



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

June 23, 2016
9:00 a.m.

CONVOCATION MATERIAL

PUBLIC COPY

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IN CAMERA MATERIAL*

CONVOCATION AGENDA
June 23, 2016

Convocation Room – 9:00 a.m.

Election of Treasurer

Treasurer's Remarks

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

- **Confirmation of Draft Minutes of Convocation – [May 26, 2016](#)**
- **Audit & Finance Committee Report - [Appointment of the Law Society's Auditor](#)**
- **Report of the Director of Professional Development and Competence – [Deemed Call Candidates](#)**

Professional Regulation Committee Report ([M. Mercer](#)) [\[Tab 2\]](#)

- Proposed Amendments to By-Law 7

For Information

- Report of the Advertising and Fee Arrangements Issues Working Group
- In Camera Item

Access to Justice Committee Report ([C. Corsetti](#)) [\[Tab 3\]](#)

- Financial Support for the Law Commission of Ontario

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report ([P. Schabas](#)) [\[Tab 4\]](#)

- Human Rights Monitoring Group Request for Interventions

For Information

- Human Rights Monitoring Group Responses to Interventions
- Equity Legal Education and Rule of Law Series Calendar 2016

Tribunal Committee Report ([B. Murchie/D. Wright](#)) [\[Tab 5\]](#)

- Proposed Amendments to the Law Society Tribunal Rules of Practice and Procedure

For Information

- Tribunal 2015 Annual Report
- Tribunal 2016 First Quarter Statistics

Federation of Law Societies of Canada Update ([L. Pawlitza](#)) [\[Tab 6\]](#)

REPORTS FOR INFORMATION ONLY

Report of the Chief Executive Officer [\[Tab 7\]](#)

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

- Financial Support for the Law Commission of Ontario
- LibraryCo Inc. First Quarter Financial Statements 2016
- Other Committee Work

Government Relations and Public Affairs Committee Report (in camera) [\[Tab 9\]](#)

Priority Planning Committee Report [Tab 10]

- Progress Report on the Law Society's Strategic Plan 2015-2019

Professional Development and Competence Committee Report (*J. Leiper*) [Tab 11]

- Indigenous Legal Issues Specialty
- Appointments to Certified Specialist Board

Report from The Action Group on Access to Justice (TAG) [Tab 12]

Treasurer's Engagement Report [Tab 13]

Lunch – Benchers' Dining Room

Tab 1

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2016

MOVED BY:

SECONDED BY:

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

Tab 1.1

DRAFT

MINUTES OF CONVOCATION

Thursday, 26th May, 2016
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Banack, Beach, Bickford, Boyd, Braithwaite, Bredt, Burd, Callaghan (by telephone), Chrétien, Clément, Conway, Cooper, Corsetti, Criger, Donnelly (by telephone), Earnshaw, Epstein, Evans, Ferrier, Furlong, Goldblatt, Gottlieb, Groia, Haigh, Horvat, Krishna, Lawrie (by telephone), Leiper, Lem (by telephone), Lerner, Lippa, MacKenzie, MacLean, Manes (by telephone), McGrath, Merali, Mercer, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitz, Potter (by telephone), Richardson (by telephone), Richer, Rosenthal, Ross, Ruby (by telephone), Schabas, Sheff, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg, Swaye, Troister, Udell, Vespry, Wardle and Wright.

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Secretary: James Varro

The Reporter was sworn.

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The Treasurer welcomed those joining Convocation by webcast.

TREASURER'S REMARKS

The Treasurer informed benchers that Claudia P. Prémont, bâtonnière du Québec, Lise Tremblay, Chief Executive Officer of the Barreau du Québec and Paul Le Vay, on behalf of the Association des juristes d'expression française de l'Ontario (AJEFO), will be attending Convocation.

The Treasurer advised that Kathleen Waters from LAWPRO will attend Convocation luncheon.

The Treasurer updated Convocation on the status of the Professional Development and Competence Committee Report and proposed licensing enhancements, and advised that the licensing process changes will not be implemented for the 2017-18 licensing year.

The Treasurer updated Convocation on her outreach activities with reference to her engagement report in the Convocation Materials. The Treasurer thanked benchers who participated with her in some of the outreach activities.

The Treasurer congratulated the recipients of the Law Society Awards bestowed at a ceremony last evening. The Treasurer thanked former benchers Constance Backhouse and William Simpson who assisted in bestowing the awards.

The Treasurer announced the recipients of the 2016 honorary LL.D. at upcoming calls to the bar:

- Mark M. Persaud, June 17, London Call
- Her Excellency Mary Robinson, Former President of Ireland, June 20 morning Toronto Call
- Richard W. Pound, Q.C., June 21 morning Toronto Call
- David Lepofsky, June 21 afternoon Toronto Call

The Treasurer announced that The Honourable Jody Wilson-Raybould, the Minister of Justice and Attorney General of Canada, will be called to the bar pursuant to section 1 of the *Barristers Act* in Ottawa on June 15, 2016.

The Treasurer announced that the Attorney General of Ontario, The Honourable Madeleine Meilleur, will address the Toronto call to the bar on June 20, 2016 in the afternoon.

The Treasurer informed Convocation that Dianne Corbiere has been appointed to the Federation of Law Societies of Canada working group on the Truth and Reconciliation Commission's Calls to Action.

The Treasurer announced that the Trinity Western University appeal will be heard June 6 to 8, 2016.

The Treasurer informed Convocation of upcoming public education and other events.

The Treasurer announced the four candidates for the Treasurer's election on June 23, 2016: Raj Anand, Howard Goldblatt, Susan McGrath and Paul Schabas.

The Treasurer advised that Julia Bass, Policy Counsel, will be leaving the Law Society on May 31 and thanked her for her outstanding contribution to the Law Society.

MOTION – CONSENT AGENDA – Tab 2

It was moved by Mr. Troister, seconded by Ms. Strosberg, that Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

Carried

Tab 2.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of April 28, 2016 were confirmed.

Tab 2.2 – MOTIONS

Tab 2.2.1 – Motion – Committee Appointments

THAT the following be reappointed to the Proceedings Authorization Committee:

Paul Schabas, Chair
Jacqueline Horvat
Brian Lawrie
Jeffrey Lem
Jonathan Rosenthal
Gerald Sheff

Carried

Tab 2.2.2 – Motion – Reappointments to the Law Society Tribunal

THAT Marian Lipka be reappointed to the Hearing Division of the Law Society Tribunal for a term ending April 24, 2018.

THAT the following be reappointed to the Hearing Division of the Law Society Tribunal for a term ending June 29, 2018:

Eva Krangle
Sabita Maraj
John F. Spekkens
Marilyn Thain
Eric Whist

Carried

Tab 2.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

Carried

COMPLIANCE-BASED ENTITY REGULATION TASK FORCE REPORT

Mr. Earnshaw presented the Report.

Re: Final Report of the Task Force on Compliance-Based Entity Regulation

It was moved by Mr. Earnshaw, seconded by Mr. MacKenzie, that Convocation approve:

- a. that the Law Society seek an amendment to the *Law Society Act* to permit Law Society regulation of entities through which legal services are provided; and
- b. the development of a regulatory framework for consideration by Convocation based on the principles of compliance-based regulation set out in the report.

An amendment to the motion, moved by Ms. Vespry, seconded by Ms. St. Lewis, that part a. and part b. of the motion each be the subject of a separate vote, was accepted.

Part a. of the motion was carried.

Part b. of the motion was carried.

TREASURER'S REMARKS

The Treasurer welcomed Claudia P. Prémont, bâtonnière du Québec, Lise Tremblay, Chief Executive Officer of the Barreau du Québec and Paul Le Vay representing AJEFO, to Convocation.

ADDRESS BY THE BÂTONNIÈRE DU QUÉBEC

Claudia P. Prémont addressed Convocation on the work of the Barreau du Québec.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Amendments to the Rules of Professional Conduct Regarding Transactions with Clients

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation approve amendments to Rules 3.4-27 to 3.4-37 of the Rules of Professional Conduct, as set out in Tab 4.1.1.

Carried

Re: Amendments to the Rules of Professional Conduct Regarding Duty to Report

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation approve amendments to the commentary to Rule 3.2-1 (Quality of Service) and Rule 7.1-3 and Commentary (Duty to Report Misconduct) as set out in Tab 4.2.1.

Carried

Re: Amendments to the Rules of Professional Conduct Regarding Errors and Omissions

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation approve amendments to the Rules of Professional Conduct regarding the reporting to clients of errors and omissions in Rules 7.8-1 and 7.8-2 as set out in Tab 4.3.1.

Carried

For Information

- Professional Regulation Division Quarterly Report January to March 2016

PARALEGAL STANDING COMMITTEE REPORT

Ms. Haigh presented the Report.

Re: Proposed Amendments to *Paralegal Rules of Conduct*

It was moved by Ms. Haigh, seconded by Ms. McGrath, that Convocation approve the amendments to the *Paralegal Rules of Conduct* set out at Tabs 5.1.1, 5.1.3. and 5.1.4.

Carried

For Information

- Update on Enhancements to Licensing Process

AUDIT & FINANCE COMMITTEE REPORT

Mr. Wardle presented the Report.

Re: Investment Policy

It was moved by Mr. Wardle, seconded by Mr. Bredt, that Convocation approve the updated Investment Policy.

Carried

Re: Portfolio Manager

It was moved by Mr. Wardle, seconded by Mr. Bredt, that Convocation approve the continued retention of the Portfolio Manager, Foyston Gordon & Payne.

Carried

Re: Investment Custodian

It was moved by Mr. Wardle, seconded by Mr. Bredt, that Convocation approve the continued retention of the Custodian, CIBC Mellon Global Securities Services Company.

Carried

For Information

- Report on Investment Returns
- Law Society of Upper Canada Financial Statements for the three months ended March 31, 2016
- Investment Compliance Reporting for the period ending March 31, 2016

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

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Request for Interventions

It was moved by Mr. Schabas, seconded by Mr. Cooper, that Convocation approve the letters and public statements in the cases set out at Tabs 7.2.1 and 7.2.2.

Carried

For Information

- Statistical Snapshots of the Professions
- Equity Legal Education and Rule of Law Series Calendar 2016

The Treasurer advised that the Tribunal Committee Report and the Report on the Federation of Law Societies of Canada will be deferred to June 23, 2016 Convocation.

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REPORTS FOR INFORMATION ONLY

TRIBUNAL COMMITTEE REPORT

FEDERATION OF LAW SOCIETIES OF CANADA UPDATE

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

CONVOCATION ROSE AT 1:16 P.M.



TAB 1.2

**Report to Convocation
June 23, 2016**

Audit & Finance Committee

Committee Members

Christopher Bredt (Co-Chair)

Peter Wardle (Co-Chair)

Michelle Haigh (Vice-Chair)

John Callaghan

Suzanne Clément

Paul Cooper

Teresa Donnelly

Seymour Epstein

Rocco Galati

Vern Krishna

Janet Leiper

Catherine Strosberg

Purpose of Report: Decision

**Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

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For Decision:

Law Society Auditor **TAB 1.2**

COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on June 8, 2016. Committee members in attendance were Chris Bredt (Co-Chair), Peter Wardle, (Co-Chair), Suzanne Clément, Paul Cooper, Teresa Donnelly, Seymour Epstein, Vern Krishna, and Catherine Strosberg.
2. Also in attendance: Stephanie Kalinowski from Hicks Morley.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Terry Knott, Juda Strawczynski, Wes Robertson, Brenda Albuquerque-Boutilier, Mary Giovinazzo and Andrew Cawse.

**CONSENT AGENDA
LAW SOCIETY AUDITOR**

Motion

4. **That Convocation appoint PricewaterhouseCoopers LLP (PwC) as auditor for The Law Society of Upper Canada, the Fund of the Pension Plan for the Employees of the Law Society and LibraryCo Inc. for the 2016 financial year.**
5. PwC are the auditors of the Law Society, LAWPRO, LibraryCo, the Law Society Foundation and the Law Society's Pension Fund. Convocation appoints the Law Society auditor on the advice of the Audit & Finance Committee. LAWPRO's auditors are appointed at their Annual General Meeting. Under the terms of the Unanimous Shareholders Agreement, LibraryCo's auditor is appointed by the Law Society. The Law Society Foundation's auditors are appointed at their Annual Meeting.
6. 2015 was the first year for PwC as Law Society auditor. There have been no issues with their services or fees and there have been no issues identified during meetings between the Audit & Finance Committee and the auditors.

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:

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, June 23rd 2016

ALL OF WHICH is respectfully submitted

DATED this 23rd day of June, 2016

CANDIDATES FOR CALL TO THE BAR
June 23rd 2016

Transfer from another province (Mobility)

Uba Emeka Anya
Martine Marie Huguette Boucher
Amanda Melissa Carew
Stacy Ann Coulterman
Raymond Lawrence Gill
Miata Amie Gorvie
Andrea Elizabeth Jamieson
Bianca Cherie Krueger
Alok Kumar
Kerry Kathleen Byrne McGinnis
Damilola Sunday Olawuyi
Michèle Suzie Poirier
Shannel Jasmine Rajan
Sumeet Sood
Hillson Tse

Licensing Candidates

Pierre Avram Bourassa
Raymond Dinshaw
Kathleen Marion Carole Elhatton-Lake
Kathryn Elizabeth Hart
Lisha Li
Elena Ponte
Nerissa Jia Yun Yan



TAB 2

Report to Convocation June 23, 2016

Professional Regulation Committee

Committee Members

Malcolm Mercer (Chair)
Susan Richer (Vice-Chair)
Paul Schabas (Vice-Chair)
Robert Armstrong
Peter Beach
Suzanne Clément
Paul Cooper
Cathy Corsetti
Janis Criger
Seymour Epstein
Robert Evans
Julian Falconer
Patrick Furlong
Carol Hartman
Jacqueline Horvat
Brian Lawrie
William C. McDowell
Ross Murray
Jan Richardson
Heather Ross

Purpose of Report: Decision and Information

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

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For Decision

Proposed Amendments to By-Law 7 – Surrender of a Professional Corporation Certificate.....[Tab 2.1](#)

For Information

Report of the Advertising and Referral Fees Issues Working Group.....[Tab 2.2](#)

In Camera Item.....[Tab 2.3](#)

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on June 9, 2016. In attendance were Malcolm Mercer (Chair), Susan Richer (Vice-Chair), Paul Schabas (Vice-Chair), Peter Beach (by telephone), Suzanne Clément (by telephone), Paul Cooper, Janis Criger, Seymour Epstein, Robert F. Evans (by telephone), Patrick Furlong, Brian Lawrie, Ross Murray, Jan Richardson (by telephone), and Heather Ross.
2. The following Law Society staff members attended the meeting Lesley Cameron, Elliot Spears, James Varro, Naomi Bussin, Ross Gower, Juda Strawczynski, and Margaret Drent.

FOR DECISION

BY-LAW AMENDMENTS - SURRENDER OF A PROFESSIONAL CORPORATION CERTIFICATE

MOTION

3. That Convocation amend By-Law 7 as set out in the motion at [Tab 2.1.1](#) to remove the requirement that a professional corporation provide an accountant's certificate when surrendering a certificate of authorization.

RATIONALE

4. The proposed amendments are intended to ensure that the By-Law reflects current practice. The current requirement that an accountant's certificate be provided when surrendering a certificate of professional corporation is no longer necessary.
5. The requested amendment will also ensure consistency with By-Law 4, amended to the same effect by Convocation in April 2016.

Proposed Amendment – Removal of Requirement to Provide Accountant's Certificate

6. The proposed amendments are shown in the attached redline at [Tab 2.1.2](#). Section 10 of By-Law 7 provides the current requirements for the surrender by a professional corporation of its certificate of authorization. Subsection 10 (1) requires a professional corporation to apply to the Society for permission to surrender its certificate of authorization in the following circumstances:
 - a. when the corporation does not wish to renew the certificate;
 - b. when the corporation no longer wishes to practice law in Ontario, provide legal services in Ontario or both practice law in Ontario and provide legal services in Ontario; and
 - c. prior to a voluntary winding up or a voluntary dissolution of the corporation.
7. Subsection 10 (2) provides that an application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation. Subsection 10 (2) also requires that the declaration include certain information such as the name of the corporation, the reasons for the application, and a declaration that all money or property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled to it. In the alternative, the professional corporation shall indicate that it has not been responsible for any money or property held in trust.

TAB 2.1

8. Subsection 10 (3) of By-Law 7 further requires that an accountant's certificate be attached to the statutory declaration required under subsection 10 (2).
9. The practice regarding applications for surrender of a professional corporation has evolved in recent years. It is increasingly common for licensees to assume responsibility for their own book-keeping using various software products; as a result, it is less common for the services of an accountant to be required. It would not be practical or appropriate in these circumstances for the Law Society staff to require licensees to provide an accountant's certificate indicating that all money and property held in trust by the applicant for surrender have been accounted for when processing an application for surrender of a professional corporation certificate.
10. In these cases, it has been sufficient for a licensee to provide proof to the Law Society that all trust accounts have been closed.
11. In April 2016 Convocation approved a new process for administrative surrender of licence. As part of these amendments, Convocation approved the removal of a requirement that an applicant provide an accountant's certificate when surrendering a licence in By-Law 4. The Committee recommends this proposed amendment to By-Law 7 ensure consistency between the two By-Laws.

Other Proposed Amendments to By-Law 7

12. Two other amendments to By-Law 7 are also proposed. The first would allow a fee to be levied on applications for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name (Corporate name certificate).
13. If instituted, the fee would help recover some operational costs associated with processing these applications in certain circumstances. It has not yet been determined whether such a fee will be imposed in all cases.
14. Second, it is proposed that the phrase "in each of the following situations" be added to subsection 10 (1), above the list of circumstances in which a professional corporation may apply to the Society for permission to surrender its certificate of authorization. The revision will clarify that not all of the circumstances that are listed must be present in order for a professional corporation to be required to surrender its certificate.
15. The proposed amendments to subsection 10(1) would indicate that the Society may require the surrender of the certificate in the circumstances listed in paragraphs (1) through (3).

THE LAW SOCIETY OF UPPER CANADA

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

**BY-LAW 7
[BUSINESS ENTITIES]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2016

MOVED BY

SECONDED BY

THAT By-Law 7 [Business Entities], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008, October 30, 2008, November 27, 2008, April 30, 2009, June 28, 2012 and April 25, 2013 be further amended as follows:

1. Section 4 of the English version of the By-Law is amended by adding the following subsection:

Same

- (1.1) An application under subsection (1) shall include,
 - (a) a completed application, in a form provided by the Society; and
 - (b) an application fee, if any.

2. Section 4 of the French version of the By-Law is amended by adding the following subsection:

Idem

- (1.1) Une demande présentée en application du paragraphe (1) devra comprendre,
 - (a) un formulaire de demande fourni par le Barreau dûment rempli ;
 - (b) les droits de demande, le cas échéant.

3. Subsection 10 (1) of the English version of the By-Law is revoked and the following substituted:

10 (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization in each of the following situations:

1. When the corporation does not wish to renew the certificate.
2. When the corporation no longer wishes to practise law in Ontario, provide legal services in Ontario or both practise law in Ontario and provide legal services in Ontario.
3. Prior to a voluntary winding up or voluntary dissolution of the corporation.

4. Subsection 10 (1) of the French version of the By-Law is revoked and the following substituted:

10 (1) Une société professionnelle demande au Barreau la permission de rendre son certificat d'autorisation lorsqu'elle se trouve dans chacune des situations suivantes :

1. La société ne désire pas renouveler son certificat.
2. La société ne désire plus exercer le droit ou fournir des services juridiques en Ontario, ou les deux.
3. Une liquidation volontaire ou une dissolution volontaire de la société va s'effectuer.

5. Subsection 10 (3) of the By-Law is revoked.

BY-LAW 7

Redline Showing Proposed Changes – Professional Regulation Committee

Made: May 1, 2007 Amended: June 28, 2007 September 20, 2007 (editorial changes) February 21, 2008 October 30, 2008 November 27, 2008 April 30, 2009 June 28, 2012 April 25, 2013 December 4, 2014 (editorial changes)

BUSINESS ENTITIES

PART I

LIMITED LIABILITY PARTNERSHIPS

PROFESSIONAL LIABILITY INSURANCE

(. . .)

PART II

PROFESSIONAL CORPORATIONS

CORPORATE NAME

Name requirements

3. The name of a professional corporation, including a descriptive or trade name, shall be,
 - (a) demonstrably true, accurate and verifiable;
 - (b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and
 - (c) in the best interests of the public and consistent with a high standard of professionalism.

Corporate name certificate

4. (1) A licensee may apply in writing to the Society for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name.

Same

(1.1) An application under subsection (1) shall include,

(a) a completed application, in a form provided by the Society; and

(b) an application fee, if any;

Decision of Society

- (2) The Society shall consider every application made under subsection (1) and shall,
 - (a) if the Society is satisfied that the proposed name complies with section 3, issue a certificate to the licensee; or
 - (b) if the Society is not satisfied that the proposed name complies with section 3, reject the application.

Notice to licensee and application for review

(3) If the Society rejects an application made under subsection (1), the Society shall so notify the licensee and the licensee may apply to the committee of benchers appointed under section 37 for a review.

Time for making application for review

(4) An application for a review under subsection 4 (3) shall be commenced by the licensee notifying the Society in writing of the application within thirty days after the day the Society notifies the licensee that his or her application for a certificate has been rejected.

Powers on review

- (5) After considering an application for a review under subsection (3), the committee of benchers appointed under section 37 shall,
 - (a) if it is satisfied that the proposed name complies with section 3, direct the Society to issue a certificate to the licensee; or
 - (b) if it is not satisfied that the proposed name complies with section 3, reject the application.

CERTIFICATE OF AUTHORIZATION

(. . .)

Surrender of certificate

10. (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization in each of the following situations:

~~(a)~~ 1. When the corporation does not wish to renew the certificate;

~~(b)~~ 2. When the corporation no longer wishes to practise law in Ontario, provide legal services in Ontario or both practise law in Ontario and provide legal services in Ontario; and ~~and~~

~~(c)~~ 3. Prior to a voluntary winding up or voluntary dissolution of the corporation.

Same

(2) An application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation setting forth,

- (a) the name of the professional corporation, the professional corporation's Ontario Corporation Number, the address of the professional corporation's registered office, the address of the professional corporation's business office, the number of the professional corporation's certificate of authorization and the date of issue of the professional corporation's certificate of authorization;
- (b) the reasons for the application;
- (c) a declaration that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the professional corporation has not been responsible for any money or property held in trust;
- (d) a declaration that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to, as required, a licensee licensed to practise law in Ontario or a licensee licensed to provide legal services in Ontario, or, alternatively, that the professional corporation has neither practised law in Ontario or provided legal services in Ontario;

- (e) a declaration that the directors of the professional corporation are not aware of any claim against the professional corporation in its professional capacity or in respect of its practice of law in Ontario or provision of legal services in Ontario; and
- (f) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

~~(3) — An accountant's certificate to the effect that all money and property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration required under subsection (2).~~

Publication of notice of intention to surrender certificate

(4) Subject to subsection (5), a professional corporation that wishes to surrender its certificate of authorization shall, at least thirty days before the day on which it applies to the Society under subsection (1), publish in the Ontario Reports a notice of intention to surrender a certificate of authorization.

Exemption from requirement to publish notice

(5) Upon the written application of the professional corporation, the Society may exempt the professional corporation from the requirement to publish a notice of intention to surrender a certificate of authorization.

Notice of intention to surrender certificate

(6) The notice of intention to surrender a certificate of authorization which a professional corporation is required to publish under subsection (4) shall be in Form 7A.

Proof of publication of notice of intention to surrender certificate

(7) Unless a professional corporation is exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, an application under subsection (1) shall be accompanied by proof of publication in accordance with subsection (4) of a notice of intention to surrender a certificate of authorization.

Society to consider application

(8) Subject to subsection (9), the Society shall consider every application made under subsection (1) in respect of which the requirements set out in subsections (2), (3) and (7) have been complied with, and the Society may consider an application made under subsection (1) in respect of which the requirements set out in subsection (2), (3) and (7) have not been complied with, and,

- (a) the Society shall accept an application if it is satisfied,
 - (i) that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the professional corporation has not been responsible for any money or property held in trust,
 - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to, as required, a licensee licensed to practise law in Ontario or a licensee licensed to provide legal services in Ontario, or, alternatively, that the professional corporation has neither practised law in Ontario or provided legal services in Ontario,
 - (iii) that there are no claims against the professional corporation in its professional capacity or in respect of its practice of law in Ontario or provision of legal services in Ontario,
 - (iv) that the professional corporation is no longer the subject of or has fully complied with all terms and conditions of any order made under Part II of the Act, and
 - (v) that the professional corporation, if not exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, has complied with subsection (4); or
- (b) subject to subsection (9), the Society shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(9) The Society may accept an application if the Society is not satisfied of the matter mentioned in subclause (8) (a) (iv) but is satisfied of the matters mentioned in subclauses (8) (a) (i), (ii), (iii) and (v).

Society not to consider application

(10) The Society shall not consider an application made under subsection (1) if the professional corporation, any licensee practising law in Ontario through the professional corporation or any licensee providing legal services in Ontario through the professional corporation is,

- (a) the subject of an audit, investigation, search or seizure by the Society; or
- (b) a party to a proceeding under Part II of the Act.

Documents, explanations

(11) For the purposes of assisting the Society to consider its application, the professional corporation shall provide to the Society such documents and explanations as the Society may require.

Rejection of application

(12) If the Society rejects its application, the Society may specify terms and conditions to be complied with by the professional corporation as a condition of its application being accepted, and if the professional corporation complies with the terms and conditions to the satisfaction of the Society, the Society shall accept the application.

CHANGE OF INFORMATION

Change of information

11. (1) A professional corporation shall notify the Society in writing immediately after,
- (a) any change in the information provided as part of the professional corporation's application for a certificate of authorization or for a renewal of a certificate of authorization; and
 - (b) any change in the professional corporation's articles of incorporation.

(...)

FOR INFORMATION

**ADVERTISING & FEE ARRANGEMENTS ISSUES WORKING GROUP
REPORT**

SUMMARY

Issue Under Consideration

16. The Advertising & Fee Arrangements Issues Working Group (“Working Group”) is providing this status report through the Professional Regulation Committee (“the Committee”) to Convocation on its work and proposed next steps. The Working Group has received a great deal of information about issues that are of significant importance to the public, the Law Society and to the professions. These are further described in this Report but include advertising by lawyers and paralegals that may be false or misleading and fees charged to clients that appear to impact on the way in which legal services are being provided and may not be transparent.
17. With the agreement of the Committee, the Working Group proposes, in accordance with its Terms of Reference, that it seek further input with respect to potential regulatory responses to a number of issues relating to licensee advertising, referral fees and fee arrangements, as described in the “Next Steps” section of this report, with responses requested by September 30, 2016.
18. Changes to the Law Society’s rules or by-laws, if required, would then be proposed for consideration by the Committee and Convocation.

BACKGROUND

19. The Working Group was established in February 2016 by the Committee¹ in order to obtain a better understanding of current advertising, referral fee and contingency fee practices in a range of practice settings, including real estate, personal injury, criminal law and paralegal practices, and to determine whether any regulatory responses are required with respect to them. The Working Group was created after Convocation approved a Call for Input in 2015 and received input from the professions. The 2015 Call for Input Document can be viewed at [https://www.lsuc.on.ca/uploadedFiles/For the Public/News/Consultations/call-for-input-](https://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/News/Consultations/call-for-input-)

¹ The Working Group is chaired by Malcolm Mercer. The Working Group members are Robert Burd, Paul Cooper, Carol Hartman, Jacqueline Horvat, Jan Richardson and Andrew Spurgeon.

[document.pdf](#). The Working Group's Terms of Reference are attached at **Tab 2.2.1**.

20. In recent years, some stakeholders have been urging the Law Society to limit referral fees and take enforcement action to ensure truth and clarity in advertising practices. The Law Society was concerned that it did not have sufficient information about current practices regarding referral fees or the impact of changes on the profession or on the public. Further information was required about advertising, referral fees and relationships between lawyers and non-licensees in personal injury, criminal and real estate practice, among others. The Working Group undertook this review.
21. The following discussion is based on information the Working Group obtained from its own research, operational input and information received from focus group participants.

Personal Injury

22. There has been a significant increase in advertising of personal injury legal services in recent years. At the same time, there have been changes in referral fee arrangements with referral fees often taking a larger proportion of the contingent fee and with up-front referral fees sometimes being required.
23. There are a number of perspectives from which these changes may be considered:
 - a. The firms who are significant advertisers seek to generate sufficient business to make their advertising expenses worthwhile, whether from fees earned on work done or from referral fees received.
 - b. As a result of the entry of firms who are significant advertisers, firms who traditionally attracted their clients without engaging in significant advertising face new competition for clients. Some of these firms have advertised in response. Paying referral fees is another way of obtaining clients as are focused advertising and marketing in the health care sector. Some firms have strong reputations for experience and expertise which will attract clients who have the ability and motivation to search out these firms.
 - c. Increasing referral fees suggests that attracting clients is increasing costly and that the fees earned on referred matters can support that cost despite decreased profitability for the referee. Incumbents will naturally be concerned about increased costs of attracting work.
 - d. The consumer response to advertising suggests that advertising is either suggestive of expertise or that alternatives are not easily known. The consumer

response may also suggest that some injured people are seeking legal remedies and would not otherwise have done so. The increasing cost of obtaining clients, whether by advertising, referral fees or otherwise, may be reducing firm profitability but may also affect the work being done for clients or the contingent fees that are charged. There is reason to be concerned that clients are not aware that they have been referred or that significant referral fees are being paid for referrals. Similarly, there is reason to be concerned that contingent fee arrangements are not clear and comparable so that prospective clients can make informed choices.

24. The trend in personal injury advertising appears to be similar to that observed in the United States, where lawyer advertising is “big business.”² The U.S. experience shows that all high volume practices typically engage in mass advertising.³ High volume practices include what are at times described as “brokerage houses” where advertisers screen cases and refer them for a referral fee, and “settlement mills”, which run high volume, low value cases.⁴ Overall, there are, in fact, “relatively few personal injury lawyers” engaging in expensive mass advertising.⁵
25. In Ontario, lawyer advertising appears to have rapidly become “big business”. There are a few high volume personal injury law firms that are leaders in mass advertising and that operate a hybrid of the “brokerage house” and “settlement mill” models. These firms engage in mass advertising campaigns both in order to take on certain cases internally, and in order to earn revenue by referring certain cases out to selected licensees for a referral fee. In response to the entry of these direct to consumer firms, certain market incumbents focusing on larger and more specialist cases have also entered the mass advertising market.⁶

² Nora Freeman Engstrom, “Legal Access and Attorney Advertising” *Journal of Gender, Social Policy and the Law*, Vol. 19 Iss. 4 [2011], Art. 4 at 1084.

³ *Ibid.*

⁴ *Ibid.* See also Sara Parikh, “How the Spider Catches the Fly: Referral Networks in the Plaintiffs’ Personal Injury Bar” *New York Law School Law Review* Vol. 51, 2006/07 244-283.

⁵ Nora Freeman Engstrom, “Legal Access and Attorney Advertising” *Journal of Gender, Social Policy and the Law*, Vol. 19 Iss. 4 [2011], Art. 4 at 1084.

⁶ See, for example, Shannon Kari, “The Battle for the Personal Injury Dollar” *Canadian Lawyer*, November/December 2012.

26. Firms providing referral services can provide a point of entry for people with potential claims. Personal injury law firm advertising can bring awareness to potential claimants of the option of personal injury legal services. It may be the case that broad based advertising has increased awareness of legal services and that referral fee arrangements provide a way of funding these costs. That said, studies show that the public's view of lawyer and paralegal advertising is not clear.⁷
27. From a public policy perspective, it is noteworthy that consumers, particularly those without experience with lawyers or paralegals, may be particularly drawn to advertising, for example, to heavy advertising campaigns that suggest a firm is large and successful. Most consumers have little, if any, advance knowledge or information as to the nature and expertise of personal injury firms, as to referral fees paid or received by lawyers or as to the fees charged for personal injury work.
28. Although the *Rules of Professional Conduct* require disclosure and client consent, the information obtained through the Law Society's regulatory experience and from advocacy groups suggest that in many cases clients are not sufficiently aware of the fact that they are being referred to another lawyer, that there is a referral fee or the quantum of the fee. The Law Society's regulatory experience supports current concerns about advertising and the structure of some law firms, and whether there is sufficient transparency regarding the business arrangement from a consumer point of view.
29. The provincial government has been studying the role of legal services providers, in the context of automobile insurance fraud, as indicated in the 2012 Report of the Ontario Automobile Insurance Anti-Fraud Task Force.⁸ The Task Force studied the role of various players in the personal injury field including tow truck drivers, health care clinics and lawyers and paralegals. The Report considered the role of lawyers and paralegals in insurance fraud, referral fees paid to non-licensees and conflicts of interest. The report mentioned that legal services providers were involved in paying and receiving referral fees with other interested parties such as auto body storage and repair shops and health care clinics. It is suggested that referral fees paid increased the overall cost of claims.

⁷ In a 2014 report by Advertising Standards Canada, the report states that a significant majority of Canadians (67%) have at least a "somewhat favorable" impression of advertising, however, in the category of advertising for law firms and legal services, only 37% of those polled were "comfortable" with the levels of trust and accuracy in advertising - 2014 Consumer Perspectives on Advertising, Advertising Standards Canada, p. 7.

⁸ Final Report of the Ontario Automobile Insurance Anti-Fraud Task Force Steering Committee, October 2012, online: <http://www.fin.gov.on.ca/en/autoinsurance/final-report.pdf>.

30. These issues are not unique to Ontario. An overview of legislative and regulatory requirements relating to personal injury practice in other jurisdictions was provided to the Committee in November 2015 and is summarized as follows:
- a. In England and Wales, legislation bans referral fees in the personal injury field and restricts contingency fee arrangements in personal injury cases.
 - b. In Australia, legislation severely restricts advertising personal injury services and prohibits solicitation of claims or payment of same, which could be interpreted as prohibiting referral fees.
 - c. In Scotland, referral fees to non-lawyers are prohibited although they are entitled to pay referral fees to other lawyers and to pay a fee to be on a referral panel. A recent government report recommended that the ban on referral fees should be lifted.
 - d. In Ireland, legislation specifically prohibits advertising personal injury services.
 - e. In the United States, the Association of Professional Responsibility Lawyers published a June 2015 report calling for streamlining the advertising rules to focus on advertising that is false and misleading. The Committee deferred consideration regarding the regulation of lawyer referral services. More recently, however, the Supreme Court of Florida rejected a petition by the Florida Bar to loosen the restrictions on referrals from for-profit lawyer referral services.

Real Estate

31. There has also been an increased volume of advertising for real estate work. However, the context of real estate advertising is very different than for personal injury advertising.
32. Many consumers are prepared to select their real estate lawyers on the basis of price. Fixed price services are commonly advertised by real estate lawyers to attract residential real estate work. However, there is concern whether some fixed-price advertising honestly and accurately discloses what costs are included in the fixed price and what are in addition. In a price sensitive market where relatively small price differences can affect consumer choices, it may be particularly important to ensure that consumers are not misled as to what is promised and what is not.
33. In addition, concern has also been expressed about the relationship between some real estate lawyers and the providers of services to their clients. At issue are incentives paid to lawyers or their staff where the lawyer is involved in the retainer of the third party. These reported practices raise transparency and conflict of interest issues.

Other issues

34. While a particular issue in personal injury given the volume of mass advertising, there are concerns generally about advertising and marketing on the basis of awards or honours. It appears clear that establishing and promoting awards have become a significant business. This presumably reflects that consumers have difficulty determining which lawyer or paralegal to retain and see awards as providing useful information. Similarly, advertisers seek to demonstrate quality by disclosing awards and honours. However, it is often unclear that awards being advertised have much, if anything, to do with quality. The American Bar Association is currently considering these very issues.
35. Another advertising and marketing issue that has arisen is common to personal injury and other areas. Where personal injury advertising is intended to generate referral fees rather than work for the firm being advertised, there is concern that the advertising can be misleading. Consumers can be misled into thinking that the advertiser will provide the advertised services. This issue also applies outside of personal injury where services are advertised that the advertiser does not intend to provide, is not competent to provide or is not licensed to provide. This has been raised as an issue for paralegals where scope of practice is limited and, accordingly, it has been said that care should be taken to ensure that consumers are not misled by overbroad advertising.

Regulatory Response to Changes in Advertising and Marketing

36. Unlike some other jurisdictions, Ontario has few rules on marketing, advertising or fees-related issues directed specifically to particular areas of practice.
37. Advertising complaints historically represent a very small percentage of complaints received. However, the number of complaints has been growing, particularly those initiated by the Law Society. In 2011, the Law Society received 68 complaints involving an allegation of advertising and initiated an additional 47 complaints, for a total of 115. In 2013, the Law Society received 73 and initiated an additional 64, for a total of 137. In 2015, the Law Society received 53 complaints and initiated 88, for a total of 141.
38. A specialized team in the Investigations Department has been established to respond to these issues. The approach is:
 - Identification of licensees who may be in breach of the current advertising rules.
 - Where the issues are considered minor, for example minor wording, contact is made with the licensee with a view to resolving the matter. If the matter cannot be resolved it is referred for further investigation.
 - Developing a process to follow up on resolved matters.

- Where the issues identified are more significant, a matter is investigated.
 - If after investigation, further regulatory action is required, the matter may be addressed by staff or referred to the Proceedings Authorization Committee.
 - In serious cases, discipline proceedings may be initiated.
39. As with the majority of complaints, most of the complaints about advertising have been resolved based on compliance. Few cases about advertising result in formal disciplinary proceedings although there was a recent case before the Law Society Tribunal in *Law Society of Upper Canada v. Zappia*, 2015 ONLSTH 34. Generally, when staff discussed the requirements of the rule with the individual licensees in question, the licensees amended their advertising appropriately.

WORKING GROUP ACTIVITIES AND INPUT RECEIVED

40. The Working Group met a number of times from March to May 2016.
41. In order to obtain a better understanding of current advertising, referral fee and contingency fee practices, the Working Group arranged a series of meetings with the assistance of a “knowledgeable intermediary”, James Caskey.⁹
42. Through these meetings, the Working Group received candid information from legal organizations and associations, law firms, hospital General Counsel, individual lawyers and paralegals. The Working Group thanks all those who shared their time, expertise, experiences and views, which have been invaluable in shaping the Working Group’s consideration of current practices and appropriate regulatory responses. A more detailed summary of the input received is attached at [Tab 2.2.2](#).

(i) Advertising and Marketing

43. Meeting participants reported a clear increase in advertising in Ontario, particularly in personal injury, with a shift by some firms towards direct to consumer marketing. Meeting participants gave numerous examples of what they considered to be misleading advertisements, including advertising of “all in” pricing that excluded disbursements, misleading claims as to the service being offered or the level of expertise, paralegal advertising outside of the scope of paralegal practice, and reference to awards without disclosing that a direct or indirect payment was made for its use. Several participants

⁹ Most stakeholder meetings were facilitated by James Caskey, a senior partner with Siskinds LLP, London, Ontario, who facilitated the exchange of information between the Law Society and the professions. The Working Group wishes to thank Mr. Caskey for his valuable assistance.

gave examples of what they considered were tasteless or offensive advertisements, such as concerns about the location of advertising (such as within a hospital, on billboards next to highways or in washrooms), the use of actors in advertising and attractive women in marketing.

(ii) Referral Fees

44. Meeting participants raised a wide range of concerns about the referral fee rules¹⁰ and practices. A major concern was that referral fees in personal injury law have become unreasonable and disproportionate, with several participants relating that some referring firms are currently negotiating up-front flat-fee payments that are sometimes very large, in addition to up to a 30% share of the fee at the successful conclusion of the matter. Referrals to the highest bidder might not be based on the competency of counsel, or made to counsel with requisite expertise. Moreover, counsel accepting these referrals might not be able to vigorously advocate on behalf of the client or be prepared to take the case to trial if necessary due to the high costs of acquiring the case.
45. Most recognized that referral fees should be permitted, but noted that the rules were never intended to create a law firm line of business based on the selling of claims. Some questioned whether referral fees should be permitted at all, and were of the view that referring matters to other licensees when necessary is the licensee's professional obligation. Certain meeting group participants also expressed the concern that although it is prohibited, licensees may be paying referral fees to non-licensees, and that non-licensee referral services have emerged.
46. Participants raised concerns arising in real estate practice and the use of title insurance. The Working Group received reports of one title insurer having an arrangement whereby law firms could through various means seek to receive "legal fees" as part of the amounts charged to the client for the purchase of certain services. In addition, the Working Group learned that in the past certain suppliers offered law firm staff gift certificates for each purchase, one entry per order into a contest for a chance to win prizes, or possibly even a fee based on the volume of services purchased.

¹⁰ The lawyer and paralegal rules permit licensees to refer matters to other licensees because of the expertise and ability of the other licensee to handle the matter, and to receive a referral fee for doing so if the referral was not made because of a conflict of interest, the fee is reasonable and does not increase the total fee charged to the client, and the client is informed and consents: Rule 3.6-6 of the Rules of Professional Conduct; Rule 5.01(14) of the Paralegal Rules of Conduct. Licensees are prohibited from entering into referral fee arrangements with non-licensees. Rule 3.6-7 of the Rules of Professional Conduct; Rules 5.01(12) of the Paralegal Rules of Conduct.

(iii) Contingency Fee Agreements

47. All of the personal injury law firms who participated in the meetings typically operate under contingency fee arrangements. They reported that personal injury lawyers' contingency fee rates range from 20% to 30% of the award. Some personal injury lawyers reported that they do not charge the client for anything, including disbursements, if there is no recovery. Others expect the client to pay disbursements even if no recovery is made.
48. Several personal injury lawyers suggested that the current requirements under the *Solicitors Act* are difficult for clients to understand, that strict compliance with the *Solicitors Act* has historically been the exception to the rule, and that the current *Solicitors Act* requirements are unworkable for certain cases, particularly those requiring a trial. This is because, under the *Solicitors Act*, legal costs belong to the client. When a matter goes to trial, and the plaintiff is successful, the licensee is compensated as a percentage of the award alone, and the legal costs, which may be significant given the trial that took place, belong to the client. The result is that in certain cases, the law firm's time and expertise may dramatically enhance the client's recovery, at the cost of the law firm's time and effort. It was suggested by some that there may be better ways to align the interests of counsel and client in such circumstances.

DISCUSSION

49. The Working Group has carefully considered all of the input received, keeping in mind the Law Society's regulatory experience as well as the regulatory experiences and academic research from other jurisdictions. The following sets out the Working Group's views on these issues. The Working Group has not arrived at a definitive position in some areas, and proposes to seek input from the professions before any regulatory changes are proposed.
50. The *Law Society Act* provides that in carrying out its regulatory functions, the Law Society should have regard to its duties to maintain and advance the cause of justice and the rule of law, to facilitate access to justice, to protect the public interest, to act in a timely, open and efficient manner, and to regulate in a manner that is proportionate to the significance of the regulatory objectives sought to be realized.¹¹ These overarching principles were used by the Working Group to distill underlying general principles and to

¹¹ *Law Society Act*, R.S.O. 1990 c.L.8 at s.4.2.

formulate policy statements that in its view apply to considering advertising and marketing, referral fees and fees.

(i) Advertising and Marketing

General Principles

51. The rules already clearly state that marketing of legal services must be true, accurate and verifiable, must not be misleading, confusing or deceptive, and be in the best interests of the public and consistent with a high standard of professionalism.¹²
52. In the Working Group's view, the rules as currently stated capture the core principles that must apply to advertising and marketing by lawyers and paralegals.

Advertising & Marketing the Cost of Legal Services

(i) Real Estate "All In" Pricing

Policy Statement

53. The Working Group believes that the advertising of "all in" real estate pricing should be transparent, and that consumers should be able to effectively compare offered prices.

Discussion

54. Real estate legal work is price sensitive with the result that price advertising is important. Most consumers of real estate legal services will only use a real estate lawyer once or a few times in their lives. Consumers will not necessarily be aware of differences between fees and disbursements,¹³ or that the nature of legal services provided will change, and so too will the fees and disbursements, depending, for example, on whether a purchase is with or without mortgage financing.
55. The Working Group recognizes that real estate advertising of "all in" pricing can be misleading if it is not transparent about additional fees, disbursements or charges which

¹² Rule 4.2-1 of the Rules of Professional Conduct; Rule 8.03(2) of the Paralegal Rules of Conduct.

¹³ In fact, the Working Group heard different views expressed by real estate lawyers as to what might reasonably be a disbursement that can be charged to a client, and what should be considered general overhead that is intended to be covered by the lawyer's fee. Some suggested that fixed prices, if offered, should include costs for services, such as law clerk work, that lawyers could choose to do within their firms or to out-source to independent contractors.

will ultimately lead to the client receiving a bill that exceeds the quoted “all in” price. Clients usually do not meet with the lawyer at the outset of the retainer, so once a client is “in the door” through deceptive advertising, by the time the real price is revealed, it is often too late to change lawyers. Moreover, the difference between the “all in” price and the actual invoice may be relatively minor, such that individual clients may not take recourse, leaving possibly deceptive pricing unchecked.

56. The Working Group notes that Rule 4.2-2 of the *Rules of Professional Conduct* already provides that a lawyer may advertise fees, but only if the advertising is “reasonably precise as to the services offered for each fee quoted”, the advertising “states whether other amounts, such as disbursements and taxes will be charged in addition to the fee” and “the lawyer strictly adheres to the advertised fee in every applicable case”. The determination of what constitutes a “disbursement” in many instances is the crux of the issue.

Options

57. The Working Group is interested in further considering how “all in” pricing in real estate law could be made consistent and comparable so that consumers may more easily compare services.
58. There are various ways whereby “all in” pricing could be regulated.
- a. Rule 4.2-2 already provides helpful general guidance. The *status quo* could be maintained.
 - b. The Law Society could require that any reference to a price must be the total maximum cost that the client will pay for the transaction, inclusive of tax and disbursements. Consideration would need to be given to whether “all in” pricing should include the cost of a financing transaction, given that the substantial majority of residential purchase transactions are on the basis of mortgage financing, and, if so, whether lawyers could disclose that a discount is available for an all-cash transaction, and be required to disclose, where applicable, that additional costs are required for additional mortgages.
 - c. The Law Society could require that any reference to a price must be the total maximum cost that the client will pay for the transaction, exclusive of taxes.
 - d. If a fixed fee exclusive of disbursements is advertised then disclosure of the typical amount of disbursements could be required. If a fixed fee is advertised for

a purchase then a fixed fee for a mortgage financing could be required.¹⁴

59. The Working Group seeks input into what approaches, including but not limited to the above, might be considered to allow comparison when lawyers choose to advertise on a fixed-fee basis.

(ii) Contingency Fee Pricing

Policy Statement

60. The Working Group believes that contingent fee structures should be transparent, and that the total costs associated with contingent fees should be clear to the consumer at the outset. Consumers should be able to evaluate proposed fees against the fees being offered by others.

Discussion

61. While the contingency fee model facilitates access to legal services, it reduces the perceived importance at the outset of the basis on which the fees will eventually be charged. When fees are deducted from ultimate recovery and not paid directly by the client, transparency is reduced. The Working Group is concerned that contingency fee pricing is not currently sufficiently transparent at the outset to consumers. In the personal injury market, for example, where firms are typically operating on a contingency fee basis, the contingent fee that a prospective client can expect to ultimately be charged often remains opaque and it is difficult to determine whether a competitive fee structure is being proposed.

Options

62. The Working Group is of the preliminary view that lawyers and paralegals typically operating on contingency fee arrangements should be required to disclose their standard

¹⁴ While the Working Group considered the concept of a tariff that would set what constitutes disbursements in real estate and include permissible price points for them, the Working Group does not believe that the Law Society should introduce such a system. The Law Society previously considered such tariffs in real estate law, and decided against their introduction. The Working Group is concerned that tariffs risk adding regulatory burden, may not be able to account for market variations, and risk inadvertently leading to a tariff price point becoming the new price floor, which would be anti-competitive and against the best interests of clients.

arrangements, including their usual contingent rates and arrangements with respect to disbursements on their websites. This would facilitate greater transparency for prospective clients.

Nature of the Services Being Offered

Policy Statement

63. The Working Group is of the general view that lawyers and paralegals soliciting work that they are not permitted to provide, are not competent to provide, or do not intend to provide are misleading consumers. The public is entitled to expect that lawyers and paralegals are themselves offering to provide the legal services that they advertised.

(i) Personal injury

(a) Referral / Brokerage Services

Discussion

64. Consumers naturally expect that lawyers advertising the provisions of personal injury legal services are offering to represent them. However, where referral fees are a material part of the revenue generated from advertising, the service actually offered to the client may be a referral rather than legal representation.

Options

65. One option is to require fair disclosure of the service that will be delivered. Where a significant portion of the revenue generated by advertising is from referral fees, the advertiser could be required to advertise on that basis, making it perfectly clear that the advertiser may not itself provide the legal services and in such a case may refer clients to others for a fee.
66. This option is premised on the proposition that it is misleading to purport to offer personal injury legal services while in fact the intent is to refer work to be done for others in exchange for payment.
67. Another option is simply to ban advertising for the purpose of obtaining work to be referred to others in exchange for a referral fee.
68. This option is premised on the proposition that, in the personal injury law sector, little real value is provided by mere brokerage and that the costs of advertising and brokerage

fees may well add to the ultimate fee to the client or affect the legal services that are ultimately provided. However, there may be circumstances where a brokerage model may provide valuable service. For example, brokerage may provide value where referrals are made solely in the best interests of the client or where the brokerage helps to manage the issues faced by the client including when legal and other services are required, the nature of those services and who should provide them.

(b) Second Opinion Advertising

Discussion

69. Clients are entitled to seek second opinions with respect to their cases. They may wish to do so for a variety of valid reasons, including as a check on the level of service being provided by their current counsel, or in order to consider multiple legal opinions before making crucial decisions related to their legal matters.
70. However, there is reason to think that some second opinion services currently being advertised are truly intended to entice clients who are already represented by legal counsel to switch lawyers rather than to provide a second opinion. Current Rule 4.1-2(d) clearly prohibits offering legal services using means that are intended to influence a person who has retained another lawyer to change their lawyer.¹⁵
71. The Working Group has considered how to balance consumer rights with maintaining lawyer professionalism around providing second opinions. The Working Group recognizes that advertising should only be limited where there is a legitimate public interest objective to do so. In this case, the Working Group is concerned by a potential “bait and switch” on the part of law firms purporting to offer second opinions when they may be using such advertising to entice a client of another lawyer to switch firms. The Working Group is also concerned about the conflict of interest inherent in providing a second opinion where part of the intent is to obtain the work. That said, the availability of second opinions is important for clients who may wish independent assistance in assessing their options including with respect to settlement.

Options

72. The Working Group seeks input about whether this rule is sufficient or whether the Law

¹⁵ Rule 8.02(d) of the Paralegal Rules of Conduct similarly prohibit offering legal services using means “that are intended to influence a person who has retained another paralegal or a lawyer for a particular matter to change his or her representative for that matter, unless the change is initiated by the person or the other representative [...]”

Society should permit second opinions on the condition that the provider of the second opinion who advertises or markets “second opinion” services be prohibited from taking on the cases where a second opinion is given.

(ii) Paralegal Advertising of Services that are Outside of the Scope of Practice Violates the Paralegal Rules

73. Concerns have been raised with respect to paralegal advertising soliciting work outside of the permitted scope of practice. This includes advertising “criminal law” or “impaired driving”. The concern could also include using words in other languages which are ambiguous as to whether they refer to a lawyer or paralegal. At times, this may simply be inadvertent. However, in other instances the advertising appears to be designed to generate referral fee revenues rather than to offer legal services. Paralegal Rule 8.02(3) is clear: “A paralegal shall not advertise services that are beyond the permissible scope of practice of a paralegal.”

Advertising the Attributes of the Provider

Policy Statement

74. The Working Group is of the general view that the attributes of the provider must be true, accurate and verifiable, and should not be misleading, confusing or deceptive.

(a) Identifying the Licensee’s Class of License

Discussion

75. Consumers of legal services are entitled to know whether a service is being provided by a lawyer or a paralegal. In other professions where there are overlapping scopes of practice, it is standard for the service providers to state their professions. For example, while a doctor and a nurse both provide health services, and share the ability to engage in certain prescribed activities, patients are entitled to know the nature of the professional offering services. This promotes patient knowledge and trust in health providers and the health system more generally.

Option

76. The Working Group is considering proposing that all licensees be required to identify the type of license they have in their advertising and marketing materials (e.g. lawyer or paralegal). This would not be onerous but would enhance awareness of the availability and licensing of paralegal services, and of the range of services which paralegals are

permitted and able to offer consumers.

(b) Awards and the Risk of Misleading Attributes of the Provider

Discussion

77. Consumers commonly have difficulty selecting as between providers based on quality, and that there is little objective criteria on which to assist. For example, hospital counsel expressed frustration as to the lack of a well-accepted, externally validated award or recognition through which leading personal injury lawyers could be identified.
78. Lawyers and paralegals often rely on awards and honours to suggest quality. However, not all awards are necessarily indicative of quality alone, or at all. While some awards are based on third party evaluation, peer recognition or consumer recognition, some “awards” are essentially received for payment or other inducement. The Working Group is of the view that using these awards without disclosure or disclaimer is misleading.
79. The Working Group recognizes that there are real issues as to how awards are used by lawyers and paralegal licensees, and grappled with what the Law Society could do to address the issues. The Working Group recognizes that the public may view awards as a proxy for expertise or quality of service. The Working Group is concerned about the use of awards or honours that do not appear to be credible or have merit, and/or cannot be shown to be made on some transparent or objective criteria. Given these significant concerns, the Working Group has not ruled out proposing that the use of awards in advertising be banned altogether. If advertising of such awards is to be permitted, then, in the Working Group’s view, using such awards or honours without full disclosure should be prohibited.

Options

80. The Working Group is considering whether full disclosure of the nature of the award or honour should be available on the firm website including any fees paid or other arrangements with the firm which may have affected the making of the award or honour.
81. The Working Group is also considering whether principles should be developed to limit the nature or awards and honours that may be included in advertising and marketing. The Working Group leaves open the option of recommending banning the use of awards.
82. The Working Group is further considering whether a personal injury designation could and should be created within the Law Society’s Certified Speciality in civil litigation, to achieve another objective qualitative measure for consumers.

Taste in Advertising

Discussion

83. The Working Group heard repeated stakeholders concerns about “tasteless” advertising. The Working Group notes that the term “taste” does not appear in the lawyer or paralegal rules. In the Working Group’s view, this is with good reason. Taste is highly subjective and evolves.
84. However, as noted above the lawyer and paralegal marketing rules require the marketing of services to be demonstrably true, accurate and verifiable, should not mislead, and should be in the best interest of the public and consistent with a high standard of professionalism. The Working Group considers that the nature of the current rules is not the problem. The Working Group considers that detailed regulation in matters of taste is not realistically possible and that the current rules set an appropriate standard.
85. The Working Group however observes that at least some of the concern about “taste” is actually about the volume of advertising which is in turn driven by the ability to turn work achieved through advertising into referral fees without providing material value and without transparency. The volume of advertising may also relate to profitability of contingent fee work and the relative absence of transparency sufficient to permit the market to operate effectively.

Options

86. While the Working Group has considered the concept of pre-approval of advertising and marketing such as is currently done in Florida on a voluntary basis, the Working Group is not persuaded that issues of taste are effectively or properly addressed through prior restraint and micro-regulation. The Working Group is inclined to the view that pursuing the options discussed under other topics is the better course, at least for the time being.
87. That said, it appears that the Investigations Department is involved in many more dealings with advertising than is commonly known. It may be useful for there to be greater transparency as to what has been seen to be unacceptable as a way of signalling standards more generally.

(ii) Referral Fees

General Principles

88. The Working Group has distilled the underlying principles to guide referral fees, again based on section 4(2) of the *Law Society Act*. If referral fees are to be permitted, then, in the Working Group's view, they should be transparent, consensual and fully align with the client's interests. Licensees should be encouraged to refer matters where they are not competent to take them on. Providing clients with referrals to competent counsel is an important service if done properly at a reasonable cost.

Discussion

89. In Ontario, the amounts being charged for referral fees appear to have sharply increased in the past few years based on the information provided to the Law Society.
90. The Working Group recognizes the concern that up-front flat referral fees incent referrals to the lawyer who will pay the most for the referral and provide no incentive to refer to the lawyer who will achieve the best result for the client. Payment of up-front flat fees, and/or referral fees that are a significant percentage of the fee charged by the referree may be disproportionate to the value provided by the referrer, and may compromise the net fee earned by the referree to an extent that compromises quality of service. The cost of acquiring the file through payment of referral fees may economically limit the ability of a counsel who has accepted the referral to take the matter to trial. These risks are of concern.
91. The Working Group is also concerned by claims that referrals are being made in some cases without the client's knowledge or express consent.
92. Referral fees are opaque to consumers, clients and to the Law Society. If consumers knew that their claims were being referred to other licensees, and the size of the referral fees, they might not accept the referral. The Working Group is concerned that it is difficult to ascertain how referral fees are operating, and whether they currently, on balance, act in a manner that serves the public interest.
93. Given the increasing and evolving changes in how referral fees are arranged, the Working Group considered whether the referral system should be maintained as is, scrapped, capped, made more transparent or otherwise subjected to increased regulatory safeguards.
94. The Working Group considered following in the footsteps of England and Wales and

recommending an absolute ban on referral fees in personal injury law.¹⁶ Referrals would then be required purely as a matter of professional obligation. But the Working Group is also aware that banning referral fees in England and Wales raised presumably unintended consequences as discussed below.

