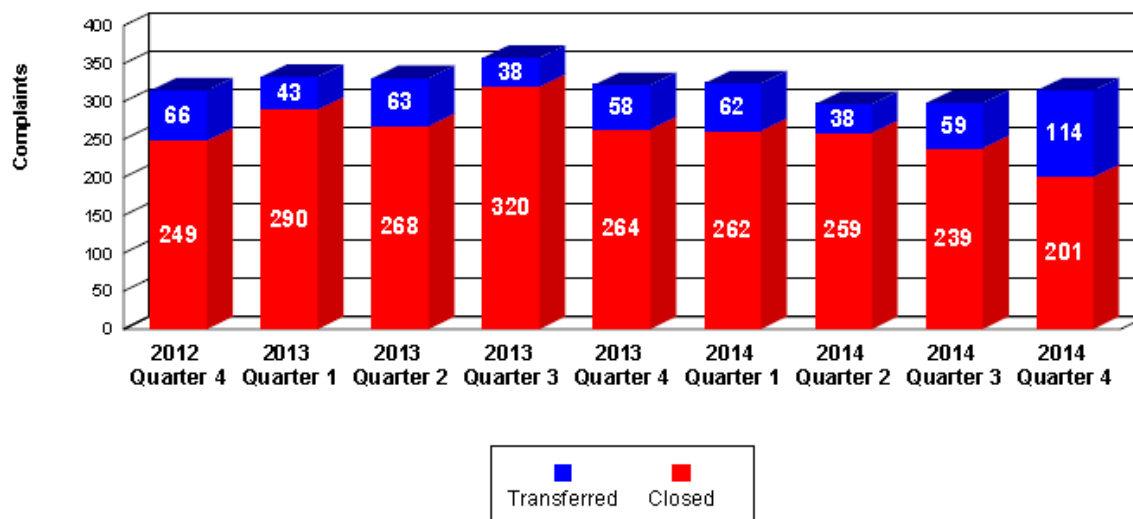
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 3.4.

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## 2.3 –Investigations

**Graph 2.3B Investigations - Complaints Closed and Transferred Out**



### Detailed Analysis of Complaints Closed and Transferred Out of Investigations

		2012		2013		2014	
Complaints against Lawyers	Closed	657	815	729	875	593	807
	Transferred	158		146		214	
Lawyer Applicant Cases ★	Closed	24	27	51	52	18	20
	Transferred	3		1		2	
Complaints against Licensed Paralegals	Closed	163	206	137	175	158	195
	Transferred	43		38		37	
Paralegal Applicant Cases ★	Closed	69	69	88	95	42	48
	Transferred	0		7		6	
Complaints against Non-Licensees/Non-Applicants*	Closed	140	157	137	147	150	164
	Transferred	17		10		14	
TOTAL	Closed	1053	1274	1142	1344	961	1234
	Transferred	221		202		273	

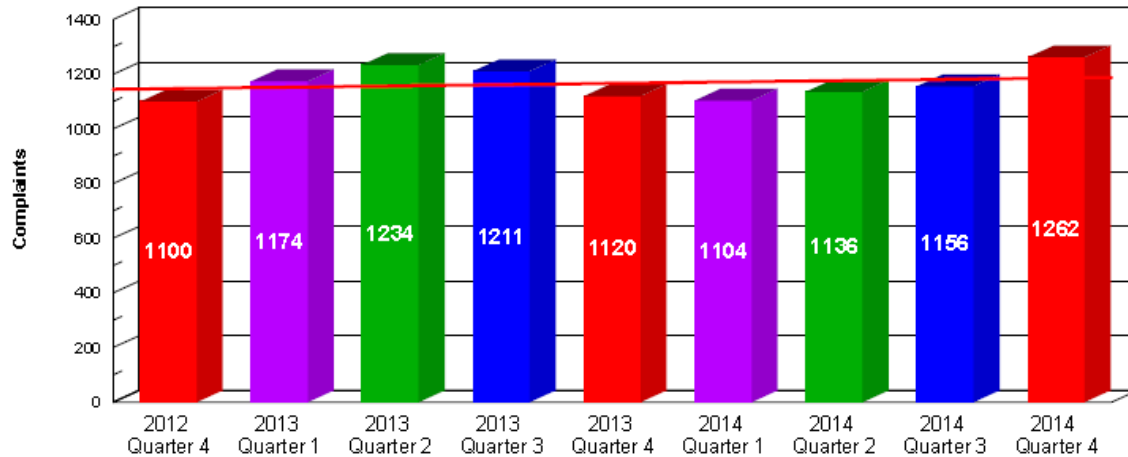
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 3.4.

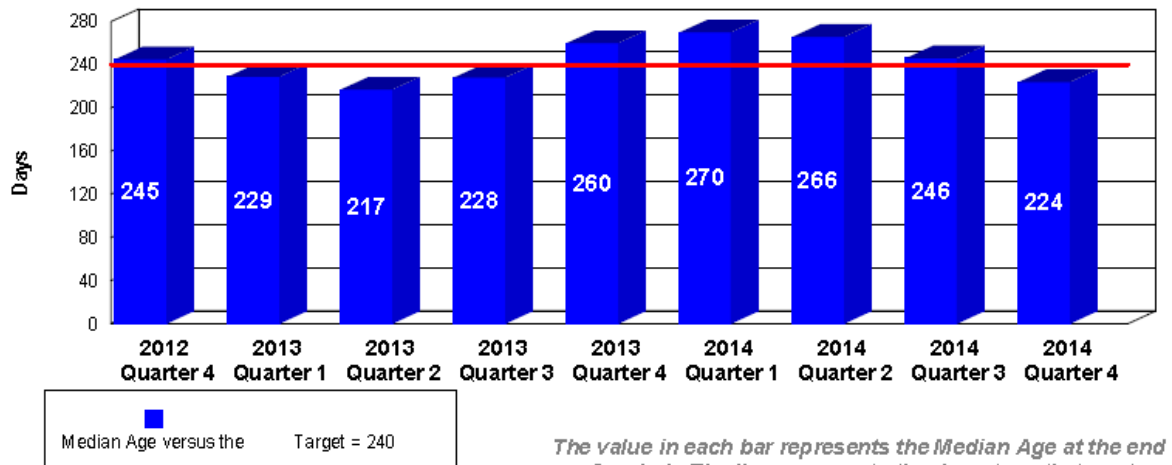
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## 2.3 – Investigations

**Graph 2.3C: Investigations – Department Inventory**



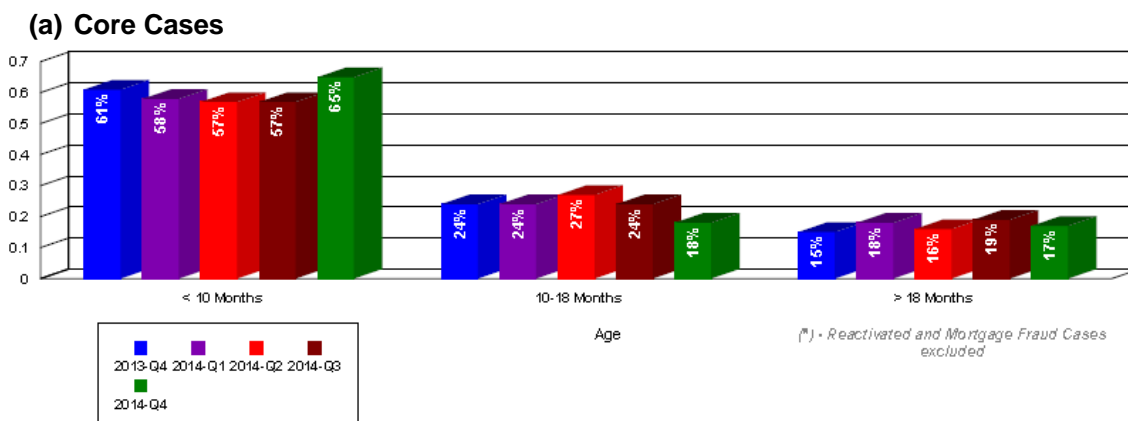
**Graph 2.3D: Investigations - Median Age of All Complaints**



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## 2.3 – Investigations

**Graph 2.3E: Investigations – Aging of Complaints**



	<10 months	10 to 18 months	>18 months
<b>Q4 2013</b>	591 cases involving 451 subjects	228 cases involving 177 subjects	147 cases involving 109 subjects
<b>Q1 2014</b>	544 cases involving 451 subjects	227 cases involving 160 subjects	165 cases involving 122 subjects
<b>Q2 2014</b>	549 cases involving 433 subjects	256 cases involving 178 subjects	160 cases involving 120 subjects
<b>Q3 2014</b>	540 cases involving 395 subjects	223 cases involving 180 subjects	180 cases involving 124 subjects
<b>Q4 2014</b>	693 cases involving 452 subjects	193 cases involving 152 subjects	181 cases involving 191 subjects

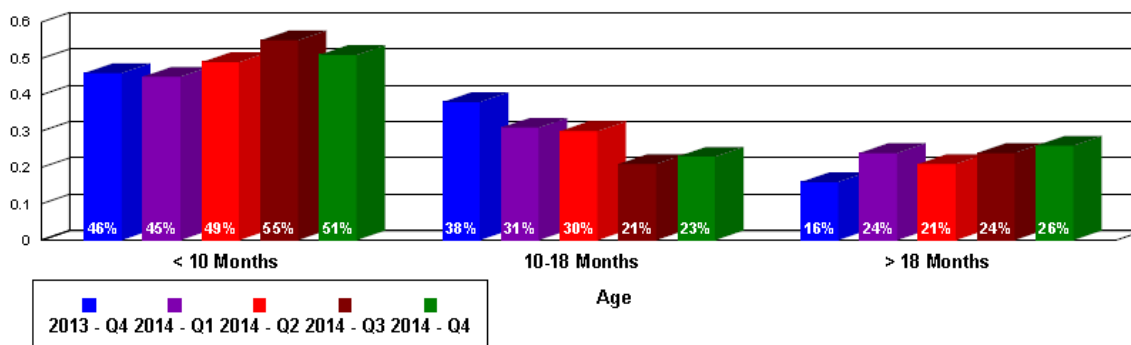
While the department strives to reduce the proportion of cases in the older time frame and to increase the proportion of cases in the youngest time frame, it is recognized that there are cases that are older than 18 months in Investigations for the following reasons:

- The investigator has to wait for evidence from a third party (i.e. not the complainant or the licensee/subject), for example psychiatric evaluation, court transcripts, or a key witness;
- Newer complaints are received against the licensee/subject. In order to move forward together to the Proceedings Authorization Committee, the older cases await the completion of younger cases;
- A need to coordinate investigations between different licensees/subject where the issues arise out of the same set of circumstances (e.g. a complainant complains about 2 lawyers in relation to the same matter);
- Multiple cases involve one lawyer. These investigations are complex and time consuming;
- Where capacity issues are raised during a conduct investigation.

