



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

**February 25, 2016**  
**9:00 a.m.**

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# CONVOCATION MATERIAL

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**CONVOCATION AGENDA**  
**February 25, 2016**

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**Convocation Room – 9:00 a.m.**

**Committee of the Whole**

**Treasurer’s Remarks**

- Treasurer’s Engagement Report [Tab 1]

**Consent Agenda - Motion [Tab 2]**

- **Confirmation of Draft Minutes of Convocation – January 28, 2016**
- **Motion – Law Society Tribunal Appointments**
- **Report of the Director of Professional Development and Competence – Deemed Call Candidates**

**Professional Regulation Committee Report (M. Mercer) [Tab 3]**

- Amendments to the Rules of Professional Conduct
- Proposed Summary Revocation Authority for Indefinitely Suspended Licenses
- In Camera Item

*For Information*

- Federation of Law Societies Standing Committee on the Model Code of Professional Conduct Consultation
- Advertising and Fee Arrangements Issues Working Group
- 2015 Annual Report of the Complaints Resolution Commissioner
- Professional Regulation Division Quarterly Report

**Paralegal Standing Committee Report (M. Haigh) [Tab 4]**

- Amendment to the Paralegal Rules of Conduct
- In Camera Item

*For Information*

- Consultation on Proposed Amendments to the Paralegal Rules of Conduct

**Tribunal Committee Report (B. Murchie) [Tab 5]**

- Report on the Consent Resolution Conference Pilot Project

**Audit and Finance Committee Report (C. Bredt, P. Wardle) [Tab 6]**

- Use of General Fund Balance (Reserves)

*For Information*

- Other Committee Work

**Equity and Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones Report (P. Schabas) [Tab 7]**

- Human Rights Monitoring Group Requests for Intervention

*For Information*

- Human Rights Monitoring Group Responses from Human Rights Organizations
- Discrimination and Harassment Counsel Semi-Annual Report for the Period July 1 to December 31, 2015
- Public Education Equality and Rule of Law Series Calendar 2016

**Paralegal Award Selection Committee Report (M. Haigh) (in camera) [Tab 8]**

**Law Society Awards Committee Report (W. McDowell) (in camera) [Tab 9]**

**Report of the LL.D. Advisory Committee (W. McDowell) (in camera) [Tab 10]**

**Compensation Committee Report** (in camera) [[Tab 11](#)]

*REPORTS FOR INFORMATION ONLY*

**Professional Development and Competence Committee Report** [[Tab 12](#)]

- Annual Resource and Program Report

**Report from The Action Group on Access to Justice (TAG)** [[Tab 13](#)]

Lunch – Benchers’ Dining Room



The Law Society  
of Upper Canada

Barreau du  
Haut-Canada

## Treasurer's Engagements

February 2016

| Date        | Engagement  |
|-------------|---|
| February 3  | Swearing-in Ceremony for The Honourable Robert Edward Gattrell<br>Ontario Court of Justice, Barrie Ontario<br><a href="https://news.ontario.ca/mag/en/2015/12/new-judge-appointed-to-the-ontario-court-of-justice-15.html">https://news.ontario.ca/mag/en/2015/12/new-judge-appointed-to-the-ontario-court-of-justice-15.html</a> |
| February 8  | Webcast Introducing Compliance Based Entity Regulation <ul style="list-style-type: none"> <li>• Speaker</li> </ul> <a href="http://www.lsuc.on.ca/better-practices/">http://www.lsuc.on.ca/better-practices/</a>  |
| February 9  | Black History Month Event: The Illegal: An Evening with Lawrence Hill<br><a href="http://www.lawsocietygazette.ca/event/black-history-month-2016/">http://www.lawsocietygazette.ca/event/black-history-month-2016/</a>  |
| February 13 | Black Law Students Association Conference and Gala<br><a href="http://www.blsacanada.com/2016-conference/">http://www.blsacanada.com/2016-conference/</a>   |
| February 23 | U of T Alumni Leadership Lunch  |
| February 24 | Reception for Josée Bouchard re Appointment to the Human Rights Tribunal of Ontario<br><a href="http://www.sjto.gov.on.ca/hrto/">http://www.sjto.gov.on.ca/hrto/</a>  |
| February 25 | Flip your Wig Reception & Launch <ul style="list-style-type: none"> <li>• Sponsor and Ambassador</li> </ul> <a href="http://www.flipyourwigforjustice.ca/">http://www.flipyourwigforjustice.ca/</a>   |
| February 25 | Lincoln Law Association Annual General Meeting <ul style="list-style-type: none"> <li>• Speaker</li> </ul> <a href="http://thelcla.ca/about/">http://thelcla.ca/about/</a>  |

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 25, 2016

MOVED BY: Barbara Murchie

SECONDED BY: Raj Anand

THAT Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

DRAFT

MINUTES OF CONVOCATION

Thursday, 28<sup>th</sup> January, 2016  
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong, Banack (by telephone), Beach (by telephone), Bickford, Braithwaite, Bredt, Burd (by telephone), Callaghan, Chrétien, Clément (by telephone), Cooper, Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Epstein, Evans, Falconer, Finkelstein (by telephone), Furlong, Galati, Go, Goldblatt, Gottlieb, Groia, Haigh (by telephone), Hartman, Horvat, Krishna (by telephone), Leiper, Lem, Lerner, Lippa, MacLean (by telephone), McDowell, McGrath, Merali, Mercer, Millar, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza (by telephone), Potter, Richardson (by telephone), Richer, Rosenthal, Ross, Ruby (by telephone), Schabas, Sharda, Sheff, Spence, Spurgeon, St. Lewis, C. Strosberg (by telephone), H. Strosberg (by telephone), Swaye (by telephone), Troister, Udell, Vespry, Wardle, and Wright.

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by webcast.

The Treasurer welcomed David Wright, Chair, Law Society Tribunal, attending for the Tribunal Three-Year Review report.

The Treasurer informed Convocation of her activities, including her attendance in Hong Kong for the opening of the legal year and her visit to the Department of Justice, her attendance in Cambridge with Central South county and district law associations, her meeting with the Treasurer's Liaison Group, where they spoke of mutual initiatives, and her second meeting with the Early Careers Roundtable.

The Treasurer informed Convocation that she attended a dinner on January 18, 2016 that the Law Society sponsored for the Elders Forum on Justice Issues where she extended a welcome from the Law Society.

The Treasurer advised that she attended an event on January 26, 2016 that the Law Society hosted with Canadian Lawyers for International Human Rights (CLAHR), on the International Day of the Endangered Lawyer.

The Treasurer thanked benchers who volunteered to serve at the Lawyers Feed the Hungry dinner last evening.

The Treasurer noted the deadline for Law Society award nominations on January 29, 2016.

The Treasurer reminded benchers of the first call to the bar of 2016 tomorrow at which the Honourable George W. Adams, Q.C., will receive an honorary Doctor of Laws.

The Treasurer congratulated the Honourable Stephen T. Goudge, Q.C., former bencher, and former judge of the Ontario Court of Appeal, on receiving the Order of Ontario.

The Treasurer congratulated Chief Executive Officer Robert Lapper who will be receiving the University of Victoria Distinguished Alumni Award on February 2, 2016.

The Treasurer advised that the first bencher education session will be held at Convocation on February 25, 2016.

The Treasurer advised of a number of upcoming Law Society events.

The Treasurer announced the following guests at the Convocation luncheon:

- The Honourable Justice Rosalie Silberman Abella and the Honourable Mr. Justice Michael J. Moldaver of the Supreme Court of Canada; and
- Chief Justice George R. Strathy of the Court of Appeal for Ontario.

#### MOTION – CONSENT AGENDA

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

Carried

#### Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of December 4, 2015 were confirmed.

Tab 1.2 – MOTIONS

Re: Tab 1.2.1 – Annual General Meeting

THAT Convocation approve Wednesday May 11, 2016 at 5:15 p.m. at Osgoode Hall, 130 Queen Street West, Toronto as the time and place of the 2016 Annual General Meeting, in accordance with Section 5 of By-Law 2 [Corporate Provisions].

Carried

Re: Tab 1.2.2 – Appointments

THAT Janis Criger be appointed to the Access to Justice Committee.

THAT Michelle Haigh be appointed to the Law Society Awards/LL.D. Advisory Committee.

Carried

Tab 1.3 – 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

MENTORING AND ADVISORY SERVICES PROPOSAL TASK FORCE REPORT

Ms. Horvat and Mr. Wardle presented the Report.

Re: Law Practice Coach and Advisor Initiative

It was moved by Mr. Wardle, seconded by Ms. Horvat, that Convocation:

- a. approve a law practice coaching and advisory initiative for lawyers and paralegals, the components of which are set out at paragraph 14 of and the details of which are described in the Report; and
- b. approve funding for the initiative as set out in paragraph 72 of the Report, with the estimated annual cost for 2016 of \$250,000 to be funded from the Law Society's contingency, as recommended by the Audit and Finance Committee.

Carried

Ms. Hartman left the room.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Retired Judges Returning to Practice

It was moved by Mr. Mercer, seconded by Mr. Schabas, that Convocation approve the amendments to the Rules of Professional Conduct set out at Tab 4.1.1 of the Report.

Carried

Ms. Hartman returned to Convocation.

*For Information*

- Law Society Response to Proposed Ontario Securities Commission Policy

AUDIT & FINANCE COMMITTEE REPORT

Mr. Wardle presented the Report.

Re: Law Society Funding of Coordinator for Lawyers Feed the Hungry Programs

It was moved by Mr. Wardle, seconded by Ms. Leiper, that Convocation approve the funding for two years of a new Law Society fundraising and stakeholder management coordinator dedicated to support the Lawyers Feed the Hungry programs in all Ontario centres and assist the Toronto program in moving toward a self-sustaining model over two years. The estimated cost of \$100,000 per annum will be funded from the Law Society's contingency in 2016 and the operating budget in 2017.

Carried

*For Information*

- LAWPRO Third Quarter Financial Statements for the Nine Months Ended September 30, 2015
- LibraryCo Inc. Third Quarter Financial Statements for the Nine Months Ended September 30, 2015

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Corsetti presented the Report.

Re: Update on Publications

Ms. Corsetti provided an information report on the distribution of the Law Society's publication, a guide entitled Handling Everyday Legal Problems.

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

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Requests for Interventions

It was moved by Mr. Schabas, seconded by Ms. Donnelly, that Convocation approve the letters and public statements in the cases set out in the Report at Tabs 6.1.1 to 6.1.8.

Carried

*For Information*

- Access to Justice in French Update
- Human Rights Monitoring Group Access to Justice Report
- Equity Legal Education and Rule of Law Series Calendar Winter 2016 – Summer 2016

TRIBUNAL COMMITTEE REPORT

Ms. Murchie presented the Report.

Re: Tribunal Model Three-Year Review Final Report

Ms. Murchie and Mr. Anand presented the report for information.

Mr. Anand thanked David Wright, Grace Knakowski and Sophia Sperdakos for their assistance with the three-year review.

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*REPORTS FOR INFORMATION ONLY*

ACCESS TO JUSTICE COMMITTEE REPORT

- Update on Publications

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE

CONVOCATION ROSE AT 12:56 P.M.

## THE LAW SOCIETY OF UPPER CANADA

### MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 25, 2016

#### REAPPOINTMENTS TO THE LAW SOCIETY TRIBUNAL Pursuant to Sections 49.21 and 49.29 of the *Law Society Act*

MOVED BY: Barbara Murchie

SECONDED BY: Raj Anand

#### APPEAL DIVISION

THAT S. Margot Blight and Susan E. Opler be reappointed to the Appeal Division of the Law Society Tribunal for a two-year term commencing March 12, 2016;

AND THAT Cathy J. Corsetti and W. Paul Dray be reappointed to the Appeal Division of the Law Society Tribunal for a two-year term commencing April 24, 2016.

#### HEARING DIVISION

THAT the following be reappointed to the Hearing Division of the Law Society Tribunal for a two-year term commencing March 12, 2016:

Andrea Alexander  
S. Margot Blight  
Marc D'Amours  
Lyle Kanee  
Barbara A. Laskin  
Michelle Lomazzo  
Anna Mascieri-Boudria  
W. Andrew Oliver  
Susan E. Opler  
Maurice A. Portelance  
Frederika M. Rotter  
Caroline A. Rowan  
Michelle A. Tamlin (Vanier)  
Sarah B. Walker  
Ted Yao

AND THAT Robert J. Burd, Cathy J. Corsetti and W. Paul Dray be reappointed to the Hearing Division of the Law Society Tribunal for a two-year term commencing April 24, 2016.

#### Explanatory Note

Pursuant to the *Law Society Act*, Convocation appoints and reappoints members to the Hearing and Appeal Divisions of the Law Society Tribunal. The individuals named in this motion, who are non-bencher licensees, non-licensees and paralegal benchers, were previously appointed or reappointed by Convocation to a two-year term ending March 12, 2016 or April 24, 2016. They are being recommended for reappointment by the Chair of the Law Society Tribunal pursuant to ss. 49.21 (7) and 49.29(7) of the *Law Society Act*.

**Tab 2.3**

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

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

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, February 25<sup>th</sup> 2016

ALL OF WHICH is respectfully submitted

DATED this 25<sup>th</sup> day of February, 2016

**CANDIDATES FOR CALL TO THE BAR**  
**February 25<sup>th</sup> 2016**

**Transfer from another province (Mobility)**

Marc Emile Luigi Duplessis-Vatteroni  
Vinay Nikhil Desai  
Madison Joy Kragten  
Ryan Joseph Maclsaac

**L3**

Pierre-Yves Dominique Joseph Chatillon  
David Huy Luan Ha

**Licensing Candidates**

Lawrence David  
Alamgir Hussain  
Natalie Cathleen Kuehn



**TAB 3**

## **Report to Convocation February 25, 2016**

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### **Professional Regulation Committee**

#### **Committee Members**

Malcolm Mercer (Chair)  
Susan Richer (Vice-Chair)  
Paul Schabas (Vice-Chair)  
Robert Armstrong  
Peter Beach  
John Callaghan  
Suzanne Clément  
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**

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### **For Information**

|   |                         |
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| 2015 Annual Report of the Complaints Resolution Commissioner..... | <a href="#">Tab 3.7</a> |
| Professional Regulation Division Quarterly Report.....            | <a href="#">Tab 3.8</a> |

### COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on February 11, 2016. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), Susan Richer (Vice-Chair), Peter Beach, Suzanne Clément, Paul Cooper, Janis Criger, Seymour Epstein, Robert F. Evans, Julian Falconer (by telephone), Patrick Furlong, Jacqueline Horvat, Brian Lawrie, Jan Richardson, and Heather Ross.
2. The Complaints Resolution Commissioner, Bernard Morrow, participated in the meeting to present his 2015 Annual Report, together with Miriam Weinfeld and Lisa Steinberg, Counsel from the Commissioner’s office. Staff members attending were Lesley Cameron, James Varro, Naomi Bussin, and Margaret Drent.

FOR DECISION

**AMENDMENTS TO THE RULES OF PROFESSIONAL  
CONDUCT REGARDING CONFLICT OF INTEREST**

**MOTION**

3. That Convocation approve amendments to Rules 3.4-1 and 3.4-2 of the Rules of Professional Conduct (Conflicts of Interest and Consent) as set out at [Tab 3.1.1](#).

**NATURE OF THE ISSUE**

4. The Federation of Law Societies of Canada's Standing Committee on the Model Code has developed the Model Code of Professional Conduct (Model Code).
5. In 2013, Convocation accepted the Committee's recommendations to amend Rules 3.4-1 of the Rules of Professional Conduct (Conflicts of Interest) and 3.4-2 (Consent) to implement the Model Code. The amendments came into force on October 1, 2014.
6. In 2013, when Convocation considered the amendments, the decision in *Canadian National Railway Co. v. McKercher LLP* had not yet been released.<sup>1</sup> The Federation of Law Societies reviewed the *McKercher* decision and amended the conflicts rules in the Model Code.
7. The Committee considered the amendments and based on the principles in the *McKercher* case, prepared new Commentary to Rule 3.4-1 to reflect *McKercher* and other developments in the law. The Committee also prepared amendments to Rules 3.4-2 (Consent) and to the Commentary.
8. A Call for Input regarding these and other proposed changes to the Rules of Professional Conduct was recently conducted.<sup>2</sup> A number of respondents provided comments about the proposed amendments, following which the Committee completed the drafting of proposed amendments to Rules 3.4-1, 3.4-2 and Commentaries. The Committee is grateful to all respondents to the Call for Input for their interest, and to the Law Society Rules drafter, Don Revell, for his drafting assistance.

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<sup>1</sup> *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39.

<sup>2</sup> The Call for Input was launched on June 26, 2015; comments were requested by October 16, 2015. Call for Input materials may be found at <http://www.lsuc.on.ca/call-for-input/>. Responses to the Call for Input are available to benchers on request. The Call for Input also requested feedback regarding Rules regarding Incriminating Physical Evidence, Short-Term Legal Services, Conflicts of Interest, Doing Business With a Client. A report regarding Incriminating Physical Evidence appears elsewhere in these materials.

## SUMMARY OF PROPOSED AMENDMENTS - RULE 3.4-1 – CONFLICTS OF INTEREST

9. The *McKercher* decision considered the “bright line” rule established by the Supreme Court of Canada in *R. v. Neil*.<sup>3</sup> *McKercher* provides that a lawyer, and by extension, a law firm, cannot act for a client whose immediate legal interests are adverse to those of another existing client, unless both clients consent. The “bright line” rule applies regardless of whether the matter are related or unrelated.
10. The changes proposed to the Commentary to Rule 3.4-1 (Conflicts of Interest) are intended to provide guidance to lawyers regarding their ethical obligations in this area. These changes are described below.
  - a. Paragraph [1] explains that a conflict of interest may arise as a result of the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person.
  - b. Paragraph [2] of the Commentary explains that the duty of confidentiality, the duty of candour, and the duty of commitment to the client’s cause are all aspects of the duty of loyalty. This paragraph provides that “this rule protects all of these duties from impairment by a conflicting duty or interest”.
  - c. Paragraph [3] of the Commentary is intended to provide additional guidance regarding the threshold for a conflict of interest to be established.
11. Potentially conflicting duties and interests are further explained in paragraphs [4] through [11] of the commentary, as follows:
  - a. paragraphs [4] and [5] describe conflicts of interest resulting from a lawyer’s personal interest;
  - b. paragraphs [6] to [9] describe conflicts of interest that may arise because of a lawyer’s duty to a current client;
  - c. paragraph [6] notes that the bright line rule applies even if work done for two clients is completely unrelated;
  - d. paragraph [10] discusses conflicts arising from a lawyer’s duty to a former client; and
  - e. paragraph [11] describes conflicts that may arise as a result of a duty to Other Persons.
12. Examples of circumstances that may give rise to a conflict of interest are included in paragraphs [4] through [8]. These examples are not intended to be exhaustive, but rather illustrate how these duties and interests can give rise to a conflict of interest.
13. The balance of the Commentary addresses other issues that must be taken into consideration, including the lawyer’s duty of commitment to a client’s cause, the duty of candour, the duty of confidentiality, and consent (also addressed in Rule 3.4-2,

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<sup>3</sup> *R. v. Neil* [2002] 3 S.C.R. 631.

discussed in greater detail below). Paragraph [14] refers to the role of the courts with respect to the principles applied by the court regarding lawyers' relationships with their clients.

#### **SUMMARY OF PROPOSED AMENDMENTS - RULE 3.4-2 (CONSENT)**

14. The Committee proposes amendments to Rule 3.4-2 and Commentary to enhance guidance to lawyers in this area. Rule 3.4-2 currently provides that consent may be express or implied. Rule 3.4-2, paragraph (a) provides that express consent must be fully informed and voluntary after disclosure. Rule 3.4-2, paragraph (b) provides that consent may be implied, and need not be in writing, in the following circumstances:
  - a. the client is a government, financial institution, publicly-traded or similarly substantial entity, or an entity with in-house counsel;
  - b. the matters are unrelated;
  - c. the lawyer has no relevant confidential information from one client that might reasonably affect the representation of the other client; and
  - d. the client has commonly consented to lawyers acting for and against it in unrelated matters.
  
15. The Committee proposes to amend Rule 3.4-2 to eliminate the distinction between express and implied consent and has reformulated the Rule as follows:

3.4-2 A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.
  
16. As reflected in *McKercher*, the emergence of a “reasonableness” limitation to the scope of the “bright line” rule, as opposed to the notion of implied consent in certain circumstances, is addressed in the proposed amendment to Rule 3.4-2.
  
17. The Committee also proposes the following amendments to the Commentary to Rule 3.4-2:
  - a. paragraph [1] is amended to provide that the duty of a lawyer to disclose a conflict of interest arises from the lawyer’s duty of candour to the client.
  
  - b. paragraph [2] is amended to provide that “disclosure means full and fair disclosure of all information relevant to a person’s decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed”.
  
18. The Committee also proposes to amend paragraph [6] of the Commentary to reflect recent developments in the law. Consistent with the changes proposed above, the revised Commentary provides that

The bright line rule, referred to in the Commentary to Rule 3.4-1, does not apply in circumstances where it would be unreasonable for a client to expect that its law firm would not act against it in unrelated matters. No issue of consent arises in such circumstances absent a substantial risk of material and adverse effect on the lawyer's loyalty to or representation of a client. Where such a risk exists, consent is required even though the bright line rule does not apply.

19. All of the amendments are shown in the redline version of the Rule at [Tab 3.1.1](#).

#### **CALL FOR INPUT – FEEDBACK RECEIVED**

20. Four legal organizations and five individuals provided written comments on the proposed amendments to Rules 3.4-1 and 3.4-2. The Committee is grateful to all participants in the Call for Input for the quality and thoughtfulness of the submissions.
21. There were a number of comments regarding the scope of application of the bright line rule including that the June 2015 version published for the Call for Input provided insufficient guidance regarding the application of the bright line rule to unrelated matters. The Committee carefully considered these suggestions, and proposes the addition of the phrase “the bright line rule applies even if the work done for the two clients is completely unrelated” to paragraph [6] of the Commentary.
22. Several respondents suggested that the Commentary specifically refer to the *McKercher decision*, rather than “the Courts”, as was the case in the June 2015 version. The Committee has adopted this suggestion.
23. One respondent suggested that the requirement that a lawyer contact “all affected clients” in Rule 3.4-2 was overly onerous, and could detrimentally affect access to legal services. The Committee carefully considered this submission, and concluded that the Rule reflects a long-standing standard for obtaining consent in situations of conflicts of interest, and should not be changed.
24. In addition to the redline version, showing proposed changes to Rules 3.4-1 and 3.4-2, a “clean” version of the Rules is shown at [Tab 3.1.2](#).

## REDLINE SHOWING AMENDMENTS PROPOSED BY THE PROFESSIONAL REGULATION COMMITTEE

### SECTION 3.4 CONFLICTS

#### Duty to Avoid Conflicts of Interest

**3.4-1** A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.

#### Commentary

[1] As defined in rule 1.1-1, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. [Rule 3.4-1 protects the duties owed by lawyers to their clients and the lawyer-client relationship from impairment as a result of a conflicting duty or interest.](#) ~~In this context, "substantial risk" means that the risk is significant and plausible, even if it is not certain or even probable that the material adverse effect will occur. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer.~~ A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

[2] [In addition to the duty of representation arising from a retainer, the law imposes other duties on the lawyer, particularly the duty of loyalty. The duty of confidentiality, the duty of candour and the duty of commitment to the client's cause are aspects of the duty of loyalty. This rule protects all of these duties from impairment by a conflicting duty or interest.](#)

[3] [A client may be unable to judge whether the lawyer's duties have actually been compromised. Even a well-intentioned lawyer may not realize that performance of his or her duties has been compromised. Accordingly, the rule addresses the risk of impairment rather than actual impairment. The expression "substantial risk" in the definition of "conflict of interest" describes the likelihood of the impairment, as opposed to its nature or severity. A "substantial risk" is one that is significant and plausible, even if it is not certain or even probable that it will occur. There must be more there a mere possibility that the impairment will occur. Except as otherwise provided in Rule 3.4-2, it is for the client and not the lawyer to decide whether to accept this risk.](#)

#### [Personal Interest Conflicts](#)

[4] A lawyer's own interests can impair client representation and loyalty. This can be reasonably obvious, for example, where a lawyer is asked to advise the client in respect of a matter in which the lawyer, the lawyer's partner or associate or a family member has a material direct or indirect financial interest. But other situations may not be so obvious. For example, the judgment of a lawyer who has a close personal relationship, sexual or otherwise, with a client who is in a family law dispute is likely to be compromised. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer.

[5] Lawyers should carefully consider their relationships with their clients and the subject matter of the retainer in order to determine whether a conflicting personal interest exists. If the lawyer is a member of a firm and concludes that a conflicting personal interest exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work without the involvement of the conflicted lawyer.

~~[2] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.~~

~~[3] In order to assess whether there is a conflict of interest, the lawyer is required to consider the lawyer's duties to current, former and joint clients, third persons, as well as the lawyer's own interests.~~

### **Representation**

~~[4] Representation means acting for a client and includes the lawyer's advice to and judgment on behalf of the client.~~

### **The Fiduciary Relationship, the Duty of Loyalty and Conflicting Interests**

~~[5] The value of an independent bar is diminished unless the lawyer is free from conflicts of interest. The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Aspects of the duty of loyalty owed to a current client are the duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty to avoid conflicting interests. Current clients must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship.~~

### Current Client Conflicts

[6] Duties owed to another current client can also impair client representation and loyalty. Representing opposing parties in a dispute provides a particularly stark example of a current client conflict. Conflicts may also arise in a joint retainer where the jointly represented clients' interests diverge. Acting for more than one client in separate but related matters may risk impairment because of the nature of the retainers. The duty of confidentiality owed to one client may be inconsistent with the duty of candour owed to another client depending on whether information obtained by the lawyer during either retainer would be relevant to both retainers. These are examples of situations where conflicts of interest involving other current clients may arise.

[7] A bright line rule has been developed by the courts to protect the representation of and loyalty to current clients. c.f. *Canadian National Railway Co. v. McKercher LLP*, [2013] 2 S.C.R. 649. The bright line rule holds that a lawyer cannot act directly adverse to the immediate legal interests of a current client, without the clients' consent. The bright line rule applies even if the work done for the two clients is completely unrelated. The scope of the bright line rule is limited. It provides that a lawyer cannot act directly adverse to the immediate legal interests of a current client. Accordingly, the main area of application of the bright line rule is in civil and criminal proceedings. Exceptionally, the bright line rule does not apply in circumstances where it is unreasonable for a client to expect that the client's law firm will not act against the client in unrelated matters.

[8] The bright line recognizes that the lawyer-client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. This type of conflict may also arise outside a law partnership, in situations where sole practitioners, who are in space-sharing associations and who otherwise have separate practices, hold themselves out as a law firm and lawyers in the association represent opposite parties to a dispute.

[9] A lawyer should understand that there may be a conflict of interest arising from the duties owed to another current client even if the bright line rule does not apply. In matters involving another current client, lawyers should take care to consider not only whether the bright line rule applies but whether there is a substantial risk of impairment. In either case, there is a conflict of interest.

#### Former Client Conflicts

[10] Duties owed to a former client, as reflected in Rule 3.4-10, can impair client representation and loyalty. As the duty of confidentiality continues after the retainer is completed, the duty of confidentiality owed to a former client may conflict with the duty of candour owed to a current client if information from the former matter would be relevant to the current matter. Lawyers also have a duty not to act against a former client in the same or a related matter even where the former client's confidential information is not at risk. In order to determine the existence of a conflict of interest, a lawyer should consider whether the representation of the current client in a matter includes acting against a former client.

#### Conflicts arising from Duties to Other Persons

[11] Duties owed to other persons can impair client representation and loyalty. For example, a lawyer may act as a director of a corporation as well as a trustee. If the lawyer acts against such a corporation or trust, there may be a conflict of interest. But even acting for such a corporation or trust may affect the lawyer's independent judgment and fiduciary obligations in either or both roles, make it difficult if not impossible to distinguish between legal advice from business and practical advice, or jeopardize the protection of lawyer and client privilege. Lawyers should carefully consider the propriety, and the wisdom of wearing "more than one hat" at the same time.

#### Other Issues To Consider

[12] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. For example, the addition of new parties in litigation or in a transaction can give rise to new conflicts of interest that must be addressed.

[13] Addressing conflicts may require that other rules be considered, for example

(a) the lawyer's duty of commitment to the client's cause, reflected in Rule 3.7-1, prevents the lawyer from withdrawing from representation of a current client, especially summarily and unexpectedly, in order to circumvent the conflict of interest rules;

(b) the lawyer's duty of candour, reflected in Rule 3.2-2, requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer. Even where a lawyer concludes that there is no conflict of interest in acting against a current client, the duty of candour may require that the client be advised of the adverse retainer in order to determine whether to continue the retainer;

(c) the lawyer's duty of confidentiality, reflected in Rule 3.3-1 and owed to current and former clients, may limit the lawyer's ability to obtain client consent as permitted by Rule 3.4-2 because the lawyer may not be able to disclose the information required for proper consent. Where there is a conflict of interest and consent cannot be obtained for this reason, the lawyer must not act; and

(d) rule 3.4-2 permits a lawyer to act in a conflict in certain circumstances with consent. It is the client, not the lawyer, who is entitled to decide whether to accept risk of impairment of client representation and loyalty. However, Rule 3.4-2 provides that client consent does not permit a lawyer to act where there would be impairment rather than merely the risk of impairment.

[14] These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary and other principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by the Law Society even where a court dealing with the case may decline to order disqualification as a remedy.

~~[6] [FLSC— not in use]~~

~~[7] Accordingly, factors for the lawyer's consideration in determining whether a conflict of interest exists include~~

~~(a) the immediacy of the legal interests;~~

~~(b) whether the legal interests are directly adverse;~~

~~(c) whether the issue is substantive or procedural;~~

~~(d) the temporal relationship between the matters;~~

~~(e) the significance of the issue to the immediate and long term interests of the clients involved; and~~

~~(f) the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.~~

### **Examples of Conflicts of Interest**

~~[8] Conflicts of interest can arise in many different circumstances. The following are examples of situations in which conflicts of interest commonly arise requiring a lawyer to take particular care to determine whether a conflict of interest exists:~~

~~(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.~~

~~(b) A lawyer provides legal advice on a series of commercial transactions to the owner of a small business and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.~~

~~(c) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.~~

~~(i) A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.~~

~~(d) A lawyer has a sexual or close personal relationship with a client.~~

~~(i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning their affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by their lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.~~

~~(e) A lawyer or their law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.~~

~~These two roles may result in a conflict of interest or other problems because they may~~

~~(i) affect the lawyer's independent judgment and fiduciary obligations in either or both roles,~~

~~(ii) obscure legal advice from business and practical advice,~~

~~(iii) jeopardize the protection of lawyer and client privilege, and~~

~~(iv) disqualify the lawyer or the law firm from acting for the organization.~~

~~(f) Sole practitioners who practise with other licensees in cost sharing or other arrangements represent clients on opposite sides of a dispute. See rule 3.3-1, Commentary [7]~~

*[New and amended – October 2014]*

## Consent

**3.4-2** A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is ~~express or implied~~ consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes it is reasonable for the lawyer to conclude that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

- ~~(a) — Express consent must be fully informed and voluntary after disclosure.~~
- ~~(b) — Consent may be implied and need not be in writing where all of the following apply:
  - ~~(i) — the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in house counsel,~~
  - ~~(ii) — the matters are unrelated,~~
  - ~~(iii) — the lawyer has no relevant confidential information from one client that might reasonably affect the representation of the other client, and~~
  - ~~(iv) — the client has commonly consented to lawyers acting for and against it in unrelated matters.~~~~

## Commentary

~~[0.1] Rule 3.4 2 permits a client to accept the risk of material impairment of representation or loyalty. However, the lawyer would be unable to act where it is reasonable to conclude that representation or loyalty will be materially impaired even with client consent. Possible material impairment may be waived but actual material impairment cannot be waived.~~

## Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2A] While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable and not sophisticated.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

#### **Consent in advance**

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied consent Consent and the Bright Line Rule

~~[6] The bright line rule, referred to in the Commentary to Rule 3.4-1, does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. No issue of consent arises in such circumstances absent a substantial risk of material and adverse effect on the lawyer's loyalty to or representation of a client. Where such a risk exists, consent is required even though the bright line rule does not apply. In some cases consent may be implied, rather than expressly granted. As the Supreme Court held in *R. v. Neil* and in *Strother v. 3464920 Canada Inc*, however, the concept of implied consent is applicable in exceptional cases only. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the representation of the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.~~

~~[New – October 2014]~~

**“CLEAN” VERSION SHOWING AMENDMENTS PROPOSED BY THE  
PROFESSIONAL REGULATION COMMITTEE**

**SECTION 3.4 CONFLICTS**

**Duty to Avoid Conflicts of Interest**

**3.4-1** A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.

**Commentary**

[1] As defined in rule 1.1-1, a conflict of interest exists when there is a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person. Rule 3.4-1 protects the duties owed by lawyers to their clients and the lawyer-client relationship from impairment as a result of a conflicting duty or interest. A client’s interests may be seriously prejudiced unless the lawyer’s judgment and freedom of action on the client’s behalf are as free as possible from conflicts of interest.

[2] In addition to the duty of representation arising from a retainer, the law imposes other duties on the lawyer, particularly the duty of loyalty. The duty of confidentiality, the duty of candour and the duty of commitment to the client’s cause are aspects of the duty of loyalty. This rule protects all of these duties from impairment by a conflicting duty or interest.

[3] A client may be unable to judge whether the lawyer’s duties have actually been compromised. Even a well-intentioned lawyer may not realize that performance of his or her duties has been compromised. Accordingly, the rule addresses the risk of impairment rather than actual impairment. The expression “substantial risk” in the definition of “conflict of interest” describes the likelihood of the impairment, as opposed to its nature or severity. A “substantial risk” is one that is significant and plausible, even if it is not certain or even probable that it will occur. There must be more than a mere possibility that the impairment will occur. Except as otherwise provided in Rule 3.4-2, it is for the client and not the lawyer to decide whether to accept this risk.

**Personal Interest Conflicts**

[4] A lawyer's own interests can impair client representation and loyalty. This can be reasonably obvious, for example, where a lawyer is asked to advise the client in respect of a matter in which the lawyer, the lawyer's partner or associate or a family member has a material direct or indirect financial interest. But other situations may not be so obvious. For example, the judgment of a lawyer who has a close personal relationship, sexual or otherwise, with a client who is in a family law dispute is likely to be compromised. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer.