95. The Working Group is of the view that, despite current imperfections in practice, referral fees can be used to align licensee and client interest, and provide value to clients. It notes that the academic literature indicates that referral fees that are limited to a proportion of the ultimate contingent fee align the interests of the client, the referring lawyer and the lawyer accepting the referral. Referral fees are less problematic if the interests of all actors are aligned.¹⁷
96. The Working Group recognizes that some lawyers, particularly lawyers in smaller communities, and paralegals throughout Ontario consider referrals to be part of the service they provide to clients. These are often the first legal professional encountered by a consumer, and can play an important service by referring prospective clients to other licensees where appropriate. Referrals in contexts such as these add value both by assisting the individual receiving the service and by generally facilitating access to justice. In the Working Group's view, while such services may be provided for free, they should be open to being compensated.
97. Moreover, if referral fees are banned, the risk increases that some lawyer and paralegals will keep files that they are not competent to handle.
98. The Working Group therefore concludes that abandoning referral fees entirely is undesirable in some respects and may not be required.
99. The Working Group also recognizes that banning referral fees would not bring an end to the economic advantage of brand recognition of firms engaged in referral practices, but rather would likely simply change how the advantage is exploited. In England and Wales, the referral fee ban in personal injury resulted in rapid growth in the size of some personal injury firms. Similarly, brand leaders in Ontario might simply expand their practices if referral fees were absolutely prohibited. If the reality is that advertising generates profitable work, banning referral fees will likely just change how that profit is

¹⁶ Solicitors Regulatory Authority, "Ban on referral fees in personal injury cases", online: <http://www.sra.org.uk/referralfees/>.

¹⁷ See generally Zamir, Eyal, Medina, Barak and Segal, Uzi, *The Puzzling Uniformity of Lawyers' Contingent Fee Rates: An Assortative Matching Solution* (January 16, 2012). SSRN: 1986491; Sara Parikh, "How the Spider Catches the Fly: Referral Networks in the Plaintiffs' Personal Injury Bar" *New York Law School Law Review* Vol. 51, 2006/07 244-283.

realized.

100. Moreover, there are more moderate regulatory approaches which could be implemented to curb referral fee practices to ensure that they operate in the public interest. In addition to achieving better transparency for consumers, the Working Group considers that limiting the proportion of the ultimate fee that may be charged as a referral fee may be worthwhile. It appears that mass advertising in the personal injury sector has been highly effective at attracting prospective clients, with many of these prospective clients then referred to others. But referral fees that were once commonly in the range of 10 or 15% of the ultimate fee have reportedly commonly become 25 or 30% of the ultimate fee. Constraining the proportion of the ultimate fee that may be charged as a referral fee is worthy of serious consideration given that the increased costs of referral may impact the client in significant ways, such as by impacting selection of counsel and limiting the ability of counsel to take the matter to trial, as noted above.

Options

101. The Working Group seeks input with respect to the following options under consideration:
- a. Banning up-front flat referral fees on contingent fee matters.
 - b. Limiting the referral fees that may be charged as a percentage of the ultimate fee in contingent fee and other matters.
 - c. Requiring referrees to fully disclose their standard referral fee arrangements.
 - d. Requiring the client, the referrer and the referree to enter into a standard form agreement at the time that the referral is made, fully disclosing the nature of the referral and the referral fee.
 - e. Requiring licensees to record referral fees paid or received in their financial records in a manner to be maintained and accessible to the Law Society on request.

(iii) Fees

Policy Statement

102. As a general principle, fees should be on an agreed upon and transparent basis.

(a) Real Estate Fees

103. As noted above, the Working Group believes that “all in” real estate pricing should be transparent, and that the total costs associated with fixed fee real estate transactions

should be agreed upon and clear to the consumer.

(b) "Fees" and related practices with respect to title insurance and other services

Discussion

104. As noted above, the Working Group received reports of law firms receiving compensation or other benefits related to the purchase of services, without these practices necessarily being disclosed to the client. The Working Group is of the view that these practices breach the real estate lawyer's fiduciary duty to the client.

Options

105. To add greater certainty in this regard, the Working Group welcomes feedback regarding whether the Rules of Professional Conduct require amendment, and/or any other potential regulatory responses to this issue.

(c) Personal Injury Law

Policy Statement

106. As noted above, as a general principle, fees should be on an agreed upon and transparent basis. This applies in personal injury law and contingent fee based practices.

Discussion

107. The Working Group is concerned by the lack of transparency of the operation of contingency fees in the marketplace. Contingency fees were developed to facilitate access to justice, but there is very little economic data with respect to the contingency fee market in Ontario. It is difficult to determine the price elasticity of contingency fee arrangements, the frequency of fixed percentage fee contingency agreements compared to contingency fee agreements with different fees applying depending on the stage at which the matter settles, or when non-contingency fee arrangements may be used in personal injury matters.¹⁸ It is therefore difficult to assess the impacts of contingency fee

¹⁸ There is little information about these questions generally. For an example of a study of contingency fees, see Herbert M. Kritzer, *Seven Dogged Myths Concerning Contingency Fees*, 80 Wash. U. L. Q. 739 (2002). Available at: http://openscholarship.wustl.edu/law_lawreview/vol80/iss3/4

arrangements on justice outcomes.

108. The Working Group considered various additional means of enhancing their transparency. It considered whether to recommend additional reporting requirements on licensees who provide services under contingency fee agreements in order to contribute towards a better understanding of the contingency fee regime in Ontario. The Working Group recognizes that certain reporting requirements may be difficult to report, particularly as some of this information might be reportable on a firm basis but difficult to consider on a licensee basis. Ultimately the Working Group decided not to recommend seeking such input from licensees at this time, although as reporting systems change, the regulatory burden of seeking such information may decrease, and it may be worth seeking this information at a later date.

Options

109. As noted above, the Working Group welcomes input on the possibility of requiring licensees offering contingency fee arrangements to disclose their standard arrangements and typical contingent rates on their websites in order to facilitate greater transparency. The Working Group welcomes input on other means of enhancing transparency and the availability of information about contingent fees and the contingent fee market.

(iv) Enforcement Issues

110. The Working Group acknowledges that a major theme that arose in the focus group meetings with respect to advertising is the perception that the Law Society has not been doing enough to enforce the rules already in place, and has permitted a proliferation of unprofessional advertising.
111. The Working Group considered whether, as a matter of policy, the Law Society should engage in further efforts with respect to advertising issues.
112. The Working Group again notes the invaluable feedback received from lawyers, paralegals and legal organizations. The information obtained provided further detail as to current advertising practices, and the issues described in this report will assist the Law Society in its ongoing operational efforts to address advertising issues as they arise.
113. However, the Working Group does not believe that there is a need for the Law Society to fundamentally revise its complaints handling processes or significantly increase enforcement actions. The Working Group is mindful of the Law Society's resources, and the need to consider regulatory proportionality. Enforcement measures are always

available, and may be used on a case by case basis, but the Working Group was not convinced that, as a matter of policy, the Law Society should increase regulatory resources to intake or prosecution, which represent the start and end points of regulatory complaints processes.

114. The Working Group recommends however, that the Law Society do more to communicate its concerns about these issues and its regulatory responses to them. There is value in greater transparency about concerns that are raised and how they are addressed as this would provide better practical guidance to lawyers and paralegals.

NEXT STEPS

115. In summary, the Working Group seeks further input with respect to the following areas at this time:

Advertising and Fees

- Advertising and fees in real estate law:
 - o How could pricing in real estate law be made consistent so that consumers may more easily compare services? Should the Law Society take further action regarding “all in” pricing in real estate transactions?
 - o How can the Law Society eliminate reported issues with respect to “fees” and related practices with respect to title insurance and other services as described in the report?
- Contingent fees:
 - o How can contingent fee structures, including the total costs associated with contingent fees be made more transparent to consumers at the outset?
 - o Should lawyers and paralegals typically operating on contingency fee arrangements be required to disclose their standard arrangements, including their usual contingent rates and arrangements with respect to disbursements on their websites?
 - o How is the *Solicitors Act* operating in practice?
- Personal injury advertising:
 - o Referral / brokerage services:
 - Where a significant portion of the revenue generated by advertising is from referral fees, should the advertiser be required to advertise on

that basis, making it perfectly clear that the advertiser may not itself provide the legal services and in such a case may refer clients to others for a fee?

- In the alternative, should advertising for the purpose of obtaining work to be referred to others in exchange for a referral fee simply be banned?
- Advertising second opinion services:
 - Do current requirements balance consumer rights with maintaining professionalism around providing second opinions?
 - If not, should the provider of the second opinion who advertises or markets “second opinion” services be prohibited from taking on the cases where a second opinion is given?
- Identification of type of license:
 - Should all licensees be required to identify the type of license they have in their advertising and marketing materials (e.g. lawyer or paralegal)?
- Use of awards:
 - Should the Law Society ban the use of awards and honours, limit the nature of awards and honours that may be included in advertising and marketing, or require full disclosure of the nature of an award or honour, such as on a licensee website, including any fees paid or other arrangements which may have affected the making of the award?

Referral Fees

Should the Law Society:

- a. Ban up-front flat referral fees on contingent fee matter?
- b. Limit the referral fees that may be charged as a percentage of the ultimate fee in contingent fee and other matters?
- c. Require referees to fully disclose their standard referral fee arrangements?
- d. Require the client, the referrer and the referree to enter into a standard form agreement at the time that the referral is made, fully disclosing the nature of the referral and the referral fee?
- e. Require licensees to record referral fees paid or received in their financial records in a manner to be maintained and accessible to the Law Society on request?

116. The Working Group is inviting feedback with respect to whether the issues discussed are applicable in other areas of practice, such as employment law and family law.

117. As noted at the outset of this report, the Working Group is seeking further input with respect to the above noted issues by September 30, 2016. The Working Group will then carefully consider all input it receives and report back to the Professional Regulation Committee with recommendations.

ADVERTISING AND FEE ARRANGEMENTS ISSUES WORKING GROUP

TERMS OF REFERENCE

APRIL 2016, REVISED JUNE 2016

1. The Advertising and Referral Arrangements Issues Working Group was established in February 2016 by the Professional Regulation Committee. Convocation received an information report regarding the establishment of the Working Group on February 25, 2016.
2. The Working Group is chaired by Malcolm Mercer. The members of the Working Group are Robert Burd, Paul Cooper, Carol Hartman, Jacqueline Horvat, Jan Richardson and Andrew Spurgeon.
3. In 2015, the Professional Regulation Committee developed proposed amendments to the Rules of Professional Conduct to respond to the following advertising issues which had been brought to the Law Society's attention.
 - a. Use of Endorsements and Awards: Advertising often includes awards or endorsements by professional publications and organizations such as Consumers Choice and Readers Choice. There is generally insufficient detail about the award. For example, it is often not clear to consumers whether the lawyer paid to receive it (directly or indirectly through advertising).
 - b. Use of Hyperbole: Advertisements may contain exaggerated comparisons to other lawyers and statements or suggestions that the lawyer is aggressive.
 - c. Advertising about fee arrangements (contingency fees) without a disclaimer: (an example would be "you don't pay unless we win"). The advertising contains no reference to the client's responsibility to pay the lawyer's disbursements. For example, the client may well be required to cover the costs incurred by the lawyer such as photocopying, even if the litigation is unsuccessful.
 - d. Advertising that is misleading about the size of the firm, number of offices, and areas of practice.
 - e. A lack of professionalism in the location, context and images used.
4. In 2015, the Law Society of Upper Canada conducted a consultation on the proposed amendments. Feedback was requested by October 16, 2015.
5. In early 2016, the Law Society of Upper Canada conducted a Call for Input regarding proposed amendments to the Paralegal Rules on the same subject. Feedback was requested by April 15, 2016.

6. The Professional Regulation Committee discussed the feedback regarding proposed amendments to the Rules of Professional Conduct at its November 11, 2015, meeting. At that time, it was decided that further study was required of related issues before a decision could be made about advertising and marketing rules.
7. The Working Group's mandate is to
 - a. obtain a better understanding of current advertising, referral fee and contingency fee practices and issues that may arise in personal injury, criminal defence, real estate, paralegal practices and other areas by speaking with lawyers and paralegals;
 - b. better understand the relationship between (i) referral fee arrangements and contingency fees; and ii) contingency fees and the requirement that fees are fair and reasonable, and then, to consider whether additional guidance is required on these issues;
 - c. propose final amendments to the advertising rules;
 - d. propose amendments, as appropriate, relating to referral fees, contingent fees, and law brokerages;
 - e. propose a report including, as appropriate, proposals for consultations on new or amended Rules on these subjects.
8. The Advertising and Referral Fee Arrangements Working Group will gather information from stakeholders and will provide interim reports to the Professional Regulation Committee as its work progresses. Interim reports to Convocation will be provided to Convocation to regularly update Convocation and the public as to the progress of the Advertising and Referral Fee Arrangements Working Group.
9. It is expected that the Advertising and Referral Fee Arrangements Working Group will complete its information gathering by the end of April 2016, that it will report on its work to the Professional Regulation Committee at its June 8, 2016 meeting, and that a report will be provided to Convocation on June 23, 2016. Subject to Convocation's direction, the Advertising and Referral Arrangements Issues Working Group expects to consult and seek feedback from the professions by the fall of 2016, and will report to the Professional Regulation Committee thereafter. It is anticipated that a subsequent report with appropriate recommendations will be provided to Convocation no later than early 2017.

SUMMARY OF INPUT RECEIVED THROUGH THE ADVERTISING AND FEE ARRANGEMENTS WORKING GROUP FOCUS GROUP AND RELATED MEETINGS

1. The following is a detailed summary of input received by the Advertising and Fee Arrangements Working Group through its focus group and related meetings.

(i) Advertising and Marketing

2. Meeting participants reported a clear increase in the volume of advertising for legal services in Ontario, particularly in the area of personal injury. In the past, lawyers typically received referrals from past clients, from other lawyers, by other professionals (such as physicians seeking a personal injury lawyer to assist a patient) or by word of mouth. Lawyer advertising, if any, was limited to perhaps placing an advertisement in the Yellow Pages.
3. Today, however, some lawyers and paralegals market directly to consumers. Today lawyers and paralegals may advertise directly to prospective clients in innumerable ways. Law firms, lawyers and paralegals are advertising in newspapers and magazines, online and through social media, on television, radio, billboards, buses, bus shelters, benches in front of hospitals and in hospitals.
4. Only a few law firms tend to be heavy advertisers. In personal injury law, some firms are understood to heavily advertise both to attract work that they can take on themselves and to attract clients who could be referred to other personal injury lawyers in exchange for referral fees.
5. Most participants accepted that advertising is here to stay, although some would seek to ban it outright on the claim that it has led to the commoditization of personal injury and other practice areas, eroded the public perception of lawyers, and threatens the administration of justice.
6. Meeting participants gave examples of what they considered to be misleading advertisements, such as:
 - “All-in” pricing for real estate closings or other transactions, without including disbursements or other amounts;
 - Claims that “We win or it’s free”;
 - Claims by law firms to have personal injury expertise when the lawyers are recently licensed and/or have never conducted a trial;
 - Advertising suggesting that a lawyer or law firm will act as the prospective client’s tough, trusted advocate, without disclosing that the lawyer or law firm may refer the

- client to a different firm in exchange for a referral fee;
 - Paralegals advertising for services that are outside of their scope of practice;
 - Paralegal advertising that disparages lawyers or that indicates that the cost of paralegal services is less than lawyers;
 - Displaying an award without disclosing that payment was made (directly or indirectly) for the use of the award name or logo;
 - Reference to being “#1”, “expert”, or to being the “best”;
 - Suggesting that a “second opinion” would be in an injured parties’ best interests to attract new clients.
7. Several participants gave examples of what they considered were tasteless or offensive advertisements. These included concerns about the volume of advertising, the location of advertising (such as within a hospital, on billboards next to highways or in washrooms), the use of actors in advertising and attractive women in marketing.
8. Many participants urged the Law Society to do more to educate about the existing rules, and enforce them. Suggestions included the following:
- a. Some participants suggested that the Law Society should make it easier to complain about advertising practices, perhaps by permitting people to take photos of advertisements and email them to the Law Society for the regulator to consider. Others noted, however, that policing the marketplace at this level could have major cost implications, and may not be effective, as it could lead to what has been described as “regulatory whack-a-mole”.
 - b. As an alternative pro-active measure, it was suggested that the Law Society could pre-approve all proposed advertising, either through a voluntary or mandatory process, which could be more efficient than repeatedly responding to complaints about the same advertisements. This could be administered as a user-pay system so that the cost of administering the program would not be borne by all licensees. However, it was also noted that this could lead to the Law Society assuming risks associated with legal advertising.

(ii) Referral Fees

9. Meeting participants raised a wide range of concerns about the referral fee rules and practices.
10. Some participants questioned whether referral fees should be permitted at all. It was suggested that there should not be a referral fee for complying with one’s professional obligations; if a licensee has no ability to handle a client’s problem (because it is beyond their expertise or their capacity), it is the licensee’s professional responsibility to refer the client to another licensee who has the expertise and ability to handle the matter.

11. Some suggested that if an economic incentive is necessary to align licensee interests with their professional responsibility, then referral arrangements should be minimal, and perhaps capped.
12. Several participants suggested that the referral fee rules have led to the emergence of “legal brokerage” law firms where referring files represents a significant part of the law firm’s business.¹ These participants strongly maintained that referral fees were never intended to permit licensees to simply resell claims, particularly in the personal injury market, but that this has become big business for some firms.
13. Meeting participants raised the following concerns with “legal brokerage” approaches in personal injury law:
 - a. Referral fees have become unreasonable and disproportionate. Several participants related that some referring firms are currently negotiating up-front flat-fee payments that are sometimes very large, in addition to up to a 30% share of the fee at the successful conclusion of the matter.
 - b. Referrals to the highest bidder might not be based on the competency of counsel, or made to counsel with requisite expertise.
 - c. Counsel accepting these referrals might not be able to vigorously advocate on behalf of the client or be prepared to take the case to trial if necessary due to the high costs of acquiring the case.
14. It was suggested by many participants that the risks arising out of the current referral practices may outweigh the risks that an incompetent counsel would keep a case were counsel not permitted to receive a referral fee.
15. Some participants suggested that all licensees should be required to disclose in their annual reports information related to the extent to which they refer files, accept referrals, and the amounts of referral fees received.
16. Participants also raised issues related to the obligation to disclose referral fees. Some senior members of the personal injury bar advised that in practice, historically the amount of a referral fee was not discussed in advance of the result being known. The client only became aware of the amount on the final account. “Fair and reasonable” was the criteria and was based on result and complexity. Disclosure to the client that some referral compensation would be paid from the final fee was considered to be sufficient and appropriate.

¹ While the Working Group did not hear of any law firms currently operating solely as legal brokerages, it did hear from law firms that refer cases to others in exchange for a referral fee.

17. One senior lawyer questioned the need to disclose referral fees to the client, on the basis that since the referral will not increase the cost, the client does not need to know. This lawyer advised that because of the difficulties in explaining the referral concept, and in order to facilitate referrals by sole practitioners and small firms, the referral fee disclosure requirement should be revisited.
18. Meeting group participants also engaged in considerable discussion about payment of referral fees to non-licensees. Those attending from the personal injury bar suggested that the rule is honoured in the breach, although the examples focused on anecdotal and unconfirmed reports. Certain focus group participants suggested that health providers, rehab companies, tow truck drivers, paramedics, hospital workers, physiotherapists, social workers and even doctors have been paid by lawyers for directing injured people to them.
19. Several participants reported the emergence of non-licensee referral services such as toll free numbers and websites operated by non-licensees offering to direct callers to personal injury lawyers for a fee. Some suggested that licensee referrals are not an issue, but that referral systems from non-licensees should be more strictly policed by the Law Society. It was acknowledged, however, that it is difficult to police “indirect” referrals and referrals from non-licensees.
20. The Working Group also heard from in-house counsel at major hospitals. Hospital patients frequently suffer an injury in circumstances that may give rise to a legal claim. Hospital counsel explained that hospital staff at times view the referral of patients to competent counsel as part of ensuring a full, holistic patient recovery. Competent, trusted counsel can advocate on behalf of a patient to seek the recovery of expenses and seek damages to compensate the patient for the physical injury sustained and other resulting losses.
21. Hospital in-house counsel noted that from time to time they receive a claim from a plaintiff personal injury lawyer that hospital staff improperly referred their client to a different lawyer or firm but have not found these to be of merit. They advise that these referrals would be contrary to hospital policies.
22. Meeting participants also discussed current referral fee practices whereby licensed paralegals refer matters outside of their scope of practice to lawyers and receive a referral fee. These fees reportedly could be hundreds of dollars or higher. Lawyers were concerned about paralegals deliberately advertising for work that falls outside of the scope of their license in order to then receive a referral fee. There was less concern about paralegals who occasionally encounter a file that falls outside of their scope and then seek a referral fee.

23. Finally, participants raised concerns arising in real estate practice and the use of title insurance. Rule 3.2-9.5 provides that a lawyer “shall not receive any compensation, whether directly or indirectly, from a title insurer, agent or intermediary for recommending a specific title insurance product”. Rule 3.2-9.6 further states that the lawyer “shall disclose to the client that no commission or fee is being furnished [...] to the lawyer with respect to any title insurance coverage” and the accompanying Commentary notes that this is a matter of fiduciary duty and that the lawyer must fully disclose all financial dealings.
24. Against this backdrop the Working Group received reports of one title insurer having an arrangement whereby law firms could through various means seek to receive “legal fees” as part of the amounts charged to the client for the purchase of certain services. Similarly, the Working Group learned that in the past certain suppliers offered law firm staff gift certificates for each purchase, one entry per order into a contest for a chance to win prizes, or possibly even a fee based on the volume of services purchased.

(iii) Contingency Fee Agreements

25. All of the personal injury law firms who participated in the meetings typically operate under contingency fee arrangements. It was common ground for personal injury firms that contingency fee agreements generally improve access to justice for people who are injured, but do not have the financial resources to conduct the litigation necessary to achieve a just and equitable result.
26. Personal injury lawyers reported that competition can impact the percentage amount of the fee, and that typically personal injury lawyers’ contingency fee rates range from 20% to 30% of the award. Some personal injury lawyers reported that they do not charge the client for anything, including disbursements, if there is no recovery. Others expect the client to pay disbursements even if no recovery is made.
27. Although contingency fee agreements appear to be the standard approach to personal injury practices, most personal injury counsel were of the view that the current requirements under the *Solicitors Act* are difficult for clients to understand, and that strict compliance with the requirements has historically been the exception to the rule.
28. Counsel noted that under the *Solicitors Act*, when a lawyer and client enter into a contingency fee retainer agreement, the lawyer’s costs belong to the client. However, in practice, whether proper or not, many personal injury firms have traditionally charged the client on the basis of legal costs plus a percentage fee, known as the “costs-plus” model. This practice may be continuing at some firms, particularly for cases that go to trial. However, all plaintiff personal injury bar participants were aware of the Divisional Court’s recent decision of *Hodge v. Neinstein*, 2015 ONSC 7345, which certified a class action

against a personal injury law firm for having allegedly collected fees on a “costs-plus” basis.

29. Several plaintiff personal injury bar participants suggested that the current *Solicitors Act* requirements are unworkable for certain cases, particularly those requiring a trial. When a matter goes to trial, and the plaintiff is successful, because the *Solicitors Act* provides that legal costs belong to the client, the result is that the law firm’s time and expertise may dramatically enhance the client’s recovery at the expense of the law firm’s time and effort.
30. Participants raised a range of potential actions related to contingency fee arrangements, including that:
 - Personal injury lawyers could simply enter into retainer agreements providing for escalating fee arrangements depending on when and how the case resolves to avoid billing on a “costs-plus” model;
 - The Law Society should seek an amendment to the *Solicitors Act* to expressly permit “costs plus” fee arrangements; and/or
 - The Law Society should develop a standard retainer agreement for contingency fee arrangements.
31. Although most participants expressed frustrations related to the application of the *Solicitors Act*, certain plaintiff personal injury lawyers suggested that the *Solicitors Act* can be complied with by the personal injury bar, and that they do so in their practices. Others noted that while a strict contingency fee arrangement may not be viable for certain cases, alternative approaches can be adopted. One option would be to return to a traditional billable hour approach where the client is almost certain to succeed, perhaps with a deferral on collecting until the conclusion of the matter.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*



TAB 3

Report to Convocation June 23, 2016

Access to Justice Committee

Committee Members

Cathy Corsetti, Chair
Howard Goldblatt, Vice-Chair
Fred Bickford
Marion Boyd
Robert Evans
Avvy Go
Brian Lawrie
Michael Lerner
Virginia MacLean
Malcolm Mercer
Barbara Murchie
Gina Papageorgiou
Susan Richer
Paul Schabas
Baljit Sikand
Anne Vespry
Bradley Wright

Purpose of Report: Decision

**Prepared by the Policy Secretariat
(Juda Strawczynski 416-947-3997)**

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For Decision

Request for Law Society Support of the Law Commission of Ontario **TAB 3.1**

COMMITTEE PROCESS

1. The Access to Justice Committee (“the Committee”) met on June 8, 2016. Committee members Cathy Corsetti (Chair), Howard Goldblatt (Vice-Chair), Fred Bickford, Marion Boyd, Robert Evans, Brian Lawrie, Micael Lerner, Virginia MacLean, Malcolm Mercer, Barbara Murchie, Susan Richer, Paul Schabas, Baljit Sikand, Anne Vespry and Bradley Wright. Members of the Paralegal Standing Committee also attended. Staff members Grant Wedge, Juda Strawczynski, Margaret Drent and Sabreena Delhon attended.

FOR DECISION

REQUEST FOR RENEWAL OF LAW SOCIETY SUPPORT IN PRINCIPLE FOR THE MANDATE OF THE LAW COMMISSION OF ONTARIO

MOTION

2. **That Convocation approve the Law Commission of Ontario's request for renewal of the Law Society's support in principle for the mandate of the Law Commission of Ontario.**

BACKGROUND

3. The Law Commission of Ontario (LCO) was established by five partners, including the Government of Ontario through the Ministry of the Attorney General, Osgoode Hall Law School at York University, the Law Deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada. A multi-party agreement for the LCO's first mandate was signed in 2007 and the LCO was formally launched later that year.
4. The LCO has a mandate to:
 - a. recommend law reform measures;
 - b. increase the legal system's relevance, effectiveness and accessibility;
 - c. clarify and simplify the law;
 - d. consider technology as a means to enhance access to justice; and
 - e. stimulate critical debate about law and promote scholarly legal research.
5. While the LCO's projects may involve all areas of provincial law that affect a wide variety of constituents, its mandate emphasizes selecting areas for study that are underserved by other research.
6. The multi-party agreement for the LCO's first mandate expired in December 2011. In June 2010, Convocation reaffirmed the Law Society's support in principle for the mandate of the LCO for a further five years.
7. Raj Anand is the current Law Society's appointee on the LCO Board.
8. The Agreement between the Parties for the LCO's second mandate expires on December 31, 2016, and at this time the LCO has presented its application for support in its third mandate.

THE REQUEST FOR SUPPORT

9. The LCO's application materials are provided at **Tab 3.1**. Further information about the LCO's research mandate and future projects can be accessed through the public website at www.lco-cdo.org.
10. As reported to Convocation in the report of the Audit and Finance Committee this month, that Committee considered the financial implications of the Law Commission of Ontario's request for renewal of the Law Society's support of the Law Commission pending a recommendation from the Access to Justice Committee. If Convocation approves the continued support of the LCO, the funding will be included in the draft 2017 budget. The request would increase the Law Society's funding by 5% to \$144,900 in 2017 and by 2% per year for 2018-2022.
11. The Access to Justice Committee supports the LCO's request for Law Society support in principle for the LCO's mandate.
12. The Access to Justice Committee recognizes the important role played by the LCO in our justice system. As the LCO explains:

Ontarians expect their laws to be up-to-date, principled, and efficient. They expect that the analysis used to develop provincial laws will be rigorous, multidisciplinary, and based on extensive consultations with the persons and institutions most affected by them. They also expect their laws to be evidence-based and fair.

The LCO is important because it provides independent, balanced, and authoritative advice on some of Ontario's most complex and important legal policy issues. The LCO evaluates laws impartially, transparently and broadly. The LCO's analysis is informed by legal analysis; multi-disciplinary research; contemporary social, demographic and economic conditions; and the impact of rapid technological change. The LCO gives a voice to marginalized communities and others who are often left out of important law reform debates and discussions.

Finally, the LCO is important because it enhances the public's understanding of law reform and encourages informed, critical debate on important issues in Ontario's justice system.

LCO's reports have led to legislative amendments, policy changes, promoted access to justice, led to policy and program changes, and have

contributed significantly to the public debate surrounding important law reform issues.¹

13. The Access to Justice Committee recognizes that the LCO's work to date has addressed important areas of Ontario's legal system. The LCO has helped to inform discussion, spark debate, and at times serve as an impetus for change. For example, the LCO application highlights, among its other recent accomplishments, that:
 - a. The provincial government credited the LCO's report on vulnerable workers and precarious work for legislative amendments to the *Employment Standards Act*.
 - b. The provincial government sought the LCO's advice and recommendations regarding how to respond to the RDSP [Federal Registered Disability Savings] program.
 - c. The LCO's Curriculum Model for Teaching about Violence against Women contributed to the Premier's initiatives on domestic violence.²

14. The LCO's current projects include, for example, a review of legal capacity, decision-making and guardianship laws and potential reforms, legal issues related to improving the last stages of life, and considering potential legislative amendments to the provincial *Class Proceeding Act*.³ It is also developing projects related to Indigenous issues, the regulation and use of public space, and considering how our legal structures impact community safety.⁴

15. In carrying out its functions, duties and powers, the Law Society is required pursuant to s.4.2 of the *Law Society Act* to have regard to, among other factors, the duty to maintain and advance the cause of justice and the rule of law, act so as to facilitate access to justice for the people of Ontario, and protect the public interest. These principles are shared by the LCO, and, in the view of the Access to Justice Committee, are advanced by the Law Society supporting the mandate of the LCO.

¹ LCO Renewal 2017-2021 Backgrounder at page 5.

² *Ibid.* at page 3.

³ *Ibid.* "Current Projects" at pages 9-11.

⁴ *Ibid.*, "Projects in Development" at pages 11-12.



June 1, 2016

Robert G.W. Lapper
Chief Executive Officer
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Mr. Lapper:

Re: **Law Commission of Ontario – Renewal Request**

I am pleased to submit the Law Commission of Ontario's formal request that the Law Society of Upper Canada renew the LCO's mandate and funding.

As you know, the LCO's second five-year mandate concludes at the end of 2016. Accordingly, the LCO is now seeking to renew its mandate for a third five year period (2017-2021). LCO renewal has three, related components: renewal of the multiparty Agreement establishing the LCO; securing new funding commitments from the LCO major funders; and, developing a LCO new strategic plan.

With this letter, the LCO is requesting that the Law Society:

- Give approval in principle to renewal of the five-year Agreement establishing the Law Commission of Ontario; and,
- Approve the LCO's funding request for its third mandate.

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The Law Society and its members have always been strong and generous supporters of the Law Commission of Ontario and its projects. The LCO welcomes the opportunity to continue working with the Law Society and its members on important law reform and access to justice issues in the years ahead.

The success of the LCO depends upon the Commission's ability to work constructively and successfully with its funders, the legal community, the provincial government, public and private institutions, academics, Ontario's diverse communities, and the general public. The LCO remains strongly committed to working with the Law Society and its members in this manner.

This letter has five parts:

1. A brief description of the LCO and its projects;
2. A discussion of the multi-party Agreement establishing the LCO;
3. A summary of the LCO's funding request;
4. A summary of potential priorities for the LCO's third mandate;
5. A discussion of the LCO/Law Society relationship.

The information in this letter is supplemented by a background document titled "Law Commission of Ontario Renewal Application 2017-2021" that is attached as Appendix A. The document provides more information on the LCO's operations, activities, and potential priorities for its third mandate.

1. Background and LCO Projects

The Law Commission of Ontario (LCO) is a unique, innovative, and productive partnership between the provincial government, the Law Foundation of Ontario, the Law Society of Upper Canada, Osgoode Hall Law School, and the Law Deans of Ontario.

The LCO's mandate is to provide independent advice and recommendations on important law reform issues. The LCO promotes access to justice by making Ontario's laws more effective, accessible and just; making the law simpler and clearer; stimulating debate; and using technology to make the law more accessible to Ontarians.

The LCO plays an important role in Ontario's justice system because it provides independent, balanced, and authoritative advice on some of Ontario's most complex and important legal policy issues. The LCO evaluates laws impartially, transparently and broadly. The LCO's

analysis is informed by legal analysis; multidisciplinary research; contemporary social, demographic and economic conditions; and the impact of rapid technological change.

The LCO provides principled, practical, “problem-solving” recommendations that are informed by broad consultations and tested through a transparent, comprehensive review process that engages a broad range of individuals, experts, and institutions. The LCO gives a voice to marginalized communities and others who should have an important voice in law reform debates and discussions.

Over the last five years, the LCO has engaged with thousands of Ontarians on law reform projects. I believe it is fair to say that the LCO has become a leader in public engagement with Ontario’s justice system.

Since its inception, the LCO has completed major projects on a broad range of far-reaching issues including: the law as it affects persons with disabilities; the law as it affects older adults; vulnerable workers and precarious work; the *Provincial Offences Act*; increasing access to family law; division of pensions; small estates; fees for cashing government cheques; and others.

The scope, importance, and potential impact of the LCO’s work can be demonstrated with a review of the LCO’s current projects:

- Legal Capacity, Decision-making and Guardianship. This project considers reforms to the complex laws, regulations, and practices governing Ontario’s legal capacity, substitute decision-making, and guardianship regime.
- Improving the Last Stages of Life. This project considers the law, practices, identities and values of persons entering the last stages of their life.
- Defamation Law in the Age of the Internet. This project considers how Ontario’s defamation laws should account for technological developments such as the internet and social media.
- Class Actions. This project considers potential legislative amendments to the provincial *Class Proceedings Act*.

LCO projects in the development stage are equally far-reaching. These include:

- Indigenous Issues
- Regulation of Public Space
- Simplified Policy Tools
- Community Safety

The background document titled “Law Commission of Ontario Renewal Application 2017-2021” provides more information on the LCO’s projects, consultations, and methodology.

2. Agreement/Mandate Renewal

The LCO was established pursuant to a five-party agreement between MAG, Osgoode, the Law Deans of Ontario, the Law Foundation of Ontario, and the Law Society. The agreement runs for five years and has been renewed twice. The current agreement (“Mandate Two”) expires on December 31st, 2016. As currently written, the Agreement establishes:

- The LCO’s mandate;
- The Board’s powers, composition and appointment process;
- The duties of the Executive Director; and,
- The duties and composition of the LCO’s Law School Group and Community Council.

Importantly, the Agreement does not commit any of the parties to any specific term or amount of funding.

A copy of the current Agreement is attached as Appendix B.

The LCO believes that the terms and provisions of the Agreement are for the most part clear and straightforward. Nor is the LCO aware of any substantive issues or questions about the Agreement from our funders, stakeholders, or the LCO founding parties. As a result, the LCO does not expect significant changes to the wording or provisions of the Agreement.

That said, the LCO believes it is worthwhile to review or “refresh” the language of the Agreement before it is circulated to the signatories for final approval. Accordingly, at this time the LCO is approaching the signatories for their *approval in principle* to renew the Agreement for an additional five year term. Assuming the signatories agree, the LCO will organize meetings with the signatories to discuss and confirm the final language of the new Agreement.

3. Funding Renewal

This is also a funding renewal year for the LCO.

The LCO is requesting a small, incremental increase in its Law Society funding. More specifically, the LCO is requesting a 5% increase in Law Society funding for the 2017/18 fiscal year and 2% per year increases for the remaining four years of the Agreement.

This proposal would increase the Law Society contributions over the LCO's third mandate as follows:

Law Society Funding to LCO

Current FY 2016/17	Proposed FY 2017/18	Proposed FY 2018/19	Proposed FY 2019/20	Proposed FY 2020/21	Proposed FY 2021/22
\$138,000	\$144,900	\$147,798	\$150,754	\$153,769	\$156,844

As you can see, this proposal would increase the Law Society's contribution to the LCO by approximately 14% over the next five years. The LCO will be requesting equivalent increases from its other funders. For the Law Society, this would represent an annual increase of less than \$20,000 in the Law Society's contribution in the fifth year. Increased funding would allow the LCO to:

- Invest more resources in the LCO's law reform and access to justice projects;
- Organize more topical, "one-off" events such as the LCO's recent Forum on Open Data in the Justice System or its upcoming forum on Legal Ethics and End of Life Decision-making;
- Account for the rising costs of operations;
- Expand its outreach and engagement activities to different communities across Ontario.

Appendix C provides detailed notes and explanations regarding the LCO's five year funding request. The LCO's funding request is necessarily linked to its third mandate priorities and activities, which are discussed below.

I should point out that this is a *provisional* funding request. The LCO board will not have the opportunity to consider this formally until June 9th.

Finally, it is important to note that this funding request is one part of a comprehensive, long-term funding strategy that will include:

- A dedicated effort to seek out new funders, particularly for LCO projects;
- A thorough analysis of the LCO's existing costs; and,
- A dedicated effort to expand in-kind and volunteer contributions to LCO projects and operations.

4. Third Mandate: Priorities and Strategic Planning

The current LCO strategic plan expires at the end of 2016. The LCO board has committed to holding a board retreat this fall to consider a new strategic plan and other issues.

The LCO believes that it has made a successful transition from an innovative start-up to a mature organization. The LCO has established itself as an independent, authoritative voice on important law reform issues in Ontario. Nevertheless, the LCO renewal process gives the Commission an opportunity to take stock of its successes, to identify its weaknesses, and to develop a process and plan that will guide the organization over the next several years.

Accordingly, an important first step for the LCO's third mandate will be to initiate a strategic planning process to help the Commission identify strategic priorities and objectives to guide its work over the next three to five years. The LCO will also need to identify the infrastructure and capacities to ensure it can fulfil its chosen priorities. The LCO's new strategic plan will have to be focused, achievable, and accessible.

The LCO has provisionally identified a series of potential strategies or priorities that it may undertake in its third mandate. This list has not been finalized or approved by the LCO board. The LCO will begin a strategic planning process (which will involve the Law Society) this summer. Subject to that qualification, the LCO's potential priorities over the next three to five years could include:

- Enhancing the LCO's leadership in law reform and promoting access to justice;
- Promoting the relevance, impact and accessibility of the LCO's work;
- Improving the LCO's engagement and outreach to vulnerable communities, including Indigenous communities and racialized communities;
- Completing the LCO's current projects and initiating new ones;
- Promoting the LCO's role as an active, innovative participant in contemporary law reform and access to justice issues in Ontario
- Diversifying the LCO's funding, leveraging existing resources;
- Developing a digital strategy;
- Improving collaboration/partnerships/commitments to funders and stakeholders;

- Building internal capacity; and,
- Strengthening the LCO's relationship with law schools and the academic community.

5. Law Society Relationship and Benchers' Questions

Once again, the Law Society and its members have always been strong and generous supporters of the Law Commission of Ontario and its projects. The LCO's relationship with the Law Society and its members is fundamental to the LCO's mandate.

Part of that relationship involves responding to questions or issues raised by Benchers, Law Society staff, or Convocation generally. As a result, it may be helpful at this point to respond to questions that were raised by Benchers when Patricia Hughes and I attended Convocation in December 2015. At the time, the LCO was asked questions about how the Commission conducts outreach to Indigenous and racialized communities and how the LCO expects its projects would be inclusive of their concerns. These are fair and appropriate questions that I will try to briefly answer here.

First, Benchers correctly stated that the LCO has never had a project specifically dedicated to Indigenous issues or those of racialized communities. The Commission has undertaken many projects in which Indigenous or racialized communities were affected by an LCO project area, but that is not the same thing as a dedicated project.

Second, the LCO is strongly and publicly committed to developing a project that specifically addresses Indigenous issues. The topic for this project has not been formalized, but the Commission has a preliminary interest in issues related to Indigenous peoples and the criminal justice system. The Commission has had exploratory meetings with Indigenous organizations and leaders to discuss potential topics and processes for this project. This is a high priority for the Commission. The project's success will depend on close collaboration with community leaders, justice system stakeholders, and others. Planning for this project will begin in the fall of 2016 and the Commission will work with the Law Society, individual Benchers, Indigenous organizations, and others to develop, plan, and undertake this work.

Third, Indigenous and racialized communities will have an important voice in several of the LCO's current and upcoming projects. For example, the LCO will actively seek out and engage these communities in its Last Stages of Life project. Among other issues, this project considers the rights, values and cultural traditions of different communities at the end of life. Consultations on this project will begin in the fall. Similarly, the LCO's upcoming Regulation of Public Space and Community Safety projects both have obvious implications for Ontario's Indigenous and

racialized communities. The planning for these projects will begin in early 2017 and the LCO will seek the advice of the Law Society, individual Benchers, organizations and community groups, and others about how to develop, plan, and undertake this work.

Finally, it is important to recognize the strength of the LCO's engagement with Ontario's communities and its commitment to understand the lived experience of law. The Commission's current project on Legal Capacity, Decision-making and Guardianship provides a good example of the LCO's commitment to consultations and engagement with a broad cross-section of Ontarians:

- The project's Advisory Group included community advocates, representatives from community legal clinics, and lawyers committed to the rights of persons with disabilities.
- During the course of this project, the Commission heard from more than 300 organizations and experts, organized 35 focus groups, dozens of stakeholder meetings, and consulted with approximately 800 Ontarians.
- Persons and organizations consulted with during this project include persons with lived experience with the law; community agencies and advocates; health professionals and institutions; financial institutions; government ministries; regulated health colleges; community agencies; courts; tribunals; legal organizations; lawyers (including lawyers with expertise in mental health law, trusts and estates, and health law), and others.
- The LCO organized numerous focus groups, surveys and sought submissions from persons with lived experience, their families, and the general public. The LCO eventually received input from more than 300 individuals through surveys, focus groups, submissions, phone calls, emails or other means.

The LCO's 2012 project *A Framework for the Law as it Affects Persons with Disabilities* provides a similar though less extensive example. During this project, the LCO consulted more than 100 organizations and 150 persons with disabilities during the project's multi-year policy-development process.

6. Conclusion

Successful law reform requires the contribution of many organizations and individuals. The LCO, the Law Society, and many others must work together to advance law reform and access to justice in Ontario. As a result, the LCO is committed to working with the Law Society and its members on important law reform and access to justice issues in the years ahead.

Thank you in advance for any consideration that this application may receive. Please contact me with any questions or comments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Aneurin Thomas', with a stylized, cursive script.

Aneurin Thomas
Executive Director

Copied to: Bruce Elman, Chair, Board of Governors
Raj Anand, LSUC Appointee to the LCO Board of Governors
Janet E. Minor, Treasurer, LSUC
Wendy Tysall, Chief Financial Officer, LSUC
Andrew Cawse, Financial Policy Advisor, LSUC
Phyllis Lepore Babcock, Executive Officer, OHLS

Appendix A



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

INDEPENDENCE
ENGAGEMENT
IMPACT

**LCO RENEWAL
2017-2021
BACKGROUND**

Executive Summary

The Law Commission of Ontario (LCO) is a unique, innovative and productive partnership between the provincial government, the Law Foundation of Ontario, the Law Society of Upper Canada, Osgoode Hall Law School and the Law Deans of Ontario,

The LCO was established in 2007. The five-year agreement that created the LCO has been renewed twice. The current agreement (“Mandate Two”) expires on December 31st, 2016.

The LCO provides independent, balanced, and authoritative advice on some of Ontario’s most complex and far-reaching legal policy issues. The LCO evaluates laws impartially, transparently and broadly. The LCO’s work is informed by legal analysis; multidisciplinary research; public consultations; social, demographic and economic conditions; and the impact of technology.

LCO reports include principled, practical, “problem-solving” recommendations that are informed by broad consultations and tested through a transparent, comprehensive review process that engages a broad range of individuals, experts, and institutions. The LCO gives a voice to marginalized communities and others who should have an important role in law reform debates and discussions. Over the last five years, the LCO has engaged with thousands of Ontarians on law reform projects.

LCO reports have led to legislative amendments and policy changes, promoted access to justice, and contributed significantly to public debates surrounding important law reform issues.

a. Advancing Law Reform

The LCO’s primary objective is to advance law reform in Ontario.

Between 2010 and the end of 2016, the Commission will complete nine major projects and circulate 19 final reports, interim reports, and discussion papers. Final reports during this period include:

- Legal Capacity, Decision-making and Guardianship, Expected Fall/Winter 2016
- Simplified Procedures for Small Estates, August 2015
- Capacity and Legal Representation for the Federal RDSP, June 2014
- Review of the Forestry Workers Lien for Wages Act, September 2013
- Increasing Access to Family Justice, February 2013
- Vulnerable Workers and Precarious Work, December 2012
- A Framework for the Law as it Affects Persons with Disabilities, September 2012
- Curriculum Modules: Framework for Teaching about Violence against Women, Aug. 2012
- A Framework for Law as it Affects Older Adults, April 2012

LCO projects are selected through a rigorous, participatory process that emphasizes the practical relevance and impact of projects on Ontarians, access to justice, and whether the LCO's independent, multidisciplinary perspective and participatory process will contribute to law reform in an area. LCO projects and final reports are approved by the LCO board of governors. The LCO board includes a cross-section of leaders within Ontario's justice community and is uniquely positioned to influence the development of law reform in Ontario.

By definition, LCO reports break new ground in law reform. For example, the LCO's two Framework projects (Persons with Disabilities, Older Adults) were comprehensive, innovative, and multidisciplinary analyses of how the law affects two of Ontario's most vulnerable communities. These projects were the first of their kind in Canada.

b. Relevance and Impact

The provincial government, justice organizations and others rely on the LCO to provide independent, authoritative advice on contemporary, complex and often controversial legal policy issues:

- The LCO's Last Stages of Life project is tackling important issues that potentially affect thousands of individuals, their families, lawyers, health care facilities, and others. Some of the issues considered in this project include:
 - Legal frameworks and regulation of palliative care in Ontario;
 - Advance care planning;
 - Consent and capacity issues at the end of life;
 - Authority to decide life-saving or life-sustaining treatment under *Health Care Consent Act*;
 - Regulation of palliative sedation and other medical procedures, and,
 - Accommodations and supports for individuals and families belonging to faith and cultural communities under the *Human Rights Code* and *Charter*.

This project complements and contributes to the multiple legislative and policy initiatives underway regarding medical aid in dying (MAID).

- The LCO's Legal Capacity, Decision-making and Guardianship project considers reforms to the complex laws, regulations, and practices governing legal capacity, substitute decision-making, and guardianship. Topics considered during this project include:
 - Concepts of legal capacity and how to improve capacity assessments;
 - Legal authority and accountability for substitute decision-makers;
 - Concepts and models of supported decision-making;
 - Regulation of powers of attorney;
 - Supports for individuals, decision-makers, families, professionals, and institutions; and,
 - Dispute resolution and rights enforcement in capacity and guardianship matters.

The laws considered in this project affect a wide spectrum of health professionals and institutions, including doctors, nurses, dentists, hospitals, retirement homes, and other care facilities. The laws also affect financial institutions, government ministries, regulated health colleges, community agencies, courts, tribunals, legal organizations, lawyers, and others.

- The LCO's Defamation in the Age of the Internet project considers how Ontario's defamation laws should account for the internet, social media, etc. The project considers the legal and social implications of the internet on *Charter* rights, free speech, reputation, privacy, and civil society.
- The LCO's Simplified Policy Tools project will develop innovative, accessible "toolkits" that can be used by policy-makers and advocates to advance rights of persons with disabilities and older adults.
- The LCO's Class Actions considers potential legislative amendments to the provincial *Class Proceedings Act*. This Act affects many of Canada's largest institutions and industries.
- The provincial government credited the LCO's report on vulnerable workers and precarious work for legislative amendments to the *Employment Standards Act*.
- The provincial government sought the LCO's advice and recommendations regarding how to respond to the Federal RDSP program.
- The LCO's Curriculum Modules for Teaching about Violence against Women contributed to the Premier's initiatives on domestic violence.

In addition to its formal reports, the LCO also supports law reform, policy making and critical debate through its background papers, forums, events, and roundtables. For example, the LCO's recent Forum on Open Data in the Justice System was the first event in Ontario to consider the implications of the provincial government's initiative to promote "big data" within Ontario's justice system. The Commission's upcoming "Roundtable: Legal Ethics and Practice for the Last Stages of Life" will bring together lawyers, the Law Society, academics, provincial policymakers and others for the first time to discuss challenges they foresee in this area of law.

The importance of the LCO's work has been recognized by the provincial government, legal stakeholders, the press, community organizations and the judiciary. Chief Justice Smith of the Superior Court provided the following comments on the LCO's Simplified Procedures for Small Estates:

This report is excellent! It tackles a current and very real problem facing the administration of estates in Ontario. It does so with very real and practical suggestions that will result in benefits to the people of Ontario seeking probate in small estates, while also promoting administrative efficiencies in the Superior Court of Justice and among staff in the Ministry of the Attorney General's Court Services Division (CSD). The simplified, plain language processes recommended for those who seek probate will result in benefits to thousands of Ontarians each year...

Similarly, the Toronto Star complemented the LCO's Interim Capacity report in an editorial that reads, in part,

The Law Commission of Ontario has issued excellent recommendations for making elder-care rules more rational and relevant. Queen's Park should listen.

c. Public Engagement

The LCO is leader in public engagement on law reform issues. Over the last five years, the LCO engaged with thousands of Ontarians on law reform projects. During this period, the LCO has consulted with governments, the legal professions, justice organizations, community organizations, and academics across Canada. Most importantly, however, the LCO has engaged with Ontarians and Ontario's diverse communities to ensure their perspectives help design and inform the Commission's work. The LCO has developed expertise on identifying and analyzing the experience of marginalized communities and the systemic barriers that individuals may face through law, policy and practice.

The Commission's project on Legal Capacity, Decision-Making and Guardianship provides a good example of the LCO's commitment to consultations and engagement with a broad cross-section of Ontarians. During the course of this project, the Commission has heard from more than 300 organizations and experts, organized 35 focus groups, dozens of stakeholder meetings, and consulted with approximately 800 Ontarians.

d. Third Mandate: Priorities and Strategic Planning

The LCO's current strategic plan expires at the end of 2016. The LCO board has committed to holding a board retreat in the fall of 2016 to consider a new strategic plan and other issues. The LCO will work with its funders and stakeholders to help the Commission identify the strategic priorities that will guide the LCO over the next several years. Potential priorities over the next three to five years could include:

- Enhancing the LCO's leadership in law reform and promoting access to justice;
- Promoting the relevance, impact and accessibility of the LCO's work;
- Improving the LCO's engagement to vulnerable communities, including Indigenous communities and racialized communities;
- Completing the LCO's current projects and initiating new ones;
- Promoting the LCO's role as an active, innovative partner in law reform and access to justice;
- Diversifying the LCO's funding, leveraging existing resources;
- Developing a digital strategy;
- Improving collaboration/partnerships/commitments to funders and stakeholders;
- Building internal capacity; and,
- Strengthening the LCO's relationship with law schools and the academic community.

LCO Renewal Backgrounder

1. What is the Law Commission of Ontario?

The Law Commission of Ontario (LCO) is a unique, innovative, and productive partnership between the provincial government, the Law Foundation of Ontario, the Law Society of Upper Canada, Osgoode Hall Law School, and the Law Deans of Ontario.

The LCO's mandate is to provide independent advice and recommendations on important law reform issues. The LCO promotes access to justice by making Ontario's laws more effective, accessible and just; making the law simpler and clearer; stimulating debate; and using technology to make the law more accessible to Ontarians.

The LCO conducts research, undertakes consultations, and makes recommendations on important and complex legal and social policy issues. The LCO emphasizes the need for multi-disciplinary research, broad consultations, and the importance of understanding the impact of law on the lives of Ontarians.

a. Why Is The LCO Important?

Ontarians expect their laws to be up-to-date, principled, and efficient. They expect that the analysis used to develop provincial laws will be rigorous, multidisciplinary, and based on extensive consultations with the persons and institutions most affected by them. They also expect their laws to be evidence-based and fair.

The LCO is important because it provides independent, balanced, and authoritative advice on some of Ontario's most complex and important legal policy issues. The LCO evaluates laws impartially, transparently and broadly. The LCO's analysis is informed by legal analysis; multi-disciplinary research; contemporary social, demographic and economic conditions; and the impact of rapid technological change. The LCO gives a voice to marginalized communities and others who are often left out of important law reform debates and discussions.

Finally, the LCO is important because it enhances the public's understanding of law reform and encourages informed, critical debate on important issues in Ontario's justice system.

LCO's reports have led to legislative amendments, policy changes, promoted access to justice, led to policy and program changes, and have contributed significantly to the public debate surrounding important law reform issues.

b. What Does the LCO Do?

The LCO provides principled, practical, “problem-solving” recommendations on some of most complex and far-reaching legal policy issues in the province today. Through this work, the LCO promotes access to justice, public debate and engagement on important issues, and evidence-based legislation and legal policies.

The LCO’s methodology has been developed over several years. It combines strong legal and multi-disciplinary research, contemporary public policy techniques, and a high level of public engagement. The LCO’s analysis is tested through an independent, transparent, and comprehensive review process that engages a broad range of individuals, experts, and institutions.

Most of the LCO’s work is project-related. Since its inception, the LCO has completed major reports on a broad range of far-reaching issues including: the law as it affects persons with disabilities; the law as it affects older adults; vulnerable workers and precarious work; the *Provincial Offences Act*; increasing access to family law; division of pensions; small estates; fees for cashing government cheques; and others.

The LCO also commissions background papers and organizes conferences, forums and symposiums. LCO staff also speak at events, write articles, and appear as guest lecturers at law schools and other faculties.

A description of the Commission’s current projects is included in section 2 below. Section 3 describes the LCO’s reports, consultations, and activities during its second mandate (2012-2016).

c. Who Benefits From the LCO?

The LCO fulfills its mandate when there is a high level of informed discussion and debate by the provincial government, justice system stakeholders, the legal professions, community agencies, academics, public and private institutions, and the general public on the projects it has undertaken.

Across Ontario, there are many beneficiaries of the LCO’s work:

- Government decision-makers and policy advisors at the provincial, national, and municipal levels;
- Legal system professionals, including the judiciary; legal tribunals, legal organizations, and individual members of the legal professions;
- Regulatory bodies such as the Law Society of Upper Canada, regulated health professions, and others that are involved in LCO policy areas;
- Private organizations and/or public institutions that are involved with legal issues or the justice system, such as hospitals and financial institutions;
- Community groups and agencies, community legal clinics, and individuals advocating for change;
- Academics and experts working in fields related to LCO projects.
- Law schools; and,
- The general public.

d. How Does The LCO Work?

Successful law reform requires the contribution of many individuals and institutions. The LCO does not pass laws or implement legal policy. The LCO's role is to make independent, thoughtful recommendations that provide principled and practical solutions to contemporary legal policy issues.

The LCO's ability to complete projects successfully is based on several factors:

- **Substantive Expertise.** The LCO has substantive expertise in the areas of legal and multidisciplinary research, law reform, access to justice and contemporary public policy techniques. The LCO also has notable expertise in issues related to vulnerable Ontarians, disability, human rights, inclusion, and the lived experience of law.
- **Community and Stakeholder Engagement.** The LCO engages communities and perspectives from across Ontario to help design and inform its work. For example, major LCO projects have an expert reference committee called an "Advisory Group" made up of a broad cross-section of experts, institutions, and persons with lived experience in the area of an LCO project. The Commission also organizes extensive public consultations and engagement, tailored to the particular needs of an individual project.
- **Multi-disciplinary Perspective.** The LCO ensures its work is informed by multiple perspectives. This approach ensures the Commission's work is relevant and responsive to the sometimes competing needs and perspectives of different stakeholders and sectors.
- **Ability to Leverage Resources and Build Partnerships.** The LCO's work is dependent upon its ability to build partnerships and leverage the support and contributions of individuals and organizations across Ontario. These contributions multiply the LCO's resources and impact significantly.
- **Project Planning and Management.** The LCO uses contemporary project planning and management tools to ensure projects are completed successfully, including project charters, timelines, resource requirements, critical paths, and other project management methodologies. LCO staff have monthly project update meetings; regular update reports to our board; and regular liaison and project updates to our funders, advisory committees, and partners.
- **Budget and Financial Management.** The LCO has comprehensive budgetary and financial management accountability of all activities and projects, including monthly budget update meetings; regular financial reports to the LCO board; and regular financial updates to our funders. The LCO also relies on the financial administration of Osgoode Hall Law School.

e. Board of Governors

The LCO's work is guided by a Board of Governors representing a broad cross-section of leaders within Ontario's justice community. The board includes the Deputy Attorney General; the Deans of Osgoode Hall Law School and the University of Windsor Faculty of Law; current and former justices of the Court of Appeal of Ontario; and several prominent lawyers and academics from across Ontario. The LCO board is uniquely positioned to influence the development of law reform in Ontario.

The current board's composition is:

- Professor Bruce Elman (at large, Chair as of September 2012);
- Stephen Goudge (appointed by the Law Foundation of Upper Canada);
- Patrick Monahan (Deputy Attorney General, appointed by MAG);
- Dean Lorne Sossin (appointed by Osgoode Hall Law School);
- Raj Anand (appointed by the Law Society of Upper Canada);
- Dean Christopher Waters (appointed by the Ontario Law Deans);
- Justice Harry LaForme (judicial appointment);
- Mark Berlin (at large appointment);
- Professor Maria Páez Victor (at large appointment);
- Sonia Ouellet (at large appointment); and,
- Andrew Pinto (at large appointment).
- Nye Thomas, LCO Executive Director, ex officio

f. LCO Staff, Secondments, Pro Bono and In-Kind Contributions

The LCO has a small, dedicated staff who have a high level of skill and expertise in law reform work. LCO staff are experts in legal and public policy research, consultation and stakeholder engagement strategies, and project management. LCO staff are supplemented by counsel seconded from the provincial Ministry of the Attorney General and law students from every law school in Ontario.

The LCO benefits from the strong support of Osgoode Hall Law School and York University, both of which provide important administrative, IT, HR, and other support in addition to direct financial contributions.

Finally, the LCO benefits from the incalculable support and pro bono contributions of a wide array of individuals, legal organizations, institutions, community groups and members of the general public. The importance and impact of these volunteer contributions to the LCO's work cannot be underestimated. Indeed, one of the hallmarks of the LCO model has been its ability to leverage the support and contributions of individuals and organizations. For example, during the LCO's second mandate (2012-2016), the LCO relied on the contributions of almost 180 individuals or organizations on its various project Advisory Groups. One Advisory Group met more than 30 times over the course of several years.

2. Current Projects

The LCO fulfills its mandate and promotes access to justice through its reports and projects.

Historically, the LCO's projects have fallen into two broad categories: 1) "first principles" projects that comprehensively review an area of law or policy and, 2) "black letter" projects that focus on narrower legal issues. Many LCO projects combine both a "first principles" and "black letter" approach.