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## 2.3 – Investigations

### (b) Mortgage Fraud Cases



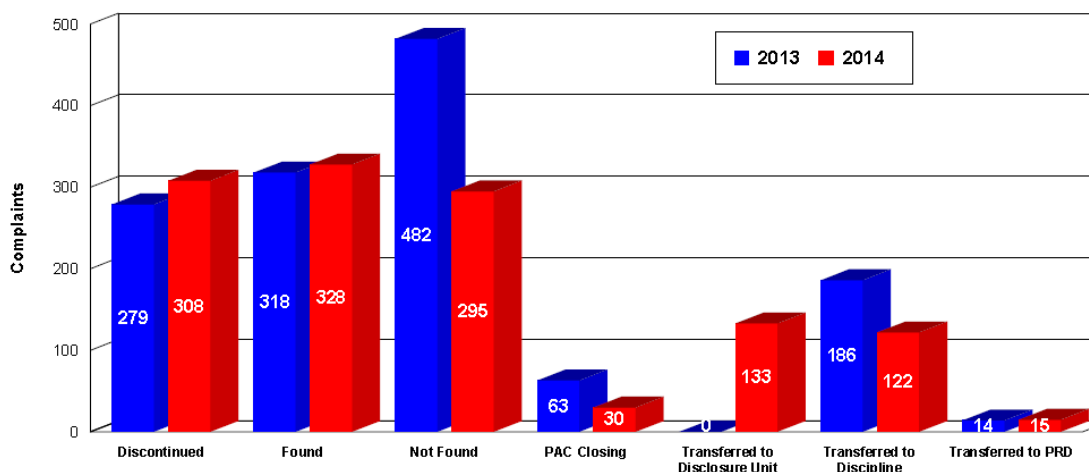
	<10 months	10 to 18 months	>18 months
Q4 2013	35 cases involving 28 subjects	29 cases involving 26 subjects	12 cases involving 11 subjects
Q1 2014	40 cases involving 33 subjects	28 cases involving 23 subjects	21 cases involving 19 subjects
Q2 2014	49 cases involving 41 subjects	30 cases involving 24 subjects	21 cases involving 19 subjects
Q3 2014	61 cases involving 46 subjects	23 cases involving 19 subjects	26 cases involving 21 subjects
Q4 2014	57 cases involving 41 subjects	26 cases involving 23 subjects	29 cases involving 26 subjects

As noted above, the department strives to reduce the proportion of mortgage fraud cases in the older time frame and to increase the proportion of cases in the youngest time frame. However, it is recognized that there will always be mortgage fraud cases that are older than 18 months in Investigations for the reasons cited above, particularly:

- When newer complaints against the licensee/subject are received, existing investigations may have to await their completion in order that all the cases can be taken to Proceedings Authorization Committee together.
- There is a need to coordinate investigations between different licensees/subject where the issues arise out of the same set of circumstances (e.g. a complainant complains about 2 lawyers in relation to the same matter).
- There are multiple cases involve one lawyer resulting in greater complexity.

## 2.3 – Investigations

**Graph 2.3G: Investigations – Complaints Closed by Disposition**



This graph shows a breakdown of the dispositions for complaints closed in or transferred out of Investigations for 2013 and 2014.

With respect to the closing dispositions, as shown in the chart below,

- there was a significant decrease in 2014 in the proportion of cases that were closed on the basis that no breach was found (not found), decreasing from 42% of all closures in 2013 to 31% of all closures in 2014, and
- the proportion of cases closed as discontinued or found (with a remedial measure) increased significantly from 2013 to 2014.

	2013 (% of total cases closed)	2014 (% of total cases closed)
<b>Discontinued<sup>6</sup></b>	24%	32%
<b>Found<sup>7</sup></b>	28%	34%
<b>Not Found<sup>6</sup></b>	42%	31%
<b>PAC Closing<sup>7</sup></b>	6%	3%
<b>Total cases closed</b>	100% (1142 cases)	100% (961 cases)

A glossary of the individual disposition types included in each of the shown categories is available in Section 4, Appendix D.

<sup>6</sup> Differences noted between 2013 and 2014 are significant to  $p > .001$

<sup>7</sup> Differences notes between 2013 and 2014 are significant to  $p > .01$

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## 2.4 – Unauthorized Practice (UAP)

**Graph 2.4A: Unauthorized Practice Complaints in Intake**

Quarter	New	Closed/Transferred			Inventory at Year End
		Closed	Transfer to CR	Transfer to Investigations	
<b>2010 (+ POL)</b>	330 (398)*	151	1	249	18
<b>2011 (+POL)</b>	255 (321)*	87	2	206	15
<b>2012 (+POL)</b>	256 (299)*	86	0	182	19
<b>2013 (+POL)</b>	260 (311)*	102	0	197	11
<b>2014 (+POL)</b>	223 (266)*	77	0	154	21

\* In 2014, complaints alleging practising outside the scope of licence ("POL") were received in a total of 43 cases. The number of POL complaints received since the beginning of 2010 (when the POL allegation was added to the division's case management system) has remained fairly stable.

**Graph 2.4B: Unauthorized Practice investigations (in Complaints Resolution and Investigations)**

	New		Closed <sup>8</sup>		Inventory
	CR	INV	CR	INV	CR & INV
<b>2010</b>	1	249	28	190	124
<b>2011</b>	2	206	0	188	140
<b>2012</b>	0	182	1	185	131
<b>2013</b>	0	197	0	187	137
<b>2014</b>	0	154	0	206	90

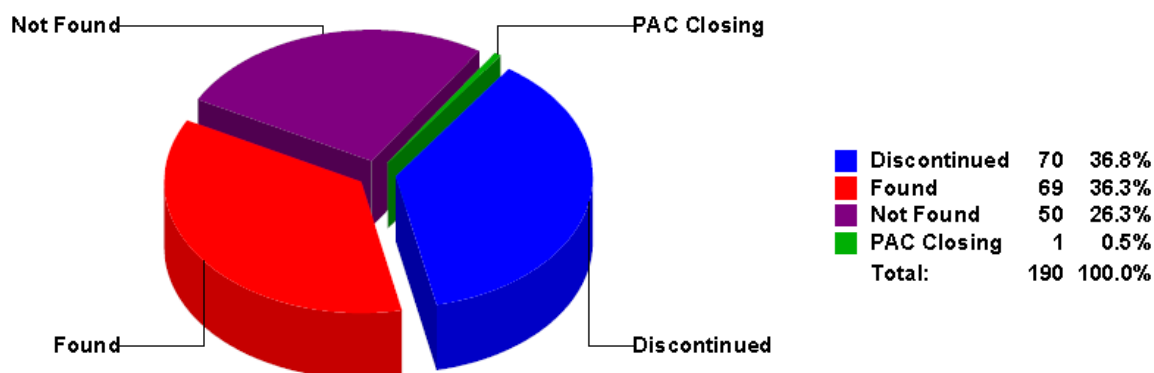
As noted in the chart above, in 2014, a total of 206 UAP cases were completed. The inventory of UAP cases in Investigations decreased significantly from 137 cases at the end of 2013 to 90 cases at the end of 2014.

<sup>8</sup>"Closed" refers to completed investigations and therefore consists of both those investigations that were closed by the Law Society and those that were referred for prosecution/injunctive relief.



## 2.4 – Unauthorized Practice (UAP)

**Graph 2.4C: Unauthorized Practice Investigations – Closing Dispositions**



This chart displays the dispositions of unauthorized practice (UAP) investigations closed in Complaints Resolution and Investigations in the quarter:

“Not found” refers to investigations where there was no evidence of unauthorized practice/provision of legal services.

“Found” reflects investigations that were closed by some action to remedy the unauthorized practice such as an undertaking or an injunction.

“Discontinued” investigations were closed without a final determination on the merits of the complaint for reasons such as the withdrawal of the complaint by the complainant.

**Graph 2.4D: UAP Enforcement Actions**

In 2014,

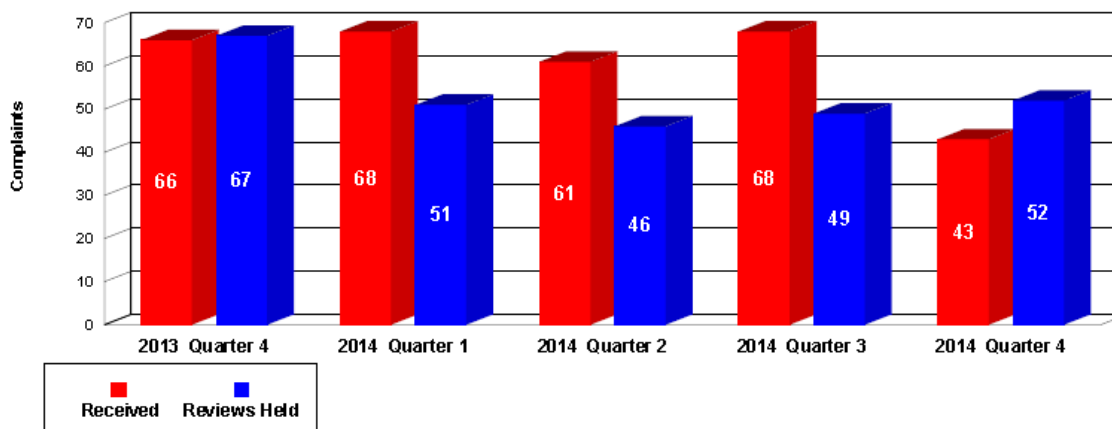
- 4 matters were initiated in the courts, all seeking permanent injunctions.
- 2 appeals were launched in matters in which injunctions had been ordered.
- 1 application for leave to appeal to the Supreme Court of Canada was launched;
- 5 matters were completed, including 2 matters in which injunctions were obtained and 2 appeals against injunctions ordered previously were dismissed.