[5] Lawyers should carefully consider their relationships with their clients and the subject matter of the retainer in order to determine whether a conflicting personal interest exists. If the lawyer is a member of a firm and concludes that a conflicting personal interest exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work without the involvement of the conflicted lawyer.

### **Current Client Conflicts**

[6] Duties owed to another current client can also impair client representation and loyalty. Representing opposing parties in a dispute provides a particularly stark example of a current client conflict. Conflicts may also arise in a joint retainer where the jointly represented clients' interests diverge. Acting for more than one client in separate but related matters may risk impairment because of the nature of the retainers. The duty of confidentiality owed to one client may be inconsistent with the duty of candour owed to another client depending on whether information obtained by the lawyer during either retainer would be relevant to both retainers. These are examples of situations where conflicts of interest involving other current clients may arise.

[7] A bright line rule has been developed by the courts to protect the representation of and loyalty to current clients. *c.f. Canadian National Railway Co. v. McKercher LLP*, [2013] 2 S.C.R. 649. The bright line rule holds that a lawyer cannot act directly adverse to the immediate legal interests of a current client, without the clients' consent. The bright line rule applies even if the work done for the two clients is completely unrelated. The scope of the bright line rule is limited. It provides that a lawyer cannot act directly adverse to the immediate legal interests of a current client. Accordingly, the main area of application of the bright line rule is in civil and criminal proceedings. Exceptionally, the bright line rule does not apply in circumstances where it is unreasonable for a client to expect that the client's law firm will not act against the client in unrelated matters.

[8] The bright line recognizes that the lawyer-client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. This type of conflict may also arise outside a law partnership, in situations where sole practitioners, who are in space-sharing associations and who otherwise have separate practices, hold themselves out as a law firm and lawyers in the association represent opposite parties to a dispute.

[9] A lawyer should understand that there may be a conflict of interest arising from the duties owed to another current client even if the bright line rule does not apply. In matters involving another current client, lawyers should take care to consider not only whether the bright line rule applies but whether there is a substantial risk of impairment. In either case, there is a conflict of interest.

### **Former Client Conflicts**

[10] Duties owed to a former client, as reflected in Rule 3.4-10, can impair client representation and loyalty. As the duty of confidentiality continues after the retainer is completed, the duty of confidentiality owed to a former client may conflict with the duty of candour owed to a current client if information from the former matter would be relevant to the current matter. Lawyers also have a duty not to act against a former client in the same or a related matter even where the former client's confidential information is not at risk. In order to determine the existence of a conflict of interest, a lawyer should consider whether the representation of the current client in a matter includes acting against a former client.

### **Conflicts arising from Duties to Other Persons**

[11] Duties owed to other persons can impair client representation and loyalty. For example, a lawyer may act as a director of a corporation as well as a trustee. If the lawyer acts against such a corporation or trust, there may be a conflict of interest. But even acting for such a corporation or trust may affect the lawyer's independent judgment and fiduciary obligations in either or both roles, make it difficult if not impossible to distinguish between legal advice from business and practical advice, or jeopardize the protection of lawyer and client privilege. Lawyers should carefully consider the propriety, and the wisdom of wearing "more than one hat" at the same time.

### **Other Issues To Consider**

[12] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. For example, the addition of new parties in litigation or in a transaction can give rise to new conflicts of interest that must be addressed.

[13] Addressing conflicts may require that other rules be considered, for example

(a) the lawyer's duty of commitment to the client's cause, reflected in Rule 3.7-1, prevents the lawyer from withdrawing from representation of a current client, especially summarily and unexpectedly, in order to circumvent the conflict of interest rules;

(b) the lawyer's duty of candour, reflected in Rule 3.2-2, requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer. Even where a lawyer concludes that there is no conflict of interest in acting against a current client, the duty of candour may require that the client be advised of the adverse retainer in order to determine whether to continue the retainer;

(c) the lawyer's duty of confidentiality, reflected in Rule 3.3-1 and owed to current and former clients, may limit the lawyer's ability to obtain client consent as permitted by Rule 3.4-2 because the lawyer may not be able to disclose the information required for proper consent. Where there is a conflict of interest and consent cannot be obtained for this reason, the lawyer must not act; and

(d) rule 3.4-2 permits a lawyer to act in a conflict in certain circumstances with consent. It is the client, not the lawyer, who is entitled to decide whether to accept risk of impairment of client representation and loyalty. However, Rule 3.4-2 provides that client consent does not permit a lawyer to act where there would be impairment rather than merely the risk of impairment.

[14] These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary and other principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by the Law Society even where a court dealing with the case may decline to order disqualification as a remedy.

## Consent

**3.4-2** A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

### Commentary

#### Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2A] While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable and not sophisticated.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

#### Consent in advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

**Consent and the Bright Line Rule**

[6] The bright line rule, referred to in the Commentary to Rule 3.4-1, does not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. No issue of consent arises in such circumstances absent a substantial risk of material and adverse effect on the lawyer's loyalty to or representation of a client. Where such a risk exists, consent is required even though the bright line rule does not apply.

FOR DECISION

**AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT  
REGARDING INCRIMINATING PHYSICAL EVIDENCE**

**MOTION**

25. That Convocation approve amendments to the Rules of Professional Conduct set out at [Tab 3.2.1](#) to add a new Rule 5.1-2A and Commentary to prohibit the concealment, destruction or alteration of incriminating physical evidence.

**NATURE OF THE ISSUE**

26. The Federation of Law Societies of Canada's Standing Committee on the Model Code monitors changes in the law of professional responsibility and ethics, receives and considers feedback from Law Societies and other interested parties regarding the Model Code, and makes recommendations to Federation Council with respect to any changes to the Model Code.
27. New Rule 5.1-2A was approved by the Federation Council for the Model Code in 2014. If adopted in Ontario, the Rule would prohibit the concealment, destruction or alteration of incriminating physical evidence. The Commentary following the Rule elaborates on the types of evidence covered by the Rule, addresses the tension between the lawyer's duties to the client and the administration of justice in these circumstances, and provides options drawn from the case-law regarding the manner in which a lawyer might deal with such evidence. The Commentary also discusses issues relating to the protection of client confidentiality and privilege.<sup>1</sup>
28. Based on the changes to the Model Code, a Call for Input regarding these proposed amendments to the Rules of Professional Conduct was recently conducted.<sup>2</sup> Several respondents provided comments about the proposed amendments. The Committee is grateful to all respondents to the Call for Input for their interest, and to the Law Society Rules drafter, Don Revell, for his drafting assistance.
29. After further consideration, the Committee is proposing the adoption of Model Code Rule 5.1-2A in the Rules of Professional Conduct, in addition to the Commentary, that has been

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<sup>1</sup> The Model Code may be accessed at <http://flsc.ca/wp-content/uploads/2014/12/conduct1.pdf>.

<sup>2</sup> The Call for Input was launched on June 26, 2015; comments were requested by October 16, 2015. Call for Input materials may be found at <http://www.lsuc.on.ca/call-for-input/>. Responses to the Call for Input are available to benchers on request. The Call for Input also requested feedback regarding Short-Term Legal Services, Conflicts of Interest, Doing Business with a Client, and Advertising. Reports regarding amendments to Rules 3.4-1 (Conflicts of Interest) and Consent (Rule 3.4-2) appear elsewhere in these materials.

amended from the Model Code version. These changes are described in more detail in this report.

## **CURRENT GUIDANCE IN THE RULES OF PROFESSIONAL CONDUCT**

30. Rule 3.5-7 of the Rules of Professional Conduct currently provides “if a lawyer is unsure of the proper person to receive a client’s property, the lawyer shall apply to a tribunal of competent jurisdiction for direction”. Paragraph [1] of the Commentary to the Rule provides

The lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client’s common law privilege and with relevant constitutional and statutory provisions such as those found in the *Income Tax Act (Canada)* and the *Criminal Code*.

31. Some years ago, Convocation established a Special Committee to consider additional guidance in the Rules in this area, but no changes were made.

## **SUMMARY OF PROPOSED AMENDMENTS**

32. The proposed new Rule would prohibit the concealment, destruction or alteration of incriminating physical evidence. The commentary following the rule provides detailed guidance on the scope and application of the Rule. The Rule was drafted broadly to ensure that any conduct relating to the obstruction or attempted obstruction of the course of justice would also be captured.
33. As paragraph [2] of the Commentary indicates, the Rule does not address a lawyer’s possession of exculpatory evidence, as exculpatory evidence does not raise the same ethical issues as does inculpatory physical evidence.
34. The Commentary to Rule 5.1-2A elaborates on the types of evidence covered by the Rule, addresses the tension between the lawyer’s duties to the client and the administration of justice in these circumstances, and provides options drawn from the case law (specifically those prescribed in *R. v. Murray*)<sup>3</sup> regarding the manner in which a lawyer might deal with such evidence. The Commentary also discusses issues relating to the protection of client confidentiality and privilege.

## **CALL FOR INPUT – FEEDBACK RECEIVED**

35. A number of respondents commented on the proposed Rule, including several legal organizations, and were generally in favour of the Rule. Two respondents, the Lawyers Professional Indemnity Company and the Toronto Lawyers Association (TLA) in particular, indicated that they found the amendments helpful. TLA said that it was

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<sup>3</sup> *R. v Murray* [2000] O.J. No. 2182.

...pleased that the LSUC is providing express guidance on this challenging issue, including specific examples. While there is well established case law and commentary addressing the issue, it is clearly beneficial to the profession and the public at large for the Rules to clearly express the limits of permissible conduct and the boundaries of solicitor-client privilege in the representation and defence of a client.

### THE COMMITTEE'S PROPOSAL

36. The Committee proposes that Convocation adopt the new Rule and Commentary shown at **Tab 3.2.1**, with the following changes to the Model Code version of the Rule.
  - a. The word “physical” should be inserted in front of “evidence” in the first paragraph of Commentary to Rule 5.1-2A, to ensure consistent drafting of the Rule and Commentary.
  - b. The word “mere” should be removed from the first line of paragraph [3] of the Commentary, which now provides “a lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its existence”.
  - c. Paragraph [3] of the Commentary to the Model Code Rule described three options to be considered by a lawyer in possession of incriminating physical evidence. Paragraph [4] of the Model Code Commentary referred to the possibility that a lawyer might retain independent counsel, who is not informed of the identity of the client, and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence. The Committee was of the view that retaining independent legal counsel should be given greater prominence in the Commentary than is the case in the Model Code and proposes that the reference to the retaining of independent counsel be moved from paragraph [4] to paragraph [3], where it becomes the first option to be considered by a lawyer in possession of incriminating physical evidence.
37. A redline version, showing these changes, is attached as **Tab 3.2.1**. A “clean” version is attached as **Tab 3.2.2**.
38. The Committee proposes that Rule 3.5-7, referred to earlier, also remain in the Rules to provide additional, broader guidance to lawyers regarding their duties respecting client property.

**Tab 3.2.1**

**INCRIMINATING PHYSICAL EVIDENCE – PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT – REDLINE VERSION**

**5.1-2** When acting as an advocate, a lawyer shall not

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;
- (b) knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable;
- (c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence, or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice;
- (d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;
- (e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct;
- (f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority;
- (g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;
- (h) make suggestions to a witness recklessly or knowing them to be false;
- (i) deliberately refrain from informing the tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent;
- (j) improperly dissuade a witness from giving evidence or advise a witness to be absent;
- (k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

- (l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation;
- (m) needlessly abuse, hector, or harass a witness;
- (n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge;
- (o) needlessly inconvenience a witness; or
- (p) appear before a court or tribunal while under the influence of alcohol or a drug.

*[Amended – October 2014]*

#### **Commentary**

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to secure a civil advantage for the client. See also rules 3.2-5 and 3.2-5.1 and accompanying commentary.

[4] When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

*[Amended – October 2014]*

#### **Incriminating Physical Evidence**

**5.1-2A** A lawyer shall not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice.

**Commentary**

[1] In this rule, “physical evidence” does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is in fact exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options, which may include consulting with a senior legal practitioner. These options include, as soon as reasonably possible:

(a) considering whether to retain independent legal counsel to provide advice about the lawyer’s obligations. If retained, the lawyer and independent legal counsel should consider

(i) whether independent legal counsel should be informed of the identity of the client and instructed not to disclose the identity of the instructing lawyer to law enforcement authorities or to the prosecution, and

(ii) whether independent legal counsel, should, either directly or anonymously, taking into account the procedures appropriate in the circumstances

(I) disclose or deliver the evidence to law enforcement authorities or the prosecution,  
or

(II) both disclose and deliver the evidence to law enforcement authorities and to the prosecution;

(b) delivering the evidence to law enforcement authorities or to the prosecution, either directly or anonymously, taking into account the procedures appropriate in the circumstances;

(c) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination;  
or

(d) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or to the prosecution, the lawyer has a duty to protect client confidentiality, including the client’s identity, and to preserve solicitor-client privilege.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A lawyer should ensure that there is no concealment, destruction or alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

**Tab 3.2.2**

**INCRIMINATING PHYSICAL EVIDENCE – PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT – “CLEAN” VERSION**

**5.1-2** When acting as an advocate, a lawyer shall not

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;
- (b) knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable;
- (c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence, or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice;
- (d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;
- (e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct;
- (f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority;
- (g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;
- (h) make suggestions to a witness recklessly or knowing them to be false;
- (i) deliberately refrain from informing the tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent;
- (j) improperly dissuade a witness from giving evidence or advise a witness to be absent;
- (k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;
- (l) knowingly misrepresent the client’s position in the litigation or the issues to be determined in the litigation;

- (m) needlessly abuse, hector, or harass a witness;
- (n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge;
- (o) needlessly inconvenience a witness; or
- (p) appear before a court or tribunal while under the influence of alcohol or a drug.

*[Amended – October 2014]*

#### **Commentary**

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to secure a civil advantage for the client. See also rules 3.2-5 and 3.2-5.1 and accompanying commentary.

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*[Amended – October 2014]*

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### Commentary

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[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is in fact exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options, which may include consulting with a senior legal practitioner. These options include, as soon as reasonably possible:

(a) considering whether to retain independent legal counsel to provide advice about the lawyer’s obligations. If retained, the lawyer and independent legal counsel should consider

(i) whether independent legal counsel should be informed of the identity of the client and instructed not to disclose the identity of the instructing lawyer to law enforcement authorities or to the prosecution, and

(ii) whether independent legal counsel, should, either directly or anonymously, taking into account the procedures appropriate in the circumstances

(I) disclose or deliver the evidence to law enforcement authorities or the prosecution, or

(II) both disclose and deliver the evidence to law enforcement authorities and to the prosecution;

(b) delivering the evidence to law enforcement authorities or to the prosecution, either directly or anonymously, taking into account the procedures appropriate in the circumstances;

(c) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination; or

(d) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or to the prosecution, the lawyer has a duty to protect client confidentiality, including the client’s identity, and to preserve solicitor-client privilege.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A lawyer should ensure that there is no concealment, destruction or alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

FOR DECISION

**SUMMARY REVOCATION OF LICENCES SUSPENDED BY THE  
LAW SOCIETY TRIBUNAL**

**MOTION**

39. **That Convocation:**
- a. **approve, in principle, a process to permit summary revocation of a licensee's licence where the licence has already been indefinitely suspended under section 35 of the Act and has remained suspended for at least two years; and**
  - b. **request that the *Law Society Act* be amended to implement this process.**

**RATIONALE**

40. This proposal concerns lawyers and paralegals whose licences have been indefinitely suspended by the Law Society Tribunal pending compliance with a term of an order. For example, licensees may be suspended for a definite period and then indefinitely until they cooperate with the Law Society's investigation in some specific way, such as by producing financial records or client files, or perform some other obligation, such as fulfilling an undertaking to a third party.
41. These licensees have received the procedural protections of the hearing process and are the subject of an order by the Law Society Tribunal. By their continued failure to comply with the terms of the order, these licensees are:
- a. flouting the Law Society's authority;
  - b. in many cases, preventing the underlying investigation from being completed;
  - c. undermining the confidence of the public in the Law Society's ability to govern; and
  - d. consuming resources and generating reputational risk as past or continuing misconduct comes to the Law Society's attention.
42. A legislative amendment would be required to expand the scope of s. 48(1) to include summary revocation of licence for licensees whose licenses have remained indefinitely suspended under an order of the Tribunal for more than two years.
43. The Paralegal Standing and Tribunal Committees have considered this proposal and are in agreement with it.

## CURRENT REGULATORY FRAMEWORK AND REQUIRED AMENDMENTS

44. The Law Society Tribunal – Hearing Division has the power to order an indefinite suspension of a licence under section 35(1)(3) of the Act, reproduced as follows:

### Conduct orders

35. (1) Subject to the rules of practice and procedure, if an application is made under section 34 and the Hearing Division determines that the licensee has contravened section 33, the Division shall make one or more of the following orders:

...

3. An order suspending the licensee's licence,
    - i. for a definite period,
    - ii. until terms and conditions specified by the Hearing Division are met to the satisfaction of the Society, or
    - iii. for a definite period and, after that, until terms and conditions specified by the Hearing Division are met to the satisfaction of the Society.
45. Section 48 of the *Law Society Act* currently permits summary revocation for administrative reasons).<sup>1</sup> This section authorizes a benchler, or an employee holding an office prescribed by the by-laws, to make an order revoking a licence if the licensee has been suspended for failure to pay fees, or to comply with filing and indemnity requirements.
46. A licence may be revoked if the order is still in force twelve months after it was made. This regulatory authority is referred to as "summary revocation". In practice this provision is not used to terminate licenses that are the subject of an administrative suspension. However it exists.
47. Section 48, reproduced below, does not currently permit summary revocation for indefinite suspensions of licence made for disciplinary reasons under section 35 of the Act.

### Summary revocation

48. (1) A person appointed for the purpose by Convocation may make an order revoking a licensee's licence if an order under section 46, clause 47 (1) (a) or section 47.1 is still in effect more than 12 months after it was made. 2006, c. 21, Sched. C, s. 42.

### Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

---

<sup>1</sup> Sections 46, 47, 47.1, and 49 of the *Act* authorize administrative suspensions.

- (a) a bencher; or
- (b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section. 2006, c. 21, Sched. C, s. 42.

## DISCUSSION AND PROPOSAL

- 48. It is estimated that five to seven licensees per year would meet the criteria for summary revocation of a licence (that is, whose licences have remained indefinitely suspended by Tribunal order for at least two years) if the Committee's proposal is approved.
- 49. In addition to the legislative amendment required to implement this proposal, changes would be required to the By-Laws and to the *Rules of Practice and Procedure*. These changes would be referred to Convocation at the appropriate time should it approve this proposal.
- 50. The implementation of this proposal would require the creation of an administrative process whereby a licence could be revoked by decision of a bencher. This process is described in greater detail below.

### Description of the Summary Revocation Process

- 51. If a licensee's licence had been suspended by order of the Law Society Tribunal and the suspension remained in effect more than two years after the order is made, summary revocation will be considered by staff. It is not contemplated that staff will do any further investigation of the licensee's circumstances other than reviewing whatever information may have been provided at the instance of the licensee or some other person since the Tribunal order.
- 52. The application would be prepared by staff for consideration by the Summary Order bencher, and would include relevant materials, including a draft summary order, the Tribunal decision and order, and confirmation that the licensee's licence remains indefinitely suspended. The application would be considered in writing only. The only question for decision would be whether the application is accepted or rejected.
- 53. Options for providing the licensee who is the subject of the Tribunal order with notice of potential revocation after a two year indefinite suspension include:
  - a. specific language in the original order that warns the licensee that if the indefinite suspension continues for two years or more he or she may be revoked pursuant to the applicable legislation;
  - b. a notice that accompanies the Tribunal order, like the Guidelines for Suspended Licensees, which are sent to all licensees suspended by the Tribunal at their last known address;
  - c. a notice that is sent to the licensee at or near the expiration of the two year suspension period, shortly before the application is made to the Summary Order bencher.

The Committee recommends option a.

54. In addition to the estimated five to seven licensees per year who might qualify for this summary revocation process in the future, there are also a large number of licensees who are already indefinitely suspended, many of whom have been suspended for more than two years. A notice procedure will be necessary before any application to revoke these licensees as well. The Committee contemplated notices sent to these licensees' last known addresses warning of revocation following a further six month period of default. It may be necessary to consider these licensees separately in any legislative amendment.
55. The Law Society would use the process in a manner that is consistent with its duty to protect the public interest and to act in a timely, open and efficient manner. While no investigation is contemplated at the time of any application to the Summary Order bench, in the event that evidence that the licensee is unable to comply with the order is brought to the Law Society's attention, it will be considered in assessing whether an application for revocation is appropriate, and where the application proceeds, any such information will be brought to the attention of the Summary Order bench.
56. If approved by the Summary Order bench, the Law Society would provide notice of revocation of license to the licensee at their last known address.
57. The licensee would have the right to appeal this decision within a specified time. It is contemplated that the Appeal Division would hear the appeal. This provides additional protections to licensees where relevant information is not brought to the attention of the Law Society before any application for revocation.
58. Should the licensee wish to apply for licensing in future, the need for a good character hearing would be considered at that time, as would be the case with any other applicant.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

**FOR INFORMATION**

**FEDERATION OF LAW SOCIETIES OF CANADA -  
AMENDMENTS TO THE MODEL CODE OF PROFESSIONAL  
CONDUCT – PUBLIC CONSULTATION**

65. The Model Code of Professional Conduct (“Model Code”) was developed by the Federation of Law Societies of Canada (FLSC) to harmonize ethical and professional conduct standards for the Canadian legal profession. Convocation adopted amendments to the Rules of Professional Conduct to implement the Model Code in October, 2013. These amendments came into force in Ontario in October 2014.
66. The Standing Committee on the Model Code of the Federation of Law Societies of Canada (Standing Committee) reviews the Model Code on an ongoing basis to ensure that it responds to and reflects current legal practice and ethics. The Standing Committee monitors changes in the law of professional responsibility and ethics, receives and considers feedback from Law Societies and other interested parties regarding the Rules, and makes recommendations for amendments to the Model Code.
67. The Standing Committee is currently seeking feedback from Canadian Law Societies, the Canadian Bar Association, individuals engaged in legal ethics issues, lawyers, paralegals, and interested members of the public on draft amendments to the Model Code. These amendments are as follows:
  - a. additional guidance is proposed in paragraph [9] of the Commentary to Model Code Rule 3.1-2 (Competence);
  - b. amendments are proposed to the Rules prohibiting lawyers from engaging in, or assisting clients to engage in dishonesty, fraud, crime or illegal conduct (Rule 3.2-7);
  - c. a new Rule is being considered regarding Leaving a Law Firm (Rule 3.2-7); and
  - d. an addition to the Commentary regarding Incriminating Physical Evidence is proposed (Rule 5.1-2A).
68. A link to the Consultation Report is available here: <http://flsc.ca/national-initiatives/model-code-of-professional-conduct/>.
69. Submissions are requested by June 30, 2016. The Committee encourages Ontario lawyers and paralegals to participate in the Federation’s Call for Input. Information regarding making a submission is available in the Consultation Report. Details regarding participation in the Call for Input will be provided to members of the Law Society, as well as to legal organizations.

70. Once amendments to the Model Code are made, the Law Society's Professional Regulation Committee will be asked to consider their adoption for the Law Society's Rules of Professional Conduct.
71. The FLSC materials were also considered by the Paralegal Standing Committee on February 10, 2016. Amendments to the Paralegal Rules and Guidelines which may arise from the adoption of Model Code amendments by the Law Society would be considered by that Committee.

**FOR INFORMATION**

**ADVERTISING AND FEE ARRANGEMENTS ISSUES WORKING GROUP**

72. In 2015, the Professional Regulation Committee conducted a Call for Input regarding the Rules of Professional Conduct, including marketing and advertising rules.
73. Based on its review of the thoughtful submissions received from individuals and legal organization on these issues, the Committee has determined that it would be beneficial to obtain more detailed information about advertising and fee arrangements issues in Ontario from a variety of stakeholders, primarily in the personal injury sector. This information would provide additional context to facilitate the Committee's consideration of referral fee arrangements, contingency fees, and marketing and advertising issues.
74. To provide guidance on next steps, the Treasurer requested that the Committee's Chair, Malcolm Mercer, establish a Working Group to address these issues. The members of the Working Group are Malcom Mercer (Chair), Robert Burd, Paul Cooper, Carol Hartman, Jacqueline Horvat, Jan Richardson and Andrew Spurgeon. It is anticipated that the Working Group will provide a report to the Committee with recommendations in June 2016.
75. A meeting of the Working Group will be arranged shortly, at which time the Group will consider a plan for next steps. Further information should be provided to Convocation in April.

**FOR INFORMATION**

**ANNUAL REPORT OF  
THE COMPLAINTS RESOLUTION COMMISSIONER**

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

**Annual report**

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

77. The report of the Commissioner, Bernard Morrow, is attached as [Tab 3.7.1](#).
78. Mr. Morrow and two members of his staff attended the Committee’s February 11, 2016 meeting to discuss the report. The report was also considered by the Paralegal Standing Committee on February 10, 2016.

# Annual Report of the Complaints Resolution Commissioner

January 1, 2015 – December 31, 2015

Submitted by Bernard Morrow,  
Complaints Resolution Commissioner

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## **A. Introduction**

I began a two-year appointment as Complaints Resolution Commissioner (hereinafter referred to as the “Commissioner”) on April 1, 2014. I was preceded by Mr. Stindar Lal, who held the position of Commissioner from April 1, 2010 to March 31, 2014. I have enjoyed a busy and fulfilling second year as Commissioner. This Annual Report (hereinafter referred to as the “Report”) covers the activities of the office of the Complaints Resolution Commissioner (hereinafter referred to as the “CRC”) for the 2015 calendar year.

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

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

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

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

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

By-Law 11 provides the Commissioner with two distinct functions, the complaints resolution function and the complaints review function.

### **Complaints Resolution Function**

The complaints resolution function provides the Commissioner with the statutory authority to perform a formal resolution role. It allows the Law Society, with the consent of the complainant and licensee, to refer a matter to the Commissioner for resolution, prior to the complaint being investigated.

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

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

### Complaints Review Function

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

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

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

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

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

### Standard of Review

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

Applying this standard of review, if the Commissioner is satisfied that the Law Society's consideration of a complaint and its decision to close a file is reasonable, no further action is recommended. However, if the Commissioner is not satisfied that the Law Society's consideration of a complaint and its decision is reasonable, the complaint will be referred back to the Law Society with a recommendation for further action.

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

#### **D. Complaints Review Process**

##### **Notice to the Complainant**

Upon being notified by the staff of either the Complaints Resolution Department or the Investigations Department that a complaint file is being closed without a referral to the Proceedings Authorization Committee for further action, including disciplinary action, the complainant is advised of the right to seek a review by the Commissioner.

##### **Processing Requests for Review**

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

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

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

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

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

### **Format of the Review Meeting**

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

Subsection 8 (2) of By-Law 11 provides:

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

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

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

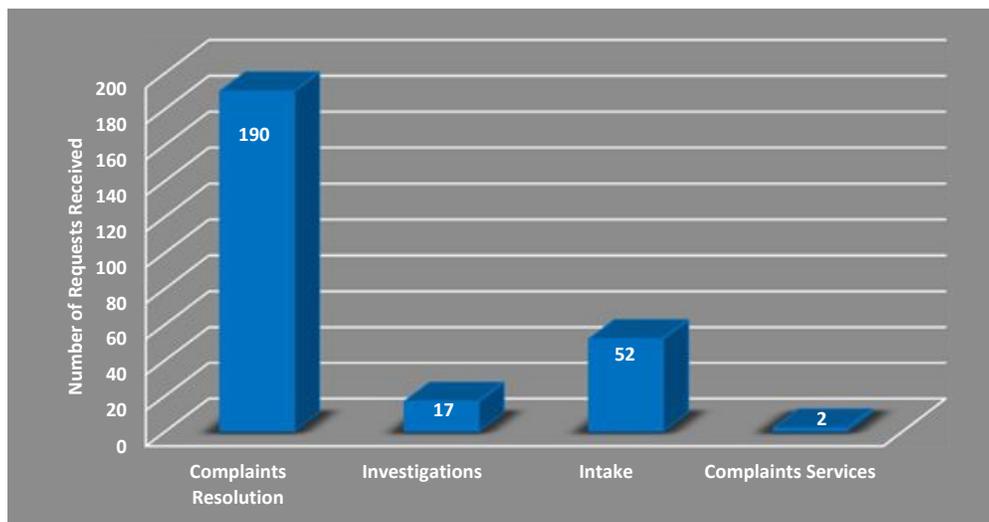
During 2015, meetings were scheduled on two days per week, bi-weekly. On average three review meetings were conducted on each meeting day. Some of the complainants requested reviews of multiple licensees. The format of each of these review meetings is set out in the statistical information that follows.

**E. Statistical Information**

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

**Number of Requests for Review**

**Table 1 – CRC Requests Received by Department in 2015**



In 2015, the CRC received 261 requests for review. Table 1, above, provides a breakdown of the departments from which the requests for review were received.

As indicated earlier in this Report, subsection 4 (1) of By-Law 11 provides that a review is only available when the merits of a complaint have been considered by the Law Society. This subsection of By-Law 11 has been interpreted to mean that the Commissioner can only review those files that have been investigated under the authority set out in section 49.3 of the *Act*.

As reflected in Table 1, above, the CRC received 54 requests for review from the Law Society’s Complaint Services and Intake departments. In accordance with subsection 4 (1) of By Law 11, these requests were found to be outside the Commissioner’s jurisdiction and, therefore, not reviewed. Where the CRC receives a request for review, which is beyond the Commissioner’s jurisdiction on the basis that the complaint was not investigated, the complainant is advised of the Commissioner’s lack of jurisdiction and referred back to the department that closed the file for a further response. The department manager then reviews the file and if the manager believes that the file should remain closed, the complainant is so notified.

In 2015, the CRC also received 12 requests for review that were beyond the Commissioner’s jurisdiction for other reasons, including the expiry of the 60 day time period for requesting a review, the discontinuance of the investigation, or the referral of the file to the Proceedings Authorization Committee. In each case, the complainant was notified in writing of the reason for the Commissioner’s lack of jurisdiction to review the matter. Of these 12 files, seven were investigated by the Complaints Resolution Department and four were investigated by the Investigations Department. One file was referred to the Proceedings Authorization Committee.

Therefore, in total, 66 requests for review were found ineligible for review by the Commissioner. After eliminating these 66 files, 195 requests for review remained to be considered by the Commissioner in 2015.

By comparison, in 2014 there were 281 requests for review received, and after eliminating those files beyond the Commissioner’s jurisdiction, 219 requests for review remained to be processed. In 2013, 310 requests for review were received, and after eliminating those beyond the Commissioner’s jurisdiction, 223 requests remained to be processed.

**Table 2 - Comparison of Requests Received in 2015, 2014 and 2013 by Department**

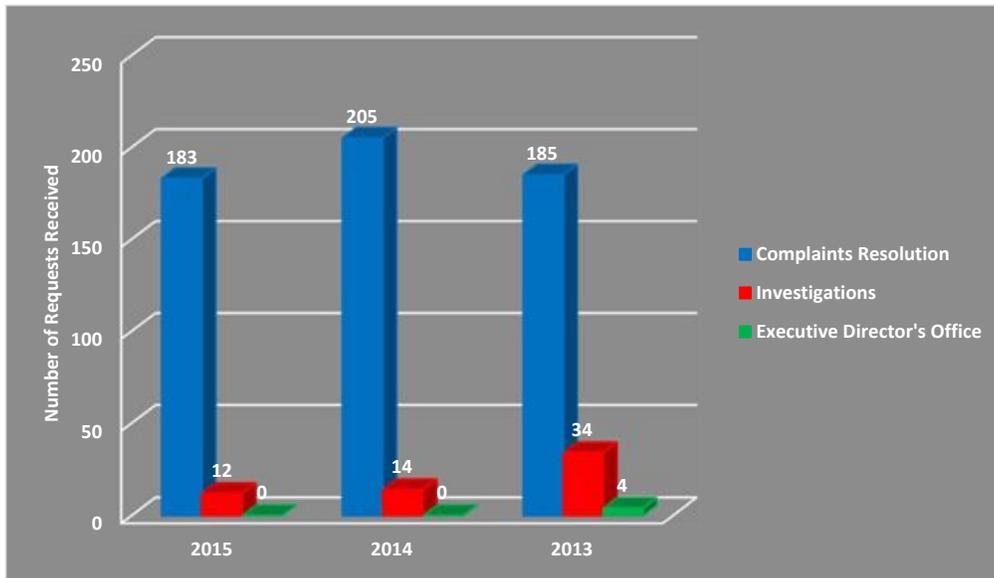


Table 2, above, provides a comparison of requests for review received by department from 2013 through 2015. It does not include those files where the request was beyond the Commissioner’s jurisdiction.

While there has been a decline in the total number of requests for review received in 2015, this may be attributable, in part, to the decrease in the number of files closed by the Complaints Resolution Department during 2014 and 2015. However, I understand that

while there have been fewer complaint files closed during 2014 and 2015 by the Complaints Resolution Department, there has been an increase in the percentage of requests for review for those closed files.

**Number of Reviews Conducted**

Between January 1, 2015 and December 31, 2015, the Commissioner reviewed 160 files. Of those 160 files, 50 involved requests for review received in 2015, 108 related to requests received in 2014 and two requests were received in 2013.

In 2014, 197 files were reviewed. In 2013, 205 files were reviewed.