The scope, importance, and potential impact of the LCO's work can be demonstrated with a review of the LCO's recent, current, and upcoming projects. The Commission's portfolio of projects turns over regularly as projects begin and conclude on different timetables. Recent, current, and future projects include:

a. Simplified Procedures for Small Estates

The LCO's Simplified Procedures for Small Estates final report was released in November 2015. The report is available at <http://www.lco-cdo.org/en/small-estates-final-report>. The report recommended a new, simplified process for administering small estates in Ontario. The response to the report has been very positive. For example, Chief Justice Smith of the Superior Court has written that:

This report is excellent! It tackles a current and very real problem facing the administration of estates in Ontario. It does so with very real and practical suggestions that will result in benefits to the people of Ontario seeking probate in small estates, while also promoting administrative efficiencies in the Superior Court of Justice and among staff in the Ministry of the Attorney General's Court Services Division (CSD). The simplified, plain language processes recommended for those who seek probate will result in benefits to thousands of Ontarians each year...

b. Legal Capacity, Decision-Making and Guardianship

The LCO's Legal Capacity, Decision-making and Guardianship project considers reforms to the complex laws, regulations, and practices governing Ontario's legal capacity, substitute decision-making, and guardianship regime.

The breadth and impact of this project is significant. Each year, capacity and guardianship laws affect tens of thousands of Ontarians and their families. The laws affect a wide spectrum of health professionals and institutions, including doctors, nurses, dentists, hospitals, retirement homes, and other care facilities. The laws also affect financial institutions, government ministries, regulated health colleges, community agencies, courts, tribunals, legal organizations, lawyers, and others.

The consultation process for this project has been the most extensive in the Commission's history. To date, the Commission has organized 35 focus groups, dozens of stakeholder meetings, and consulted with approximately 800 Ontarians.

The LCO released its Interim Report in the Capacity project on January 11, 2016. The report is available at <http://www.lco-cdo.org/en/capacity-guardianship-interim-report>. The Interim Report has been well received publicly and by stakeholders. Most notably, the Toronto Star ran an editorial complementing the report on the day following its release. The editorial reads, in part,

The Law Commission of Ontario has issued excellent recommendations for making elder-care rules more rational and relevant. Queen's Park should listen.

Consultations on the Interim Report have been completed and the LCO has begun to draft the final report.

c. Improving the Last Stages of Life

In 2015, the LCO initiated its Improving the Last Stages of Life project. This project considers the law, practices, identities, rights, and values of persons entering the last stages of their life. This project complements and contributes to the multiple legislative and policy initiatives underway in the province regarding physician-assisted death (PAD).

To date, the LCO has held approximately 60 consultations with stakeholder groups including health professionals, ethicists, lawyers who give advice on these issues, and representatives of professional regulatory bodies, administrative tribunals, community organizations and government.

The Commission will be hosting an educational program titled "Improving the Last Stages of Life: Understanding Professional Ethical Issues for Lawyers" in June 2016. The roundtable will bring together practicing lawyers, academics, the judiciary, policymakers and others to share the challenges they face or foresee in this area of the law.

d. Defamation Law in the Age of the Internet

In 2015, the Commission initiated a project titled *Defamation Law in the Age of the Internet*. This project considers if or how Ontario's defamation laws should account for technological developments such as the internet, social media, etc. The project is significant because it considers the legal and social implications of the internet on *Charter* rights, free speech, reputation, privacy, and civil society. This project is receiving considerable attention across Canada and internationally.

e. Class Actions

The LCO is continuing to work on its Class Actions project. This project considers potential legislative amendments to the provincial *Class Proceedings Act*. The Act governs legal proceedings affecting some of Canada's largest institutions and industries.

f. Forum on Open Government in the Justice System

The Commission organized a forum on Open Data in the Justice System in April 2016. The event was organized to consider recent initiatives by the provincial government to expand public access to government data and information. The forum was the first event in Ontario to consider the implications of this initiative for Ontario's justice system.

g. Projects in Development

The LCO has a number of projects in development. These are projects which the LCO has committed to but not yet begun. The LCO expects to address these projects in its third mandate.

a. Indigenous Issues

The LCO will be undertaking a dedicated project regarding Indigenous peoples. The specific topic has not been formalized, but the Commission is interested in issues related to Indigenous peoples and the criminal justice system. The Commission has been meeting with Indigenous organizations and leaders to determine an appropriate scope and process for this project. This is a high priority for the Commission. The project's success will depend on close collaboration with community leaders, justice system stakeholders, and others. Planning for this project to begin in the fall of 2016.

b. Regulation of Public Space

This project will consider issues related to the regulation and use of public space. The project will consider constitutional and human rights, municipal and planning law, trespass law, and other issues. This will be a multidisciplinary, innovative project that will emphasize community consultations, stakeholder engagement and participation, and comparative research. Planning for this project will begin in early 2017.

c. Simplified Policy Tools

The Commission is developing simplified policy instruments to encourage the use of the Framework projects described above. The project will adapt materials from Framework reports to assist decision-makers, policy staff, and community advocates in public and private organizations across Ontario. The “tools” will help individuals and organizations develop, review, interpret and apply disability-inclusive law, policy and practice at the institutional level. Specific tools could include:

- Checklists and charts;
- A Facilitator’s Guide;
- Workbook(s);
- Clear language guides;
- Educational materials, including on-line materials: and
- Links and references to additional resources.

d. Community Safety

The Commission has committed to undertaking a project on community safety. The project will follow up on earlier reports and initiatives in this area. For example, the Commission may research the scope and impact of the “collateral consequences” of a criminal conviction on community safety, including individual and community access to employment and other opportunities, and poverty reduction.

3. Second Mandate Report: 2012 To 2016

This section reports on the LCO’s activities during its second mandate (2012-2016).

e. Advancing Law Reform

The LCO’s primary objective is to advance law reform in Ontario. From this perspective, the LCO’s second mandate has been very productive. During this period, the Commission expects to complete nine major projects and to circulate 19 final reports, interim reports, or discussion papers. These projects and reports cover a wide range of legal policy issues, ranging from simplified procedures for small estates to family law reform to a major analysis of legal consent and capacity. The LCO’s reports and papers during this period include:

Final Reports

- Legal Capacity, Decision-Making and Guardianship, Expected Fall/Winter 2016
- Simplified Procedures for Small Estates, August 2015
- Capacity of Adults with Mental Disabilities and the Federal RDSP, June 2014
- Forestry Workers Lien for Wages Act, September 2013
- Increasing Access to Family Justice, February 2013
- Vulnerable Workers and Precarious Work, December 2012
- Framework for Law as it Affects Persons with Disabilities, September 2012
- Curriculum Model for Teaching about Violence against Women, August 2012
- Framework for Law as it Affects Older Adults, April 2012

Interim Reports

- Legal Capacity, Decision-Making and Guardianship, October 2015
- Vulnerable Workers and Precarious Work, August 2012
- Framework for Law as it Affects Persons with Disabilities, March 2012
- Increasing Access to Family Justice, February 2012

Discussion Papers/Consultation Papers

- Defamation in the Age of the Internet, Expected Fall/Winter 2016
- Last Stages of Life, Expected Summer 2016
- Simplified Procedures for Small Estates, September 2014
- Legal Capacity, Decision-Making and Guardianship, May 2014
- Capacity of Adults with Mental Disabilities and the Federal RDSP, December 2013
- Modernization of the Forestry Workers Lien for Wages Act, October 2012

By definition, LCO reports break new ground in law reform. For example, the LCO's two Framework projects (Persons with Disabilities, Older Adults) represent comprehensive, innovative, and multidisciplinary analyses of how the law affects two of Ontario's most vulnerable communities. The projects also developed pioneering "toolkits" to be used by policy-makers and advocates when analyzing existing laws or developing new ones. The projects were the first of their kind in Canada.

f. Promoting Knowledge/Research and Stimulating Critical Debate

The LCO has a mandate to promote knowledge and research on law reform issues and to promote critical debate about law and the justice system.

In addition to its authoritative final reports, the Commission promotes knowledge and research on law reform issues by commissioning and distributing high-quality research papers from leading academics

and practitioners, legal organizations, community organizations, and other experts. These papers contribute to the LCO's projects and the public discussion of law reform issues generally. The LCO's background papers are distributed widely by the LCO and others.

During the second mandate, the LCO commissioned and distributed almost 20 background papers from a diverse range of organizations and individuals. These reports are available on the LCO's website. These papers, like the LCO's reports, have contributed significantly to the public's knowledge and understanding of complex legal policy issues.

Examples of the LCO's background papers include:

- Health Care Consent and Advance Care Planning: Standards and Supports by the Advocacy Centre for the Elderly and Dykeman Dewhirst O'Brien LLP
- Understanding The Lived Experience Of Individuals, Caregivers And Families Touched By Frailty, Chronic Illness And Dementia in Ontario by Dr. Mary Chiu, Dr. Adrian Grek, Sonia Meerai, LJ Nelles, Dr. Joel Sadavoy & Dr. Virginia Wesson
- Integrating Religious And Cultural Supports Into Quality Care In The Last Stages Of Life In Ontario by Omar Ha-Redeye, Ruby Latif & Dr. Kashif Pirzada
- Congregate Living and the Law as It Affects Older Adults by the Advocacy Centre for the Elderly
- New Approaches to Enforcement and Compliance with Labour Regulatory Standards: The Case of Ontario, Canada by *Leah F. Vosko, Eric Tucker, Mark P. Thomas, Mary Gellatly*

The LCO also promotes knowledge and stimulates critical debate through speaking engagements, articles, guest lectures at law schools and other faculties, and by organizing topical forums and events. For example, the LCO's recent Forum on Open Data in the Justice System was first event in Ontario to consider the far-reaching implications of "big data" on Ontario's justice system. The forum considered the legal and practical balance between open government, privacy, and benefits and risks of open data in the justice system.

g. Public and Professional Engagement/Partnerships

LCO does not pass laws or implement legal policy. The success of the LCO is singularly dependent upon its ability to work constructively and successfully with its funders, partners, the legal community, governments, institutions, academics, Ontario's diverse communities, and the general public. Accordingly, the LCO places a very strong emphasis on public and professional engagement.

Over the last five years, the LCO engaged with thousands of Ontarians on law reform projects. During this period, it is fair to say that the LCO has become a leader in public engagement with Ontario's justice system. The LCO has worked with:

- The legal professions and legal organizations across Ontario;
- The Law Society of Upper Canada;
- The Law Foundation of Ontario;

- The Ministry of the Attorney General and many other provincial ministries;
- Municipalities and local governments; and,
- Legal academics, law schools, and other academics across Ontario and Canada.

Most importantly, however, the LCO has engaged with Ontario's diverse communities and the general public to ensure their perspectives help design and inform the Commission's work. The LCO has developed expertise on identifying and analyzing the experience of marginalized communities and the systemic barriers that individuals may face through law, policy and practice. This experience and commitment is reflected in a number of past and current LCO projects, including:

- Improving the Last Stages of Life
- Legal Capacity, Decision-Making and Guardianship
- Regulation of Public Space
- Capacity of Adults with Mental Disabilities and the Federal RDSP
- Increasing Access to Family Justice
- Vulnerable Workers and Precarious Work
- Framework for Law as it Affects Persons with Disabilities
- Framework for Law as it Affects Older Adults

The Commission's project on Legal Capacity, Decision-Making and Guardianship provides a good example of the LCO's commitment to consultations and engagement with a broad cross-section of Ontarians. During the course of this project, the Commission has heard from more than 300 organizations and experts, organized 35 focus groups, dozens of stakeholder meetings, and consulted with approximately 800 Ontarians.

Persons and organizations consulted with during this project include persons with lived experience with the law; community agencies and advocates; health professionals and institutions (doctors, nurses, dentists, hospitals, retirement homes, and other care facilities), financial institutions, government ministries, regulated health colleges, community agencies, courts, tribunals, legal organizations, lawyers (including lawyers with expertise in mental health law, trusts and estates, and health law), and others.

The LCO's 2012 project titled *A Framework for the Law as it Affects Persons with Disabilities* provides a similar though less extensive example. During this project, the LCO consulted more than 100 organizations and 150 persons with disabilities during the project's multi-year policy-development process.

h. Advisory Groups

Project Advisory Groups are another important method of promoting public and professional engagement with the LCO. The LCO establishes an expert Advisory Group for its major projects. Advisory Group members are carefully selected to provide the LCO with access to academic, lived and practical expertise, as well as a range of perspectives and skill sets.

During the second mandate, the Commission relied on 11 Advisory Groups with almost 180 members.

The Commission's 2012 *Framework for the Law as it Affects Persons with Disabilities* project provides a good example of the LCO's Advisory Group structure. This committee included 16 community representatives and experts, including

- Canadian Association for Independent Living;
- Psychiatric Patients' Advocacy Office;
- Canadian Hearing Society;
- Income Security Advocacy Centre;
- Centre for Addiction and Mental Health;
- Springtide Resources;
- Northwestern Independent Living Services;
- Legal Academics;
- Ryerson University;
- Ethno-Racial Persons with Disabilities Coalition of Ontario;
- ARCH Disability Law Centre;
- Ontario Human Rights Commission;
- Learning Disabilities Association of Ontario;
- Canadian Coalition for Seniors' Mental Health;
- Ontario Counsel of Agencies Serving Immigrants;
- Provincial government representatives.

The LCO's current *Defamation in the Age of the Internet* project provides another example. Advisory Group members for this project represent a broad cross-section of perspectives and experiences with defamation issues. The committee includes:

- Six senior defamation lawyers (both plaintiff and media defence counsel);
- Three academics (in defamation law, freedom of expression and the regulation of internet speech);
- A provincial government representative;
- A representative from the Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic;
- Two members of the judiciary (Ontario Superior Court and retired Supreme Court of Canada);
- A representative from the *Toronto Star*; and,
- A complainant who successfully sued for online defamation.

In order to reflect the multi-jurisdictional scope of internet defamation legal issues, the Advisory Group includes members from British Columbia, Alberta, New Brunswick and England in addition to Ontario.

i. Focus Groups, Surveys, Public Submissions, Etc.

The LCO also organizes focus groups, surveys and seeks submissions from the general public during its projects. For example, during the Legal Capacity, Decision-Making and Guardianship project, described above, the LCO received input from more than 300 individuals through surveys, individual submissions,

phone calls, emails or other means. The LCO also heard from approximately 170 persons during one of the LCO's eleven project focus groups. The focus groups included approximately 100 individuals with lived experience or their family members.

4. Priorities and Themes for the Third Mandate

A first step for the LCO's third mandate will be to initiate a strategic planning process to help the LCO identify strategic priorities and objectives to guide its work over the next three to five years. The LCO will also need to identify the infrastructure and capacities to ensure it can fulfil its chosen priorities. The LCO's new strategic plan will have to be focussed, achievable, and accessible.

The LCO believes that it has made a successful transition from an innovative start-up to a mature organization. The LCO has established itself as an independent, authoritative voice on important law reform issues in Ontario. Nevertheless, the LCO renewal process gives the Commission an opportunity to take stock of its successes, to identify its weaknesses, and to develop a process and plan that will guide the LCO over the next several years.

The long-term success of the LCO depends on its ability to produce independent, thoughtful, and practical reports on complex legal policy issues. The Commission's work also depends on building and maintaining successful relationships with its funders, the provincial government, legal organizations, law schools and academics, and a diverse range of communities across Ontario.

By definition, the Commission's projects address some of the most complex and far-reaching legal policy issues in the province today. Accordingly, the LCO must continue to emphasize strong legal and multidisciplinary research, contemporary public policy techniques, and a high level of public engagement. Successful law reform requires the contribution of many individuals and institutions.

The LCO board has committed to holding a board retreat in the fall of 2016 to consider a new strategic plan and other issues.

The LCO has provisionally identified a series of important projects or priorities that it may undertake in its third mandate. This list of priorities has not been finalized. Part of the LCO's next strategic planning process will be to identify and commit to the organization's objectives and strategies for the next five years. Subject to that qualification, the LCO's potential priorities over the next three to five years could include:

- Enhancing the LCO's leadership in law reform and promoting access to justice;
- Promoting the relevance, impact and accessibility of the LCO's work;
- Improving the LCO's engagement and outreach to vulnerable communities, including Indigenous communities and racialized communities;
- Completing the LCO's current projects; initiating new ones;
- Promoting the LCO's role as an active, innovative participant in contemporary law reform and access to justice issues in Ontario
- Diversifying the LCO's funding, leveraging existing resources

- Developing a digital strategy
- Improving collaboration/partnerships/commitments to funders and stakeholders
- Building internal capacity
- Strengthening the LCO's relationship with law schools and the academic community

5. Questions and Comments

Further information about the LCO is available on the LCO's website at www.lco-cdo.org.

Any questions or comments about the Law Commission of Ontario can be directed to:

Nye Thomas
Executive Director
Law Commission of Ontario
Osgoode Hall Law School
York University
2032 Ignat Kaneff Building
4700 Keele Street
Toronto, ON
M3J 1P3

(p) 416-650-8402
(c) 416-402-7267

Appendix B

LAW COMMISSION OF ONTARIO

THIS AGREEMENT is made in quintuplet this 1st day of December, 2011.

BETWEEN THE PARTIES:

**HER MAJESTY THE QUEEN in right of Ontario
As represented by the Attorney General**

- AND -

THE DEAN OF OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY

- AND -

THE LAW DEANS OF ONTARIO

- AND -

THE LAW FOUNDATION OF ONTARIO

- AND -

THE LAW SOCIETY OF UPPER CANADA

THE PARTIES AGREE AS FOLLOWS:

- 1. In this Agreement, unless the context otherwise requires:**
 - (a) "Board" means the Board of Governors established under subsection 4(1);**
 - (b) "Council" means the Community Council established under subsection 10(1);**

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- (c) **“Executive Director”** means the Executive Director hired under subsection 11(1);
 - (d) **“Law Commission”** means the Law Commission of Ontario established by this Agreement between the Parties;
 - (e) **“Law Deans”** means the Law Deans of the following law schools:
Osgoode Hall Law School, York University; Queen’s University Faculty of Law; University of Ottawa Faculty of Law – Common Law Section; University of Ottawa Faculty of Law – Civil Law Section, University of Toronto Faculty of Law; University of Western Ontario Faculty of Law; the University of Windsor Faculty of Law; and any new Faculty of Law established by the Ontario government.
 - (f) **“Law Foundation”** means the Law Foundation of Ontario;
 - (g) **“Law School Group”** means the Law School Research and Liaison Group established under subsection 9(1);
 - (h) **“Law Society”** means the Law Society of Upper Canada;
 - (i) **“Minister”** means Her Majesty the Queen in right of Ontario as represented by the Attorney General;
 - (j) **“Parties”** means Her Majesty the Queen in right of Ontario as represented by the Attorney General, the Dean of Osgoode Hall Law School, the Law Deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada.
2. (1) The Law Commission’s purpose is to recommend law reform measures to:
- (a) Enhance the legal system’s relevance, effectiveness and accessibility;
 - (b) Improve the administration of justice through the clarification and simplification of the law; and
 - (c) Consider the effectiveness and use of technology as a means to enhance access to justice.

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- (2) The Law Commission shall also:**
- (a) Stimulate critical debate about law and promote scholarly legal research; and**
 - (b) Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.**
- 3. In furtherance of its mandate, the Law Commission may:**
- (a) undertake, promote, initiate and evaluate studies and research;**
 - (b) support, publish, sell or otherwise disseminate studies, reports and other documents;**
 - (c) sponsor or support conferences, seminars and other meetings;**
 - (d) facilitate and support cooperative efforts among the Law Commission, governments, the academic community, the legal profession and other organizations and persons interested in the Commission's work; and**
 - (e) do all such things as are conducive to the furtherance of its purpose.**
- 4. (1) There is hereby established a governing body of the Law Commission called the Board of Governors and consisting of the following members:**
- (a) One person appointed by the Law Foundation of Ontario;**
 - (b) One person appointed by the Law Deans (other than Osgoode Hall Law School);**
 - (c) One person appointed by Osgoode Hall Law School;**
 - (d) One person appointed by the Ministry of the Attorney General;**
 - (e) One person appointed by the Law Society;**
 - (f) One person appointed by the judiciary; and**
 - (g) Other representatives as required and identified by the Board of Governors.**

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- (2) All appointments to the Board shall be for a period of three years.**
- (3) A member of the Board of Governors shall be eligible for reappointment to the Law Commission in the same or another capacity.**
- (4) Upon the expiry of a member's term of office, the member may continue in office until his or her reappointment or until his or her successor is appointed, as the case may be.**
- (5) A member who wishes to resign shall notify the Board of Governors and the body that appointed him/ her in writing to that effect, and the resignation becomes effective at the time the body receives the notice or at the time specified in the notice, whichever is the later.**
- (6) A member who is appointed to the Board of Governors shall not be appointed to the Law School Group or the Council.**
- (7) As a group, the members of the Board of Governors should be broadly representative of the regional and cultural diversity of the province of Ontario.**
- 5. (1) The Board of Governors may elect a Chair of the Board of Governors from among its members in accordance with clause 5(2), who shall preside over all meetings of the Board of Governors and in his/ her absence the Board of Governors may elect an Acting Chair to carry out the duties of the Chair.**
- (2) The Chair shall be selected based on the following criteria:**

 - (a) High level of professional achievement in his/ her field of endeavour;**
 - (b) Demonstrated commitment to law reform;**

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- (c) **Strong managerial and leadership skills;**
 - (d) **Interest in operational design and operational issues;**
 - (e) **Energetic and able to make the required time commitment; and**
 - (f) **Excellent interpersonal skills.**
6. **The members of the Board of Governors serve without remuneration, but shall be entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in the course of performing duties under this Agreement.**
7. (1) **The Board of Governors shall manage and conduct the affairs and business of the Law Commission and exercise the powers and perform the duties necessary to achieve the Law Commission's mandate and, without limiting the generality of the foregoing, shall:**
- (a) **be responsible for making final decisions regarding the research agenda, research projects and final reports;**
 - (b) **be responsible for overseeing the operational functioning of the Law Commission;**
 - (c) **make connections with the private bar and other Canadian and international law reform bodies, including the Uniform Law Conference of Canada; and**
 - (d) **be responsible for hiring the Executive Director, setting the terms of employment and developing the Executive Director's performance measures.**
- (2) **The Board of Governors may delegate any of its powers to committees named by it from among its members.**
8. (1) **The Board of Governors shall meet at such times as the Chair may determine.**

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- (2) A member of the Board of Governors may participate in a meeting of the Board of Governors or of a committee of the Board of Governors by means of such telephone or other communication facilities as permit all persons participating in the meeting to communicate with each other, and a member participating in a meeting is deemed for the purposes of this Agreement to be present at the meeting.
- (3) The Board of Governors shall not transact business unless half of the Board of Governors members referred to in subsection 4(1) are present.
9. (1) There is hereby established a Law School Research and Liaison Group, consisting of the following members:
- (a) The Executive Director (Chair);
 - (b) One person appointed by Osgoode Hall Law School, York University;
 - (c) One person appointed by Queen's University Faculty of Law;
 - (d) One person appointed by the University of Ottawa's Faculty of Law- Civil Law Section;
 - (e) One person appointed by the University of Ottawa Faculty of Law- Common Law Section;
 - (f) One person appointed by the University of Toronto's Faculty of Law;
 - (g) One person appointed by the University of Western Ontario's Faculty of Law;
 - (h) One person appointed by the University of Windsor's Faculty of Law;
 - (i) One person appointed by each new Faculty of Law established by the Ontario government.

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- (2) The Law School Group shall assist the LCO by:**

 - (a) identifying appropriate faculty members to undertake commissioned research;**
 - (b) sitting on *ad hoc* project advisory committees;**
 - (c) facilitating LCO engagement with the law schools; and**
 - (d) otherwise contributing to the research excellence of the LCO's work and relations with the law schools.**
- (3) The Law School Group shall meet at such times as the Chair may determine.**
- (4) A member of the Law School Group may participate in a meeting of the Group by means of such telephone or other communication facilities as permit all persons participating in the meeting to communicate with each other, and a member participating in a meeting is deemed for the purposes of this Agreement to be present at the meeting.**
- (5) Members of the Law School Group shall be appointed for a period of three years.**
- (6) A member of the Law School Group shall be eligible for reappointment to the Law Commission in the same or another capacity.**
- (7) Upon the expiry of a member's term of office, a member of the Law School Group may continue in office until his or her reappointment or until his or her successor is appointed, as the case may be.**
- (8) A member of the Law School Group who wishes to resign shall notify the Executive Director and the resignation becomes effective at the time the**

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Executive Director receives the notice or at the time specified in the notice, whichever is the later.

(9) A member who is appointed to the Law School Group shall not be appointed to the Board or to the Council.

(10) The members of the Law School Group shall serve without remuneration but shall be entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in the course of performing duties under this Agreement.

10. (1) There is hereby established a Community Council consisting of the following members:

- (a) The Executive Director (Chair); and**
- (b) other members as appointed by the Board of Governors.**

(2) The Council shall assist the Law Commission by:

- (a) facilitating engagement with diverse communities and sectors of Ontario;**
- (b) contributing skills and experience to the Law Commission's operation and projects; and**
- (c) otherwise contributing to the development of the Law Commission.**

(3) As a group, the members of the Council should be broadly representative of the regional and cultural diversity of the province of Ontario. Without excluding other relevant factors, selection of members shall take into consideration characteristics such as:

- (a) membership in Ontario's French language community;**
- (b) sex;**
- (c) sexual orientation;**

LAW COMMISSION OF ONTARIO

- (d) age;**
 - (e) abilities;**
 - (f) Aboriginal status;**
 - (g) cultural diversity;**
 - (h) geographic diversity;**
 - (i) expertise and skills relevant to the operation of the Law Commission.**
- (4) The Council shall meet at such times as the Chair of the Council shall determine.**
- (5) A member of the Council may participate in a meeting of the Council by means of such telephone or other communication facilities as permit all persons participating in the meeting to communicate with each other, and a member participating in a meeting is deemed for the purposes of this Agreement to be present at the meeting.**
- (6) Members of the Council shall be appointed for a period of three years.**
- (7) A member the Council shall be eligible for reappointment to the Law Commission in the same or another capacity.**
- (8) Upon the expiry of a member's term of office, a member of the Council may continue in office until his or her reappointment if the individual is to be reappointed.**
- (9) A member of the Council who wishes to resign shall notify the Executive Director and the resignation becomes effective at the time the Executive Director receives the notice or at the time specified in the notice, whichever is the later.**

LAW COMMISSION OF ONTARIO

- (10) A member who is appointed to the Council shall not be appointed to the Board or Law School Group.**
- (11) The members of the Council shall serve without remuneration but shall be entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in the course of performing duties under this Agreement.**
- 11. (1) There shall be an Executive Director who shall be appointed by the Board of Governors and who shall be responsible to the Board of Governors for the carrying out of the objectives of the Law Commission.**
- (2) Under the direction of the Chair of the Board of Governors, the Executive Director has the day-to-day supervision over the staff and work of the Law Commission.**
- (3) The Executive Director shall be a non-voting member of the Board of Governors and shall support the Board of Governors meetings and decision-making process.**
- (4) The Executive Director shall assist the Board of Governors to develop and support the research agenda, conduct requests for proposals, set timelines and provide project management.**
- (5) The Executive Director shall also assist the Board of Governors in the maintenance of ongoing stakeholder communications and management.**

LAW COMMISSION OF ONTARIO

- 12. The Law Commission, through the Executive Director, may employ legal staff and administrative and secretarial staff that may be required to carry out the mandate of the Law Commission.**
- 13. The office of the Law Commission shall be at Osgoode Hall Law School.**
- 14. Appointments and agreements on behalf of the Parties shall be made in writing under the signatures,**

 - (a) for her Majesty the Queen in right of Ontario, the Attorney General or his/ her designate;**
 - (b) for Osgoode Hall Law School, the Dean or his/ her designate;**
 - (c) for the Law Deans, the Chair or his/ her designate;**
 - (d) for the Law Foundation, the Chair or his/ her designate; and**
 - (e) for the Law Society, the Treasurer or his/ her designate.**
- 15. (1) The Board of Governors shall, on or before June 1 in each year, prepare for submission to the Minister, Osgoode Hall Law School, the Law Society and the Law Foundation, a budget for the next ensuing fiscal year.**

 - (2) Notwithstanding any other provision of this Agreement and as a condition precedent to the continuation of the Agreement, the Board of Governors shall obtain from the Minister, the Dean of Osgoode Hall Law School, the Law Society and the Law Foundation approval of the budget in each fiscal year.**
 - (3) The budget shall identify items of expenditure, describe items of expenditure and provide estimates of projected expenditures with respect to:**

 - (a) the salary and expenses payable to the Executive Director;**
 - (b) office and administration expenses, including administrative and secretarial staff and legal staff;**

LAW COMMISSION OF ONTARIO

- (c) provision of and addition to a research library and materials;
 - (d) expenses of all research projects, including services and expenses of persons retained;
 - (e) the expenses for members of the Board, the Law School Group and the Council; and
 - (f) any other matters the Board of Governors considers appropriate.
16. The Law Commission shall annually provide to the Parties an annual report on the affairs and business of the Law Commission during the preceding year, including, without limitation,
- (a) a financial statement and a summary statement of the source and application of funds for the previous fiscal year prepared and certified by an appropriate financial officer of Osgoode Hall Law School; and
 - (b) a summary of the Law Commission's activities and business affairs in its previous operating year.
17. (1) The term of this Agreement is from January 1, 2012 to December 31, 2016.
- (2) The term of this Agreement may be extended by mutual agreement of the Parties on any terms and conditions they may agree to.
 - (3) A party may terminate this Agreement before December 31, 2016 by giving the other Parties two years notice in writing, on or before March 31, in any year.
 - (4) If notice is given under subclause (3), the Party giving the notice shall, on giving the notice, provide a copy of the notice to the Executive Director.

LAW COMMISSION OF ONTARIO

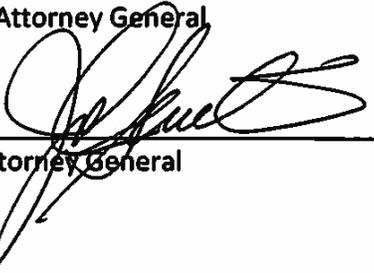
- 18. On the termination of this Agreement, unless otherwise specified, any property shall become the property of the successor organization to the Law Commission, if any. In the absence of such a successor organization, unless otherwise specified, such items shall revert to the donor.**

THE PARTIES have executed this Agreement by adding their signatures on the following page.

LAW COMMISSION OF ONTARIO

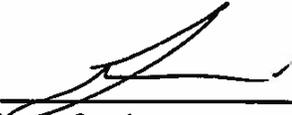
SIGNED, SEALED and DELIVERED by:

HER MAJESTY THE QUEEN in right of
the Province of Ontario, as represented
by the Attorney General

Per: 
Attorney General

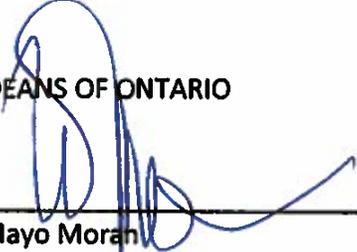
JAN. 19, 2012
Date

OSGOODE HALL LAW SCHOOL

Per: 
Lorne Sossin

Jan 19, 2012.
Date

LAW DEANS OF ONTARIO

Per: 
Mayo Moran

Feb 29, 2012
Date

LAW FOUNDATION OF ONTARIO

Per: 
Mark Sandler

Feb 27/2012
Date

LAW SOCIETY OF UPPER CANADA

Per: 
Laurie Pawlitz

February 13/12
Date

Appendix C

Column 1	Column 2	Column 3	Column 4	Column 5
Year 11	Year 12	Year 13	Year 14	Year 15
Proposed 2017/18	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22

A. CORE FUNDING**Revenue**

1	LFO	\$ 577,500	\$ 589,050	\$ 600,831	\$ 612,848	\$ 625,105
2	MAG	\$ 262,500	\$ 267,750	\$ 273,105	\$ 278,567	\$ 284,138
3	LSUC	\$ 144,900	\$ 147,798	\$ 150,754	\$ 153,769	\$ 156,844
4	OHLS	\$ 105,000	\$ 107,100	\$ 109,242	\$ 111,427	\$ 113,655
5	YU-VPA&P	\$ 25,200	\$ 25,704	\$ 26,218	\$ 26,742	\$ 27,277
6	YU-VPR&I	\$ 21,000	\$ 21,420	\$ 21,848	\$ 22,285	\$ 22,731
7	TOTAL REVENUE	\$ 1,136,100	\$ 1,158,822	\$ 1,181,998	\$ 1,205,638	\$ 1,229,751

Expenses

8	Salaries - FT & PT staff	\$ 719,736	\$ 737,688	\$ 756,089	\$ 774,950	\$ 794,282
9	Wages - Grad Students	\$ 37,000	\$ 37,000	\$ 37,000	\$ 37,000	\$ 37,000
10	Wages - LLB/JD	\$ 65,000	\$ 65,000	\$ 65,000	\$ 65,000	\$ 65,000
11	Total Salaries & Benefits	\$ 821,736	\$ 839,688	\$ 858,089	\$ 876,950	\$ 896,282
12	Consultants	\$ 4,000	\$ 4,000	\$ 4,000	\$ 84,000	\$ 4,000
13	Contract Researchers	\$ 70,000	\$ -	\$ 140,000	\$ 70,000	\$ -
14	Translation, Graphic Design, other	\$ 106,600	\$ 77,000	\$ 87,000	\$ 135,000	\$ 269,000
15	Contracts & Translation	\$ 180,600	\$ 81,000	\$ 231,000	\$ 289,000	\$ 273,000
16	Equipment Lease (copier/fax)	\$ 2,600	\$ 2,600	\$ 2,600	\$ 2,600	\$ 2,600
17	Furnishings	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250
18	Computer Equipment	\$ 10,000	\$ 10,000	\$ 2,500	\$ 10,000	\$ 10,000
19	Equip. Furniture & Bldgs	\$ 12,850	\$ 12,850	\$ 5,350	\$ 12,850	\$ 12,850
20	Postage and Couriers	\$ 4,100	\$ 7,600	\$ 600	\$ 7,600	\$ 4,100
21	Books, Publications	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
22	Advertising	\$ 1,700	\$ 2,900	\$ 500	\$ 2,900	\$ 1,700
23	Membership & Audit Fees	\$ 5,000	\$ 5,100	\$ 5,200	\$ 5,300	\$ 5,400
24	Software - Licence fees	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250
25	Office Supplies	\$ 2,800	\$ 2,800	\$ 2,800	\$ 2,800	\$ 2,800
26	Paper, Copying & Printing	\$ 6,600	\$ 8,100	\$ 5,100	\$ 8,100	\$ 6,600
27	Telephone Equipment & Rental	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000
28	Operating Costs	\$ 36,450	\$ 42,750	\$ 30,450	\$ 42,950	\$ 36,850
29	Functions & Hospitality	\$ 65,800	\$ 15,300	\$ 51,300	\$ 70,300	\$ 20,300
30	General Travel & Accommodation	\$ 15,050	\$ 14,300	\$ 15,300	\$ 28,300	\$ 16,800
31	Total Hospitality & Travel	\$ 80,850	\$ 29,600	\$ 66,600	\$ 98,600	\$ 37,100
32	TOTAL EXPENSES	\$ 1,132,486	\$ 1,005,888	\$ 1,191,489	\$ 1,320,350	\$ 1,256,082

Net Balance

33	Revenue - Expenses	\$ 3,614	\$ 152,934	-\$ 9,490	-\$ 114,711	-\$ 26,331
34	Carry Forward from previous years		\$ 3,614	\$ 156,549	\$ 147,058	\$ 32,347
35	Drawdowns on Unexpended Funds					
36	Balance Available	\$ 3,614	\$ 156,549	\$ 147,058	\$ 32,347	\$ 6,016

B. NON-CORE FUNDING

	(2017/18)	(2018/19)	(2019/20)	(2020/21)	(2021/22)
Revenue					
Less: Expenses					
Net Balance					

*To be presented to the LCO Board of Governors for approval on June 9, 2016

GENERAL NOTES

1. The Law Commission of Ontario's fiscal year is May 1st to April 30th.
2. This budget shows A. Core Funding, funding received from LCO's regular funders, and B. Non-Core Funding, special funding received for particular purposes.
3. *What are Unexpended Funds?*
In both Mandate 1 and 2, LCO funders have remitted funding by different methods: The LFO and the LSUC provided annual funding based on LCO expenditure for each year, not exceeding their proportion to total funding. However, OHLS and the MAG remitted their set annual commitment each year. Therefore, in years when the LCO spent less than the annual committed funding, the difference not expended was assigned as LCO *unexpended funds*.

In years when activity and expenditure were greater than the annual commitment, the LCO would request to drawdown on the *unexpended funds* from the LFO and the LSUC to cover any shortfall of funding for that year, in addition to their annual commitments.
4. *What is Carry Forward?*
When the LCO generated a surplus at the end of a fiscal year, that is when revenue exceeds expenditures, that surplus was carried forward to the next fiscal year. This differs from unexpended funds as the surplus derives from actual revenue received from all funders, rather than funds accumulated and withheld specifically from the LFO and the LSUC when the LCO spent less than the annual committed funding.
5. At the end of Mandate 3, the Rolling Budget should show that despite fluctuations in revenue and expenses, the net balance will be zero or as close to zero as possible.

NOTES
YEARS 11-15

A. Core Funding

- A(1) [Column 1, Line 7] This budget assumes a 5% increase in revenue from all LCO funders in Year 1 of Mandate 3 (LFO: \$577,500, MAG: \$262,500, LSUC: \$144,900, OHLS: \$105,000, YU-VPA&P: \$25,200, and YU-VPR&I: \$21,000 [VPA&P and VPR&I are considered part of OHLS contributions]).
- A(2) [Columns 2-5, Line 7] This budget assumes a 2% annual increase in revenue from all LCO funders beginning in Year 2 of Mandate 3.
- A(3) [Columns 1-5, Line 8] Salaries and benefits are for full-time, part-time and contract LCO staff and provide for a 2.5% annual across-the-board increase where applicable.
- A(4) [Columns 1-5, Line 9] Wagers are for one grad student working full-time in the summer, and one grad student working part-time in the fall/winter. The hourly rate has also been increased from \$32.92 to \$35.
- A(5) [Columns 1-5, Line 10] Wages are for three JD/LLB law students working full-time in the summer, three JD/LLB students working part-time in the fall/winter, one Work-Study student in the summer to assist in the office, one Work-Study student in the fall/winter, and one LAWS student for four weeks in the summer. The hourly rate has also been increased for the JD/LLB students from \$15 to \$17, and for the Work-Study student from \$13.50 to \$15.
- The Government of Ontario Work-Study program contributes \$3,000 per term towards wages.
- A(6) [Columns 1,2,3,5, Line 12] Funds in this budget line account for the spring/summer and fall/winter Liaison newsletter copy writing (\$4,000).
- A(7) [Column 4, Line 12] Funds in this budget line account for the spring/summer and

fall/winter Liaison newsletter copy writing (\$4,000) as well as a consultant for the Aboriginal project.

A(8) [Column 1, Line 13]

Funds in this budget line are allocated to four commissioned research papers in the Regulation of Public Space project.

A(9) [Columns 3-4, Line 13]

Funds in this budget line are allocated to commissioned research papers in the Redefining Parentage, Multifaceted Approaches to Community Safety project, and Aboriginal projects.

A(10) [Column 1, Line 14]

The Translation, Graphic Design, other category includes translation of reports and other documents, graphic design, typesetting of reports, brochures, posters, photography, Directors and Officers insurance and General Liability insurance, and services such as captioning, ASL used in consultations.

Funds in this budget line are allocated to translation costs for an interim report in the Improving the Last Stages of Life project, translation and graphic design costs for a final report in the Last Stages project, translation costs for an interim report in the Defamation Law in the Age of the Internet project, and translation costs for a discussion paper and interim report in the Public Space project.

A(11) [Column 2, Line 14]

Funds in this budget line are allocated to translation and graphic design costs for a final report in the Defamation project, and translation and graphic design costs for a final report in the Public Space project.

A(12) [Columns 3-5, Line 14]

Funds in this budget line are allocated to translation and graphic design costs for discussion papers, interim reports and final reports in the Redefining Parentage, Community Safety and Aboriginal projects.

A(13) [Columns 1-5, Line 18]

Funds in this category are allocated to the replacement of several laptops and desktops that are due to be out of warranty.

- A(14) [Column 1, Line 20] Postage and couriers expenses include the mail out of reports newsletters and holiday cards.
- Funds in this budget line also account for the mail out of the final report in the Last Stages project.
- A(15) [Column 2, Line 20] Funds in this budget line also account for the mail out of the final reports in the Defamation and Public Space projects.
- A(16) [Columns 3-5, Line 20] Funds in this budget line also account for the mail out of the final reports in the Redefining Parentage, Community Safety and Aboriginal projects.
- A(17) [Columns 1-5, Line 21] Funds in this category are allocated to an annual subscription for the Canadian Law List published by Thomson Reuters Canada Ltd (\$399), an annual subscription for the Ontario Lawyer's Phonebook (\$189), and miscellaneous.
- A(18) [Column 1, Line 22] Funds in this budget line are allocated to advertising fees for the final report in the Last Stages project.
- A(19) [Column 2, Line 22] Funds in this budget line are allocated to advertising fees for the final reports in the Defamation and Public Space projects.
- A(20) [Columns 3-5, Line 22] Funds in this budget line are allocated to advertising fees for the final reports in the Redefining Parentage, Community Safety and Aboriginal projects.
- A(21) [Columns 1-5, Line 23] Funds in this budget line are allocated to Audit fees and membership fees, including FOLRAC.
- A(22) [Column 1, Line 26] Paper, Copying and Printing expense relates to the printing of the reports, newsletters, brochures, posters and programs for events and business cards.
- Funds in this budget line are allocated to a final report in the Last Stages project, a spring/summer and fall/winter Liaison

newsletter, a spring/summer project booklet, holiday cards and miscellaneous.

- A(23) [Column 2, Line 26] Funds in this budget line are allocated to final reports in the Defamation and Public Space projects, a spring/summer and fall/winter Liaison newsletter, a spring/summer project booklet, holiday cards and miscellaneous.
- A(24) [Columns 3-5, Line 26] Funds in this budget line are allocated to final reports in the Redefining Parentage, Community Safety and Aboriginal projects, a spring/summer and fall/winter Liaison newsletter, a spring/summer project booklet, holiday cards and miscellaneous.
- A(25) [Columns 1-5, Line 27] Telephone Equipment & Rental expense includes conference calls for board meetings, advisory group meetings, smart-phone charges and monthly office telephone-rental and call charges.
- A(26) [Column 1, Line 29] Functions and Hospitality expense includes catering and room set up charges relating to consultations in current projects, LCO events, student events, board meetings, and project advisory group meetings.
- Funds in this budget line are allocated to consultations and advisory group meetings in the Last Stages, Defamation and Public Space projects, a webinar event in the Defamation project, a public launch in the Last Stages project, the annual funders meeting, visits to all of Ontario’s law schools by the ED, and miscellaneous.
- A(27) [Column 2, Line 29] Funds in this budget line are allocated to public launches in the Defamation and Public Space projects, the annual funders meeting, visits to all of Ontario’s law schools by the ED, and miscellaneous.
- A(28) [Columns 3-5, Line 29] Funds in this budget line are allocated to consultations, advisory group meetings, events and public launches in the Redefining Parentage, Community Safety and Aboriginal projects, the annual

fundraising meeting, visits to all of Ontario's law schools by the ED, and miscellaneous.

A(29) [Columns 1-5, Line 30] General Travel and Accommodation expense relates to travel reimbursements to members of the LCO Board of Governors, Community Council, Law School Research and Liaison Group and Advisory Groups, the Executive Director, LCO staff and students, to attend meetings and events.

A(30) [Column 5, Line 36] The LCO will balance the budget, or come as close as possible to balancing the budget, at the end of Mandate 3.

B. Non-Core Funding

The LCO will seek outside funding for the Simplified Policy Tools project and the Class Actions project (save costs for the Class Actions database as it has already been budgeted for in the 2016/17 fiscal year).

TAB 4



Report to Convocation

June 23, 2016

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

Committee Members
Julian Falconer, Co-Chair
Janet Leiper, Co-Chair
Dianne Corbiere, Vice-Chair
Sandra Nishikawa, Vice-Chair
Raj Anand
Fred Bickford
Suzanne Clément
Teresa Donnelly
Robert Evans
Avvy Go
Howard Goldblatt
Marian Lippa
Isfahan Merali
Barbara Murchie
Gina Papageorgiou
Susan Richer
Raj Sharda

Purpose of Report: Decision and Information

**Prepared by the Equity Initiatives Department
(Ekua Quansah – 416-947-3425)**

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For Information

Human Rights Monitoring Group – Responses to Interventions [TAB 4.2](#)

Equity Legal Education and Rule of Law Calendar 2016 [TAB 4.3](#)

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on June 23, 2016. Committee members, benchers Julian Falconer, Co-Chair, Dianne Corbiere, Vice-Chair, Sandra Nishikawa, Vice-Chair, Raj Anand, Fred Bickford, Suzanne Clément, Teresa Donnelly, Robert Evans, Howard Goldblatt, Marian Lippa, Isfahan Merali, Barbara Murchie and Raj Sharda attended. Former Treasurer W.A. Derry Millar participated. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, Kathleen Lickers, representative of the Indigenous Advisory Group and Jonathan Davey, Vice-Chair of the Equity Advisory Group also participated. Staff members Darcy Belisle, Hyacinth Khin, Denise McCourtie, Ekuia Quansah, Susan Tonkin and Grant Wedge were present.

TAB 4.1

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS

2. **That Convocation approve the letters and public statements in the following cases:**
 - a. **Lawyer Juan Carlos Gutiérrez – Venezuela – letter of intervention and public statement presented at [TAB 4.1.1](#).**
 - b. **Lawyer Nabeel Adib Abdallah – Sudan – letter of intervention and public statement presented at [TAB 4.1.2](#).**
 - c. **Lawyer Jean Kisumbule Muteba – Democratic Republic of the Congo – letter of intervention and public statement presented at [TAB 4.1.3](#).**
 - d. **Lawyer Negad El-Borai – Egypt – letter of intervention and public statement presented at [TAB 4.1.4](#).**
 - e. **Lawyer Taimoor Karimi – Bahrain – letter of intervention and public statement presented at [TAB 4.1.5](#).**

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 harassment of lawyer Juan Carlos Gutiérrez:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the harassment of lawyer Juan Carlos Gutiérrez falls within the mandate of the Monitoring Group.
5. The Monitoring Group considered the following factors when making a decision about the harassment of lawyer Nabeel Adib Abdallah:
 - a. there are no concerns about the quality of sources used for this report;

- b. the harassment of lawyer Nabeel Adib Abdallah falls within the mandate of the Monitoring Group.
6. The Monitoring Group considered the following factors when making a decision about the murder of Jean Kisumbule Muteba:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the murder of lawyer Jean Kisumbule Muteba falls within the mandate of the Monitoring Group.
7. The Monitoring Group considered the following factors when making a decision about the harassment of human rights lawyer Negad El-Borai:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the harassment of lawyer Negad El-Borai falls within the mandate of the Monitoring Group.
8. The Monitoring Group considered the following factors when making a decision about the harassment and imminent expulsion of lawyer Taimoor Karimi:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the harassment and imminent expulsion of lawyer Taimoor Karimi falls within the mandate of the Monitoring Group.

KEY BACKGROUND

VENEZUELA – JUDICIAL HARASSMENT OF LAWYER JUAN CARLOS GUTIÉRREZ

Sources of Information

9. The background information for this report was taken from the following sources:
 - a. International Bar Association's Human Rights Institute

Background

10. Juan Carlos Gutiérrez is a lawyer in Venezuela and Colombia and counsel to Venezuelan opposition leader and political prisoner Leopoldo López. Detained in February 2014 after participating in a series of peaceful demonstrations, Leopoldo López was convicted of incitement, criminal association and arson. In September 2015, he was sentenced to 13 years and nine months in prison.¹

¹ "Venezuela: IBAHRI concerned by harassment of lawyer Juan Carlos Gutiérrez in Venezuela, 5 May

11. The Law Society has received reports that on 25 April 2016 Juan Carlos Gutiérrez filed a formal complaint before the National Prosecutor's Office. In his complaint he stated that he was subjected to several humiliating practices by military authorities at the Ramo Verde prison, where Leopoldo López has been detained since February 2014. The impugning conduct includes: strip searches; verbal and physical assaults; and intrusive and inappropriate touching. Juan Carlos Gutiérrez also alleges he was deprived of several personal belongings by prison authorities.²
12. Juan Carlos Gutiérrez asserts that his ability to represent his client has been impeded by unjustified restrictions on his communications with Leopoldo López. Moreover, Juan Carlos Gutiérrez alleges that prison authorities have eroded solicitor-client privilege by recording all of his meetings with his client and by reading, and occasionally confiscating, lawyer-client communications without permission. Juan Carlos Gutiérrez also alleges that prison authorities have photographed him without consent and have accessed information on his mobile phone.³
13. On 5 May 2016 Baroness Helena Kennedy, International Bar Association's Human Rights Institute (IBAHRI) Co-Chair, released the following public statement: *'We are deeply concerned about the recurrent persecution and obstacles deployed against lawyers and human rights defenders involved in politically sensitive cases in Venezuela. The attacks on their work affect not only their rights, but undermine the rights of the defendant, harms the effectiveness of any defence and imposes undue restrictions on due process. Moreover, these actions create a deterrent effect, silencing other views and expressions of dissent by those exercising their right to freedom of expression. The Venezuelan government must stop such attacks and take necessary measures to ensure a safe environment for lawyers so that they can perform their professional functions free from any kind of harassment.'*⁴

SUDAN – HARASSMENT AGAINST HUMAN RIGHTS LAWYER NABEEL ADIB ABDALLAH

Sources of Information

14. The background information for this report was taken from the following sources:
 - a. Lawyers' Rights Watch Canada.

Background

15. The Law Society has received reports that on 5 May 2016, Sudan's National Intelligence and Security Services (NISS) agents raided the office of prominent lawyer and rights

2016," online: International Bar Association's Human Rights Institute (IBAHRI) < <http://www.ibanet.org> >

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

activist Nabeel Adib Abdallah. Several university students were arrested at the scene. The authorities have provided no justification for the raid and have not cited any specific charges. It is currently unclear whether Nabeel Adib Abdallah himself was also arrested.⁵

16. The raid came after the Vice Chancellor of the University of Khartoum reportedly shut down the university indefinitely and dismissed 17 students for involvement in recent human rights demonstrations. Some of the students went to Abdallah's office to hire him to challenge the dismissal decision.⁶
17. On 11 May 2016, Lawyers Rights Watch Canada (LRWC) published an open letter to the President of Sudan citing their belief that Nabeel Adib Abdallah has been targeted with harassment and arrest due to his human rights work. The raid is seen as part of the overall pattern of suppression and harassment of human rights activists in Sudan.⁷

DEMOCRATIC REPUBLIC OF THE CONGO – MURDER LAWYER JEAN KISUMBULE MUTEBA

Sources of Information

18. The background information for this report was taken from the following sources:
 - a. International Association of Lawyers; and
 - b. Lawyers for Lawyers.

Background

19. The Law Society has received reports that on 27 February 2016, Jean Kisumbule Muteba, a lawyer in the Democratic Republic of the Congo, was murdered at Bandalungwa, Kinshasa. The motivation for the crime remains unknown.⁸
20. Edouard Mukendi Kalambayi, President of the Bar Association of Kinshasa/Gombe, called on national authorities to investigate the crime and bring the responsible individuals to justice. On 7 March 2016, the International Association of Lawyers (UIA) published an open letter to Edouard Mukendi Kalambayi expressing its support for a fulsome investigation and urging the authorities to conduct an impartial investigation. In their letter, the UIA also noted the recent increase in the number of assaults on lawyers and human rights defenders in the Democratic Republic of the Congo.⁹

⁵ "Re: Arbitrary Arrest and Detention of Human Rights Defender Nabeel Adib Abdullah and University Students, 11 May 2016," online: Lawyers' Rights Watch Canada < <http://www.lrwc.org> >

⁶ *Ibid.*

⁷ *Ibid.*

⁸ "DRC Lawyer Jean Kisumbule Muteba shot dead, 27 February 2016," online: Lawyers for Lawyers < <http://www.advocatenvooradvocaten.nl> >

⁹ "The UIA condemns the murder of lawyer Jean Kisumbule Muteba," online: International Association of Lawyers < <http://www.uianet.org> >

21. On 2 March 2016, Edouard Mukendi Kalambayi issued a press release reporting that Congolese authorities had made several commitments regarding Jean Kisumbule Mutea's crime, as well as with respect to the security of lawyers in general. This movement followed protests from lawyers about the circumstances of the murder of Jean Kisumbule Muteba and about the general safety of lawyers.¹⁰
22. On 8 April 2016, the UIA wrote to Congolese authorities to express concern about the safety of lawyers in the Democratic Republic of the Congo and to inform them that they will continue to attentively follow the course of the investigation and the situation of lawyers in the country.¹¹

EGYPT– JUDICIAL HARASSMENT OF HUMAN RIGHTS LAWYER NEGAD EL-BORAI

Sources of Information

23. The background information for this report was taken from the following sources:
 - a. Daily News Egypt; and
 - b. Observatory for the Protection of Human Rights Defenders.

Background

24. The Law Society has received reports of the continued judicial harassment of Mr. Negad El-Borai, human rights lawyer and Director of the "United Group – Attorneys-at-law, Legal Advisors" (United Group).
25. According to the information received, Mr. Negad El-Borai was summoned to an investigation on 17 May 2016 in relation to a complaint filed by the High Judicial Council. The complaint relates to Negad El-Borai's work on an anti-torture bill in March 2015, and his advocacy before the Egyptian authorities for its adoption in April 2015. The complaint also relates to a workshop that Negad El-Borai organized in order to discuss the proposed bill.¹²
26. Negad El-Borai has been summoned to five investigations in this case. Following the fourth investigation on 3 March 2016, he was arrested, released and charged with "establishing an unlicensed entity for the intent of inciting resistance to the authorities", "implementing human rights activities without a license", "deliberately spreading false information with the purpose of harming public order or public interest" and "receiving funds from the National Center for State Courts (NCSC)".¹³

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² "Egypt: Continuing judicial harassment against Mr. Negad El-Borai, 17 May 2016," online: Observatory for the Protection of Human Rights Defenders < <https://www.fidh.org> >

¹³ "UPDATE: Investigations postponed for rights lawyer over anti-torture bill, 17 May 2016," online: Daily News Egypt <<http://www.dailynewsegypt.com>>

27. On 17 May 2016, the Observatory for the Protection of Human Rights Defenders (the "Observatory") published a letter condemning the ongoing judicial harassment of Negad El-Borai. Furthermore, the Observatory expressed its concern that human rights defenders and organizations fighting against torture in Egypt are being increasingly targeted by the authorities. The letter also noted that the criminalization of anti-torture work comes in the context of a dramatic deterioration of the human rights situation in Egypt, which has been marked by a crackdown on civil society and an increase in reported cases of torture, deaths in detention and disappearances.¹⁴

BAHRAIN– JUDICIAL HARASSMENT AND IMMINENT EXPULSION OF HUMAN RIGHTS LAWYER TAIMOOR KARIMI

Sources of Information

28. The background information for this report was taken from the following sources:
- c. Amnesty International;
 - d. Reuters; and
 - e. Human Rights Watch.

Background

29. Taimoor Karimi is a Shi'ite Muslim lawyer who participated in Bahrain's pro-democracy protests in 2011 and defended some of the movement's most prominent activists. In 2014, Taimoor Karimi was one of ten individuals whose Bahraini citizenship was withdrawn without due process.¹⁵ Bahraini authorities have obstructed his right to appeal the decision to revoke his citizenship. Taimoor Karimi has fought the order for three years, during which time he has lost his government issued identification, job and bank account.¹⁶
30. On 10 August 2014, the public prosecutor issued a court summons to Taimoor Karimi for "violations of asylum and immigration law" that include remaining in Bahrain without the residence license that all non-nationals over 16 are required to have. Since the Appeal Court in Manama upheld his sentence on 23 May, he has been at imminent risk of expulsion from Bahrain.¹⁷
31. On 26 May 2016, Amnesty International called for urgent action for appeals to be sent in English and in Arabic, addressing the King of Bahrain, the Ministry of Interior and the

¹⁴ "Egypt: Continuing judicial harassment against Mr. Negad El-Borai, 17 May 2016," online: Observatory for the Protection of Human Rights Defenders < <https://www.fidh.org>>

¹⁵ "Bahrain: Citizenship Rights Stripped Away, 21 August 2014," online: Human Rights Watch < <https://www.hrw.org>>

¹⁶ "Bahrain punishes opponents by revoking their citizenship, 31 March 2016," online: Reuters < <http://ca.reuters.com>>

¹⁷ "Urgent Action: Stateless lawyer at imminent risk of expulsion, 24 May 2016," online: Amnesty International < <https://www.amnesty.org>>

Minister of Justice and Islamic Affairs urging them not to proceed with the expulsion of Taimoor Karimi, and to rescind the decision stripping him of his Bahraini citizenship.¹⁸

¹⁸ *Ibid.*

TAB 4.1.1

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

JUAN CARLOS GUTIÉRREZ

His Excellency, Nicolás Maduro
President of Venezuela
Final Avenida Urdaneta, Esq. de Bolero,
Palacio de Miraflores,
Caracas, Capital District,
Venezuela

Dear President:

Re: Harassment of Lawyer Juan Carlos Gutiérrez

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment of lawyer Juan Carlos Gutiérrez. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Juan Carlos Gutiérrez is a lawyer and and counsel to Venezuelan opposition leader and political prisoner Leopoldo López.

It has come to our attention that on 25 April 2016, Juan Carlos Gutiérrez filed a formal complaint before the National Prosecutor's Office. In his complaint he stated that he was subjected to several humiliating practices by military authorities at the Ramo Verde prison, where Leopoldo López has been detained since February 2014. The impugning conduct includes: strip searches; verbal and physical assaults; and intrusive and inappropriate touching. Juan Carlos Gutiérrez also alleges he was deprived of several personal belongings by prison authorities.