There were 5 active UAP matters as at December 31, 2014.

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## 2.5 – Complaints Resolution Commissioner

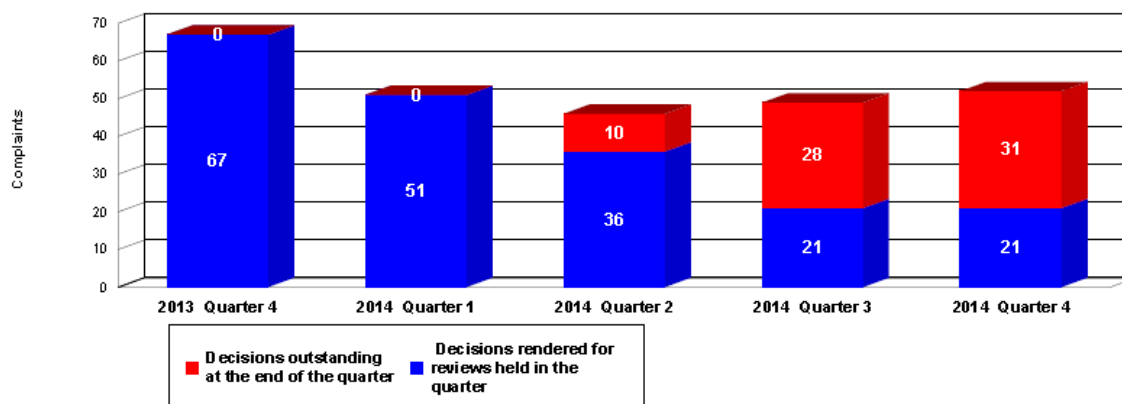
**Graph 2.5A: Reviews Requested and Files Reviewed (by Quarter)**



In 2014, the Complaints Resolution Commissioner received 240 requests for review. This represents an increase of approximately 3% from the number of requests for review received in 2013 (233). The 240 requests for review were received from 208 complainants and involved investigations of 206 lawyers and 24 paralegals. An additional 41 requests were received (for cases closed in Complaints Services and Intake) over which the Commissioner had no jurisdiction.

In 2014, the Commissioner reviewed 198 cases, a 3.4% decrease from the number of cases reviewed in 2013 (205). Forty-nine (49) of the cases reviewed were conducted in writing.

**Graph 2.5B: Status of Files Reviewed in each Quarter**



While the files may be reviewed in one quarter, the final decision by the Commissioner may not be rendered in the same quarter. In the last quarter of 2014, the Commissioner rendered decisions in 21 of the 52 cases reviewed in that quarter. (He also rendered decisions in 29 cases reviewed in previous quarters.) As at December 31, 2014, there were 31 decisions outstanding from cases reviewed in 2014.

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## 2.5 – Complaints Resolution Commissioner

**Graph 2.5C: Decisions Rendered, by Quarter**

<b>Quarter</b>	<b>Decisions Rendered (# of decisions where review in previous quarter(s))</b>	<b>Files to Remain Closed</b>	<b>Files Referred Back to PRD</b>
<b>2009</b>	194	174 (90%)	20 (10%)
<b>2010</b>	193	160 (83%)	33 (17%)
<b>2011</b>	260	248 (95%)	12 (5%)
<b>2012</b>	242	224 (93%)	18 (7%)
<b>2013</b>	205	192(94%)	13(6%)
<b>2014</b>	167	160 (96%)	7 (4%)

Of the 167 decisions rendered in 2014, the Commissioner sent 7 files back to Professional Regulation. In 4 of these cases, the Commissioner was not satisfied that the decision to close was reasonable and referred the cases back with a recommendation for further investigation. With respect to the remaining 3 cases, while he found the Law Society's decision to close the case to be reasonable, the Commissioner referred the cases back for other considerations (e.g. to consider new information provided by the Complainant during the review; to consider investigating other issues).

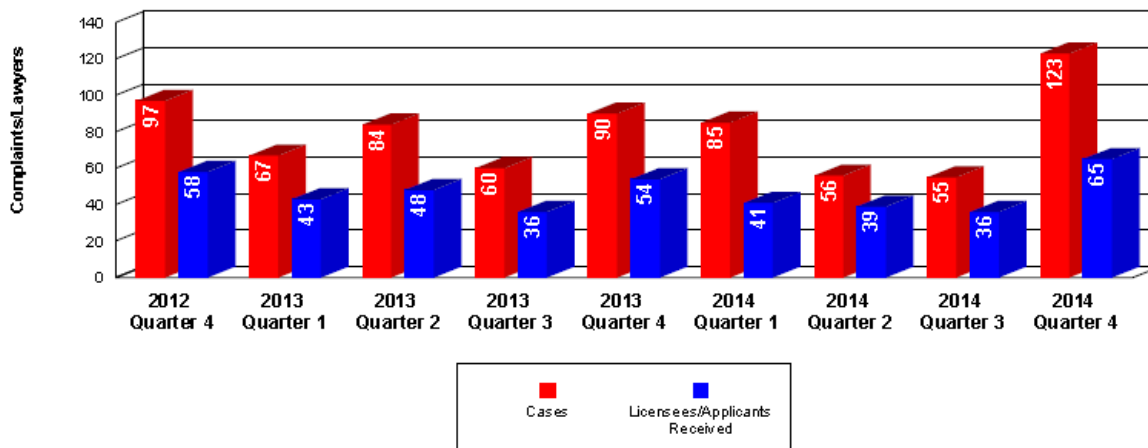
With respect to the 4 cases referred back with a recommendation for further investigation, the Executive Director of Professional Regulation, as at December 31, 2014:

- adopted the recommendation in 3 cases;
- had not rendered a decision with respect to a case referred back in the last quarter of 2014.

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## 2.6 – Discipline

**Graph 2.6A: Discipline - Input<sup>9</sup>**



In 2014, 181 new licensee/applicant matters were received in Discipline, the same as received in 2013. (New appeals commenced in 2014 are not included in these numbers.) These matters related to 319 cases.

### Detailed Analysis of New Cases Received in Discipline

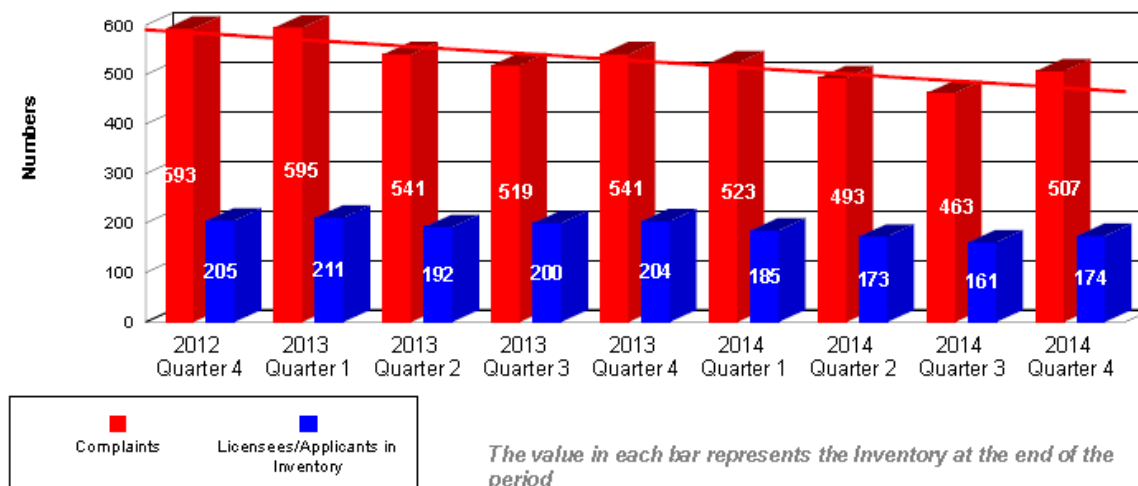
		2012	2013	2014
<b>Lawyers</b>	Cases	226	238	267
	Lawyers	110	135	150
<b>Lawyer Applicants</b>	Cases	4	1	1
	Lawyer Applicants	3	1	1
<b>Licensed Paralegals</b>	Cases	56	49	46
	Licensed Paralegals	20	37	25
<b>Paralegal Applicants</b>	Cases	11	13	5
	Paralegal Applicants	3	8	5
<b>TOTAL</b>	Cases	292	301	319
	Licensees & Applicants	136	181	181

<sup>9</sup>“Input” refers to complaints that were transferred into Discipline from various other departments during the specific quarter. It includes new complaints/cases received in Discipline and the lawyers/applicants to which the new complaints relate. New appeals commenced in the period are not included in these numbers.

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## 2.6 – Discipline

**Graph 2.6B: Discipline – Department Inventory<sup>10</sup>**



<sup>10</sup>Consists primarily of complaints and lawyers/applicants that are in scheduling and are with the Hearing Panel or on appeal.