**Format of Review Meetings Conducted**

*Table 3 – Comparison of Format of Review Meetings Held in 2015, 2014 and 2013*

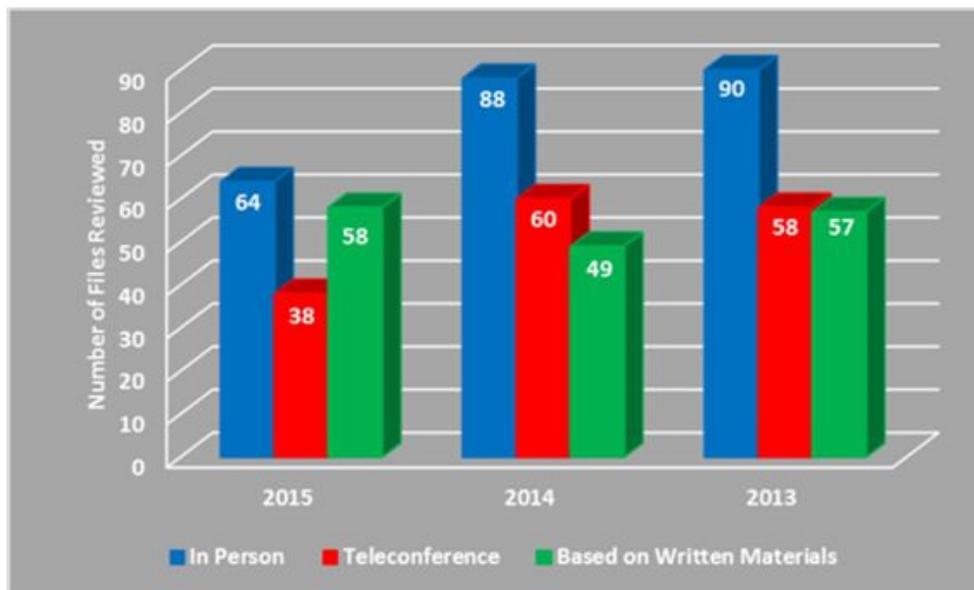


Table 3, above, indicates that during 2015, of the 160 files reviewed, 64 (40%) were reviewed by way of in-person meeting, 38 (24%) were conducted by teleconference and 58 (36%) proceeded based on the written material.

By comparison, between January 1, 2014 and December 31, 2014, of the 197 files reviewed, 88 (44%) were reviewed by way of in-person meeting, 60 (31%) were conducted by teleconference and 49 (25%) proceeded based on the written material.

In 2013, of the 205 files reviewed, 90 (44%) were reviewed by way of in-person meeting, 58 (28%) were conducted by teleconference and 57 (28%) proceeded based on the written material.

The statistical data indicates that there were fewer reviews conducted in 2015 than in the previous two years. This is attributable to the reduction in the number of requests for review received and CRC counsel availability.

The majority of in-person review meetings have been held in Toronto. However, in an effort to provide greater accessibility to the process for those complainants who reside outside of the Toronto area, in-person meetings have also been offered in Ottawa and London, where demand justifies the scheduling of review meetings in those cities.

In 2015, while some complainants residing in Ottawa and London expressed a desire in their request form for an in-person meeting, they were content to participate by teleconference or to have the review conducted in writing upon being advised that an in-person meeting in their region might delay the review. Accordingly, trips to Ottawa and London were not scheduled owing to limited demand.

**Department that Conducted the Investigation**

*Table 4 – CRC Reviews Conducted in 2015 by Department*



Table 4, above, identifies the department that conducted the investigation of those files reviewed in 2015.

As Table 4 demonstrates, of the 160 files reviewed in 2015, 145 were investigated by the Complaints Resolution Department and 15 were investigated by the Investigations Department. There were no files received from the office of the Executive Director.

**Table 5 – Comparison of Reviews Conducted in 2015, 2014 and 2013 by Department**

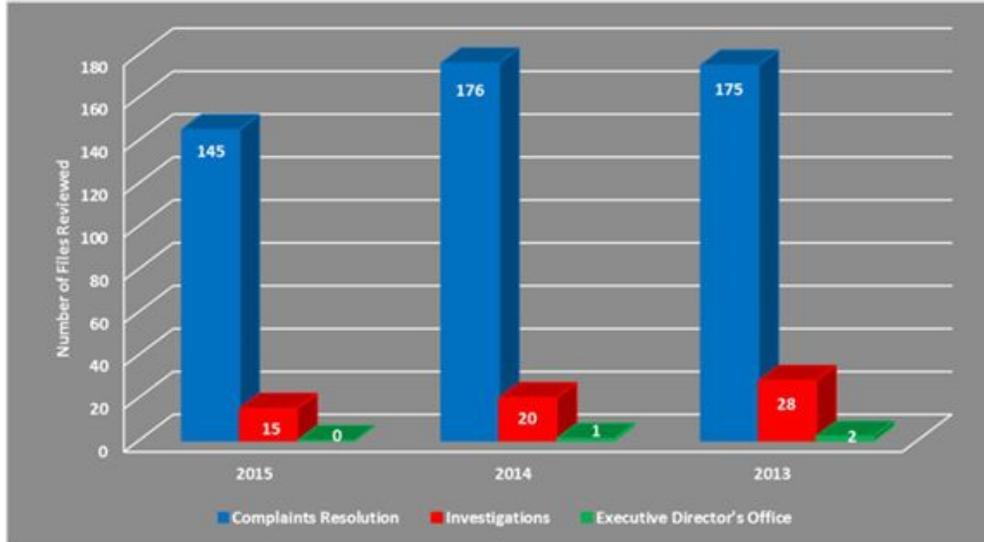


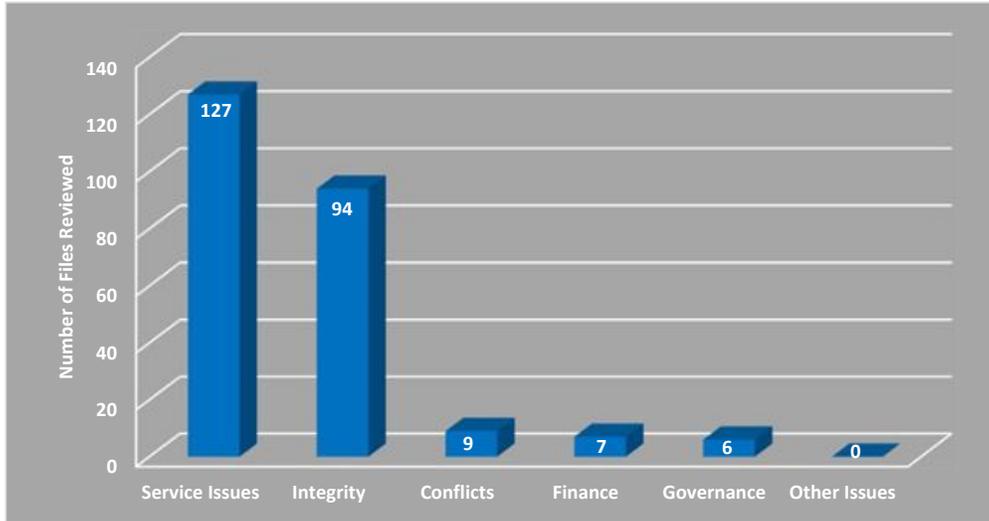
Table 5, above, provides a statistical comparison by department of the complaints reviewed in 2015, 2014 and 2013. The far left portion of Table 5 reproduces the statistical data conveyed in Table 4 for 2015.

In 2014, of the 197 files reviewed by the Commissioner, 176 were investigated by the Complaints Resolution Department, 20 were investigated by the Investigations Department and one file was investigated by the Executive Director's office.

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

**Predominant Issues Identified in the Cases Reviewed**

***Table 6 - Predominant Issues Identified in Each of the 2015 Files Reviewed***



The Law Society tracks the regulatory issues raised in each complaint file investigated. Based on the Law Society’s categorization, Table 6, above, identifies the six predominant issues for complaint files reviewed in 2015, displaying the number of files in which each issue was raised.

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

**Table 7 – Comparison of Predominant Issues Identified for Files Reviewed in 2015, 2014 and 2013**

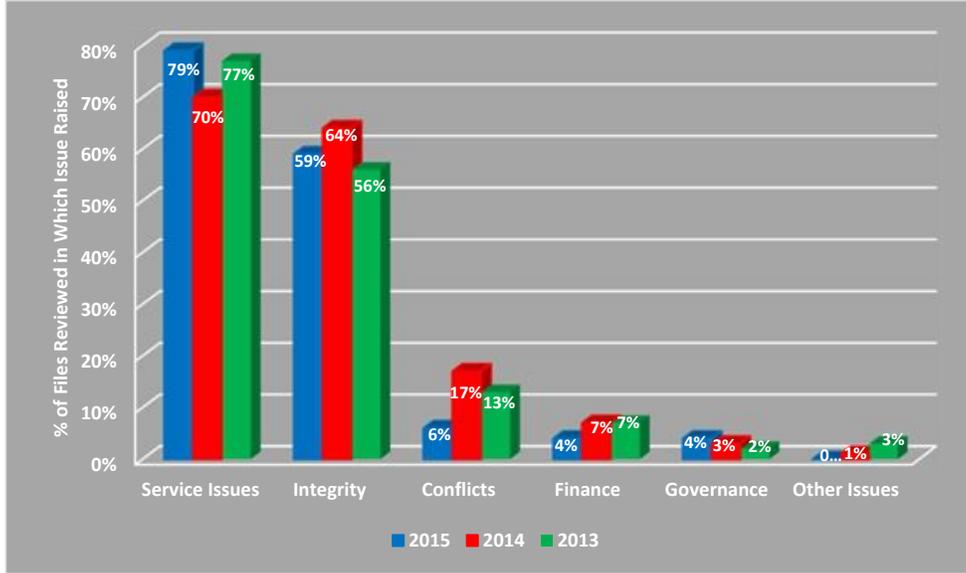


Table 7, above, provides a statistical comparison, by percentage, of the predominant issues raised in the files reviewed in 2015, 2014 and 2013. Service issues are the most predominant issues raised in complaints review. Service issues were raised in 79% of the files reviewed in 2015, 70% of the files reviewed in 2014 and 77% of the files reviewed in 2013.

## Results of Reviews Conducted in 2015

*Figure 1 (1) - Review Results 2015*

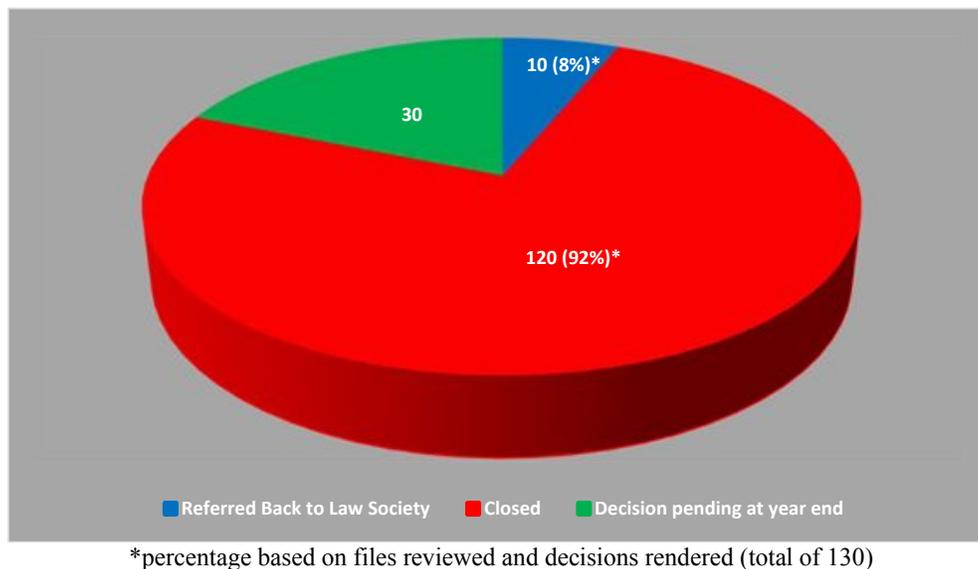


Figure 1 (1), above, depicts the results of the 160 files reviewed by the Commissioner in 2015.

Of the 160 files reviewed in 2015, decisions were rendered in 130. Of those 130 decisions, 10 (8%) were sent back to the Law Society. In each of these files, the Commissioner was not satisfied that the decision to close the matter was reasonable and he referred these files back, pursuant to subsection 7 (2) (b) of By-Law 11, with recommendations for further action.

While not depicted in Figure 1 (1), above, of the 120 files closed, practice issues were identified in three files and brought to the attention of the Executive Director in order to support the Law Society's efforts to better serve the public interest. In one file, the following concerns were identified:

- the closing letter did not adequately address and analyze the relevant issues and the application of the *Rules of Professional Conduct*.
- the investigator's failure to notify the complainant of the outcome of the investigation in a timely manner; and,
- the completeness of the file materials provided to the CRC.

In the second file, concerns regarding the current status of a licensee's practice were raised. In the third file, concerns were addressed regarding the investigator's analysis of the evidence and the application of the *Rules of Professional Conduct*.

The Commissioner and his Counsel together with Counsel to the Executive Director have continued to work together to address and improve practices and procedures between the Law Society's Professional Regulation departments and the CRC. Counsel to the Commissioner have also worked on an informal basis with the Managers of the Professional Regulation departments to clarify issues and address concerns. This has included the disclosure of witness statements and the particulars of licensee responses to complainants. These mutually cooperative practices and procedures have improved transparency in the review process.

### Results of Reviews Conducted in 2014

*Figure 1 (2) - Review Results 2014*

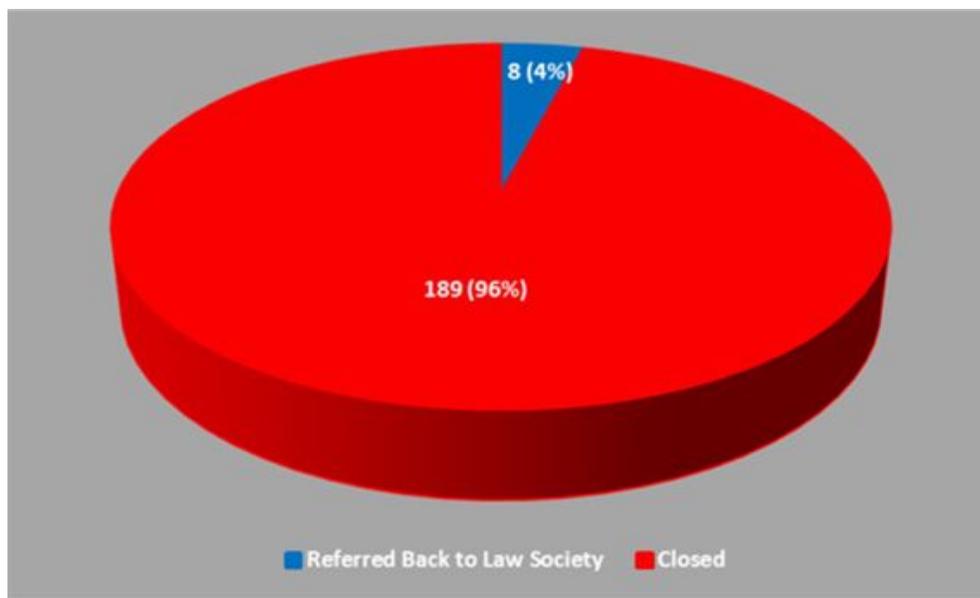


Figure 1 (2), above, reflects the results of the 197 decisions rendered by the Commissioner in 2014.<sup>3</sup>

Of the 197 files reviewed in 2014, eight files (4%) were sent back to the Law Society. In six of these files, the Commissioner did not find the Law Society's decision to close the file to be reasonable and recommended further action pursuant to subsection 7 (2) (b) of By-Law 11. In two other files, while the Commissioner found the Law Society's decision to close to be reasonable, he referred the files back to the Law Society on the basis of fresh evidence received [subsection 7 (1) of By-Law 11]. In one file, not depicted in Figure 1 (2), above, the Commissioner was satisfied that the decision to close was reasonable but sent the matter back after identifying practice issues.

<sup>3</sup> Of the 197 files reviewed in 2014, decisions in 166 files were rendered in 2014 while decisions in 30 files were rendered in 2015.

**Results of Reviews Conducted in 2013**

*Figure 1 (3) – Review Results 2013*

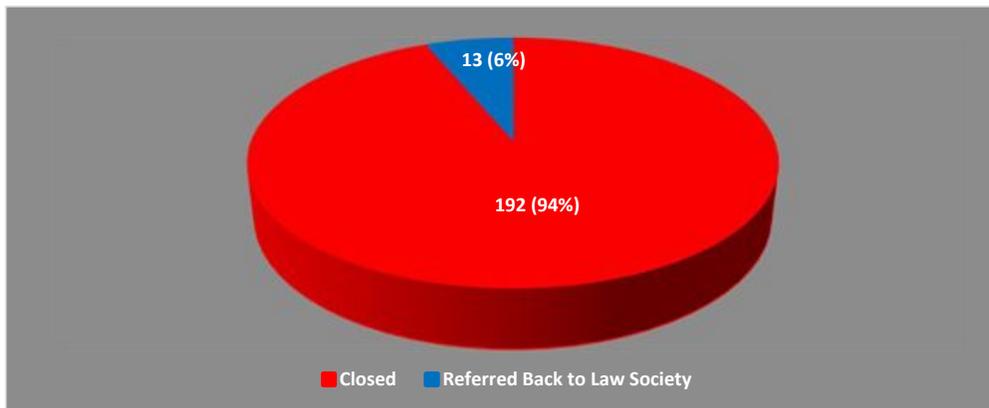


Figure 1 (3), above, reflects the results of the Review Meetings conducted in 2013.

As shown in Figure 1 (2), during 2013, of the 205 decisions rendered, 13 files (6%) were referred back to the Law Society, pursuant to subsection 7 (2) (b) of By-Law 11, with recommendations for further action.

**Executive Director’s Response to Files Referred Back to the Law Society in 2015**

*Figure 2 (1) – Executive Director’s Response to Files Referred Back in 2015*



In 2015, as depicted in Figure 2 (1), above, ten files were reviewed and referred back by the Commissioner to the Law Society pursuant to subsection 7 (2) (b) of By-Law 11, with recommendations for further action. The Law Society acted on the recommendations made by the Commissioner in seven of those files. Decisions on the remaining three files remained outstanding as of December 31, 2015.

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

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



Figure 2 (2), above, reflects the Law Society’s response to the eight files that were reviewed by the Commissioner in 2014 and referred back pursuant to either subsection or 7 (2) (b) of By-Law 11, with a recommendation for further action, or pursuant to subsection 7 (1) of By-Law 11, based on the receipt of fresh evidence. All recommendations made by the Commissioner were accepted by the Executive Director.<sup>4</sup>

**Executive Director’s Response to Files Referred Back to the Law Society in 2013**

*Figure 2 (3) – Executive Director’s Response to Files Referred Back in 2013*



<sup>4</sup> Of the eight files reviewed and referred back in 2014, the Executive Director’s decision to adopt the Commissioner’s recommendation in one file was rendered in 2015.

Figure 2 (3), above, reflects the Law Society's response to the nine files reviewed by the Commissioner in 2013 and referred back with recommendations for further action, pursuant to subsection 7 (2) (b) of By-Law 11. The Executive Director agreed to take further action on six of these files and declined to take any further action on the remaining three files.

In addition to the nine files depicted in Figure 2 (3), above, four other files were sent back raising practice issues, which did not require a specific response from the Executive Director.

#### **F. Age Tracking of Files Closed in 2015**

Following the submission of the Annual Report for the year ending December 31, 2013, the Professional Regulation Committee requested statistical data regarding the average time for advancing a file through the Complaints Review process. In this Annual Report we have provided data for the 2015 calendar year together with a comparison of the data for both the 2014 and 2013 calendar years.

The tables below compare the aging of files from the date a request for review is received in the Commissioner's office to the date a file is closed. In-person and teleconference reviews are compared with in-writing reviews for each of 2013, 2014 and 2015.

#### **In-Person and Teleconference Reviews**

In 2015, 102 reviews were completed by either the in-person or teleconference meeting format. By comparison, in each of 2014 and 2013, 148 reviews were completed through in-person meetings and teleconferences.

| <b>Average Age</b>   | <b>2015<br/>(days)</b> | <b>2014<br/>(days)</b> | <b>2013<br/>(days)</b> |
|--|------------------------|------------------------|------------------------|
| <b>Average age from the receipt of the request to the date the Commissioner's decision was released</b>                    | <b>319</b>             | <b>230</b>             | <b>265</b>             |
| (a) Average age from the date the request for a review was received to the date the PRD was notified of the request        | 3                      | 5                      | 5                      |
| (b) Average age from the date that PRD was notified of the request to the date the document books were received by the CRC | 126                    | 111                    | 125                    |
| (c) Average age from the date the document books were received to the date the review meeting was first scheduled          | 23                     | 11                     | 19                     |
| (d) Average age from the date the review meeting was first scheduled to the date the review meeting was held               | 90                     | 70                     | 88                     |
| (e) Average age from the date the review meeting was held to the date the Commissioner's decision was released             | 76                     | 33                     | 28                     |

| <b>Median Age</b>   | <b>2015<br/>(days)</b> | <b>2014<br/>(days)</b> | <b>2013<br/>(days)</b> |
|---|------------------------|------------------------|------------------------|
| <b>Median age from the receipt of the request to the date the Commissioner's decision was released</b>                    | <b>303</b>             | <b>224</b>             | <b>246</b>             |
| (a) Median age from the date the request for a review was received to the date PRD was notified of the request            | 2                      | 1                      | 2                      |
| (b) Median age from the date that PRD was notified of the request to the date the document books were received by the CRC | 121                    | 96                     | 121                    |
| (c) Median age from the date the document books were received to the date the review meeting was first scheduled          | 7                      | 2                      | 3                      |
| (d) Median age from the date the review meeting was first scheduled to the date the review meeting was held               | 78                     | 58                     | 77                     |
| (e) Median age from the date the review meeting was held to the date the Commissioner's decision was released             | 72                     | 34                     | 26                     |

### In-Writing Reviews

In 2015, 58 reviews were conducted based on the written materials. By comparison, 49 reviews were conducted based on written materials in 2014 and 57 reviews were conducted based on written material in 2013.

| <b>Average Age</b>   | <b>2015<br/>(days)</b> | <b>2014<br/>(days)</b> | <b>2013<br/>(days)</b> |
|--|------------------------|------------------------|------------------------|
| <b>Average age from the receipt of the request to the date the Commissioner's decision was released</b>                    | <b>327</b>             | <b>213</b>             | <b>240</b>             |
| (a) Average age from the date the request for review was received to the date PRD was notified of the request              | 7                      | 12                     | 10                     |
| (b) Average age from the date that PRD was notified of the request to the date the document books were received by the CRC | 128                    | 99                     | 127                    |
| (c) Average age from the date the document books were received to the date the Commissioner's decision was released        | 194                    | 101                    | 103                    |

| <b>Median Age</b>   | <b>2015<br/>(days)</b> | <b>2014<br/>(days)</b> | <b>2013<br/>(days)</b> |
|---|------------------------|------------------------|------------------------|
| <b>Median age from the receipt of the request to the date the Commissioner's decision was released</b>                    | <b>320</b>             | <b>195</b>             | <b>236</b>             |
| (a) Median age from the date the request for review was received to the date PRD was notified of the request              | 3                      | 1                      | 3                      |
| (b) Median age from the date that PRD was notified of the request to the date the document books were received by the CRC | 123                    | 96                     | 137                    |
| (c) Median age from the date the document books were received to the date the Commissioner's decision was released        | 193                    | 94                     | 84                     |

The age tracking data depicted above captures a delay resulting from files placed in abeyance during 2015. There were 19 files completed in 2015 that were at some point placed in abeyance for a variety of reasons. The reasons included lengthy adjournment requests made by complainants, requirements of further work following managerial reviews and related files not being ready to proceed. Of these 19 files, 12 ultimately proceeded by way of an in-person or teleconference meeting, five proceeded based on the written materials and two matters were subsequently withdrawn following managerial review. Of the two files withdrawn, one was referred to the Proceedings Authorization Committee with a recommendation for further action and the second resulted in further action taken by the Law Society to the complainant's satisfaction.

### **No Jurisdiction Files**

In 2015, 66 files were closed on the basis that the Commissioner did not have the jurisdiction to review the file. The average age from receipt of the request to review to the date the complainant was notified of the lack of jurisdiction was six days, and the median age was three days.

In 2014, 63 files were closed on the basis that the Commissioner did not have the jurisdiction to review the file, for a variety of reasons<sup>5</sup>. The average age from receipt of the request to review to the date the complainant was notified of the lack of jurisdiction was five days, and the median age was nine days.

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

### **Active Inventory as of December 31, 2015**

There were 184 files in the CRC's active inventory as of December 31, 2015, with the following status:

- Review dates had been scheduled in 2016 for 29 files.
- The CRC was awaiting review materials in 120 files from the Law Society.
- Five files were being held in abeyance.
- 30 decisions on files reviewed in 2015 were pending.

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<sup>5</sup> Note that, in one file, the request for review was received in 2013. In the remaining files, the requests for review were received in 2014.

## **G. Observations and Recommendations**

The work we do at the CRC is challenging. It is also important and fulfilling work.

A complainant who seeks the Commissioner's assistance has had a negative experience with a licensee and, having complained about that licensee's conduct, is unhappy with the way in which the Law Society has handled their complaint. By the time a complainant seeks a review, they are often extremely upset and frustrated. For many complainants, the review process presents a last opportunity to tell their story.

### **Listening with Sensitivity and Responsiveness**

With this backdrop, we are sensitive to the expectations that complainants bring with them to the review process and we do our utmost to ensure that every complainant understands the review process and the scope of the Commissioner's jurisdiction. Most importantly, we afford every complainant with a full opportunity to voice their concerns and be heard.

### **In-Person Format Still Preferred**

A significant percentage of reviews continue to be conducted in person. Complainants appear to appreciate the opportunity to engage in direct face-to-face dialogue. The majority of the files reviewed since the establishment of the CRC have been investigated and closed by the Complaints Resolution Department, which does not meet with the complainant in person. Therefore, an in-person meeting with the Commissioner is often the complainant's first and only opportunity to express their concerns directly to another person.

A discussion with the Commissioner, either in-person or by teleconference, also avails the complainant with an opportunity to ask questions about the Law Society's process and the outcome of the investigation. The dialogue allows the Commissioner to discuss issues that the complainant may not fully understand, including the difference between issues of negligence and professional misconduct, the Law Society's limited jurisdiction to deal with fee issues, and the role of an assessment officer.

While most complainants continue to prefer either the in-person or teleconference review meeting format, we have noticed a significant increase in the number of requests for review based on the written materials. This increase has presented some challenges in file management. Since reviews conducted in-writing do not allow for verbal communication with the Commissioner, the amount of time required to prepare the Commissioner's letter increases. A review based on the written material requires a recitation of all relevant facts and a consideration of all objections set out in the complainant's written submissions. Further, an in-person or teleconference review meeting allows the Commissioner the opportunity to clarify issues and manage the complainant's expectations during the course of the review meeting.

Regardless of the format for the review, we can say with confidence that the CRC approaches each request with a genuine interest in ensuring that the complainant has been

thoroughly heard and the Law Society's investigation carefully considered. It is important for a complainant to understand that the CRC takes its mandate seriously.

### **Track Record of Referrals Back**

Over the past year, approximately 8% of the complaints reviewed were referred back to the Law Society with a recommendation for further action. This represents an increase of close to 2% over 2014. This figure does not include those files brought to the Executive Director's attention to address various practice issues. Where appropriate, the complainant is advised that their practice concerns will be brought to the Executive Director's attention. This step is taken in an effort to satisfy the complainant that their concerns have been heard and are being addressed.

### **Outreach with Professional Regulation**

My role as Commissioner has provided me with the opportunity to engage in a productive ongoing dialogue with the Executive Director regarding systemic concerns and suggestions for improvement with the Law Society's process. During 2015, I have had the privilege of working with both Ms. Zeynep Onen and Ms. Lesley Cameron, who have been receptive to my feedback. Collectively, they have embraced the recommendations I have made on individual complaint files and have welcomed discussion on finding ways to improve the Law Society's practices and procedures to deliver a more transparent and responsive complaints process. The Law Society's actions in response to two of my recommendations made in the 2014 Annual Report illustrate this point:

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

I raised concerns regarding inconsistencies in the format and content of the Complaints Resolution and Investigations departments closing letters, particularly with regard to the discussion of the regulatory issues, the analysis of the issues and the reasons supporting the outcomes reached on each issue. Over the past year, I have noticed greater consistency in letter writing standards across departments. I have also continued to notice a marked improvement in the level of detail in closing letters, particularly those issued by the Investigations Department.

- **Provide better explanation of remedial action options**

I expressed concerns regarding the need to provide the complainant with a better understanding of what remedial action involves. I had been particularly concerned that the term "Best Practices Information" created confusion for the public, leaving some complainants with the mistaken perception that in receiving "best practices" the licensee was being commended for their actions rather than being admonished. I also raised concerns regarding inconsistencies in the approaches taken by the Complaints Resolution and Investigations departments in the use of these options. In practice, the Investigations Department had not invoked the use of Best Practices Information as a

remedial tool while the Complaints Resolution Department had used it extensively. Since conveying our concerns, we understand that the Complaints Resolution Department has ceased using Best Practices Information as a remedial action option and, instead, is now issuing a formal written Caution.

### **Recommendations**

In ongoing dialogue with the Executive Director, I have been encouraged to provide feedback regarding systemic concerns and suggestions for improving the Law Society's investigations process and enhancing the Commissioner's role. Over the past year, this feedback has included the following:

- **Offer more opportunities for in-person and/or telephone communication at investigation**

As alluded to above, many of the complainants with whom we meet often report how thankful they are to finally have an opportunity to tell their story to another person. While we appreciate that limited Law Society resources may preclude personal contact in all investigations, we encourage the Law Society to consider greater use of in-person and telephone meetings with complainants to enhance communication, particularly in circumstances where there are language, writing proficiency and mental health issues that may impede a complainant's ability to articulate the details of their complaint in writing.

- **Encourage greater transparency and communication regarding the investigation process**

Feedback I have received from complainants leads me to believe that the Law Society could do more to keep complainants informed about important aspects of the investigation process and developments that take place during the course of an investigation.

For example, all complainants should be advised when their file has been transferred during the course of an investigation from one investigator to another and receive assurances that the newly assigned investigator will conduct a complete review of the file before the investigation is concluded and a closing letter issued.

I also find that there is inconsistency between investigators in the role they play in obtaining third party evidence. This apparent inconsistency in approach has created confusion for both our office and complainants. I suggest that the Law Society establish a policy regarding the acquisition of third party evidence and that this policy be implemented consistently.

- **Consider the use of the Commissioner's complaints resolution function**

As discussed above, By-Law 11 provides the Commissioner with two distinct functions, the complaints resolution and complaints review functions. However, to date, the Commissioner has only been called upon to perform the complaints review function. There are times when it is clear that a complainant is seeking a resolution to their complaint that would lend itself to a mediation process involving the licensee and complainant. Unfortunately, once the complaint has been streamed through a formal investigation and the complainant has requested a review of the investigation, it is too late to mediate. I would encourage the early identification of files that may be suitable for mediation and the development of a clear process for referral.

## APPENDIX 1 LAW SOCIETY ACT EXCERPTS

### COMPLAINTS RESOLUTION COMMISSIONER

#### **Appointment**

[49.14 \(1\)](#) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

#### **Restriction**

[\(2\)](#) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

#### **Term of office**

[\(3\)](#) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

#### **Removal from office**

[\(4\)](#) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

#### **Restriction on practice of law**

[\(5\)](#) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

#### **Functions of Commissioner**

[49.15 \(1\)](#) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

#### **Investigation by Commissioner**

[\(2\)](#) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

#### **Access to information**

[\(3\)](#) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

### **Delegation**

[49.16 \(1\)](#) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

### **Terms and conditions**

[\(2\)](#) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

### **Identification**

[49.17](#) On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

### **Confidentiality**

[49.18 \(1\)](#) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

### **Exceptions**

[\(2\)](#) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

### **Testimony**

[\(3\)](#) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any

document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

**Decisions final**

[49.19](#) A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

**BY-LAW 11**

Made: May 1, 2007  
Amended: June 28, 2007  
September 20, 2007 (editorial changes)  
October 25, 2007 (editorial changes)  
February 21, 2008  
April 24, 2008  
October 30, 2008  
January 29, 2009  
October 28, 2010  
April 25, 2013  
May 30, 2013  
March 4, 2014  
June 26, 2014

**REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE**

**PART I**

**COMPLAINTS RESOLUTION COMMISSIONER**

**GENERAL**

**Definitions**

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

**Provision of funds by Society**

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

**Restrictions on spending**

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

**Annual report**

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

REVIEW OF COMPLAINTS

**Reviewable complaints**

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

**Same**

- (2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:
- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
  - 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
  - 3. Negligence of a licensee.

**Interpretation: “previously reviewed”**

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

**Right to request referral**

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

**Request in writing**

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

**Time for making request**

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

**When notice given**

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
  - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
  - (ii) if it was faxed, on the first day after it was faxed.

**Referral of complaints**

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

**Notice**

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

**Fresh evidence**

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

**Disposition of complaint referred for review**

- (2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,
- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
  - (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

**Disposition of complaint referred for review: notice**

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

**Referral back to Society: notice**

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

**Same**

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

**Procedure**

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

**Meeting**

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

**Participation in review: Society**

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

**Participation in review: licensee**

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

**Description of consideration, etc.**

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

**Requirement to answer questions**

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

RESOLUTION

**Discretionary referral of complaints**

9. (1) The Society may refer a complaint to the Commissioner for resolution if,
- (a) the complaint is within the jurisdiction of the Society to investigate;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;

Professional Regulation Committee - Annual Report of the Complaints Resolution Commissioner

- (c) the complaint has not been referred to the Proceedings Authorization Committee;
- (d) no resolution of the complaint has been attempted by the Society; and
- (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

**Parties**

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

**Outcome of Resolution**

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

**No resolution**

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

**Enforcement of resolution**

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

**Confidentiality: Commissioner**

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

**Exceptions**

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

**Without prejudice**

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

**Procedure**

**Convocation - Professional Regulation Committee Report**

**Professional Regulation Committee - Annual Report of the Complaints Resolution Commissioner**

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

# Request for Review by the Complaints Resolution Commissioner



Before you complete the Request Form, please read the attached "Request for Review by the Complaints Resolution Commissioner Information Sheet."

If you want a review, you must make your Request for Review **in writing** within **60 days** of the Law Society's notification (the closing letter you received from Law Society staff) that no further action will be taken with respect to your complaint. If you want a review for more than one complaint, please complete and send a separate Request for Review form for each complaint.

You must send your Request for Review to:  
Office of the Complaints Resolution Commissioner  
393 University Avenue, Suite 515, Toronto, ON, M5G 1E6  
Fax: 416-947-5213 Email: [complaintsreview@lsuc.on.ca](mailto:complaintsreview@lsuc.on.ca)

If you have any questions about your request for a review, please call the Office of the Complaints Resolution Commissioner at 416-947-3442 or 1-866-880-9480.