Juan Carlos Gutiérrez asserts that his ability to represent his client has been impeded by unjustified restrictions on his communications with his client. Moreover, he alleges that prison authorities have eroded solicitor-client privilege by recording all of his meetings with his client and by reading, and occasionally confiscating, confidential lawyer-client communications without permission. Juan Carlos Gutiérrez alleges that prison authorities have photographed him without consent and have accessed information on his mobile phone.

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 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 Venezuela to:

- a. put an end to all acts of harassment against Juan Carlos Gutiérrez as well as other lawyers and human rights defenders in Venezuela;
- b. guarantee in all circumstances the physical and psychological integrity of Juan Carlos Gutiérrez; and
- c. 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 49,000 lawyers and 7,600 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:

Ambassador-Designate Wilmer Omar Barrientos Fernández
32 Range Road
Ottawa, Ontario K1N 8J4
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

Chairperson, Caracas Bar Association

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

Gabriela 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 Letter to Lawyers' Associations

Dear [Name],

Re: Harassment of human rights lawyers Juan Carlos Gutiérrez

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to His Excellency, Nicolás Maduro, President of Venezuela, expressing our deep concerns over reports of the harassment of lawyer Juan Carlos Gutiérrez.

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 Ekua Quansah, Associate Counsel, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@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 49,000 lawyers and 7,400 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
- Chairperson, Caracas Bar Association
- 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
- Gabriela 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 grave concerns about the harassment of lawyer Juan Carlos Gutiérrez

Juan Carlos Gutiérrez is a lawyer and counsel to Venezuelan opposition leader and political prisoner Leopoldo López.

It has come to our attention that on 25 April 2016, Mr Gutiérrez filed a formal complaint before the National Prosecutor's Office. In his complaint he stated that he was subjected to several humiliating practices by military authorities at the Ramo Verde prison where Mr López has been detained since February 2014. The impugning conduct includes: strip searches; verbal and physical assaults; and intrusive and inappropriate touching. Juan Carlos Gutiérrez also alleges he was deprived of several personal belongings by prison authorities.

Juan Carlos Gutiérrez asserts that his ability to represent his client has been impeded by unjustified restrictions on his communications with his client. Moreover, he alleges that prison authorities have eroded solicitor-client privilege by recording all of his meetings with his client and by reading, and occasionally confiscating, confidential lawyer-client communications without permission. Juan Carlos Gutiérrez alleges that prison authorities have photographed him without consent and have accessed information on his mobile phone.

The Law Society of Upper Canada urges the government of Venezuela 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 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 Venezuela to:

- a. put an end to all acts of harassment against Juan Carlos Gutiérrez as well as other lawyers and human rights defenders in Venezuela;
- b. guarantee in all circumstances the physical and psychological integrity of Juan Carlos Gutiérrez; and
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 4.1.2

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

NABEEL ADIB ABDALLAH

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

Dear President:

Re: Harassment of Lawyer Nabeel Adib Abdallah

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment of lawyer Nabeel Adib Abdallah. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Nabeel Adib Abdallah is a prominent lawyer and rights activist. The Law Society has received reports that on 5 May 2016, Sudan's National Intelligence and Security Services (NISS) agents raided Nabeel Adib Abdallah's office, confiscating property and arresting several university students. The authorities have provided no justification for the raid and have not cited any specific charges, nor any other information about the removal of Nabeel Adib Abdallah's property. It is unclear whether Nabeel Adib Abdallah himself was also arrested at the scene.

The raid came after the Vice Chancellor of the University of Khartoum reportedly shut down the university indefinitely and dismissed 17 students for their involvement in human rights demonstrations. The students went to Nabeel Adib Abdallah's office in order to engage him to challenge the dismissal decision when they were arrested.

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 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 Sudan to:

- a. put an end to all acts of harassment against Nabeel Adib Abdallah as well as other lawyers and human rights defenders in Sudan;
- b. guarantee in all circumstances the physical and psychological integrity of Nabeel Adib Abdallah;
- c. guarantee all the procedural rights that should be accorded to Nabeel Adib Abdallah and other human rights lawyers and defenders in Sudan; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,600 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:

Ambassador Mahomoud Fadl Abdelrasoul

354 Stewart Street
Ottawa,
Ontario
K1N 6K8

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

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

Kenneth Roth, Executive Director, Human Rights Watch

Al-Tayeb Haroun, Chairman, Sudanese Bar Association

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

Gabriela 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 Letter to Lawyers' Associations

Dear [Name],

Re: Harassment of human rights lawyer Nabeel Adib Abdallah

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to His Excellency, Omar Hassan Ahmad al-Bashir, President of Sudan, expressing our deep concerns over reports of the harassment of lawyer Nabeel Adib Abdallah.

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 Ekua Quansah, Associate Counsel, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@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 49,000 lawyers and 7,400 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
- Al-Tayeb Haroun, Chairman, Sudanese Bar Association
- 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
- Gabriela 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 grave concerns about the harassment of human rights lawyer Nabeel Adib Abdallah

Nabeel Adib Abdallah is a prominent lawyer and rights activist. The Law Society has received reports that on 5 May 2016, Sudan's National Intelligence and Security Services (NISS) agents raided Nabeel Adib Abdallah's office, confiscating property and arresting several university students. The authorities have provided no justification for the raid and have not cited any specific charges, nor any other information about the removal of Nabeel Adib Abdallah's property. It is unclear whether Nabeel Adib Abdallah himself was also arrested at the scene.

The raid came after the Vice Chancellor of the University of Khartoum reportedly shut down the university indefinitely and dismissed 17 students for their involvement in recent human rights demonstrations. The students went to Nabeel Adib Abdallah's office in order to engage him to challenge the dismissal decision when they were arrested.

The Law Society of Upper Canada urges the government of Sudan 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, economic 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 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 Sudan to:

- a. put an end to all acts of harassment directed toward Nabeel Adib Abdallah as well as other lawyers and human rights defenders in Sudan;

- b. guarantee in all circumstances the physical and psychological integrity of Nabeel Adib Abdallah;
- c. guarantee all the procedural rights that should be accorded to Nabeel Adib Abdallah and other human rights lawyers and defenders in Sudan;
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 4.1.3

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

JEAN KISUMBULE MUTEBA

His Excellency President Joseph Kabila Kabange
Gombe, Kinshasa
Democratic Republic of Congo

Dear President:

Re: Murder of Lawyer Jean Kisumbule Muteba

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the murder of lawyer Jean Kisumbule Muteba. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society received reports that on 27 February 2016 Jean Kisumbule Muteba, a lawyer in the Democratic Republic of Congo, was murdered at Bandalungwa, Kinshasa. The motivation for the crime remains unknown.

Edouard Mukendi Kalambayi, President of the Bar Association of Kinshasa/Gombe, called on national authorities to investigate the crime and bring the responsible individuals to justice. On 7 March 2016, the International Association of Lawyers (UIA) sent a letter to Edouard Mukendi Kalambayi expressing its support for a fulsome and impartial investigation. In their letter, the UIA noted the recent increase in assaults on lawyers and human rights defenders in the Democratic Republic of the Congo.

On 2 March 2016, Edouard Mukendi Kalambayi issued a press release reporting that Congolese authorities had made several commitments regarding Jean Kisumbule Muteba's murder. This movement followed protests from lawyers about the circumstances of the murder of Jean Kisumbule Muteba and about the safety of lawyers in general.

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 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 the Democratic Republic of Congo to:

- a. conduct a fair, impartial and independent investigation into on the murder of Jean Kisumbule Muteba in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations; and
- c. 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 49,000 lawyers and 7,600 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:

Mr Dominique Kilufya Kamfwa, Ambassador

Congolese (Dem) Embassy in Ottawa, Canada
18 Range Road
Ottawa, ON K1N 8J3
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

President, National Bar Association, Democratic Republic of the Congo

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

Gabriela 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 Letter to Lawyers' Associations

Dear [Name],

Re: Murder of lawyer Jean Kisumbule Muteba

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to His Excellency, President Joseph Kabila Kabange, President of the Democratic Republic of Congo, expressing our deep concerns over reports of the murder of lawyer Jean Kisumbule Muteba.

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 Ekua Quansah, Associate Counsel, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@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:

- 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
- President, National Bar Association, Democratic Republic of the Congo
- 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
- Gabriela 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 grave concerns about the murder of lawyer Jean Kisumbule Muteba

The Law Society received reports that on 27 February 2016 Jean Kisumbule Muteba, a lawyer in the Democratic Republic of Congo, was murdered at Bandalungwa, Kinshasa. The motivation for the crime remains unknown.

Edouard Mukendi Kalambayi, President of the Bar Association of Kinshasa/Gombe, called on national authorities to investigate the crime and bring the responsible individuals to justice. On 7 March 2016, the International Association of Lawyers (UIA) sent a letter to Edouard Mukendi Kalambayi expressing its support for a fulsome and impartial investigation. In their letter, the UIA noted the recent increase in the number of assaults on lawyers and human rights defenders in the Democratic Republic of the Congo.

On 2 March 2016, Edouard Mukendi Kalambayi issued a press release reporting that Congolese authorities had made several commitments regarding Jean Kisumbule Muteba's murder. This movement followed protests from lawyers about the circumstances of the murder of Jean Kisumbule Muteba and about the safety of lawyers in general.

The Law Society of Upper Canada urges the government of Democratic Republic of Congo 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 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 the Democratic Republic of Congo to:

- a. conduct a fair, impartial and independent investigation into on the murder of Jean Kisumbule Muteba in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations; and
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 4.1.4

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

NEGAD EL-BORAI

Abdel Fattah el-Sisi
President of the Arab Republic of Egypt
Abedine Palace
Cairo, Egypt

Dear President:

Re: Harassment of lawyer Negad El-Borai

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment of lawyer Negad El-Borai. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society received reports of the continued judicial harassment of Mr. Negad El-Borai, human rights lawyer and Director of the “United Group – Attorneys-at-law, Legal Advisors” (United Group).

According to the information received, Negad El-Borai was summoned to an investigation on 17th May 2016 in relation to a complaint filed by the High Judicial Council. The complaint relates to Negad El-Borai’s work on an anti-torture bill in March 2015, and his advocacy before the Egyptian authorities for its adoption in April 2015. The complaint also relates to a workshop that Negad El-Borai organized in order to discuss the proposed bill.

The investigation of 17th May 2016 represented the fifth such investigation in this case. Following the fourth investigation on 3 March 2016, he was arrested, released and charged with “establishing an unlicensed entity for the intent of inciting resistance to the authorities”, “implementing human rights activities without a license”, “deliberately spreading false information with the purpose of harming public order or public interest” and “receiving funds from the National Center for State Courts (NCSC)”.

On 17th May 2016, the Observatory for the Protection of Human Rights Defenders (the “Observatory”) published a letter condemning the ongoing judicial harassment of Negad El-Borai. Furthermore, the Observatory expressed its concern that human rights defenders and organizations fighting against torture in Egypt are being increasingly targeted by the authorities. The letter also noted that the criminalization of anti-torture work comes in the context of a dramatic deterioration of the human rights situation in Egypt, which has been marked by a crackdown on civil society and an increase in reported cases of torture, deaths in detention and disappearances.

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.

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The Law Society urges the government of Egypt to:

- a. put an end to all acts of harassment against Negad El-Borai as well as other lawyers and human rights defenders in Egypt;
- b. Immediately and unconditionally withdraw all charges against Negad El-Borai;
- c. guarantee all the procedural rights that should be accorded to Negad El-Borai and other human rights lawyers and defenders in Egypt;
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,600 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:

Moataz Mounir Moharram Zahran
Ambassador of the Arab Republic of Egypt
454 Laurier Avenue East
Ottawa
ON K1N 6R3

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

President, Egyptian Bar Association

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

Gabriela 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 Letter to Lawyers' Associations

Dear [Name],

Re: Harassment of lawyer Negad El-Borai

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to His Excellency, Abdel Fattah el-Sisi, President of the Arab Republic of Egypt, expressing our deep concerns over reports of the harassment of lawyer Negad El-Borai.

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 Ekua Quansah, Associate Counsel, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@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:

- 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
- President, Egyptian Bar Association
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
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PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the harassment of lawyer Negad El-Borai

The Law Society received reports of the continued judicial harassment of Mr. Negad El-Borai, human rights lawyer and Director of the “United Group – Attorneys-at-law, Legal Advisors” (United Group).

According to the information received, Negad El-Borai was summoned to an investigation on 17th May 2016 in relation to a complaint filed by the High Judicial Council. The complaint relates to Negad El-Borai’s work on an anti-torture bill in March 2015, and his advocacy before the Egyptian authorities for its adoption in April 2015. The complaint also relates to a workshop that Negad El-Borai organized in order to discuss the proposed bill.

The summons of 17th May 2016 was the fifth of its kind: Negad El-Borai was summoned to four previous investigations in the same case. Following the fourth investigation on 3 March 2016, he was arrested, released and charged with “establishing an unlicensed entity for the intent of inciting resistance to the authorities”, “implementing human rights activities without a license”, “deliberately spreading false information with the purpose of harming public order or public interest” and “receiving funds from the National Center for State Courts (NCSC)”.

On 17th May 2016, the Observatory for the Protection of Human Rights Defenders (the “Observatory”) published a letter condemning the ongoing judicial harassment of Negad El-Borai. Furthermore, the Observatory expressed its concern that human rights defenders and organizations fighting against torture in Egypt are being increasingly targeted by the authorities. The letter also noted that the criminalization of anti-torture work comes in the context of a dramatic deterioration of the human rights situation in Egypt, which has been marked by a crackdown on civil society and an increase in reported cases of torture, deaths in detention and disappearances.

The Law Society of Upper Canada urges the government of Egypt to consider Articles 16 and 23 of the United Nations’ *Basic Principles on the Role of Lawyers*.

Article 16 states:

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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 Egypt to:

- a. put an end to all acts of harassment against Negad El-Borai as well as other lawyers and human rights defenders in Egypt;
- b. Immediately and unconditionally withdraw all charges against Negad El-Borai;
- c. guarantee all the procedural rights that should be accorded to Negad El-Borai and other human rights lawyers and defenders in Egypt;
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 4.1.5

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

TAIMOOR KARIMI

His Highness Shaikh Khalifa Bin Salman Al Khalifa
Prime Minister's Office
P.O. Box 1000
Government Road
Manama
Kingdom of Bahrain

Dear Prime Minister:

Re: Harassment and imminent expulsion of lawyer Taimoor Karimi

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment and imminent expulsion of lawyer Taimoor Karimi. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Taimoor Karimi is a Shi'ite Muslim lawyer who took part in Bahrain's pro-democracy protests in 2011 and defended some of the prominent activists who were jailed afterwards. In 2014, Taimoor Karimi was one of ten individuals whose Bahraini citizenship was withdrawn without due process. Bahraini authorities have obstructed Taimoor Karimi's right of appeal and refused to justify the decision to revoke his citizenship. Taimoor Karimi has fought the order for three years, during which time he has lost his government issued identification, job and bank account.

On 10 August 2014, the public prosecutor issued a court summons to Taimoor Karimi for "violations of asylum and immigration law" that include remaining in Bahrain without the residence license that all non-nationals over 16 are required to have. Since the Appeal Court in Manama upheld his sentence on 23 May 2016, he has been at imminent risk of expulsion from Bahrain.

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

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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 Bahrain to:

- a. immediately reinstate Taimoor Karimi's citizenship;
- b. put an end to all acts of harassment against Taimoor Karimi as well as other lawyers and human rights defenders in Bahrain;
- c. Immediately and unconditionally withdraw all charges against Taimoor Karimi;
- d. guarantee all the procedural rights that should be accorded to Taimoor Karimi and other human rights lawyers and defenders in Bahrain;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

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cc:

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

President, Bahrain Bar Association

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

Gabriela 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 Letter to Lawyers' Associations

Dear [Name],

Re: Harassment and imminent expulsion of lawyer Taimoor Karimi

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to His Highness, Shaikh Khalifa Bin Salman Al Khalifa, Prime Minister of Bahrain, expressing our deep concerns over reports of the harassment and imminent expulsion of lawyer Taimoor Karimi.

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 Ekua Quansah, Associate Counsel, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

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The Law Society urges the government of Bahrain to:

- a. immediately reinstate Taimoor Karimi's citizenship;

- b. put an end to all acts of harassment against Taimoor Karimi as well as other lawyers and human rights defenders in Bahrain;
- c. Immediately and unconditionally withdraw all charges against Taimoor Karimi;
- d. guarantee all the procedural rights that should be accorded to Taimoor Karimi and other human rights lawyers and defenders in Bahrain;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 4.2

FOR INFORMATION

**HUMAN RIGHTS MONITORING GROUP
RESPONSES TO INTERVENTIONS**

32. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
33. In May 2016, the Monitoring Group received three responses to the Law Society’s recent intervention letters:
- The Monitoring Group received a response from the Bar Council of India regarding the case of lawyers [Shalini Gera and Isha Khandewal](#) (India).
 - The Monitoring Group received correspondence directly from Shalini Gera and Isha Khandelwal thanking the Law Society for its intervention in their case.
 - The Monitoring Group received a response directly from lawyer [Sirikan Charoensiri](#) (Thailand), thanking the Law Society for its intervention and providing additional information about her case.

EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR 2016

32. The Equity Legal Education and Rule of Law Series calendar is presented at [TAB 4.3.1](#).

TAB 4.3.1

EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR

Summer 2016

CELEBRATION OF INDIGENOUS PEOPLES EVENT

Date: June 23, 2016

Time and Location:

Panel Discussion: 3:00 – 5:00 p.m.*

Reception: 5:00 – 6:00 p.m.

Osgoode Hall, 130 Queen St. W., Toronto

*This program will also be available as a live webcast

Description:

What Does Reconciliation Mean to You?

In honour of National Aboriginal History Month, join the Law Society and partners for the Celebration of Indigenous Peoples Event.

This event will feature presentations from the following participants:

- Jeffery Hewitt (Osgoode Hall Law School)
- Sarah Morales (University of Ottawa, Faculty of Law)
- Andrée Boisselle (Osgoode Hall Law School)
- Deborah McGregor (Osgoode Hall Law School)
- Kathleen Lickers (Indigenous Advisory Group to the Law Society)

Presentations will be facilitated by Dianne Corbiere, Law Society Benchler, on a number of topics related to reconciliation, including:

- What are law schools and the Law Society doing to respond to the Truth and Reconciliation Calls to Action?
- How can training promote Intercultural competence?
- How do we understand Indigenous legal perspectives as a basis for achieving reconciliation?
- Is reconciliation grounded in the land?
- How can you advance reconciliation through the practice of law?

Additional information available at the following link:

<http://www.lawsocietygazette.ca/event/nahm-2016/>

PRIDE WEEK EVENT

Date: June 28, 2016

Time and Location:

Panel Discussion: 5:30 – 7:00 p.m.*

Reception: 7:00 – 8:00 p.m.

Osgoode Hall, 130 Queen St. W., Toronto

*This program is also available as a live webcast

Description: June 2016 will mark the first-ever Pride Month in Canada. Join the Law Society of Upper Canada and the Sexual Orientation and Gender Identity Law Section of the Ontario Bar Association for a program in honour of this important occasion.

Additional information available at the following link:

<http://www.lawsocietygazette.ca/event/pride-2016/>



TAB 5

**Report to Convocation
June 23, 2016**

Tribunal Committee

Committee Members

Barbara Murchie (Chair)
Peter Wardle (Vice-Chair)
Raj Anand
Larry Banack
Marion Boyd
Jack Braithwaite
Christopher Bredt
Robert Burd
Lee Ferrier
Rocco Galati
Isfahan Merali
Baljit Sikand

Purpose of Report: Decision and Information

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

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Tribunal 2016 First Quarter Statistics	TAB 5.3

COMMITTEE PROCESS

1. The Committee met on June 9, 2016. Committee members Barbara Murchie (Chair), Peter Wardle (Vice-Chair) Raj Anand, Larry Banack, Marion Boyd, Jack Braithwaite, Chris Bredt, Robert Burd, Lee Ferrier, Isfahan Merali and Baljit Sikand participated. Bencher Joseph Groia attended part of the meeting. Tribunal Chair, David Wright, and staff members Grace Knakowski and Lisa Mallia attended part of the meeting. Staff member Sophia Spurdakos also attended.

DECISION

**PROPOSED AMENDMENTS TO THE LAW SOCIETY
TRIBUNAL HEARING DIVISION AND APPEAL DIVISION
RULES OF PRACTICE AND PROCEDURE****Motion**

2. That Convocation approve the proposed French and English amendments to the Law Society Tribunal Hearing Division and Appeal Divisions Rules of Practice and Procedure set out in the motion at [TAB 5.1.1: Amendments to HD and AD Rules](#).

Proposal under Consideration

3. A number of housekeeping and minor amendments to the Law Society Tribunal Rules of Practice and Procedure (“Rules”) are proposed for Convocation’s approval. They are set out at [TAB 5.1.1: Amendments to HD and AD Rules](#).
4. The amendments will clarify and update Tribunal procedures and reflect Convocation policy.

Key Issues and Considerations

5. There are four changes proposed:
 - a. Rule 5: The Tribunal does a significant proportion of case management through correspondence to and from the panel through the Tribunal Office. This is a positive development as it reduces the number of Proceedings Management Conference (PMC)/conference call appearances on issues that do not require in-person attendance.

Currently, however, when directions on a matter are made through this approach they do not form part of the record. This proposed Rule amendment clarifies that all directions will be given by way of an endorsement and ensures that all directions – when at or outside a hearing – are in the same format or on the record.
 - b. Rule 12 – The amendment clarifies the language around those PMCs that occur in writing. It is not a substantive change but rather replaces the words “exchange of documents” with “written submissions,” a more accurate expression of what is intended and clearer to those using the Rules.

- c. Rule 13 –The Rule currently lists certain types of motions that must be made by way of Notice of Motion. For all other motions the Rule provides that they should be brought by notice of motion unless “unnecessary” as a result of the circumstances. The panel before whom a motion without notice is brought determines whether the Notice is unnecessary. Currently a number of the motions listed in the Rule are routinely done without motion (e.g. that a hearing or part of a hearing be held in the absence of the public). The proposal simply removes the enumerated motions and leaves discretion with the panel, which is best situated to consider the issues.
- d. Appeal Division Rules 1.2 – The rule is corrected to reflect Convocation’s discontinuation of the Consent Resolution Conference and the addition of new Rule 29 in the Hearing Division rules.

TAB 5.1.1

THE LAW SOCIETY OF UPPER CANADA

LAW SOCIETY TRIBUNAL

RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2016

MOVED BY

SECONDED BY

THAT Convocation amend the Law Society Tribunal Hearing Division Rules of Practice and Procedure, made by Convocation on March 12, 2014, and amended by Convocation on May 22, 2014, September 24, 2014, October 30, 2014, February 25, 2016, and April 28, 2016 and the Law Society Tribunal Appeal Division Rules of Practice and Procedure, made by Convocation on March 12, 2014 and amended by Convocation on October 30, 2014 by,

Hearing Division

1. adding Rule 5.02 as indicated at [Tab 5.1.1.1](#);
2. revoking Rule 12.02 and replacing it with the revised Rule 12.02 as indicated at [Tab 5.1.1.1](#);
3. revoking Rule 13.01(1) and approving the consequential renumbering of Rule 13.01 as indicated at [Tab 5.1.1.1](#);

Appeal Division

4. approving consequential amendments to Rule 1.2 as a result of the discontinuation of the Consent Resolution Conference and the addition new Rule 29 as indicated at [Tab 5.1.1.2](#).

BARREAU DU HAUT-CANADA

TRIBUNAL DU BARREAU

RÈGLES DE PRATIQUE ET DE PROCÉDURE

MOTION À PRÉSENTER À LA RÉUNION DU CONSEIL DU 23 JUIN 2016

PRÉSENTÉE PAR

APPUYÉE PAR

QUE le Conseil modifie comme suit les règles de pratique et de procédure de la Section de première instance du Tribunal du Barreau adoptées par le Conseil le 12 mars 2014, et modifiées par le Conseil le 22 mai 2014, le 24 septembre 2014, le 30 octobre 2014, le 25 février 2016 et le 28 avril 2016, et les règles de pratique et de procédure de la Section d'appel du Tribunal du Barreau adoptées par le Conseil le 12 mars 2014, et modifiées par le Conseil le 30 octobre 2014 :

Section de première instance

1. En ajoutant la règle 5.02 tel qu'indiqué à [l'onglet 5.1.1.1](#) ;
2. En abrogeant la règle 12.02 et en la remplaçant par la règle 12.02 révisée tel qu'indiqué à [l'onglet 5.1.1.1](#) ;
3. En abrogeant la règle 13.01 (1) et en approuvant la numérotation corrélative de la règle 13.01 tel qu'indiqué à [l'onglet 5.1.1.1](#) ;

Section d'appel

4. En approuvant les modifications corrélatives de la règle 1.2 par suite de la discontinuation de la conférence de résolution par consentement préalable à l'instance et de l'ajout de la nouvelle règle 29 tel qu'indiqué à [l'onglet 5.1.1.2](#)

RULE 5 COMMUNICATION WITH PANEL AND CASE MANAGEMENT DIRECTIONS

5.01 No party, non-party participant, representative or other person who attends at or participates in a hearing shall communicate with a panel outside of the hearing with respect to the subject matter of the hearing except,

(a) in the presence of all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives; or

(b) in writing by sending the written communication to the Tribunal Office and a copy of the written communication to all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives.

5.02 By endorsement, a panel may make case management directions following written communications under Rule 5.01(b) or at any other time.

12.02 A proceeding management conference may be held in person, by telephone conference, ~~by exchange of documents~~ by written submissions or by any combination of the ~~se formats~~ se formats-mentioned formats.

RÈGLE 5 COMMUNICATION AVEC LA FORMATION ET DIRECTIVES DE GESTION DE L'INSTANCE

5.01 Les parties, les tiers, les représentants ou les personnes qui assistent ou participent à une audience ne doivent pas communiquer avec la formation à l'égard de l'objet de l'audience en dehors de celle-ci, sauf, selon le cas :

- a) en présence de toutes les parties et de tous les tiers qui ont été autorisés à participer à l'audience à l'égard de l'objet de la communication, ou de leurs représentants;
- b) par écrit, en envoyant la communication écrite au greffe du Tribunal et sa copie à toutes les parties et à tous les tiers qui ont été autorisés à participer à l'audience à l'égard de l'objet de la communication, ou à leurs représentants.

5.02 La formation peut, par inscription, donner des directives sur la gestion de l'instance suite à une communication écrite en vertu de la règle 5.01 b) ou à tout autre moment.

12.02 La conférence de gestion de l'instance peut avoir lieu en présence des parties, par conférence téléphonique, par observations écrites ou par une combinaison de ces modalités. ~~par échange de documents ou par une combinaison de ces modalités.~~

RULE 13 MOTIONS

Making the motion

13.01 ~~(1)~~ — ~~The following motions shall be made by notice of motion (Form 13A):~~

- ~~1. — A motion relating to the jurisdiction of the Hearing Division.~~
- ~~2. — A motion to stay or dismiss a proceeding.~~
- ~~3. — A motion raising any constitutional issues, including issues raised under the Canadian Charter of Rights and Freedoms.~~
- ~~4. — A motion relating to disclosure.~~
- ~~5. — A motion that a hearing or a part of a hearing in a proceeding be held in the absence of the public.~~
- ~~6. — A motion to prohibit a person from disclosing information disclosed in a hearing.~~

Same

~~(1)(2)~~ A motion ~~not mentioned in subrule (1)~~ shall be made by notice of motion (Form 13A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Contents of notice of motion: motion for order for hearing in absence of public or for non-disclosure

~~(2)(3)~~ In a motion for an order that a hearing or a part of a hearing in a proceeding be held in the absence of the public or for an order prohibiting a person from disclosing information disclosed in a hearing, the moving party shall include in the notice of motion the grounds upon which the order is sought but shall not include in the notice of motion the specific matters, document or communication in respect of which the order is sought.

RÈGLE 13 MOTIONS

Présentation des motions

13.01 (1) ~~Les motions suivantes sont présentées par voie d'avis de motion (formulaire 13A) :~~

~~1. Les motions portant sur la compétence de la Section de première instance.~~

~~2. Les motions en suspension ou rejet de l'instance.~~

~~3. Les motions soulevant des questions constitutionnelles, notamment dans le cadre de la Charte canadienne des droits et libertés;~~

~~4. Les motions portant sur la divulgation.~~

~~5. Les motions visant à obtenir que tout ou partie d'une audience tenue dans le cadre d'une instance se déroule à huis clos.~~

~~6. Les motions visant à interdire la divulgation de renseignements rendus publics au cours d'une audience.~~

Idem

(2) Les motions qui ne figurent pas au paragraphe (1) sont présentées par voie d'avis de motion (formulaire 13A) sauf si l'avis n'est pas nécessaire en raison des circonstances ou de la nature de la motion.

Teneur de l'avis de motion : motion visant à obtenir une ordonnance de huis clos ou de non-divulgation

(32) Sur motion visant à obtenir une ordonnance disposant que tout ou partie d'une audience tenue dans le cadre d'une instance se déroule à huis clos ou interdisant la divulgation de renseignements rendus publics au cours d'une audience, l'auteur de la motion précise, dans l'avis de motion, les motifs à l'appui de celle-ci, sans toutefois faire mention des questions, des communications ou des documents particuliers visés par l'ordonnance.

APPEAL DIVISION

RULE 1 APPLICATION AND INTERPRETATION

Application

1.1 These Rules, apply to proceedings before the Appeal Division that are commenced on or after July 1, 2012.

Application of Hearing Division Rules

1.2 (1) Except where otherwise provided by these Rules, the Hearing Division Rules, where appropriate and with necessary modifications, apply to proceedings before the Appeal Division.

(2) The following Hearing Division Rules do not apply to proceedings before the Appeal Division:

1. Rule 6 [Adding Parties].
2. Rule 7 [Joinder or Severance of Proceedings].
3. Rule 9 [Commencement, Amendment and Abandonment of Proceedings].
4. Rule 11 [Scheduling].
5. Rule 12 [Proceedings Management].
6. Rule 16.04 [Motion under Rule 21: no notice required].
7. Rule 19 [Disclosure].
8. Rule 20 [Admissions].
9. Rule 21 [Suspension or Restriction Order].
10. Rule 22 [Pre-Hearing Conferences].
11. Rule 23.01 [Consent to hearing by one panelist].
12. Rule 29 [~~Consent Resolution Conference~~Retired Judge Appearing As Counsel Proceedings and Working With or Employing Unauthorized Persons Proceedings].

SECTION D'APPEL

RÈGLE 1 APPLICATION ET INTERPRÉTATION

Application

1.1 Les présentes règles s'appliquent aux instances introduites devant la Section d'appel après le 1^{er} juillet 2012.

Application des règles de la Section de première instance

1.2 (1) Sauf dispositions contraires des présentes règles, les règles de la Section de première instance, s'il y a lieu et avec les adaptations nécessaires, s'appliquent aux instances tenues devant la Section d'appel.

(2) Les règles suivantes de la Section de première instance ne s'appliquent pas aux instances tenues devant la Section d'appel :

1. Règle 6 [Jonction des parties].
2. Règle 7 [Réunion ou séparation des instances].
3. Règle 9 [Introduction, modification et désistement d'une instance].
4. Règle 11 [Fixation des dates].
5. Règle 12 [Gestion des instances].
6. Règle 16.04 [Motion présentée en vertu de la règle 21 : avis non obligatoire].
7. Règle 19 [Divulgateion].
8. Règle 20 [Aveux].
9. Règle 21 [Ordonnances de suspension ou de restriction].
10. Règle 22 [Conférences préparatoires à l'audience].
11. Règle 23.01 [Consentement à l'instruction de l'instance par un seul membre].
12. Règle 29 [~~Conférence sur la résolution de la cause avec consentement~~
Instances portant sur un juge à la retraite qui plaide à titre d'avocat désire
plaider comme avocat et instance sur la rétention des services d'une
personne non autorisée ou sur son embauche].

INFORMATION

TRIBUNAL ANNUAL REPORT 2015

6. Pursuant to the June 2012 Tribunal Reform Report (the “2012 Report”) the Tribunal Chair is to provide an Annual Report to Convocation on Tribunal operations.
7. The Tribunal Annual Report - 2015, in French and English, is set out at **TABS 5.2.1: 2015 Annual Report (English)** and **5.2.2: 2015 Annual Report (French)** for Convocation’s information.
8. The Annual Report requirement provides for an annual snapshot of the Tribunal’s operations and developments. The 2015 Tribunal Annual Report also provides an overview to the progress of the 2012 reforms implementation. As an electronic document the Annual Report enables readers to access additional, more specific information in many of the areas touched on. As a public document it also reflects the Tribunal’s and the Law Society’s commitment to transparent processes.



Law Society Tribunal
Tribunal du Barreau

ANNUAL REPORT

MESSAGE FROM THE CHAIR >

BUILDING THE TRIBUNAL >

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TRIBUNAL METRICS >

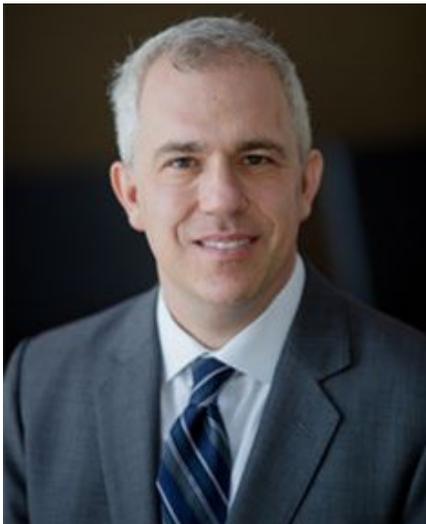
2015

Message from the Chair

2015 was a busy year for the Law Society Tribunal, filled with many changes to enhance the Tribunal's unique, independent model of adjudication within the Law Society of Upper Canada.

In early September, we moved from the Law Society offices at Osgoode Hall to 375 University Avenue. We now have three full-sized hearing rooms and one multi-purpose room, all of which have state-of-the-art technology. There are also four breakout rooms for parties. The public and the parties now have equal access to a counter to file documents and obtain information.

This year, there was a large change in the Tribunal's membership. At the beginning of the year, Convocation appointed four new adjudicators after a competitive process that involved review of writing samples and skills-based interviews. In May, 19 newly elected or appointed benchers became Tribunal members. All received comprehensive training and orientation.



David A. Wright
Chair, Law Society Tribunal

The former Vice-Chairs of the Hearing and Appeal Divisions, Linda Rothstein and Mark Sandler, did not run for re-election as benchers and their terms ended in May. I thank both of them for their strong contributions as adjudicative leaders and their thoughtful advice to me since I started in 2013. As Chair of the Appeal Panel for more than six years, Mark wrote many reasons that made and developed key principles. His influence will continue for many years.

Raj Anand is now Vice-Chair of the Hearing Division and Christopher D. Bredt is Vice-Chair of the Appeal Division. I look forward to working closely with them in the years ahead.

We continued to develop our case law, providing guidance to the professions about their professional obligations and establishing principles affecting other Tribunal cases. Significant 2015 decisions include:

- *Law Society of Upper Canada v. DeMerchant, 2015 ONLSTA 6*, dealing with conflicts of interest in the context of large corporations;
- *Law Society of Upper Canada v. Hohots, 2015 ONLSTH 72* and *Law Society of Upper Canada v. Jaszi, 2015 ONLSTH 149*, both addressing standards of practice for refugee lawyers;
- *Law Society of Upper Canada v. Abbott, 2015 ONLSTA 25*, considering the impact of investigative delay on penalty; and
- *Law Society of Upper Canada v. Savone, 2015 ONLSTA 26*, dealing with the Law Society's obligations of disclosure.

Note: Abbott was upheld by the Divisional Court (see [2016 ONSC 641](#)) and Savone is under appeal to that Court as of March 2016.

I want to especially recognize the Tribunal staff and adjudicators, all of whom work very hard and are dedicated to our mission. Our team is committed to serving parties, the public, and the professions with excellence. We welcome feedback from the community, and will continue to innovate while keeping our independence and neutrality.

Building the Tribunal

A Distinct Identity

MISSION STATEMENT AND CORE VALUES

The Law Society Tribunal is an independent adjudicative tribunal within the Law Society of Upper Canada. The Tribunal was formally established on March 12, 2014, through implementation of the *Modernizing Regulation of the Legal Profession Act, 2013*.

In recognition of the Tribunal's distinct identity and commitment to an enhanced process, a *mission statement and core values* were created and implemented through a process of consultation with stakeholders and members.

The Law Society Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest. The work of Tribunal members and staff is informed and governed by this mission statement and the core values of fairness, quality, transparency and timeliness.

TRIBUNAL TEAM

The Tribunal is led by the Chair and is made up of members and staff. Tribunal members are the adjudicators who hear and decide cases. All are part-time, with the exception of the Chair. We have one part-time and 13 full-time staff members, including the Chair.

Members

The Tribunal consists of a Hearing and Appeal Division. The Chair of the Tribunal is Chair of both the Hearing and Appeal Divisions, and each Division has a Vice-Chair. Under the *Law Society Act*, the Chair must be a lawyer who is not a benchler and the Vice-Chairs must be elected benchers.

Other Tribunal members include elected and other lawyer benchers, paralegal benchers, lay (public) benchers appointed by the Lieutenant Governor in Council, and lawyers, paralegals and lay (public) members appointed by Convocation on recommendation of the Chair. Public members must also be approved by the Attorney General for Ontario. As of December 31, 2015, there were 92 members of the Hearing Division, 24 of whom were also members of the Appeal Division. The Chair is appointed for a four-year term, and Vice-Chairs and members are appointed for terms of up to two years.

Members sit in panels of one, three or five to hear and decide cases. Panels are composed by the Chair in accordance with the requirements of *Ontario Regulation 167/07*.

Staff

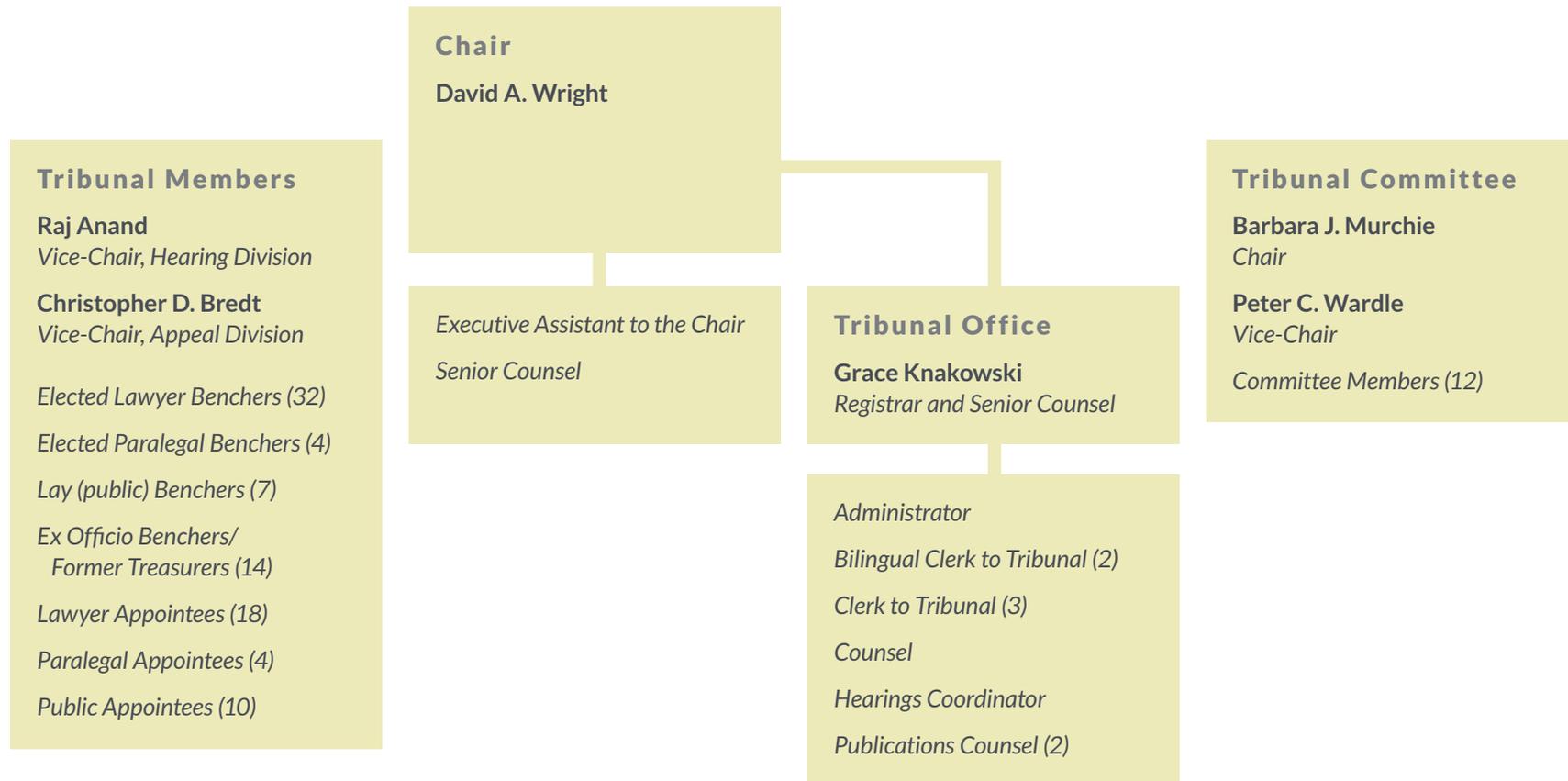
The Tribunal Office is managed by the Registrar and Senior Counsel, who reports to the Chair. Tribunal counsel support the adjudicative and legal needs of the Tribunal through general legal advice, review of reasons and development of, and participation in, adjudicator education. Counsel may also represent the Tribunal at a judicial review or other court proceeding. Tribunal administrative staff support the work of the Tribunal through file management, scheduling, clerking hearings and releasing orders and reasons.

Tribunal Committee

The Tribunal Committee is a standing committee of Convocation. Its mandate is to develop for Convocation's approval, in conjunction with the Chair, policy options on all matters relating to the Tribunal, including practice directions, the *Adjudicator Code of Conduct*, publication protocols for Tribunal decisions, Tribunal member professional development and rules of practice and procedure.

TRIBUNAL STRUCTURE

(as of December 31, 2015)



Tribunal Advancement

The Law Society Tribunal is committed to continuous improvement and advancement. As part of this commitment, a detailed Tribunal member position description and formal performance development process for members have been approved by Convocation and implemented.



Left to right: Raj Anand Vice-Chair, Hearing Division; David A. Wright, Chair, Law Society Tribunal; Christopher D. Bredt Vice-Chair, Appeal Division

APPOINTMENT AND REAPPOINTMENT PROCESS

Members are appointed and reappointed to the Tribunal by Convocation on recommendation of the Chair. Benchers are eligible to be appointed to an initial term by virtue of their position. Other members are appointed following a competitive process and must have adjudicative experience. Tribunal members must adhere to the Law Society Tribunal *Adjudicator Code of Conduct* and demonstrate many competencies, including:

- Knowledge of administrative law, legislation and rules
- Commitment to procedurally fair and transparent hearings
- Production of quality jurisprudence
- Collegiality and self-reflection
- Continuous development through education of adjudicative skills and knowledge of issues before the Tribunal

BUILDING THE TRIBUNAL

The Law Society Tribunal is committed to reflecting diversity of background, expertise and experience among its members, including French proficiency and subject-area knowledge. In 2015, Convocation appointed 20 new benchers adjudicators and four appointee adjudicators, further enhancing this diversity.

ORIENTATION AND EDUCATION

All new Tribunal members attend a multi-day orientation. Continuing education is offered to members and staff throughout the year, and attendance at two half-day sessions is mandatory for all members. This year's sessions focused on hearing management. The Tribunal, in conjunction with the Society of Ontario Adjudicators and Regulators (SOAR), presented an intensive four-day orientation session to the new benchers. The new appointee lawyers, all of whom have extensive adjudicative experience, received a two-day orientation session focused on issues particular to the Tribunal.

Outreach

STAKEHOLDER INPUT

The Chair's Practice Roundtable continues to provide Tribunal stakeholders with a collegial forum in which to comment on the work of the Tribunal. It is comprised of counsel who regularly represent the Law Society or licensees, and duty counsel who frequently assist self-represented individuals at the Tribunal.

The Chair's Practice Roundtable also provides an effective channel for the Tribunal to share and receive comments on developments and proposals about its processes.

Lawyers, paralegals and members of the public can receive email updates and consultation documents from the Tribunal by asking to be included on the [Tribunal's Stakeholder List](#).

REGULATORY AND ADMINISTRATIVE JUSTICE COMMUNITY

The Law Society Tribunal continues to establish its presence within, and make contributions to, the regulatory and administrative justice community. In 2015, David A. Wright was appointed to the Board of Directors of the Council of Canadian Administrative Tribunals and spoke at many conferences and events, including:

- TAG – The Action Group on Access to Justice and the Canadian Institute for the Administration of Justice — *Opening Minds to Mental Health*
- SOAR Annual Conference — *Public Interests: Useful Concept or Meaningless Subterfuge?*, and, together with the Law Society Tribunal Registrar and Senior Counsel, *Promoting Tribunal Neutrality in an Integrated Regulatory Model*
- Association des juristes d'expression française de l'Ontario (AJEFO) — *Mise à jour des développements récents importants dans le nouveau Tribunal du Barreau indépendant et les changements d'adjudication au Barreau*
- Ontario Paralegal Association — *Administrative Law*

- Manitoba Council of Administrative Tribunals — *Ethics: Herding Cats – Tools in your Toolbox*
- Association of Professional Engineers of Ontario — *Getting into the Mindset of an Adjudicator*
- Health Services Appeal and Review Board, Health Professions Appeal and Review Board, Ontario Hepatitis C Assistance Plan Review Committee — *The Public Interest in Professional Regulation*



TAG – The Action Group on Access to Justice and the Canadian Institute for the Administration of Justice — *Opening Minds to Mental Health*

Mission Statement and Core Values

MISSION STATEMENT

The Law Society Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest.



Fairness

We will be fair and impartial in our processes and proceedings, treating all with respect, courtesy and dignity.

Quality

We strive for excellence, acting with dedication and professionalism. We aim for continuous improvement, valuing diverse perspectives. We commit to an atmosphere that enables all to perform at their best.

Transparency

We will act in a manner that bears the closest scrutiny. Our decisions, rules, processes and policies will be available to licensees and the public, accessible and easily understandable.

Timeliness

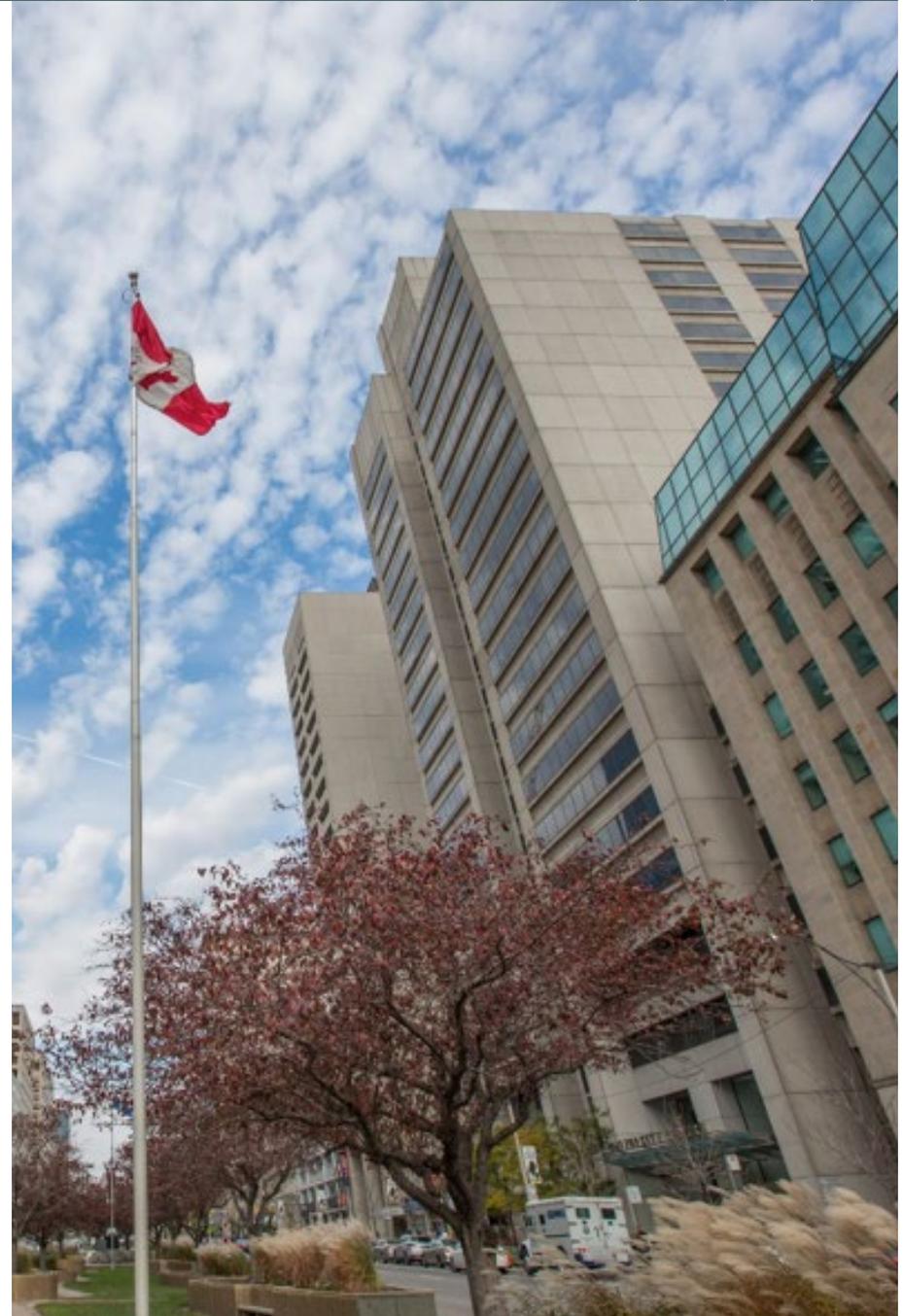
We are guided by the importance of timely resolution of all matters. We will schedule hearing and continuation dates expeditiously and complete written reasons promptly.

Tribunal Operations

Relocation

On September 4, 2015, the Tribunal relocated its offices and hearing rooms from the Law Society of Upper Canada's offices at Osgoode Hall to new premises at 375 University Avenue, at the corner of Armoury Street. The relocation of the Tribunal further demonstrates the Law Society's commitment to foster an independent adjudicative tribunal. There are well-designed hearing rooms, multiple breakout rooms for parties, and functional panel deliberation rooms. Each hearing room has public seating, and overflow can be accommodated in a separate room through video display. Hearing rooms have enhanced video, audio, telecommunication and Internet capabilities. A party, witness or panelist may now participate at a hearing through video or web conferencing. Fixed cameras and large television monitors allow the parties, panel and public to see and hear those participating in a hearing on site or remotely.

The work and staff of the Tribunal are supported through a dedicated file-management area and modern moving filing system that securely stores all materials in one location. The new premises allow staff to better serve hearings seamlessly since hearing, breakout and deliberation rooms, and staff offices and workspaces are now all close to one another.





Accessible

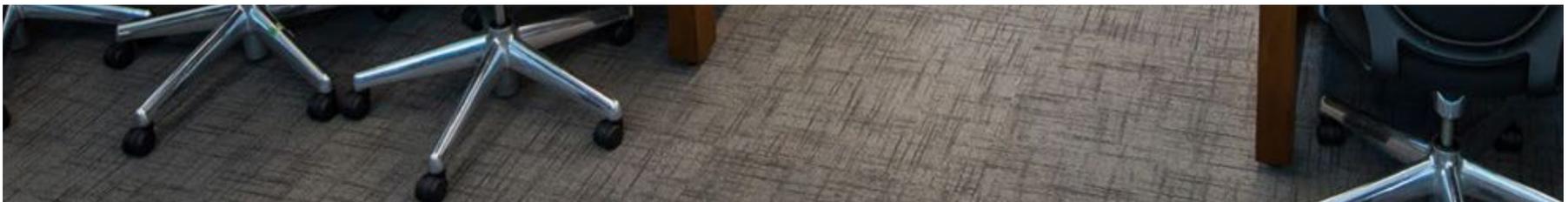
The Law Society Tribunal values being accessible to its stakeholders. Our new premises comply with the [Accessibility for Ontarians with Disabilities Act, 2005](#) and have ergonomic seating and furnishings, assistive listening devices and braille signage. Onsite underground parking and elevators make the Tribunal more accessible to people with mobility challenges. A reception space with waiting area, coat closet, printer and a large screen listing hearings, along with telephones and water in all hearing rooms make the premises user-friendly and welcoming. Law Society representatives, licensees and the public can equally access the Tribunal and its staff through the front counter.





Three-Year Review

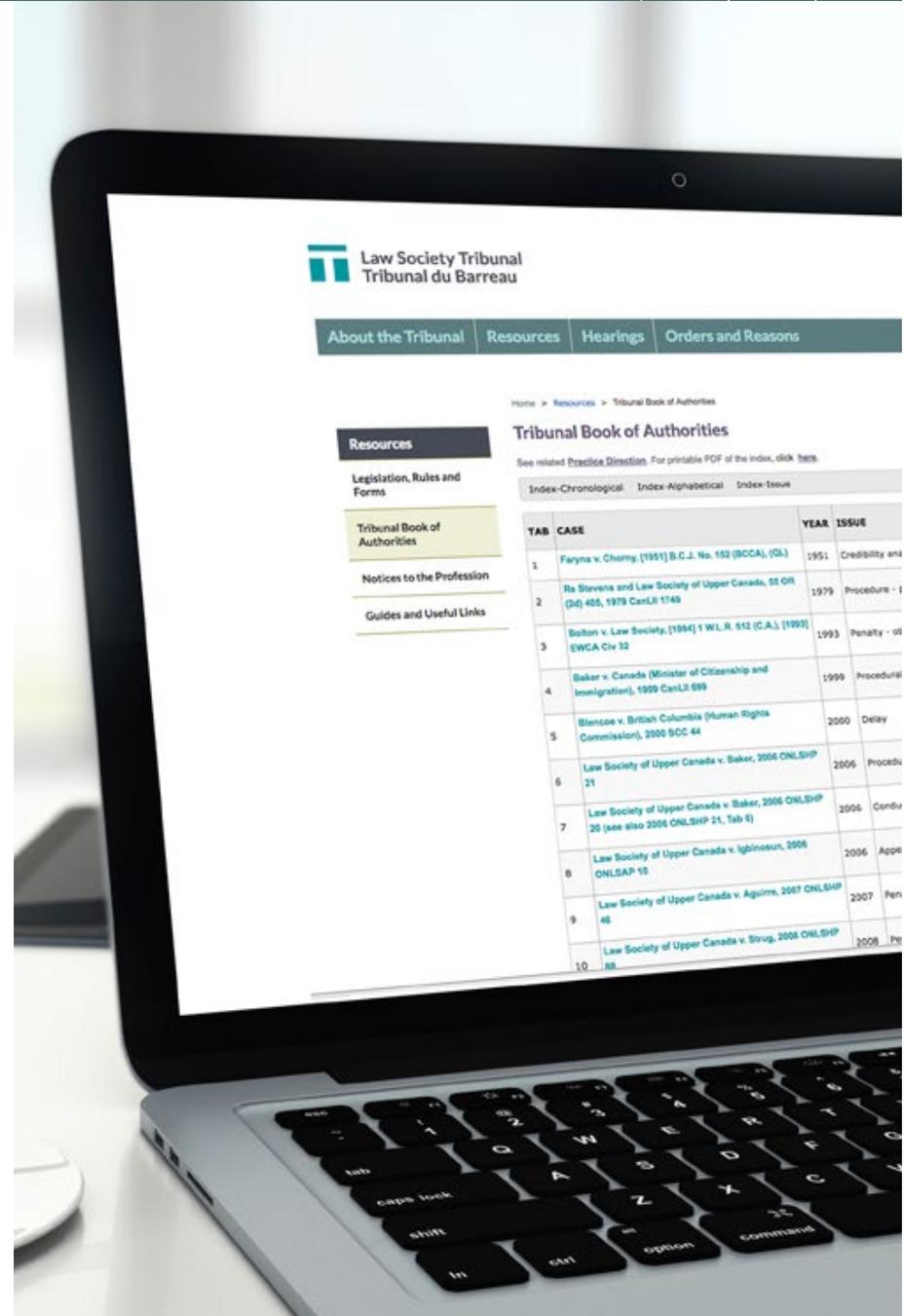
In 2015, a working group of the Tribunal Committee consulted extensively with Tribunal stakeholders to gain input and feedback on the Tribunal's progress since its establishment in March 2014. Among those consulted were the Chair's Practice Roundtable; Treasurer's Liaison Group; four Law Society Committees — Audit and Finance, Equity and Aboriginal Issues, Paralegal Standing, and Professional Regulation; Tribunal members; a sample of legal representatives who appear before the Tribunal with some frequency and, through them, their clients. The *Tribunal Model Three-Year Review Final Report* concluded that the "model is being thoughtfully and carefully implemented to reflect the goals Convocation established and is being received positively."



Initiatives

In 2015, the *Tribunal Book of Authorities*, containing frequently cited cases at Tribunal proceedings, was created and made publicly available through the Tribunal's website. The *Tribunal Book of Authorities* assists parties and reduces their costs. Cases from the *Tribunal Book of Authorities* can be relied upon through a simple citation reference instead of copying the entire case. The Tribunal issued a *practice direction* to explain this new resource.