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## 2.6 – Discipline

**Graph 2.6C: Discipline – Matters Authorized by PAC**

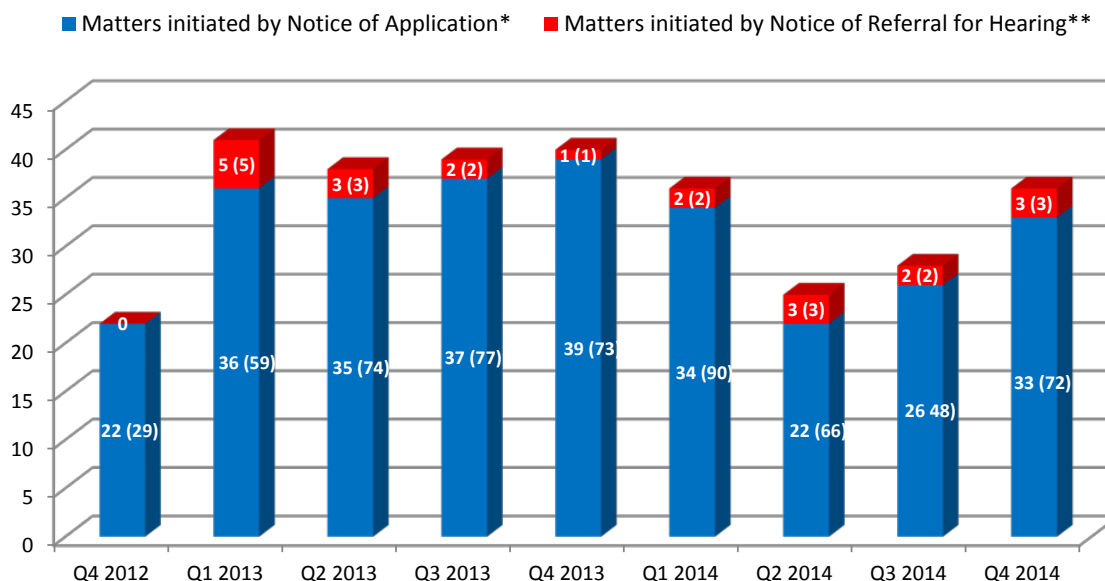
		Totals for 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Totals for 2014
<b>Conduct</b>	Lawyer	121 (SH-36)*	18 (SH-7)*	22 (SH-5)*	23 (SH-9)*	19 (SH-10)*	82 (SH-31)*
	Paralegal	41 (SH-12)	7 (SH-3)*	4 (SH-1)*	1 (SH-1)*	5 (SH-2)*	17 (7)*
<b>Capacity</b>	Lawyer	4	1	-	2	-	3
	Paralegal		-	-	-	-	
<b>Competency</b>	Lawyer		-	-	-	-	
	Paralegal		-	-	-	-	
<b>Non-Compliance</b>	Lawyer		-	-	-	-	
	Paralegal		-	-	-	-	
<b>Interlocutory Suspension</b>	Lawyer	5	2	2	2	5	11
	Paralegal		-	-	-	3	3
<b>Licensing</b>	Lawyer	3	-	2	1	1	4
	Paralegal	4	-	1	-	-	1
<b>Invitation to Attend</b>	Lawyer	31	3	4	1	6	14
	Paralegal	3	2	2	-	1	5
<b>Letter of Advice</b>	Lawyer	24	2	1	2	2	7
	Paralegal	3	-	-	-	-	
<b>Regulatory Meeting</b>	Lawyer	3	-	-	-	1	1
	Paralegal		-	-	-	-	
<b>Yearly Totals</b>	Lawyer	191	26	31	31	37	122
	Paralegal	51	9	7	1	8	26
	<b>TOTAL</b>	<b>242</b>	<b>35</b>	<b>38</b>	<b>32</b>	<b>45</b>	<b>148</b>

\*The number of Summary Hearings (SH) authorized appears in brackets and is included in the total number of conduct matters authorized in each quarter.

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## 2.6 – Discipline

**Graph 2.6D: Discipline - Notices of Application / Referral for Hearing Issued**



\* Matters which are initiated by Notice of Application include conduct, capacity, non-compliance and competency matters. Also included in this category are interlocutory suspension/restriction motions.

\*\* Matters which are initiated by Notice of Referral for Hearing (formerly Notice of Hearing) include licensing (including readmission matters), reinstatement and restoration matters.

The above graph shows the number of notices issued by the Discipline department in the past 9 quarters. The numbers in each bar indicate the number of notices issued and, in brackets, the number of cases relating to those notices. One notice may relate to more than one case. For example, in Q4 2014, 33 Notices of Application were issued (relating to 72 cases) and 3 Notices of Referral for Hearing were issued (relating to 3 cases).

	2011	2012	2013	2014
Notices of Application issued	122	109	147	115
Notices of Application	118	104	142	101
Interlocutory Suspension/Restriction motions	4	3	5	14
Notices of Referral for Hearing issued	12	6	11	10
<b>Total Notices Issued</b>	<b>134</b>	<b>115</b>	<b>158</b>	<b>125</b>

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## 2.6 – Discipline

With respect to the 32 Notices of Application<sup>11</sup>/Notices of Motion for Interim Suspension Order and 3 licensing matters for which PAC authorization was obtained which were issued in Q4 2014:

- 25 were issued less than 1 month after PAC authorization;
- 8 were issued between 1 and 2 months after PAC authorization; and
- 2 were issued between 2 and 3 months after PAC authorization.

**Graph 2.6E: Discipline – Completed Matters**

		Q1 2013	Q2 2013	Q3 2013	Q4 2013	Total 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Total 2014
<b>Conduct Hearings</b>	Lawyers	20	32	18	24	94	27	21*	23	30	101*
	Paralegal Licensees	4	2	3	9	18	10	6	4	3	23
<b>Interlocutory Suspension Hearings/Orders</b>	Lawyers	-	1	-	2	3	2	3	2	4	11
	Paralegal Licensees	-	-	-	-	-	-	-	-	3	3
<b>Capacity Hearings</b>	Lawyers	1	-	-	1	2	1	-	1	1	3
	Paralegal Licensees	-	-	-	-	-	-	-	-	-	-
<b>Competency Hearings</b>	Lawyers	-	-	-	-	-	-	-	-	-	-
	Paralegal Licensees	-	-	-	-	-	-	-	-	-	-
<b>Non-Compliance Hearings</b>	Lawyers	-	-	-	-	-	-	1*	-	-	1*
	Paralegal Licensees	-	-	-	-	-	-	-	-	-	-
<b>Reinstatement Hearings</b>	Lawyers	1	-	-	-	1	2	-	1	1	3
	Paralegal Licensees	-	-	1	-	1	-	-	-	-	1
<b>Restoration</b>	Lawyers	-	-	-	-	-	-	-	-	-	-
	Paralegal Licensees	-	-	-	-	-	-	-	-	-	-
<b>Licensing Hearings (including Readmission)</b>	Lawyer Applicants	-	2	2	-	4	-	1	-	1	2
	Paralegal Applicants	1	1	1	-	3	1	2	1	-	4
<b>TOTAL NUMBER OF HEARINGS</b>	Lawyers*	22	35	20	27	104	32	25	27	37	120
	Paralegals*	5	3	5	9	22	11	8	5	6	31
	<b>TOTAL</b>	<b>27</b>	<b>38</b>	<b>25</b>	<b>36</b>	<b>126</b>	<b>43</b>	<b>33</b>	<b>32</b>	<b>43</b>	<b>151</b>

\*The Q2 2014, there was one hearing in which a conduct application and a non-compliance application were heard together. Both are included in the totals for lawyer conduct and lawyer non-compliance categories. However, it is only counted once in the total numbers for the quarter and for the year.

<sup>11</sup> Notices of Application are issued with respect to conduct, competency, capacity and non-compliance matters and require authorization by the Proceedings Authorization Committee (PAC).



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## 2.6 – Discipline

### Graph 2.6F: Discipline – Appeals

The following chart sets out the number of appeals filed with the Appeal Panel, the Divisional Court or the Court of Appeal in the calendar years 2008, 2009, 2010, 2011, 2012, 2013 and 2014.

Quarter/Year	Appeal Division	Divisional Court	Court of Appeal
2008	14	8 appeal	
2009	19	1 appeal	3 motions for leave; 2 appeals
2010	27	3 appeals; 2 judicial reviews	4 motions for leave
2011	18	6 appeals, 2 judicial reviews	2 motions for leave
2012	23	4 appeals; 5 judicial reviews	2 motions for leave
2013	20	3 appeals; 3 judicial reviews	
2014 1 <sup>st</sup> Quarter	2	5 appeals; 1 judicial review	1 motion for leave
2 <sup>nd</sup> Quarter	8 <sup>12</sup>	5 appeals; 1 judicial review	1 motion for leave
3 <sup>rd</sup> Quarter	7	2 appeals	2 motions for leave
4 <sup>th</sup> Quarter	6	2 appeals; 3 judicial reviews <sup>13</sup>	1 motion for leave
Total:	23	14 appeals; 5 judicial reviews	4 motions for leave

As of December 31, 2014, there are 12 appeals pending before the Appeal Division, 6 appeals in which the Appeal Division has reserved on judgment, 1 appeal before the Appeal Division that has been adjourned *sine die*, and 1 appeal in which the Appeal Division allowed the appeal in part, substituting findings of professional misconduct for those rendered by the Hearing Division, and is seized on the issue of penalty and costs.

With respect to matters before the Divisional Court, there are 11 appeals and 5 judicial review matters<sup>14</sup> pending. There are 3 leave applications pending in the Court of Appeal.

In 2014, 24 appeals before the Appeal Division were completed; 17 were launched by licensees/applicants, 6 were launched by the Law Society and 1 was launched by the Law Society with a cross-appeal by the licensee<sup>14</sup>:

- With respect to the 17 appeals brought by licensees / applicants:
  - 3 appeals were abandoned or deemed abandoned
  - 8 appeals were dismissed (4 licensees subsequently launched an appeal / judicial review before the Divisional Court)

<sup>12</sup> 1 of the matters is a motion seeking an extension of time in which to file an appeal.

<sup>13</sup> While one of the judicial reviews has been filed with the Divisional Court, as at December 31, 2014, the Law Society had not yet been served.

<sup>14</sup> A licensee also brought a motion for an extension of time in which to file an appeal. This matter was subsequently brought before the Divisional Court and dismissed.

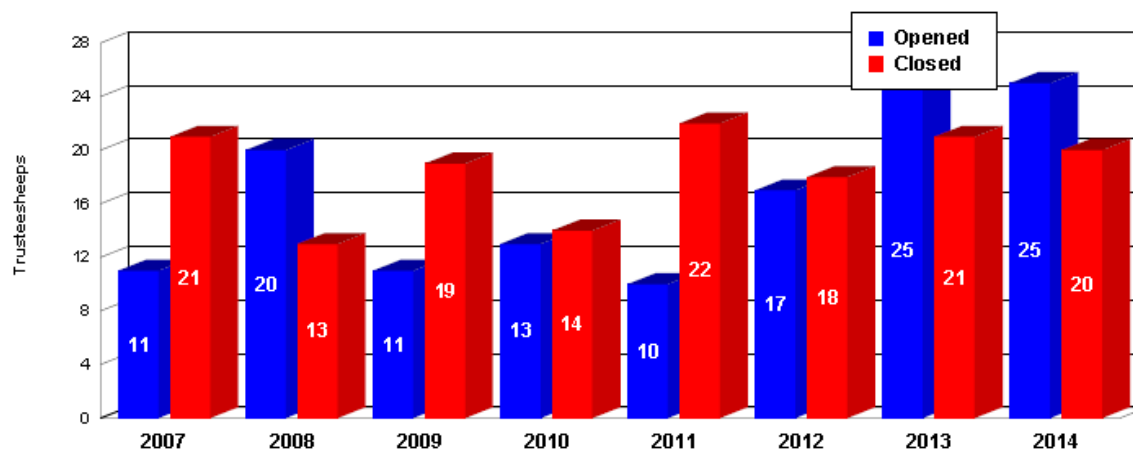
## 2.6 – Discipline

- 6 appeals were allowed or allowed in part:
  - In 2 matters, the Appeal Division set aside the Hearing Panel/Divisions' Decisions and Orders and ordered new hearings. In one of these matters, the Law Society elected not to re-prosecute and the Appeal Division ordered a new penalty.
  - in 4 matters, the Appeal Division set aside the Hearing Panel/Division's Decisions and Orders, substituting new penalties in 2 matters, substituting a new cost order in 1 matter and granting an applicant a L1 licence in the fourth matter.
- With respect to the 6 Law Society appeals, the Appeal Division allowed or allowed in part all 6 appeals,
  - setting aside the Decisions and Orders of the Hearing Division and ordering new hearings in 5 matters. (3 licensees appealed these decisions to Divisional Court.)
  - amending the Hearing Division's order in 1 matter.
- With respect to the appeal by the Law Society/cross-appeal by the licensee, the Appeal Division allowed the Law Society's appeal, setting aside the penalty ordered by the Hearing Division and substituting a new penalty. The cross-appeal was dismissed. (The licensee appealed this decision to the Divisional Court.)