## I. INFORMATION ABOUT YOU (THE COMPLAINANT)

Salutation: Mr. \_\_\_ Ms. \_\_\_ Mrs. \_\_\_ Dr. \_\_\_ Other: \_\_\_

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Home Phone Number: \_\_\_\_\_ Cell Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

Please indicate where you want the Document Book (mailed via XpressPost) and other mailed communications about this review to be sent:

Address: \_\_\_\_\_ Unit/Apt.: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

What is the best way to contact you from Monday to Friday between the hours of 8:30 a.m. and 4:30 p.m. (select one) :

\_\_\_ Telephone Telephone Number: \_\_\_\_\_

\_\_\_ Facsimile Facsimile Number: \_\_\_\_\_

\_\_\_ Email Email Address: \_\_\_\_\_

Are you a lawyer or licensed paralegal: Yes \_\_\_ No \_\_\_

# Request for Review by the Complaints Resolution Commissioner



## 2. DETAILS OF LAW SOCIETY COMPLAINT MATTER

LSUC File Number: \_\_\_\_\_

• Name of Lawyer/Paralegal: \_\_\_\_\_

• Name of Law Society's Investigator: \_\_\_\_\_

• Date of Law Society's letter notifying you that the file is being closed: \_\_\_\_\_

• What is your relationship to the lawyer/paralegal? \_\_\_\_\_

\_\_\_ Client \_\_\_ Opposing lawyer or paralegal \_\_\_ Other (specify) \_\_\_\_\_

• What area of law/legal services does your complaint relate to? \_\_\_\_\_

\_\_\_ Real Estate \_\_\_ Civil Litigation \_\_\_ Corporate/Commercial/Business \_\_\_ Estates/Wills

\_\_\_ Matrimonial/Family \_\_\_ Administrative/Immigration \_\_\_ Criminal \_\_\_ Other (specify): \_\_\_\_\_

• Are you acting under a Power of Attorney or some other form of authorization? \_\_\_ Yes \_\_\_ No

**If yes**, please provide supporting documentation with this request form.

• If you are complaining about an estate:

Are you a beneficiary? \_\_\_ Yes \_\_\_ No

Are you the Estate Trustee or the Executor? \_\_\_ Yes \_\_\_ No

**If yes**, please provide supporting documentation with this request form.

List any other Complaints you have submitted which are still under investigation with the Law Society or related to this complaint:

| File Number(s) | Name of Lawyer(s)/Paralegal(s) |
|----------------|--------------------------------|
| _____          | _____                          |
| _____          | _____                          |
| _____          | _____                          |

# Request for Review by the Complaints Resolution Commissioner



### 3. PREFERENCE FOR REVIEW MEETING

Please check a box to show your preference for the form of the Commissioner’s review meeting.

**I prefer the review by the Commissioner to occur (Please select only one):**

- In Person\***  
\*Please note that in person meetings take place at the Office of the Complaints Resolution Commissioner.
- By Telephone Conference**  
Telephone number you would like to be contacted at: \_\_\_\_\_
- Based on the Written Materials in this File**  
This option does not involve a meeting with you in person or by telephone conference. Selecting this option may result in the review being completed more quickly. If you want to send written submissions, please send your submissions and any additional documents to the Office of the Complaints Resolution Commissioner within 1 month of sending this request.

### 4. REASON FOR YOUR REQUEST FOR A REVIEW

**Please briefly explain why you want a review by the Commissioner.** Before you complete this section, please review the Information Sheet which explains the Commissioner’s role.

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### 5. ADDITIONAL DOCUMENTS

Are you attaching copies of any new documents?: Yes \_\_\_ No \_\_\_  
**Please do NOT send originals.**

(Please do not resend copies of those documents which have already been provided to the Law Society of Upper Canada. The information contained in the Law Society’s file will be provided to the Commissioner in advance of the review meeting. **Resending copies of documents or repeating information already provided to the Law Society may delay the review.**)

### 6. SIGNATURE

Date Signed \_\_\_\_\_ Signature \_\_\_\_\_

**Please send this form and accompanying documents to:**  
Office of the Complaints Resolution Commissioner  
393 University Avenue, Suite 515, Toronto, ON, M5G 1E6  
Fax: 416-947-5213 Email: [complaintsreview@lsuc.on.ca](mailto:complaintsreview@lsuc.on.ca)

If you have any questions about your request for a review, please call the Office of the Complaints Resolution Commissioner at 416-947-3442 or 1-866-880-9480.

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.

# Office of the Complaints Resolution Commissioner



INFORMATION SHEET

This information sheet will help you request a review by the Complaints Resolution Commissioner (the Commissioner).

## REQUEST FOR REVIEW:

The Commissioner, on your request, will do an independent review of the Law Society's investigation and the decision to close your complaint file. If you want to have the Law Society's decision to close your complaint file reviewed by the Commissioner, please complete the attached Request for Review form. Please return the form to the Office of the Complaints Resolution Commissioner following the instructions at the end of the Request Form. **A request for review by the Commissioner must be made in writing within 60 days of the Law Society's notification (the closing letter you received from Law Society staff) that no further action will be taken with respect to your complaint.**

## THE ROLE OF THE COMPLAINTS RESOLUTION COMMISSIONER:

After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall:

- If satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- If not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

## THE COMPLAINTS RESOLUTION COMMISSIONER CANNOT:

- Make a finding of professional misconduct;
- Impose disciplinary penalties;
- Make a finding of professional negligence;
- Award payment of money or other compensation for financial losses;
- Direct a licensee (lawyer or licensed paralegal) to refund fees or disbursements; or
- Conduct a new investigation.

## MEETING WITH THE COMPLAINTS RESOLUTION COMMISSIONER:

As part of the review process, you may be invited to meet with the Commissioner in person or to participate in a conference call. These sessions are informal and involve a discussion of your complaint and the concerns you have with the Law Society's decision to close your file. Your meeting will be scheduled for one hour.

The Commissioner will consider your preference and decide the most appropriate manner for the review meeting to proceed. The Commissioner may also review your file based on the written material only. A review based on the written material only may result in the review being completed sooner.

The Commissioner also has in person meetings, approximately twice per year, in London and Ottawa. If you live in either of these areas and want your matter reviewed by telephone conference instead of an in person meeting, the review by the Commissioner may take place sooner.

Most people prefer to participate in the review meeting on their own. However, you may bring a friend, family member or a legal representative to your review meeting.

Counsel to the Commissioner is a lawyer and will be at the Review Meeting to assist the Commissioner and respond to any legal questions raised by the Commissioner. The Counsel's role is restricted to providing assistance to the Commissioner and he or she cannot give you legal advice.

Neither the lawyer/licensed paralegal who was the subject of your complaint nor the Law Society investigator, will be present at the meeting or during the conference call.

## Office of the Complaints Resolution Commissioner



INFORMATION SHEET

### **SCHEDULING OF THE REVIEW MEETING:**

Your meeting with the Commissioner will be scheduled as soon as possible. However, it may take several months for your review to take place. We appreciate and thank you for your patience.

If you cannot attend the meeting on the scheduled date or have decided not to proceed with your complaint, please notify the Office of the Complaints Resolution Commissioner as soon as possible, so that the time set aside for your meeting can be used productively. If you want your meeting date to be adjourned/rescheduled, the Commissioner may request supporting documentation explaining why you cannot attend the meeting.

### **PROVIDING NEW INFORMATION:**

To assist you at the review meeting, the Office of the Commissioner will send you a Document Book and correspondence. The Document Book will be sent to you when your meeting date is scheduled. The Commissioner and the Counsel to the Commissioner will also have a copy and will review the Document Book before the meeting.

If you send new material concerning your complaint or you submit written submissions to the Commissioner, please send this material within one month of sending in your Request for Review form. **Please do not send original documents.**

Do not resend copies of documents which have already been provided to the Law Society, as the information contained in the Law Society's file will be provided to the Commissioner in advance of the review meeting. **Resending copies of documents or repeating information already provided to the Law Society may delay the review.**

### **DECISION OF THE COMPLAINTS RESOLUTION COMMISSIONER:**

The Commissioner will send you the decision in writing within several weeks of when the review has been conducted. If the Commissioner agrees with the Law Society's decision to close the complaint, the Commissioner's decision concludes the matter. There are no further reviews and the decision is final.

### **FOR MORE INFORMATION:**

If you have any questions about how to request a review by the Commissioner, please contact the Office of the Complaints Resolution Commissioner at the following and we will be pleased to help you:

**393 University Avenue  
Suite 515  
Toronto, ON  
M5G 1E6**

**Telephone: 416-947-3442**

**Toll-Free Number: 1-866-880-9480**

**Fax: 416-947-5213**

**Email: [complaintsreview@lsuc.on.ca](mailto:complaintsreview@lsuc.on.ca)**

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.

FOR INFORMATION

**PROFESSIONAL REGULATION DIVISION  
QUARTERLY REPORT**

79. The Professional Regulation Division's Quarterly Report (fourth quarter 2015), provided to the Committee by Lesley Cameron, Acting Executive Director of the Professional Regulation Division, appears at [Tab 3.8.1](#). The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period October to December 2015. The report was also considered by the Paralegal Standing Committee on February 10, 2016.



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

# The Professional Regulation Division

**Quarterly Report**  
October - December 2015

The Law Society of Upper Canada  
The Professional Regulation Division  
Quarterly Report (October 1 – December 31, 2015)

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## **The Quarterly Report**

The Quarterly Report provides a summary of the Professional Regulation Division's activities and achievements during the past quarter, October 1 to December 31, 2015. The purpose of the Quarterly Report is to provide information on the production and work of the Division during the quarter, to explain the factors that may have influenced the Division's performance, and to provide a description of exceptional or unusual projects or events in the period.

## **The Professional Regulation Division**

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

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

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The Law Society of Upper Canada  
 The Professional Regulation Division  
 Quarterly Report (October 1 – December 31, 2015)

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**PROFESSIONAL REGULATION  
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**OVERVIEW**

New Complaints Received

During 2015, Professional Regulation received 4781 new cases through its Intake Department. While these are referenced as complaints, they include investigations relating to applicants with good character issues, and matters commenced by the Law Society based on information that has come to our attention.

The number of new matters in 2015 was approximately 3% lower than the number received in 2014 and about 8% (393 case) lower than the number received in 2013. There is no apparent explanation for the decreasing number of new cases as the nature of the caseload remains proportionately similar and there was no procedural or communications change that would explain the difference.

The Intake Department (pages 13 to 16)

While lower than 2014, the output of cases in the Intake Department in 2015 (4842) still exceeded the input of 4774 cases (including new and re-opened complaints). As a result, inventory in the Intake Department decreased from 508 cases at the end of 2014 to 443 cases at the end of 2015 (approximately 13% decrease). The median age of its active caseload also decreased from 35 to 32 days, slightly higher than the department target of 30 days.

Complaints Resolution Department (pages 17 to 22)

While input of cases into Complaints Resolution in 2015 (1543 cases) decreased by approximately 6% from its 2014 input (1638 cases), it was still much higher than the department's output (1393 cases in 2015 compared to 1643 cases in 2014). As a result, Complaints Resolution's inventory increased to 1107 cases at the end of 2015, up from 948 cases at the end of 2014. The median age of active cases in the department also increased to 199 days at year end, up from 154 days at the end of 2014 and significantly higher than the department target of between 150 and 170 days.

Investigations Department (pages 23 to 29)

In the last 3 years, input into Investigations has been stable – 1348 cases in 2013, 1334 cases in 2014 and 1336 cases in 2015. However, in each year, the output has been less (4 cases less in 2013, 99 cases less in 2014 and 88 cases less in 2015). As a result, inventory in the Department has been steadily increasing to a high of 1386 cases at the end of 2015. The median age of active inventory at the end of 2015, 268 days, is higher than the department target of 240 days, but not as high as it has been in previous years.

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### Discipline Department (pages 33 to 40)

Input of cases (and subjects) in the Discipline Department has been fairly stable in the past few years. The active matters in discipline has also been stable. In 2015, the number of matters considered by PAC, particularly cases requiring a hearing, increased from 148 in 2014 to 197 in 2015. The number of matters authorized to proceed to a hearing increased by approximately 30% (from 121 matters authorized in 2014 to 157 matters authorized in 2015).

The number of notices issued in the Hearing Division in 2015 also increased to 142 notices, up approximately 14% from the 125 notices issued in 2014. The number of appeals and judicial reviews to the Appeal Division and the Divisional Court decreased in 2015.

### Aging

As noted above, the age of active cases in both the Complaints Resolution and Investigations department increased in 2015. The proportion of older cases in each department's caseload also increased.

- At the end of 2015, 16% of Complaints Resolutions' inventory (160 cases involving 132 subjects) was over 12 months, up from 8% at the end of 2014 (73 cases involving 60 subjects). (Page 21)
- At the end of 2015, in the Investigations department
  - 19% of its core cases were over 18 months (230 cases), up from 17% at the end of 2014 (181 cases). However, the number of subjects involved in those cases decreased, from 191 subjects at the end of 2014 to 148 subjects at the end of 2015). (Page 27)
  - 32% of mortgage fraud cases were over 18 months, up from 26% at the end of 2014. Of note is that the number of cases and subjects involved were virtually the same (29 cases involving 26 subjects at the end of 2014; 29 cases involving 25 subjects at the end of 2015). The increased proportion is mainly due to the decreased overall inventory of mortgage fraud cases (112 at the end of 2014; 91 at the end of 2015). (Page 28)
- The average age of matters completed in 2015 in the Hearing Division decreased to 861 days (from 896 days in 2014 and 1031 days in 2013). The main reason for the decrease in age is a decrease in the average age from receipt of the complaint to PAC authorization (i.e. the investigative phase), which decreased to an average of 541 days, down from 600 days in 2014 and 665 days in 2013. (Page 38)

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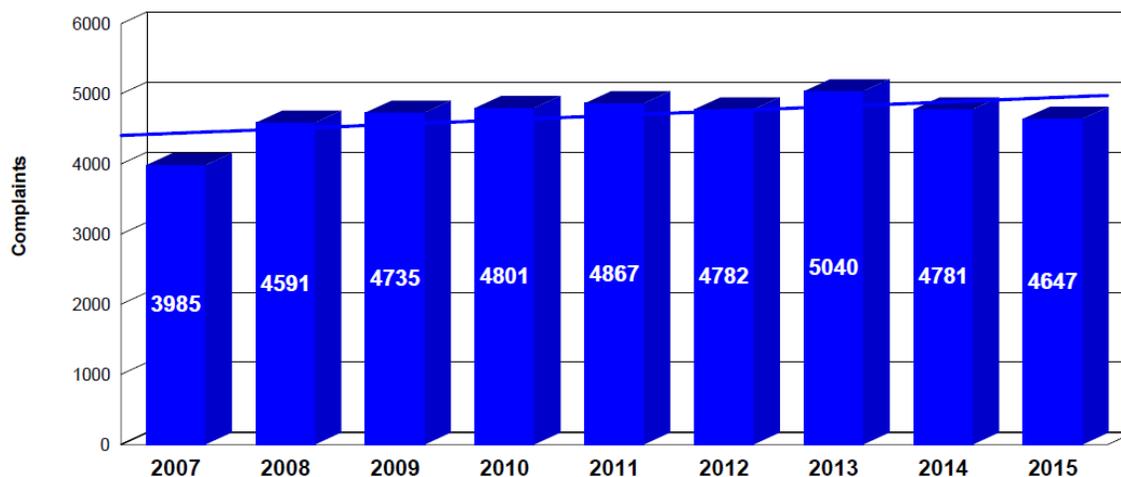
## **SECTION 1**

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

The Law Society of Upper Canada  
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## PERFORMANCE IN THE PROFESSIONAL REGULATION DIVISION

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



### Detailed Analysis of Complaints Received in the Division

|   | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 3481 | 3946 | 3891 | 3791 | 3920 | 3820 | 3896 | 3734 | 3646 |
| <b>Lawyer Applicant Cases ★</b>                         | 44   | 48   | 70   | 86   | 92   | 99   | 115  | 115  | 106  |
| <b>Complaints against Licensed Paralegals</b>           | 0    | 164  | 351  | 490  | 494  | 480  | 584  | 543  | 544  |
| <b>Paralegal Applicant Cases ★</b>                      | 333  | 175  | 146  | 124  | 144  | 155  | 205  | 180  | 165  |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 127  | 258  | 277  | 310  | 217  | 228  | 240  | 209  | 186  |
| <b>TOTAL</b>  | 3985 | 4591 | 4735 | 4801 | 4867 | 4782 | 5040 | 4781 | 4647 |

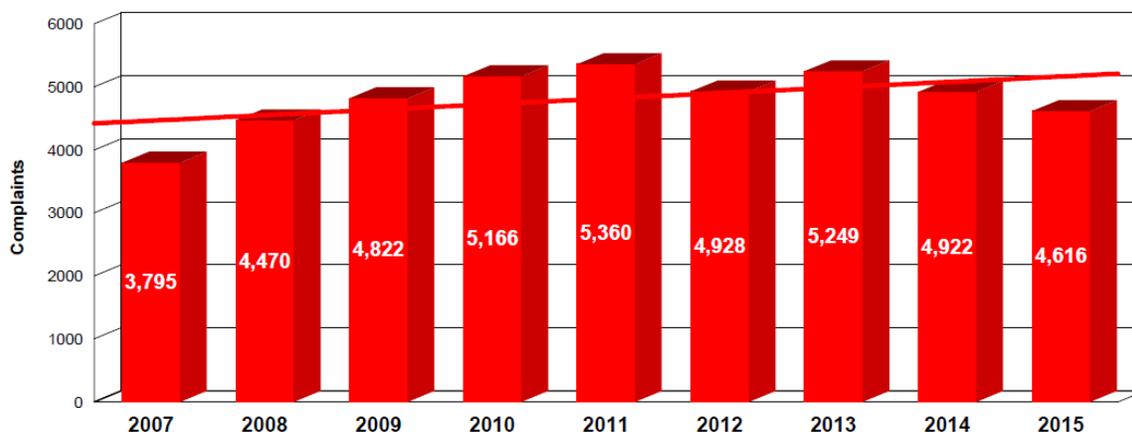
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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

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**Graph 1B: Complaints Closed<sup>2</sup> in the Division**



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

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 4107 | 4303 | 4312 | 3932 | 4174 | 3813 | 3650 |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 108  | 88   | 122  | 112  | 107  |
| <b>Complaints against Licensed Paralegals</b>           | 459  | 536  | 536  | 486  | 487  | 570  | 494  |
| <b>Paralegal Applicant Cases ★</b>                      | 0    | 0    | 160  | 163  | 206  | 195  | 155  |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 256  | 327  | 244  | 259  | 260  | 232  | 210  |
| <b>TOTAL</b>  | 4822 | 5166 | 5360 | 4928 | 5249 | 4922 | 4616 |

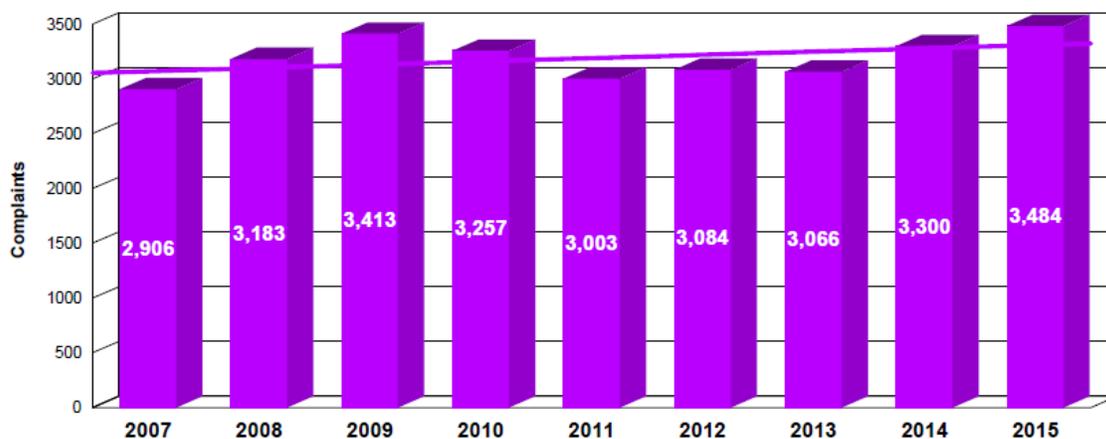
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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

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



*The value in each bar represents the Inventory at the end of the period*

### Detailed Analysis of Total Inventory in the Division

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 2951 | 2675 | 2465 | 2546 | 2449 | 2661 | 2768 |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 18   | 31   | 25   | 29   | 29   |
| <b>Complaints against Licensed Paralegals</b>           | 322  | 422  | 306  | 322  | 398  | 438  | 510  |
| <b>Paralegal Applicant Cases ★</b>                      | 0    | 0    | 72   | 60   | 67   | 50   | 63   |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 140  | 160  | 142  | 125  | 127  | 122  | 114  |
| <b>TOTAL</b>  | 3413 | 3257 | 3003 | 3084 | 3066 | 3300 | 3484 |

★ Applicant cases include good character cases and UAP complaints

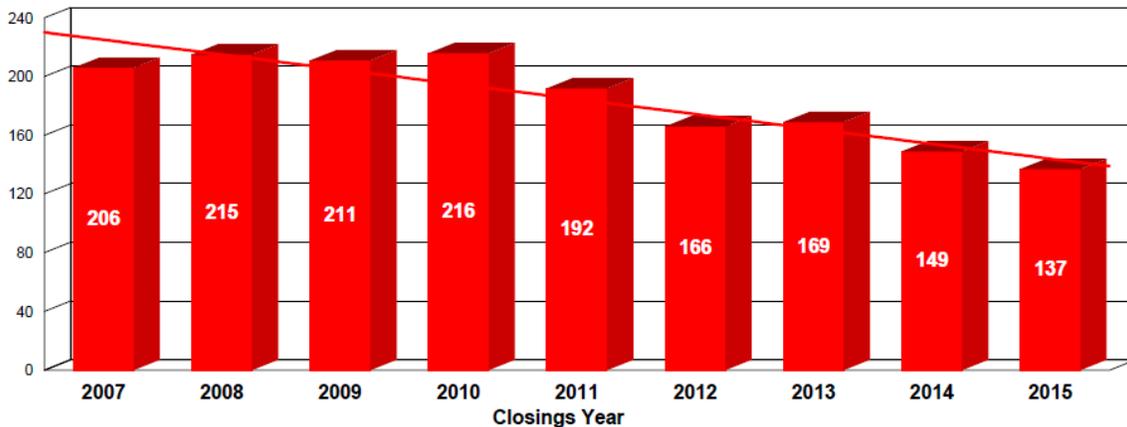
\* For a complete analysis of UAP complaints see section 2.4.

<sup>3</sup> These graphs do not include active complaints (enforcement matters) in the Monitoring & Enforcement Department.

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**Graph 1D: Median Age of Closed Complaints (days)<sup>3</sup>**



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## **SECTION 2**

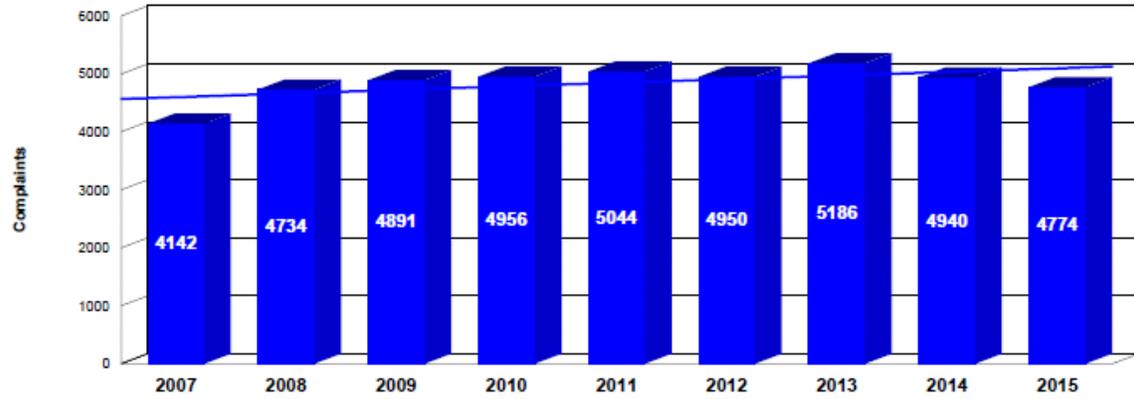
# **DEPARTMENTAL PERFORMANCE DURING THE QUARTER**

The Law Society of Upper Canada  
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## 2.1 – Intake

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



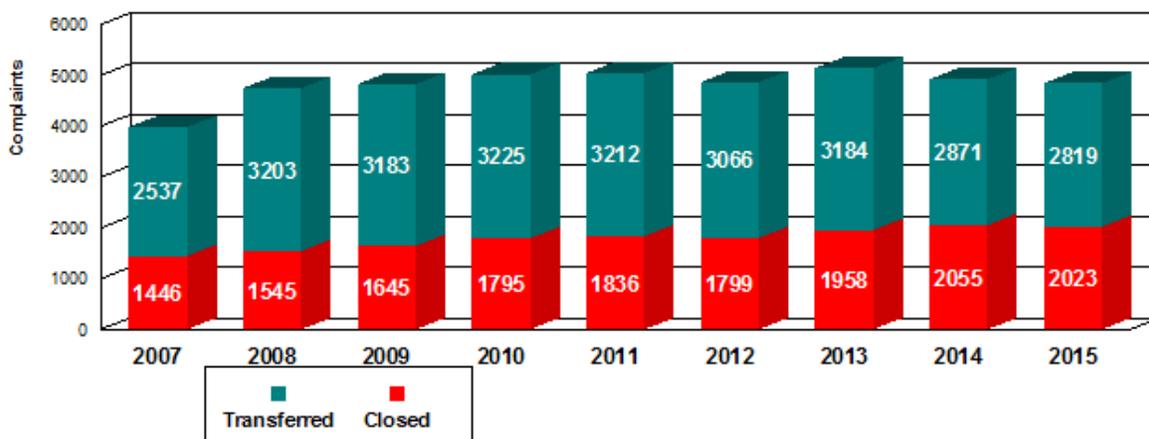
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<sup>4</sup>Includes new complaints received and re-opened complaints

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## 2.1 – Intake

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



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

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 4055 | 4025 | 4062 | 3895 | 3991 | 3851 | 3807 |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 94   | 98   | 113  | 119  | 106  |
| <b>Complaints against Licensed Paralegals</b>           | 450  | 626  | 508  | 483  | 568  | 556  | 550  |
| <b>Paralegal Applicant Cases ★</b>                      | 38   | 0    | 150  | 157  | 197  | 188  | 165  |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 285  | 369  | 234  | 232  | 273  | 212  | 214  |
| <b>TOTAL</b>  | 4828 | 5020 | 5048 | 4865 | 5142 | 4926 | 4842 |

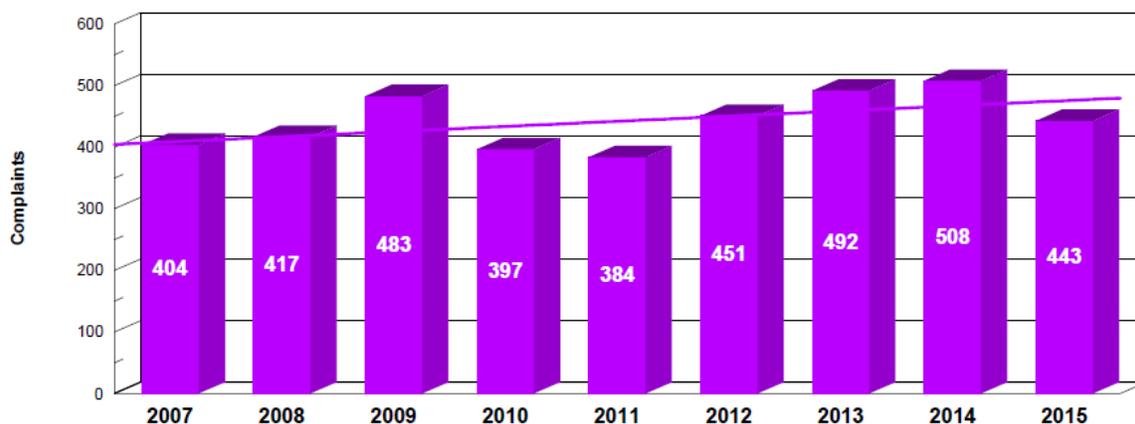
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.1 – Intake

**Graph 2.1 C: Department Inventory**



*The value in each bar represents the inventory at the end of the period*

### Detailed Analysis of Inventory by Subject Types

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 404  | 342  | 338  | 399  | 415  | 437  | 380  |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 0    | 2    | 4    | 1    | 1    |
| <b>Complaints against Licensed Paralegals</b>           | 33   | 35   | 29   | 32   | 54   | 50   | 56   |
| <b>Paralegal Applicant Cases ★</b>                      | 0    | 0    | 2    | 0    | 9    | 0    | 0    |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 46   | 20   | 15   | 18   | 10   | 20   | 6    |
| <b>TOTAL</b>  | 483  | 397  | 384  | 451  | 492  | 508  | 443  |

★ Applicant cases include good character cases and UAP complaints

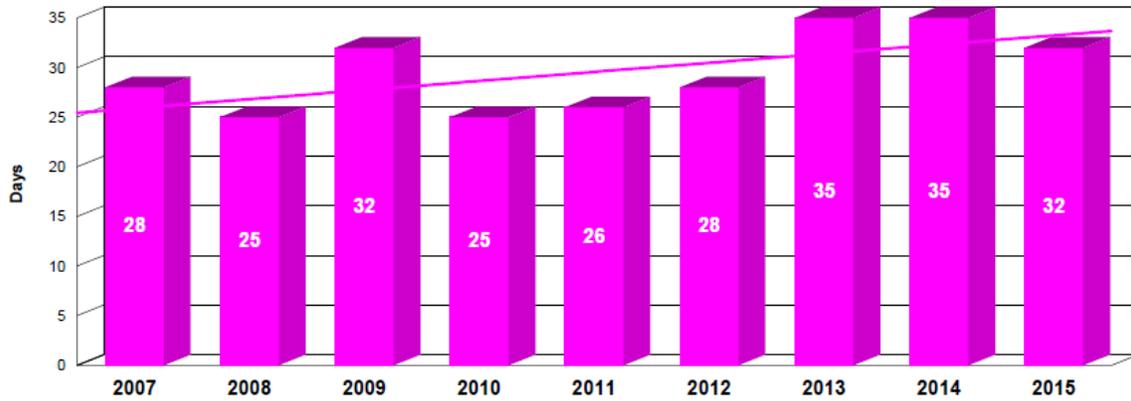
\* For a complete analysis of UAP complaints see section 2.4

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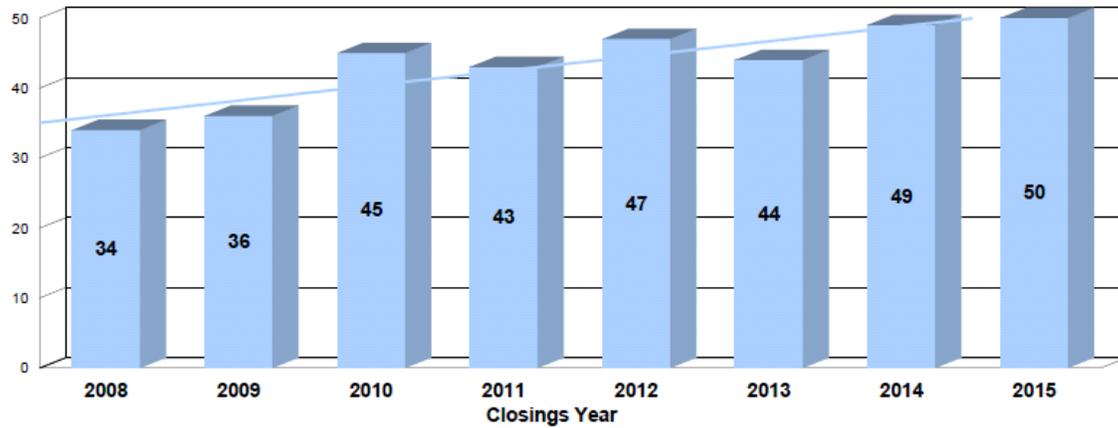
## 2.1 – Intake

**Graph 2.1D: Median Age of Active Complaints**



*The value in each bar represents the Median Age at the end of the period*

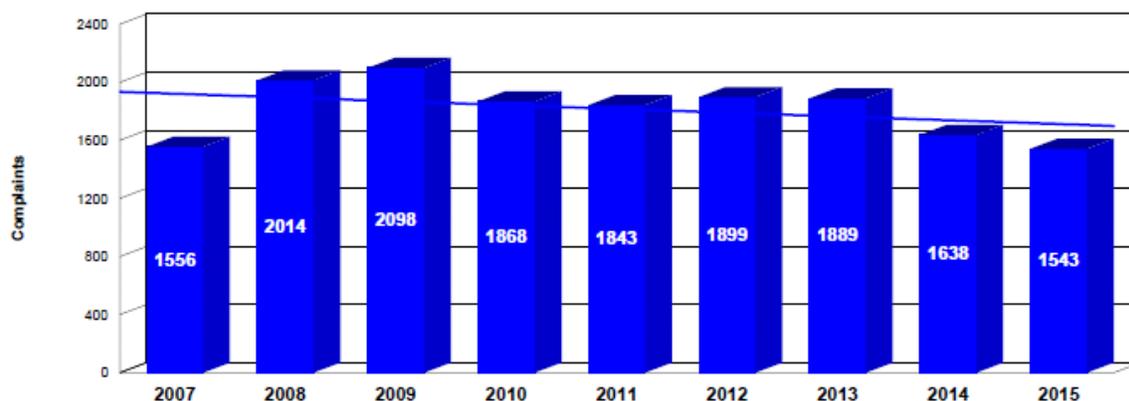
**Graph 2.1E: Median Age of Closed Complaints (days)**



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## 2.2 – Complaints Resolution

Graph 2.2A: Input<sup>5</sup>



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

|   | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 1493 | 1901 | 1896 | 1693 | 1692 | 1736 | 1683 | 1426 | 1377 |
| <b>Lawyer Applicant Cases ★</b>                         | 8    | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>Complaints against Licensed Paralegals</b>           | 0    | 63   | 137  | 171  | 149  | 163  | 205  | 210  | 165  |
| <b>Paralegal Applicant Cases ★</b>                      | 6    | 5    | 2    | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 49   | 45   | 62   | 4    | 2    | 0    | 1    | 2    | 1    |
| <b>TOTAL</b>  | 1556 | 2014 | 2098 | 1868 | 1843 | 1899 | 1889 | 1638 | 1543 |

★ Applicant cases include good character cases and UAP complaints

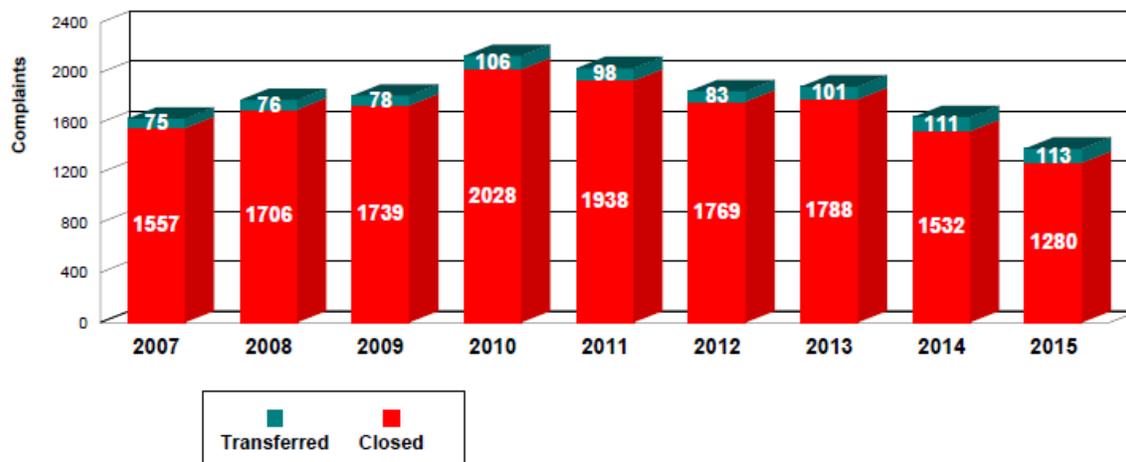
\* For a complete analysis of UAP complaints see section 2.4.