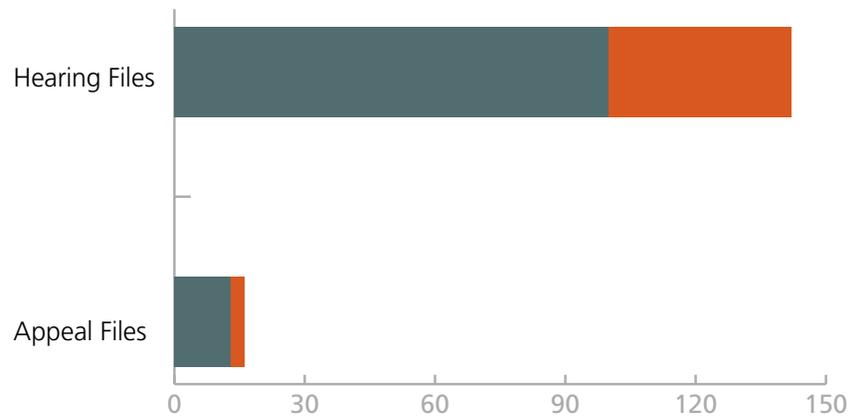
In addition, we enhanced the Tribunal's website, allowing stakeholders to easily research Tribunal orders and reasons and information about hearings. New sort and search features for the *Current Proceedings*, *Upcoming Hearings* and *Orders and Reasons* web pages were added. Order summaries on the Tribunal website now provide a link to related reasons on the *Canadian Legal Information Institute* (CanLII) website. We added a frequently asked questions (*FAQ*) page, designed in particular to assist self-represented parties and the public.



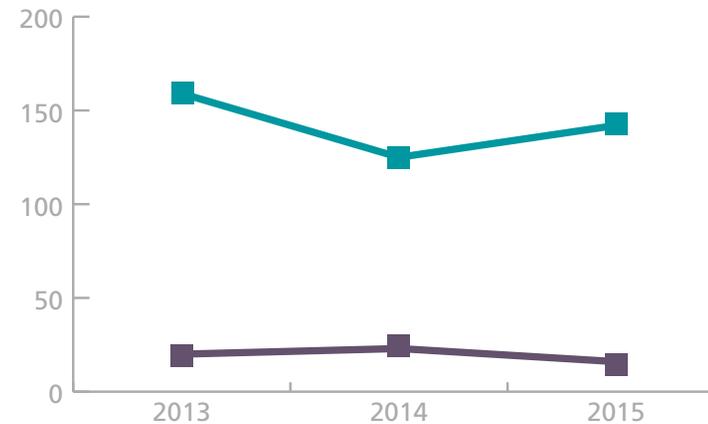
Tribunal Metrics

The Law Society Tribunal's 2015 statistics may be found [here](#).

HEARING AND APPEAL FILES OPENED IN 2015



HEARING AND APPEAL FILES OPENED BY YEAR



Statistical Highlights and Trends

FILES OPENED

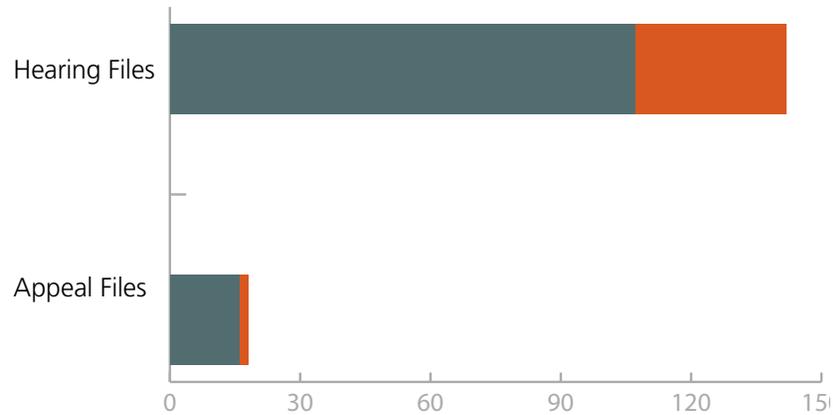
The Tribunal continues to keep pace with its caseload by opening about as many files as it closes. In 2015, the Law Society Tribunal opened 142 notices of application or referral for hearing and motions for interlocutory suspension or practice restriction to be considered by the Hearing Division, compared to 125 filings in 2014, a 14% increase. The Tribunal also opened 16 notices of appeal to be considered by the Appeal Division, compared to 23 filings in 2014, a 30% decrease. The total number of filings in 2015 is similar to that of 2014.

Tribunal Metrics

The Law Society Tribunal's 2015 statistics may be found [here](#).

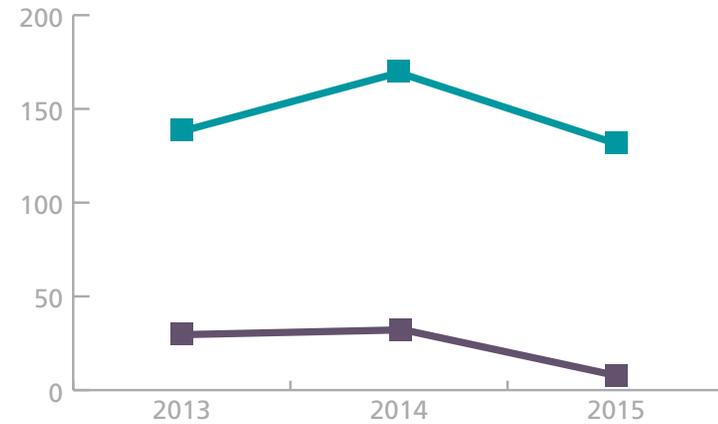
HEARING AND APPEAL FILES CLOSED IN 2015

- Lawyers
- Paralegals



HEARING AND APPEAL FILES CLOSED BY YEAR

- Hearing
- Appeal



FILES CLOSED

In 2015, the Tribunal closed 142 files that were before the Hearing Division compared to 152 closed files in 2014, a 7% decrease. The Tribunal also closed 18 files that were before the Appeal Division compared to 28 closed files in 2014, a 36% decrease.

OPEN FILES BY AGE

At year-end 2015, the Tribunal's active files had been open for the following lengths of time:

0 to 6 months – 68 files (44%); 7 to 12 months – 42 files (27%); 13 to 18 months – 16 files (11%); 19 to 24 months – 12 files (8%); and over 24 months – 15 files (10%).

As in 2014, nearly half of the Tribunal's active files at 2015 year-end were 0 to 6 months old and 82% of the Tribunal's active files were less than 18 months old. These figures are almost identical to 2014 and 2013 year-end figures. This is a significant improvement from 2012 when 33% of open files at year-end were 0 to 6 months old and 76% were less than 18 months old.

NUMBER OF FILES AND FREQUENCY BEFORE THE TRIBUNAL

In 2015, a total of 137 files were before the proceeding management conference (PMC), a slight 5% decrease from the 144 files of the year before. The instances in which files were considered by the PMC decreased to 298 instances from 338 in 2014, a 12% decrease. A total of 158 files were before the Hearing Division, a 17% decrease from the 190 files of the year before. The number of times files were considered by the Hearing Division decreased by 25% to 282 from 377 in 2014. The emphasis placed on active case management at PMC and pre-hearing conferences (PHCs) likely accounts for this reduction. Twelve files were before the Appeal Division, a 54% decrease from the 26 files of the year before. Files were considered by the Appeal Division 16 times in 2015 as compared with 37 times in 2014, a 57% decrease.

TOTAL HEARINGS SCHEDULED AND VACATED

In 2015, hearings or PHCs were scheduled on 93% of all available calendar days. 337 single-day or multiple day hearing blocks were scheduled before the Hearing and Appeal Divisions. Of these, 315 were for Hearing Division hearings and 22 were for Appeal Division hearings. Of the 337 hearing blocks scheduled, 20% were vacated, similar to the 17% vacated in 2014. Twenty-three percent of Appeal Division hearings were vacated, an increase of 11% from 2014. The Tribunal continues to apply its *practice direction* on adjournment requests.

TRIBUNAL REASONS PRODUCED AND PUBLISHED

In 2015, the Tribunal produced 140 written reasons, a 24% decrease from 2014, likely due to fewer files proceeding before the Hearing Division. Tribunal written and oral reasons continue to be published on the [CanLII](#) website so Tribunal jurisprudence is easily available to lawyers, paralegals and the public.



Law Society Tribunal
Tribunal du Barreau

MESSAGE DU PRÉSIDENT >

ÉVOLUTION DU TRIBUNAL >

OPÉRATIONS DU TRIBUNAL >

STATISTIQUES DU TRIBUNAL >

RAPPORT ANNUEL

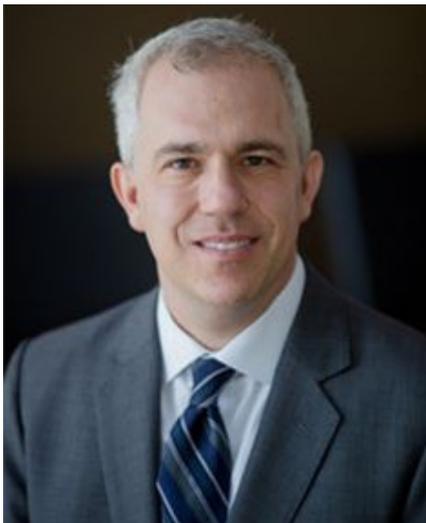
2015

Message du président

L'année 2015 a été bien chargée pour le Tribunal du Barreau, apportant de nombreux changements pour améliorer son modèle unique d'arbitrage indépendant au sein du Barreau du Haut-Canada.

Au début du mois de septembre, nous avons quitté l'édifice du Barreau à Osgoode Hall pour emménager au 375, av. University. Nous avons maintenant trois salles d'audience et une salle à usage multiple, toutes dotées d'une technologie de pointe. Nous avons également quatre salles de réunion pour les parties. Autant le public que les parties ont désormais accès à un même comptoir pour déposer leurs documents et obtenir des renseignements.

Cette année, la composition du Tribunal a subi un grand changement. Au début de l'année, le Conseil a nommé quatre nouveaux arbitres après un concours comprenant un examen d'échantillons de rédactions et des entrevues basées sur les compétences. En mai, 19 membres conseillers nouvellement élus ou nommés sont devenus membres du Tribunal. Ils ont tous reçu une formation générale et une orientation.



David A. Wright, président,
Tribunal du Barreau

Les anciens vice-présidents des sections de première instance et d'appel, Linda Rothstein et Mark Sandler, ne se sont pas représentés à l'élection des conseillers et leur mandat a pris fin en mai. Je les remercie de leurs solides contributions comme arbitres en chef et des conseils précieux qu'ils m'ont donnés dès mes débuts en 2013. Comme président de la formation des appels pendant plus de six ans, Mark a écrit de nombreux motifs qui ont mené à des principes clés. Son influence se fera sentir pendant de nombreuses années.

Raj Anand est maintenant le vice-président de la Section de première instance et Christopher D. Bredt est vice-président de la Section d'appel. Je serai heureux de travailler avec eux au cours des prochaines années.

Nous avons continué de développer notre jurisprudence, en donnant aux professions des conseils sur leurs obligations professionnelles et en établissant des principes touchant d'autres cas devant le Tribunal. Les principales décisions de 2015 comprennent :

- *Law Society of Upper Canada c. DeMerchant, 2015 ONLSTA 6*, traitant des conflits d'intérêts dans le cadre des grandes sociétés ;
- *Law Society of Upper Canada c. Hohots, 2015 ONLSTH 72* et *Law Society of Upper Canada c. Jaszi, 2015 ONLSTH 149*, traitant des normes de pratique pour les avocats des réfugiés ;
- *Law Society of Upper Canada c. Abbott, 2015 ONLSTA 25*, considérant l'impact des délais d'enquête portant sur la sanction ;
- *Law Society of Upper Canada c. Savone, 2015 ONLSTA 26*, traitant des obligations de divulgation du Barreau.

Remarque : La décision Abbott a été maintenue par la Cour divisionnaire (voir [2016 ONSC 641](#)) et la décision Savone est en appel devant cette cour en mars 2016.

Je tiens à reconnaître particulièrement le personnel du Tribunal et ses arbitres, qui ont tous et toutes travaillé très fort et avec un grand dévouement à notre mission. Notre équipe est engagée à servir les parties, le public et les professions avec excellence. Nous acceptons avec plaisir les commentaires de la communauté et nous continuerons à innover tout en conservant notre indépendance et notre neutralité.

Évolution du Tribunal

Identité distincte

MISSION ET VALEURS

Le Tribunal du Barreau est un tribunal d'arbitrage indépendant au sein du Barreau du Haut-Canada. Le Tribunal du Barreau a été constitué officiellement le 12 mars 2014 en vertu de la *Loi de 2013 sur la modernisation de la réglementation de la profession juridique*.

En reconnaissance de l'identité du Tribunal et de son engagement envers l'amélioration de sa procédure, un énoncé de *mission et de valeurs* a été créé et mis en œuvre après une consultation avec les intervenants et les membres.

Le Tribunal du Barreau traite, entend et tranche des cas de réglementation concernant les avocates, les avocats et les parajuristes de l'Ontario de manière équitable, juste et dans l'intérêt public. Ces valeurs essentielles guident et gouvernent le travail des membres et du personnel du Tribunal : équité, qualité, transparence et délais.

ÉQUIPE DU TRIBUNAL

Le Tribunal est dirigé par le président et comprend des membres du tribunal et du personnel. Les membres du Tribunal sont les arbitres qui entendent et tranchent les causes. Tous les arbitres agissent à temps partiel, à l'exception du président. Le Tribunal compte un employé à temps partiel et 13 employés à temps plein, dont le président.

Membres

Le Tribunal est constitué d'une section de première instance et d'une section d'appel. Le président du Tribunal préside ces deux sections, chacune ayant un vice-président. Aux termes de la *Loi sur le Barreau*, le président doit être avocat non conseiller et les vice-présidents doivent être des conseillers élus.

Les autres membres du Tribunal comprennent des conseillers avocats et parajuristes élus ou non élus ; des conseillers non juristes (public) nommés par le Lieutenant-gouverneur en conseil, et des membres du Tribunal avocats, parajuristes et non-juristes (public) nommés par le Conseil sur recommandation du président. Les membres publics doivent aussi être approuvés par la procureure générale de l'Ontario. Au 31 décembre 2015, il y avait 92 membres de la Section de première instance, dont 24 sont également membres de la Section d'appel. Le président est nommé pour un mandat de quatre ans, et les vice-présidents et membres sont nommés pour des mandats de deux ans maximum.

Les membres siègent à des formations de un, trois ou cinq pour entendre et trancher les causes. Les formations sont composées par le président conformément aux exigences du *Règlement de l'Ontario 167/07*.

Personnel

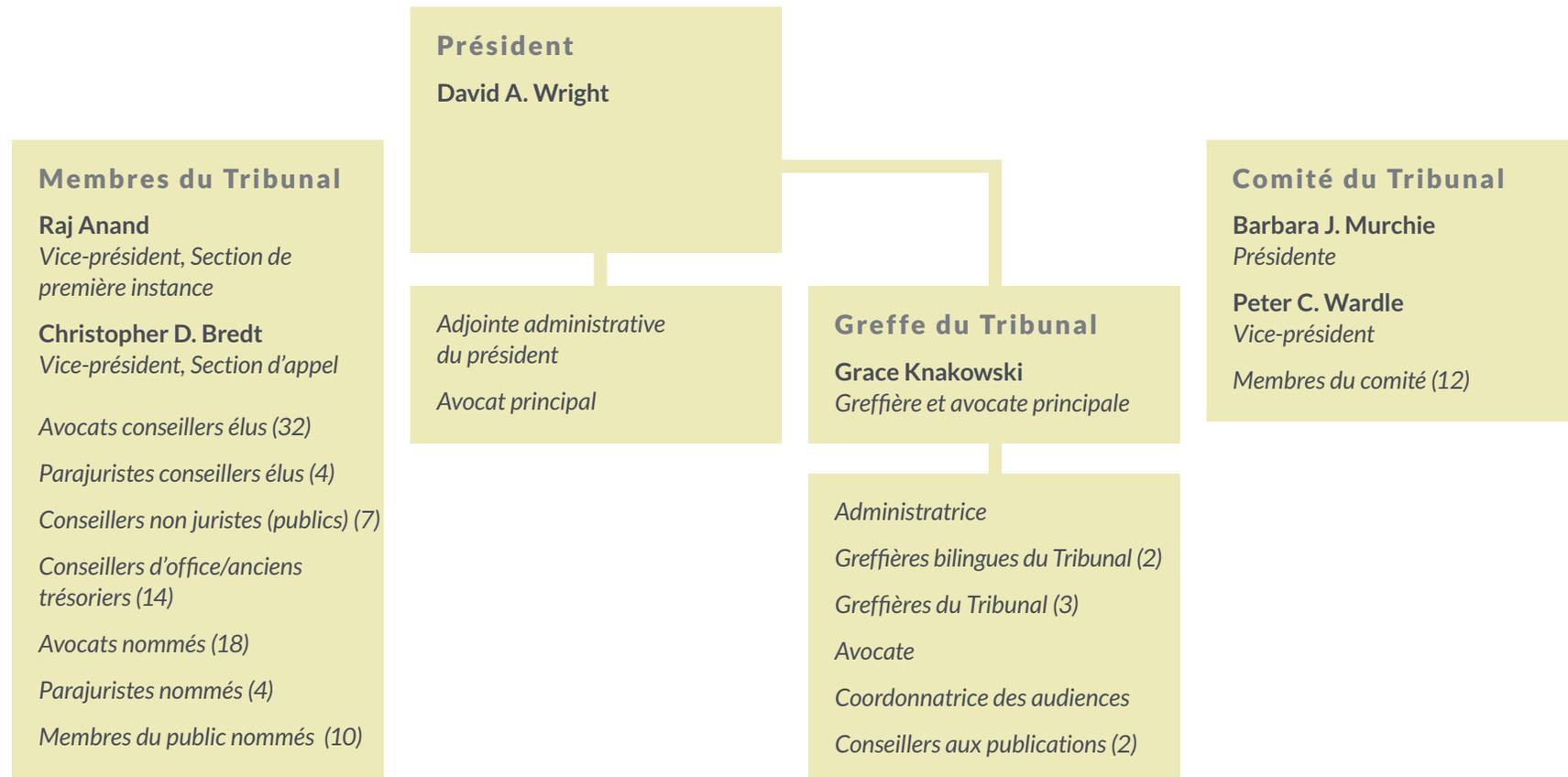
Le greffe du Tribunal est administré par la greffière et avocate principale, qui se rapporte au président. Les avocats du Tribunal soutiennent les fonctions d'arbitrage et les besoins juridiques du Tribunal en fournissant des conseils juridiques d'ordre général, en revoyant les motifs, en élaborant des formations en arbitrage et en y participant. Les avocats peuvent aussi représenter le Tribunal à une révision judiciaire ou autre procédure judiciaire. Le personnel administratif du Tribunal soutient le travail du Tribunal par la gestion des dossiers, l'établissement du calendrier, le soutien aux audiences et la publication des ordonnances et des motifs.

Comité du Tribunal

Le Comité du Tribunal est un comité permanent du Conseil. Son mandat est d'élaborer, de concert avec le président du Tribunal du Barreau, pour approbation du Conseil, différentes politiques sur toutes les questions portant sur le Tribunal, y compris l'élaboration ou la préparation des directives de cabinet, le *Code de déontologie des arbitres*, un protocole de publication pour rendre les décisions du tribunal, le perfectionnement professionnel des arbitres et des règles de pratique et de procédure.

STRUCTURE DU TRIBUNAL

(au 31 décembre 2015)



Avancement du Tribunal

Le Tribunal du Barreau s'engage à continuer de s'améliorer. Dans le cadre de cet engagement, une description détaillée de postes pour les membres du Tribunal et un processus de perfectionnement professionnel officiel pour les membres ont été approuvés par le Conseil et mis en œuvre.



De gauche à droite : Raj Anand, vice-président, Section de première instance; David A. Wright, président, Tribunal du Barreau; Christopher D. Bredt, vice-président, Section d'appel

PROCESSUS DE NOMINATION ET DE RENOUVELLEMENT DES NOMINATIONS

Les membres sont nommés et renommés au Tribunal par le Conseil, sur recommandation du président. Les conseillers peuvent être nommés pour un mandat initial du fait de leur charge. D'autres membres sont nommés après un processus concurrentiel et doivent avoir une expérience d'arbitrage. Les membres du Tribunal doivent respecter le *Code de déontologie des arbitres* du Tribunal du Barreau et faire preuve de diverses compétences, comme :

- La connaissance du droit administratif, de la loi et des règles
- Un engagement envers des audiences équitables et transparentes
- La production de jurisprudence de qualité
- La collégialité et la réflexion personnelle
- Le perfectionnement continu par l'éducation des habiletés d'arbitrage et des connaissances des questions présentées au Tribunal

DÉVELOPPER LE TRIBUNAL

Le Tribunal du Barreau est déterminé à refléter la diversité, l'expertise et l'expérience parmi ses membres, y compris la compétence en français et les connaissances dans des domaines du droit. En 2015, le Conseil a nommé 20 nouveaux arbitres conseillers et quatre arbitres non conseillers pour améliorer cette diversité.

ORIENTATION ET ÉDUCATION

Tous les nouveaux membres du Tribunal participent à une orientation sur plusieurs jours. La formation continue est offerte aux membres et au personnel durant l'année, et la participation à deux séances d'une demi-journée est obligatoire pour tous les membres. Les séances de cette année portaient sur la gestion des audiences. Le Tribunal, en conjonction avec la *Society of Ontario Adjudicators and Regulators (SOAR)* a présenté une séance d'orientation de quatre jours intensifs aux nouveaux membres conseillers. Les avocats nouvellement nommés, qui ont tous et toutes une grande expérience en arbitrage, ont suivi une séance d'orientation de deux jours sur des questions d'intérêt particulier au Tribunal.

Rayonnement

OPINION DES INTERVENANTS

La Table ronde du président concernant les pratiques continue de fournir aux intervenants du Tribunal un forum collégial pour exprimer leurs opinions sur le travail du Tribunal. La Table ronde est constituée d'avocats qui représentent régulièrement le Barreau ou des titulaires de permis, et d'avocats de service qui aident fréquemment les personnes non représentées au Tribunal.

La Table ronde du président fournit également un canal efficace au Tribunal pour partager et recevoir des commentaires sur les développements et les propositions concernant ses processus.

Les avocates, avocats, parajuristes et membres du public peuvent recevoir les mises à jour et les documents de consultation du Tribunal en demandant d'être ajoutés à la [liste des intervenants](#).

COMMUNAUTÉ DE JUSTICE ADMINISTRATIVE ET RÉGLEMENTAIRE

Le Tribunal du Barreau continue d'établir sa présence et de faire des contributions à la communauté de justice administrative et réglementaire. En 2015, David A. Wright a été nommé au conseil d'administration du Conseil canadien des tribunaux administratifs et a parlé à de nombreuses conférences et de nombreux événements, y compris :

- TAG—Le Groupe d'action sur l'accès à la justice et l'Institut canadien d'administration de la justice—*S'ouvrir l'esprit à la santé mentale*
- Conférence annuelle de la SOAR—*Intérêts publics : Concept utile ou subterfuges insignifiants ?* Et avec la greffière et avocate principale du Tribunal du Barreau, *Favoriser la neutralité du tribunal dans un modèle réglementaire intégré*
- Association des juristes d'expression française de l'Ontario (AJEFO)—*Mise à jour des développements récents importants dans le nouveau Tribunal du Barreau indépendant et les changements d'adjudication au Barreau*
- Ontario Paralegal Association—Droit administratif

- Manitoba Council of Administrative Tribunals—*Ethics: Herding Cats — Tools in your Toolbox*
- Association of Professional Engineers of Ontario—*Getting into the Mindset of an Adjudicator*
- Commission d'appel et de révision des services de santé, Programme ontarien d'aide aux victimes de l'hépatite C—*L'intérêt public dans la réglementation professionnelle*



TAG—Le Groupe d'action sur l'accès à la justice et l'Institut canadien d'administration de la justice—*S'ouvrir l'esprit à la santé mentale*

Mission et valeurs

ÉNONCÉ DE MISSION

Le Tribunal du Barreau traite, entend et tranche des cas de réglementation concernant les avocates, les avocats et les parajuristes de l'Ontario de manière équitable, juste et dans l'intérêt public.



Équité

Nous serons équitables et impartiaux dans nos procédures et nos instances, et traiterons toutes les parties avec respect, courtoisie et dignité.

Qualité

Nous visons l'excellence, agissons avec dévouement et professionnalisme. Nous cherchons à nous améliorer constamment et nous valorisons les perspectives diverses. Nous nous engageons à créer une atmosphère permettant à toutes et à tous d'accomplir leurs tâches au mieux de leur habileté.

Transparence

Nous agirons d'une manière qui résiste à l'examen le plus minutieux. Nos décisions, règles, procédures et politiques seront à la disposition de tous les titulaires de permis et du public, en format accessible et facile à comprendre.

Délais

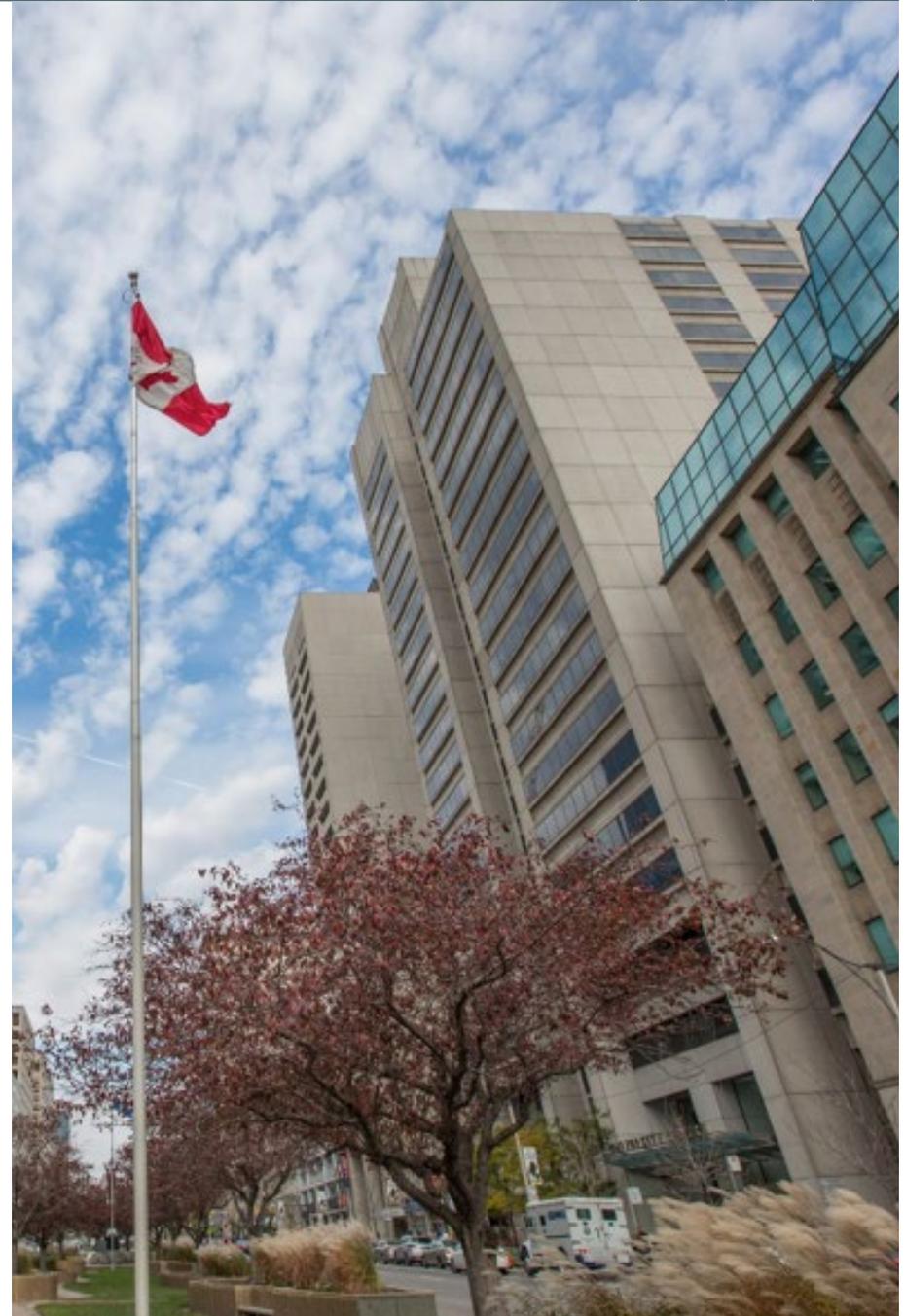
Nous sommes guidés par l'importance d'une résolution de toutes les affaires en temps utile. Nous fixerons rapidement des dates d'audition et de reprise et rendrons promptement des motifs écrits.

Opérations du Tribunal

Déménagement

Le 4 septembre 2015, le Tribunal a quitté Osgoode Hall pour emménager dans ses bureaux et ses salles d'audience au 375, avenue University, au coin de la rue Armoury. Le déménagement du Tribunal témoigne de l'engagement du Barreau envers l'indépendance du tribunal d'arbitrage. Les parties ont à leur disposition des salles d'audience bien conçues, des salles de réunion multiples et des salles fonctionnelles de délibération. Chaque salle d'audience est dotée de sièges pour le public, et en cas de débordement, nous avons une salle distincte munie d'un écran vidéo. Les salles d'audience ont des capacités vidéo, audio, de télécommunication et d'Internet. Les parties, les témoins ou les formations peuvent désormais participer à une audience par vidéoconférence ou webconférence. L'installation de caméras fixes et de grands écrans de télévision permettent aux parties, aux formations et au public de voir et d'entendre ceux et celles qui participent à une audience, sur place et à distance.

Le travail et le personnel du Tribunal bénéficient d'une aire dédiée à la gestion des dossiers et de systèmes de classement modernes pour emmagasiner de façon sécuritaire tous les documents en un seul lieu. Les nouveaux bureaux permettent au personnel de mieux servir les audiences, puisque les salles d'audience, de réunion et de délibération et les bureaux et postes de travail du personnel sont maintenant proches les uns des autres.





Accessibilité

Le Tribunal du Barreau valorise le fait d'être accessible à ses parties concernées. Nos nouveaux bureaux sont conformes à la [Loi de 2005 sur l'accessibilité pour les personnes handicapées de l'Ontario](#) et offrent des sièges et du mobilier ergonomiques, des appareils de sonorisation assistée et la signalisation en braille. Le stationnement souterrain sur place et les ascenseurs rendent le Tribunal plus accessible aux personnes qui ont des difficultés de déplacement. Une aire de réception avec une salle d'attente, un vestiaire, une imprimante et un grand écran indiquant le lieu de l'audience, et des téléphones et de l'eau dans toutes les salles d'audience rendent les lieux conviviaux et accueillants. Les représentants du Barreau, les titulaires de permis et le public ont un accès égal au Tribunal à et son personnel au comptoir de la réception.





Examen sur trois ans

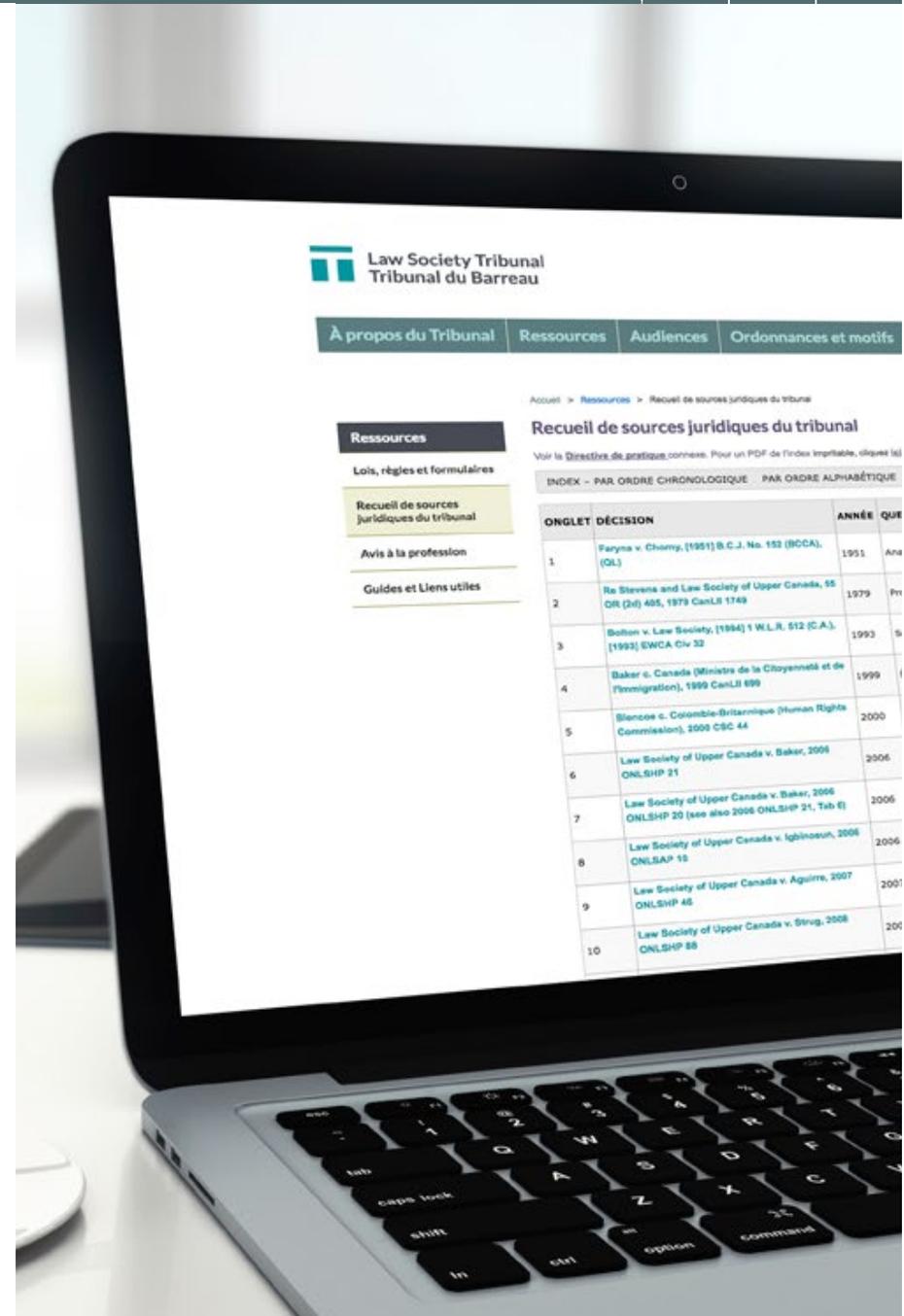
En 2015, un groupe de travail du comité du Tribunal a mené une vaste consultation auprès des parties concernées pour connaître leurs opinions sur les progrès du Tribunal depuis sa création en mars 2014. Les parties consultées comprenaient notamment : la table ronde du président ; le groupe de liaison de la trésorière ; quatre comités du Barreau, soit le comité d'audit et de finance, le comité sur l'équité et les affaires autochtones, le comité permanent des parajuristes et le comité de réglementation de la profession ; des membres du Tribunal ; quelques-uns des représentants juridiques qui ont plaidé devant le Tribunal assez souvent et, par leur entremise, leurs clients. Le [rapport final sur l'examen du modèle du Tribunal après trois ans](#) a conclu que le modèle était soigneusement mis en œuvre pour refléter les objectifs établis par le Conseil et qu'il était bien reçu.



Initiatives

En 2015, le *Recueil de sources juridiques du Tribunal*, contenant des cas souvent cités aux instances du Tribunal, a été créé et publié sur le site Web du Tribunal. Ce recueil aide les parties et réduit leurs frais. On peut simplement citer des cas tirés du Recueil de sources juridiques au lieu de reproduire le cas au complet. Le Tribunal a émis une *directive de pratique* pour expliquer cette nouvelle ressource.

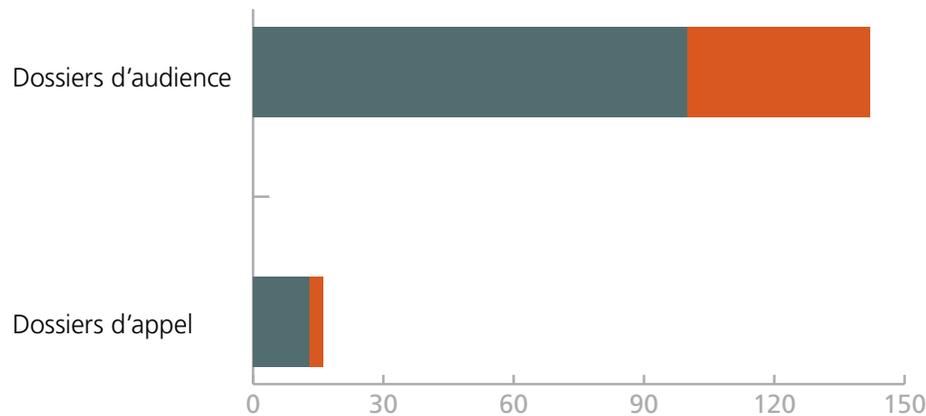
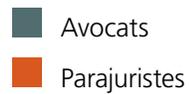
De plus, nous avons amélioré le site Web du Tribunal, en facilitant la recherche par les parties dans les ordonnances du Tribunal, les motifs et les renseignements sur les audiences. De nouvelles caractéristiques pour catégoriser et chercher dans les pages des *procédures en cours*, des *audiences à venir* et des *ordonnances et motifs* ont été ajoutées. Des sommaires d'ordonnances sur le site Web du Tribunal renvoient désormais aux motifs connexes de *l'Institut canadien d'information juridique (CanLII)*. Nous avons ajouté une page de foire aux questions (*FAQ*) conçue en particulier pour aider les parties qui s'autoreprésentent et le public.



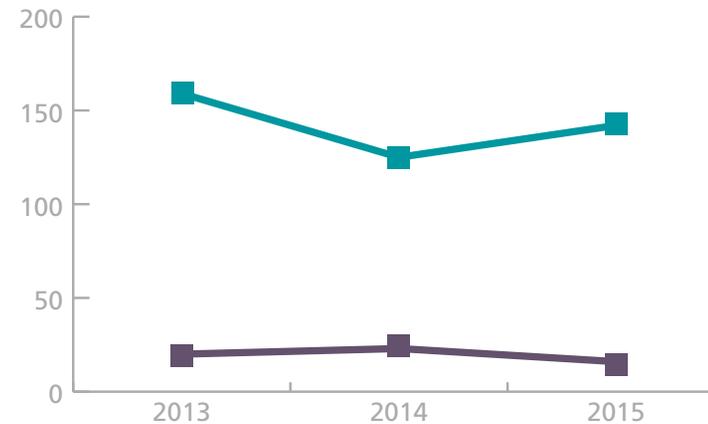
Statistiques du Tribunal

Les statistiques du Tribunal du Barreau pour 2015 se trouvent [ici](#).

DOSSIERS D'AUDIENCE ET D'APPEL OUVERTS EN 2015



DOSSIERS D'AUDIENCE ET D'APPEL OUVERTS PAR ANNÉE



Sommaire et tendances statistiques

DOSSIERS OUVERTS

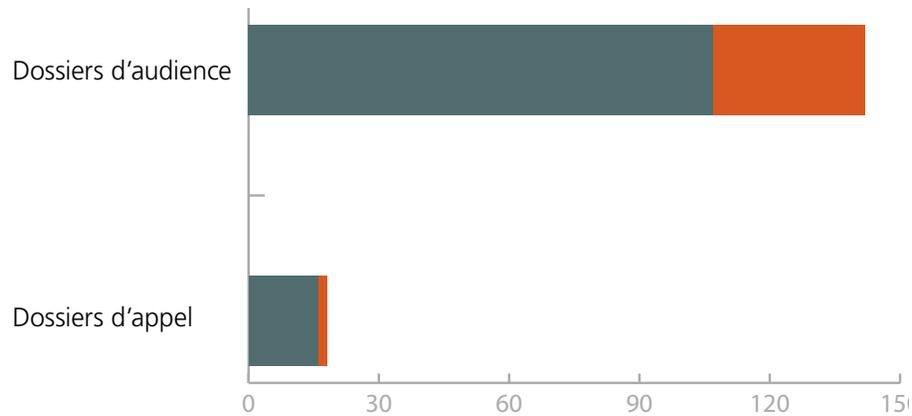
Le Tribunal garde le rythme dans sa charge de travail en ouvrant autant de dossiers qu'il en ferme. En 2015, le Tribunal du Barreau a ouvert 142 avis de requête ou de renvoi à l'audience et des motions de suspension interlocutoire ou de restriction de la pratique à présenter à la Section de première instance, comparativement à 125 dépôts en 2014, soit une augmentation de 14 %. Le Tribunal a aussi ouvert 16 avis d'appel à présenter devant la Section d'appel, comparativement à 23 dépôts en 2014, soit une diminution de 30 %. Le nombre total de dépôts en 2015 est semblable à celui de 2014.

Statistiques du Tribunal

Les statistiques du Tribunal du Barreau pour 2015 se trouvent [ici](#).

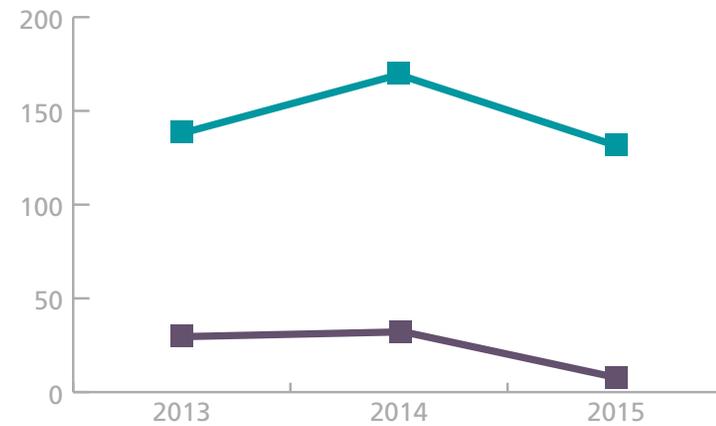
DOSSIERS D'AUDIENCE ET D'APPEL CLOS EN 2015

- Avocats
- Parajuristes



DOSSIERS D'AUDIENCE ET D'APPEL CLOS PAR ANNÉE

- Audiences
- Appels



DOSSIERS CLOS

En 2015, le Tribunal a clos 142 dossiers qui étaient devant la Section de première instance comparativement à 152 dossiers clos en 2014, soit une diminution de 7 %. Le Tribunal a également clos 18 dossiers qui étaient devant la Section d'appel, comparativement à 28 dossiers clos en 2014, soit une diminution de 36 %.

DOSSIERS OUVERTS SELON LA DURÉE

À la fin de 2015, les dossiers actifs du Tribunal étaient ouverts pour les durées suivantes :

0 à 6 mois — 68 dossiers (44 %), 7 à 12 mois — 42 dossiers (27 %), 13 à 18 mois — 16 dossiers (11 %), 19 à 24 mois — 12 dossiers (8 %) et plus de 24 mois — 15 dossiers (10 %).

Comme en 2014, près de la moitié des dossiers actifs du Tribunal à la fin de 2015 dataient de moins de six mois et 82 % des dossiers actifs du Tribunal dataient de moins de 18 mois. Ces chiffres sont presque identiques à ceux de la fin de 2014 et de 2013, et marquent une amélioration substantielle par rapport à 2012 où 33 % des dossiers ouverts à la fin de l'année étaient d'une durée de 0 à 6 mois et 76 % étaient d'une durée de moins de 18 mois.

NOMBRE DE DOSSIERS ET FRÉQUENCE DE COMPARUTION DEVANT LE TRIBUNAL

En 2015, un total de 137 dossiers a été examiné en conférence de gestion de l'instance (CGI), soit une légère diminution de 5 % par rapport aux 144 dossiers l'année précédente. Les cas dans lesquels les dossiers ont été examinés en CGI ont diminué, passant de 338 à 298 en 2014, soit une diminution de 12 %. La Section de première instance a examiné un total de 158 dossiers, soit une diminution de 17 % comparativement à 190 dossiers l'année précédente. Le nombre de fois où les dossiers ont été examinés par la Section de première instance a diminué de 25 % pour passer à 282 (377 en 2014). Cette diminution est vraisemblablement imputable à l'accent mis sur la gestion des cas actifs par CGI et par des conférences préparatoires à l'audience. La Section d'appel a examiné 12 dossiers, une diminution de 54 % par rapport à 26 dossiers l'année précédente. La Section d'appel a examiné des dossiers en 16 occasions en 2015, contre 37 en 2014, soit une diminution de 57 %.

NOMBRE TOTAL D'AUDIENCES FIXÉES ET ANNULÉES

En 2015, les audiences ou les conférences préliminaires se sont réparties sur 93 % de tous les jours civils disponibles. En tout, 337 tranches d'audiences sur un jour ou sur plusieurs jours ont été fixées devant les sections de première instance ou d'appel. Sur ce nombre, 315 étaient devant la Section de première instance et 22 devant la Section d'appel. Sur les 337 audiences prévues, 20 % ont été annulées, un pourcentage comparable aux 17 % d'audiences annulées en 2014. Vingt-trois pour cent des audiences de la Section d'appel ont été annulées, une augmentation de 11 % par rapport à 2014. Le Tribunal continue d'appliquer sa *directive de pratique* sur les demandes d'ajournement.

PRODUCTION ET PUBLICATION DES MOTIFS DU TRIBUNAL

En 2015, le Tribunal a produit 140 motifs écrits, une diminution de 24 % par rapport à 2014, vraisemblablement à cause d'un nombre inférieur de dossiers se rendant à la Section de première instance. Les motifs écrits et oraux du Tribunal continuent d'être publiés sur le site Web de *CanLII* pour que les décisions du Tribunal soient faciles à consulter par les avocats, les parajuristes et le public.

TAB 5.3

INFORMATION

TRIBUNAL 2016 FIRST QUARTER STATISTICS

9. The Tribunal's quarterly report for the first quarter of 2016 is set out at [TAB 5.3.1: 2016 Q1 Final](#) for information.
10. Ongoing collection and reporting of Tribunal operational statistics assist the Tribunal to monitor issues, needs and implementation of the new model and enable the Committee and Convocation to track certain processes and statistics.

2016 LAW SOCIETY TRIBUNAL STATISTICS

First Quarter Report: January 1, 2016 to March 31, 2016

Files Opened	3
Files Closed	4
Open Files at the End of Each Quarter.....	6
Summary Files Opened and Closed.....	8
Open Summary Files at End of Quarter	8
Number of Lawyers and Paralegals Before the Tribunal.....	9
Number of Files and Frequency Before the Tribunal	10
Total Hearings Scheduled and Vacated	11
Reasons for Vacated Hearings.....	12
Calendar Days Scheduled and Vacated.....	13
Reasons For and Number of Resulting Vacated Calendar Days.....	14
Parties' Adjournment Requests	15
Parties' Position on Adjournment Requests	16
Lawyer Matters	16
Paralegal Matters	16
Tribunal Reasons Produced and Published	17

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.

NOTE – In all tables in this document, numbers in parentheses are 2015 figures.

Table 1 Number of lawyer and paralegal files opened in the Hearing and Appeal Divisions for each quarter.

	Q1	Q2	Q3	Q4	Cumulative
Total Files	44 (42)				44 (42)
Lawyer	37				37
Paralegal	7				7
Hearing Files	41 (36)				41 (36)
Lawyer	34				34
Paralegal	7				7
Appeal Files	3 (6)				3 (6)
Lawyer	3				3
Paralegal	0				0

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 any time prior.

Table 2 Number of lawyer and paralegal files closed in the Hearing and Appeal Divisions for each quarter.

	Q1	Q2	Q3	Q4	Cumulative
Total Files	65 (51)				65 (51)
Lawyer	52				52
Paralegal	13				13
Hearing Files	63 (45)				63 (45)
Lawyer	50				50
Paralegal	13				13
Appeal Files	2 (6)				2 (6)
Lawyer	2				2
Paralegal	0				0

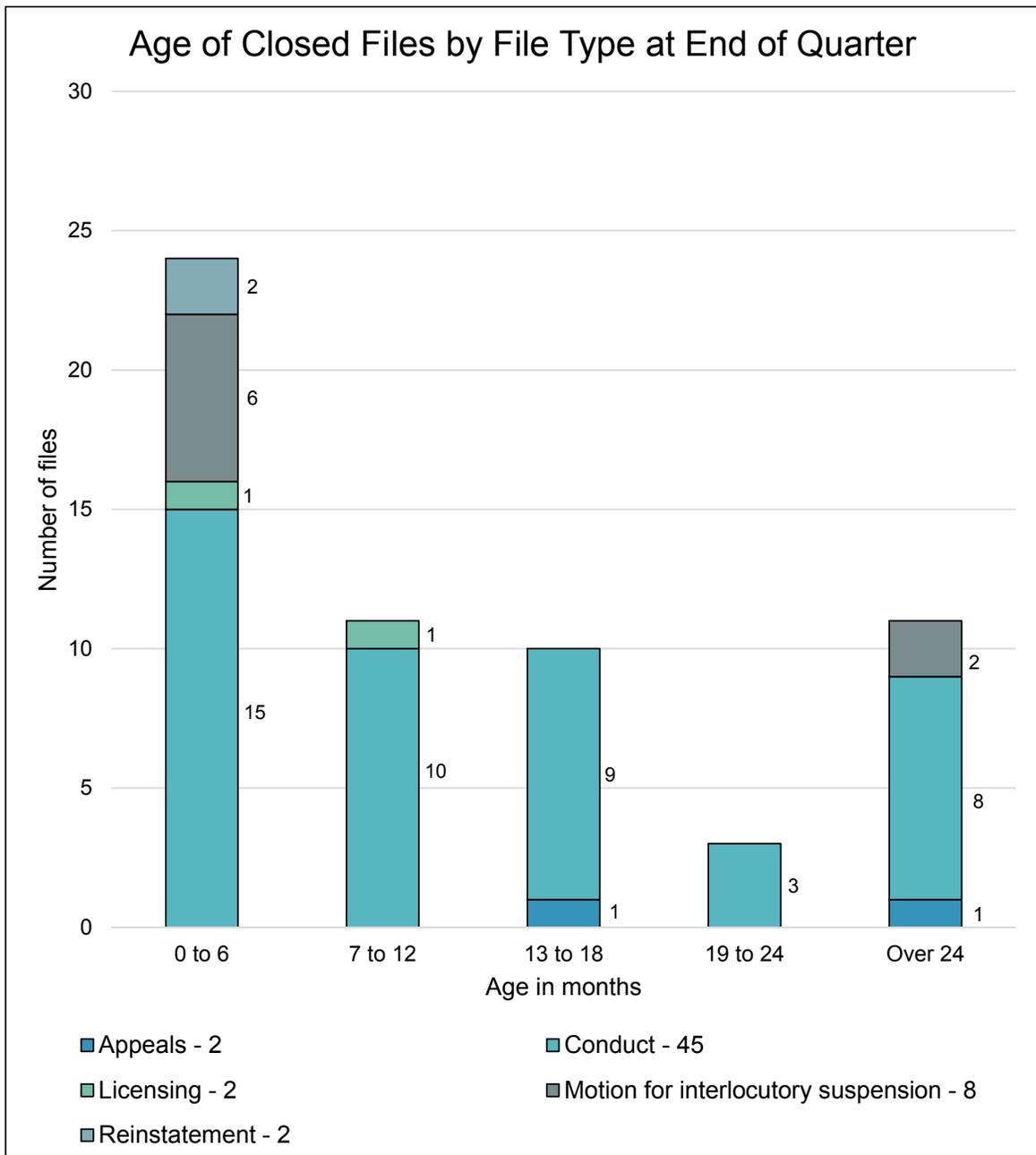


Figure 1 Number and age of files closed in each file type.

Open Files at the End of Each Quarter

Table 3 Number of lawyer and paralegal files that were open at the end of each quarter.

	Q1	Q2	Q3	Q4
Total Files	142 (145)			
Lawyer	118			
Paralegal	24			
Hearing Files	125 (127)			
Lawyer	104			
Paralegal	21			
Appeal Files	17 (18)			
Lawyer	14			
Paralegal	3			

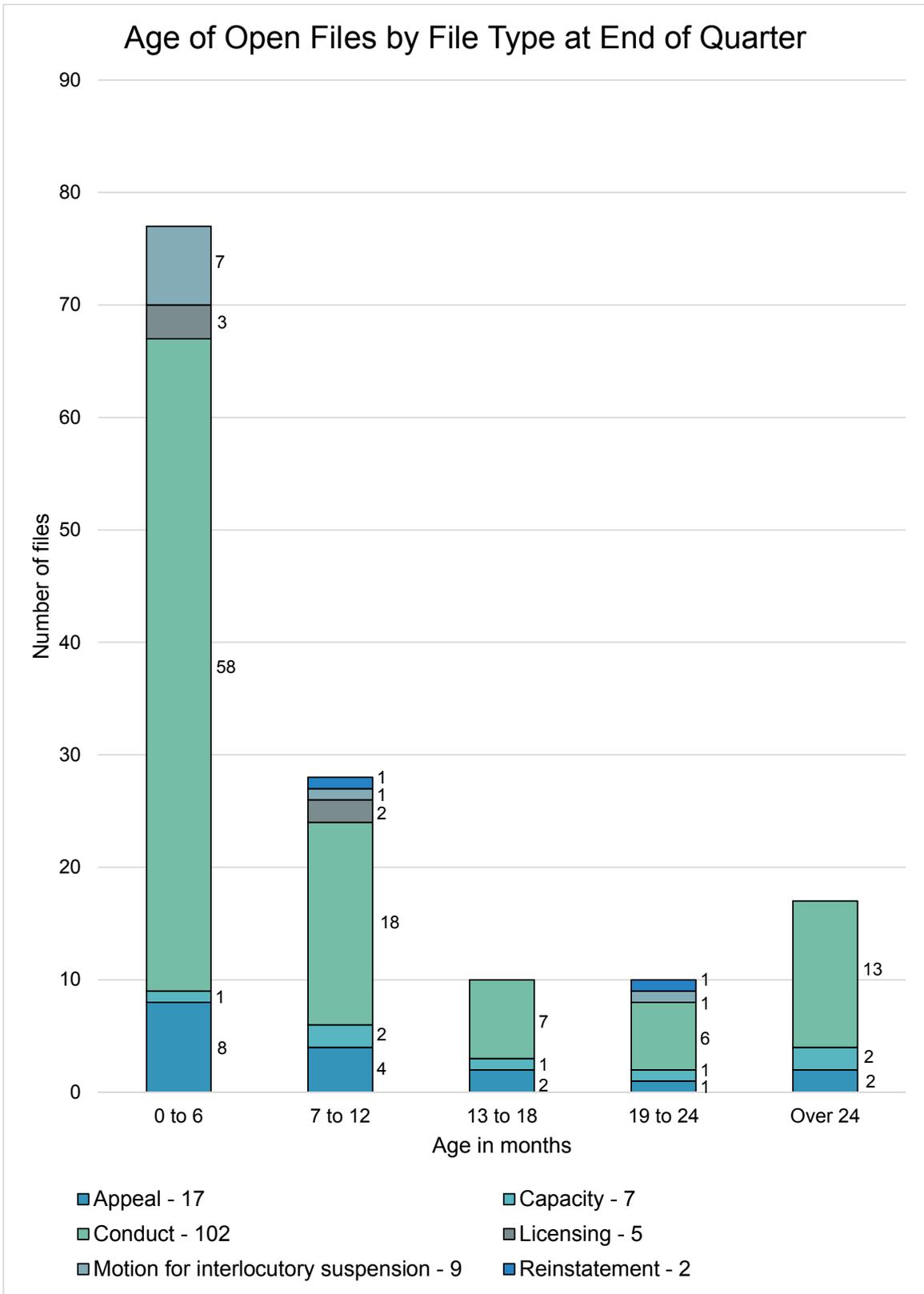


Figure 2 Number and age of open files in each file type.

Summary Files Opened and Closed

A summary file is a proceeding that is first returnable to a hearing panel and bypasses the PMC in accordance with s.2(1) of O. Reg. 167/07. These files are typically heard by a single adjudicator. This data is a subset of the information in Table 1 and Table 2.

Table 4 Number of lawyer and paralegal summary files that were opened and closed in each quarter.

	Q1	Q2	Q3	Q4	Cumulative
Total Summary Files Opened	10 (10)				10 (10)
Lawyer	8				8
Paralegal	2				2
Total Summary Files Closed	16 (9)				16 (9)
Lawyer	11				11
Paralegal	5				5

Open Summary Files at End of Quarter

Table 5 Number of lawyer and paralegal summary files that were open at the end of each quarter.

	Q1	Q2	Q3	Q4
Total Summary Files	13 (18)			
Lawyer	12			
Paralegal	1			

Number of Lawyers and Paralegals Before the Tribunal

Table 6 Number of lawyers and paralegals before the Tribunal at various proceeding stages.

Stage	Q1	Q2	Q3	Q4	Yearly Total
Proceeding Management Conference (PMC)	58 (48)				58 (48)
Lawyers	49				49
Paralegals	9				9
Hearing	43 (40)				43 (40)
Lawyers	31				31
Paralegals	12				12
Appeal Management Conference (AMC)	(5) 5				5 (5)
Lawyers	4				4
Paralegals	1				1
Appeal	4 (6)				4 (6)
Lawyers	4				4
Paralegals	0				0

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.

Table 7 Number of files before the Tribunal and number of times files were considered by the Tribunal.

Stage	Q1 Files	Q1 Times Considered	Q2 Files	Q2 Times Considered	Q3 Files	Q3 Times Considered	Q4 Files	Q4 Times Considered	Total Files	Total Times Considered
PMC	58 (50)	95 (73)							58 (50)	95 (73)
Lawyer	49	76							49	76
Paralegal	9	19							9	19
Hearing	43 (46)	58 (61)							43 (46)	58 (61)
Lawyer	31	45							31	45
Paralegal	12	13							12	13
AMC	5 (5)	9 (6)							5 (5)	9 (6)
Lawyer	4	8							4	8
Paralegal	1	1							1	1
Appeal	4 (6)	5 (7)							4 (6)	5 (7)
Lawyer	4	5							4	5
Paralegal	0	0							0	0

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. A multi-day hearing is partially vacated if it proceeded on only some of the scheduled days. Reasons for vacated hearings are noted in Table 9. The number of hearing calendar days is noted in Table 11.

Table 8 Total hearings scheduled and vacated per quarter.

	Q1	Q2	Q3	Q4	Cumulative
Number of hearings scheduled¹	86 (75)				86 (75)
Lawyer	69				69
Paralegal	17				17
Number of hearings completely vacated	25 (21)				25 (21)
Percentage of hearings completely vacated	29% (28%)				29% (28%)
Lawyer	23				23
Paralegal	2				2
Number of hearings partially vacated	4 (14)				4 (14)
Percentage of hearings partially vacated	5% (19%)				5% (19%)
Lawyer	2				2
Paralegal	2				2
Number of appeal hearings scheduled²	8 (11)				8 (11)
Lawyer	7				7
Paralegal	1				1
Number of appeal hearings completely vacated	2 (3)				2 (3)
Percentage of appeal hearings completely vacated	25% (27%)				25% (27%)
Lawyer	2				2
Paralegal	0				0

¹ This includes PMC motion hearings.