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## 2.7 – Trustee Services

**Graph 2.7A: Trustee Services - Formal Trusteeships Opened and Closed**



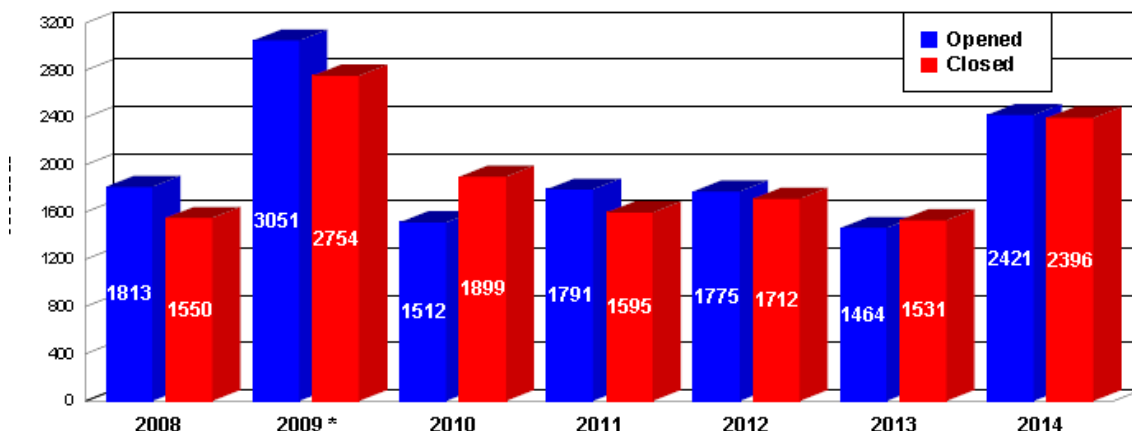
This graph displays the number of formal trusteeships that were opened and closed in the past 7 years. Formal trusteeships are court-ordered.

During 2014, Trustee Services opened 76 files. As of December 31, 2014, a total of 130 active files remained in its inventory, which included 44 active court ordered (formal) and voluntary (informal) trusteeships. The remaining files involve various other matters that Trustee Services deals with on a regular basis, including search warrants and the administration of the Unclaimed Trust Fund.

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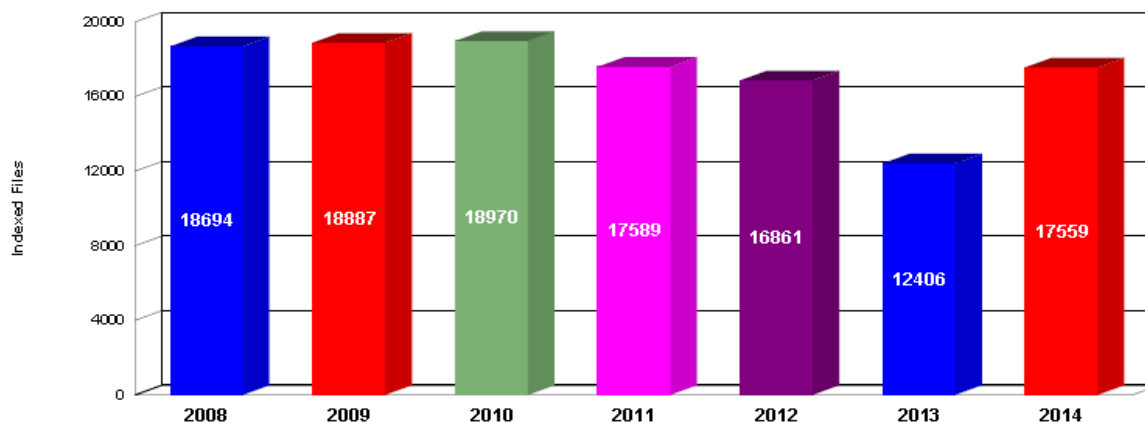
## 2.7 – Trustee Services

**Graph 2.7B: Trustee Services – Client Request Files Opened and Closed, by Quarters**



Trustee Services staff receive and respond to specific client related requests, such as the return of a file or responding to requests for information concerning a professional business. The graph above shows these requests (which are created as sub-cases in the division's case management system, IRIS) that were opened and closed in the past five years. The higher numbers in 2009 (\*) represent a one-time capturing of work in progress as a result of the department's decision in that year to also record distribution of client funds to specific individuals within the IRIS system. As of December 31, 2014, Trustee Services had 456 active client request files, of which 282 related solely to the distribution of trust funds.

**Graph 2.7C: Trustee Services – Client Files Indexed Annually**

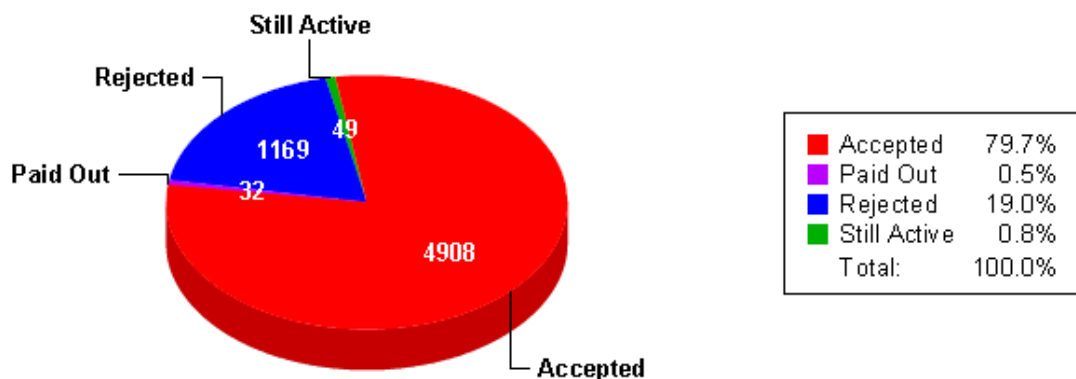


When Trustee Services obtains a formal, court-ordered trusteeship against a licensee or enters into a voluntary trusteeship arrangement with a licensee, client files are retrieved from the licensee's professional business, indexed and preserved for the benefit of the clients. The above graph displays the number of client files obtained and indexed in the last 6 years. In addition to the indexing of client files, Trustee Services also indexes wills and Powers of Attorneys which are in the licensee's possession.

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## 2.7 – Trustee Services

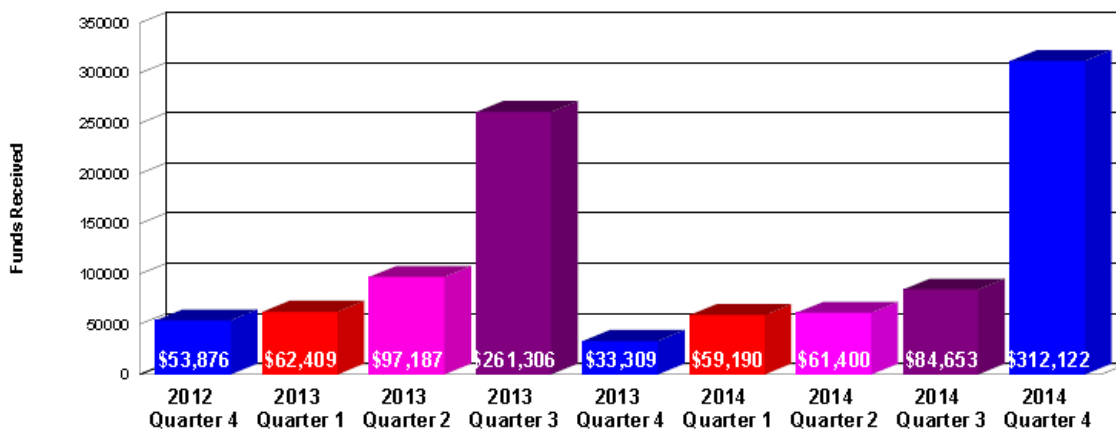
**Graph 2.7D: Unclaimed Trust Fund – Summary of Applications Made**



The Unclaimed Trust Fund (UTF) is a program that enables lawyers to apply to have trust funds they have held for at least 2 years to be taken over and held by the Law Society. This diagram displays the results of applications made to the UTF from its inception on February 1, 1999 to December 31, 2014.

**Graph 2.7E: Unclaimed Trust Fund - Amounts Received**

The graph below shows the amounts received into the UTF for the previous 9 quarters. As of December 31, 2014, a total of \$3,812,536 had been received into the Fund since its inception and \$100,318 has been paid out, leaving a balance in the Fund of \$3,712,218.