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

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## 2.2 – Complaints Resolution

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



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

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 1685 | 1938 | 1864 | 1698 | 1709 | 1460 | 1214 |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>Complaints against Licensed Paralegals</b>           | 93   | 162  | 179  | 154  | 179  | 183  | 178  |
| <b>Paralegal Applicant Cases ★</b>                      | 1    | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 38   | 34   | 3    | 0    | 1    | 0    | 1    |
| <b>TOTAL</b>  | 1817 | 2134 | 2036 | 1852 | 1889 | 1643 | 1393 |

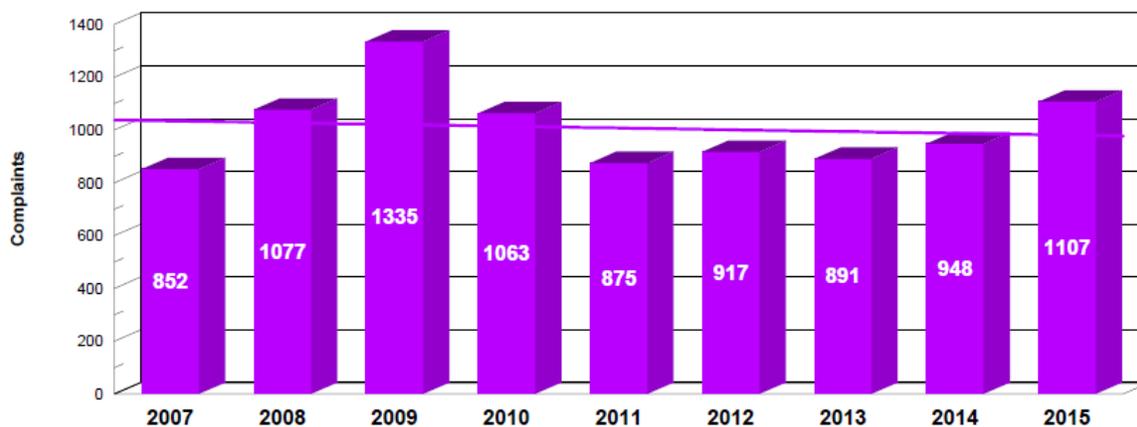
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.2 – Complaints Resolution

**Graph 2.2C: Department Inventory**



*The value in each bar represents the Inventory at the end of the period*

### Detailed Analysis of Inventory by Subject Types

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 1216 | 966  | 800  | 830  | 811  | 836  | 1009 |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>Complaints against Licensed Paralegals</b>           | 88   | 96   | 75   | 87   | 80   | 110  | 97   |
| <b>Paralegal Applicant Cases ★</b>                      | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 31   | 1    | 0    | 0    | 0    | 2    | 1    |
| <b>TOTAL</b>  | 1335 | 1063 | 875  | 917  | 891  | 948  | 1107 |

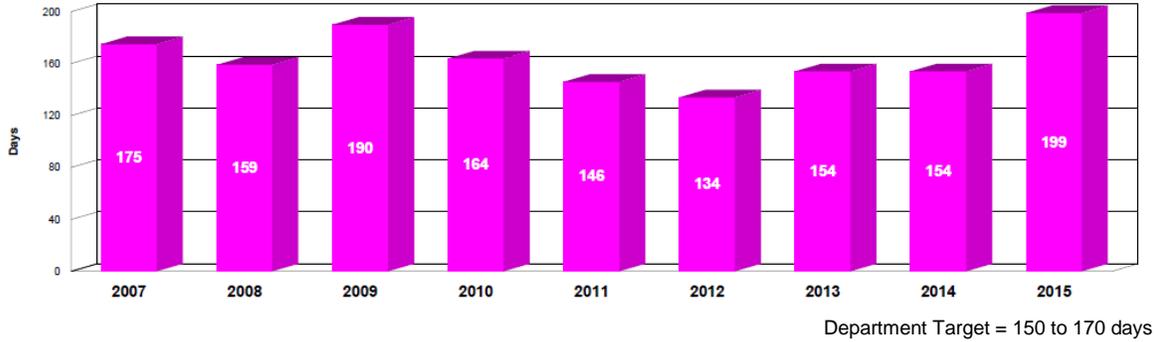
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

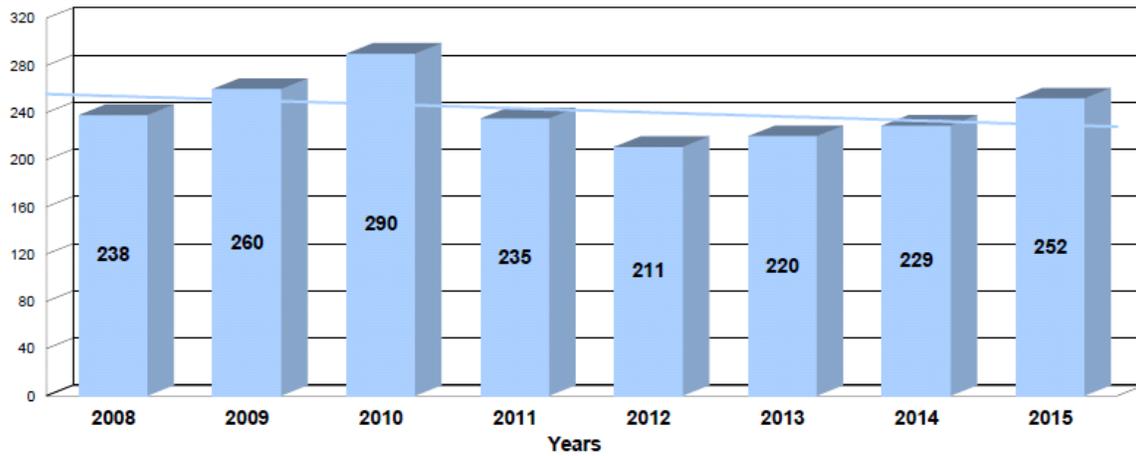
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## 2.2 – Complaints Resolution

**Graph 2.2D: Median Age of Active Complaints**



**Graph 2.2E: Median Age of Completed<sup>6</sup> Complaints**

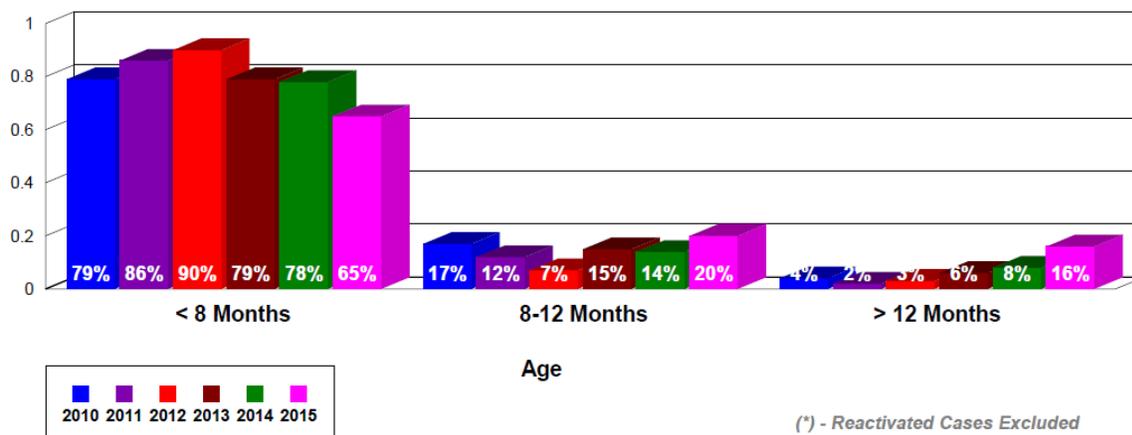


<sup>6</sup> Included are complaints closed by Complaints Resolution or transferred by the department to Discipline.

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## 2.2 – Complaints Resolution

**Graph 2.2F: Aging of Complaints**



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

|             | <8 months                        | 8 to 12 months                   | >12 months                       |
|-------------|----------------------------------|----------------------------------|----------------------------------|
| <b>2010</b> | 766 cases involving 712 subjects | 165 cases involving 130 subjects | 39 cases involving 35 subjects   |
| <b>2011</b> | 676 cases involving 614 subjects | 93 cases involving 82 subjects   | 19 cases involving 16 subjects   |
| <b>2012</b> | 765 cases involving 679 subjects | 55 cases involving 48 subjects   | 29 cases involving 19 subjects   |
| <b>2013</b> | 658 cases involving 600 subjects | 124 cases involving 119 subjects | 51 cases involving 43 subjects   |
| <b>2014</b> | 673 cases involving 620 subjects | 120 cases involving 112 subjects | 73 cases involving 60 subjects   |
| <b>2015</b> | 667 cases involving 610 subjects | 203 cases involving 191 subjects | 160 cases involving 132 subjects |

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

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

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## 2.2 – Complaints Resolution

**Chart 2.2G: Percentage of Total Cases Closed in Year by Disposition**

|                           | 2010                 | 2011                 | 2012                 | 2013                 | 2014                 | 2015                 |
|---------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| <b>Discontinued</b>       | 14%                  | 13%                  | 13%                  | 17%                  | 17%                  | 16%                  |
| <b>Found</b>              | 36%                  | 37%                  | 36%                  | 34%                  | 34%                  | 28% <sup>7</sup>     |
| <b>Not Found</b>          | 49%                  | 48%                  | 50%                  | 48%                  | 49%                  | 55% <sup>7</sup>     |
| <b>PAC Closing</b>        | 1%                   | 2%                   | 1%                   | 1%                   | 1%                   | 1%                   |
| <b>Total cases closed</b> | 100%<br>(2028 cases) | 100%<br>(1938 cases) | 100%<br>(1769 cases) | 100%<br>(1788 cases) | 100%<br>(1532 cases) | 100%<br>(1280 cases) |

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

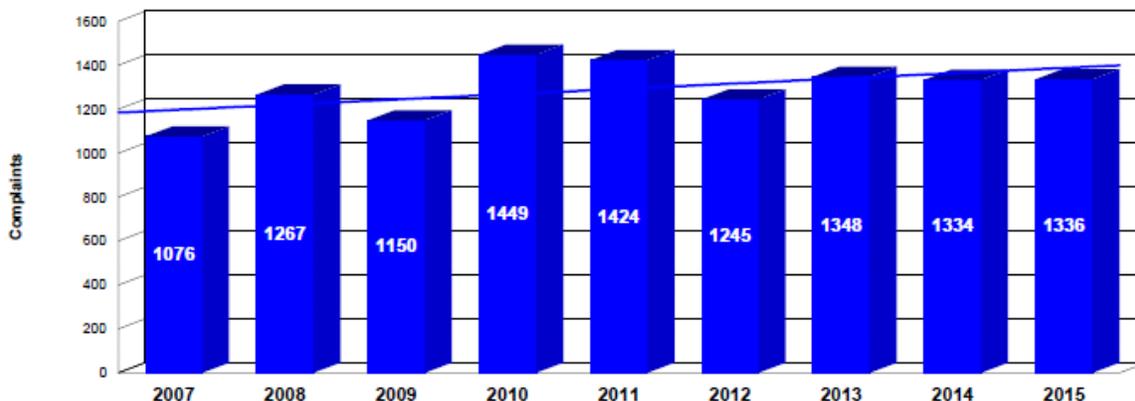
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<sup>7</sup> Differences noted between 2014 and 2015 are significant to  $p > .001$

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## 2.3 – Investigations

Graph 2.3A: Input



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

|   | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 818  | 893  | 810  | 935  | 930  | 798  | 821  | 927  | 879  |
| <b>Lawyer Applicant Cases ★</b>                         | 30   | 27   | 39   | 0    | 34   | 37   | 47   | 28   | 28   |
| <b>Complaints against Licensed Paralegals</b>           | 0    | 29   | 87   | 288  | 237  | 190  | 230  | 192  | 252  |
| <b>Paralegal Applicant Cases ★</b>                      | 174  | 196  | 125  | 0    | 66   | 77   | 85   | 53   | 55   |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 54   | 122  | 89   | 226  | 155  | 141  | 163  | 134  | 122  |
| <b>TOTAL</b>  | 1076 | 1267 | 1150 | 1449 | 1422 | 1243 | 1346 | 1334 | 1336 |

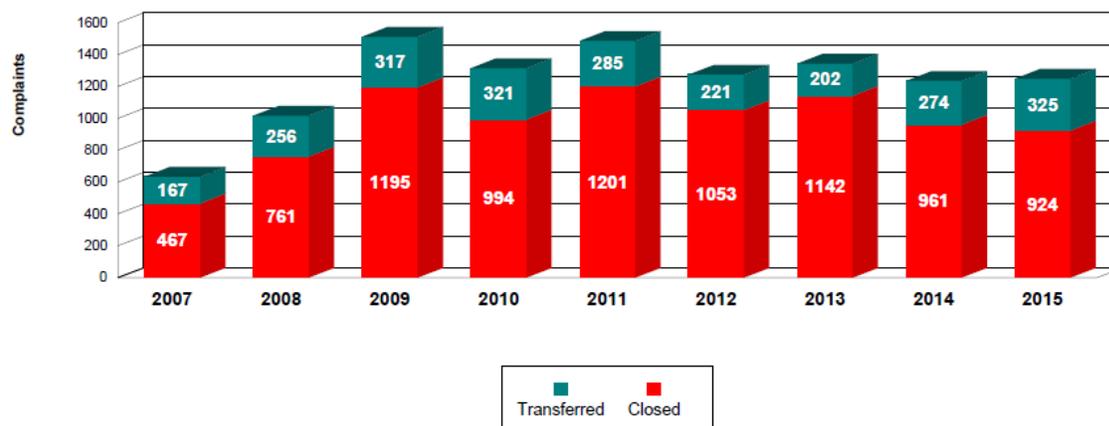
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.3 – Investigations

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



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

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 1110 | 952  | 1012 | 815  | 875  | 808  | 832  |
| <b>Lawyer Applicant Cases ★</b>                         | 10   | 40   | 40   | 27   | 52   | 20   | 30   |
| <b>Complaints against Licensed Paralegals</b>           | 275  | 219  | 219  | 206  | 175  | 195  | 240  |
| <b>Paralegal Applicant Cases ★</b>                      | 39   | 0    | 60   | 69   | 96   | 48   | 43   |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 78   | 176  | 155  | 157  | 147  | 164  | 104  |
| <b>TOTAL</b>  | 1512 | 1315 | 1486 | 1274 | 1344 | 1235 | 1248 |

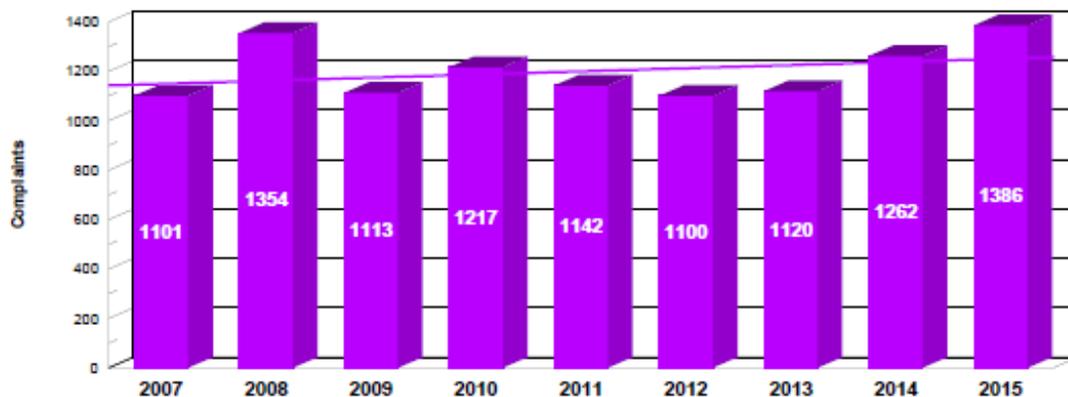
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.3 – Investigations

**Graph 2.3C: Department Inventory**



*The value in each bar represents the Inventory at the end of the period*

### Detailed Analysis of Inventory by Subject Types

|   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| <b>Complaints against Lawyers</b>                       | 965  | 921  | 822  | 796  | 759  | 906  | 982  |
| <b>Lawyer Applicant Cases ★</b>                         | 0    | 0    | 15   | 25   | 20   | 27   | 27   |
| <b>Complaints against Licensed Paralegals</b>           | 87   | 186  | 161  | 145  | 202  | 210  | 224  |
| <b>Paralegal Applicant Cases ★</b>                      | 0    | 0    | 37   | 43   | 36   | 41   | 53   |
| <b>Complaints against Non-Licensees/Non-Applicants*</b> | 61   | 110  | 107  | 91   | 103  | 78   | 100  |
| <b>TOTAL</b>  | 1113 | 1217 | 1142 | 1100 | 1120 | 1262 | 1386 |

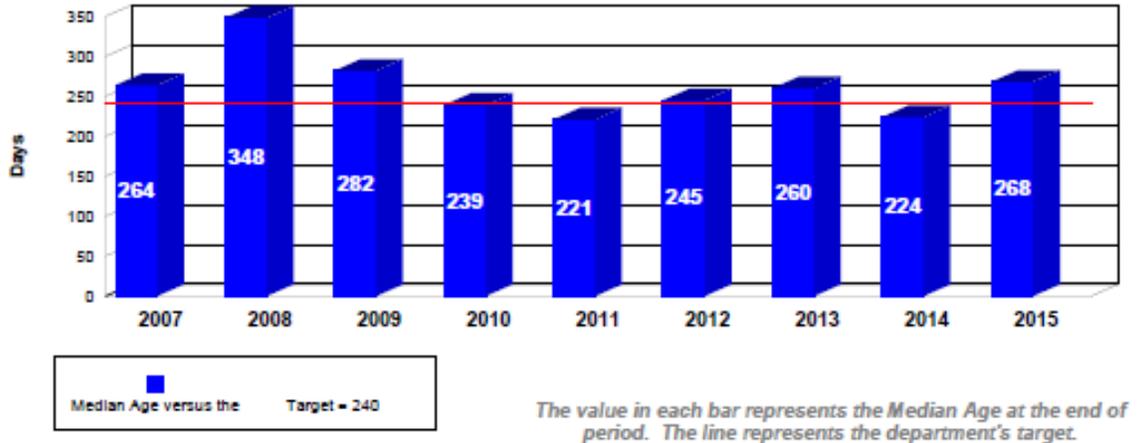
★ Applicant cases include good character cases and UAP complaints

\*For a complete analysis of UAP complaints see section 2.4.

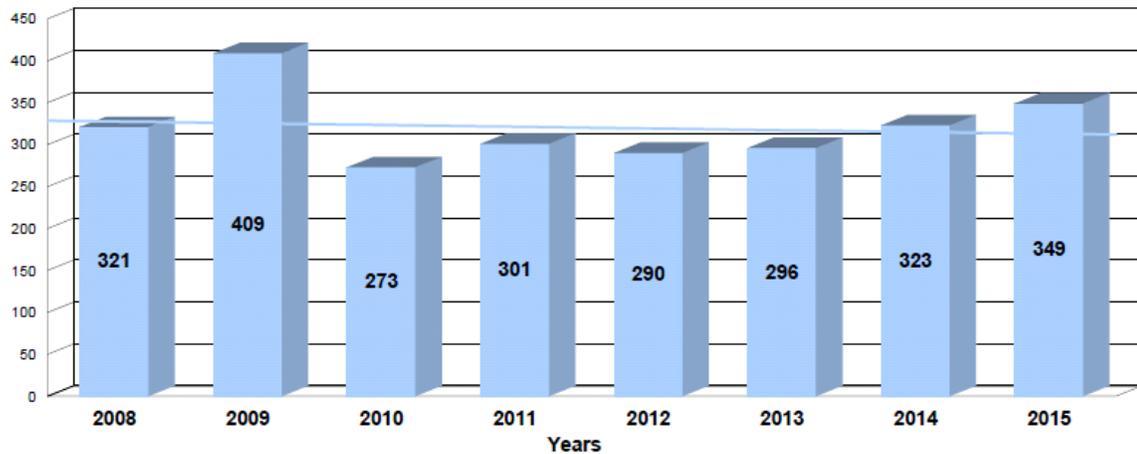
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## 2.3 – Investigations

**Graph 2.3D: Median Age of Active Complaints**



**Graph 2.3E: Median Age of Completed<sup>8</sup> Complaints**



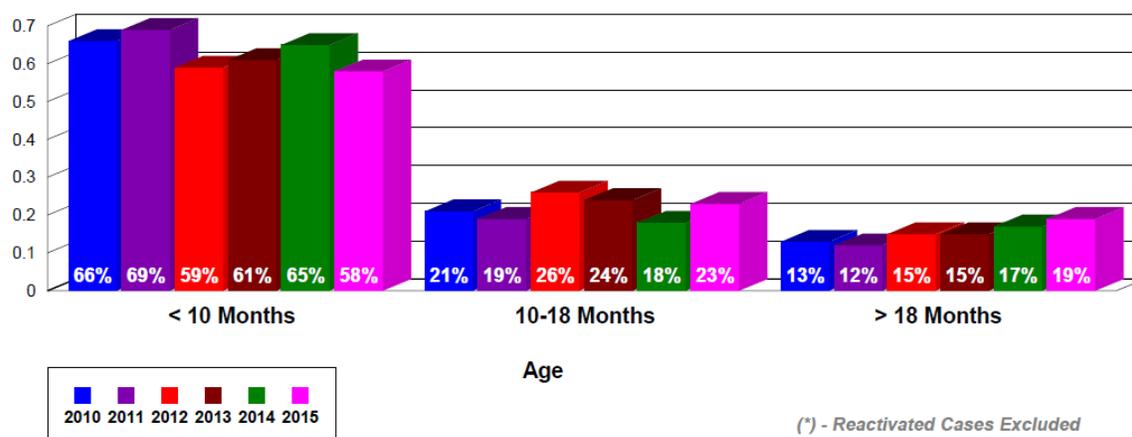
<sup>8</sup> Included are complaints closed by Investigations or transferred by the department to Discipline.

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## 2.3 – Investigations

Graph 2.3F: Aging of Complaints

(a) Core Cases



|             | <10 months                       | 10 to 18 months                  | >18 months                       |
|-------------|----------------------------------|----------------------------------|----------------------------------|
| <b>2010</b> | 659 cases involving 526 subjects | 210 cases involving 151 subjects | 130 cases involving 96 subjects  |
| <b>2011</b> | 669 cases involving 529 subjects | 181 cases involving 145 subjects | 113 cases involving 87 subjects  |
| <b>2012</b> | 550 cases involving 457 subjects | 245 cases involving 208 subjects | 142 cases involving 113 subjects |
| <b>2013</b> | 591 cases involving 451 subjects | 228 cases involving 177 subjects | 147 cases involving 109 subjects |
| <b>2014</b> | 693 cases involving 451 subjects | 193 cases involving 152 subjects | 181 cases involving 191 subjects |
| <b>2015</b> | 695 cases involving 543 subjects | 282 cases involving 222 subjects | 230 cases involving 148 subjects |

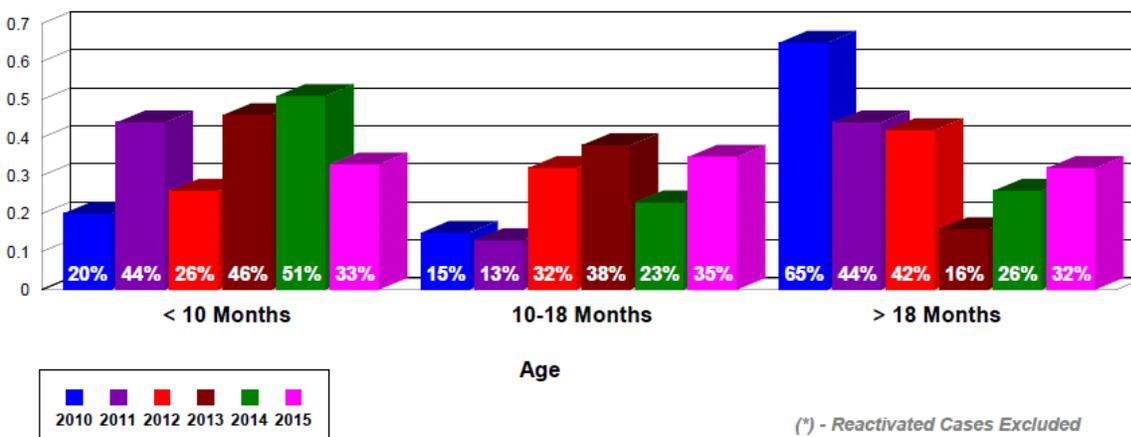
While the department strives to reduce the proportion of cases in the older time frame and to increase the proportion of cases in the youngest time frame, it is recognized that there are cases that are older than 18 months in Investigations for various reasons, including:

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

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## 2.3 – Investigations

### (b) Mortgage Fraud Cases



|             | <10 months                     | 10 to 18 months                | >18 months                     |
|-------------|--------------------------------|--------------------------------|--------------------------------|
| <b>2010</b> | 19 cases involving 15 subjects | 14 cases involving 11 subjects | 61 cases involving 49 subjects |
| <b>2011</b> | 42 cases involving 31 subjects | 13 cases involving 9 subjects  | 41 cases involving 30 subjects |
| <b>2012</b> | 14 cases involving 10 subjects | 17 cases involving 16 subjects | 21 cases involving 17 subjects |
| <b>2013</b> | 35 cases involving 28 subjects | 29 cases involving 19 subjects | 26 cases involving 21 subjects |
| <b>2014</b> | 57 cases involving 41 subjects | 26 cases involving 21 subjects | 29 cases involving 26 subjects |
| <b>2015</b> | 30 cases involving 22 subjects | 32 cases involving 19 subjects | 29 cases involving 25 subjects |

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

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

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## 2.3 – Investigations

**Chart 2.3G: Percentage of Total Cases Closed in Year by Disposition**

|                           | 2010                | 2011                 | 2012                 | 2013                 | 2014                | 2015                |
|---------------------------|---------------------|----------------------|----------------------|----------------------|---------------------|---------------------|
| <b>Discontinued</b>       | 28%                 | 29%                  | 27%                  | 24%                  | 32%                 | 31%                 |
| <b>Found</b>              | 21%                 | 23%                  | 26%                  | 28%                  | 34%                 | 29% <sup>9</sup>    |
| <b>Not Found</b>          | 48%                 | 47%                  | 45%                  | 42%                  | 31%                 | 37% <sup>9</sup>    |
| <b>PAC Closing</b>        | 2%                  | 2%                   | 3%                   | 6%                   | 3%                  | 3%                  |
| <b>Total cases closed</b> | 100%<br>(994 cases) | 100%<br>(1201 cases) | 100%<br>(1053 cases) | 100%<br>(1142 cases) | 100%<br>(961 cases) | 100%<br>(924 cases) |

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

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<sup>9</sup> Differences noted between 2014 and 2015 are significant to  $p > .01$ .

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## 2.4 – Unauthorized Practice (UAP)

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

| Quarter | New | Closed/Transferred |                |                            | Inventory at Year End |
|---------|-----|--------------------|----------------|----------------------------|-----------------------|
|         |     | Closed             | Transfer to CR | Transfer to Investigations |                       |
| 2010    | 330 | 151                | 1              | 249                        | 18                    |
| 2011    | 255 | 87                 | 2              | 206                        | 15                    |
| 2012    | 256 | 86                 | 0              | 182                        | 19                    |
| 2013    | 260 | 102                | 0              | 197                        | 11                    |
| 2014    | 223 | 77                 | 0              | 154                        | 21                    |
| 2015    | 196 | 79                 | 0              | 151                        | 6                     |

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

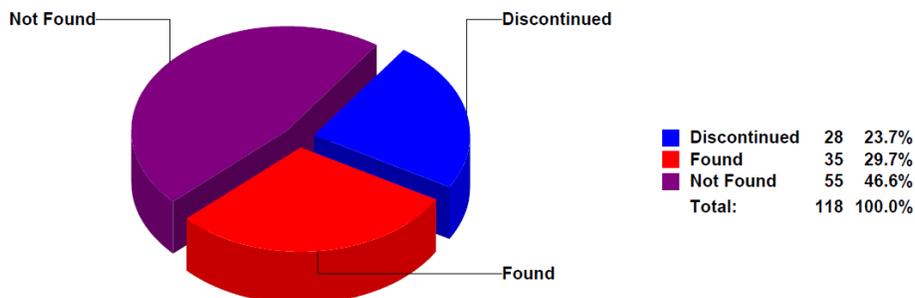
|      | New |     | Closed <sup>10</sup> |     | Inventory |     |
|------|-----|-----|----------------------|-----|-----------|-----|
|      | CR  | INV | CR                   | INV | CR        | INV |
| 2010 | 1   | 249 | 28                   | 190 | 124       |     |
| 2011 | 2   | 206 | 0                    | 188 | 140       |     |
| 2012 | 0   | 182 | 1                    | 185 | 131       |     |
| 2013 | 0   | 197 | 0                    | 187 | 137       |     |
| 2014 | 0   | 154 | 0                    | 206 | 90        |     |
| 2015 | 0   | 151 | 0                    | 129 | 112       |     |

<sup>10</sup>“Closed” refers to completed investigations and therefore consists of both those investigations that were closed by the Law Society and those that were referred for prosecution/injunctive relief.

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## 2.4 – Unauthorized Practice (UAP)

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



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

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

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

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

**Graph 2.4D: UAP Enforcement Actions**

In 2015,

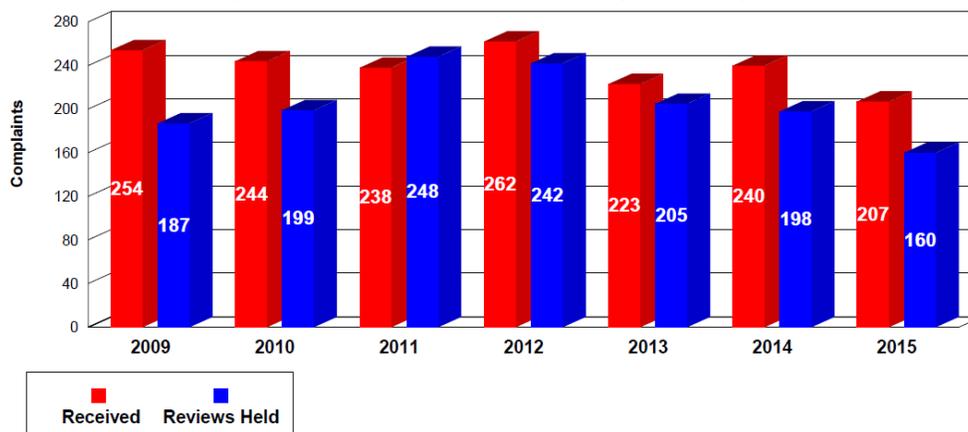
- 4 matters were initiated in the courts, all seeking permanent injunctions.
- 1 appeal was launched in which an injunction had been ordered.
- 5 matters were completed, including
  - 3 matters in which injunctions were obtained.
  - 1 matter in which a finding of contempt was made.
  - 1 matter in which an appeal of an injunction was dismissed for delay.
  - 1 matter in which leave to appeal to the Supreme Court of Canada was denied.

There were 4 active UAP matters as at December 31, 2015.

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## 2.5 – Complaints Resolution Commissioner

**Graph 2.5A: Reviews Requested and Files Reviewed (by Quarter)<sup>11</sup>**



**Graph 2.5B: Decisions Rendered, by Year**

| Year | Decisions Rendered<br>(# of decisions where review in<br>previous quarter(s)) | Files to Remain<br>Closed | Files Referred<br>Back to PRD |
|------|---|---------------------------|-------------------------------|
| 2009 | 194   | 174 (90%)                 | 20 (10%)                      |
| 2010 | 193   | 160 (83%)                 | 33 (17%)                      |
| 2011 | 260   | 248 (95%)                 | 12 (5%)                       |
| 2012 | 242   | 224 (93%)                 | 18 (7%)                       |
| 2013 | 205   | 192(94%)                  | 13(6%)                        |
| 2014 | 167   | 160 (96%)                 | 7 (4%)                        |
| 2015 | 161   | 150 (93%)                 | 11 (7%)                       |

Of the 161 decisions rendered in 2015, the Commissioner sent 11 files back to Professional Regulation. In 10 of these cases, the Commissioner was not satisfied that the decision to close was reasonable and referred the cases back with a recommendation for further investigation. With respect to 1 case, while he found the Law Society's decision to close the case reasonable, the Commissioner referred the case back to consider new information provided by the Complainant during the review.