² This includes AMC motion hearings.

Reasons for Vacated Hearings

A hearing may be vacated for more than one reason. These tables show the number of times each reason resulted in a vacated hearing. In these tables, L represents lawyers and P represents paralegals.

Table 9 Reasons hearings were vacated per quarter.

Reasons Hearings Were Vacated	Q1 (L)	Q1 (P)	Q2 (L)	Q2 (P)	Q3 (L)	Q3 (P)	Q4 (L)	Q4 (P)
Agreed Statement of Facts concluded / expected		1						
Matter finished	2							
Party / representative unprepared	6							
Evidence	1							
Hearing proceeded in writing		1						
Matter abandoned	2							
Motion heard instead	1							
New representative	2							
Matter stayed	2							
Party / representative ill	5							
Party subject of other proceeding	1							
Returned to PAC	1							
Seized panel unavailable	1							
Submissions to be made	1							

Table 10 Reasons that portions of hearings were vacated per quarter.

Reasons Portions Of Hearings Were Vacated	Q1 (L)	Q1 (P)	Q2 (L)	Q2 (P)	Q3 (L)	Q3 (P)	Q4 (L)	Q4 (P)
Agreed Statement of Facts (ASF) concluded / expected		1						
Hearing completed ahead of time estimated		1						
Party / representative unavailable / ill	1							

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 three-day 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 on the same day, 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 in Table 12.

Table 11 Number of calendar days that were scheduled and vacated in the Hearing and Appeal Divisions

	Q1	Q2	Q3	Q4	Cumulative
Number of available calendar days	62 (62)				62 (62)
Number of Hearing Division calendar days scheduled	51 (59)				51 (59)
Number of Hearing Division calendar days vacated	5 (5)				5 (5)
Percentage of Hearing Division calendar days vacated	10% (9%)				10% (9%)
Number of Appeal Division calendar days scheduled	12 (13)				12 (13)
Number of Appeal Division calendar days vacated	1 (3)				1 (3)
Percentage of Appeal Division calendar days vacated	8% (23%)				8% (23%)

Reasons For and Number of Resulting Vacated Calendar Days

The first figure in each quarter's column represents the number of times a panel accepted this reason. The second figure represents the number of resulting vacated calendar days. The number of calendar days vacated shown on this page may be greater than the calendar days vacated as reported in Table 11 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.

Table 12 Reasons and the number of times each was accepted and resulted in vacated calendar days.

Reasons For Vacated Calendar Days	Q1	Q2	Q3	Q4
ASF concluded	3-3			
Counsel unprepared	3-3			
New counsel	2-2			

Parties' Adjournment Requests

The following table lists the number of adjournment requests made to the Law Society Tribunal in each quarter. Adjournment requests reported below may relate to matters scheduled to be heard during this quarter or in a subsequent quarter. In this table, L represents lawyers and P represents paralegals.

Table 13 Number of adjournment requests granted and denied per quarter by the Hearing and Appeal Divisions

Adjournment Requests	Q1 (L)	Q1 (P)	Q2 (L)	Q2 (P)	Q3 (L)	Q3 (P)	Q4 (L)	Q4 (P)	Cumulative
Granted by PMC	8 (9)	1 (0)							9 (9)
Denied by PMC	3 (0)	0 (0)							3 (0)
Granted by Hearing Division	4 (10)	0 (3)							4 (13)
Denied by Hearing Division	1 (0)	0 (1)							1 (1)
Granted by AMC	0 (0)	0 (0)							0 (0)
Denied by AMC	0 (0)	0 (0)							0 (0)
Granted by Appeal Division	0 (0)	0 (0)							0 (0)
Denied by Appeal Division	0 (0)	0 (0)							0 (0)

Parties' Position on Adjournment Requests

Lawyer Matters

Table 14 Parties position on adjournment requests in lawyer matters for Q1.

Adjournment Requests	On Consent	Opposed	Unopposed	Total
Granted by PMC	3	0	5	8
Denied by PMC	0	3	0	3
Granted by the Hearing Division	2	2	0	4
Denied by the Hearing Division	0	1	0	1

Paralegal Matters

Table 15 Parties position on adjournment requests in paralegal matters for Q1.

Adjournment Requests	On Consent	Opposed	Unopposed	Total
Granted by PMC	1	0	0	1
Denied by PMC	0	0	0	0
Granted by the Hearing Division	0	0	0	0
Denied by the Hearing Division	0	0	0	0

Tribunal Reasons Produced and Published

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.

Table 16 Number of oral and written reasons produced and published per quarter.

	Q1	Q2	Q3	Q4	Cumulative
Number of written reasons produced	47 (42)				47 (42)
Lawyer	40				40
Paralegal	7				7
Number of written reasons published	47 (47)				47 (47)
Lawyer	40				40
Paralegal	7				7
Number of oral reasons produced	16 (13)				16 (13)
Lawyer	12				12
Paralegal	4				4
Number of oral reasons published	18 (10)				18 (10)
Lawyer	12				12
Paralegal	6				6



Tab 6

**Report to Convocation
June 23, 2016**

**Report on the Federation of Law Societies of Canada
Council and Related Meetings, Banff
March 9-11, 2016**

Purpose of Report: Information

**Prepared by Jim Varro
Policy Secretariat**

FOR INFORMATION

COUNCIL AND RELATED MEETINGS OF THE FEDERATION OF LAW SOCIETIES OF CANADA

INTRODUCTION

1. The Federation of Law Societies of Canada (the “Federation”) is the national coordinating body for Canada’s 14 law societies. It operates the National Committee on Accreditation (“NCA”), a Standing Committee at the Federation whose primary mandate is to assess the legal education and professional experience of persons whose legal education and professional experience were obtained outside of Canadian common law jurisdictions and who wish to be admitted to a common law bar in Canada. It provides administrative support to the National Criminal Law Program and the National Family Law Program.
2. The Federation additionally engages in a number of national initiatives through various committees and other groups on which reports are received at its annual and semi-annual meetings.
3. More information about the Federation can be found on its website at www.flsc.ca/.
4. The Federation typically meets twice a year to conduct its business meetings for Council members, benchers and law society staff. This includes a meeting of law society CEOs in the CEOs’ Forum and of law society presidents in the Presidents’ Forum.
5. Treasurer Janet Minor, Federation Council member Laurie Pawlitzka, CEO Robert Lapper, Grant Wedge and Jim Varro attended the Banff meetings held from March 9 to 11, 2016. This report provides highlights of the meetings.

COUNCIL MEETING

6. The Council met on March 10 and 11, 2016. It dealt with a number of decision items, received reports from the Federation’s President and its CEO and addressed a range of Federation matters.

Reports for Discussion or Decision

Report from the Federation Executive on the Calls to Action of the Truth and Reconciliation Commission

7. In its Calls to Action issued last year, the Truth and Reconciliation Commission (“TRC”) called upon the Federation “to ensure that lawyers receive appropriate cultural

competency training” addressing the Indian Residential Schools legacy and key elements of Aboriginal law.¹

8. At the Federation’s conference in Winnipeg in the fall of 2015, which included a focus on the Calls to Action, there was consensus among the conference participants that responding to the Calls to Action must be meaningful and prompt, and include direct collaboration with Indigenous peoples from the outset. The Federation Executive noted at the Banff meeting that although individual law societies have begun to consider how to respond to the Calls to Action, the direct appeal to the Federation suggests the need for a national response.
9. Following an in-depth discussion of the Calls to Action, the Council voted to establish a working group to develop recommendations on how best to effectively respond to the Calls to Action. The Council resolution included a commitment to a process that engages representatives of Indigenous peoples. The Federation will also ensure that its work will complement the ongoing work of law societies across the country on the Calls to Action.

Report of the Governance Review Committee

10. In June 2014, Federation Council approved the creation of a Governance Review Committee to conduct a governance review of the Federation. The Committee includes the Law Society of Upper Canada’s Robert Lapper, as well as Marie-Claude Bélanger-Richard, Federation President (Chair), Jeff Hirsch, Federation President, Sheila Greene, Council member for the Law Society of Newfoundland & Labrador, Sheila MacPherson, Council member for the Law Society of the Northwest Territories, Steve Raby, Council member for the Law Society of Alberta, Johanne Brodeur, former Bâtonnière of the Barreau du Québec and Tim McGee, CEO, Law Society of British Columbia.
11. The Committee carried out extensive consultations and meetings with law society leaders, former Council members, Federation Presidents, as well as some current and former Federation Committee members.
12. Following its status report to the Winnipeg meeting in the fall of 2015, the Committee continued its work and prepared a draft of proposed Governance Policies. The Policies were prepared to, among other things, clarify roles, responsibilities and processes and to render Federation governance more transparent and efficient. The Committee sought and received feedback on a number of issues contained in the Policies from various law societies, including the Law Society of Upper Canada.

¹ Recommendation 27 states: We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

13. The Committee's report to the Banff meeting included a revised proposed draft of the Policies. The Committee's report noted that in its view, the proposed Policies will mark a significant improvement in how the Federation goes about its business and serves the interests of its members. The revised Policies, in addition to reflecting a small number of drafting refinements, include changes intended to provide greater clarity on a number of issues, including the effect of Council votes, membership in a Nominating Committee (as proposed), the distribution of documentation for Council meetings and attendance at Council.
14. Council engaged in a substantial discussion of the report and the draft Governance Policies. Council adopted the proposed Policies, on the understanding that provisions relating to who may attend Council meetings and the transparency around meetings will be further refined and clarified before being presented for adoption in the Policies.

Report on Strategic Planning

15. Recognizing the importance to the Federation of being guided by a Strategic Plan and an Annual Activity Plan, the Federation President reported to Council that, in the Executive's view, the governance review process that has been underway since early 2015 provides the impetus to take a fresh look at what should be the Federation's strategic priorities for the next few years. The Federation last engaged in a full strategic planning process in 2008 and has been guided by a Strategic Plan that was reviewed in a summary way every year since then.
16. At the Council meetings in October and December 2015, the consensus was that strategic planning should await the completion of the governance review process, which is imminent. The view was also expressed that the meaningful engagement and buy-in of all of the Federation's leadership constituencies - the elected leadership of Canada's law societies, their CEOs and senior staff, the Federation Council and the Federation's senior staff - will be important to the success of this planning exercise.
17. To this end, Council received reports from the Presidents' Forum and the CEOs' Forum, both of which met prior to Council, where issues of mutual interest to the Federation and Law Societies were discussed. The CEOs' Forum included a session in which an environmental scan was undertaken of the myriad issues, developments and challenges relevant to the world of legal services regulation.
18. These reports helped to inform Council on issues important to strategic planning for the Federation. Next steps include receiving from law society CEOs briefing papers on the key initiatives in their jurisdictions and an exchange through the Federation of strategic plans that law societies have created for their own organizations.

Report of the Interim Finance and Audit Committee

19. At the Winnipeg meetings in the fall of 2015, the Federation Council approved the establishment of the Interim Finance and Audit Committee. The members of the Committee are: Marie-Claude Bélanger-Richard, Q.C, Jeff Hirsch, Gavin Hume, Q.C. Steve Raby, Q.C. Robert Lapper, Q.C. and Lise Tremblay.
20. The Committee provided its report on the operating statements for the Federation's general fund and the National Committee on Accreditation ("NCA") for the first half of the 2015-2016 financial year, and presented for decision the 2016-2017 budgets for the Federation, the NCA and the 2016 budget for Canlii.
21. Council agreed to defer the decision on approval of the Federation budget and associated law societies levy and NCA budget to permit the Law Society of Upper Canada to review these budgets. It is anticipated that these matters will be returned to the Federation's June 2016 Council meeting.
22. Council approved the Canlii budget for 2016 in the amount of approximately \$3.3million, based on the CanLII Board's recommendation to Council with respect to the fees to be paid to CanLII by the law societies in order to fund its activities.²

Standing Committee on the Model Code of Professional Conduct

23. The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to Council with respect to any changes to the Model Code. The Law Society's Naomi Bussin, Senior Counsel Professional Regulation, serves on the Standing Committee.
24. Council approved the report from the Standing Committee that included proposed amendments to the rules on communicating with witnesses, advice and reporting on errors and omissions, and language respecting equity seeking groups and the duty to report. These rules amendments will now be referred to law societies for consideration for adoption in their rules or codes of professional conduct.

² The portion of fees payable by law societies is as follows:

- the sum of \$39.24 per FTE to be paid by all law societies other than the Barreau du Québec and the Chambre des notaires du Québec;
- the sum of \$26.24 per FTE to be paid by the Barreau du Québec; and
- the sum of \$16.77 per FTE to be paid by the Chambre des notaires du Québec.

National Committee on Accreditation (NCA) Proposed Program Review

25. The NCA is a standing committee of the Federation. Established in 1977 through the joint efforts of the Federation and the Council of Canadian Law Deans (“CCLD”) as the Joint Committee on Accreditation, it is responsible for the assessment of the legal training and professional experience of internationally trained lawyers and students and graduates of Canadian civil law programs who wish to enter the bar admission program in any of the Canadian common law jurisdictions. Bencher Malcolm Mercer serves on the NCA.
26. At its request, Council received a report from Federation CEO Jonathan Herman on options for reviewing the policy, governance and operations of the NCA. The report following preliminary input received from the Chair of the NCA, Graeme Mitchell, and a number of law society senior staff across the country.
27. In assessing the options, the Council was of the view that a review that looks at the full range of issues relating to the NCA including its governance, the standard against which candidates are assessed, training and preparation of candidates and appropriate testing mechanisms, was appropriate.
28. The Council determined that this was a priority. It directed that work begin on the scope of review and that the matter be returned to Council in June 2016 for further consideration.

National Mobility Database

29. The Council, at its request, received a report from CEO Jonathan Herman on development of a plan to make enhancements to the current interjurisdictional database of law societies’ membership to ensure that it is more effective and functional.
30. Under the National Mobility Agreement (“NMA”), a lawyer called to the bar in one common law province may provide legal services temporarily (up to 100 days) in or with respect to the law of another common law province without a permit or notice to the host law society, provided certain conditions are met. Those conditions include requirements to be in good standing in the lawyer’s home jurisdiction, have an unrestricted right to practise, not be subject to any disciplinary proceedings, and have no disciplinary record in any jurisdiction. To ensure that a lawyer’s eligibility to practise temporarily in another jurisdiction could be easily ascertained, the NMA mandated the creation of an interjurisdictional database for use by law societies.
31. Council agreed that there is a need to ensure the currency and accuracy of the information the database contains, that it is supported by the appropriate technology and that consistency in the information presented in the database is achieved. Council agreed that enhancements to the database should be pursued. It determined that the Executive should meet to discuss creating the appropriate group among the law societies’ CEOs and

senior staff to perform the necessary work and engaging expertise for the project as appropriate.

Council Liaison with CanLII Board of Directors

32. The Council determined that it was desirable to establish a liaison to provide a link between the Board of Directors and management of CanLII, and the Federation and Canada's law societies for the purpose of facilitating two-way and multilateral communication among the parties about matters of strategic importance relating to CanLII.
33. CanLII operates within a professional management structure led by a full time President and CEO employed by a skills-based Board of Directors. The Federation is the sole member designated to act as an agent of the law societies for the purpose of collecting the fees that fund CanLII's operations. The ultimate oversight function with respect to CanLII's Board of Directors, strategic plan, budget and funding requirements, remains with Canada's law societies acting through the Federation. The CanLII Board is currently working with CanLII's President and CEO, Xavier Beauchamp Tremblay, to develop a new strategic plan for the consideration of the Federation and the law societies.
34. To ensure an appropriate connection between CanLII and its funders, the Council believes it is appropriate that communications relating to the strategic priorities of CanLII take place in a structured and effective manner. Council approved the position of Council liaison to CanLII and requested that the Executive designate a member of Council to be the liaison.

Information Reports

35. Council received a number of reports for information, as noted below.

CanLII Semi-Annual Report

36. Martin Felsky, the Chair of CanLII Board of Directors, provided a report on CanLII's activities and its audited financial statements for 2015, including the Auditor's Report on the financial statements. Diana Miles serves on the CanLII Board.
37. The report noted, as indicated earlier, that CanLII is currently undergoing a review of its strategic plan. The CanLII board has appointed a working group for this purpose.
38. Since the fall of 2015, CanLII has worked on:
 - a. making design changes to the CanLII.org interface to declutter the search page and make references to CanLII Connects more visible, which has significantly boosted the number of new CanLII Connects visitors and users at the end of 2015 and in early 2016;

- b. rolling out features to improve the user experience in the search results pages, including infinite scrolling and the ability to toggle between full or compact display of search results;
 - c. reorganizing the jurisdiction-specific pages where the growing list of databases made it increasingly difficult to promptly identify more important databases (i.e. courts and major administrative tribunals);
 - d. adding Federal and Quebec Annual Statutes as part of a project funded by the Centre d'accès à l'information juridique (CAIJ); and
 - a. revamping its blog to provide more regular updates to users.
39. CanLII looks forward to undertaking projects that will come within a new strategic plan. It will continue to look for improvements and opportunities to expand CanLII content and services in ways that could support greater reliance on CanLII by legal professionals.

National Committee on Accreditation (NCA)

40. The NCA's mandate was noted earlier in this report.
41. The role of the committee includes considering appeals of assessments (three to date in 2015-2016).
42. Recent activities have included the following:
- a. In January 2015, the committee revised the NCA Assessment Policy, bringing it into compliance with the National Requirement;
 - b. The NCA has received 1,030 applications for assessment to date in 2015/2016; during the same period, 641 Certificates of Qualification have been issued;
 - c. In January 2016, 1,520 exams were written in 16 Canadian cities (includes Vancouver, Calgary, Edmonton, Regina, Winnipeg, & Toronto) and seven sites abroad;
 - d. The NCA Chair is an observer and participant on the National Requirement Review Committee and will be providing input from the perspective of the NCA.

Canadian Common Law Program Approval Committee

43. Laurie Pawlitza, Treasurer Emeritus of the Law Society is Chair of the Canadian Common Law Program Approval Committee (the "Approval Committee"), which is mandated to assess Canadian common law programs to determine whether they comply with [the National Requirement](#) that graduate must meet for entry into the Canadian bar admission or licensing programs.
44. Approval Committee members are:
- a. Morgan Cooper - former President, Law Society of Newfoundland and Labrador;
 - b. Stephen G. Raby, Q.C. - Council member representing the Law Society of Alberta;

- c. Cori Ghitter - Director of Professionalism and Policy, Law Society of Alberta;
 - d. M. Iacobucci - Dean, University of Toronto, Faculty of Law;

 - e. Sébastien Lebel-Grenier - Dean, Université de Sherbrooke; and
 - f. Lorna Turnbull - Dean, University of Manitoba
45. The committee met in January 2016, to discuss various issues including the evaluation of learning resources, a key issue for the committee due to challenges in evaluating facilities, libraries, etc. without visits to the schools and given the variation in funding, size, and organization of Canadian law schools.
46. The committee welcomed Federation President Jeff Hirsch and National Requirement Review Committee (“NRRC”) Chair Tom Conway to the meeting and took advantage of their presence to have a fruitful discussion on various policy issues related to the Approval Committee and the NRRC.
47. The committee previously met in June 2015 to evaluate 20 law school reports. As required in the Approval Committee’s iterative process, initial feedback and questions were sent to the law schools in the summer and all schools were responsive.
48. There are currently 19 law schools with approved programs, and two (Lakehead University and Trinity Western University) with preliminary approval. There are 19 three-year JD programs, 53 joint programs, nine dual programs, and seven one-year civil law programs, for a total of 88. Lakehead’s first class will be graduating in spring 2016 and the committee will be considering full approval of the program in late winter.
49. In keeping with its mandate, the committee is monitoring changes and challenges within legal education. The committee members see an important role for the committee in facilitating the flow of communication to and from the law societies and the academy on these issues, and in ensuring that both the Federation and the law societies are aware of the issues.

National Requirement Review Committee

50. The National Requirement Review Committee was established by the Council of the Federation to undertake two primary tasks: 1) perform an initial review of the National Requirement that graduates of all Canadian common law programs must meet to be eligible to enter law society bar admission or licensing programs; and 2) consider whether a non-discrimination provision should be added to the National Requirement and if so in what form.
51. The following serve on the committee:
- a. Thomas G. Conway, Federation Past President, Chair
 - b. Herman Van Ommen, Q.C. (Law Society of British Columbia)

- c. Kevin Feth, Q.C. (Law Society of Alberta)
- d. Peter Wardle (Law Society of Upper Canada)
- e. Tilly Pillay, Q.C. (Nova Scotia Barristers' Society)
- f. Shauna Van Praagh (Faculty of Law, McGill University)
- g. Trevor Farrow (Osgoode Hall Law School)
- h. Diana Miles (Law Society of Upper Canada)

52. The committee is planning two meetings this spring, the first to consider input from the Approval Committee on the list of issues relating to the initial review of the National Requirement, and the second to continue discussions on the possible addition to the National Requirement of a non-discrimination provision and to develop a plan for consultation on that issue.

National Admission Standards Project (NASP)

53. The National Admission Standards Steering Committee, as part of the National Admissions Standards Project ("NASP"), provides strategic direction for the development and implementation of the national standards for admission to the legal profession.
54. The committee is comprised of:
- a. Don Thompson, Q.C., Executive Director, Law Society of Alberta, Chair;
 - b. Bâtonnière Marie-Claude Bélanger-Richard, Q.C., Federation past president and former Bâtonnière, Law Society of New Brunswick;
 - c. Allan Fineblit, Q.C., former CEO, Law Society of Manitoba;
 - d. Jeff Hirsch, President, Law Society of Manitoba;
 - e. Robert Lapper, CEO, Law Society of Upper Canada;
 - f. Tim McGee, Q.C., CEO, Law Society of British Columbia;
 - g. Diana Miles, Executive Director, Organizational Strategy / Professional Development and Competence, Law Society of Upper Canada;
 - h. Laurie Pawlitza, Council member and past Treasurer, Law Society of Upper Canada;
 - i. Darrel Pink, Executive Director, Nova Scotia Barristers' Society;
 - j. Bâtonnier Bernard Synnott, Barreau du Quebec;
 - k. Alan Treleaven, Director, Education and Practice, Law Society of British Columbia;
 - l. Lise Tremblay, CEO, Barreau du Quebec; and
 - m. Jonathan Herman, Federation CEO.
55. In 2013, law societies adopted the National Competency Profile, which describes the competencies required of new lawyers and Quebec notaries. Throughout 2014, members of the committee met with law societies to discuss options for assessing the competencies in the profile.
56. The committee's assessment proposal was circulated to law societies and members of Council in the fall of 2015. The proposal provides a vision and structure for moving

forward with the development of a national qualifying assessment system for admission. The proposed assessment system aims to provide an appropriate degree of consistency in how law societies assess the competencies in the National Competency Profile, given the mobility of the legal profession today. It is aimed at helping law societies meet their public interest mandate through consistent, defensible and high standards for admission to the legal profession.

57. With input received at the Federation's December 2015 Council meeting from various Council members who reported on the views within their law societies about the proposal and their readiness for next steps, and pending receipt of feedback from all law societies on the assessment proposal, the committee will meet to discuss the National Good Character Standard and a process and timeline for review of the National Competency Profile.

Standing Committee on National Discipline Standards

58. The mandate of the Standing Committee is to facilitate implementation of the national standards established for law society handling of complaints and discipline matters ("National Discipline Standards") and to make recommendations to Council for amendments to the National Discipline Standards from time to time as necessary.
59. The members of the committee are:
 - a. Alan Fineblit, Q.C. Chair (Counsel, Thompson, Dorfman Sweatman LLP and former CEO, Law Society of Manitoba);
 - b. Deb Armour (Chief Legal Officer, Law Society of British Columbia);
 - c. Guy Bilodeau (syndic, Bureau du syndic du Barreau du Québec);
 - d. Lynn Daffe (Executive Director, Law Society of Yukon);
 - e. Elizabeth Osler (Deputy Executive Director & Director, Regulation, Law Society of Alberta);
 - f. Victoria Rees (Director, Professional Responsibility, Nova Scotia Barristers' Society);
 - g. Greg Walen Q.C. (Council Member representing the Law Society of Saskatchewan);
 - h. Phyllis Weir (Legal Director, Law Society of Newfoundland and Labrador); and
 - i. Irene Hamilton, Public Representative (Director of Justice Innovation, Department of Justice (Manitoba))
60. The committee continues work on a number of initiatives, including:
 - a. a proposal for a voluntary peer review pilot project,
 - b. a proposed new standard on early resolution of complaints,
 - c. a proposal for a new standard for the ability to impose interim measures,
 - d. a proposal for standards to measure quality of discipline work, and
 - e. some resources for law societies implementing Standard 16 (information sharing).

61. The Adjudicator Training Working Group (ATWG) continues to work on the design of a national training curriculum for law society adjudicators.
62. The committee has completed several communication documents which will be distributed to law societies soon, along with updated versions of the National Discipline Standards and the Implementation Guide.

Standing Committee on the Model Code of Professional Conduct

63. The mandate of the Standing Committee was noted earlier in this report. Its members are:
 - a. Gavin Hume Q.C., Chair - Council member representing the Law Society of British Columbia
 - b. Stephen G. Raby, Q.C. - Council member representing the Law Society of Alberta
 - c. Sheila H. Greene, Q.C. - Council member representing the Law Society of Newfoundland and Labrador
 - d. Naomi Bussin - Senior Counsel, Professional Regulation, Law Society of Upper Canada
 - e. Sylvie Champagne - Secrétaire de l'Ordre, Barreau du Québec
 - f. Kris Dangerfield - Chief Executive Officer, Law Society of Manitoba
 - g. Darrel Pink - Executive Director, Nova Scotia Barristers' Society
64. The committee continues its work on post-judicial return to practice and fee sharing and referral fee rules.
65. The most recent consultation package on proposed amendments to the Model Code was released on January 30, 2016. The package, which includes proposed amendments to the rules on competence, dishonesty/fraud, and incriminating physical evidence, and a new rule addressing responsibilities that arise when a lawyer leaves a law firm, was sent to law societies, the Canadian Bar Association, and the Department of Justice. It was also circulated to the legal ethics community through the listserv operated by the Canadian Association for Legal Ethics and was posted on the Federation's public website. The consultation is open until June 30, 2016.
66. The committee has established a fixed schedule for consultations and amendment packages in response to requests from the law societies. Consultation packages will be released on January 30 of each year, with feedback due by June 30. The committee will review the feedback and finalize the proposed amendments by November 1, with a view to circulating them to Council and the law societies by November 30 for a vote by Council at its spring meeting.

Standing Committee on Access to Legal Services

67. The Standing Committee on Access to Legal Services facilitates the Federation's strategic objective of collaborating with other participants in the legal system to foster greater public satisfaction with access to legal services.
68. The Committee members are:
 - a. Jeff Hirsch, Chair - President of the Federation of Law Societies of Canada
 - b. Kevin Feth, Q.C. - Former President, Law Society of Alberta
 - c. Sheila H. Greene, Q.C. - Council Member representing the Law Society of Newfoundland and Labrador
 - d. Bâtonnier Nicolas Plourde, Ad.E. - Former Bâtonnier, Barreau du Québec
 - e. Bâtonnier Richard J. Scott, Q.C. - Council Member representing the Law Society of New Brunswick
 - f. Robert Lapper, Q.C. - Chief Executive Officer, Law Society of Upper Canada
 - g. Tim McGee, Q.C. - Chief Executive Officer and Executive Director, Law Society of British Columbia
 - h. Darrel Pink - Executive Director, Nova Scotia Barristers' Society
 - i. Nalini Vaddapalli - Chief Executive Officer, Law Society of Nunavut
69. The Standing Committee is focusing on possible access initiatives to feed into the larger Federation strategic planning work planned for 2016.
70. The Standing Committee chair and Federation President Jeff Hirsch continues to play an active role as the Federation's appointee to the National Action Committee on Access to Justice in Family and Civil Law Matters (the "NAC"). The meetings of NAC provide an opportunity for representatives of the provincial and territorial committees to share their greatest achievements and challenges and to discuss plans for ongoing information sharing as well as the possibility of holding an innovation roundtable.



CEO's REPORT

This has been a particularly busy period for operations at the Law Society. Since my last report to Convocation in December 2015, outside of day to day regulatory activities the organization has focused much of its efforts on the following initiatives:

- Budget planning for 2017 and beyond;
- Ongoing management of the mortgage fraud case inventory and caseload in the Professional Regulation Division;
- Ongoing review of LibraryCo and library services;
- Development of various policy initiatives including Compliance-Based Entity Regulation, Challenges Faced by Racialized Licensees, Licensing, Alternative Business Structures (ABS) and Mental Health Strategy;
- Continuing support of TAG - The Action Group on Access to Justice;
- Ongoing implementation of the three year technology plan including the rollout of SharePoint, licensee database redesign, Synerion Direct to track staff attendance, upgrade to the Ecommerce site, as well as a number of enhancements to the Law Society Portal;
- Judicial Review of the Law Society's decision on accreditation of Trinity Western University; and
- The Treasurer Election.

This report will provide an overview of operational trends and activities and policy and other initiatives that are currently underway or in development to support strategic priorities.



STRATEGIC PLANNING UPDATE

We have made significant progress on the strategic priorities that Convocation adopted last fall. Details of progress on the work on the priorities is provided in the report from the Priority Planning Committee to Convocation this month. A number of initiatives mentioned later in this report have been completed – a new coach and advisor network, a mental health strategy and recommendations on entity and compliance based regulation – and others are ongoing, including our policy development benchmarking project and work on the diversity survey of benchers.

As the Committee's report reflects, the priority planning process Convocation follows, which provides a structured approach to planning and prioritizing the Law Society's policy agenda, continues to help advance the effective fulfillment of the Law Society's mandate.

We have established operational work plans related to the priorities to assist in monitoring progress on and completing the work on the priorities in the Plan. As this report will reveal, the work of the operations is aligned with the strategic priorities to ensure that the priorities are achieved and realized in an effective, efficient way.

2016 BUDGET UPDATE AND DEVELOPMENT OF THE 2017 BUDGET PLAN

FINANCIAL REPORTING

The Law Society's audited financial statements for 2015 were presented at the Annual General Meeting in May. The statements received an unqualified audit opinion, and the Law Society remains in a strong financial position. This was the first year for PwC as our auditors and the transition procedures went smoothly.

Audited annual financial statements have been or will be completed for LibraryCo, the Law Society Pension Fund and the Law Society Foundation.

All required tax returns, charity and not-for-profit returns will be submitted by the deadline of June 30, 2016.



BUDGET DEVELOPMENT

Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November).

Budget planning for 2017 and longer term projections for the 2017 to 2019 budget cycle have commenced with initial discussions on the financial pressures associated with the budget for 2017, incorporating the strategic plan approved for the current bench term. A summarized budget timetable is set out below:

DATE (2016)	PROCESS
Second Quarter	The Priority Planning Committee assesses financial pressures to be considered in the preparation of the 2017 budget. The Executive Management team (SME) considers individual and collective budget assumptions, variables and objectives. This review also includes how the proposed 2017 budget fits into the priorities established in the Strategic Plan for 2015-19.
May 11	The Audit & Finance Committee received a first draft of pressures and factors for the 2017 budget. Prior to May Convocation, a Budget Education Session was held for all benchers to assist them to understand and provide input on the budget components and processes.
July August	The components reviewed and approved above are compiled into an operating budget for the Law Society. Facilities and Information Technology departments compile a capital budget with the assistance of user departments. LibraryCo's Transition Committee incorporates the results of a user survey into their deliberations.
Sep 14	A first draft of the 2017 budget and medium term financial plan is presented to the Audit & Finance Committee.



	Under the Unanimous Shareholders Agreement, LibraryCo provides its 2017 budget for incorporation into the Law Society budget.
Sep 22	A budget information session is held for all benchers to ensure a full exchange of information on the 2017 budget and medium term financial plan.
October 12 and 27	Draft operating budgets for lawyers and paralegals and a capital budget for 2017 and the medium term financial plan are presented to the Audit & Finance Committee and Convocation for approval. The budget is typically approved by Convocation in October.

OPERATIONAL TRENDS AND ACTIVITIES

COMPLAINTS AND INVESTIGATIONS

• *Complaint Trends*

Complaint trends fluctuate year by year. In 2013, there was a noticeable increase in new cases with a 5.4% increase compared to 2012. In 2014, the trend reversed, with the Division receiving 4781 cases, 5% lower than the 5040 cases received in 2013 and about the same number as received in 2012 (4782). In 2015, the downward trend continued, with the Division receiving 4647 cases, 8% less than in 2014.

In the first four months of 2016, the Division has received an increase in new complaints when compared to the same period in 2015. Between January 1 and April 30, 2016, 1678 new complaints had been received in the Division, a 5.8% increase over the 1586 complaints received in the first four months of 2015.

The distribution by type of subjects of the cases received in the first four months of 2016 (January to April) is:

Lawyers:	1283 complaints (76.5%)
Paralegals:	203 complaints (12.1%)
Lawyer Applicants:	50 cases (3.0%)



Paralegal Applicants:	99 cases (5.9%)
Unauthorized practitioners:	43 complaints (2.5%)

- **Investigations**

While the number of cases coming into the Law Society has increased in the first four months of 2016, the number of cases referred to the Investigations department in this period has decreased (by 8%). This department addresses the more serious, complex issues. The number of cases referred to the Complaints Resolution department (more minor cases) has increased (by 5.7%). This is a change from 2015 when the cases referred to this department had decreased from previous years.

In February 2016, Convocation approved the use of \$500,000 from the General Fund Balance to fund additional resources for the Professional Regulation Division: five new positions for the Investigations department and one for the Disclosure Unit. Four of the positions have been filled and recruitment for the last two is in process. Although it will take some time before the impact of these positions will be realized, we are pleased to report that the decision has made an immediate positive impact on staff morale. Inventory in the Investigations department has decreased in the first four months of 2016.

- **Discipline**

The number of cases coming into Discipline also fluctuates from year to year. Cases coming into the department in the first four months are higher. However, several relate to one licensee. When this factor is removed, the numbers this year appear to be similar to the numbers in the same four month period in 2015. The number of Notices of Application issued by Discipline has increased in 2016 (56 in the first four months compared to 45 in the same period in 2015). Despite this increase, Discipline's inventory remains relatively stable.

- **Mortgage Fraud**

Over the past several years the Law Society has received new reports of mortgage fraud allegations at the rate of between two and five lawyers every month. In 2015, the Law Society received reports of lawyers engaged in mortgage fraud at an average of between two and three (2.8) lawyers every month, down from the average of 4.5 new lawyer investigations per month in 2014. This year, from January through April, the Law Society received reports of lawyers engaged in mortgage fraud at an average of 2.3 per



month. At the end of April 2015, 40 mortgage fraud investigations (69 cases) were in the inventory, 44% fewer than at the end of April 2015 (71 mortgage fraud investigations involving 100 cases).

The Executive Director's objective is to complete mortgage fraud investigations in 18 months. Currently, 48% of mortgage fraud investigations are less than 10 months old, 17% are between 10 and 18 months old, and 35% are older than 18 months. Cases aged 18 months or older typically have a history that includes investigation interruptions beyond the control of the Law Society, including summary hearing process for a licensee's failure to cooperate, the need to wait for third party evidence, and delays in obtaining cooperation including from witnesses. These investigations are tracked and monitored regularly for timely completion.

MANAGING RISK THROUGH INTERLOCUTORY SUSPENSIONS AND RESTRICTIONS

The Professional Regulation Division undertakes risk assessments when cases arrive and during an investigation. Interlocutory suspensions and practice restrictions are an important tool to address risk to the public to prevent future harm. From January – April 2016:

- The Proceedings Authorization Committee authorized seven interlocutory suspension applications
- Eleven interlocutory suspension or practise restriction applications were completed before the Law Society Tribunal
 - Three applications were withdrawn (as a result of one licensee signing an undertaking not to practise law, one licensee surrendering their license and in the third case, withdrawing the application for a practise restriction and obtaining authorization to seek an interlocutory suspension);
 - One application was dismissed by the Tribunal;
 - Two interlocutory practice restriction orders were ordered by the Tribunal;
 - Five interlocutory suspension orders were ordered by the Tribunal;
 - Five interlocutory suspension matters are currently before the Tribunal. Interim interlocutory orders have been made in four of the five cases.

All of these matters relate to serious misconduct and Professional Regulation staff have moved quickly to protect the public.



TRUSTEESHIPS AND COMPENSATION FUND

Trustee Services becomes involved to protect, preserve and distribute client files, funds and/or property when a licensee cannot do so because of regulatory action, death or incapacity. Between January 1 and April 30, 2016, Trustee Services has obtained two new formal trusteeship matters, which are dealt with in the Superior Court, and 10 formal trusteeships have been completed and closed. An additional 14 cases have been opened in which guidance and information has been provided on how to wind up a licensee's practice. The department has received 454 and closed 448 requests from clients and others concerning licensees' practices.

Between January 1 and April 30, 2016, a total of 83 applications for compensation have been received by the Compensation Fund: 76 claims involving 29 lawyers and seven claims involving four paralegals. During this period, a total of 29 claims have been granted: \$419,400 has been paid on 23 claims against 10 lawyers and \$12,700 has been paid on six claims against three paralegals. The Compensation Fund continues to carry a number of potential claims related to a very high-profile real estate loss.

DECISIONS OF THE SUPERIOR COURT AND COURT OF APPEAL

In 2016 we received twelve decisions from the Ontario Superior Court and Court of Appeal, relating to seven lawyers, two paralegals and one lawyer applicant. All of these matters were initiated by the licensee or applicant except for three matters involving two licensees.

- ***Judicial Review – Divisional Court***

There was one application for judicial review by a paralegal, which was dismissed due to the paralegal's failure to perfect his application.

There was another application for judicial review brought by a lawyer applicant seeking an order directing the Law Society to provide a license to the lawyer. The application was dismissed.

- ***Appeals – Divisional Court***

The Divisional Court released appeal decisions in six matters, relating to five lawyers and one paralegal:

- In one matter the Law Society's motion to quash the lawyer's Notice of Appeal



was successful

- In one matter the paralegal's motion for an extension of time to file a notice of appeal was dismissed
- In two matters the lawyers' appeals were dismissed
- In one matter the lawyer's appeal and the Law Society's cross-appeal were both dismissed
- In one matter the lawyer's appeal was successful and the Court restored the Hearing Division's dismissal of the Law Society's application.

• ***Appeals – Court of Appeal***

The Court of Appeal heard four motions, relating to three lawyers and one paralegal:

- A paralegal's motion for extension of time to bring an application for leave to appeal was dismissed
- A lawyer's motion to review the dismissal of a 2009 motion was dismissed
- A lawyer's motion to seek leave to appeal was dismissed
- The Law Society's motion to seek leave to appeal was granted

• ***Issues Considered***

Issues considered by the Courts in these decisions included:

- Application of the appropriate standard of review
- Jurisdiction to provide relief sought
- Failing to perfect application/extension of time for motion for leave
- Delay by licensee in seeking appellate relief
- What is a final order
- Factors to be considered in a motion for delay
- Ability to raise new issues on appeal
- Costs awarded as a result of the recusal of panellists
- Validity of the presumptive disposition of revocation

LICENSING UPDATE

• ***Lawyer Licensing Process***

There are approximately 2350 newly registered lawyer licensing candidates in the 2015-16 process which is now well under way, with most candidates having been called to



the bar recently. The new group of licensing candidates for 2016-17 licensing have started their process and licensing examinations were held this June.

The second year of the Pathways Pilot Project is also now completed. The Law Practice Program alternative pathway was selected by 231 candidates for the 2015-16 licensing year – 220 completing the English program with Ryerson University and 11 completing the French program with the University of Ottawa.

In the June 2016 call to the bar ceremonies, the Law Society will have called 1600 candidates to the Bar of Ontario. In addition to the ceremonial call held in January and to be held in September, and administrative calls throughout the year, the Law Society anticipates calling over 2200 lawyer licensing candidates to the Bar in 2016.

- ***Paralegal Licensing Process***

Following the introduction of new accreditation protocols for Paralegal College Programs, which took effect in the 2015-16 academic year for the colleges, 11 intakes of paralegal college programming were not entitled to proceed. This was predominantly due to lack of sufficient enrollment in those intakes. At this time, there are 29 approved paralegal programs, at 45 college campuses, with 64 class intakes on a cohort to cohort basis. Since the inception of the paralegal college program audits for accreditation and ongoing quality assurance, the Law society has conducted 51 rigorous audits and continues to do so.

PROFESSIONAL DEVELOPMENT

- ***Certified Specialist Program***

The Law Society's Certified Specialist Program is adding a new area of specialization in Indigenous Legal Issues. This will be the 16th practice area now available through this competence-based credentialing process, which promotes high standards of knowledge, skill, experience and professional conduct to support access to quality legal representation by the public. Development of the new area began in early 2014 and has involved subject matter area experts and senior practitioners from a broad array of practice contexts, client groups and geographical locations to assist with the drafting, review and validation of the standards. Input on the standards was sought from client and professional stakeholder groups. The new specialization in Indigenous Legal Issues is expected to be available to the profession in the fall of 2016.



- ***Continuing Professional Development (CPD)***

The number of paid registrations to date have increased in 2016, so it is anticipated that the 2016 net contribution will meet or exceed the projected net income amount. The department continues to offer eCourses to members as an adjunct to our regular programming. An additional five eCourse titles are currently in development, and will be released by the end of 2016. These educational tools address practice management and professional responsibility topics and substantive law. The CPD department will also provide live replays of 2015-16 programming in the summer months, July and August, for the first time. This will increase accessibility by allowing members to view programs that they were unable to attend at first instance, and to apply these CPD hours towards their accreditation requirement.

Since October 2015, representatives from the CPD department have been working closely with other Law Society departments – specifically IT, Membership, By-Law Administration and the Client Services Centre – and an external vendor to transition to a new eCommerce platform that allows members to more easily and quickly purchase their CPD goods online. This project involved several members of the CPD department in months of further refining the project/platform scope, working with the external vendor to create the new capabilities, and a few testing and acceptance stages. The “LSUC Store” was launched in mid-May, providing a modernized online platform to order CPD programs, including replays, materials and other goods, for Fall 2016 onward. The new system has additional functionality compared to the prior platform in that the members can input discounts for programs themselves, process a refund or access store credit online, utilize additional types of payment for CPD goods (credit, and Interac Visa). In addition, it only requires a single sign-on from the member into the Law Society portal to place an order. These new features make ordering easier and more convenient.

Additional information about the LSUC Store and a marketing roll out of the benefits of the new system were provided by CPD through marketing pieces, updated information in online FAQs and a short promotional video about the system’s functionality. While results are still preliminary, initial indicators are promising for customer satisfaction with LSUC Store.

Internally, the new platform will allow significantly better reporting functions by CPD management regarding purchases and transactions. The new platform also provides CPD with functionality to make special offers to segments of the membership - like passes or subscriptions - further increasing our ability to offer affordable and quality legal education.



- **Practice Supports and Resources**

Supporting and enhancing the ability to engage in life-long competence for lawyers and paralegals is a strategic priority for 2015 to 2019. In April 2016, the Practice Supports and Resources Department was restructured to support this initiative. Building on the experience and expertise of the Practice Management Helpline (PMH) team and their work deriving practice supports, the department will focus on the continued development of practice management resources and will also support the newly established Coach and Advisor Network.

PMH has answered more than 3,700 inquiries since the beginning of the year. New resources have been developed and existing resources updated to reflect the recent amendments to the *Rules of Professional Conduct* and paralegal *Rules of Conduct*. Current planning in this department is focused on how best to improve and extend the quality services that are relied on daily by lawyers and paralegals.

Early stage planning for the Coach and Advisor Network has focused on how best to operationalize the objectives set by the Mentoring and Advisory Task Force. Outreach to law associations and legal professional organizations with mentorship programs is underway, with more planned in the coming months. We are developing training and other curricula to support Best Practices for Coaches and Advisors and exploring options to streamline the application and matching process. More information will soon be available on the Law Society website, with the anticipated launch set for the Fall.

- **Quality Assurance: Practice Audits**

Practice Review and Spot Audit have conducted a number of presentations as part of their outreach program to licensees.

For the first half of 2016, Practice Review developed a CPD webcast to paralegals on assessing their practice management processes to improve efficiencies. Reviewers have also responded to invitations to present on practice management topics to the law associations from Prescott, Peel and Hamilton.

Outreach to paralegal practitioners included best practices presentations to paralegal classes at both Algonquin and Conestoga Colleges.

Spot Audit has been actively involved on a number of educational presentations to the Ontario Bar Association, the Barrie Real Estate Law Association and the Peel Real



Estate Law Association to discuss Spot Audit processes and a variety of financial books and records topics.

Spot Audit and Practice Review was present at the June 9th Sole Practitioner and Small Firm Conference's "Ingenious Bar" to respond to licensees' questions on the Practice Review and Spot Audit programs, books and records, and practice management systems. The Spot Audit and Practice Review outreach initiatives continue to be well received and appreciated by licensees.

LEGAL INFORMATION AND LIBRARY SERVICES

The Corporate Records and Archives team has updated the Law Society's records retention schedule, the policy that sets out how long the organization maintains business records. The team used SharePoint to enable manager access for comments. Senior management will receive a final version for approval later in 2016. An up-to-date retention policy clarifies the organization's record management and supports the development of automated features in the Law Society's systems that store records. The revised schedule will be a key tool and will be used in a pilot project currently in the planning stages that will focus on the information stored in the Law Society's SharePoint platform.

The Great Library is transitioning part of its print collection from the Main Reading Room into compact shelving in the library's basement. High density shelving will be installed in June and the contents of the American Room – content with historical value but low day-to-day use – will be moved to the shelving. This will enable the library to provide additional research space for licensees on the main floor as an improved client service feature.

The library's legal research guides, hosted by Libguides, were migrated to a new version of the service in March 2016. These practical self-help guides, available through the library's website and the Great Library App, average over 2,000 hits a month.

TECHNOLOGY

The Finance Portlet, which allows licensees to view and pay their annual fees and initiate fee adjustments using the Law Society Portal, continues to facilitate paperless billing of lawyers and paralegals and other transactions and the processing of payments.



- ***SharePoint***

SharePoint usage has increased significantly since my last report. This can be attributed to the launch of our new HUB intranet in fall 2015, and to departments and individuals staff members starting to taking advantage of the functionality and benefits SharePoint provides. Areas such as Membership Services and Tribunals are benefitting from custom-built workflows (the Licensee Hub and the Tribunal Information Management system, respectively) that automate portions of their business processes.

The Corporate Resource & Training Centre (CR&TC) continues to support the Law Society's SharePoint initiative by providing needs assessments, training, coaching, documentation and other assistance. A recent survey conducted by CR&TC shows that value continues to be created for staff with respect to their SharePoint training. Moreover, short training sessions to adjudicators to demonstrate the new Tribunals Information Management workflow have also been facilitated by the department.

- ***Licensee Database Redesign***

A detailed report on the findings of the Life of a Licensee study was completed in late 2015. The study resulted in a comprehensive "business process map" of the Law Society, and an initial analysis of the possibilities and options for modernization.

Based on this study, a major project is being undertaken to modernize the Law Society's core system, the AS/400-based Lawyer & Paralegal Database. The goal is to establish a modern, integrated system that can accommodate all current data management and reporting needs and without further re-engineering allow for significant future changes and additions.

The proposed new system, the Relationship Management System (RMS), now also includes the wide range of Law Society stakeholders, the relationships of licensees have with each other, and the organizations they operate or work for. The technical recommendations and cost estimates were presented to the IT Executive Committee and the Audit and Finance Committee in early June.

- ***LSUC Portal***

The LSUC Portal was given a major update in 2015, with a new and more consistent look and feel applied to most of the portlets and new or updated functionality in a variety of areas. Major accessibility improvements were also included in the update, along with successfully integrating the questions from the Law Foundation's Form 1 report into the



Lawyer and Paralegal Annual Reports (LAR/PAR), eliminating the need for licensees to file two separate reports relating to their trust accounts. Additionally, notices regarding licensee administrative obligations are now published to the LSUC Portal. In the first quarter of 2016, over 1500 notices and reminders were published to licensee LSUC Portal accounts, significantly reducing the need for paper notices and increasing efficiencies for this process.

In 2016 the IT Department is continuing to make the LSUC Portal completely AODA-compliant. IT and the CSC will be continuing the Annual Report upgrade project, in order to ensure that the LAR/PAR are consistent with the rest of the LSUC Portal and to allow for flexibility in future LAR/PAR development.

The Law Society Referral Service (LSRS) application and renewal process is also moving into the LSUC Portal. Beginning next year, licensees who wish to apply to be a member of the LSRS or who wish to renew their LSRS membership will be able to do so in the LSUC Portal. This change will provide a self-serve option for licensees who will be able to manage their own LSRS profile, including the areas of law and languages in which they will accept referrals, as well as their availability. This project will also greatly improve the administration of the LSRS for staff.

- ***E-Commerce***

The current project to replace the Society's aging e-commerce system was started in the fall of 2015. After concerted by representatives from CPD, CSC, Finance, and IT, the new vendor-hosted system went "live" on May 17, 2016. As I reported earlier, the system, dubbed the "LSUC Store," can be accessed at <https://store.lsuc.on.ca/>, and represents a significant improvement over the old system in terms of security, reliability, and functionality. CPD programs, Certificates of Standing and Status Letters, as well as LSUC merchandize are now available for purchase by licensees and non-licensees through the LSUC Store, and has a convenient single-sign-on integration with the LSUC Portal.

While there will be a short period of fine-tuning the system and moving over all product offerings, it is anticipated that the old system will retire before the end of the year and the LSUC store will serve the Society's needs for many years to come.

- ***Digital Information Risk Management Program***

With a new Digital Information Risk Management policy and program in place, IT has undertaken numerous initiatives to maintain or improve the confidentiality, integrity, and



availability of the Society's information systems and the data contained within them, including software and systems to protect us from viruses, phishing emails, spyware, and hackers. This summer, the IT Department is also working to ensure that all of the mobile devices issued by the Law Society are encrypted, thus securing the data on them.

The IT Department will also be rolling out a staff security awareness campaign in the fall.

- ***Time & Attendance***

The Law Society implemented Synerion Direct on May 30, 2016. The new system greatly improves the once manual process by automating the recording and tracking of attendance.

OUR PEOPLE

- ***Diversity Census and Inclusion Survey Initiative***

In March, the Law Society launched its first Diversity Census and Inclusion Survey - to help us better understand the demographic characteristics that make up our team. There was a 72% participation rate, with high rates of feelings of inclusion overall. The final, in depth analysis and action plans from the survey results are expected to follow in the coming weeks.

- ***EIW (Excellence, Innovation and Wellness)***

The Corporate Services Division has commenced work on their Progressive Excellence Program (PEP) certification under the Excellence, Innovation and Wellness Standard offered by Excellence Canada. This multi-year certification drive relies on the early establishment of the culture, values and overall direction for success, building upon the previous experience of the Client Service Centre (winners of PEP Level 4 certification and a concurrent Gold Canada Award for Excellence in 2015). The Division got off to a promising start this spring with the establishment of a Mandate, Mission, Vision and Values document that formalizes their shared commitment to the delivery of excellent service, in an atmosphere of innovation, with a primary focus on wellness. The next step will be a self-assessment against the specific criteria of the Standard, to identify early strengths and opportunities and to shape future strategic direction.



OUR SPACE

- ***Innovative Workspaces***

Our workspace footprint is a valuable asset; and more than ever we realize the need for utilizing our physical space creatively and in ways that allow us to work both, individually and collaboratively.

With a focus on enhancement of the working environment, we are addressing support of performance and goals with innovative interventions; including the use of furniture standards that allows flexibility without compromising personal comfort and functionality, continuous review of ergonomic configurations, transforming our walls to writing surfaces for groups that rely on collaboration, upgrading our meeting rooms with integrated technology and introducing 'digital' windows in interior work areas that do not have access to exterior views.

Plans for the first floor Finance area have been developed to address a much needed and improved configuration that will incorporate the new space management strategies; including consolidation of the various divisions and the merging of functional support spaces. This will create an effective and efficient footprint for the department and facilitate workflow requirements.

POLICY AND GOVERNANCE INITIATIVES

ACCESS TO JUSTICE AND THE ACTION GROUP (TAG)

The Action Group on Access to Justice (TAG) is catalyzing solutions to Ontario's access to justice challenges. Together with its growing list of partners, TAG works on a range of "clusters" that increase awareness and impact of access to justice efforts by fostering greater coordination among participants. I am pleased to provide the following selection of 2016 activities.

- ***Access to Justice Week – October 2016***

This year TAG will be organizing Access to Justice Week from October 17th to 21st. This week will include activities that engage the legal community as well as the general public and trusted intermediaries. As part of this, we will hold a conference in partnership with LawConnect (a collaborative initiative of OJEN and CLEO). Titled Connect, Create, Communicate: Public Legal Education and the Access to Justice



Movement, the conference is open to legal professionals, community workers, students, and others working in this field. The goal of this week is to bring diversity to the access to justice conversation and advance innovative solutions.

- ***Access to Justice through Reconciliation: Responding to the Crisis of Indigenous Children & Youth in Care***

This cluster brings together Ontario focused organizations and agencies responsible for Indigenous children and youth such as the Association of Native and Family Services Agencies of Ontario, First Nations Child & Family Caring Society of Canada, Office of the Provincial Advocate for Children and Youth – Ontario, Office of the Children’s Lawyer – Ministry of the Attorney General and the Ontario Association of Children’s Aid Society. Other participants include elders, Indigenous and other mandated caretakers, Métis Nation of Ontario and the Law Society of Upper Canada’s Indigenous Advisory Council.

We held two engagement sessions for this cluster in the spring .One session included a powerful keynote presentation from Dr. Cindy Blackstock. Outcomes from this cluster were reported earlier in June and will be considered for action by partners in the coming months. Related activities are being considered for Access to Justice Week.

- ***Be an Architect of Justice***

Architects of Justice is an initiative that increases public participation in the development of access to justice solutions. This summer TAG will be at various events across Ontario sharing public legal education materials and collecting feedback from the public about how to improve access to justice. Be an Architect of Justice kicked off at Osgoode Hall during Doors Open Toronto with a public design session that asked participants of all ages to imagine the justice system of the future. This initiative draws on law and paralegal students to survey the public about access to justice improvements.

- ***Steps to Justice***

This initiative creates practical information about common legal problems and related “next steps” in a digital format. Steps to Justice is led by Community Legal Education Ontario and it brings together the Ontario Ministry of the Attorney General, the Ontario Superior Court of Justice, the Ontario Court of Justice, Social Justice Tribunals of Ontario, the Ontario Bar Association, Legal Aid Ontario, the Law Society of Upper Canada and a number of community legal clinics and as well as growing list of



community groups. Steps to Justice is targeted at first-contact community workers and people who have low or moderate incomes or face other disadvantages. This initiative will take a “no wrong door” approach by embedding the same content into multiple, targeted websites. User testing is currently underway and content can be found on the CLEO website. An official launch is slated for Access to Justice Week.

- ***PLEI Cluster (Public Legal Education and Information)***

This cluster will facilitate information sharing and collaboration among PLEI organizations and like-minded community organizations in order to enhance impact and reduce duplication of resources. Emphasis will be placed on improving access to justice for low-income and disadvantaged communities. Cluster activities have been informed by the CLEO’s Mapping Public Legal Education and Information in Ontario report which was released in April.

- ***History Repeating? Forensic Evidence, Motheris and Miscarriages of Justice***

This cluster looks at the limits of forensic evidence and is in partnership with Innocence Canada (formerly AIDWYC). A recent CPD session this month looked at the role that flawed forensic pathology and other forensic evidence has played in miscarriages of justice in Canada.

- ***Advanced Care Planning and Access to Justice***

How can service providers improve access to justice and advance care planning for those aging with HIV/AIDS? This is the guiding question for a new cluster that brings together the Canadian Working Group on HIV and Rehabilitation, Advocacy Centre for the Elderly, Hospice Palliative Care Ontario and HIV and AIDS Legal Clinic (Ontario) to explore access to justice considerations related to health care consent and advance care planning. A roundtable for this cluster was held earlier this month and next steps are currently under review.

- ***Communication***

Details about all of this work is available on the TAG website (actiongroup.ca). TAG also has a monthly [newsletter](#) and an active presence on [Twitter](#) where information about a wide range of access to justice activities is regularly circulated. Sabreena Delhon (sdelhon@lsuc.on.ca) is the Manager of TAG and is based in the Policy, Equity and Public Affairs division.



COMPLIANCE BASED ENTITY REGULATION

Created in June 2015, the Task Force submitted its report on this subject to May 2016 Convocation, which approved a two-part proposal. The first is to seek an amendment to the *Law Society Act* for the authority to regulate entities, and the second is to development for Convocation's review a framework for compliance-based regulation of licensees, based on certain practice management principles articulated in the report. This phase of the Task Force's work will involve focussed, targeted consultations with the professions on options for models for this approach to regulation. We look forward to the results of this work later in 2017.

ALTERNATIVE BUSINESS STRUCTURES (ABS) WORKING GROUP

Based on the proposed work outlined in its report to September 2015 Convocation, the Working Group on this subject continues its review of alternative business structures, or ABS, and has focused on a number of potential ABS options, including non-licensee minority ownership of law firms and entities, franchise arrangements and structures that may develop an access to justice focused ABS framework (sometimes called ABS+) for civil society organizations, such as charities, not-for-profits, and trade unions. As work on the strategic priority on access to justice progresses on other fronts at the Law Society, the ABS Working Group's work will likely intersect with these initiatives to enable a holistic approach to our work to advance and enhance access to justice.

CHALLENGES FACED BY RACIALIZED LICENSEES

The Challenges Faced by Racialized Licensees Working Group is continuing its work under its mandate to identify challenges faced by racialized licensees in different practice environments, identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline, consider best practices for preventive, remedial and support strategies and determine appropriate preventative, remedial, enforcement, regulatory and support strategies.

With the benefit of information from a consultative phase, the Working Group is working towards a final report it is anticipated by the end of 2016.