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## 2.8 – Monitoring & Enforcement

**Graph 2.8A: Monitoring & Enforcement – New Matters**

	Totals for 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Totals for 2014
<b>Enforcement</b>	28	8	8	3	7	26
<b>Insolvency</b>	30	5	12	7	6	30
<b>Orders</b>	147	38	43	53	45	179
<b>Restitution &amp; Judgments</b>	6	0	1	0	0	1
<b>Undertakings</b>	47	12	16	15	16	59
<b>TOTAL</b>	<b>258</b>	<b>63</b>	<b>80</b>	<b>78</b>	<b>74</b>	<b>295</b>

The above chart sets out the number of new matters opened by the Monitoring and Enforcement Department in 2014. As at December 31, 2014, the department had an active inventory of 953 cases, broken down as follows:

Enforcement	8
Insolvency	108
Orders	501 (with an additional 262 in abeyance)
Restitution & Judgments	37 (with an additional 2 in abeyance)
Undertakings	299 (with an additional 463 in abeyance)
<b>TOTAL</b>	<b>953</b>

**Graph 2.8B: Monitoring & Enforcement – Collections**

As at December 31, 2014, the department collected a total of \$346,751.

\$324,104 (Discipline order costs)
\$ 7,000 (Compensation Fund recoveries)
\$ 5,647 (bankruptcy dividends)
\$ 10,000 (court & restitution order recoveries)

**Graph 2.8C: Monitoring & Enforcement – Regulatory Inquiries**

In May 2009, Monitoring & Enforcement took over responsibility for responding to inquiries from the public concerning regulatory matters. The following chart sets out the number of emails/telephone inquiries the Monitoring and Enforcement staff responded to and the number of licensees who were the subjects of those inquiries:

Type of Inquiry		Totals for 2009*	Totals for 2010	Totals for 2011	Totals for 2012	Totals for 2013	Totals for 2014
<b>Email</b>	<b>Number</b>	<b>1655</b>	<b>4302</b>	<b>2643</b>	<b>3474</b>	<b>3860</b>	<b>4316</b>
	<b>Licensees</b>	<b>2844</b>	<b>5976</b>	<b>3755</b>	<b>4148</b>	<b>4368</b>	<b>4910</b>
<b>Telephone</b>	<b>Number</b>	<b>3193</b>	<b>3575</b>	<b>1097</b>	<b>918</b>	<b>936</b>	<b>1063</b>
	<b>Licensees</b>	<b>3544</b>	<b>3944</b>	<b>1211</b>	<b>970</b>	<b>979</b>	<b>1072</b>
<b>Total Inquiries</b>	<b>Number</b>	<b>4848</b>	<b>7877</b>	<b>3740</b>	<b>4392</b>	<b>4796</b>	<b>5379</b>
	<b>Licensees</b>	<b>6388</b>	<b>9920</b>	<b>4966</b>	<b>5118</b>	<b>5347</b>	<b>5982</b>

\*May 1 to December 31 only

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## **SECTION 3**

## **APPENDICES**

The Law Society of Upper Canada  
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Quarterly Report (October 1 – December 31, 2014)

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## APPENDIX A

### A Description of the Professional Regulation Division Work Process

#### Client Service Centre (CSC)

All complaints to the Law Society receive initial processing in the CSC. It is the responsibility of this group of staff to sort these complaints to identify those which may raise regulatory issues, and to forward them to Professional Regulation.

#### Intake

Intake receives all new complaints referred to Professional Regulation. Its function is to review and substantiate the complaints, identify regulatory and risk issues, triage where required, and to provide early resolution where appropriate. Intake also has an important case management function, determining and facilitating the regulatory approach that will best serve the requirements of the case, and ensuring that different investigations concerning the same lawyer are appropriately linked.

#### Complaints Resolution

The role of Complaints Resolution is to investigate and resolve complaints where the allegations indicate less serious breaches of the *Rules of Professional Conduct*. The majority of complaints are resolved, or closed on the basis of an informal regulatory response. Where a significant breach of the rules is shown on investigation, or where the lawyer fails to cooperate in the regulatory process, a prosecution or other response may be sought from the Proceedings Authorization Committee.

#### Investigations

The Investigations Department's primary responsibility is to investigate allegations concerning a licensee's conduct or capacity, which, if made out, are likely to lead to discipline proceedings. Investigations staff includes lawyers, investigators and auditors. On completion of the investigation a complaint is referred to the Procedures Authorization Committee, closed, or resolved. On reviewing any complaint referred to it, the Proceedings Authorization Committee may authorize a prosecution, order further investigation, or authorize an alternative resolution such as an Invitation to Attend. The Investigations Department is also responsible for unauthorized practice cases, contrary to section 26.1 (formerly section 50) of the *Law Society Act*.



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## **A Description of the Professional Regulation Division Work Process (Cont'd)**

### **Complaints Review**

Where a complaint is closed by Law Society staff, the complainant may have the right to a review of that decision by the Complaints Resolution Commissioner. The role of the Commissioner and the complaints review process is established by the *Law Society Act* and Law Society By-Law 11. The Commissioner receives all cases where a complainant wishes to bring a complaint and holds meetings with the complainants. At the end of the process, the Commissioner may confirm the Law Society decision, or recommend further investigation. The Commissioner may also make informal recommendations for improved process.

### **Discipline**

Discipline counsel represent the Law Society before Hearing and Appeal Panels and in the courts when appeals are taken from the decisions of these panels. The department is responsible for the prosecution of a variety of matters including those concerning licensee conduct and capacity, applications for admission to the Law Society, and applications for reinstatement or readmission.

The majority of prosecutions concern issues of licensee conduct based on infractions of the *Rules of Professional Conduct*. The Law Society's discipline counsel issue the application commencing the process, disclose evidence, and represent the Law Society in pre-hearing and hearing processes.

### **Monitoring and Enforcement**

The Monitoring & Enforcement Department is responsible for enforcement of Hearing Panel orders and lawyer undertakings. Monitoring & Enforcement Department activities include enforcing Hearing Panel orders, monitoring undertakings obtained at the completion of matters by other departments within the Division, ensuring that bankrupt lawyers comply with the Law Society's by-laws; enforcing judgments and mortgages obtained by or assigned to the Compensation Fund and responding to regulatory inquiries from the public.

### **Trustee Services**

Trustee Services responds in situations where a lawyer has abandoned his/her practice or has been disbarred or suspended, as well as situations where a sole practitioner has suffered serious health problems and is unable to continue in the practice of law. Through the use of the Law Society's trusteeship powers, staff carry out the Law Society's mandate to protect the public interest by taking possession of the practice, if necessary. The department also provides information and assistance to lawyers and their personal representatives who are closing their practices.

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## **A Description of the Professional Regulation Division Work Process (Cont'd)**

### *Unclaimed Trust Fund Services*

The Law Society has established a program that enables lawyers to submit unclaimed trust funds that they have held for at least two years to the Law Society. Members of the public who believe they are entitled to these funds are able to make claims for these funds. Trustee Services receives lawyer applications to remit funds, investigates the circumstances, and recommends whether the funds should be accepted into the UTF. In a significant minority of cases, Society staff locate the client and the lawyer is then able to return the funds.

### **Compensation Fund**

This fund receives and processes claims from clients who have lost money because of a lawyer's or paralegal's dishonesty. The Fund depends entirely on the lawyer and paralegal fee levies. Staff receive claims and assess their merits based on a set of Guidelines approved by Convocation. The maximum compensation payable under the Guidelines is \$150,000 to any one claimant for claims involving lawyers and \$10,000 per claimant for claims involving paralegals.

### **Office of the Director**

The responsibility of the Director is to oversee all departments within the Division including budget, staffing, technology, issue management and case process including an effective and timely complaints process, and appropriate risk management. This includes coordination and liaison with other divisions of the Law Society and external parties, communications both within the outside the division, development of policy and rule amendment proposals, oversight of case process including the management of significant investigations and prosecutions, and resource management. The Director reports to the Professional Regulation Committee and supports Benchers work on strategic initiatives in licensee regulation.

### **Case Management**

This department's main responsibility is the oversight of Professional Regulation's case management system, the Integrated Regulatory Information System ("IRIS"). Case Management was created in 2008 as a discrete department within the division to ensure in-house control of the quality and integrity of data maintained in IRIS and to allow for ongoing improvements to IRIS. The department is responsible for: the development of qualitative analysis and recommendations regarding file handling, issue management, work process and procedural improvements; the development of reporting structures and the examination and evaluation of reporting requirements for Professional Regulation; and ongoing monitoring of case files to ensure that the Professional Regulation product continues to support the Law Society's mandate to protect the public and maintain public confidence in the legal profession in Ontario. Case Management is also responsible for various divisional projects, including the Discipline History Project and the Reasons Analysis Project.

The Law Society of Upper Canada  
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### APPENDIX B -Glossary of Case Types Used in the Quarterly Report

Case Type Name	Individual Allegations	
Conflicts	Licensee in a Position of Conflict Business / Financial Relations with Client	
Financial	Estate / Power of Attorney Real Estate / Mortgage Schemes Misapplication Misappropriation Pre-Taking Co-mingling / Mishandling Trust Accounts Breach of No-Cash Rule	
Governance	Fail to Maintain Books & Records Practice by Former / Suspended Licensee Relations Prohibited Persons / Fail Prevent UAP UAP by Non-Licensee Fail to Prevent Practise Outside Scope of Licence Practising Outside Scope of Licence Fail to Report Misconduct / Error / Omission Fail to Cooperate with LSUC Practising without insurance / Fee Category Student Investigations Improper Advertising Operating Trust Account while Bankrupt	
Integrity	Conduct Unbecoming outside the Practice of Law Criminal Charges Counseling / Behaving Dishonourably Discriminatory Conduct Sexual Misconduct Direct Communications with Represented Parties Misleading Breach of Orders, Undertaking or Escrow Civility	
Service Issues	Fail to Provide Client Report Fail to Follow Client Instructions Fail to Communicate Fail to Preserve Client Property Fail to Serve Client Withdrawal of Services / Abandonment Fail to Supervise Staff Fail to Account Fail to Pay Financial Obligations Breach of Confidentiality / Fiduciary Duty	
Special Applications	Readmission Admission Capacity Reinstatement – Variation of Order	Reinstatement – Order Fulfilled Restoration Competency from PD&C Interlocutory Suspension
Other Issues	Other Issues	