With respect to the 11 cases referred back, the Executive Director of Professional Regulation, as at December 31, 2015:

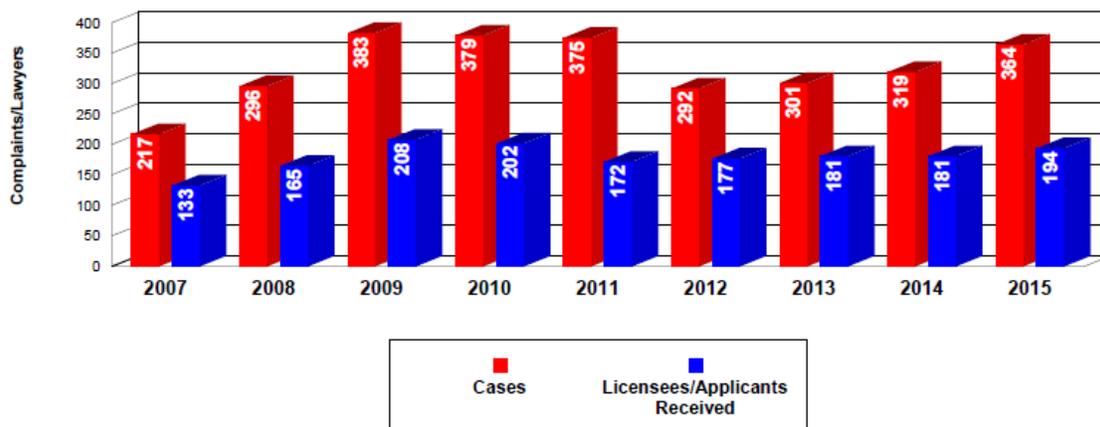
- adopted the recommendation in 8 cases;
- had not rendered a decision with respect to 3 cases referred back in December 2015.

<sup>11</sup> In addition to the 207 requests received in 2015, 54 requests were received (for cases closed in Complaints Services and Intake) over which the Commissioner had no jurisdiction.

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## 2.6 – Discipline

Graph 2.6A: Input<sup>12</sup>



### Detailed Analysis of New Cases Received in Discipline

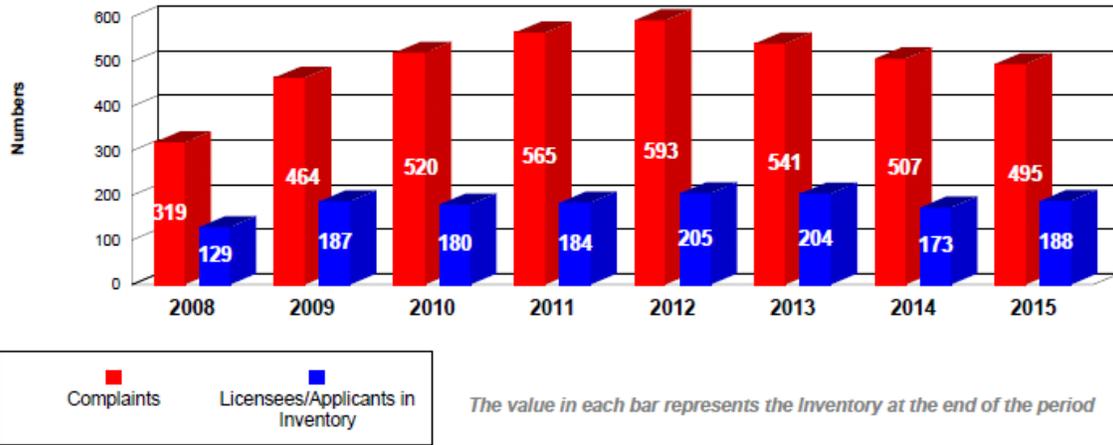
|                             |                        | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-----------------------------|------------------------|------|------|------|------|------|------|------|------|------|
| <b>Lawyers</b>              | Cases                  | 200  | 252  | 248  | 304  | 317  | 226  | 238  | 267  | 242  |
|                             | Lawyers                | 117  | 129  | 139  | 162  | 137  | 143  | 135  | 150  | 132  |
| <b>Lawyer Applicants</b>    | Cases                  | 17   | 11   | 4    | 0    | 5    | 4    | 1    | 1    | 3    |
|                             | Applicants             | 16   | 6    | 6    | 1    | 3    | 4    | 1    | 1    | 3    |
| <b>Licensed Paralegals</b>  | Cases                  | 0    | 0    | 123  | 74   | 35   | 56   | 49   | 46   | 108  |
|                             | Paralegals             | 0    | 0    | 7    | 25   | 25   | 26   | 37   | 25   | 52   |
| <b>Paralegal Applicants</b> | Cases                  | 0    | 33   | 8    | 1    | 18   | 6    | 13   | 5    | 11   |
|                             | Applicants             | 0    | 30   | 56   | 14   | 7    | 4    | 8    | 5    | 7    |
| <b>TOTAL</b>                | Cases                  | 217  | 296  | 383  | 379  | 375  | 292  | 301  | 319  | 364  |
|                             | Licensees & Applicants | 133  | 165  | 208  | 202  | 172  | 177  | 181  | 181  | 194  |

<sup>12</sup>“Input” refers to complaints that were transferred into Discipline from various other departments during the specific quarter. It includes new complaints/cases received in Discipline and the lawyers/applicants to which the new complaints relate. New appeals commenced in the period are not included in these numbers.

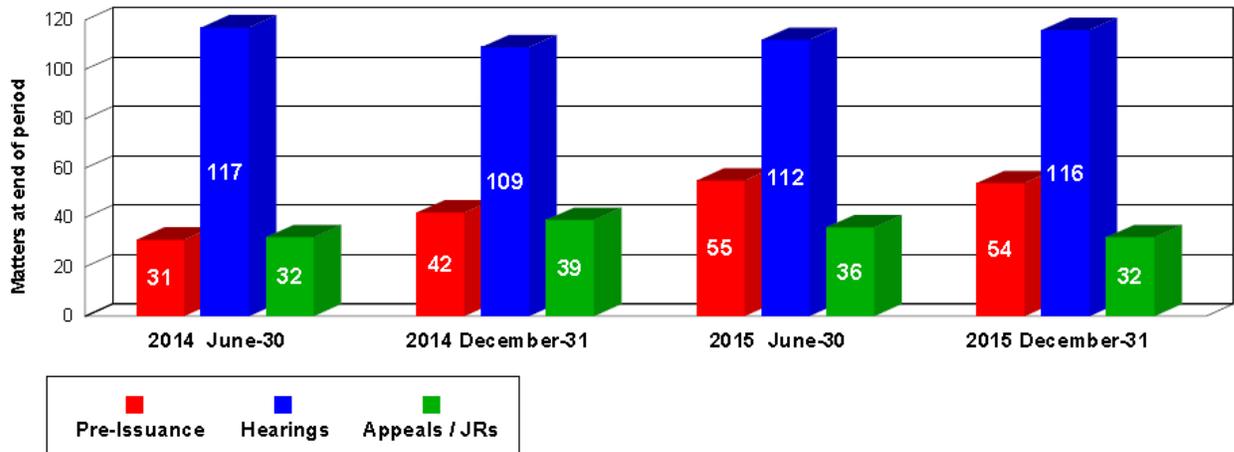
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## 2.6 – Discipline

**Graph 2.6B: Department Inventory<sup>13</sup>**



**Graph 2.6C: Inventory of Discipline Matters<sup>14</sup>**



<sup>13</sup> Consists primarily of complaints and lawyers/applicants that are in scheduling and are with the Hearing Panel or on appeal.

<sup>14</sup> A licensee may have more than one matter ongoing at a time (e.g. a licensee may have an ongoing hearing before the Hearing Division and a judicial review in Divisional Court).

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## 2.6 – Discipline

**Graph 2.6D: Matters Authorized by PAC**

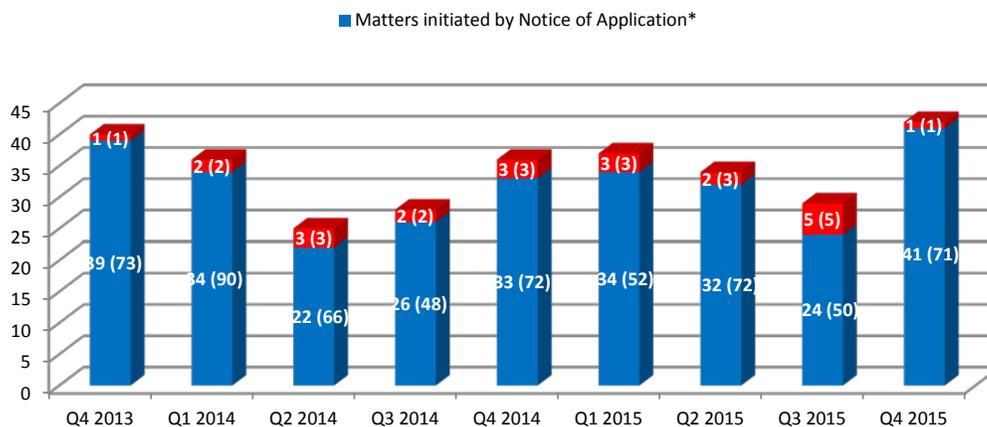
|                                     |           | Totals<br>for 2010 | Totals<br>for 2011 | Totals for<br>2012 | Totals<br>for 2013 | Totals<br>for 2014 | Totals<br>for 2015 |
|-------------------------------------|-----------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Conduct</b>                      | Lawyer    | 123<br>(SH-45)*    | 104<br>(SH-26)*    | 104<br>(SH-31)*    | 121<br>(SH-36)*    | 82<br>(31 SH)*     | 104<br>(35 SH)*    |
|                                     | Paralegal | 14<br>(SH-4)*      | 30<br>(SH-9)*      | 21<br>(SH-12)*     | 41<br>(SH-12)      | 17<br>(7)*         | 27<br>(11 SH)*     |
| <b>Capacity</b>                     | Lawyer    | 1                  | -                  | 5                  | 4                  | 3                  | 3                  |
|                                     | Paralegal | -                  | -                  | -                  | -                  | 0                  | 0                  |
| <b>Competency</b>                   | Lawyer    | -                  | -                  | -                  | -                  | 0                  | 0                  |
|                                     | Paralegal | -                  | -                  | -                  | -                  | 0                  | 0                  |
| <b>Non-Compliance</b>               | Lawyer    | -                  | -                  | -                  | -                  | 0                  | 0                  |
|                                     | Paralegal | -                  | -                  | -                  | -                  | 0                  | 0                  |
| <b>Interlocutory<br/>Suspension</b> | Lawyer    | 8                  | 4                  | 2                  | 5                  | 11                 | 10                 |
|                                     | Paralegal | -                  | -                  | 1                  | -                  | 3                  | 3                  |
| <b>Licensing</b>                    | Lawyer    | 4                  | 2                  | 3                  | 3                  | 4                  | 4                  |
|                                     | Paralegal | 8                  | 2                  | 1                  | 4                  | 1                  | 6                  |
| <b>Invitation to Attend</b>         | Lawyer    | 10                 | 14                 | 34                 | 31                 | 14                 | 23                 |
|                                     | Paralegal | 1                  | -                  | -                  | 3                  | 5                  | 5                  |
| <b>Letter of Advice</b>             | Lawyer    | 11                 | 8                  | 9                  | 24                 | 7                  | 8                  |
|                                     | Paralegal | -                  | -                  | -                  | 3                  | 0                  | 3                  |
| <b>Regulatory Meeting</b>           | Lawyer    | 2                  | 5                  | 3                  | 3                  | 1                  | 2                  |
|                                     | Paralegal | 1                  | -                  | -                  | -                  | 0                  | 0                  |
| <b>Yearly Totals</b>                | Lawyer    | 159                | 137                | 160                | 191                | 122                | 153                |
|                                     | Paralegal | 24                 | 32                 | 23                 | 51                 | 26                 | 44                 |
| <b>TOTAL</b>                        |           | <b>183</b>         | <b>169</b>         | <b>183</b>         | <b>242</b>         | <b>148</b>         | <b>197</b>         |

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

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## 2.6 – Discipline

**Graph 2.6E: Notices Issued in the Hearing Division**



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

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

The numbers in each bar indicate the number of notices issued and, in brackets, the number of cases relating to those notices. One notice may relate to more than one case. For example, in Q4 2015, 41 Notices of Application were issued (relating to 71 cases) and 1 Notice of Referral for Hearing was issued (relating to 1 case).

|  | 2010       | 2011       | 2012       | 2013       | 2014       | 2015       |
|--|------------|------------|------------|------------|------------|------------|
| Notices of Application issued                | 125        | 122        | 109        | 147        | 115        | 131        |
| Notices of Application                       | 117        | 118        | 104        | 142        | 101        | 117        |
| Interlocutory Suspension/Restriction motions | 8          | 4          | 3          | 5          | 14         | 14         |
| Notices of Referral for Hearing issued       | 13         | 12         | 6          | 11         | 10         | 11         |
| <b>Total Notices Issued</b>                  | <b>138</b> | <b>134</b> | <b>115</b> | <b>158</b> | <b>125</b> | <b>142</b> |

The National Discipline Standards require that 75% of Notices be issued within 60 days of authorization and 95% of Notices be issued within 90 days of authorization.

- In Q4, 2015, with respect to the 41 Notices of Application<sup>15</sup>/Notices of Motion for Interim Suspension Order and 1 Notice of Referral for Hearing (licensing matters) which were issued<sup>16</sup>:
  - 90% were issued within 60 days of PAC Authorization;
  - 94% were issued within 90 days of PAC Authorization.

<sup>15</sup> Notices of Application are issued with respect to conduct, competency, capacity and non-compliance matters and require authorization by the Proceedings Authorization Committee (PAC).

<sup>16</sup> The other Notice of Referral for Hearing was issued in relation to a reinstatement matter which does not require PAC authorization.

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## 2.6 – Discipline

- In all of 2015, with respect to the 131 Notices of Application<sup>15</sup>/Notices of Motion for Interim Suspension Order and & 9 Notices of Referral for Hearing (licensing matters) which were issued:
  - 84% were issued within 60 days of PAC Authorization;
  - 93% were issued within 90 days of PAC Authorization.

**Graph 2.6F: Discipline – Completed Matters in the Hearing Division**

|   |                      | Total<br>2010 | Total<br>2011 | Total<br>2012 | Total<br>2013 | Total<br>2014 | Total<br>2015 |
|---|----------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <b>Conduct Hearings</b>                           | Lawyers              | 85            | 84            | 82            | 94            | 101*          | 77            |
|   | Paralegal Licensees  | 3             | 17            | 20            | 18            | 23            | 21            |
| <b>Interlocutory Suspension Hearings/Orders</b>   | Lawyers              | 10            | 5             | 4             | 3             | 11            | 8             |
|   | Paralegal Licensees  | -             | -             | 1             | -             | 3             | 3             |
| <b>Capacity Hearings</b>                          | Lawyers              | -             | -             | 5             | 2             | 3             | 5             |
|   | Paralegal Licensees  | -             | -             | -             | -             | -             | -             |
| <b>Competency Hearings</b>                        | Lawyers              | -             | -             | -             | -             | -             | -             |
|   | Paralegal Licensees  | -             | -             | -             | -             | -             | -             |
| <b>Non-Compliance Hearings</b>                    | Lawyers              | -             | -             | 1             | -             | 1*            | 1             |
|   | Paralegal Licensees  | -             | -             | -             | -             | -             | -             |
| <b>Reinstatement Hearings</b>                     | Lawyers              | 3             | 5             | 3             | 1             | 3             | 2             |
|   | Paralegal Licensees  | -             | -             | -             | 1             | 1             | 1             |
| <b>Restoration</b>                                | Lawyers              | -             | -             | -             | -             | -             | -             |
|   | Paralegal Licensees  | -             | -             | -             | -             | -             | -             |
| <b>Licensing Hearings (including Readmission)</b> | Lawyer Applicants    | 7             | 4             | 4             | 4             | 2             | 4             |
|   | Paralegal Applicants | 33            | 7             | 5             | 3             | 4             | 7             |
| <b>TOTAL NUMBER OF HEARINGS</b>                   | Lawyers*             | 105           | 98            | 101           | 104           | 120           | 97            |
|   | Paralegals*          | 36            | 24            | 26            | 22            | 31            | 32            |
|   | <b>TOTAL</b>         | <b>141</b>    | <b>122</b>    | <b>125</b>    | <b>126</b>    | <b>151</b>    | <b>129</b>    |

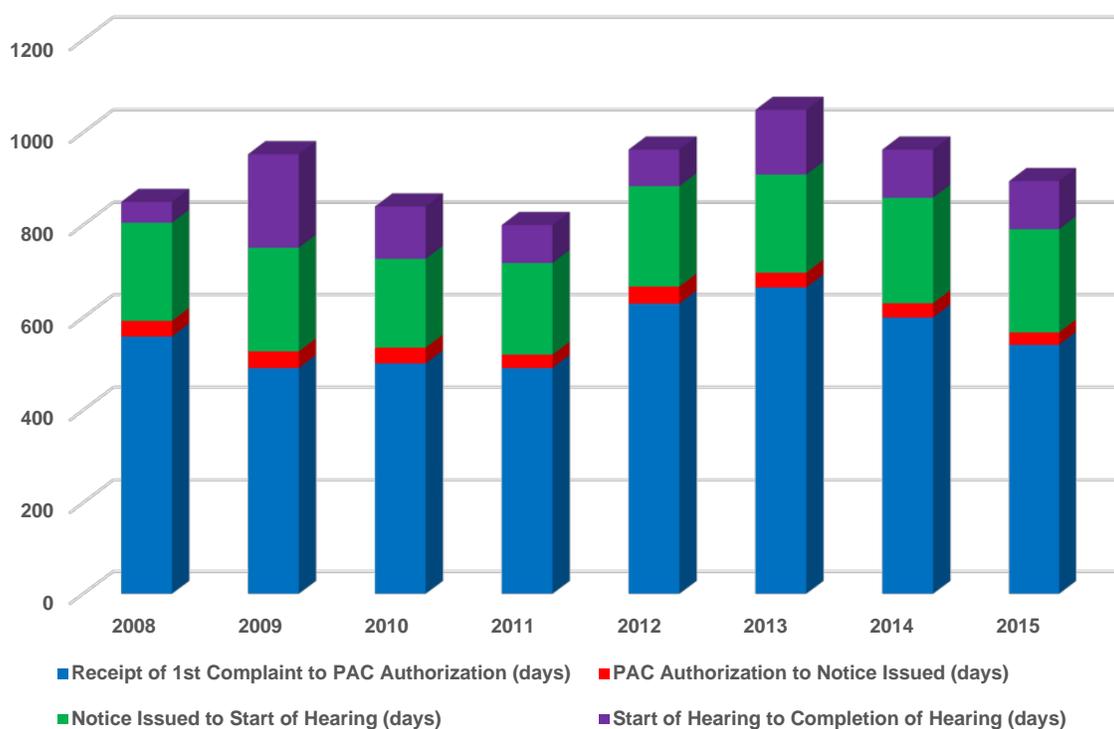
\*The Q2 2014, there was one hearing in which a conduct application and a non-compliance application were heard together. Both are included in the totals for lawyer conduct and lawyer non-compliance categories. However, it is only counted once in the total numbers for the quarter and for the year.

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## 2.6 – Discipline

**Graph 2.6G: Age of Completed Matters in the Hearing Division**

|      | Total Completed Hearings | Date 1 <sup>st</sup> Complaint Received to Date Hearing Completed | Total Completed Hearings less Completed Mortgage Fraud Hearings | Date 1 <sup>st</sup> Complaint Received to Date Hearing Completed |
|------|--------------------------|---|---|---|
| 2008 | 108                      | 847 days  | 100   | 770 days  |
| 2009 | 102                      | 841 days  | 98  | 813 days  |
| 2010 | 131                      | 833 days  | 117   | 727 days  |
| 2011 | 114                      | 770 days  | 102   | 652 days  |
| 2012 | 110                      | 940 days  | 92  | 693 days  |
| 2013 | 123                      | 1031 days   | 103   | 805 days  |
| 2014 | 135                      | 896 days  | 126   | 797 days  |
| 2015 | 128                      | 861 days  | 116   | 789 days  |



|  | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|--|------|------|------|------|------|------|------|------|
| Receipt of 1st Complaint to PAC Authorization (days) | 559  | 491  | 501  | 491  | 630  | 665  | 600  | 541  |
| PAC Authorization to Notice Issued (days)            | 34   | 36   | 34   | 29   | 37   | 32   | 31   | 27   |
| Notice Issued to Start of Hearing (days)             | 212  | 224  | 192  | 198  | 217  | 212  | 228  | 223  |
| Start of Hearing to Completion of Hearing (days)     | 45   | 202  | 113  | 82   | 79   | 140  | 104  | 104  |

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## 2.6 – Discipline

### Graph 2.6H: Appeals and Judicial Reviews

The following chart sets out the number of appeals filed with the Appeal Division, the Divisional Court or the Court of Appeal in the calendar years 2010 to 2015.

| Quarter/Year                 | Appeal Division | Divisional Court               | Court of Appeal                                   |
|------------------------------|-----------------|--------------------------------|---|
| 2010                         | 27              | 3 appeals; 2 judicial reviews  | 4 motions for leave                               |
| 2011                         | 18              | 6 appeals, 2 judicial reviews  | 2 motions for leave                               |
| 2012                         | 23              | 4 appeals; 5 judicial reviews  | 2 motions for leave                               |
| 2013                         | 20              | 3 appeals; 3 judicial reviews  |   |
| 2014                         | 23              | 14 appeals; 5 judicial reviews | 4 motions for leave                               |
| 2015 1 <sup>st</sup> Quarter | 6               | 2 appeals; 1 judicial review   | 3 motions for leave                               |
| 2 <sup>nd</sup> Quarter      | 3               | 2 appeals; 0 judicial reviews  | 0 motions for leave; 1 appeal                     |
| 3 <sup>rd</sup> Quarter      | 2               | 1 appeal; 0 judicial reviews   | 1 motion for leave                                |
| 4 <sup>th</sup> Quarter      | 5               | 1 appeal; 0 judicial reviews   | 1 motion for leave; 2 other motions <sup>17</sup> |
| Total                        | 16              | 6 appeals; 1 judicial review   | 5 motions for leave; 1 appeal; 2 other motions    |

As of December 31, 2015, there are 12 appeals pending before the Appeal Division, 1 appeal in which the Appeal Division has reserved on judgment, 2 appeals that have been adjourned sine die and 3 appeals in which costs or penalty decisions remain outstanding.

With respect to matters before the Divisional Court, there are 7 appeals and 2 judicial review matters pending and 1 appeal in which costs remained outstanding. In the Court of Appeal, there are 2 motions for leave to appeal, 1 motion for an extension of time to seek leave, 1 motion for a review of the Court's dismissal of a leave application and 1 appeal pending.

In 2015, 18 appeals before the Appeal Division were completed; 15 were launched by licensees/applicants, 2 were launched by the Law Society and 1 was launched by the licensee with a cross-appeal by the Law Society:

- With respect to the 15 appeals brought by licensees / applicants:
  - 7 appeals were abandoned or deemed abandoned.
  - 2 appeals were dismissed.
  - 6 appeals were allowed or allowed in part:
    - In 1 matter, the Appeal Division set aside the Hearing Division's Order or costs and a revocation of the licensee's licence and ordered a 2 year suspension.
    - In 3 matters, the Appeal Division set aside the Hearing Division's Decision and Order and ordered a new hearing

<sup>17</sup> 1 motion to extend time for leave to appeal; 1 motion for review of denial of leave application

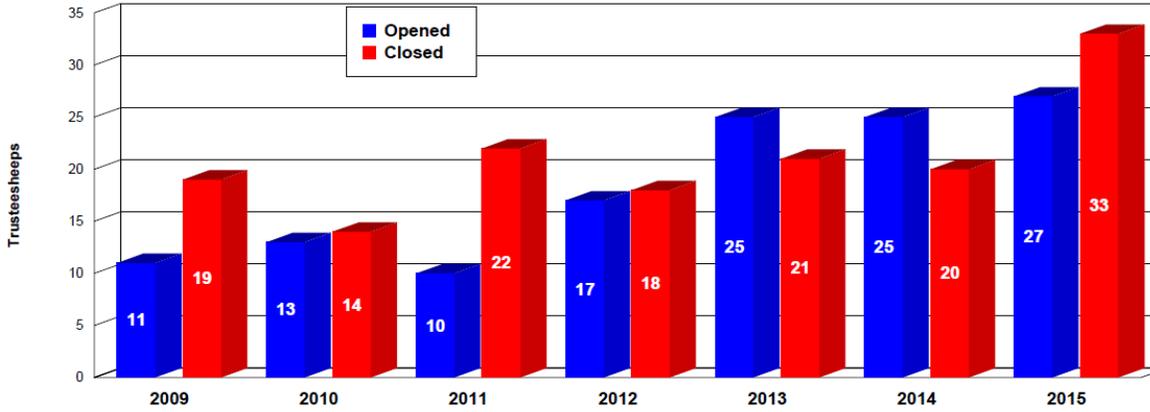
## 2.6 – Discipline

- In 1 matter, the Appeal Division set aside one of the findings made by the Hearing Division and reduced the suspension ordered by the Hearing Division from 6 months to 5 months.
  - In 1 matter, the Appeal Division allowed the appeal in respect to one particular but dismissed the remainder of the appeal.
- With respect to the 2 Law Society appeals, the Appeal Division allowed both appeals.
    - In 1 appeal, the Appeal Division set aside a supervision term, substituting a term requiring an undertaking from the licensee.
    - In the other appeal, the Appeal division set aside the 18 month penalty imposed by the Hearing Division, substituting it with an order revoking the lawyer's licence.
  - With respect to the appeal by the licensee/cross-appeal by the Law Society, the Appeal Division dismissed both appeals.

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## 2.7 – Trustee Services

**Graph 2.7A: Formal Trusteeships Opened and Closed**

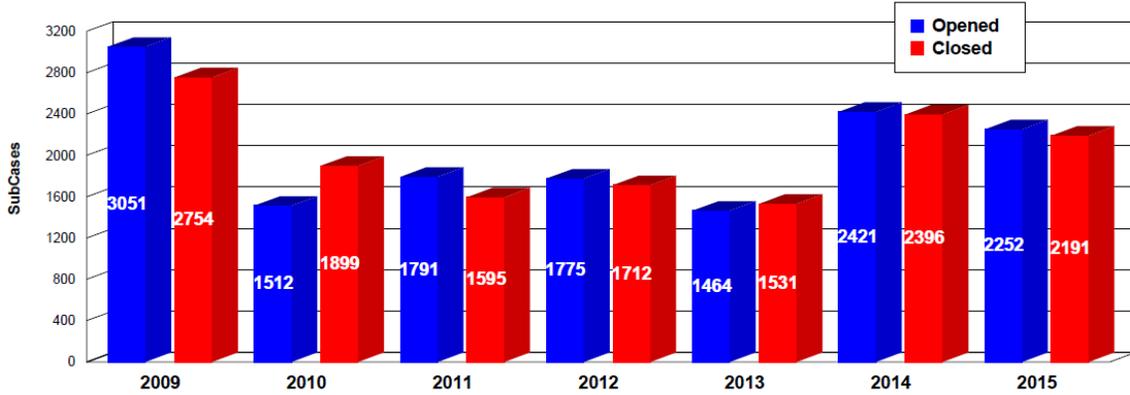


This graph displays the number of formal trusteeships that were opened and closed in the past 7 years. Formal trusteeships are court-ordered.

During 2015, Trustee Services opened 89 files. As of December 31, 2015, a total of 134 active files remained in its inventory, which included 39 active court ordered (formal) and voluntary (informal) trusteeships. The remaining files involve various other matters that Trustee Services deals with on a regular basis, including search warrants and the administration of the Unclaimed Trust Fund.

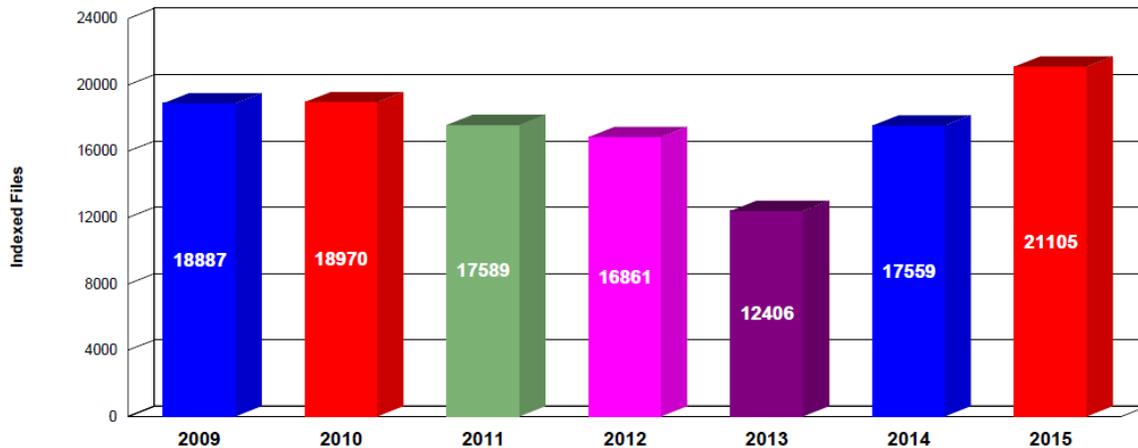
## 2.7 – Trustee Services

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



Trustee Services staff receive and respond to specific client related requests, such as the return of a file or responding to requests for information concerning a professional business. The graph above shows these requests that were opened and closed in the past seven years. The higher numbers in 2009 (\*) represent a one-time capturing of work in progress as a result of the department’s decision in that year to also record distribution of client funds to specific individuals within the PRD case management system. As of December 31, 2015, Trustee Services had 485 active client request files, of which 440 related solely to the distribution of trust funds.

**Graph 2.7C: Client Files Indexed Annually**

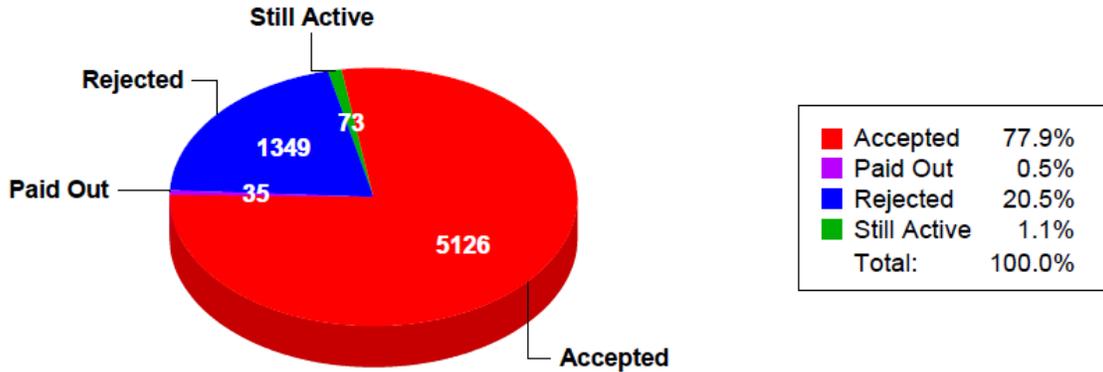


When Trustee Services obtains a formal, court-ordered trusteeship against a licensee or enters into a voluntary trusteeship arrangement with a licensee, client files are retrieved from the licensee’s professional business, indexed and preserved for the benefit of the clients. The above graph displays the number of client files obtained and indexed in the last 7 years. In addition to the indexing of client files, Trustee Services also indexes wills and Powers of Attorneys which are in the licensee’s possession.

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## 2.7 – Trustee Services

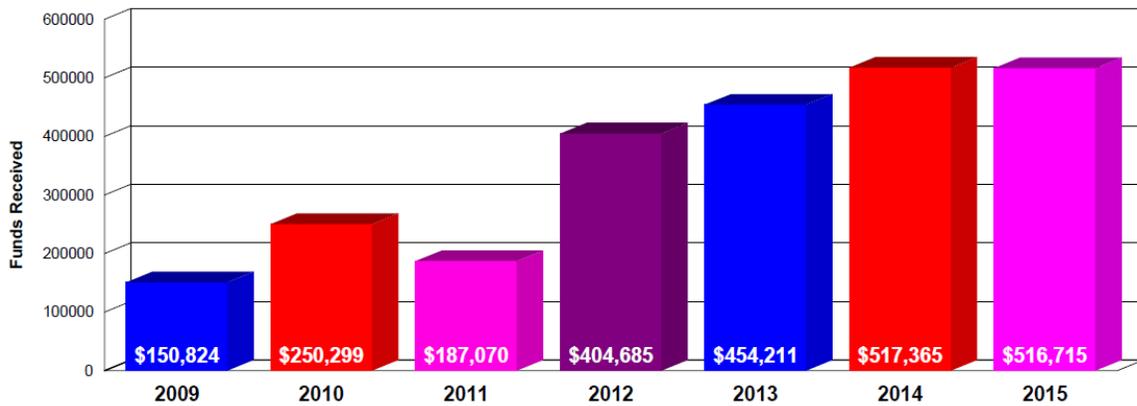
**Graph 2.7D: Unclaimed Trust Fund – Summary of Applications Made**



The Unclaimed Trust Fund (UTF) is a program that enables lawyers to apply to have trust funds they have held for at least 2 years to be taken over and held by the Law Society. This diagram displays the results of applications made to the UTF from its inception on February 1, 1999 to December 31, 2015.

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

The graph below shows the amounts received into the UTF for the previous 9 quarters. As of December 31, 2014, a total of \$3,450,202.47 had been received into the Fund since its inception and 103,395.30 has been paid out, leaving a balance in the Fund of \$3,346,807.17.