REAL ESTATE ISSUES WORKING GROUP

Since its creation in June 2015 to deal with issues and developments related to real estate practice in Ontario, the Working Group has met on numerous occasions to consider approaches to these matters. It has referred to other committees those matters



that require specific policy analysis. It has also ensured that, through stakeholder engagement primarily with the Real Estate Liaison Group, appropriate exchange of information and views on these issues occurs.

CREATING A STRATEGY TO PROMOTE WELLNESS AND ADDRESS MENTAL HEALTH AND ADDICTION ISSUES

The Task Force on this subject, created by Convocation in June 2015, completed its work and reported to April 2016 Convocation with a comprehensive Law Society-wide mental health and wellness strategy. Convocation unanimously approved the strategy, which will now move an implementation phase with oversight provided by an implementation task force to be struck by the new Treasurer. The strategy has received extremely positive comment from many stakeholder groups and we look forward to beginning work to realize the various aspects of this important and valuable initiative.

FRENCH LANGUAGE INITIATIVES

The Law Society continued to work collaboratively with partners in the justice system to enhance access to justice in French. At the invitation of the Attorney General, the Law Society participated on the French Language Services Bench and Bar Response Steering Committee. In January at the Equity and Aboriginal Issues Committee (EAIC), the Hon. Justice Thorburn, Superior Court of Justice, spoke about access to Justice in French, along with Andr e-Anne Martel, Executive Director, Association des juristes d'expression franais d'Ontario (AJEFO) and Julie Lassonde, AJEFO Board member, spoke about AJEFO services.¹ Both presentations noted the important role the Law Society has played in supporting access to justice in French. The Law Society continues to work with the French Language Services Commissioner in addressing complaints related to its French language services and making systemic and proactive change.

COMMUNICATIONS AND MARKETING (C&M)

The Communications and Marketing (C&M) team provides strategic communications leadership across the organization to raise awareness about the Law Society's initiatives, programs and services, to enhance its corporate reputation among members and the public and to strengthen employee communication and engagement. The group

¹ For instance see www.cliquezJustice.ca AJEFO's legal information portal since 2012.



emphasizes a 'digital first' approach in communicating through paid, earned, shared and owned media channels.

In the first half of 2016, C&M worked on evolving our digital communications – to use the public website and social media channels more effectively and strategically as vehicles for consistent corporate messaging to support priority initiatives and manage the Law Society's reputation.

To this end the department has a number of focused initiatives underway:

- Redesign of the Law Society's website – content and infrastructure, look and feel, in partnership with the Information Technology Department that achieves the following:
 - Enables efficient and effective access to core information required by our various target audiences
 - Improves visitors' understanding of the Law Society's role as regulator and the activities that fall within our mandate
 - Creates an more engaging and intuitive user experience
 - Unifies all parts of the website with a cohesive look and feel and consistent web architecture
 - Improves the Law Society's ability to use the website as a strategic communications tool
- Work to establish and implement a content strategy tied to strategic plan and the development of targeted messaging to support priority initiatives
- Implementation of social media strategy and plan including the creation of a cross-departmental working group and editorial calendar to take a holistic and collaborative approach to digital content

More people than ever follow us on our social media platforms: our Facebook page now has more than 3,300 likes; more than 7,400 follow us on LinkedIn; and more than 8,750 follow us on Twitter.

A renewed effort to share more content and generate social media traffic to our websites continues to show results. Over the past year, as compared to the previous 12 months, traffic to the *Gazette* increased by 19%. Of the 54,316 people who visited the *Gazette* this year, 18% came from social interaction. Compared to last year, referrals from Facebook grew 184%, LinkedIn grew 127%, and Twitter grew a steady 21%.



Traffic from mobile devices is up 33%, which is a noteworthy increase as we look to redesign the website. The *Gazette* also sent 9,208 people back to www.lsuc.on.ca, which is a 53% increase over last year, as a result of linking meaningful content to the main site.

MEDIA RELATIONS AND ISSUES MANAGEMENT (MRIM)

The Media Relations and Issues Management (MRIM) team works to ensure that the Law Society, its mandate, initiatives and operations are positively and accurately represented in the public sphere.

In the first quarter of 2016, MRIM proactively **shared** information on Law Society initiatives and events to the media. In addition to providing links to weekly summaries of decisions to media, MRIM also provided links to notices of upcoming hearings and current hearings for full transparency and ease of reference.

MRIM received and responded to 74 media inquiries from January through March. Discipline matters continued to garner the most interest and coverage, followed by Compliance-Based Entity Regulation (CBER), Mentoring, Law Society Awards, the Mental Health Strategy and Rules and guidelines.

The Treasurer and other Law Society representatives conducted a number of interviews, predominantly with legal trade publications: **The subject areas included** CBER, the Treasurer's major policy initiatives, TRC Calls for Action, Retention of Women/Justicia, Early Career Roundtable, family law review, and intervention statements of the Human Rights Monitoring Group (China).

The MRIM team also worked in partnership with Policy, Communications and Marketing and public affairs to provide communication and issues management support on the CBER consultation, which included a webcast and, for the first time, an online submission form.

In addition, MRIM prepared a broad range of internal and external communications documents (news releases, numerous speeches, discussion points, positioning statements, FAQs, Convocation News) that support Law Society priorities and the Treasurer's outreach initiatives. MRIM also worked with Equity and Professional Regulation to manage translation of Law Society fact sheets for Indigenous People into Cree, Oji-Cree and Northwestern Ojibway, as well as English and French.



FEDERATION OF LAW SOCIETIES OF CANADA SUPPORT

The Law Society continues to make a significant contribution in both human and financial resources to the Federation. Staff and benchers continue to contribute to the progress of a number of Federation initiatives.

Former Treasurer Tom Conway and past president of the Federation chairs the National Requirement Review Committee, which includes bencher Peter Wardle as a member. Former Treasurer Laurie Pawlitzka, our Federation Council representative, also chairs the Canadian Common Law Program Approval Committee and serves on the National Admissions Standards Steering Committee. Bencher Malcolm Mercer serves as a member of the National Committee on Accreditation. Dianne Corbiere was appointed to the Federation working group addressing the Truth and Reconciliation Commission's (TRC) Calls to Action and recommendations.

Law Society staff continue with their contributions to a number of Federation initiatives. These include Diana Miles, Executive Director, Organizational Strategy /Professional Development & Competence, who participates as a member of the National Admission Standards Project Steering Committee and the National Requirement Review Committee and serves on the CanLII Board, Naomi Bussin, Senior Counsel, Professional Regulation who is a member of the Standing Committee on the Model Code of Professional Conduct and Grant Wedge, who is senior advisory support to the TRC working group.

I also serve as a member of the Governance Review Committee, the Standing Committee on Access to Legal Services, the above-noted Steering Committee and the Finance and Audit Committee.

PUBLIC AFFAIRS

- ***Government Relations***

Public Affairs liaises with all levels of government to ensure ongoing and enhanced networks and relationships. Many issues before by Convocation are of interest to the government. Consequently, Public Affairs is intimately involved in the issues, policies and initiatives being considered by benchers. In addition, government initiatives that affect the Law Society's mandate are monitored and addressed.



Stakeholder Engagement

Engagement permits the sharing of information and provides a platform for collaboration and inclusion. The Treasurer's commitment to engagement with our stakeholders has enhanced our reach and impact.

In addition to the Treasurer's Liaison Group (TLG) and the Early Careers Roundtable (ECR); two new roundtables were established in May. The In-house Corporate Counsel (ICR) and Law Students (LCR) roundtable met and were very well received.

In addition, regional dinners were hosted by the Treasurer in the Central South and North East regions. The format for these events includes a reception with local licensees and a dinner follows with the leadership from legal organizations in the region. The feedback from both were positive and instructive.

Public Affairs facilitates the work of coalitions such as the Alliance for Sustainable Legal Aid (ASLA) and the Real Estate Liaison Group (RELG) and the transition committee of LibraryCo.

- ***Real Estate Liaison Group (RELG)***

The Real Estate Liaison Group, created by the Treasurer together with the Ontario Bar Association, CDLPA and LawPRO continues its dialogue on real estate issues of common interest and planning in response to expressed concern about the future and current state of real estate practice in Ontario. The co-chairs of the Real Estate Issues Working Group have been appointed to RELG by the Treasurer to encourage co-ordination of efforts on common issues.

The group continues to meet to discuss current issues touching on real estate practice. I expect as we learn more the environment in which real estate practice occurs, RELG will continue to be a valuable forum for discussion, including on matters related to the Law Society's responsibilities.

SERVICES FOR MEMBERS AND THE PUBLIC

REVIEW OF LIBRARYCO AND LIBRARY SERVICES

The Law Society is working with the other shareholders of LibraryCo (Federation of Ontario Law Associations and Toronto Lawyers' Association) to set a direction for the



evolution of libraries and library services going forward. A survey of user needs is currently underway. Under the Administrative Services Agreement with LibraryCo, the Law Society continues to administer the financial affairs of LibraryCo together with any other requested supplementary assistance during the transition process.

PARENTAL LEAVE ASSISTANCE PROGRAM (PLAP)

The Finance department processes the applications for the Parental Leave Assistance Program. As of the end of May, 3 lawyers have applied to PLAP in 2016. Since the program launch in March 2009, there have been 336 applicants who have received benefits under PLAP.

TORONTO LAWYERS FEED THE HUNGRY PROGRAM

The Toronto Lawyers Feed the Hungry Program operates through the cafeteria and with in-kind support from the Law Society. Meals are served on Wednesday nights, Thursday mornings, Friday nights and Sunday mornings. On average, the Program serves approximately 60,000 guests a year at an average annual cost of \$380,000. With the current fund balance and assuming attendance remains at current levels, the Program has sufficient funding for 12 to 18 months of operation.

With funding from the Law Society the LFH has retained a contractor to support the development of a fundraising plan and recommend an effective organizational structure including the roles of stakeholders.

MEMBER ASSISTANCE PLAN (MAP)

For the period of January 1 to March 31, 2016 there were 361.67 MAP cases. As a result, Homewood Health, the Law Society's Member Assistance Program provider, has projected an annual utilization rate for 2016 to be 4.99%. If this is achieved, it will be the highest usage since the MAP program launch.

There continues to be a rise in cases with each passing quarter. In the first quarter, the number of MAP cases was at 361.67 for 2016, which is up from the previous 2 years (2015: 176.83; 2014: 119.50).

The awareness source of the MAP program is predominantly from previous clients (34.9%), which allows us to infer that the program is being shared through word of mouth from prior recipients of the program.



The program is averaging about one peer to peer connection per week, with 12 connections made in the first quarter. Members between the ages of 31-40 continue to represent the majority of users at 36.5%, with those between the ages of 21-30 also making significant use of the program at 26.9%. Ten e-courses were also accessed, which is on trend with previous periods.

The top MAP counselling categories for the first quarter of 2016 are psychological counselling (49.4%); work counselling (19.2%) and marital/relationship (17.6%). The method of distribution for counselling was 77.6% face-to-face; 19.6% over the phone; and 2.7% over the web.

Looking at overall utilization, the top area of Plan Smart cases were: career counselling at 56.1% and financial advisory services & 12 weeks to wellness both with 12.3%.

- ***Administrative Suspension Due Diligence***

In addition to the over 1500 notices and reminders that were published to licensee LSUC Portal accounts this quarter, the staff in the CSC continue to uphold due diligence standards regarding licensee administrative obligations. For example, during the Annual Report suspension follow-up process, the By-Law Administration Services Department has sent 128,411 automated emails to licensees reminding them of their filing obligation. At the end of the 60 day default period, 2,584 licensees had yet to file their Annual Report and staff in the CSC will attempt to personally contact each licensee at least one final time. Law Society staff similarly followed up with 957 licensees who had not fulfilled their CPD obligations and 2149 licensees who did not fulfill their Annual Fee obligations.

- ***Law Society Referral Service***

In the first quarter of 2016, the Law Society Referral Service provided 11,114 referrals. 8,108 of those referrals were provided through the online service; 2,705 referrals were provided through the crisis line; and 301 referrals were provided by email. From January 1 to March 31, 2016, LSRS also provided the names of 2907 LSRS members to people who did not qualify for a referral.

LSRS continues to promote its service to licensees through regular advertisements in the e-Bulletin and Paralegal Update, at CPD programs, including the upcoming Sole and Small Firm Conference, in the welcome package for new licensees and through reaching out to unrepresented areas in September, 2015. From January 1 to March 31, 2016, LSRS was pleased to have 129 new licensees join the service.



At the end of 2015, LSRS mailed brochures promoting the service to approximately 1000 community organizations across Canada and had an information table at Doors Open to help increase community awareness of the service.

- ***Generating Public Interest – our Building***

Osgoode Hall continues to generate public interest. The Law Society's commitment to sharing its iconic building allows visitors to learn about the history and the functions of the Law Society, the courts and the justice system in general. In 2015, Osgoode Hall participated in Doors Open Toronto and opened our doors to 12,100 people. The building also hosted 60 guided tours and added to our audio tour offerings.

- ***Events***

The Law Society continues to be the venue of choice for our external stakeholders, receiving approximately 8 event requests per month, that fall within our parameters for hosting.

- ***Osgoode Hall Restaurant***

The new website and reservation system has generated significant traffic through the Osgoode Hall Restaurant. The net sales for April 2016 are up 18% when compared to the same time of year last year, and the online reservations, both through Open Table and the Osgoode Hall Restaurant website, have more than doubled the number of covers (patrons) handled by the restaurant.

CONCLUSION

We continue to support a very large and innovative regulatory, practice support, policy, outreach and operational agenda. I hope that this report allows a moment's pause to take in the breadth and depth of it, which can sometimes be lost when we focus on very specific aspects of our daily work. It is a source of immense pleasure and pride for me to be part of this.

As always however, the real credit for our momentum and delivery of this agenda is and remains due to the incredible staff of the Law Society of Upper Canada, who are the most professional and dedicated I have ever encountered. We owe immense gratitude



to them, and through this, I hope I can express that.

As this report will appear at the Convocation that elects a new Treasurer, I also want to express, on behalf of all staff, our appreciation for the work of the current Treasurer, Janet Minor. Staff held an appreciation reception for her this month. It was a wonderful, light hearted tribute to her work with us, which as many stated there, has been deeply appreciated. Her passion for our issues challenged and inspired us. We have been privileged to work with this remarkable leader, and we will certainly miss her.









The Law Society
of Upper Canada

Barreau du
Haut-Canada



TAB 8

**Report to Convocation
June 23, 2016**

Audit & Finance Committee

Committee Members

Christopher Bredt (Co-Chair)

Peter Wardle (Co-Chair)

Michelle Haigh (Vice-Chair)

John Callaghan

Suzanne Clément

Paul Cooper

Teresa Donnelly

Seymour Epstein

Rocco Galati

Vern Krishna

Janet Leiper

Catherine Strosberg

Purpose of Report: Information

**Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

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COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on June 8, 2016. Committee members in attendance were Chris Bredt (Co-Chair), Peter Wardle, (Co-Chair), Suzanne Clément, Paul Cooper, Teresa Donnelly, Seymour Epstein, Vern Krishna, and Catherine Strosberg.
2. Also in attendance: Stephanie Kalinowski from Hicks Morley.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Terry Knott, Juda Strawczynski, Wes Robertson, Brenda Albuquerque-Boutilier, Mary Giovinazzo and Andrew Cawse.

FOR INFORMATION

FINANCIAL SUPPORT OF THE LAW COMMISSION OF ONTARIO (LCO)

4. **The Committee considered the financial implications of the Law Commission of Ontario's request for renewal of the Law Society's support of the Law Commission pending a recommendation from the Access to Justice Committee. If Convocation approves the continued support of the LCO, the funding will be included in the draft 2017 budget. The request would increase the Law Society's funding by 5% to \$144,900 in 2017 and by 2% per year for 2018-2022.**

BACKGROUND

5. The Law Society's process for this renewal will take three steps:
 - i. Convocation's approval of the principle of supporting the LCO.
 - ii. The renewal of the Agreement between the parties providing resources to the LCO.
 - iii. Inclusion of financial support for the LCO in the 2017 and future budgets. The balance of this memo addresses this step.
6. The Law Commission of Ontario (LCO) was established by 5 partners, including the Government of Ontario through the Ministry of the Attorney General, Osgoode Hall Law School at York University, the Law Deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada. The agreement for the LCO's first mandate was signed in 2007 and the LCO was formally launched later that year.
7. The LCO has a mandate to recommend law reform measures to increase the legal system's relevance, effectiveness and accessibility; to clarify and simplify the law; to consider technology as a means to enhance access to justice; and to stimulate critical debate about law and promote scholarly legal research. While the LCO's projects may involve all areas of provincial law that affect a wide variety of constituents, its mandate emphasizes selecting areas for study that are underserved by other research.
8. The multi-party agreement for the LCO's first mandate expired in December 2011. In June 2010, Convocation reaffirmed the Law Society's support in principle for the mandate of the LCO for a further five years.
9. Benchers Larry Banack and Christopher Bredt have served on the Board of Governors of the LCO and Raj Anand is the current Law Society's appointee.
10. The Agreement between the Parties for the LCO's second mandate expires on December 31, 2016.

11. The Access to Justice Committee is considering the policy implications of the renewal application.
12. The funding request was approved by the LCO Board on June 9, 2016.

FINANCIAL CONSIDERATIONS

13. The Law Society provided \$100,000 per year to the LCO during the five years of the first mandate.
14. In September 2011, Convocation increased annual financial support to \$138,000. The annual core funding from all partners during the five years of the second mandate is summarized below.

Law Foundation of Ontario	\$550,000
Ministry of the Attorney General	\$250,000
Law Society of Upper Canada	\$138,000
Osgoode Hall Law School	\$100,000
<hr/>	
TOTAL	\$1,038,000

15. The finance units of the Parties have been meeting regularly to ensure the LCO's funding needs are met and there is appropriate budgeting and reporting for the LCO to be accountable to the funders. The LCO has also provided regular written reports on how they are fulfilling their mandate and most recently addressed Convocation in December 2015.
16. The LCO is requesting an incremental increase in Law Society funding of 5% in 2017 from \$138,000 to \$144,900 and a 2% per year increase in the remaining four years of the proposed 5 year agreement.
17. The LCO has stated that the funding request is one part of a comprehensive long term funding strategy that will include:
 - A dedicated effort to seek out new funders, particularly for LCO projects;
 - A thorough analysis of the LCO's existing costs; and,
 - A dedicated effort to expand in-kind and volunteer contributions to LCO projects and operations.
18. A significant part of the business case for the third mandate is the degree of support from the other Parties for the renewal. The LCO is requesting equivalent increases from its other funders.

FOR INFORMATION

**LIBRARYCO INC. FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED
MARCH 31, 2016**

19. **Convocation is requested to receive the first quarter financial statements for LibraryCo for information.**

Rationale

20. LibraryCo Inc. is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations and the Toronto Lawyers' Association. LibraryCo is a wholly-owned subsidiary of the Law Society. There is a quarterly financial reporting schedule to the shareholder.
21. The Law Society provides administrative services to LibraryCo, for a fee, under an administrative services agreement.

Financial Impact

22. As an information item, the interim financial statements have no direct financial impact.

Stakeholder Response/Reaction

23. The statements have been approved by LibraryCo's board.



LIBRARYCO INC.
FINANCIAL REPORT
For the three months ended March 31, 2016

KEY POINT SUMMARY

Overall Results

24. Results for the first quarter identify a surplus of \$20,478 compared to a budgeted deficit of \$37,917 for the 3 months. The 2016 budget envisages a \$143,000 deficit for the year through the use of the General Fund balance.
25. The positive variance from budget of \$58,395 is primarily related to transition expenses still to be incurred but smaller favourable variances are spread across most other expense categories. It is too early in the year to attribute these variances to timing differences or actual savings.

Revenues

26. The Law Society grant (line 1) includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was just over \$1.9 million in the quarter and matched budgeted amounts for the period.
27. Interest Income (line 2) is earned on LibraryCo's cash and short term investments.

Expenses

28. Total expenses (line 16) were \$1,896,093 compared to a budgeted total of \$1,953,428 for the quarter.
29. Administration expenses (line 4) of \$76,250 represents the service fee paid to the Law Society and equals budget. The fee was reduced from 2015.
30. Transition expenses (line 6) of \$18,397 represents preliminary payments for the user needs survey.
31. Electronic product expenses of \$84,750 (line 9) are in line with the agreement and budget.
32. Group benefits and insurance (line 10) of \$79,227 consist of the Group Benefits for enrolled library staff and library D&O and property insurance.
33. County and District law libraries grants (line 13) are in line with budget at \$1,619,191 and increased from 2015.
34. Bursaries, capital and special needs grants (line 14) consist of computer refreshment grants, special needs grants and conference bursaries for library staff.

Balance Sheet

35. Short-term investments (line 2) of \$400,002 consists of a one year GIC and accrued interest.
36. Accounts receivable (line 3) are long term disability benefits premiums paid by LibraryCo on the libraries' behalf for the past quarter. These receivables are usually repaid early in the next quarter.
37. Prepaid expenses (line 4) primarily represents the property and D&O insurance policies for LibraryCo and the libraries which are to be renewed at the end of April.
38. Accounts payable and accrued liabilities (line 6) are about \$41,800 lower than 2015. The monthly electronic products expense is now being paid in the current month in which it is billed. In the prior year, the monthly electronic products expense was paid in the month following receipt of the invoice. The reduction in the administrative services fee also results in lower monthly accrued liabilities.
39. The General Fund has increased by \$20,478 in 2016 to \$273,559. The 2016 budget forecast a decrease of \$143,000 during the year should the transition expenses be fully incurred in 2016.
40. The Reserve Fund has a balance at the end of March of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with Board policy.

LIBRARYCO INC.
Balance Sheet
Stated in Dollars
As at March 31
Unaudited

	2016	2015
Assets		
Current Assets		
1 Cash	379,707	335,669
2 Short-term investments	400,002	400,324
3 Accounts receivable	17,879	20,155
4 Prepaid expenses	7,726	7,394
5 Total Assets	805,314	763,542
Liabilities, Share Capital and Fund Balances		
Current Liabilities		
6 Accounts payable and accrued liabilities	31,555	80,216
7 Total Liabilities	31,555	80,216
Share Capital and Fund Balances		
8 Share capital	200	200
9 General fund	273,559	183,126
10 Reserve fund	500,000	500,000
11 Total Share Capital and Fund Balances	773,759	683,326
12 Total Liabilities, Share Capital and Fund Balances	805,314	763,542

This Balance Sheet includes the financial resources of the LibraryCo entity only.

LIBRARYCO INC.**Schedule of Actual and Budgeted Revenues and Expenses****Stated in Dollars***For the three months ended March 31***Unaudited**

	2016	YTD		Annual	2015
	Actual	Budget	Variance	Budget	Actual
REVENUES					
1 Law Society of Upper Canada grant	1,915,511	1,915,511	-	7,662,000	1,924,003
2 Interest income	1,060	-	1,060	-	1,658
3 Total revenues	1,916,571	1,915,511	1,060	7,662,000	1,925,661
EXPENSES					
Head office/administration					
4 Administration	76,250	76,250	-	305,000	107,500
5 Professional fees	3,135	7,500	4,365	30,000	3,705
6 Transition expenses	18,397	42,420	24,023	84,836	-
7 Other	4,724	11,198	6,474	49,300	6,393
8 Total Head office/administration expenses	102,506	137,368	34,862	469,136	117,598
Law Libraries - centralized purchases					
9 Electronic products and services	84,750	84,750	-	339,000	84,750
10 Group benefits and insurance	79,227	84,744	5,517	345,000	74,348
11 Other	8,419	21,375	12,956	130,700	18,395
12 Total Law Libraries - centralized purchases	172,396	190,869	18,473	814,700	177,493
13 County and District law libraries - grants	1,619,191	1,619,191	-	6,476,764	1,585,935
14 Bursaries, capital and special needs grants	2,000	6,000	4,000	44,400	2,865
15 Total County and District Law Libraries Expenses	1,621,191	1,625,191	4,000	6,521,164	1,588,800
16 Total expenses	1,896,093	1,953,428	57,335	7,805,000	1,883,891
17 Surplus (Deficit)	20,478	(37,917)	58,395	(143,000)	41,770

This statement includes the revenues and expenses of the LibraryCo entity only.

LIBRARYCO INC.
Statement of Changes in Fund Balances
Stated in Dollars
For the three months ended March 31

	2016		2015	
	General Fund	Reserve Fund	Total	Total
1 Balance, beginning of year	253,081	500,000	753,081	641,356
2 Surplus (Deficit)	20,478	-	20,478	41,770
3 Balance, end of period	273,559	500,000	773,559	683,126

This statement includes the fund balances of the LibraryCo entity only.

FOR INFORMATION

OTHER COMMITTEE WORK

41. The Committee adopted the Statement of Investment Policies and Procedures (SIP&P) for the Law Society of Upper Canada Pension Plan, as revised. The revisions reflect recent guidance from the pension regulator on content of the SIP&P, minor amendments such as those reflecting Standard Life's acquisition by Manulife, and changes to the federal investment rules under the Pension Benefits Standards Regulations.¹
42. The Committee received a report on the renewal of the Law Society's licensee database system to address its data-related and technical limitations and user demands for a more integrated and flexible system. The name of this project is the Relationship Management System, encompassing more fully the Law Society's relationship with licensees, non-licensees, and related organizations. The platform recommendation for the Relationship Management System is to primarily follow a custom development approach, with tactical use of commercial solutions where applicable. The duration and cost estimate is that the Relationship Management System project will take 4 years to complete, at a cost of \$7.2 million. The current systems are rapidly approaching the end of their useful lives.
43. The Committee briefly discussed the status of the stakeholder management consultant's work for the Lawyers Feed the Hungry program and noted an assessment of Law Society resources devoted to the Lawyers Feed the Hungry program would follow the consultant's work.

¹ The Committee's role in relation to the Law Society's pension fund is set out in By-law 3:

Administrator of pension plan

118. (1) The Audit and Finance Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

Powers

(2) The performance of any duty, or the exercise of any power, by the Audit and Finance Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*



Tab 10

Report to Convocation June 23, 2016

Priority Planning Committee

Committee Members:

Janet Minor (Chair)
Raj Anand
Marion Boyd
Christopher Bredt
John Callaghan
Cathy Corsetti
Ross Earnshaw
Julian Falconer
Howard Goldblatt
Michelle Haigh
Carol Hartman
Jacqueline Horvat
Janet Leiper
William McDowell
Susan McGrath
Malcolm Mercer
Barbara Murchie
Julian Porter
Paul Schabas
Peter Wardle

Purpose of Report: Information

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

FOR INFORMATION

**PROGRESS REPORT ON THE
LAW SOCIETY'S STRATEGIC PLAN 2015 - 2019**

Introduction

1. In December 2015, Convocation received a report from the Priority Planning Committee (the Committee) setting out details of the priorities identified in the 2015-2019 Strategic Plan adopted by Convocation in October 2015.
2. The Committee has prepared this progress report for Convocation's information on the work completed or in progress to date (January to June 2016) on the Strategic Plan.
3. Set out on the following pages are details of the Strategic Plan, including the areas of focus and specific initiatives designed to achieve the priorities established in the Plan, and information on the progress to date on initiatives under the Plan. The Plan was formulated with the knowledge that a number of initiatives that relate to subject areas described in the Plan would continue in the new bencher term and should be incorporated in the Plan.¹
4. Operational work plans related to the priorities have set timelines to assist in monitoring progress on and completing the work on the priorities in the Plan.

Background to Convocation's Priority Planning

5. The strategic planning session held in October 2015, noted above, fulfilled a requirement Convocation established in March 2007 with respect to planning and prioritizing matters for Convocation's policy agenda and achieving strategic objectives in a bencher term.

¹ These initiatives included:

- a. the Pathways Pilot Project on transitional training;
- b. the work of the Mentoring and Advisory Services Proposal Task Force, the Task Force to Create a Strategy to Promote Wellness and Address Mental Health and Addictions Issues and the Compliance-Based Entity Regulation Task Force,
- c. the work of the Challenges Faced by Racialized Licensees Working Group and the Alternative Business Structures Working Group;
- d. the Tribunal Three Year Review project; and
- e. the project to renew the Law Society's Aboriginal Initiatives Strategy.

6. At that time, Convocation agreed on a process that included the planning session and establishing and utilizing the Committee to centralize and co-ordinate the achieving of strategic priorities for the Law Society.
7. In confirming the Strategic Plan at the October 2015 planning session, Convocation provided direction to the Law Society on priorities for the 2015-19 bench term.

The Committee's Views

8. The Committee reviewed the progress on the priorities Convocation approved, including the operational work plans. That review showed that significant progress has been made on the priorities and that some initiatives within the priorities have been completed. In the Committee's view, the priority planning process Convocation follows, which provides a structured approach to planning and prioritizing the Law Society's policy agenda, continues to help advance the effective fulfillment of the Law Society's mandate.

Next Steps

9. The Committee continues to monitor progress on the priorities, and will review matters that arise that may be accommodated within the current work plan and new matters that require assessment before they are recommended for an addition to the work plan.

LAW SOCIETY STRATEGIC PLAN FOR THE 2015-2019 BENCHER TERM PROGRESS REPORT JUNE 2016

THE LAW SOCIETY WILL LEAD AS PROFESSIONAL REGULATOR

To enhance its regulatory effectiveness in the public interest, the Law Society will focus on improvements and adjustments to its regulatory process, with particular attention to developing mental health initiatives and equity-based principles in the regulatory process.

Initial work on this priority includes considering how to address issues of licensee capacity that arise in the context of a conduct application before the Law Society Tribunal, including the possibility of instituting the authority to convert a conduct application to a capacity application.

The Law Society is also considering the development of a “risk register regulatory tool” to identify areas where supports and resources are needed to proactively address practice risk. This is being done with the oversight of the Professional Regulation Committee and the Equity and Aboriginal Issues Committee.

The results of work arising from current initiatives such as the Law Society’s Task Force to Create a Strategy to Promote Wellness and Address Mental Health and Addictions Issues, the Challenges Faced by Racialized Licensees Working Group and the Tribunal Three Year Review also include proposals that touch on matters within this priority.

SUMMARY OF PROGRESS TO JUNE 2016:

- Tribunal Three Year Review completed and reported to Convocation January 2016 showing positive progress on implementation of the enhanced Tribunal model
- Summary Revocation Authority for Indefinitely Suspended Licensees approved at February 2016 Convocation
- Working group of the Professional Regulation Committee struck in February 2016 to consider issues relating to referral fee arrangements, contingency fees, and marketing and advertising issues
- Broad-based Law Society Mental Health Strategy adopted by Convocation in April 2016
- Report on substantial compliance with National Discipline Standards (annual progress report) provided to Convocation in April 2016
- Report from the Compliance-Based Entity Regulation Task Force with recommendations for entity regulation and agreement in principle to create a framework for compliance-based regulation approved at May 2016 Convocation
- Work of the Challenges Faced by Racialized Licensees Working Group ongoing
- Work of the Alternative Business Structures Working Group, as set out in its September 2015 report to Convocation, ongoing

- Initial work at the operational level begun on the risk registry initiative

THE LAW SOCIETY WILL PRIORITIZE LIFE-LONG COMPETENCE FOR LAWYERS AND PARALEGALS

The Law Society will focus on enhancing licensing standards and requirements and their assessment, and ways to improve and increase practice supports for lawyers and paralegals and provide better mentoring.

As newly qualified lawyers and paralegals enter a challenging and evolving professional environment, the Law Society has identified a need to work to enhance entry-level standards and assessment of those standards.

Part of this exercise involves reviewing and, if required, revising the profile of the entry-level competent lawyer and paralegal and determining the extent to which the threshold for licensing needs to be changed. The adequacy of the entry level examinations for licensing those who meet entry level standards and whether skills testing should be considered are among the issues to be explored.

Aspects of this review may include considering how restricted licensing or practice restrictions at entry could support the evolution of standards of assessment.

Anticipating the effect of any changes at the licensing stage, work may also involve reflecting on how proposed changes to entry level standards may impact post-licensing competence assurance activities, and whether efforts in that respect should be increased, reduced or refocused.

This activity would take place contiguously with the evaluation of the current Pathways Pilot Project to ensure that any increased threshold becomes part of the assessment process. The work would also take into consideration any other current initiatives that may be relevant to licensing. An example would be related work being done through the Federation of Law Societies of Canada.

Matters specific to paralegal licensing requirements include the following:

- working to ensure that high quality instruction is being offered by the accredited institutions that are educating paralegal licensee candidate;
- examining enhancements to the paralegal licensing requirements, including possible additional education and training prior to entering an accredited paralegal program; and
- exploring the expansion of areas of practice and delivery of services by paralegal licensees.

With respect to practice supports and mentoring, initial work on this priority involves developing curricula of training, beyond traditional CPD formats, for new practitioners, licensees in higher

risk areas of practice and on targeted practice issues including skills training. Appropriate adult-education techniques would be used for training to more effectively address specific learning requirements.

The Law Society may also explore incentivizing CPD offerings for newer licensees or for licensees focusing on specialized skills areas.

The Law Society is considering the provision of mentoring supports applicable to all practice types and environments (e.g., private, in-house, government, etc.). Examination of this subject covers a number of issues, such as the appropriate platform for mentoring, different delivery models and appropriate training for advisors and coaches. The Law Society's Mentoring and Advisory Services Proposal Task Force examined this subject and report to Convocation.

SUMMARY OF PROGRESS TO JUNE 2016:

- Mentoring and Advisory Services Proposal Task Force report presented and a Coach and Advisory Services Initiative for lawyers and paralegals approved at February 2016 Convocation
- Proposals for changes to lawyer licensing examinations and the articling period introduced at April 2016 Convocation, to be considered in the fall of 2016
- Evaluation of Pathways Pilot Project scheduled for fall 2016
- Law Society endorsement of Federation of Law Societies of Canada review of the National Committee on Accreditation program
- Work completed on CPD curriculum of learning to align it with stages of practice, utilizing existing competency profiles (including entry level and early practice), practice area checklists and other resources; new training modules to be developed within the next six months and forward, with existing programming to benefit from integration of substantive and experiential training issues within these learning activities
- Work begun on options for paralegal experiential training and assessment in the context of improvements to pre-licensing education

THE LAW SOCIETY WILL WORK TO ENHANCE ACCESS TO JUSTICE ACROSS ONTARIO

In continuing efforts to fulfill its responsibility to act to facilitate access to justice for Ontarians, the Law Society will focus on improved planning and assignment of resources and establishing its leadership role for the Law Society with a concrete action plan to achieve access to justice goals.

Work on this priority involves a review and identification of activities, including internal functions and processes, that can be undertaken by the Law Society within its mandate to address access to justice issues. Particular priority is being given to family law issues.

The Law Society is exploring ways to increase collaboration with stakeholders, including:

- developing an enhanced stakeholder engagement plan including consideration of equity principles, implementation of an Indigenous Initiatives Strategy² and an access to justice strategy for the Francophone community and other equity stakeholders, and the general public;
- increasing the reach of the Law Society's communications and outreach using technology and media more effectively; and
- ensuring that access to justice issues are an integral part of any communications planning.

SUMMARY OF PROGRESS TO JUNE 2016:

- Review commenced through Access to Justice and Paralegal Standing Committees on the range of possible legal service providers focused on the priority area of family law, including the concepts of legal information vs. legal advice, categories of licensing, and/or expanded paralegal practices
- Continued support and facilitation of the work of TAG
- The work of TAG and the ABS Working Group's continuing research phase being utilized to inform discussions relating to access to family law services
- Ontario government and Law Society initiative commenced to explore a proposal to help families access qualified family legal service providers, led by the Honourable Justice Bonkalo; Justice Bonkalo to submit her recommendations to the Attorney General and the Law Society by September 2016
- New Indigenous Advisory Group Terms of Reference presented to Equity and Aboriginal Issues Committee; nine-member Indigenous Advisory Group being created
- Work on the development of the Indigenous Strategy continuing through the Equity and Aboriginal Issues Committee
- Work commenced on responses to the Law Society-focused recommendations of the Truth and Reconciliation Commission
- Work commenced on the Law Society website redesign project

THE LAW SOCIETY WILL ENHANCE ITS ENGAGEMENT WITH STAKEHOLDERS AND THE PUBLIC WITH RESPONSIVE COMMUNICATIONS

The Law Society will focus on:

- **enhancing communication to the public through Law Society outreach and other efforts, and**
 - **enhancing communication to lawyers and paralegals as a matter of accountability and transparency,**
- with the goals of building a better public understanding of and educate the public on the**

² This is part of the work of the current project, noted earlier, to renew the Law Society's Indigenous Initiatives Strategy.

role of the Law Society, and better enabling input from and engagement with lawyers and paralegals.

In addition to the communications elements described in the previous priority, this priority focuses on the need for a comprehensive and robust communications infrastructure to effectively reach and engage the public and licensees.

To enhance the Law Society's public communications and awareness strategy, work includes seeking the appropriate expertise on how to develop and execute a comprehensive communications strategy. This expertise is also being used to develop a plan of action appropriate to the Law Society's obligations, including how to frame key messages and improve how the Law Society communicates on time-sensitive or emerging issues. Part of this work may include investigating communication activities of other Law Societies, regulators and professional organizations.

With respect to communications to licensees, the Law Society's primary focus is to formalize a licensee engagement plan to support Law Society accountability to licensees and improve transparency of the Law Society's work. To build the plan, the Law Society is obtaining information on what licensees need and expect from the Law Society by way of communications and information supports. Based on this information, the Law Society would consider optimal delivery methods to engage with licensees and explore the merits of measuring satisfaction with its communications through feedback from licensees.

Ultimately, this work should result in a proposal for a multi-year communication plan which identifies resources, methodologies and measures to evaluate its effectiveness.

SUMMARY OF PROGRESS TO JUNE 2016:

- Operational integrated communications, engagement and outreach strategy with respect to lawyers, paralegals and the general public formulated; anticipated that by end of June 2016, experts will be engaged to provide implementation support for public and member research, corporate communication strategy, brand strategy and management, marketing, media relations and stakeholder outreach and engagement

THE LAW SOCIETY WILL INCREASE ITS ORGANIZATIONAL EFFECTIVENESS

The Law Society will:

- **review and revise as appropriate the Law Society's policy development process, guided by the duty to protect the public interest;**
- **enhance measurement and assessment of current and proposed activities; and**
- **determine ways to improve the Law Society's governance structure, including better education for members of Convocation.**

With respect to the policy development process, this initiative involves creating a process map of the Law Society's current policy development process. Benchmarking the process against other public interest regulators and other relevant not for profit organizations follows. The results are to be assessed and determinations made on what can be applied in the Law Society's process to assist it in ensuring that its policy development process is comprehensive, robust and designed with a focus on the public interest in policy development.

With respect to improving how the Law Society measures the success of its priorities, work is being undertaken to develop quantifiable targets and timelines for the achievement of the goal measures set out in the 2015-2019 Strategic Plan and a process for their measurement. The Law Society will also undertake a program review that will include assessment of why a program exists, what it costs and how it serves the public interest.

The initiative on governance involves working with benchers to identify their non-adjudicative education needs in relation to their role in the Law Society and developing a professional development plan to address those needs. This type of program covers topics such as emerging issues in professional regulation, board issues such as risk management and fiduciary duties, and a wide range of issues relevant to governors of legal services regulators and regulated professions.

The Law Society is also to conduct a diversity assessment of the composition of Convocation and report on the results.

A major initiative is a review of the Law Society's governance structure with the aim of achieving the goals of transparency, inclusiveness, effectiveness, including cost-effectiveness, and efficiency of Convocation as a governing board.

SUMMARY OF PROGRESS TO JUNE 2016:

- Law Society policy development process mapping completed; policy process benchmarking with other organizations underway and to be completed by summer 2016
- Work plans created at committee level and through the office of the Director of Policy to track and monitor progress on priorities as they relate to the mandated responsibilities of Law Society committees
- Bencher education program related to the bencher's role as board member launched in February 2016
- Diversity survey of members of Convocation being prepared with prospective launch later in 2016



TAB 11

**Report to Convocation
June 23, 2016**

Professional Development & Competence Committee

COMMITTEE MEMBERS

Howard Goldblatt (Chair)
Jeffrey Lem, Vice-Chair
Barbara Murchie (Vice-Chair)
Raj Anand
Fred Bickford
Jack Braithwaite
Robert Burd
Gisèle Chrétien
Dianne Corbiere
Teresa Donnelly
Ross Earnshaw

Joseph Groia
Vern Krishna
Michael Lerner
Marian Lippa
Virginia MacLean
Sandra Nishikawa
Jonathan Rosenthal
Andrew Spurgeon
Joanne St. Lewis
Gerald Swaye
Sid Troister
Jerry Udell
Anne Vespry
Peter Wardle

Purpose of Report: Information

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

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COMMITTEE PROCESS

1. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Jeffrey Lem (Vice-Chair), Raj Anand, Fred Bickford, Jack Braithwaite, Robert Burd, Gisèle Chrétien, Dianne Corbiere, Teresa Donnelly, Ross Earnshaw, Joseph Groia, Vern Krishna, Michael Lerner, Marian Lippa, Sandra Nishikawa, Andrew Spurgeon, Joanne St. Lewis, Sid Troister, Jerry Udell and Anne Vespry participated in the meeting. Bencher Marion Boyd attended part of the meeting. Staff members Priya Bhatia, Diana Miles and Sophia Sperdakos also attended.

INFORMATION

INDIGENOUS LEGAL ISSUES SPECIALTY

Issue for Information

2. Pursuant to By-Law 15 (Certified Specialist Program) the Certified Specialist Board has certain mandated functions, one of which is to determine the areas of law in respect of which licensees may be certified as specialists. It does not require approval from the Committee or Convocation. By-Law 15 can be accessed at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485815>.
3. In May 2013 the Board approved the development of a new certified specialty in Aboriginal Law. Although not required to do so within the By-law, it sought the approval of the PD&C Committee for the proposal as interest in the specialty was widespread. The Law Society had received 59 letters of endorsement from the profession in support of development of the specialty.
4. The development of the standards for the specialty has followed a rigorous process that included research, consultation, development, review and validation. The Board approved the final standards on May 18, 2016, which are provided here at **TAB 11.1.1: Indigenous Legal Issues Specialty Standards**. The Certified Specialist Program Administrative Policies referred to in the Standards are set out at **TAB 11.1.2: CSP Admin. Policies**.
5. The Standards are provided to Convocation for its information.

Key Issues and Considerations

6. Beginning in the spring of 2014, PD&C department team members facilitated a series of working group meetings with 16 subject matter expert practitioners in Indigenous Legal Issues from a variety of geographical areas, client perspectives and practice areas to create, review and validate the Standards. Two working groups met separately to iteratively review, amend and comment on the standards over a two-year period.
7. The focus of the working groups throughout the process has been to ensure the standards set out the requisite knowledge, skills and professional requirements for demonstration of elevated competence in this area of practice, in accordance with the Certified Specialist Program mandate.
8. As part of the final validation of the Standards, in consultation with the Law Society's Equity Initiatives Department, input was sought from the following relevant professional groups and client groups that support provision of legal services in the Indigenous Legal Issues area, many of whom provided assistance and thoughtful comment:

- Canadian Bar Association – Aboriginal Law Section
 - Ontario Bar Association - Aboriginal Law Section
 - Indigenous Bar Association
 - Legal Aid Ontario
 - Chiefs of Ontario
 - Métis Nation of Ontario
 - Ontario Federation of Indigenous Friendship Centres
 - Ontario Native Women’s Association
 - Tungasuvvingat Inuit
9. The input received confirmed that the standards are appropriate and that lawyers who achieve the designation will be well qualified to serve the public and, particularly, to serve the legal needs of Indigenous individuals, communities, nations and Peoples.
10. In developing the specialty area it became clear that the name should reflect the breadth of the practice area. Accordingly, it was determined that the new specialty area is more appropriately named Indigenous Legal Issues. The specialty comprises core requirements and three distinct, but related subspecialties that each has its own set of experience, knowledge and skills requirements. The three subspecialties are: Rights and Governance, Litigation and Advocacy, and Corporate and Commercial.
11. The required skills for all subspecialties include demonstration of the ability to properly articulate the Indigenous perspective and to effectively serve Indigenous clients. To this end, inter-cultural competencies have specifically been integrated into the Standards. Applicants are required to submit a brief statement confirming that they have obtained a significant understanding of Indigenous cultures, perspectives and contexts. They must also submit a reference from an Indigenous Community Member as one of the four references required as part of the application process.
12. The next steps in the process, which are underway, involve implementation, which will include program promotion to make the profession aware of the new area of specialization for the summer of 2016. Once there is an initial pool of certified specialists in Indigenous Legal Issues, the Board will be seeking a new member from that specialty area to ensure appropriate representation at the program governance level.
13. The Certified Specialist Program assists lawyers not yet eligible to become certified to acquire the requisite skills and knowledge to qualify for certification as a specialist in a given practice area. To that end each specialty has,
- a. learning criteria setting out required procedural and substantive knowledge and skills at the essential, intermediate and advanced levels of activity; and
 - b. detailed experience requirements for certification used to assess a lawyer's eligibility for certification.
14. The learning criteria for the Indigenous Legal Issues Specialty are in the process of being developed in accordance with the standards and adult learning best practices.

15. As in the case of all applicants, applicants for certification as a specialist in Indigenous Legal Issues will pay an initial application fee of \$400 plus HST. Currently, the annual program fee is \$375 plus HST, due on January 31 of each year.
16. The Certified Specialist Program is a cost recovery program.

STANDARDS FOR CERTIFICATION Indigenous Legal Issues

Definition of Indigenous Legal Issues Specialty Area

1. The practice of **Indigenous Legal Issues** is that area of law¹ which incorporates Indigenous Laws, jurisdiction, and perspectives and deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples.
2. The subspecialty **Indigenous Legal Issues: Rights and Governance** is the practice of law in **Indigenous Legal Issues** relating to the regulation and management of Indigenous lands, territories, and resources, the development and implementation of Indigenous government or governance structures (internal and external), as well as the interaction of the rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples with Indigenous, federal, and provincial laws and policies that may affect Indigenous rights, interests, and claims.
3. The subspecialty **Indigenous Legal Issues: Litigation and Advocacy** is the practice of law in **Indigenous Legal Issues** before courts, tribunals, or regulatory bodies and in claims processes. This subspecialty includes those proceedings that affect the interests of Indigenous individuals, communities, nations, or Peoples associated with the matter and where, regardless of the claims or cultural identities of the parties to the matter, the Indigenous perspective is material in the proceeding.
4. The subspecialty **Indigenous Legal Issues: Corporate and Commercial** is the practice of law in **Indigenous Legal Issues** in relation to the commercial activities of Indigenous individuals, communities, nations, and Peoples, and their representative organizations or governments, regarding their socio-economic development and business interests.

Definitions

5. For the purposes of these standards,

Cultural Identity refers to those aspects of identity shared by members of a culture that, taken as a set, mark them as distinct from members of other cultures.

¹ These standards do not derogate, abrogate, or interpret Indigenous people's own laws.

Indigenous means all Peoples of Canada as defined in s.35(1) of the *Constitution Act, 1982* as “Aboriginal” and includes those now known as First Nations, Métis, and Inuit Peoples in Canada regardless of status or recognition accorded by provincial or federal governments.

Indigenous Laws means the laws of Indigenous Peoples.

Indigenous people or **Indigenous Peoples** means indigenous individuals, communities, nations, and Peoples as appropriate in the particular context.

Designation

6. An applicant who is certified as a specialist in Indigenous Legal Issues in rights and governance may be identified as ***Certified Specialist (Indigenous Legal Issues: Rights and Governance)***.
7. An applicant who is certified as a specialist in Indigenous Legal Issues in litigation and advocacy may be identified as ***Certified Specialist (Indigenous Legal Issues: Litigation and Advocacy)***.
8. An applicant who is certified as a specialist in Indigenous Legal Issues in corporate and commercial may be identified as ***Certified Specialist (Indigenous Legal Issues: Corporate and Commercial)***.

Requirements for Certification

9. Applicants must comply with the requirements relating to Indigenous perspectives set out in these standards particularly those relating to
 - Knowledge Requirements (e.g., applicants’ knowledge relating to an Indigenous Peoples and knowledge of the kinds of issues that arise when individuals from different communities, nations, or Peoples interact)
 - Consideration of Indigenous Perspectives (e.g., consideration of how Indigenous perspectives may assist in matters)
 - Outline, Broad and Varied Experience (e.g., applicants’ recognition and understanding of the Indigenous perspective)
 - Summaries (e.g., how matters undertaken deal with or affect Indigenous rights, interests, or claims), and
 - Reference, Indigenous Community Members (assessment of applicants’ skills and attributes e.g., respect for, curiosity for, and willingness to expand understanding of Indigenous Laws, values, norms, and way of life and willingness to develop inter-cultural relationships).
10. Applicants must comply with the requirements for certification set out in the Policies Governing the Law Society’s Certified Specialist Program (“Policies”), particularly those relating to
 - Minimum Years of Practice and Recent Experience

- Substantial Involvement in the Specialty Area
- Professional Development
- References, Indigenous Legal Issues
- Professional Standards, and
- Application Fee.

11. Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in the subspecialty area(s) for which application is made:

(a) practice concentration requirements:

- applicants seeking certification in one subspecialty area of Indigenous Legal Issues will have devoted at least 30% of their practice concentration to such area averaged over the five (5) years of the recent experience,
- applicants seeking certification in two subspecialty areas of Indigenous Legal Issues will have devoted at least 60% of their practice concentration to such areas averaged over 5 years of the recent experience, and
- applicants seeking certification in all 3 subspecialty areas of Indigenous Legal Issues will have devoted at least 90% of their practice concentration to such areas averaged over 5 years of the recent experience.

(b) experience requirements: during the 5 years of their recent experience applicants will have attained broad and varied experience and a mastery of substantive law and procedures in the applicable subspecialty area(s) and comply with the experience requirements for the applicable subspecialty area(s) set out below.

12. In the event that applicants do not entirely meet the experience requirements, they may apply to the Society for consideration of their individual circumstances or their related (non-practice) skills. Consideration on a case by case basis will be given in circumstances where applicants have

- (a) limited their practice in recent years to a particular area of Indigenous Legal Issues or have been involved in matters of extraordinary length and complexity, or
- (b) engaged in advanced course work or performed related activities such as teaching, authoring books or articles for publication, completing post-graduate or other studies, participating in the development and/or presentation of professional development programs, research, participating in the policy development process, drafting legislation and/or instruments, participating as active members on boards or tribunals or on the executive of any organization related to Indigenous Legal Issues, or any other experience that applicants consider relevant to their application.

Applicants applying for consideration under this paragraph must, in addition to the brief description of their practice required pursuant to paragraph 13, include with their application

- (c) a detailed description of their individual circumstances or related (non-practice) skills, and
- (d) references from the institutions or organizations from which their experience is references from peers, samples of writing and/or research, and a complete list of publications.

Practice Description

13. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area(s) for which an application is made.

Knowledge Requirements

14. All applicants shall demonstrate knowledge of the unique cultural, economic, political, social, and historical context of Indigenous Peoples(s) including recognition of an Indigenous world view.

Applicants must also demonstrate an acknowledgement of past governments' assimilation policies towards Indigenous Peoples and the current impact of those policies on Indigenous Peoples.

Finally, applicants must display general knowledge of the kinds of issues that arise when individuals from different communities, nations, or Peoples interact in the context of providing legal services.

15. Applicants are asked to place a check mark (✓) next to each of the following and provide the summary required at paragraph 16 to confirm compliance with this requirement.

All applicants will have

- Acquired significant understanding of the culture, the economic, political, social, or historical contexts, and the legal perspectives of at least one Indigenous Peoples including
- the group's world views, values, norms, and way of life
 - the economic, historical, and political context unique to that group, and
 - the collective nature of Indigenous rights

"Significant understanding" is not intended to describe a deep and comprehensive understanding. Rather, the term is intended to describe the knowledge required, but not necessarily sufficient to

- (a) accurately understand, articulate, and convey the Indigenous perspective as manifested in or related to each matter undertaken by a lawyer, and
- (b) act in a manner that respects the cultural identity of all Indigenous people with whom a lawyer has dealings.

- Taken steps to understand the role and impact Indigenous culture exerts on behavior and communication

Summary

16. All applicants shall provide a brief summary of no more than 100 words outlining how they acquired significant understanding of the culture; the economic, political, social or historical contexts; and the legal perspectives of an Indigenous Peoples.

Applicants may wish to refer to one or any combination of the following possible learning experiences by which they acquired this knowledge or understanding:

- by socialization, e.g., applicants are members of an Indigenous Peoples by birth, adoption, or marriage
- by formal education or experiences, e.g., applicants have post-secondary education in Indigenous studies
- by professional life experiences, e.g., applicants have had carriage of significant cases where the Indigenous perspective is fundamental to matters undertaken, and
- by personal life experiences, e.g., applicants have lived in Indigenous communities and interacted extensively with community members.

Core Requirements, Applicable to All Subspecialties

17. All applicants must demonstrate that during the 5 years of their recent experience they have complied with core requirements: Legal Experience and Consideration of Indigenous Perspectives.

Legal Experience

17.1 All applicants are asked to confirm their knowledge of and experience with the following tasks.

- Advised clients with respect to Aboriginal and treaty or other rights held by Indigenous Peoples informed by **each** of the following:
- the *Constitution Act*, 1982, s.35,
 - the common law applying and interpreting s.35; and
 - *United Nations Declaration on the Rights of Indigenous Peoples*

and **at least two** of the following (check all applicable):

- Indigenous Law
- self-governance and other policies developed by Indigenous Peoples
- *Indian Act*
- relevant United Nations and Organization of American States Human Rights Instruments, and
- treaties and modern land claim agreements in Canada

- Advised clients on developments in the jurisprudence including international law as it applies to Indigenous Peoples
- Advised clients on the constitutionality of federal and provincial laws as it applies to Indigenous Peoples
- Followed and respected Indigenous protocols while attending and or hosting meetings with Indigenous people
- Taken steps to understand the collective nature of Indigenous rights and implications for individual rights regarding representation
- Taken steps to identify and address communication barriers to ensure the applicant understands information or concepts expressed through Indigenous culture (including language, behaviour, stories, symbols, songs, dance, artifacts, etc.)

Consideration of Indigenous Perspectives

17.2 All applicants shall confirm with a checkmark that for **each matter undertaken**, they have

- Familiarized themselves with
 - the unique cultural and the economic, political, social, and/or historical contexts of the Indigenous individuals, communities, nations, or Peoples involved in that specific matter
 - the Indigenous Laws relevant to that specific matter, and
 - where applicable, the territorial and/or resource base of the Indigenous individuals or Peoples involved in that specific matter
- Informed themselves about the unique and relevant Indigenous history, mandate, membership, or objectives of the Indigenous Peoples involved in that specific matter (to the degree that information is reasonably available to applicants)
- Considered the unique Indigenous Laws, traditional knowledge, and cultural, economic, political, social, and/or historical contexts of Indigenous individuals or Peoples involved in that specific matter **and** how such information may be applicable and of assistance in that specific matter
- Applied that information, knowledge, or understanding to help resolve that specific matter on the merits **and** in a manner that respects both the Indigenous and other cultural identities of individuals involved in that specific matter

Experience Requirements, Indigenous Legal Issues: Rights and Governance

In addition to the complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed all the requirements in one of the following: either Indigenous Rights at paragraph 18.1 or Governance at paragraph 18.2.

18. Applicants are asked to confirm their knowledge of and experience with applicable tasks listed below by placing a check mark (✓) next to the task to demonstrate their experience in Indigenous Legal Issues: Rights and Governance during the 5 years of recent experience and submit the completed Standards with the application package, along with any supplementary information required in the Standards.

18.1 Indigenous Rights Focus

(1) Applicants must complete at least 12 of 22 tasks listed below. Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus.

- Advise or act on matters involving s.35 rights in each of the following
 - civil proceedings, and
 - provincial offences charges
- Advise or act on matters with respect to s.35 rights before each of the following
 - administrative tribunals and legislative bodies
 - courts in applications for judicial review, and
 - courts in appeals with respect to s.35 rights
- Prepare and submit or respond to claims for acceptance in a Specific Claims Entitlement process
- Negotiate and/or act as legal counsel in the treaty land entitlement processes
- Negotiate and/or act as legal counsel in the Specific Claims process or other land claims process
- Advise or act on matters before the Specific Claims Tribunal
- Prepare and submit or respond to claims for acceptance in the Aboriginal rights or title claims processes
- Negotiate and/or act as legal counsel in the Comprehensive Claims process
- Advise and/or assist a client with an Indigenous community ratification process
- Negotiate and/or act as legal counsel in the negotiation of claims of Indigenous groups for or against governments, Crown corporations, boards, or proponents
- Prepare and submit or respond to claims for lands and resources
- Draft settlement agreements in relation to Indigenous claims
- Negotiate or act as legal counsel in negotiations between Indigenous Peoples or entities and industry
- Provide written and oral opinions regarding the duty to consult and accommodate and the infringement of Indigenous or treaty rights
- Make or respond to oral and written submissions to Crown or Crown agencies on impacts to s.35 rights of proposed or existing developments
- Advise clients in the dealings between proponents and Indigenous organizations on impacts to s.35 rights and the law on the duty to consult and accommodate
- Advise on implementation of statutory requirements with respect to Indigenous consultation for proposed developments

- Advise on development and implementation of internal and external Indigenous consultation protocols
- Advise with respect to social science and traditional knowledge assessments including archaeological assessments, oral histories, traditional environmental knowledge, traditional land use, socio-economic impact, etc.
- Provide written and oral legal opinions or responses regarding the honour of the Crown or fiduciary relationship and breach by the Crown
- Assist clients in identifying recognized or asserted Indigenous or treaty rights
- Advise clients on the intersection of Indigenous and treaty rights and laws among Indigenous Peoples or collectives

Outline, Broad and Varied Experience

(2) Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus during the 5 years of recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the applicable area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years. The table must include:

- Name of matter (include citation, if available)
- Type of proceeding
- Your role in the matter
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

Summaries

(3) In addition, applicants must provide with their application summaries of three significant matters or proceedings, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus. Summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (court, tribunal, policy process, etc.)

- Synopsis of outcome
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any, and
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

18.2 Governance Focus

Applicants are asked to place a check mark (✓) next to the tasks/matters they are selecting to demonstrate their experience in Indigenous Legal Issues: Rights and Governance, governance focus.