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## APPENDIX C

### Glossary of Closing Dispositions Used in the Quarterly Report Intake Department

<b><i>Closing Type Category Name</i></b>	<b><i>Closing Disposition category includes:</i></b>
<b>No Jurisdiction</b>	Negligence Fees Non-lawyer / Non-member Mandate
<b>No Response from Complainant</b>	Incomplete complaint submission Failure to provide requested information
<b>Withdrawal</b>	Prior Resolution between Member and Complainant Withdrawal at request of Complainant UAP – Closed by Triage Project
<b>Concurrent Litigation</b>	Concurrent Litigation pending internal to Law Society Process Concurrent Litigation pending external to Law Society Process
<b>Previously Raised, Previously decided</b>	Within LS Process
<b>Regulatory Issue Determined</b>	Not of Sufficient regulatory concern Abuse of Law Society Process Independent resolution between Member and Complainant Exceptional Circumstances Refusal by Complainant to LSUC release information / M Counsel S.49.3 Authorization Denied Referral for Mentoring
<b>Early Resolution</b>	Between Parties Resolution reached by LSUC

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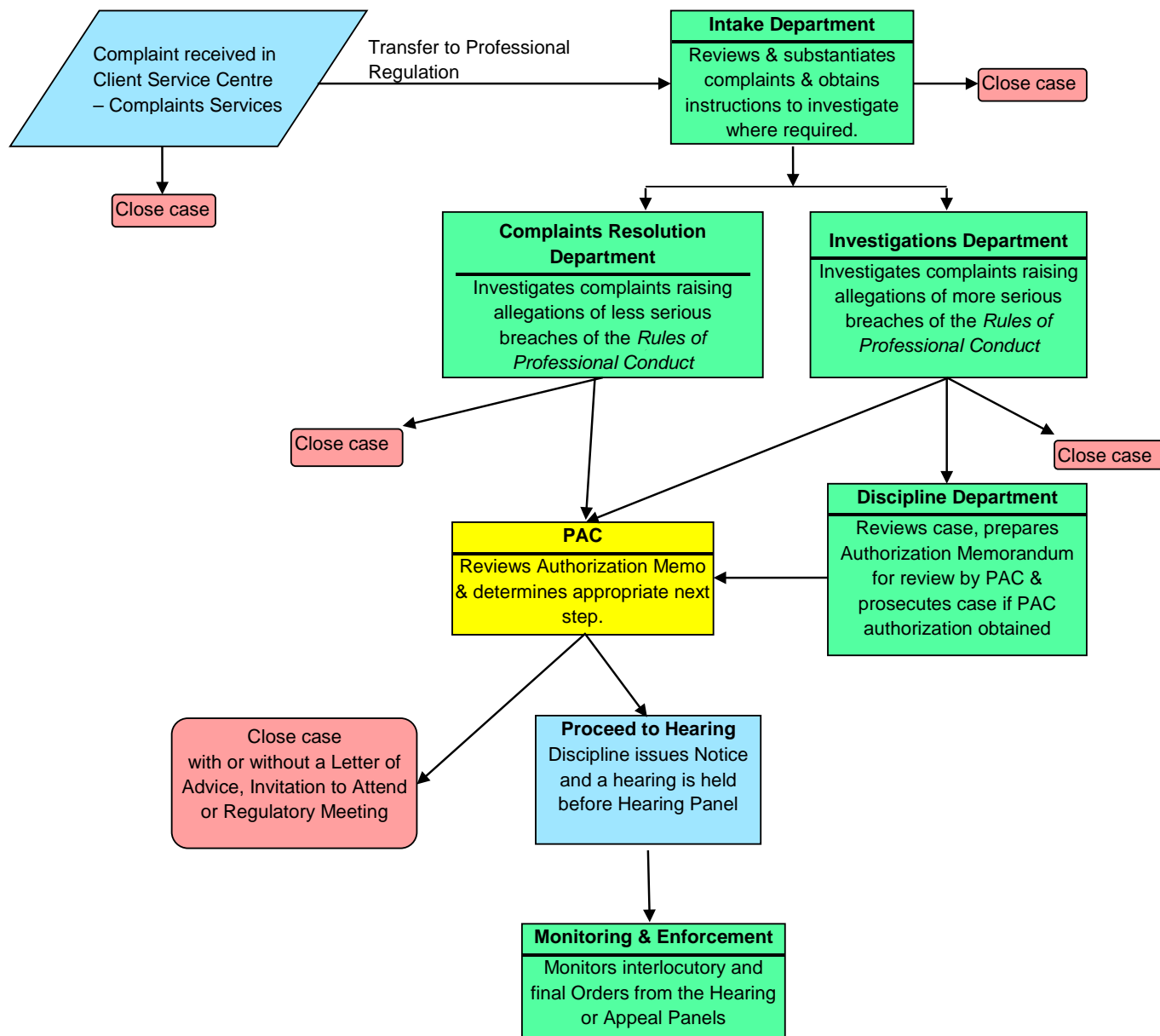
## APPENDIX D

### Glossary of Closing Dispositions Used in the Quarterly Report Complaints Resolution and Investigations Departments

<b>Closing Type Category Name</b>	<b>Closing Disposition Category Includes:</b>
<b>Discontinued</b> (Investigations which have been closed without a final determination on the merits of the complaints.)	Availability - evidence unavailable Availability – information unavailable Availability - subject deceased Availability - witnesses unavailable Concurrent Litigation – External to LSUC Process Concurrent Litigation – Within LSUC Process Concurrent Litigation – Summary Hearing Suspension Decision - exceptional circumstances Decision - malice or abuse of process Decision - not regulatory enough Decision -refusal by complainant for LSUC to release information Decision -resolution from complainant & subject Withdrawn at Complainant's Request – independent resolution Withdrawn at Complainant's Request – other UAP – Closed by UAP Triage
<b>Found</b> (A breach was found as a result of an investigation but the file was closed.)	Administrative Resignation of Subject Caution – oral Caution – written Counselling – Referred by Staff Counselling – Referred by Subject Education – Referred by Staff Education – Referred by Subject Education – Staff Provided Mentoring – Referred by Staff Mentoring – Referred by Subject Practice Review – Referred by Staff Practice Review – Referred by Subject Subject Rectified Breach Undertaking – Oral Undertaking – Written
<b>Not Found</b> (No breach found or the complaint was outside the jurisdiction of the Law Society to continue.)	Jurisdiction – Fees Jurisdiction – Negligence Jurisdiction – Other No Breach – Inquiry Completed
<b>PAC Closing</b> (Closed under the direction of the Proceedings Authorization Committee ("PAC"))	Approval of Settlement Closed Invitation to Attend Letter of Advice Regulatory Meeting Undertaking

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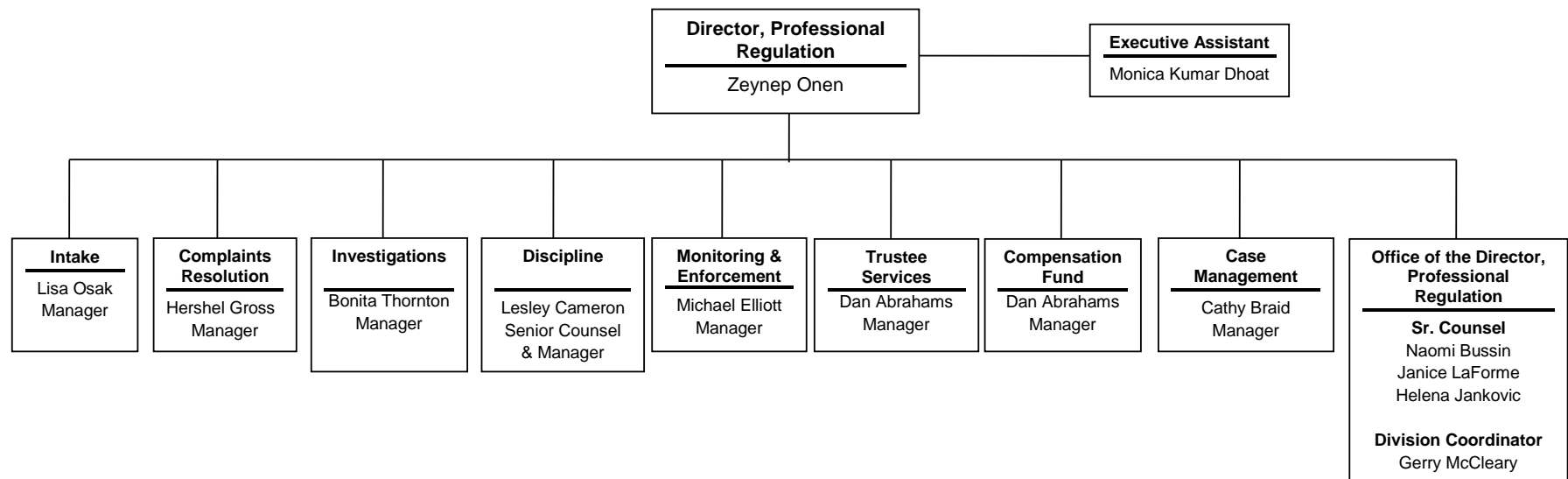
## The Professional Regulation Complaint Process



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### PROFESSIONAL REGULATION ORGANIZATIONAL CHART





**TAB 9**

**Report to Convocation  
February 26, 2015  
(reproduced from November 28, 2014)**

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**Heritage Committee**

**Committee Members**

Constance Backhouse (Chair)  
Patrick Furlong  
Virginia MacLean  
Nicholas Pustina  
Jan Richardson

**Purposes of Report: Information**

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



## TABLE OF CONTENTS

### Information

Historic Discipline Data Project Final Report  
(reproduced from November 2014 Convocation Material)

**TAB 9.1**

## **COMMITTEE PROCESS**

1. The Committee met on November 11, 2014. Committee members Constance Backhouse (Chair), Pat Furlong, Virginia MacLean, Nicholas Pustina and Jan Richardson participated. Staff members Paul Leatherdale and Sophia Sperdakos also attended.

**INFORMATION**  
**HISTORIC DISCIPLINE DATA PROJECT – REPORT**  
 (reproduced from November 28, 2014 Convocation Material)

**Issue**

2. In 2011 Convocation approved a Heritage Committee proposal for a project to gather historic discipline data. The project has now been completed and the final report for Convocation's information is set out here. The project results provide easily accessible information on historic discipline processes and outcomes and lay the groundwork for legal historians who may wish to build on what has been learned.
3. No further steps in the project are required and there are no financial implications to the Report.