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## 2.8 – Monitoring & Enforcement

**Graph 2.8A: New Matters**

|                                    | Total for<br>2010 | Total for<br>2011 | Total for<br>2012 | Total for<br>2013 | Total for<br>2014 | Total for<br>2015 |
|------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Enforcement</b>                 | 21                | 41                | 29                | 28                | 26                | 25                |
| <b>Insolvency</b>                  | 45                | 28                | 29                | 30                | 30                | 28                |
| <b>Orders</b>                      | 138               | 159               | 174               | 147               | 179               | 152               |
| <b>Restitution &amp; Judgments</b> | 13                | 7                 | 13                | 6                 | 1                 | 11                |
| <b>Undertakings</b>                | 63                | 53                | 42                | 47                | 59                | 63                |
| <b>TOTAL</b>                       | <b>280</b>        | <b>288</b>        | <b>287</b>        | <b>258</b>        | <b>295</b>        | <b>279</b>        |

The above chart sets out the number of new matters opened by the Monitoring and Enforcement Department in the last 7 years. As at December 31, 2015, the department had an active inventory of 1015 cases, broken down as follows:

|                         |  |
|-------------------------|--|
| Enforcement             | 9  |
| Insolvency              | 94                                       |
| Orders                  | 548 (with an additional 281 in abeyance) |
| Restitution & Judgments | 45 (with an additional 2 in abeyance)    |
| Undertakings            | 319 (with an additional 463 in abeyance) |
| <b>TOTAL</b>            | <b>1015</b>                              |

**Graph 2.8B: Collections**

As at December 31, 2015, the department had collected a total of \$578,872.71.

|  |
|--|
| \$ 572,703.05 (Discipline order costs)     |
| \$ 5,791.00 (Compensation Fund recoveries) |
| \$ 378.66 (bankruptcy dividends)           |

**Graph 2.8C: Regulatory Inquiries**

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

| Type of Inquiry        |                  | Totals for<br>2010 | Totals for<br>2011 | Totals for<br>2012 | Totals for<br>2013 | Totals for<br>2014 | Totals for<br>2015 |
|------------------------|------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Email</b>           | <b>Number</b>    | <b>4302</b>        | <b>2643</b>        | <b>3474</b>        | <b>3860</b>        | <b>4316</b>        | <b>4185</b>        |
|                        | <b>Licensees</b> | <b>5976</b>        | <b>3755</b>        | <b>4148</b>        | <b>4368</b>        | <b>4910</b>        | <b>4628</b>        |
| <b>Telephone</b>       | <b>Number</b>    | <b>3575</b>        | <b>1097</b>        | <b>918</b>         | <b>936</b>         | <b>1063</b>        | <b>894</b>         |
|                        | <b>Licensees</b> | <b>3944</b>        | <b>1211</b>        | <b>970</b>         | <b>979</b>         | <b>1072</b>        | <b>920</b>         |
| <b>Total Inquiries</b> | <b>Number</b>    | <b>7877</b>        | <b>3740</b>        | <b>4392</b>        | <b>4796</b>        | <b>5379</b>        | <b>5079</b>        |
|                        | <b>Licensees</b> | <b>9920</b>        | <b>4966</b>        | <b>5118</b>        | <b>5347</b>        | <b>5982</b>        | <b>5548</b>        |

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## **SECTION 3**

## **APPENDICES**

## APPENDIX A

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

#### Client Service Centre (CSC)

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

#### Intake

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

#### Complaints Resolution

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

#### Investigations

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

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

### **Complaints Review**

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

### **Discipline**

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

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

### **Monitoring and Enforcement**

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

### **Trustee Services**

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

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

### *Unclaimed Trust Fund Services*

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

### **Compensation Fund**

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

### **Office of the Director**

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

### **Case Management**

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

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**APPENDIX B - Case Types Used in Professional Regulation**

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

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## APPENDIX C

### Closing Dispositions Used in the Intake Department

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

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## APPENDIX D

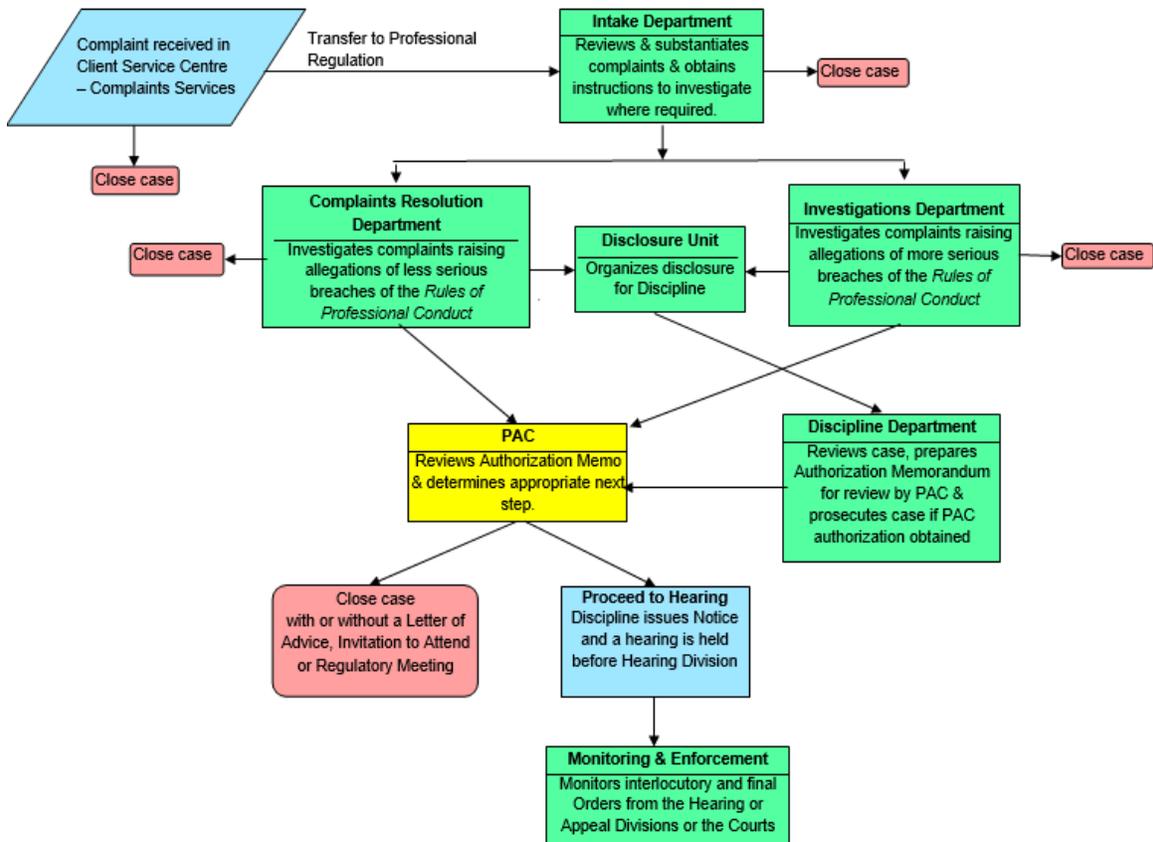
### Closing Dispositions Used in the Complaints Resolution and Investigations Departments

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

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## APPENDIX E

### The Professional Regulation Complaint Process

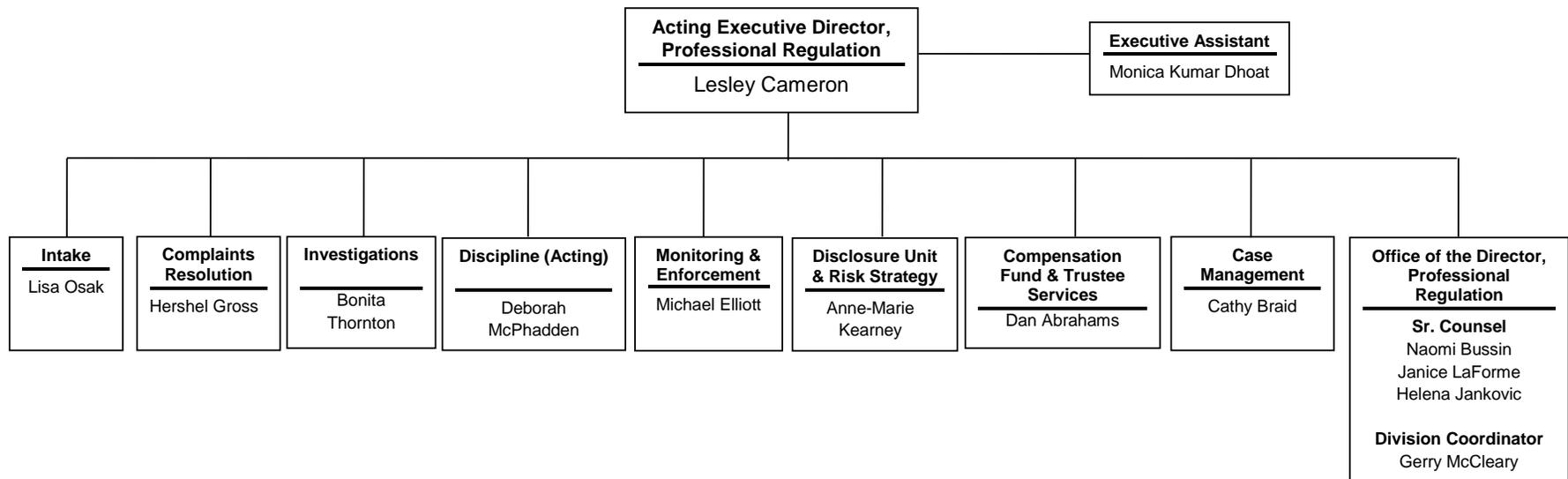


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## APPENDIX F

### PROFESSIONAL REGULATION ORGANIZATIONAL CHART





**TAB 4**

**Report to Convocation  
February 25<sup>th</sup>, 2016**

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**Paralegal Standing Committee**

**Committee Members**  
**Michelle Haigh, Chair**  
**Susan McGrath, Vice-Chair**  
**Marion Boyd**  
**Robert Burd**  
**Cathy Corsetti**  
**Janis Criger**  
**Brian Lawrie**  
**Marian Lippa**  
**Malcolm M. Mercer**  
**Barbara Murchie**  
**Baljit Sikand**  
**Catherine Strosberg**  
**Anne Vespry**

**Purpose of Report: Decision and Information**

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

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**For Decision**

Paralegal *Rule* on Working with Unauthorized persons ..... **TAB 4.1**

*In Camera* Item ..... **TAB 4.2**

**For Information**

Consultation on *Paralegal Rules* Amendments ..... **TAB 4.3**

## COMMITTEE PROCESS

1. The Committee met on February 10<sup>th</sup>, 2016. Committee members present were: Michelle Haigh (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd (by telephone), Cathy Corsetti, Janis Criger, Brian Lawrie, Marian Lippa, Malcolm Mercer, Barbara Murchie, Baljit Sikand ( by telephone), Catherine Strosberg (by telephone) and Anne Vespry.
2. Staff in attendance were: Lesley Cameron, Grant Wedge, Naomi Bussin, Elliot Spears, Sheena Weir, Sharon Greene and Julia Bass.

## FOR DECISION

### AMENDMENT TO *PARALEGAL RULES OF CONDUCT*: WORKING WITH UNAUTHORIZED PERSONS

#### Motion

3. That Convocation approve the amendment to Rule 6.01 (6) of the Paralegal Rules of Conduct regarding Working with Unauthorized Persons, set out in paragraph 6.

#### Rationale

4. In January, Convocation amended the *Rules of Professional Conduct* for lawyers as follows:

**7.6-1.1** Without the express approval of a ~~Committee of Convocation appointed for the purpose~~ panel of the Hearing Division of the Law Society Tribunal, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had their licence to practise law or to provide legal services revoked, has been suspended, has had their licence to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender their licence to practise law or to provide legal services, and has not had their licence restored.

5. This change reflects the current process whereby Convocation has designated the Tribunal as the “Committee” for this purpose, and recognizes the creation of the Law Society Tribunal.
6. The proposed corresponding change to the paralegal rule is as follows:

#### **6.01 . . .**

(6) Without the express approval of a ~~Committee of Convocation appointed for the purpose~~ panel of the Hearing Division of the Law Society Tribunal, a paralegal shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the provision of legal services any person who, in Ontario or elsewhere,

- (a) is disbarred and struck off the Rolls,
- (b) is a person whose license to practice law or to provide legal services is revoked,
- (c) as a result of disciplinary action, has been permitted to resign his or her membership in the Law Society or to surrender his or her licence to practise law or to provide legal services, and has not had his or her license restored,
- (d) is suspended,
- (e) is a person whose license to practise law or to provide legal services is suspended, or
- (f) is subject to an undertaking not to practise law or to provide legal services.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

FOR INFORMATION

**PARALEGAL RULES OF CONDUCT: CONSULTATION**

17. The Paralegal Standing Committee will be requesting comments from paralegals on proposed changes to the *Paralegal Rules of Conduct*, on the following topics:
  - a. Advertising;
  - b. Conflicts of interest, and
  - c. Short term *pro bono* legal services.
18. These proposed changes are among the amendments recently developed to accord with proposed amendments to the lawyers' *Rules of Professional Conduct*, arising from changes to the *Model Code of Professional Conduct* adopted by the Federation of Law Societies of Canada. A separate call for input was issued in connection with the proposed amendments to the lawyers' rules.
19. Convocation has adopted the policy that the *Paralegal Rules of Conduct* should be consistent with the lawyers' *Rules* to the extent possible.
20. Communication with the paralegal profession will be by means of a notice in the Ontario Reports and an email to all paralegal licensees

**Summary of Changes**

21. The amendments to be circulated for comment are as follows,
  - a. An addition to Rule 8.03 on Marketing & Advertising – shown at [TAB 4.3.1](#).
  - b. Clarification of Rule 3.04 on the obtaining of consent from a client where there may be a conflict of interest – shown at [TAB 4.3.2](#).
  - c. New wording in Rule 3.04 on Conflicts, providing that a paralegal may provide short-term *pro bono* legal services without taking steps to determine whether there is a conflict of interest - shown at [TAB 4.3.3](#).

## ADVERTISING & MARKETING

### 8.03 MARKETING OF LEGAL SERVICES

- (1) In this Rule, “marketing” includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.
- (2) A paralegal may market legal services if the marketing
  - (a) is demonstrably true, accurate and verifiable,
  - (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and
  - (c) is in the best interests of the public and is consistent with a high standard of professionalism.

(2.1) For greater certainty, the following marketing practices would contravene the requirements of Rule 8.03 (1) and (2):

- (a) stating an amount of money that the paralegal has recovered for a client or referring to the paralegal’s degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;
- (b) suggesting qualitative superiority to other paralegals;
- (c) suggesting or implying the paralegal is aggressive;
- (d) disparaging or demeaning other persons, groups, organizations or institutions;
- (e) taking advantage of a vulnerable person or group;
- (f) referring to awards or endorsements unless accompanied by information sufficient for the public to make an informed assessment of the award including: the source of the award, the nomination process and any fees paid by the paralegal, directly or indirectly;
- (g) using testimonials which contain emotional appeals.

### 3.04 CONFLICTS OF INTEREST – GENERAL

#### Avoidance of Conflicts of Interest

- (1) A paralegal shall not act or continue to act for a client where there is a conflict of interest, except as permitted under this rule.
- (2) A paralegal shall not advise or represent opposing parties in a dispute.
- (3) A paralegal shall not represent a client in a matter when there is a conflict of interest unless
  - (a) there is ~~express or implied~~ consent which must be fully informed and voluntary after disclosure from all affected clients; and
  - (b) ~~it is reasonable for the paralegal to conclude the paralegal reasonably believes~~ that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

~~(4) For the purpose of this rule:~~

~~(a) Express consent must be fully informed and voluntary after disclosure.~~

~~(b) Consent may be implied and need not be in writing where all of the following apply:~~

~~(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;~~

~~(ii) the matters are unrelated;~~

~~(iii) the paralegal has no relevant confidential information from one client that might reasonably affect the representation of the other client, and~~

~~(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.~~

### 3.04 CONFLICTS OF INTEREST

#### Short-term Legal Services

(18) In this rule,

“*pro bono* client” means a client to whom a paralegal provides short-term legal services;

“short-term legal services” means advice or representation to a client under the auspices of a *pro bono* or not-for-profit legal services provider with the expectation by the paralegal and the client that the paralegal will not provide continuing legal representation in the matter.

(19) A paralegal may provide short-term legal services without taking steps to determine whether there is a conflict of interest.

(20) A paralegal must not provide or must cease providing short-term legal services to a client where the paralegal knows or becomes aware that there is a conflict of interest

(21) A paralegal who provides short-term legal services must take reasonable measures to ensure that no disclosure of the client’s confidential information is made to another paralegal in the paralegal’s firm.

(22) A paralegal who is unable to provide short-term legal services to a *pro bono* client because of the operation of subrules (18) to (21) shall cease to provide short term legal services to the *pro bono* client as soon as the paralegal actually becomes aware of the adverse interest or as soon as he or she has or obtains the confidential information referred to in subrule (21) and the paralegal shall not seek the *pro bono* client’s waiver of the conflict.



**TAB 5**

**Report to Convocation  
February 25, 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**

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

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**Decision**

Consent Resolution Conference Pilot Project  
(Joint Report with Paralegal Standing Committee  
and Professional Regulation Committee)

**TAB 5.1**

## COMMITTEE PROCESS

1. The Committee met on February 11, 2016. Committee members Barbara Murchie (Chair), Peter Wardle (Vice-Chair) Larry Banack, Jack Braithwaite, Robert Burd, Lee Ferrier and Baljit Sikand participated. The CEO, Robert Lapper, attended part of the meeting. The Acting Executive Director Professional Regulation, Lesley Cameron, 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 Sperdakos also attended.

## DECISION

**CONSENT RESOLUTION CONFERENCE PILOT  
PROJECT  
(Joint Report with the Paralegal Standing Committee  
and the Professional Regulation Committee)**

**Motion**

2. That Convocation discontinue the Consent Resolution Conference pilot project and revoke Rule 29 and amend Rules 1.02 and 25.01 of the Law Society Tribunal Hearing Division Rules of Practice and Procedure, in accordance with [TAB 5.1.2: Motion](#).

**Proposal under Consideration**

3. The Consent Resolution Conference (the “Consent Process”) is an alternative to the regular investigation and hearing stream. Convocation approved the Consent Process on January 28, 2010 as a pilot project. On January 27, 2011, Convocation approved changes to what are now the Law Society Tribunal Hearing Division Rules of Practice and Procedure (the “Rules”) required to support the Consent Process. The pilot was to be reviewed after two years. In February 2014 Convocation extended it a further two years. To date, only two consent resolution conferences have occurred, both in 2013.
4. Rule 29 of the Rules and relevant sections of Rules 1.02 and 25.01, which govern the process, are set out at [TAB 5.1.1: Rules](#).
5. The Paralegal Standing Committee (PSC), Professional Regulation Committee (PRC) and Tribunal Committee considered the issue at their February meetings. They recommend that the Consent Process pilot project be discontinued and Rule 29 revoked and Rules 1.02 and 25.01 amended, in accordance with [TAB 5.1.2: Motion](#).

**Key Issues and Considerations**

6. The goal of the Consent Process was to create an alternative to the regular investigations and hearings stream for conduct matters. It was not to be used for matters that raised capacity issues.
7. The intent of the Consent Process was that in the appropriate circumstances, and with public interest protections and transparency measures in place, the process could,
  - a. enable licensees to agree to an early resolution of conduct matters;

- b. provide a result in the public interest that could be obtained sooner than would otherwise be the case if a full investigation and hearing were required; and
  - c. potentially save investigative and discipline resources and Tribunal time.
- 8. It was intended to apply in matters in which licensees admitted conduct allegations against them before the investigation process was complete and agreed to a joint penalty or range of penalties to be submitted to a hearing panel to obtain a decision and order.
- 9. The pilot project was brought back to Convocation for review in February 2014. Since Rule 29 was approved in January 2011, the Consent Process had only been used in two matters, both in the last six months of 2013. Given this experience, the process had not, to that point, met its goal.
- 10. At the time concerns with the process were noted relating to clarity, usefulness and need. A recommendation was made to allow the process to continue a further two years and to assess it at the end of that additional period. A report was then to be provided to Convocation, with recommendations regarding the continuation of the process thereafter.
- 11. The two-year extension has now elapsed, with no additional Consent Process conferences or hearings since 2013.

## **Discussion**

- 12. Early resolution of conduct proceedings is an appropriate goal, provided the public interest is protected. This was one goal of the Consent Process. Experience with it, however, has demonstrated that it has not turned out to be effective in meeting its goal.
- 13. The Professional Regulation Division (PRD) has advised that the Consent Process has not been effective in reducing investigation or discipline time. Moreover, licensees have generally not been interested in it both because it is not a diversion from the discipline process and because they may not always want a finding of misconduct expedited.
- 14. Licensees' counsel may well caution against early resolution without full disclosure of the Law Society's case, which means the purpose of the process to obviate the need for full investigations has not been realized. On the other side, the Law Society cannot engage in early resolution until there has been sufficient investigation to understand the nature of any misconduct with reasonable certainty.
- 15. Licensees are directed to a website description of the process at an early stage in the investigation. In relevant cases investigators have also raised it during the investigation. Nonetheless very few licensees have proven interested.

16. Given these realities, other resolution options that occur at later stages of a regulatory matter are proving more effective than the Consent Process. So, for example, the Tribunal is enhancing and using the pre-hearing conference process more frequently to actively case manage discipline and other proceedings. Experienced pre-hearing conference adjudicators are actively engaging with the licensee, his or her counsel and the Law Society to appropriately resolve issues.
17. In addition to more robust pre-hearing case management, the pre-hearing panelist may preside at the hearing where the parties agree, pursuant to Rule 22.10(2) of the Rules. This provides the parties with more certainty as to the result of the hearing.
18. Further, parties can always move forward expeditiously to a hearing, on the basis of an Agreed Statement of Facts and a joint submission on penalty. The Tribunal is able to accommodate requests for an early pre-hearing conference or hearing. The existence or use of the Consent Process is not required for this to occur.
19. The Committees have also noted that in September 2015 Convocation approved, in principle, a new administrative process for surrender of licences in the face of a Law Society investigation or discipline proceeding (by-laws will be before Convocation in the spring). The proposed surrender application would go before a Summary Order bench. Unlike the Consent Process, this is a true diversion from conduct proceedings.
20. The Tribunal has noted the following additional concerns with the Consent Process:
  - a. Given the goal of having transparent, effective Tribunal processes, it is problematic to continue a process that has been used only twice since it was introduced. This is particularly true given that there are other processes that can address early resolution.
  - b. Given how little experience there has been with the Consent Process, the panels that have been involved have been unfamiliar with it and somewhat unclear on the application of the Rule. If the Consent Process were to continue, but still be used as rarely as it has to date, each time a case comes before the Tribunal the adjudicators must be educated on it.
  - c. The Rule is cumbersome, particularly in denoting how panel composition following the Conference will be determined. Given the more effective tools available to address early resolution, it would be an inefficient use of Tribunal time to try to streamline the Rule and process.
  - d. The inclusion of this rarely used process in the Rules may be confusing for licensees, particularly if self-represented.

21. The Committees received feedback from a defence counsel who acted on one of the two matters and who appears frequently before the Tribunal as counsel for licensees. In his view, a rigorous pre-hearing conference process is a much more effective tool for resolving matters once there has been sufficient disclosure and the parties are better able to assess the merits of the matter.
22. The Committees also received feedback from three benchers who were among a total of six adjudicators who have heard a proceeding under Rule 29. Their comments raised the following main points:
  - a. If early resolution of matters in appropriate cases is a worthwhile endeavour, what will be in place to fill any “gap” left by the absence of this pilot project?
  - b. It is important to have programs that enable diversion of mental health/capacity matters in appropriate cases.
  - c. Was staff properly trained and encouraged to use the initiative and was it designed appropriately?
  - d. Was lack of training of adjudicators on the Consent Process a reason it was not used?
23. The Committees discussed these comments and note the following:
  - a. Early resolution of appropriate cases is a part of efforts to ensure an effective, fair and transparent regulatory process. The Committees are satisfied that the pre-hearing process, the ability for parties to invoke that process expeditiously and the new administrative process for surrender of licences all address that goal. They are satisfied that there is no gap left by the discontinuation of the Consent Process, particularly given how infrequently it was used.
  - b. The Committees agree that diversion for capacity and mental health matters in appropriate cases is essential, but the Consent Process did not apply to these cases and is not a diversion initiative. The current Mental Health Strategy Task Force is also considering this important issue as part of its mandate. In addition, there are tools within PRD to address capacity issues that arise during an investigation.
  - c. PRD has advised that staff did consider the Consent Process on a number of occasions and discuss it with the subjects of investigations, even though it was ultimately only used twice. Indeed, as noted above, the defence counsel whose input was sought indicated that the pre-hearing process is more effective than this one, suggesting the issue is not with staff, but with the process.

- d. The Consent Process is not triggered by adjudicators, but rather during the investigation process.
24. The Committees are satisfied that there has been ample opportunity to assess the Consent Process pilot project. In their view, it has not proven to be an effective process and should be discontinued.
25. It is important to make a pilot project initiative permanent only if there is evidence to support it. The Consent Process pilot project has had more than twice the anticipated amount of time to be implemented and it would appear that other processes better address its goal.
26. If Convocation approves the recommendation to discontinue the pilot project, the Committees recommend that the Rules reflect that by the revocation of Rule 29 and amendment of Rules 1.02 and 25.01, as set out in TAB 5.1.2: Motion.
27. If Convocation approves the recommendation, the discontinuation of the Consent Process will be communicated through a Notice to the Profession on the Tribunal webpage and in the *Ontario Reports*.

## RULE 29 CONSENT RESOLUTION CONFERENCE

### Definitions

**29.01** In this Rule,

“consent resolution conference” means a conference between the Society and the subject of a potential proceeding, that is conducted by a consent resolution panel, held prior to the commencement of the conduct proceeding for the purposes of settling,

- (a) the decision and order to be made in the conduct proceeding; or
- (b) the decision to be made and a range of orders that may be made in the conduct proceeding;

“consent resolution panel” means the panelist or, collectively, the panelists assigned to conduct a consent resolution conference;

“potential proceeding” means a conduct proceeding that has not been commenced;

“subject of a potential proceeding” means the person who will be the subject of a conduct proceeding once it has been commenced.

### Consent resolution conference: when shall be conducted

**29.02** (1) The Chair or Vice-Chair shall direct that a consent resolution conference be conducted if the following conditions are present:

1. The Society has obtained the authorization of the Proceedings Authorization Committee,
  - i. to commence a conduct proceeding, and
  - ii. to request the Hearing Division to direct that a consent resolution conference be conducted.
2. The conduct proceeding has not been commenced.
3. The Society and the subject of the potential proceeding have agreed to,
  - i. the decision and order to be made in the conduct proceeding; or
  - ii. the decision to be made and a range of orders that may be made in the conduct proceeding.
4. The subject of the potential proceeding has consented to participate in a consent resolution conference.
5. The Society has requested a consent resolution conference.

### Who conducts consent resolution conference

(2) Where the Chair or Vice-Chair directs that a consent resolution conference be conducted under subrule (1), he or she shall assign either one or three panelists to conduct

the consent resolution conference.

### **Request**

**29.03** (1) The Society may request a consent resolution conference by submitting a request in writing to the Tribunal.

### **Information re conditions**

(2) The Society shall include in its written request for a consent resolution conference sufficient information to satisfy the Chair or Vice-Chair of the existence of the conditions set out in rule 29.02.

### **Contact information of subject of potential proceeding**

(3) The Society shall also include in its written request for a consent resolution conference the name of the subject of the potential proceeding and her or his address for service, telephone number, fax number, if any, and e-mail address, if any.

### **Notice of consent resolution conference: Society**

**29.04** Where the Chair or Vice-Chair directs that a consent resolution conference be conducted, the Tribunal shall send to the Society and to the subject of the potential proceeding notice of the date, time and location of the consent resolution conference.

### **Procedure applicable to consent resolution conference**

**29.05** (1) The practices and procedures applicable to proceedings before the Hearing Division that are set out in Rules 2 to 20 and Rules 22 to 28 do not apply with respect to a consent resolution conference.

(2) Subject to this Rule, the practices and procedures applicable with respect to a consent resolution conference shall be determined by the consent resolution panel conducting the consent resolution conference.

### **Consent resolution conference not open to public**

(3) A consent resolution conference shall be conducted in the absence of the public.

### **Withdrawing participation in consent resolution conference**

**29.06** (1) At any time before or during the conduct of a consent resolution conference, the Society or the subject of the potential proceeding may withdraw from participating in the consent resolution conference.

### **Notice of withdrawal**

(2) Where the Society or the subject of the potential proceeding wishes to withdraw from participating in the consent resolution conference under subrule (1), the

withdrawing party shall so notify in writing the other party and the Tribunal.

**Settlement at consent resolution conference: commencement of conduct proceeding**

**29.07** (1) Where a consent resolution conference results in the settlement of the decision and order to be made in the conduct proceeding or the settlement of the decision to be made and a range of orders that may be made in the conduct proceeding the Society shall,

- (a) commence the conduct proceeding; and
- (b) notify the Tribunal in writing of the fact and general nature of the settlement at the consent resolution conference not later than the day on which the conduct proceeding is commenced.

**Settlement at consent resolution conference: non-application of certain Rules**

(2) Where a consent resolution conference results in the settlement of the decision and order to be made in the conduct proceeding, despite rule 1.01, the following Rules do not apply to the conduct proceeding:

- 1. Rule 6.
- 2. Rule 7.
- 3. Rule 8.
- 4. Rule 12.
- 5. Rule 13.
- 6. Rule 14.
- 7. Rule 16.
- 8. Rule 19.
- 9. Rule 20.
- 10. Rule 21.
- 11. Rule 22.

**No settlement at or withdrawal from consent resolution conference: subsequent hearings**

**29.08** Where a consent resolution conference does not result in the settlement of the decision and order to be made in the conduct proceeding, or the settlement of the decision to be made and a range of orders that may be made in the conduct proceeding, or the Society or the subject of the potential proceeding withdraws from participating in the consent resolution conference under rule 29.06,

- (a) no communication shall be made to any member of the Hearing

Division assigned to any hearing in the conduct proceeding with respect to any document specifically created for and any statement made at the consent resolution conference; and

- (b) no member of the consent resolution panel that conducted the consent resolution conference shall be assigned to any hearing in the conduct proceeding.

## **RULE 1 APPLICATION AND INTERPRETATION**

### **Definitions and interpretation**

**1.02** (1) In these Rules, unless the context requires otherwise,

...

“hearing” does not include a consent resolution conference, a proceeding management conference or a pre-hearing conference;

## **RULE 25 COSTS**

### **Costs**

#### **25.01**

...

#### **Consent resolution conference: no costs**

(4) Despite subrules (1) and (2), no costs shall be awarded against the Society or the subject of the proceeding based on,

(a) either party's refusal to participate or either party's withdrawal from participation in a consent resolution conference; or

(b) the fact that a consent resolution conference did not result in the settlement of the decision and order in the conduct proceeding or the settlement of the decision to be and a range of orders that may be made in the conduct proceeding.

THE LAW SOCIETY OF UPPER CANADA

**LAW SOCIETY TRIBUNAL  
RULES OF PRACTICE AND PROCEDURE**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 25,  
2016

MOVED BY

SECONDED BY

THAT Convocation amend the Rules of Practice and Procedure - Hearing Division, made by Convocation on March 12, 2014, and amended by Convocation on May 22, 2014, September 24, 2014, and October 30, 2014, by,

1. revoking Rule 29;
2. revoking the definition of “hearing” in Rule 1.02 and replacing it with the following:  
“hearing” does not include a proceeding management conference or a pre-hearing conference;
3. amending Rule 25.01 by revoking Rule 25.01(4).

BARREAU DU HAUT-CANADA

**TRIBUNAL DU BARREAU  
RÈGLES DE PRATIQUE ET DE PROCÉDURE**

MOTION À PRÉSENTER À LA RÉUNION DU CONSEIL LE 25 FÉVRIER 2016

PRÉSENTÉE PAR

APPUYÉE PAR

QUE le Conseil modifie comme suit les règles de pratique et de procédure de la Section de première instance adoptées par le Conseil le 12 mars 2014, et modifiées par le Conseil le 22 mai 2014, le 24 septembre 2014 et le 30 octobre 2014 :

1. en abrogeant la règle 29 ;
2. en abrogeant la définition d'« audience » dans la règle 1.02 et en la remplaçant par ce qui suit :  
  
« audience » Sont exclues de la présente définition les conférences de gestion de l'instance et les conférences préparatoires à l'audience (« *hearing* ») ;
3. en modifiant la règle 25.01 par l'abrogation de la règle 25.01 (4).



**TAB 6**

**Report to Convocation  
February 25, 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 and Information**

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

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**Other Committee Work**..... **TAB 6.2**

## COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on February 10, 2016. Committee members in attendance were Christopher Bredt (Co-Chair), Peter Wardle (Co-Chair), Michelle Haigh (Vice-Chair), John Callaghan, Suzanne Clément, Paul Cooper, Teresa Donnelly, Seymour Epstein, Rocco Galati, Janet Leiper and Catherine Strosberg (phone).
2. Other Benchers in attendance: Raj Anand, Peter Beach, Fred Bickford, Marion Boyd, Jack Braithwaite, Gisèle Chrétien (phone), Janis Criger, Robert Evans, Howard Goldblatt, Virginia MacLean (phone), Susan McGrath, Isfahan Merali (phone), Malcolm Mercer, Barbara Murchie, Sandra Nishikawa, Judith Potter, Susan Richer, Heather Ross, Paul Schabas, Sidney Troister and Anne Vespry.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Diana Miles, Terry Knott, Elliot Spears, Grant Wedge, Lesley Cameron, Sheena Weir, Fred Grady and Andrew Cawse.

**FOR DECISION**

**USE OF GENERAL FUND BALANCE (RESERVES)**

**MOTION**

4. That Convocation approve the use of \$500,000 from the General Fund Balance to amend the 2016 Professional Regulation Division (PRD) budget to fund additional resources for investigations and disclosure.

**Rationale**

5. The Professional Regulation Division is experiencing a rising backlog of complaints as previously reported to the Professional Regulation Committee and Convocation. Funds are requested for additional resources in the Professional Regulation Division's Investigations Department and Disclosure Unit and Risk Strategy Department in 2016.
6. The Investigations Department handles the most serious investigations and the funding will help to address the backlog and support the timely and effective completion of investigations, in the interests of protecting the public.
7. The investigations backlog has occurred as a result of a number of factors, including the application of enhanced risk management in investigations, undertaking investigations in an electronic world and heightened attention to communications and transparency in the course of an investigation.
8. In the longer term, efforts are being made to enhance the Law Society's regulatory processes as outlined by its Strategic Plan, including appropriate changes that may assist in effectively addressing the current situation.
9. The Committee believes that the funding for additional resources is an appropriate use of the General Fund Balance to help ensure the integrity of the Law Society's regulatory mandate.