(1) Applicants will have advised clients with respect to at least four of the following pieces/ sections of policies, guidelines, and Ontario and Federal legislation that must involve treaty or other rights and interests held by Indigenous Peoples. Check all applicable:

- s.35 of the *Constitution Act, 1982* with respect to self-governance
- First Nations Financial Act*
- First Nations Fiscal Management Act*
- First Nations Land Management Act*
- Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Safe Drinking Water for First Nations Act*
- AANDC Default Prevention and Management Policy
- AANDC Indian Lands Management Manual
- AANDC Environment, Health and Safety Policy – Contaminated Sites Program
- Additions to Reserve Policy
- Band Advisory Services Program Policy
- AANDC Band/Tribal Council/PTO Support Funding Program Policy Funding Policies
- AANDC Specific Claims Policy
- AANDC Comprehensive Land Claims Policy
- AANDC Inherent Rights Policy
- Federal Non-Insured Health Benefits Program
- Canadian Environmental Assessment Act, 2012* (with respect to reserve lands)
- Ontario Environmental Assessment Act*
- Canada Labour Code*
- Personal Information and Protection of Electronic Documents Act*
- Income Tax Act* and CRA interpretations including CRA bulletins regarding HST/GST application to Indians and policy regarding employment income of Indians
- Employment Standards Act, 2000*
- Canadian Human Rights Act*
- Ontario Human Rights Code*

- Privacy Act*
- Not-for-Profit Corporations Act, 2010* (Ontario)
- Métis Nation of Ontario Secretariat, 2015* (Ontario)
- Canada Not-for-Profit Corporations Act*
- Police Services Act*
- Education Act* (Ontario)
- First Nations Control of First Nations Education Act* (proposed) (Canada)
- Species at Risk Act* (Canada)
- Proceedings Against the Crown Act*
- Federal Courts Act*
- Judicial Review Proceedings Act*
- Specific Claims Tribunal Act*
- National Energy Board Act, 1990*
- Ontario Energy Board Act*
- Forestry Act* (Canada)
- Mining Act* (Ontario)
- Boreal Forest Agreement Property Act*
- Far North Act, 2010*
- Other _____

(2) All applicants will have completed at least 18 of the following 33 tasks with respect to governance and or Indigenous and/or treaty rights implications. Check all applicable:

- Advise client with respect to consultation and accommodation rights and responsibilities
- Draft or provide advice relating to by-laws for Indigenous organizations, (e.g., *Indian Act* s.81 or 83 by-laws, and Métis or Inuit organization or collective by-laws)
- Draft or provide advice relating to fiscal management by-laws (e.g., under *First Nations Fiscal Management Act*)
- Draft or provide advice relating to resolutions (e.g., Band council resolution, and Métis or Inuit organization resolutions)
- Advise client with respect to election matters, including appeals or disputes
- Advise client with respect to alcohol prohibition by-laws including community vote
- Advise client with respect to Indigenous laws
- Advise client with respect to employment, labour, human rights, or occupational health and safety matters
- Advise client with respect to taxation powers of Indigenous governments
- Advise client with respect to membership codes, lists, or criteria under the *Indian Act*, self-government agreement, or Métis government
- Advise client with respect to negotiation of funding arrangements with other levels of government
- Advise client with respect to administrative powers and duties of Indigenous governments
- Advise client with respect to interaction between Indigenous law and Canadian law
- Advise client with respect to taxation or seizure provisions of the *Indian Act*, *Income Tax Act*, and other relevant legislation (s.87 or s.89)
- Advise client with respect to applicability of provincial law to Indigenous Peoples (e.g., s.88 of the *Indian Act*, s.4.5 of the *Green Energy Act, 2009*)
- Advise client with respect to Indigenous membership entitlement (e.g., registration as an Indian under the *Indian Act*, and as a Métis under a Métis organization)

- Advise client with respect to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Advise client of obligations arising under Comprehensive Funding Arrangements or other funding arrangements with federal or provincial governments
- Advise client with respect to the creation, amalgamation, or de-amalgamation of a “Band” under the *Indian Act*
- Advise client with respect to an organization of Métis communities
- Draft a community trust for the benefit of the members of an Indigenous community
- Advise client with respect to obligations under a community trust
- Advise client with respect to fiscal difficulties (e.g., AANDC’s Default Prevention and Management Policy)
- Advise client with respect to negotiation of and/or rights and obligations under a self-government agreement
- Draft articles of incorporation/letters patent or advise on incorporation, by-laws for corporations owned/created or controlled by Indigenous governments or communities
- Drafting partnerships, joint venture, or other business entities that are owned/created or controlled by Indigenous governments
- Draft and/or advise on governance policies and procedures for Indigenous governments
- Advise client with respect to disclosure of information under freedom of information legislation
- Advise client with respect to political agreements, memoranda of understanding, and other like agreements between or among Indigenous governments or between Indigenous governments and federal, provincial, or municipal governments or private companies
- Advise client with respect to devolution of program and services from a federal or provincial government to a local or regional Indigenous government
- Review, prepare, and submit a land claim
- Negotiate treaties, agreements (e.g., self-government agreements), and other constructive arrangements
- Advise client with respect to the application of international Indigenous human rights standards and availability of international mechanisms for pursuit of human rights complaints

(3) All applicants will have represented a client(s) in at least 15 different types of matters spread across two of the following four categories: (A) Lands Management Related to Indigenous Peoples, (B) Operational Transactions, (C) Government Services, and (D) Advocacy. Place a check mark (✓) next to all applicable matters.

Category A: Lands Management Related to Indigenous Peoples

Advise or act for clients with respect to

- Additions to reserve policy
- Indian Act* permits or lease processes
- Expropriation or takings of reserve land
- Wills and estates on Indian reserves
- Surrender of reserve land
- Designation of reserve land
- Certificates of Possession
- Establishment of an Indian reserve

- Obtaining a ministerial loan guarantee for housing on reserve
- Codes under the *First Nations Lands Management Act*
- Regulating use and occupancy of traditional land
- Residency by-law
- Community constitutions
- Harvesting management
- Access to lands
- Resources management
- Customary land management systems

Category B: Operational Transactions

- Draft or negotiate operational or service agreements to which an Indigenous government or organization is a party. Circle the type of agreements drafted or negotiated:
 - Utilities
 - Funding
 - Construction
 - Children and family services agreements
 - Emergency services
 - Employment and training
 - Financing
 - Policing services
 - Purchase of goods and services
 - Housing agreements including CMHC financing/funding for construction or renovation of homes
 - Conservation authority, parks, or protected areas co-management agreements
 - Health
 - Infrastructure including water and road management
 - Research and traditional knowledge/intellectual property
 - Capacity funding agreement
 - Impact benefit agreement
- Draft a legal opinion or report to a client relating to the contents of and obligations of Indigenous governments or organizations under operational or service agreements referred to above
- Advise on drafting documents for transactions involving assets of Indigenous governments or organizations

Category C: Government Services

- Advise on statutory and common law obligations or entitlements of Indigenous governments or organizations concerning any of the following. Circle the type of subject matter advised on:
 - Roads and sidewalks
 - Provision of social services or housing
 - Potable water
 - Water and sewage infrastructure
 - Nuisance discharges/environmental contamination

- Operation of public transportation
- Maintenance of property (parks, community centres, Band Council Office, etc.)
- Provision of education, health, or social services
- Employment and human rights
- Taxation
- Insurance
- Coroner's inquest or public inquiries
- Financial systems and accountability
- Waste disposal
- Dog control
- Other infrastructure
- Other _____

- Advise on contract tendering, procurement, or preparing requests for proposal for goods and services to be supplied to an Indigenous government or organization
- Advise on education agreements and services
- Advise on application and interpretation of privacy legislation to Indigenous governments or organizations
- Advise on fiduciary duties of Indigenous leaders and governments to their members and organizations
- Advise on statutory or common-law conflict of interest obligations
- Prepare policy interpretations
- Advise on the imposition or removal of financial intervention (third party management or co-management)
- Advise on the obligations of Indigenous governments or their related entities in their role of service provider in relation to education, housing, health, social services, public programs administration, or other service
- Advise on capital and land management plans
- Advise on and draft community laws and regulation
- Specify other service(s) if applicable: _____

Category D: Advocacy

Advise clients with respect to

- An application to judicially review the powers of an Indigenous government
- Superior Court, Federal Court, or appellate court proceedings respecting applications for judicial review and appeals with respect to the exercise of powers or decisions by federal or provincial governments in respect of Indigenous, treaty, and other rights
- Proceedings before courts, administrative tribunals or agencies, boards, or commissions regarding the exercise of Indigenous government powers or the provision of services by Indigenous governments
- Court or administrative tribunal proceedings of specific concern to Indigenous governments and organizations. Specify: _____
- Alternative dispute resolution involving Indigenous governments, communities, or organizations
- Labour arbitration or an adjudication under Division XVI of the *Canada Labour Code* or before a human rights tribunal concerning an Indigenous government or organization as employer or service provider
- Human rights arbitrations on behalf of Indigenous governments or organizations

- Commercial arbitrations on behalf of Indigenous governments or organizations
- Public inquiries or public inquests in relation to Indigenous governments or organizations
- Appearing before or advising an Indigenous tribunal, board, or commission

Outline, Broad and Varied Experience

(4) Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Rights and Governance, governance focus during the five years of most recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in the matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table should include, where applicable

- Type of matter or proceeding
- Name of matter
- Your role in the matter
- Who or type of client represented
- Issues involved in matter
- Approximate dollar amount of transaction or matter if applicable
- Goals/objectives and outcome
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

Summaries

(5) In addition, applicants must provide with their application summaries of 3 significant matters, each summary no longer than 2 pages, and include the following information (where applicable) to illustrate their experience in Indigenous Legal Issues: Rights and Governance, governance focus. The summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Type of matter
- Who or type of client represented (individual, corporation, government, community etc.)
- Goals or objectives of the matter
- Issues involved in matter
- Approximate dollar amount of transaction or matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, etc.)

- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or regulatory or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any, and
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

Experience Requirements, Indigenous Legal Issues: Litigation and Advocacy

19. In these Standards for Certification in Indigenous Legal Issues: Litigation and Advocacy, the terms case, claim, and matter refer only to those cases, claims, or matters where the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples are in issue and includes those proceedings that affect the interests of Indigenous individuals, communities, nations, or Peoples associated with the matter and where, regardless of the claims or cultural identities of the parties to the matter, the Indigenous perspective is material in the proceeding.
20. Applicants are asked to confirm their knowledge and experience with each of the tasks listed below by placing a check mark (✓) next to the tasks to demonstrate their experience in Indigenous Legal Issues, Litigation and Advocacy during the 5 years of recent experience and submit the completed Standards with the application package, along with any supplementary information required in the Standards.
21. In addition to complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed all of the following requirements. Applicants are asked to confirm their knowledge of and experience with each of the following tasks
- Identify the appropriate parties and any standing issues to bring a matter before a statutory body or court
 - Identify the rights holders and distinguish between individual and collective interests and entitlements
 - Identify the appropriate procedures to bring a matter before a statutory body or court
 - Identify the appropriate causes of action, claim, or remedy in any given case
 - Identify the full range of defences or remedies that are available and appropriate in any given case

- Draft appropriate documentation to advance or defend a claim or matter
- Apply the law relevant to limitation periods, laches, minors, parties under disability, and the discoverability principle
- Analyze, research, and develop an appropriate theory to advance or defend a claim or matter
- Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- Assist clients in identifying recognized or asserted Indigenous or treaty rights in the context of actual or potential litigation
- Identify the unique issues in developing and responding to a claim (i.e., evidentiary issues, basis of claim, procedural issues, etc.)

Identify, prepare, and present factual evidence to advance or defend a claim or matter including each of the following types of evidence

- Fact witnesses
 - Oral history
 - Documents, including those in the possession of a third party
 - Archival evidence
 - Demonstrative evidence
 - Identify any other _____
- Identify and assess unique evidentiary issues that arise in collecting and preparing oral history, traditions, values, and teachings for disclosure (e.g., information to be imparted by Elder and community witness, customary law, etc.)
 - Identify appropriate procedures to collect and present oral history, traditions, values, teachings, and customary law. Indicate procedures used:
 - Use of the Indigenous language directly or indirectly through interpreter
 - Observance of cultural protocols
 - Choice of a suitable site
 - Viewing of sites and admission of demonstrative evidence
 - Determine and implement appropriate affirmation or oath
 - Determine and implement in consultation with the Indigenous witness a culturally appropriate protocol to assure the tribunal that the witness will attest to the truth of the witness's testimony
 - Implement special procedures to govern testimony of community witness and oral history evidence at trial, including
 - Decorum and respect to be afforded to the witness in keeping with Indigenous sensibilities for respecting Elders or community witnesses, and
 - Properly addressing how objections may be raised or developing procedures for challenging the admissibility and weight of community witness testimony

- Address the testimonial challenges that arise from the unique history and context of Indigenous Peoples or Indigenous individuals in Canada. Indicate all applicable:
 - Potential intergenerational trauma arising from residential schools, adoption out
 - Cultural differences
 - Language and communication
 - Other _____

- Develop alternative measures to allow for Elder testimony in a matter. Indicate measures used:
 - Video conference
 - Videotape
 - Affidavit
 - Testifying as a panel
 - Individual accompanying Elder during appearances at the hearing
 - Tribunal traveling to hear testimony at alternative site

- Identify, prepare, and present the necessary opinion evidence of experts to advance or defend a claim or matter. Identify range of experience with presenting opinion evidence of experts by indicating all applicable:
 - Archeologist
 - Anthropologist
 - Historical geographer
 - Historian
 - Surveyor
 - Economist
 - Land appraiser
 - Engineer
 - Oral history expert
 - Ethno-historian
 - Linguists
 - Genealogist
 - Other _____

- Conduct discovery

- Conduct cross-examination in advance of the hearing or trial
 - On affidavits
 - Of non-party witnesses including experts on Indigenous rights

- Advise clients with respect to the full range of alternative dispute resolution options appropriate to the matter

- Advocate effectively on behalf of clients in settlement procedures/processes. Indicate all applicable:
 - Negotiations
 - Mediations
 - Pre-trials and/or pre-hearings
 - Settlement conferences

- Advocate effectively on behalf of clients. Indicate all applicable:
 - On motions
 - On applications
 - At trial
 - At hearings
 - On appeals
 - Before tribunals
 - Before regulatory bodies

- Advise clients with respect to the appropriate procedure to present matters of leave to appeal and judicial review

- Effectively prepare, examine, and cross-examine expert witnesses in regard to a trial or hearing

- Prepare costs submissions

- Provide opportunities for parties, counsel, and tribunal member(s) in advancing or understanding Indigenous perspectives including but not limited to Indigenous ceremonies, protocols, and processes by which information is imparted to others

- Provide opportunities for Indigenous communities to learn about or understand the court process and procedures in advance of the hearing

Outline, Broad and Varied Experience

22. Applicants must provide with their application a complete outline (in table format) of their Indigenous Legal Issues: Litigation and Advocacy experience as counsel during the five years of recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

Please do not include mediations and simple procedural motions under the *Rules of Civil Procedure*.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to outline their experience during the last ten years.

The table must include:

- Name of matter (include citation, if available)
- Type of proceeding
- Your role in the matter
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

Summaries

23. In addition applicants must provide with their application summaries of 3 significant matters or proceedings, which may or may not be trials under paragraph 22, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Litigation and Advocacy. Summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, etc.)
- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or regulatory or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples,
or
Explanation of how the Indigenous perspective was used or incorporated in the proceeding to help resolve the matter both on the merits and in a manner that respected Indigenous and other cultural identities of each individual involved in or associated with the matter.

Experience Requirements, Indigenous Legal Issues: Corporate and Commercial

24. Applicants are asked to confirm their knowledge of and experience with applicable tasks listed below by placing a check mark (✓) next to the task to demonstrate their experience in Indigenous Legal Issues: Corporate and Commercial and submit the completed Standards with the application package, along with any supplementary information required in the Standards.

25. In addition to complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed at least 30 of the following 90 tasks from at least two of the following three categories: (1) Advice & Opinions, (2) Agreements Arising from Crown Engagement Obligations, and (3) Transactional Agreements and Financing.

26. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their experience in the subspecialty.

27. It is recognized that the items listed are not necessarily of equal complexity and that facts will be taken into consideration in the assessment of the application. Consideration will also be given to the special circumstances of the applicant in accordance with paragraph 12 above when assessing an application. Applicants may also submit details of any tasks not listed below that they have performed during the period of recent experience of similar complexity and of a commercial nature in relation to Indigenous Legal Issues: Corporate and Commercial.

Category 1: Opinions, Advice, and Drafting

Provide advice, opinions, or draft instruments with respect to

- Exercise of powers conferred on band council(s) under the *Indian Act*, including the legal binding authority and representational authority to bind collective interests
- Exercise of rights of Indigenous governing bodies
- Additions to reserve policy
- Indian Act* permits or licences
- Expropriation or takings of reserve land
- Wills and estates on Indian reserves
- Surrender of reserve land
- Designation of reserve land
- Certificates of Possession or other customary grants
- Creation of an Indian reserve
- Land use planning and development of reserve land
- Obtaining a ministerial loan guarantee for housing on reserve
- Codes under the *First Nations Lands Management Act*
- Regulating use and occupancy of traditional land
- Access rights and requirements for enforcing security or other obligations on reserve lands
- Draft or provide advice relating to *Indian Act* s.81 or s.83 by-laws
- Draft or provide advice relating to by-laws under the *First Nations Fiscal Management Act*
- Draft or provide advice relating to Band council resolutions
- Advise client with respect to Indigenous laws and/or inherent rights
- Advise client with respect to employment, labour, human rights, or occupational health and safety matters
- Advise client with respect to taxation powers
- Advise client with respect to negotiation of funding arrangements
- Advise client with respect to administrative powers and duties of Indigenous governing bodies
- Advise client with respect to interaction between Indigenous law and Canadian law
- Advise client with respect to taxation or seizure provisions of the *Indian Act*, *Income Tax Act* (s.87 or s.89) and other relevant legislation
- Advise client with respect to applicability of provincial law to Indigenous Peoples (s.88 of *Indian Act*)
- Advise client with respect to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Advise client of obligations arising under Comprehensive Funding Arrangements with federal or provincial governments
- Draft/negotiate/provide advice regarding a community trust agreement for the benefit of Indigenous Peoples
- Advise client with respect to obligations under an existing community trust

- Advise client with respect to negotiation of and/or rights and obligations under a self-government agreement
- Draft or advise on articles of incorporation/letters patent and by-laws etc.
- Draft and/or advise on governance policies and procedures
- Advise client with respect to disclosure of information under freedom of information legislation
- Advise client with respect to political agreements, memoranda of understanding, and other like agreements between or among Indigenous governments or between Indigenous governments or organizations and federal, provincial, or municipal governments or private companies or other private entities
- Advise client with respect to the application of international Indigenous human rights standards and availability of international mechanisms for pursuit of human rights complaints
- Advise on contract tendering, procurement, or preparing requests for proposal for goods and services

Category 2: Protocols and Agreements Arising from Crown Obligations

- Participate in negotiations to formalize relationships and enter into an engagement agreement to address the rights of Indigenous Peoples
- Draft, negotiate or advise on participation, capacity funding, engagement, impact benefit, license agreements such as the following:
 - initial engagement agreements or protocols to facilitate engagement between Indigenous and non-Indigenous parties
 - engagement agreements, resource revenue sharing agreements, or other similar agreements
 - term sheets, memorandums of understanding, or other documents that describe the intentions of parties in negotiations leading to engagement agreements or other similar agreements
- Advise clients in the dealings between proponents and Indigenous Peoples on impacts to constitutional rights and the law on the duty to consult and accommodate in the context of engagement agreements
- Prepare Indigenous or community based engagement protocols
- Review and consider reports generated by environmental and technical experts
- Retain and review reports generated by financial experts to advise on the negotiation of the compensation payments
- Review reports generated by external consultants and advise on the negotiation of the business opportunities and employment opportunities
- Retain and review reports generated by anthropologists, archaeologists, or other consultants
- Retain and review reports generated by Elders in order to determine impacts of potential undertakings
- Advise on the implementation of agreements
- Conduct internal meetings with members of the negotiation committee for one or more Indigenous groups
- Advise, develop, or implement community-or statutory-based ratification processes
- Review initial project descriptions and related documentation provided by a proponent to one or more Indigenous communities

- Advise and represent clients on the rights of Indigenous Peoples in respect of a proposed project and act for the client in initial meetings with a proponent
- Review, interpret, and advise on the legislative/regulatory processes governing a proposed project and the rights of Indigenous Peoples in respect thereof
- Make submissions directly to a proponent or government (federal or provincial) concerning the impact of a proposed project in the mining/quarrying, energy, oil and gas, electricity, or public infrastructure sectors with respect to the rights of one or more Indigenous Peoples
- Draft letters to the authority responsible for overseeing the legislative/regulatory process for a proposed project and submit applications for standing of Indigenous Peoples to appear before such authority in respect of the same
- Identify and retain environmental, cultural, and financial experts to determine the scale of impacts to one or more Indigenous Peoples of a proposed project and advise client(s) accordingly

Category 3 - Transactions and Financing

- Advise on alternative business structures and the tax consequences of using different business structures
- Draft/negotiate a partnership, limited partnership, or joint venture agreement
- Draft/negotiate a shareholder's agreement or subscription agreement
- Represent a client incorporating a corporation including preparation of by-laws and organizational resolutions
- Advise a client with respect to the nature and purpose of a non-share capital corporation including incorporating and organizing a non-share capital corporation
- Advise board of directors on procedural issues such as liability, conflicts of interest, and director and officer insurances etc.
- Organize an annual or special general meeting of shareholders
- Draft/negotiate project development agreements, including at least one of the following. Identify all applicable:
 - Interim funding agreements (respecting funding during negotiations)
 - Implementation agreement (reflecting relationship generally)
 - Construction management agreement (respecting construction phase)
 - Operations management agreement (respecting operations and maintenance phase)
 - Traditional ecological knowledge licence
 - Intellectual property agreement
 - Other: _____
- Draft/negotiate contract tendering, requests for information, requests for qualifications, requests for proposals or other procurement issues
- Act in the following transactional matters. Identify all applicable:
 - Sale
 - Purchase
 - Lease
 - Debt financing matter
 - Construction services agreement
 - Project management agreement
 - Operations management agreement
 - Architectural services agreement
 - Other: _____

- Structure a private equity financing transaction
- Draft/negotiate a confidentiality and non-disclosure agreement
- Draft/negotiate a letter of intent
- Draft/negotiate a share purchase agreement
- Draft/negotiate an asset purchase agreement
- Draft/negotiate an amalgamation agreement
- Draft/negotiate a consulting agreement
- Draft/negotiate an employment agreement
- Draft/negotiate employee non-disclosure, non-solicitation, and non-competition agreements
- Prepare a due diligence requisition list and/or respond to due diligence issues
- Prepare/negotiate closing agenda and represent a client at closing
- Review and advise on various governmental programs available to communities to facilitate purchase of ownership stake in a proposed project
- Negotiate with governmental authorities (or provide advice regarding such negotiations) on provision of a loan guarantee or other instrument to reduce the borrowing costs of an Indigenous community to purchase an ownership stake in a proposed project
- Draft/negotiate a loan/financing matter (could include commitment letter, trust indenture, share pledge, letter of credit, real property mortgage, leasehold mortgage, promissory note or guarantees)
- Obtain appropriate resolutions detailing informed approval in respect of at least one of the following. Identify all applicable:
 - Financing structure of the project and loans to Indigenous community-owned corporate entities
 - Unforeseen events, insurance, contingency planning, and exposure to liability of any Indigenous community-owned assets
 - Level of control of one or more Indigenous communities in project decisions and matters requiring unanimous consent
 - Pledging security
 - Identification of authorized representative
 - Tax treatment of project distributions
 - Anticipated returns from the project to one or more Indigenous Peoples
 - Make presentations to the membership of one or more Indigenous Peoples describing the project and the involvement of such communities in the project
 - Community consultation and ratification
 - Evolving requirements related to accountability and reporting on revenues
- Advise a client with respect to *Securities Act* matters
- Advise on priorities among landlord, mortgagee, and secured and unsecured creditors
- Advise on asset realization under the *Personal Property Security Act*
- Advise on a mortgage enforcement matter
- Advise on the bankruptcy process and procedures or the *Companies' Creditors Arrangement Act*
- Draft/negotiate a head lease or land lease, offer to lease or sublease, licence or permit pursuant to the *Indian Act* or other legislation or land codes pertaining to Indigenous lands
- Draft/negotiate an agreement to acquire or lease lands pursuant to the *Indian Act* or other legislation or land codes pertaining to First Nations lands
- Advise on the structure of a mergers and acquisitions transaction (e.g., shares v. assets, take-over bids, and amalgamations)

- Conduct negotiations and settlement discussions with or on behalf of a proponent and/or government in respect of a proposed resource development project
- Draft or provide advice regarding agreements related to resource development, such as exploration agreements or similar early and late stage project agreements
- Additional tasks not listed above performed during the period of recent experience of similar complexity and of a commercial nature in relation to Indigenous Legal Issues, Corporate and Commercial:
(please describe)

Outline, Broad and Varied Experience

28. Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Corporate and Commercial during the five years of most recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table must include:

- Type of matter
- Who or type of client represented (individual, corporation, government, community etc.)
- Issues involved in matter
- Approximate dollar amount of transaction or matter, and
- Goals/Objectives and outcome.

Summaries

29. In addition, applicants must provide with their application summaries of three significant transactions, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Corporate and Commercial. The summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Type of matter (transaction, agreement, legal opinion, or advice)
- Who or type of client represented (individual, corporation, government, community etc.)
- Goals or objectives of the matter
- Issues involved in matter
- Approximate dollar amount of transaction or matter
- Complexity of the matter
- Who represented
- Synopsis of outcome
- Description of any insights and perspectives the applicant gained from his or her involvement in each of these matters, and

- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

Professional Development

30. Applicants must attest to the completion of the professional development requirements. The requirements are

(a) not less than 50 hours of self-study in the two years immediately preceding the date of application and any other year within the 5 years of recent experience (a total of 150 hours), and

(b) not less than 12 hours of relevant professional development in the two years immediately preceding the date of application and any other year within the 5 years of recent experience.

The 12 hour professional development requirement may be met through participation at CLE programs or through alternative methods such as, but not limited to

(c) teaching or being a guest lecturer on a course in the specialty area

(d) writing and editing of published books or articles relating to the specialty area

(e) graduate or post-graduate studies in the specialty area

(f) involvement in the development and/or presentation of professional development programs related to the specialty area, and

(g) involvement in the development of policy related to the specialty area.

References

31. Applicants must submit four Statements of Reference. Three references must be from lawyers eligible to practise law in Ontario who have direct knowledge of the applicant's work in the specialty area in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under the subspecialty applied for.

32. A fourth reference, Statement of Reference, Indigenous Community Member, must be from a member of an Indigenous community who may also be a lawyer eligible to practise law in Ontario and who can both assess and attest to the applicant's respect for and understanding of Indigenous perspectives: a chief, band councillor, band administrator, regional and/or national chief and leader, Indigenous Elder, Indigenous community leader, Clanmother, or Indigenous academic.

33. Applicants must provide to the referees a copy of the completed Standards to let them know which subspecialty, categories, and/or tasks applicants have selected to demonstrate their experience along with the applicable Statement of Reference. Applicants should not include as a reference judges, partners, associates, co-workers, employers, employees, relatives,

3rd party neutrals, members of the Certified Specialist Board, benchers, or employees of the Law Society.

34. The four Statements of Reference must be submitted with the application to the Law Society in confidential envelopes that have been sealed, signed, and dated by the referees. Envelopes that have been opened or appear to have been tampered with will not be accepted.

Application Assessment

35. The Society will consider the totality of an applicant's practice in the relevant specialty area(s), the applicant's Professional Development Report, and references.
36. Applicants should not assume that completion of all of the enumerated practice concentration and experience requirements will automatically entitle them to certification as a specialist.
37. Applicants may be required to provide additional information to the Society to facilitate the assessment process.
38. The Society may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.

Lawyer Referee, Assessment Grid, includes <u>all</u> Items (lawyer and community member items)					
	Highest Rating	Very Good	Average	Poor	Unknown
Ability to understand and consider the priorities, objectives, and perspectives of Indigenous individuals, communities, nations, or Peoples					
Ability to identify the rights holder					
Preparation (including document preparation)					
Resourcefulness					
Knowledge of substantive issues in the specialty					
Knowledge of procedure in the specialty					
Effectiveness of advocacy (court presentations, negotiations etc. as applicable)					
Consideration for the interests of clients					
Reputation in the legal community for ability to handle a specialty matter					
Reputation in the Indigenous community for ethical conduct					

Indigenous Community Member Referee, Assessment Grid, Includes only these items			
	Agree	Disagree	Unknown
The applicant demonstrates knowledge of and respect for Indigenous Laws			
The applicant demonstrates curiosity about <u>and</u> willingness to expand his or her understanding of Indigenous Laws			
The applicant demonstrates respect for Indigenous views, values, norms, and way of life			
The applicant demonstrates curiosity about <u>and</u> willingness to expand his or her understanding of Indigenous views, values, norms, and way of life			
The applicant demonstrates willingness to initiate and develop relationships between members of Indigenous and non-Indigenous communities, nations, or Peoples			



The Law Society of
Upper Canada

Barreau
du Haut-Canada

CERTIFIED SPECIALIST PROGRAM

Policies Governing the Certified Specialist Program

December 13, 2010

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THE LAW SOCIETY OF UPPER CANADA POLICIES GOVERNING THE CERTIFIED SPECIALIST PROGRAM

PART I: DEFINITIONS

“Applicant” is a lawyer applying for Certification as a specialist.

“Application” includes the completed a) Application form, b) Standards and c) any required supplementary documents.

“Board” is the Certified Specialist Board.

“Certification Staff” are employees of the Law Society assigned by the Chief Executive Officer the responsibility of supporting the work of the Board.

“Certification” means Certification as a specialist.

“Certified Specialist or specialist” is a lawyer member of the Law Society of Upper Canada who is certified by the Board as having met the Standards for Certification in a designated area of practice.

“Consent to Disclosure” is a written authorization provided by an Applicant for Certification and by a Certified Specialist to the Lawyers’ Professional Indemnity Company authorizing disclosure of their claims history to the Law Society for the purpose of determining their compliance with the program’s professional Standards.

“Law Society or Society” is the Law Society of Upper Canada.

“Policies” are these Policies Governing the Certified Specialist Program of the Law Society of Upper Canada.

“Practice Concentration” is the required percentage of a lawyer’s practice devoted to a specialty area as defined in the Standards.

“Professional Development Report” is a report outlining the professional development undertakings of every new Applicant.

“Professional Development & Competence Committee, Committee or PD&C Committee” is a standing committee of Convocation, responsible for competence matters.

“Recent Experience” means practising law in a specialty area for at least five years before the day on which the member applies for certification as follows: i) Two years in Ontario immediately before the day on which the lawyer applies for certification; ii) Three other years in one or more common law jurisdictions.

“Standards” are Standards for Certification established for each specialty area.

“Substantial Involvement” is the combination of the Practice Concentration and experience requirements in the standards for each specialty area.

PART II: GENERAL

1. Purpose

The Certified Specialist Program recognizes lawyers who have met established Standards of experience and knowledge requirements in designated areas of law, and have maintained exemplary Standards of professional practice.

The program aims to promote the public interest and enhance lawyer competence by facilitating the development of specialty expertise in a given area.

2. Equal Opportunity

The Certified Specialist Program encourages participation from all qualified Applicants without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

3. Areas of Practice

Bankruptcy and Insolvency Law
Civil Litigation
Citizenship and Immigration Law (Immigration/Refugee Protection)
Construction Law
Corporate and Commercial Law
Criminal Law
Environmental Law
Estates and Trusts Law
Family Law
Health Law
Intellectual Property Law (Trademark/ Patent/Copyright)
Labour Law
Municipal Law (Local Government/Land Use Planning and Development)
Real Estate Law
Workplace Safety and Insurance Law

4. Limit on Number of Certifications

A lawyer may be certified as a specialist in a maximum of two areas of practice.

5. Individual Attainment

Certification can be held by individuals, and cannot be attributed to the law firm or office of which the specialist may be a member.

6. Voluntary Participation

No lawyer of the Law Society is required to be certified as a Specialist in order to practise in the area of law covered by that specialty.

PART III: CERTIFIED SPECIALIST BOARD

9. Appointment

The Board is appointed by the Committee to oversee and regulate the Certified Specialist Program.

10. Composition

The Board is comprised of between eight and twelve members, including the Chair: two benchers who are not lay benchers, one lay bencher and a minimum of five Certified Specialists who are not benchers.

11. Term

A lawyer appointed to the Board holds office for a term not exceeding three years and is eligible for reappointment.

The Chair holds office for a term not exceeding three years and is eligible for reappointment.

12. Function of the Board

The function of the Board is to:

- establish Standards for the Certification of specialists;
- determine the areas of law in respect of which lawyers may be certified as specialists;
- make rules of practice and procedure with respect to the consideration of Applications for Certification by the Board and all matters related to Certification;
- develop for the Committee's approval Policies relating to the Certification of licensees as specialists;
- recommend to the Committee the amount of fees payable by Applicants for Certification and by Certified Specialists; and
- certify lawyers as specialists.

13. Meetings of the Board

The Board will meet at the call of the Chair and no less than twice a year.

14. Quorum

Five members of the Board constitute a quorum for the purposes of the transaction of business.

15. Annual Report

Not later than March 31 of each year, the Board will report to the Committee on the affairs of the Board of the immediately preceding year.

16. Confidentiality

A member of the Board will not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under these Policies, exceptions being:

- disclosure required in connection with administration of the *Law Society Act*, the regulations or the by-laws;
- disclosure required of a member of the Board under the Law Society's Rules of Professional Conduct;

- disclosure of information that is a matter of public record; and
- disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART IV: REQUIREMENTS FOR CERTIFICATION

17. Minimum Years of Practice and Recent Experience

The Applicant must have engaged in the practice of law for at least seven years before the day on which the lawyer applies for certification as follows: i) two years in Ontario immediately before the day on which the lawyer applies for certification, and ii) at least three other years in one or more common law jurisdictions.

Recent Experience must be in the Applicant's specialty area.

18. Substantial Involvement

The Applicant must demonstrate Substantial Involvement in the subject specialty area in the five years that comprise Applicant's Recent Experience by:

- a) completing the legal experience section of the Application form;
- b) completing the experience section of the applicable Standards; and
- c) including any additional information which may be required in the Standards with his or her Application.

In the event that the Applicant does not entirely meet the experience requirement, the Applicant may apply to the Society for recognition of the Applicant's individual circumstances or the Applicant's related skills. Consideration will be given in circumstances where the Applicant has:

- limited his or her practice in recent years to a particular area of the specialty area or has been involved in matters of extraordinary length and complexity; or
- engaged in advanced course work or performed related activities such as:
 - teaching a course in the specialty area;
 - authoring books or articles for publication;
 - completing post-graduate or other studies in the specialty area;
 - participating in the development and/or presentation of professional development programs related to the specialty area;
 - research;
 - participating in the policy development process;
 - drafting legislation and/or instruments;
 - participating as an active member on boards or tribunals or on the executive of any organization related to the specialty area; or
 - any other experience the Applicant considers relevant to his or her Application.

The Applicant is not required nor permitted to disclose the names of people he or she has represented in order to substantiate a claim to having certain types of experience, unless those names are already in the public domain.

19. Multiple Certifications

Lawyers may apply for certification in more than one specialty area.

Lawyers may rely on the same task or practice experience to demonstrate substantial involvement in each specialty area.

Where a lawyer applies for certification in more than one area, or where a lawyer is certified in one area and subsequently seeks certification in a new area, the Society shall review each of the lawyer's applications.

20. Part-Time Practice

An Applicant in the part-time practice of law in Ontario may be considered for Certification as a specialist providing the Applicant's Substantial Involvement in the specialty area is equivalent to the requirements set out in these Policies and the individual Standards.

21. Professional Development

In the two years immediately preceding the date of application and one additional year within the five years of Recent Experience, the Applicant must attest to the completion of the annual professional development requirements.

The professional development requirements are as follows:

- not less than 50 hours of self-study; and
- not less than 12 hours of relevant professional development, which may consist of viewing or participating in CLE programs or through alternative methods such as, but not limited to:
 - teaching or being guest lecturer on a course in the specialty area;
 - authoring books or articles for publication;
 - completing post-graduate or other studies in the specialty area;
 - participating in the development and/or presentation of professional development programs related to the specialty area; or
 - involvement in the development of policy related to the specialty area.

The Applicant's Professional Development Report must include the following information:

- date of each activity;
- name, topics and/or issues covered by each activity;
- format of each activity;
- name of provider of each activity;
- hours of credit claimed for each activity;
- alternative methods used to comply with the professional development requirement (if applicable); and
- self-study.

22. References

The Applicant must submit the number of required written references from such persons as determined by the Standards. The references must be completed in the form prescribed by the Board.

The individual selected as a reference must be a lawyer licensed by the Law Society that has direct knowledge of the Applicant's work in the specialty area in the five years of Recent Experience and can attest to the Applicant's competent performance of the tasks which the Applicant has selected in the Experience section of the Standards to demonstrate his or her experience in the specialty area.

None of the following is eligible to act as a reference:

- a person whose license is in abeyance under subsection 31 (1) of the *Law Society Act*;
- a partner, an associate, a co-worker, an employer or an employee of the Applicant;
- an individual who is counsel to the Applicant, to the Applicant's employer or to the Applicant's firm or company;
- a third party neutral;
- a relative of the Applicant;
- a member of the Certified Specialist Board;
- a bencher; or
- an employee of the Law Society.

The statement of reference and its contents is a confidential document, and will be made available for review only to members of the Board and Certification Staff.

The individual providing a reference will not disclose the contents of the reference to the Applicant.

23. Professional Standards

During the five year period immediately preceding the date of the Application and in any jurisdiction in which the Applicant is authorized to practice, the Applicant:

- is not subject and has no record of any order made by a tribunal of a governing body of the legal profession in any jurisdiction;
- has and has had no terms, conditions, limitations or restrictions imposed to practise law in any jurisdiction;
- is not the subject of a review of his or her practice for the purpose of determining if he or she is meeting Standards of professional competence;
- has had no serious claims or substantial number of claims made against him or her in a professional capacity or in respect of his or her practice.

Despite these conditions, if the Applicant is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the Applicant is authorized to practise law, the Board may determine that granting Certification to the Applicant would not be contrary to the public interest.

An Applicant who is licensed to practise in other jurisdiction(s) will provide a certificate of standing from the governing body of the legal profession in each of those jurisdictions that has been issued no more than three months immediately prior to the date of the Application.

The Applicant may request a copy of his or her professional Standards record at any time during the Application process.

24. Application Fee

Each Application for Certification must be accompanied by an Application fee.

The Application fee is non-refundable and may not be applied to subsequent Applications.

25. Application for Certification and Accompanying Documents

In order to be considered complete, the Application package must include the following:

- completed Application for Certification form;
- Standards for Certification of which the Experience section has been completed by the Applicant
- case analyses or other documents which may be required in the applicable Standards;
- description of the Applicant's practice in relation to the specialty area;
- Professional Development Report;
- references from eligible referees;
- certificate of standing from other jurisdiction(s), if applicable;
- LawPRO report on the Applicant's claims history in the 5 year period immediately preceding the date of Application and the Consent to Disclosure form used to request the report; and
- Application fee

An Application which is incomplete will not be processed. The Applicant will have one year within which to complete the Application and may be required to update all or part of the Application in order to have it considered by the Society. If the Application form remains incomplete beyond that period, it will be considered withdrawn by the Applicant and no further action will be taken.

Applicants must submit all additional information required by the Society to complete its assessment within one (1) year of the date of request. If this information has not been received within this period, the Application will be considered withdrawn by the Applicant and no further action will be taken.

26. Applications from Members of the Board or Professional Development and Competence Committee

Applications for Certification from members of the Board or the Committee are subject to the same requirements as any other Applicant and the same conflict of interest rules set out in these Policies.

27. Parental Leave

An Applicant who has been on parental leave at any time during the seven (7) years immediately preceding his or her Application may use the year prior to that period in order to meet the Substantial Involvement requirements outlined in the Standards.

PART V: CONSIDERATION BY THE SOCIETY

28. Society Action on an Application

The Society will consider the totality of an Applicant's experience, skills, knowledge and professional development and confirm that they comply with the applicable Standards.

The Applicant may be required to supplement the information in the Application and/or provide additional references to facilitate assessment of his or her eligibility for Certification.

29. Notice

If the Society intends to recommend to the Board that the Applicant not be certified as a specialist, before making the recommendation the Society will give the Applicant 30 days in order to:

- withdraw their Application; or

- submit additional information to the Society for assessment.

30. Confidentiality

All information relating to an Application including the contents of the Application form, statements of reference, files, reports, investigations, findings and recommendations is confidential and will not be disclosed to anyone, including the Applicant. The Applicant may be informed as to the status of his or her Application at any time and may receive a composite summary of assessment upon request.

PART VI: CONSIDERATION BY BOARD

31. Board Decision on an Application

The Board shall consider every Application for Certification.

If the Society recommends to the Board that the Applicant be certified as a specialist, the Board may,

- certify the Applicant as a specialist if,
 - the Board is satisfied that the Applicant meets the professional Standards requirements for Certification; and
 - the Board is satisfied that the Applicant is not the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law; or
 - it would not be contrary to the public interest to certify the Applicant as a specialist.

If the Society recommends to the Board that the Applicant not be certified as a specialist, the Board may,

- certify the Applicant as a specialist if:
 - the Board is satisfied that the Applicant meets the professional Standards requirements for Certification; and
 - the Board is satisfied that the Applicant is not the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law; or
 - it would not be contrary to the public interest to certify the Applicant as a specialist; or
- not certify the Applicant as a specialist if,
 - the Board is not satisfied that the Applicant meets the professional Standards requirements for Certification; or
 - the Board is satisfied that the conduct, capacity or competence proceeding against the Applicant in any jurisdiction in which the Applicant is authorized to practise law is present; or
 - it would be contrary to the public interest to certify the Applicant as a specialist.

32. Notice

If the Board does not certify the Applicant as a specialist, the Board will notify the Applicant in writing of its decision.

33. Decision final

The decision of the Board on an Application is final.

34. Issuance of Certificate

Certification begins on the date it was approved by the Board.

The Board will issue to an Applicant certified as a specialist a certificate of specialty stating the area of law in which the Applicant has been certified as a specialist.

35. Directory of Specialists

The names of Certified Specialists will be included in the Directory of Specialists published by the Law Society.

36. Continuation of Certification

A lawyer certified as a specialist will continue to be certified as a specialist so long as the lawyer continues to meet the requirements of the program, namely that the lawyer:

- has maintained Substantial Involvement in the specialty area;
- complies with the professional development requirements;
- complies with the professional Standards requirements in any jurisdiction in which the lawyer is authorized to practise law and the lawyer:
 - is not the subject and has no record of any order made against the lawyer by a tribunal of the governing body of the legal profession;
 - has and has had no terms, conditions, limitations or restrictions imposed on the lawyer's authorization to practise law;
 - is not the subject of a review of the lawyer's practice for the purpose of determining if the lawyer is meeting Standards of professional competence;
 - has had no serious claims or substantial number of claims made against the lawyer in the licensee's professional capacity or in respect of the lawyer's practice; and
 - complies with the annual reporting requirement attesting to the above and remits the annual fee.

PART VIII: CERTIFIED SPECIALISTS

37. Specialist Designation

A Certified Specialist may use the following designations: Certified Specialist (area of law in which certified as specialist) or "Spécialiste agréé(e) (domaine de droit)" and/or C.S. immediately after the lawyers' name in accordance with Rules 3.03(1)(g) and 3.05(2) and the respective commentary of the Law Society's Rules of Professional Conduct. Variations of the designation will not be permitted.

A lawyer who is not a Certified Specialist will not use any designation from which a person might reasonably conclude that the licensee is a Certified Specialist.

38. Annual Fee

Every year a Certified Specialist will pay to the Society an annual fee in the amount determined by Convocation, including any applicable taxes.

The payment of the annual fee is due on January 31 of each year.

Lawyers that fail to submit the annual fee within 30 days of this deadline will be deemed not in compliance with By-Law 15.

The annual fee of a lawyer certified as specialist after January 1 will be prorated for the year in which the lawyer became a specialist and will be due on the day on which the lawyer became certified as a specialist. This fee is payable within 30 days of the date of receipt. Lawyers who fail to submit the annual fee within 30 days of this deadline will be deemed not in compliance with By-Law 15.

39. Annual Report

A Certified Specialist must submit a report to the Certification Staff by January 31 of each year in respect of the Certified Specialist's compliance with these Policies during the immediately preceding year.

The annual report must be in a form provided by Certification Staff and include:

- a declaration attesting to the specialist's completion of the annual professional development requirements;
- a Consent to Disclosure; and
- a certificate of standing from other jurisdiction(s), if applicable.

Specialists who fail to submit a report to Certification Staff within 30 days of this deadline will be deemed not in compliance with the By-Law.

40. Proof of Compliance

A Certified Specialist will, upon the request of the Society, provide proof to the satisfaction of the staff and by no later than the day specified by the staff, of his or her compliance with these Policies.

In the event a specialist fails to provide proof to the Society by the specified day, the specialist will be deemed not to be in compliance with these Policies.

41. Exemptions for extenuating or exceptional circumstances

A certified specialist may apply to the Board for relief from strict compliance with the professional development requirement on the basis of extenuating or exceptional circumstances.

Where the Board determines that extenuating or exceptional circumstances exist, the Board may exempt the certified specialist from compliance with some or all of the professional development requirement for a maximum of three consecutive years.

42. Notice to Society

A Certified Specialist will notify the Society immediately if the Certified Specialist is not in compliance with these Policies.

43. Certificate of Specialty in Abeyance

Abeyance Automatic

A specialist's Certification is automatically in abeyance while:

- the specialist's license is in abeyance under subsection 31(1) of the Law Society Act:

- the specialist has terms, conditions, limitations or restrictions imposed on the specialist's authorization to practice law in any jurisdiction in which the specialist is authorized to practice law;
- the specialist is, in any jurisdiction in which the specialist is authorized to practice law, the subject of a review of the specialist's practice for the purpose of determining if the specialist is meeting Standards of professional competence; or
- the specialist has serious claims or a substantial number of claims made against the specialist in the specialist's professional capacity or in respect of the specialist's practice in any jurisdiction in which the specialist is authorized to practise law.

Abeance at Board's Discretion

The Board may place a Certified Specialist's Certification in abeyance if the specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the specialist is authorized to practice law and to not do so would be contrary to the public interest.

Abeance Mandatory

The Board will place a Certified Specialist's Certification in abeyance if the specialist applies to the Board to have the Certification placed in abeyance.

44. Restoration of Certificate of Specialty Following Abeyance

Following Automatic Abeyance

If the conditions for automatic abeyance are no longer present and the specialist's Certification has not been revoked under these Policies the specialist's Certification will be restored upon notice to the Certification Staff of the change in conditions.

Following Discretionary Abeyance

If the conditions for discretionary abeyance are no longer present and the specialist's Certification has not been revoked under these Policies, on the Application of the specialist the Board may restore the specialist's Certification if to do so would not be contrary to the public interest.

Following Mandatory Abeyance

If the Board placed a specialist's Certification in abeyance at the request of the specialist and the specialist's Certification has not been revoked under these Policies, on the Application of the specialist the Board will restore the specialist's Certification if:

- none of the conditions for automatic abeyance are present; and
- the conditions for discretionary abeyance are not present, and if they are, the Board is satisfied that it would not be contrary to the public interest to restore the specialist's Certification.

45. Revocation of Certificate of Specialty

A Certified Specialist's Certification is automatically revoked when the specialist:

- ceases to practice law in Ontario;

- ceases to meet the Substantial Involvement requirement of the specialty area;
- is the subject of any order made against the specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
- fails to pay an annual fee or submit an annual report;
- fails to meet the professional development requirements of the subject specialty area; or
- the specialist's Certification has been in abeyance for more than twelve months.

A lawyer whose Certification was revoked may apply for Certification at any time by submitting a new Application.

46. Surrender of Certification

A Certified Specialist who wishes to surrender his or her Certification will submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board will approve the request.

A lawyer ceases to be certified as a specialist immediately after the Board approves the lawyer's request to surrender his or her Certification. The lawyer's name will be removed from the Directory of Specialists and the lawyer must cease to use the designation in accordance with these Policies and the Rules of Professional Conduct. A lawyer who surrenders his/her certificate may apply for Certification at any time by submitting a new application.

INFORMATION**APPOINTMENTS TO CERTIFIED SPECIALIST BOARD.****Issue for Information**

17. Pursuant to By-law 15 (Certified Specialist Program) the PD&C Committee (the “Committee”) appoints the members of the Certified Specialist Board (the “Board”). Convocation does not approve those appointments, but is advised of them for information. By-Law 15 can be accessed at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485815>.
18. There are currently vacancies on the Board. On June 9, 2016, the Committee considered and approved the four candidates that the Board recommended for appointment. They are as follows: David J. Bannon, May Cheng, Douglas Downey and Donna Shier.
19. The candidates’ biographies are set out at paragraph 27.
20. Following the Committee meeting the candidates were advised of their appointments.

Rationale

21. By-law 15 establishes the Board, whose members the PD&C Committee appoints. The Board is to consist of not fewer than eight and not more than 12 persons as follows:
 - Two benchers who are certified specialists
 - One lay bencher
 - Not fewer than five and not more than nine persons who are certified specialists who are not benchers.
22. At least two new certified specialists were required to meet the minimum appointees in this category under the By-law. The Board recommended to the Committee the appointment of four certified specialists to provide a broader coverage of specialty areas and practitioner expertise.

Key Considerations

23. As a result of the 2015 bencher election, a number of the members of the Board were elected to Convocation, leaving the current composition of the Board as follows:
 - Two benchers who are certified specialists.
 - One lay bencher,
 - Three certified specialists who are not benchers.

24. To fill the vacancies, the Law Society placed a notice in the Ontario Reports inviting applications for the Board and setting out the requisite qualifications. A copy of the notice is set out at [TAB 11.2.1: OR Notice](#).
25. Seven applications were received, many of which were from highly qualified certified specialists. A working group of the Board consisting of the Chair, Janet Leiper, and two Certified Specialist Board members, Kathryn D'Artois and David Shelley, reviewed all the applications and recommended four candidates to the Board, which approved them for recommendation to the Committee.
26. In making its recommendations the Board was satisfied that the certified specialists it recommended met the qualifications, had excellent references and would make an important contribution to the Board's expertise and fulfilment of its mandate.
27. The Committee approved the following Certified Specialists for appointment to the Board:

David J. Bannon, C.S., Labour Law

Called to the Bar in 1994

Certified Specialist since 2007

Prior Board and Committee experience

Frequent speaker in specialty area, extensive experience

Teacher and mentor

May Cheng, C.S., Intellectual Property Law

Called to the Bar in 1993

Certified Specialist since 2005

Prior Board and Committee experience, including at the Law Society on the Equity

Advisory Group (EAG) and Retention of Women in Private Practice

Frequent speaker and author

Douglas Downey, C.S., Real Estate Law

Called to the Bar in 1999

Certified Specialist since 2006

Prior Board and Committee Experience including with the Law Society and the Ontario Bar Association (OBA)

Mentor in current Law Society mentoring program

Frequent presenter and award winner

Donna Shier, C.S., Environmental Law

Called to the Bar 1978

Certified Specialist since 1996

Prior Board and Committee experience, including with the Law Society

Author and frequent speaker

Award winning environmental lawyer

Post-secondary law teacher



Invitation to Apply for Appointment to the Law Society's Certified Specialist Board

The Law Society of Upper Canada is inviting applications from Certified Specialists for appointment to the Certified Specialist Board (CSB), which oversees and regulates the Certified Specialist Program.

Pursuant to By-Law 15, the CSB establishes standards for the certification of specialists, determines the areas of law in respect of which lawyers may be certified as specialists, makes rules of practice and procedures with respect to the consideration of applications for certification and all matters related to certification, develops policies relating to the certification of lawyers as specialists for the Professional Development & Competence Committee's approval, recommends to the Committee the amount of fees payable by the applicants for certification and by certified specialists, and certifies lawyers as specialists.

The CSB meets monthly in person or by teleconference and holds *ad hoc* meetings when working on special projects. Members serve three-year terms. All appointments are served on a volunteer basis. The qualifications and experience sought for appointments to the CSB are as follows:

- Entitled to practise law in Ontario with a minimum of five years as a certified specialist in any of the following areas of specialization: Bankruptcy and Insolvency, Citizenship and Immigration, Construction, Corporate and Commercial, Environmental, Health, Intellectual Property, Real Estate, or Workplace Safety and Insurance;
- Familiarity with practice-area issues through involvement in the legal community; and
- Experience in program governance through board or committee involvement.

To apply for an appointment to the CSB, please send a letter of interest, a *curriculum vitae*, and two (2) letters of reference by February 15, 2016, to:
Certified Specialist Program, The Law Society of Upper Canada
130 Queen Street West, Toronto, ON M5H 2N6
E-mail: certspec@luc.on.ca

The Law Society of Upper Canada welcomes applications from persons representing the diversity of the legal profession and community.



June 23, 2016

Update Report TAG – The Action Group on Access to Justice

Connect, Create and Communicate: Public Legal Education and the Access to Justice Movement

TAG is partnering with [LawConnect Ontario](#) (a collaboration of OJEN and CLEO) on [Connect, Create and Communicate: Public Legal Education and the Access to Justice Movement](#). We are inviting short proposals for workshops that: introduce participants to new ideas or different skills, would be useful to people working in other places or sectors, are engaging and interactive and are practical. The conference is open to interested legal professionals, community workers, students, and other people working in access to justice and doing PLEI. The deadline for proposals is **June 27th at 6pm**. Connect, Create and Communicate will be held in Toronto from October 20th to 21st and is part of Access to Justice Week which will take place from October 17th to 21st. Updates will be available on the TAG website.

Architects of Justice at Doors Open Toronto

TAG launched its Architects of Justice program at Osgoode Hall during the Doors Open Toronto festival from May 28th to 29th. A team of law and paralegal students ran a design thinking initiative that engaged the public in the development of access to justice solutions. In addition, 550 respondents were surveyed about everyday access to justice concerns. On May 28th Abbey Flower Heritage Specialist at Infrastructure Ontario gave a presentation on the archeology of the New Toronto Courthouse site. A summary of tweets from the event can be found at [this link](#). Architects of Justice will run throughout the summer in various sites across Ontario. Updates will be posted on the TAG website.

Roundtable: Maintaining Self-Determination in Times of Incapacity

On June 7th TAG hosted a roundtable about access to justice and advance care planning in partnership with the Canadian Working Group on HIV and Rehabilitation, Advocacy Centre for the Elderly, Hospice Palliative Care Ontario and HALCO. The focus was on patients with chronic health conditions and the discussion explored ways to strengthen links between the legal and medical community and improve public legal education. Outcomes from the discussion will be shared in the coming weeks.

The roundtable featured the following speakers:

Kate Murzin

Canadian Working Group on HIV and Rehabilitation (CWGHR)

Judith Wahl

Advocacy Centre for the Elderly

Steve Hubel

Mood Disorders Association of Ontario (MDAO)
Facilitator, Wellness Recovery Action Planning (WRAP) program

Ron Rosenes

Consultant, HIV Sector
Chair, National Coordinating Committee on HIV and Aging Research Working Group

Julie Darnay

Hospice Palliative Care Ontario

Amy Wah

HIV/AIDS Legal Clinic Ontario (HALCO)

Ryan Peck

HIV/AIDS Legal Clinic Ontario (HALCO)

History Repeating? Forensic Evidence, Motherisk and Miscarriages of Justice

On June 6th TAG partnered with Innocence Canada (formerly AIDWYC) on a CPD session that outlined the role of flawed forensic pathology in miscarriages of justice in Canada. The program had approximately 100 in-person attendees and 100 webcast viewers. A link to the webcast will be made available on the TAG website.

The program featured the following speakers:

Philip M. Epstein

Senior Partner, Epstein Cole LLP

Brian H. Greenspan

Partner, Greenspan, Humphrey, Lavine

Dr. Dirk Huyer

Chief Coroner for Ontario

Hon. Justice Susan Lang

Court of Appeal for Ontario

James Lockyer

Partner, Lockyer Campbell Posner

Rachel Mendleson

Reporter, Toronto Star



The Law Society
of Upper Canada

Barreau du
Haut-Canada

Treasurer's Engagement

June 2016

Date	Engagement
June 3	The Empire Club First Sesquicentennial Series Lunch – The Right Honourable Beverley McLachlin, Chief Justice of Canada
June 6	Visit to Rainy River Law Association and Couchiching First Nation <ul style="list-style-type: none"> • Luncheon Couchiching First Nation • Tour of Courthouse in Rainy River • Rainy River Law Association Annual Dinner • Interview with Fort Frances Times
June 8	Treasurer's End of Term Stakeholder Reception
June 8	Women's Law Association Annual Presidents Award Gala https://www.wlao.on.ca/congratulations-to-2016-presidents-award-winner-may-m-cheng/
June 9	Ryerson University 2015/16 LPP Completion Ceremony <ul style="list-style-type: none"> • Speaker
June 9	Solo & Small Firm Treasurer's Reception <ul style="list-style-type: none"> • Speaker http://ecom.lsuc.on.ca/cpd/product.jsp?id=CLE16-0060201
June 14	Federation of Law Societies Council Meeting
June 15	Ottawa Call to the Bar <ul style="list-style-type: none"> • Special Call to the Bar The Honourable Jody Wilson Raybould Minister of Justice and Attorney General of Canada
June 16	The Advocates Society Annual End of Term Dinner
June 17	London Call to the Bar <ul style="list-style-type: none"> • Mark Persaud LL.D.

Date	Engagement
June 20	Toronto Calls to the Bar <ul style="list-style-type: none">• Her Excellency Mary Robison LL.D.• The Honourable Susan Lang LL.D.
June 20	Law Society Rule of Law Event on Climate Justice: The Way Forward Post Paris Agreement http://www.lawsocietygazette.ca/events/
June 21	Toronto Calls to the Bar <ul style="list-style-type: none">• Richard W. Pound, C.C., O.Q.Q.C., LL.D• M. David Lepofsky LL.D