**Rationale for the Project**

4. The history of the legal profession's discipline processes, although researched in other jurisdictions, has not been studied in any depth in Canada.
5. Prior to 1986, discipline hearings at the Law Society were held in camera. Outcomes of the proceedings were generally public, but were not easily accessible as there was no catalogue of the information. Material that was originally *in camera* remains so, but the public information in the Law Society's Archives' nonetheless provides a wealth of historic information.
6. The goals of the Historical Discipline Data project were to undertake research and provide information on the Law Society's historic discipline process, which researchers and the public could subsequently access. More specifically the project has,
  - a. identified disciplinary records in the custody of the Law Society Archives;
  - b. documented the historical discipline process and types of disciplinary actions the Law Society took historically, with emphasis on public sources; and
  - c. enhanced the accessibility of public information.

**The Findings**

7. The project research focused on one major source of information that is publically accessible and used two additional sources, which are not public, as tools to confirm and verify the research from the public source. Overall, the public records researched cover the period from 1879 - 1982, but it was determined that the period from 1879 to 1950 was the appropriate range for a historic focus.<sup>1</sup> The data dating from 1879 to 1913 is on the Law Society's public website, with one additional year of data added annually up to 1950 so that data on matters occurring 100 years ago or earlier will be available on-line.

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<sup>1</sup>The later public information can be accessed through the Archives department.

8. The research undertaken is important as a first step in making future in depth analytical work more feasible. Primary research such as this provides the necessary informational groundwork essential to move forward in a topic area. The Committee is satisfied that legal historians can build on this data to undertake studies at the next level of analysis. Indeed, the Committee, through the Chair, has already had discussions with a Canadian legal historian who may be interested in using the project data as a starting point for future study.
9. The Law Society's Archivist, Paul Leatherdale, undertook all the research for this project, using his in depth understanding of Law Society materials to analyze the sources effectively and catalogue the information. The Committee expresses its thanks to him for his invaluable role in the project and the value of his meticulous research.<sup>2</sup>

## Discussion

10. The first step in the project was to prepare a list of sources under the custody of the Archives department that document discipline information. A number of these are not publically accessible, but others are. The Table of Sources is set out at **TAB 9.1.1: Table of Sources**. Public documents are identified.
11. As set out above, to ensure the effective use of the available research time it was decided to focus on one main public source: the Printed Minutes of Convocation, which begin in 1879.
12. The two other sources used were the Original Minutes of Convocation, which begin in 1797 and the Discipline Committee Minute Books, up to 1950 which begin in 1915. Both sources are *in camera* for the entire period under focus.
13. The research has produced a chronological listing of all discipline matters recorded in the Published Minutes of Convocation. The information for the period 1879-1913 is available on the Law Society's website at <http://www.lsuc.on.ca/PDC/Archives/Historic-Discipline-Data-Project/Historic-Discipline-Data-Project>.
14. The listing records,
  - a. in most cases, the name or initials of the person against whom the complaint was made or disciplinary action taken. In some cases no name is provided in which case this is indicated;
  - b. the birth date, where known;
  - c. the date of call to the bar if the lawyer was a barrister;<sup>3</sup>
  - d. the date of the disciplinary matter as it appears in the Published Minutes of Convocation;
  - e. particulars of the complaint or reasons for the disciplinary action (if known);

<sup>2</sup> As a result of all the research being undertaken entirely in-house the project has been completed without using any of the \$10,000 budget allocated to it.

<sup>3</sup> Dates of birth and call dates were not part of the Minutes, but were obtained from other sources to make the record more complete.

- f. a description of the disciplinary hearing or action taken by the Discipline Committee;
  - g. the outcome of the disciplinary matter;
  - h. the type of member of the Law Society (Those recorded as barristers were both barrister and solicitor. Those recorded as a solicitor were only solicitors. Students-at-law are also identified); and
  - i. notes about the entries where applicable.
15. While each file is unique, the overall data does reveal a number of common themes as follows:
- a. A number of the complaints arise in the context of the lawyer's involvement in litigation. It is not always clear from the available information how the lawyer's behaviour is impugned, leaving open a question of whether the complaint is about sharp or unethical practice of some type or may in fact be about quality of service. In a number of case the name of the lawsuit is provided, which could be useful to future researchers.
  - b. A significant number of complaints involve allegations of unauthorized practice (e.g. a student-a-law representing himself as a lawyer or a solicitor representing himself as a barrister). This raises questions about the barrister-solicitor divide and the ultimate elimination of a divided bar in Ontario as well as questions of the reasons for so many of these complaints.
  - c. A number of complaints are resolved with the Law Society determining that the proper forum for resolution is the courts. In those complaints related to fees the Law Society notes that it has no jurisdiction to intervene. To some degree these types of complaints speak to breakdowns in communication between lawyer and client.
  - d. The complaints range from the very minor (failed to return a book to the library; abused library privileges) to consideration of disbarment following criminal conviction.
  - e. A number of complainants are members of the judiciary or well-known lawyers. Often the complainant is a client who is dismayed with the lawyer's behaviour for reasons not part of the data. Interestingly, a noticeable proportion of clients complaining about the lawyer is female. It would be interesting to explore whether the status of the complainant had an impact on the outcome of the matter.
  - f. A number of lawyers appear on more than one occasion as counsel to members accused or to the Law Society. It would be interesting to explore this fact. Was there sufficient work in this area for a lawyer to specialize in it?
  - g. It is very common to find the complainant named in the public document, even when the lawyer is not. The complainant's right to privacy does not appear to be a concern, while the lawyer's is. Over the decades, there has been a steady evolution in the issue of identification of parties, which might be interesting to explore further.

16. What these observations reveal is that even with the limited available information in the public record patterns in the discipline process emerge that careful research could further investigate.
17. Possible other topic areas for further study emerge from the research as follows:
  - a. **The Evolution of the Law Society's Regulation and Discipline Processes:**

Spanning as it does two centuries of discipline matters, the research reveals at a high level the Law Society's regulatory evolution,

    - i. in the way in which it reported discipline matters;
    - ii. its changing views of privacy (members not named; complainants named);
    - iii. the evolution of matters that resulted in disbarments;
    - iv. increasing standardization of reporting methods (certain matters of lesser severity no longer reported);
    - v. the changing nature of the origin of complaints (in early data primarily from the Courts in regard to behaviour of barristers);
    - vi. the gradual increase in the number of discipline matters per year, which could be a function of a number of factors including an absence of regulatory culture or less formal ways of dealing with disciplinary offences in the early years of self-regulation, a gradual increase in the number of lawyers leading to greater likelihood of disciplinary offences, economic downturns leading to higher numbers of infractions, increase in direct client complaints, etc.);
    - vii. the introduction of a formal Committee on Discipline in 1877; and
    - viii. the impact of technology on regulatory processes (e.g. the use of typewritten discipline reports begins in 1912).
  - b. **Using the Data for Further Inquiries:** In general, the data does not reveal information respecting the member's type of practice, ethnicity or religion. It does often identify the town in which the member practises. Historians interested in determining more detail and possible trends in the information can use the compiled data to conduct newspaper searches as well as obtain information from genealogical records, tax rolls, voter lists, etc.
  - c. **Developing Historic Context for the Data:** As a regulator of the legal profession in the public interest the Law Society may consider discipline data primarily from the perspective of risk and public harm. Any discussion and analysis of the data must consider this view, but from a historic perspective the context within which members intersect with the discipline process may also shed light on regulation, its strengths and weaknesses and its evolution and the challenges of regulation.
18. The historic discipline data project has resulted in the accumulation of a wealth of information previously scattered throughout the Law Society records. The data collected will prove an invaluable resource to legal researchers and to the Archives department itself.

TAB 9.1.1

### HISTORIC DISCIPLINE DATA PROJECT TABLE OF SOURCES

This Table identifies the various sources of information in the Law Society's Archives respecting discipline data information, with a focus on historic discipline data, the subject of this project. For each source, the type of record is identified, with the periods covered by the data, a brief description of the content of the record and whether it is an *in camera* or public source set out. Some records are both. The majority of sources in the Table are *in camera*.

Record	Date range	Description	In Camera	Public
Minutes of Convocation	1797 – 1856, 1865 – 1881, 1893 – present	The official minutes of the proceedings of Convocation.	√ 1797 – February 1989, some matters are still reported in camera	√ March 1989 – present, plus three trial public Convocations in 1988
Convocation files	1922 – present	Contain supporting material to the Minutes of Convocation: agendas, correspondence, original reports to Convocation, orders, etc. Include files relating to the discipline convocations (ca. 1974-2000).	√ Correspondence, most reports to Convocation up to Feb. 1989, in camera reports to Convocation after March 1989	√ Orders, most reports to Convocation (after March 1989)
Printed Minutes of Convocation	1879-1927, 1936-1982	Abridged version of the minutes of Convocation published in the Canada Law Journal and later the Ontario Weekly Notes and Ontario Reports.		√
Discipline Committee minute books and agendas	1915-1984	Minute books and annotated agendas documenting meetings and decisions of the Discipline Committee.	√	
Discipline Committee dockets	1912-1922, 1956-1977	Volumes contain a registers of complaints, which record the names of the complainants and respondents, the nature of the complaint, and a chronological listing of actions and communications by the Committee. It appears that the discipline docket summaries for the period of the 1930s and 1940s were placed in the individual's member file. The dockets were	√	

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		replaced by situation sheets.		
Indices to Discipline Dockets	1938-1955	Volumes contain an index to solicitors complained about and an index to complainants.	√	
Discipline Committee administrative files	1920-1974, 1981-1984	Files maintained by the secretary to the Discipline Committee. Most relate to particular subjects, not discipline cases, but a review of the files could be done to determine whether any records pertain to individual discipline matters.	√	
Discipline hearings minute books	1964-1987	Volumes contain handwritten notes of discipline hearings.	√	
Authorization memoranda	1991-1996	Document requests for authorization of disciplinary action by the Discipline, Complaints, Audit, and Investigations departments. Submitted to the Chair and Vice-Chairs of the Discipline Committee, later the Discipline Authorization Committee.	√	
Member files	ca. 1915 – present	The general member file contains documentation about many aspects of the member's activity with the Law Society (admission and education, articling, fees, military service, press clippings, etc.). The files contain documentation about discipline matters until ca. 1970 and documentation on complaints until the early 1980s. The earliest files contain very little documentation about the member.	√	
Communiqué	1971-1987	Newsletter published by the LSUC. Reported discipline decisions and other profession-related matters.		√
Discipline Digest	1992-1996	Newsletter published by the LSUC. Reported on discipline matters.		√
Ontario Lawyers Gazette	1997 – present	Periodical published by the LSUC. Includes information on discipline matters.		√



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