**Financial Impact**

10. The immediate impact will be a \$500,000 increase to the 2016 budget for PRD expenses funded from the General Fund Balance. The General Fund balance for lawyers and paralegals combined, subject to year-end adjustments, is currently estimated to be approximately \$26 million at the end of 2015. This is well in excess of the two month operating expense minimum (\$16 million) mandated by policy.
11. Annualized, the cost of this proposal will add approximately \$670,000 to the Society's operating expenses. It is anticipated that the additional resources will be required in 2017 and will be incorporated in the 2017 budget.

**TAB 6.2**

**FOR INFORMATION**

**OTHER COMMITTEE WORK**

12. The Committee received a presentation on the 2013 operational and organizational effectiveness review from the CEO for information.
13. The Committee discussed the Lawyer Compensation Fund Balance Management Policy in the context of a report from the fund actuary on claims experience.
14. The Committee reviewed a summary of the Law Society's insurance coverage.

TAB 7



## Report to Convocation February 25, 2016

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### 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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## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on February 11, 2016. Committee members, benchers Julian Falconer, Co-Chair, Janet Leiper, Co-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 and Susan Richer attended. Bencher Joanne St. Lewis, Margaret Froh, representative of the Indigenous Advisory Group, Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, also participated. Staff members Allison Cheron, Grant Wedge, Ekuia Quansah and Hyacinth Khin also attended.

TAB 7.1

FOR DECISION

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS**

2. That Convocation approve the letters and public statements in the following cases:
  - a. Lawyer Shu Xiangxin – China — letter of intervention and public statement presented at [TAB 7.1.1](#).
  - b. Lawyer Wang Qiushi – China — letter of intervention and public statement presented at [TAB 7.1.2](#).
  - c. Lawyers in Honduras — public statement presented at [TAB 7.1.3](#).
  - d. Lawyers Christopher Lephuthing, Haae Phoofolo, Khotso Nthontho, Koili Ndebele, and Tumisang Mosotho – Lesotho — letter of intervention and public statement presented at [TAB 7.1.4](#).

**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 detention of human rights lawyer Shu Xiangxin:
  - a. there are no concerns about the quality of sources used for this report;
  - b. the Law Society of Upper Canada has intervened a number of times in respect of human rights issues in China;
  - c. the detention of Shu Xiangxin falls within the mandate of the Monitoring Group.
5. The Monitoring Group considered the following factors when making a decision about the disappearance of human rights lawyer Wang Qiushi:
  - a. there are no concerns about the quality of sources used for this report;

- b. the Law Society of Upper Canada has intervened a number of times in respect of human rights issues in China, and on behalf of Wang Qiushi's former client, Wang Quanzhang;
  - c. the disappearance of human rights lawyer Wang Qiushi falls within the mandate of the Monitoring Group.
6. The Monitoring Group considered the following factors when making a decision about the treatment of lawyers in Honduras:
  - a. The 2016 Day of the Endangered Lawyer highlighted the dangers faced by lawyers in Honduras;
  - b. the Law Society of Upper Canada has intervened in cases of lawyers facing persecution in Honduras;
  - c. the treatment of lawyers in Honduras falls within the mandate of the Monitoring Group.
7. The Monitoring Group considered the following factors when making a decision about the harassment and intimidation of Christopher Lephuthing, Haae Phoofolo, Khotso Nthontho, Koili Ndebele, and Tumisang Mosotho:
  - a. there are no concerns about the quality of sources used for this report;
  - b. the harassment and intimidation of these lawyers falls within the mandate of the Monitoring Group.

## **KEY BACKGROUND**

### **CHINA – DETENTION OF SHU XIANGXIN**

#### **Sources of Information**

8. The background information for this report was taken from the following sources:
  - a. Lawyers' Rights Watch Canada
  - b. The Observatory for the Protection of Human Rights Defenders
  - c. Radio Free Asia

#### **Background**

9. The following reports serve as the basis of the Human Rights Monitoring Group's intervention in the case of Shu Xiangxin:

10. Shu Xiangxin is a lawyer and human rights advocate. He is the director of Shandong Xuzhou Law Firm and regularly appears on behalf of displaced farmers and individuals who, seeking compensation from the state for various abuses, are themselves charged with attempting to extort the government.<sup>1</sup>
11. Lawyers' Rights Watch Canada reports that Shu Xiangxin was arrested on the 2 January 2016.<sup>2</sup> Following his arrest, Shu Xiangxin was reportedly denied access to legal counsel for two days. When he was granted access to his lawyers on 4 January 2016, he signed a statement in their presence describing how he had been subjected to a severe beating and handcuffed to a staircase for seven to eight hours, during which time he lost consciousness. Shu Xiangxin's lawyers report that Shu Xiangxin was denied access to adequate clothing, toilet facilities, medical treatment, and food and water. His lawyers attest to visible injuries on Shu Xiangxin's wrists and face.<sup>3</sup>
12. After a 30-minute hearing on 8 January 2016, Shu Xiangxin was pronounced guilty of defamation and sentenced to a six month jail term. His licence to practise law was also revoked.<sup>4</sup>
13. Shu Xiangxin was not given an opportunity to present a defence and his lawyers were denied access to the courtroom: "they wouldn't let the defence attorney in there and they wouldn't allow them to bring in all the case files."<sup>5</sup>
14. Furthermore, reports indicate that Shu Xiangxin's physical condition is deteriorating:

"A medical examination conducted on January 6 and 7 showed that Mr. Shu was suffering from thrombosis, muscle atrophy, and an effusion on his brain. On January 8, he was also suffering from tinnitus in his left ear, and had great difficulty hearing. Witnesses reported that during the trial on January 8, Mr. Shu's physical condition was so weak that he was not able to walk into the court room without assistance. Until now, Mr. Shu has not received adequate medical treatment and is still subjected to ill-treatment in detention."<sup>6</sup>
15. Radio Free Asia and The Observatory for the Protection of Human Rights Defenders also report that Shu Xiangxin 's 18-year-old daughter was beaten unconscious outside the courthouse, shortly before his sentencing. The alleged aggressor was the son of the

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<sup>1</sup> "China: Arbitrary Conviction and Sentencing of Mr. Shu Xiangxin, Letter, 27 January, 2016," online: Lawyers' Rights Watch Canada < <http://lrwc.org> >

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> Statement of Cai Xin, lawyer of Shu Xiangxin in: "China jails tortured rights lawyer for six months amid protests, 8 January, 2016," online: Radio Free Asia <<http://rfa.org>>

<sup>6</sup> "China: Ongoing arbitrary detention and judicial harassment of Mr. Shu Xiangxin, 12 January, 2016," online: The Observatory for the Protection of Human Rights Defenders <<https://fidh.org>>

plaintiffs in the defamation case against Shu Xiangxin (Zhou Yujie and Wang Junzhi). Reports indicate that the authorities are not investigating this attack.<sup>7</sup>

16. Shu Xiangxin's continued detention and ill-treatment evidences mounting pressure against Chinese rights lawyers. The Observatory for the Protection of Human Rights Defenders and Lawyers' Rights Watch Canada believe that Shu Xiangxin was targeted by the Government of China for his human rights advocacy: his work on behalf of displaced farmers, and his defense of people charged with attempting to extort the government.<sup>8</sup> On 28 January 2016, Lawyers' Rights Watch Canada intervened by issuing a formal letter addressed to Xi Jinping (General Secretary, Chinese Communist Party) and Guo Shengkun (Minister of Public Security). The letter notes that Shu Xiangxin's conviction, sentencing and the revocation of his licence to practise law was imposed arbitrarily and without due process. In an open statement, the Observatory for the Protection of Human Rights Defenders also urged the Chinese authorities to respect their domestic and international human rights obligations in this matter.<sup>9</sup>

## CHINA – DISAPPEARANCE OF HUMAN RIGHTS LAWYER WANG QIUSHI

### Sources of Information

17. The background information for this report was taken from the following sources:
  - a. Front Line Defenders
  - b. Human Rights Watch

### Background

18. Wang Qiushi is a Heilongjiang-based human rights lawyer.<sup>10</sup> In recent years, Wang Qiushi has taken on a number of politically sensitive human rights cases: in 2015, he represented women's rights activist Wei Tingting — one of five feminists arrested for planning anti-sexual harassment demonstrations on International Women's Day.<sup>11</sup> Wang Qiushi also took on the case of fellow human rights lawyer, Wang Quanzhang (on whose behalf the Law Society intervened in July 2015).<sup>12</sup>

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<sup>7</sup> *Ibid*; Radio Free Asia, *supra* note 5

<sup>8</sup> "Free Shu Xiangxin, rights defence lawyer tortured in custody, 06/01/2016," online: The Observatory for the Protection of Human Rights Defenders < <https://www.fidh.org>>; "Ongoing arbitrary detention and judicial harassment of Mr. Shu Xiangxin, 12/01/2016," online: The Observatory for the Protection of Human Rights Defenders < <https://www.fidh.org>>

<sup>9</sup> Lawyers' Rights Watch Canada, *supra* note 1

<sup>10</sup> "China – Detention of human rights lawyer Wang Qiushi, 2016/01/12," online: Front Line Defenders <<https://frontlinedefenders.org>>

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

19. On 7 January 2016, Wang Qiushi was summoned to Beijing Haidian Police Station and held for 10 hours before being released.<sup>13</sup> On 8 January 2016, he was summoned by police again and questioned for six hours before being released. Wang Qiushi disappeared on 9 January 2016 after informing his friends that he had yet again been summoned by police in Beijing.<sup>14</sup>
20. On 12 January 2016, Wang Qiushi's family was reportedly informed that he had been placed under "residential surveillance" at undisclosed location by the Beijing National Security Bureau. His whereabouts are currently unknown.
21. Article 73 of the Criminal Procedure Law allows for the detention of suspects in state security, terrorism, and serious bribery cases for up to six months in undisclosed locations, "under the guise of residential surveillance."<sup>15</sup> Under Article 73, Chinese authorities are not obliged to specify the location of detainees nor notify the relatives of the detainees — or their legal representatives — of the reasons for their detention.<sup>16</sup>
22. Wang Qiushi's continued detention evidences mounting pressure against Chinese rights lawyers. On 19 January 2016, Human Rights Watch issued an open letter to the Chinese premier urging for the release of Chinese rights lawyers detained since July 2015.<sup>17</sup> Wang Qiushi appears on the list of detained lawyers. The letter is undersigned by some 20 lawyers, judges, and jurists from around the world, including: the President of the International Association of Lawyers; the President of the German Bar Association; the General Secretary of the Paris Bar Human Rights Institute, France; and the Chair of the Bar Human Rights Committee of England and Wales.

## LAWYERS IN HONDURAS

### Day of the Endangered Lawyer 2016: Honduras

23. The International Day of the Endangered Lawyer began in 2010 and was first organized by the European Democratic Lawyers Association (AED-EDL) in support of lawyers in Iran. Each year the AED-EDL focuses on a country where lawyers are endangered due to their advocacy work. This year, the International Day of the Endangered Lawyer was dedicated to lawyers in Honduras. Reports indicate that between 2010 and 2015, 86 legal professionals were murdered. The vast majority of these murders do not result in prosecution.

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<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

<sup>17</sup> "Letter from Legal Experts on Detained Chinese Lawyers, January 18, 2016," online: Human Rights Watch <<https://www.hrw.org>>

24. The Day of the Endangered Lawyer Foundation has drafted a report titled, *Basic Report on the Human Rights Lawyers under Continuing Threat in Honduras*, which provides information on the situation faced by lawyers in Honduras. The report can be found online at the following link:

[http://nl.dayoftheendangeredlawyer.eu/wp-content/uploads/sites/2/2015/12/Briefing-on-the-situation-of-Honduran-Lawyers\\_ELDH\\_nov21.pdf](http://nl.dayoftheendangeredlawyer.eu/wp-content/uploads/sites/2/2015/12/Briefing-on-the-situation-of-Honduran-Lawyers_ELDH_nov21.pdf)

**LESOTHO – HARASSMENT, THREATS AND INTIMIDATION OF CHRISTOPHER LEPHUTHING, HAAE PHOOFOLO, KHOTSO NTHONTHO, KOILI NDEBELE, AND TUMISANG MOSOTHO**

**Sources of Information**

25. The background information for this report was taken from the following sources:
- a. Lawyers for Lawyers
  - b. Lawyers' Rights Watch
  - c. Lesotho Times

**Background**

26. Haae Phoofolo, Christopher Lephuthing, Koili Ndebele, Khotso Nthontho and Tumisang Mosotho are lawyers representing 23 soldiers accused of plotting a mutiny with Maaparankoe Mahao, (an ex-army chief who was killed on 25 June 2015).<sup>18</sup>
27. Reports indicate that the lawyers are being subjected to harassment, threats and intimidation both inside and outside the of the courtroom: Lawyers for Lawyers and Lawyers' Rights Watch Canada report that members of the Lesotho Defence Forces ("LDF") have denied the lawyers access to their clients, have directly threatened the lawyers with physical harm, and carry assault weapons openly in court.<sup>19</sup> Moreover, the lawyers report that they have been followed by members of the Special Forces. Another lawyer representing the soldiers has reportedly fled Lesotho out of fear for his family's safety.<sup>20</sup>
28. Lawyers for Lawyers and Lawyers' Rights Watch Canada report that the lawyers have recently learned they are on a 'hit list', which was published on social media at the end of October 2015. Currently, its authorship is unknown. However, two people who were on a similar 'hit list' last year were killed soon after its publication.<sup>21</sup>

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<sup>18</sup> "Lesotho, Security Situation of Lawyers and Independence of the Legal Profession: Joint Letter, December 3, 2015," online: Lawyers' Rights Watch Canada & Lawyers for Lawyers < <http://www.lrwc.org> >

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> Lesotho, *supra* note 18

29. On 4 December 2015, the Lesotho Times reported that the LDF was failing to respect a High Court order of 5 October 2015 for the release of all the accused to "open arrest."<sup>22</sup> Recent reports indicate that the accused have languished in solitary confinement since then. The Lesotho Times reported that when Koili Ndebele (one of the lawyers for the accused) raised this issue with the court, Maj-Gen Letsoela (the presiding judge) stated that the Court Martial was not the proper authority to deal with issues of non-compliance and detention. Moreover, Maj-Gen Letsoela stated that he had no power to order the LDF to comply with the High Court ruling. He referred the advocate to the High Court on this issue.<sup>23</sup>
30. Lawyers for Lawyers and Lawyers' Rights Watch Canada have signed a joint intervention letter urging the Government of Lesotho to: honour its international human rights obligations to investigate the hit list; take all measures to protect the lawyers' personal and professional safety; and enable the lawyers to carry out their professional duties free from intimidation, harassment, and reprisals.<sup>24</sup>

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<sup>22</sup> "Lawyers take on court martial president, 4 December, 2015," online: Lesotho Times <<http://lestimes.com>>

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

TAB 7.1.1

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**SHU XIANGXIN**

His Excellency Mr. Xi Jinping  
President of the People's Republic of China  
State Council General Office  
2 Fuyoujie  
Xichengqu  
Beijingshi 100017  
People's Republic of China

Your Excellency:

**Re: Conviction of human rights lawyer Shu Xiangxin**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the conviction of human rights lawyer Shu Xiangxin. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Shu Xiangxin is a prominent human rights lawyer in Shandong province. He often defends clients who are involved in politically sensitive cases.

Reports indicate that Shu Xiangxin was arrested on the 2 January 2016. On 4 January 2016, Shu Xiangxin reported to his lawyers that he had been severely beaten and handcuffed to a staircase for seven hours.

Shu Xiangxin's lawyers attest to visible injuries on his wrists and face. Moreover, medical examinations conducted from 6-8 January 2016 describe the deterioration of his physical health while in pre-trial detention: he reportedly suffers from tinnitus, thrombosis, muscle atrophy, and an effusion on his brain. Furthermore, observers at his trial on 8 January 2016 report that Shu Xiangxin was unable to walk without assistance.

On 8 January 2016, Shu Xiangxin was convicted of defamation and sentenced to a six month jail term. His licence to practice law was also revoked.

A number of organizations have reported on the arrest and detention of human rights lawyers in China. The Law Society is concerned that the arrest and detention of these lawyers is directed at preventing them from carrying out peaceful human rights activities.

The Law Society of Upper Canada urges Your Excellency to comply with 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 right 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 People's Republic of China to:

- a. vacate Shu Xiangxin's conviction immediately and unconditionally;
- b. reinstate Shu Xiangxin's licence to practice law;
- c. put an end to all acts of harassment against Shu Xiangxin as well as other human rights lawyers and defenders in China;
- d. provide Shu Xiangxin with regular access to his lawyer, family, his physician and adequate medical care;
- e. guarantee in all circumstances the physical and psychological safety and integrity of Shu Xiangxin;
- f. guarantee all the procedural rights that should be accorded to Shu Xiangxin; and
- g. 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 7,900 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. Guo Shengkun  
Minister of Public Security  
No.14, Donchang'anjie,  
Dongchengqu, Beijing 100741  
People's Republic of China  
Email: gabzfwz@mps.gov.cn

Ambassador Luo Zhaohui  
Embassy of the People's Republic of China in Canada  
515 St. Patrick St.  
Ottawa, ON  
Canada K1N 5H3

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

Wang Junfeng, President, All China Lawyers 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: Conviction of human rights lawyer Shu Xiangxin**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to His Excellency Mr. Xi Jinping, President of the People's Republic of China, expressing our deep concern over reports of the detention of human rights lawyer Shu Xiangxin.

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](mailto: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 7,900 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
- Wang Junfeng, President, All China Lawyers 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 conviction of human rights lawyer Shu Xiangxin in China**

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the conviction of human rights lawyer Shu Xiangxin in China.

Shu Xiangxin is a prominent human rights lawyer in Shandong province. He often defends clients who are involved in politically sensitive cases.

The Law Society voices its concern as a result of reports that Shu Xiangxin was arrested on the 2 January 2016. On 4 January 2016, Shu Xiangxin reported to his lawyers that he had been severely beaten and handcuffed to a staircase for seven hours.

Shu Xiangxin's lawyers attest to visible injuries on his wrists and face. Moreover, medical examinations conducted from 6-8 January 2016 describe the deterioration of his physical health while in pre-trial detention: he reportedly suffers from tinnitus, thrombosis, muscle atrophy, and an effusion on his brain. Furthermore, observers at his trial on 8 January 2016 report that Shu Xiangxin was unable to walk without assistance.

Shu Xiangxin was arrested on the 2 January, 2016. On 8 January 2016, he was found guilty of defamation and sentenced to a six month jail term. His licence to practice law was also revoked.

A number of organizations have reported on the arrest and detention of human rights lawyers in China. The Law Society is concerned that the arrest and detention of these lawyers is directed at preventing them from carrying out peaceful human rights activities.

The Law Society of Upper Canada urges the government of the People's Republic of China to comply with 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 right 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 People's Republic of China to:

- a. vacate Shu Xiangxin's conviction immediately and unconditionally;
- b. reinstate Shu Xiangxin's licence to practice law;
- c. put an end to all acts of harassment against Shu Xiangxin as well as other human rights lawyers and defenders in China;
- d. provide Shu Xiangxin with regular access to his lawyer, family, his physician and adequate medical care;
- e. guarantee in all circumstances the physical and psychological safety and integrity of Shu Xiangxin;
- f. guarantee all the procedural rights that should be accorded to Shu Xiangxin; and
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 7.1.2

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**WANG QIUSHI**

His Excellency Mr. Xi Jinping  
President of the People's Republic of China  
State Council General Office  
2 Fuyoujie  
Xichengqu  
Beijingshi 100017  
People's Republic of China

Your Excellency:

**Re: Detention of Human Rights Lawyer Wang Qiushi**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the detention of human rights lawyer Wang Qiushi. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Wang Qiushi is a Heilongjiang-based human rights lawyer. He often defends clients who are involved in politically sensitive cases: in April 2015, he represented Wei Tingting, one of five feminists arrested for planning anti-sexual harassment demonstrations. Wang Qiushi also defended fellow human rights lawyer Wang Quanzhang, who has been held in detention since 10 July 2015.

Reports indicate that Wang Qiushi disappeared on 9 January 2016 after being summoned by police for questioning.

On 12 January 2016, his family was informed that he was being held by the authorities at an undisclosed location. His family has not been given any reasons for his detention.

A number of organizations have reported on the arrest and detention of human rights lawyers in China. The Law Society is concerned that the arrest and detention of these lawyers is directed at preventing them from carrying out peaceful human rights activities.

The Law Society of Upper Canada urges Your Excellency to comply with Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

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The Law Society urges the government of the People's Republic of China to:

- a. release Wang Qiushi immediately;
- b. provide Wang Qiushi with regular access to his lawyer and family;
- c. guarantee all the procedural rights that should be accorded to Wang Qiushi and other human rights lawyers and defenders in China;
- d. put an end to all acts of harassment against Wang Qiushi as well as other human rights lawyers and defenders in China;
- e. guarantee in all circumstances the physical and psychological integrity of Wang Qiushi; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor  
Treasurer

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

cc:

Mr. Guo Shengkun

Minister of Public Security  
No.14, Donchang'anjie,  
Dongchengqu, Beijing 100741  
People's Republic of China  
Email: gabzfwz@mps.gov.cn

Ambassador Luo Zhaohui  
Embassy of the People's Republic of China in Canada  
515 St. Patrick St.  
Ottawa, ON  
Canada K1N 5H3

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

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

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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

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

### Proposed Letter to Lawyers' Associations

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I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to His Excellency Mr. Xi Jinping, President of the People's Republic of China, expressing our deep concerns over reports of the detention of human rights lawyer Wang Qiushi.

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](mailto: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:

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- Mary Lawlor, Executive Director, Front Line Defenders

- Vincent Forest, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Wang Junfeng, President, All China Lawyers 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

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Wang Qiushi is a Heilongjiang-based human rights lawyer. He often defends clients who are involved in politically sensitive cases: in April 2015, he represented Wei Tingting, one of five feminists arrested for planning anti-sexual harassment demonstrations. Wang Qiushi also defended fellow human rights lawyer Wang Quanzhang, who has been held in detention since 10 July 2015.

The Law Society voices its concern as a result of reports that Wang Qiushi disappeared on 9 January 2016 after being summoned by police for questioning.

On 12 January 2016, his family was informed that he was being held by the authorities at an undisclosed location. His family has not been given any reasons for his detention.

A number of organizations have reported on the arrest and detention of human rights lawyers in China. The Law Society is concerned that the arrest and detention of these lawyers is directed at preventing them from carrying out peaceful human rights activities.

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

TAB 7.1.3

## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses concern about human rights violations faced by lawyers and members of the judiciary in Honduras**

TORONTO, ON — The Law Society of Upper Canada is deeply concerned about the ongoing human rights violations faced by lawyers and judges in Honduras.

The 2016 [Day of the Endangered Lawyer](#) was dedicated to lawyers in Honduras. **Reports indicate that between 2010 and 2015, 86 legal professionals were murdered.** According to the [Basic Report on the Human Rights Lawyers under Continuing Threat in Honduras](#), the vast majority of these murders do not result in prosecution.

The Law Society reminds the government of Honduras of Articles 16, 17 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.

Article 17 states:

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

Article 23 states:

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

The Law Society urges the government of Honduras to:

- a. put an end to all acts of violence and harassment against human rights lawyer and defenders in Honduras;

- b. guarantee in all circumstances the physical and psychological safety and integrity of all human rights lawyers and defenders;
- c. conduct a fair, impartial and independent investigation into the cases of human rights lawyers who have been murdered, harassed or attacked in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

*\*The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,900 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.*



For Immediate Release

February 26, 2016

Public Statement

**The Law Society of Upper Canada expresses grave concerns about the harassment and intimidation of lawyers in Lesotho**

TORONTO, ON – The Law Society of Upper Canada expresses grave concerns about the harassment and intimidation of lawyers Haae Phoofolo, Christopher Lephuthing, Koili Ndebele, Khotso Nthontho and Tumisang Mosotho in Lesotho.

Haae Phoofolo, Christopher Lephuthing, Koili Ndebele, Khotso Nthontho and Tumisang Mosotho are lawyers representing 23 soldiers accused of plotting a mutiny with ex-army chief Maaparankoe Mahao (who was killed on 25 June 2015).

It has come to our attention that the lawyers are being subjected to harassment and intimidation both inside and outside of the courtroom. Members of the Lesotho Defence Forces have reportedly: denied the lawyers access to their client; have directly threatened the lawyers with physical harm; and carry assault weapons inside the courtroom. In addition, the lawyers report that they have been followed by members of the Special Forces.

Moreover, reports indicate that the lawyers have recently learned they are on a 'hit list', which was published on social media at the end of October 2015. Currently, its authorship is unknown. However, two people who were on a similar 'hit list' last year were killed shortly after its publication.

Human rights organizations believe that these lawyers have been harassed and intimidated because of their legitimate legal work.

The Law Society of Upper Canada urges the government of Lesotho 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 right 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 Lesotho to:

- a. put an end to all acts of harassment against Haae Phoofolo, Christopher Lephuthing, Koili Ndebele, Khotso Nthontho and Tumisang Mosotho as well as other human rights lawyers and defenders in Lesotho;
- b. guarantee in all circumstances the physical and psychological integrity of these lawyers;
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments; and
- d. carry out an investigation as soon as possible into the 'hit list' and other threats against these lawyers.

*\*The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,900 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.*

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For more information, please contact Susan Tonkin, Communications Advisor - Media Relations, at 416-947-7605 or [stonkin@lsuc.on.ca](mailto:stonkin@lsuc.on.ca).

The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, ON, M5H 2N6  
[www.lsuc.on.ca](http://www.lsuc.on.ca)  
Follow us on Twitter [@LawsocietyLSUC](https://twitter.com/LawsocietyLSUC)

TAB 7.2

**FOR INFORMATION**

**HUMAN RIGHTS MONITORING GROUP  
RESPONSES FROM HUMAN RIGHTS ORGANIZATIONS**

31. 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 and human rights organizations.
32. In January 2016, the Monitoring Group received three responses from human rights organizations to the Law Society’s recent intervention letters. The Monitoring Group received additional information from Front Line Defenders, an organization that aims to protect human rights defenders at risk, about the following members of the legal profession: Abdullah Abdelkader (Sudan); Ermek Narymbaev (Kazakhstan); Mahfooz Saeed (Maldives); Narges Mohammadi (Iran) and Adilur Rahman Khan (Bangladesh). The Monitoring Group also received information from Human Rights Watch, an organization that engages in human rights research and advocacy, about lawyers Ermek Narymbaev (Kazakhstan) and Tahir Elci (Turkey).
33. Following the approval by Convocation in January 2016 of an intervention in the case of lawyer Razan Zaitouneh (Syria), the Law Society received correspondence from a member of the International Association of People’s Lawyers expressing support of the Law Society’s action in this matter.

## REPORT ON THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL JULY 1, 2015 – DECEMBER 31, 2015

### SUMMARY

34. Subsection 20(1)(a) of By-Law 11, *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the [Equity and Aboriginal Issues] Committee directs otherwise, the Discrimination and Harassment Counsel (the “DHC”) shall make a report to the Committee not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year.
35. Subsection 20(2) of By-Law 11 provides, “The Committee shall submit each report received from the Counsel to Convocation on the first day following the deadline for the receipt of the report by the Committee on which Convocation has a regular meeting”.
36. On February 11, 2016, the DHC Program presented to the Committee, pursuant to Subsection 20(1)(a) of By-Law 11, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period of July 1 to December 31, 2015 (**TAB 7.3.1**). The Committee submits the report to Convocation pursuant to Subsection 20(2) of By-Law 11.

TAB 7.3.1

**REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF UPPER CANADA**

**For the period from July 1, 2015 to December 31, 2015**

**Prepared by Cynthia Petersen  
Discrimination and Harassment Counsel**

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**A. INTRODUCTION**

1. The DHC provides a wide range of services to individuals who confidentially report discrimination or harassment complaints about lawyers, articling students or paralegals. Complaints are received from both members of the public and members of the legal profession.
2. The complaints arise in a variety of contexts, such as clients who report misconduct by their own lawyer or paralegal, articling students who report workplace harassment by lawyers, and lawyers who report discriminatory treatment by opposing counsel in their cases.

**B. SERVICES PROVIDED TO COMPLAINANTS**

3. The DHC does not provide legal advice. General information and advice are provided to assist complainants in evaluating their options and resolving their complaints.
4. In some cases, upon request, strategic tips and/or coaching are provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).
5. Student complainants whose articles are terminated or who decide to withdraw from their articles before completion also receive counselling and advice from the DHC about transferring their articles, as well as support in their job search for a new articling position. They are also referred to appropriate resources within the Law Society.

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6. Complainants who contact the DHC are advised of various avenues of recourse open to them, including (where applicable):
  - confronting the respondent licensee directly with their concerns;
  - speaking to their union representative (if they are unionized and their complaint relates to their employment by a lawyer or paralegal);
  - filing an internal discrimination or harassment complaint within their workplace;
  - making a complaint to the respondents supervisor/manager or to the firm that employs the respondent;
  - filing an Application with the Human Rights Tribunal of Ontario;
  - filing a complaint about professional misconduct with the Law Society;
  - reporting to the police (where criminal conduct is alleged); and
  - consulting a lawyer for legal advice regarding possible claims and causes of action.
  
7. Complainants are provided with information about each of these options, including:
  - what (if any) costs might be involved in pursuing an option;
  - whether legal representation is required in order to pursue an option;

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- referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);
  - how to file a complaint or Application (eg. whether it can be done electronically, whether particular forms are required, etc.)
  - the processes involved in each option (eg. investigation, conciliation, mediation, hearing, etc.)
  - the general types of remedies that may potentially be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, public interest remedies); and
  - the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to precise limitation periods).
8. Complainants are told that the options available to them are not mutually exclusive.
9. Some complainants are referred to other agencies/organizations (such as the Law Society's Member Assistance Program, the Human Rights Legal Support Centre, or the Law Society's Lawyer Referral Service) or are directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

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**C. MEDIATION / CONCILIATION**

10. When appropriate, complainants are offered the mediation or conciliation services of the DHC Program.
11. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory resolution of the complaint.
12. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate. If the complainant elects to have the DHC contact the respondent, written instructions must be provided. If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into mediated discussions with the DHC.
13. Where informal conciliation services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the complainant's concerns, in the hope of achieving a resolution to the complaint. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Conciliation can be conducted by an in-person meeting or using shuttle diplomacy.
14. Some complainants decline the offer of the DHC's mediation and conciliation services, notwithstanding that the services are free, confidential, and in the case

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of formal mediation, subject to a mutual “without prejudice” undertaking by both parties. The reasons why complainants decline mediation are varied and include: a complainant desiring to have a fact-finding investigation, believing that the respondent will not participate in good faith, wanting to create a formal record of the respondent’s misconduct through an adjudicative process, and/or hoping to have professional discipline imposed on the respondent.

15. Some respondents refuse to participate in mediation or conciliation, but that is relatively rare. Most respondents are open to participating in an informal mechanism for resolving complaints against them.
16. During this reporting period, there were no formal in-person mediation sessions conducted by the DHC. There were, however, a number of informal interventions made at complainants’ request, including (for the first time) conciliation of a complaint made against a paralegal. The DHC spoke with the respondents in several cases and was, in each instance, successful in achieving mutually satisfactory resolutions to complaints.

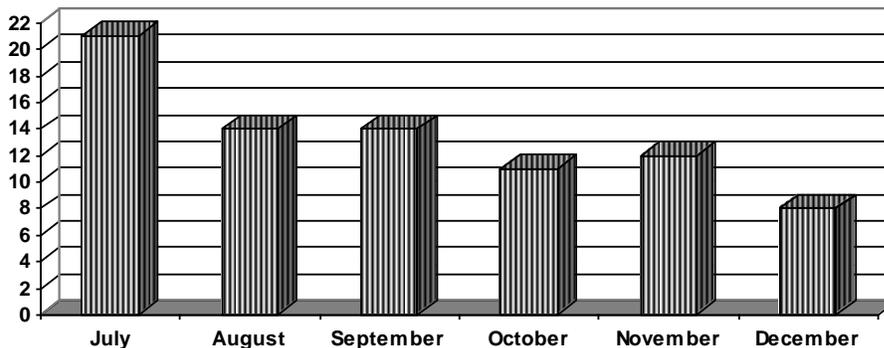
#### **D. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM**

17. During this six month reporting period, 80 individuals contacted the DHC Program with a new matter.<sup>1</sup> This represents average of 13 new contacts per month.

---

<sup>1</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number.

18. The volume of new contacts with the Program was distributed as follows:



19. Of the 80 individuals who contacted the DHC, 48 (60%) used the telephone to make their initial contact and 30 (38%) used email. Two individuals contacted the DHC in person.
20. During this reporting period, three (3) individuals were provided services in French.<sup>2</sup> The remaining clients of the Program were provided services in English.

**E. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS**

21. Of the 80 new contacts with the Program, 20 individuals reported specific complaints of discrimination or harassment by a licensee (lawyer or paralegal).
22. In this reporting period, 2 complaints were made against paralegals. The remaining 18 complaints were made against lawyers.

---

<sup>2</sup> One of the francophone callers raised a matter outside the DHC's mandate. The other two francophone callers made general inquiries. None of the francophone contacts (during this reporting period) reported a complaint about a licensee.

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23. One of the complaints against paralegals was made by a member of the public and the other was made by a paralegal candidate. Of the 18 complaints against lawyers, 5 (28%) were made by members of the public and 13 (72%) were made by licensees.

**F. COMPLAINTS AGAINST LAWYERS BY LICENSEES**

24. Twelve (12) of the complaints against lawyers were made by other lawyers. One complaint about a lawyer was made by a paralegal. (There were no complaints by articling students during this reporting period.)
25. The sole complaint by a paralegal involved a female complainant who reported sexual harassment by a male lawyer who was her employer.
26. Of the 12 complainants who were lawyers, 11 were female and only one was male.
27. Ten (10) of the 12 complaints made by lawyers (83%) arose in the context of the complainant's employment. The other two complaints were about the conduct of opposing counsel. (One of the complainants who reported workplace issues also complained about opposing counsel's conduct.)
28. There were 6 complaints against lawyers based (in whole or in part) on sex. Of these,
- Three (3) involved allegations of workplace sexual harassment:
    - An associate lawyer complained about sexual harassment by the managing partner of her law firm. Her complaint included an allegation of wrongful dismissal as a reprisal for rejecting his advances.

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- An in-house counsel complained about sexual harassment by her supervisor.
  - An associate in a small law firm reported that her work environment was poisoned by pervasive sexual harassment by male partners (including sexual jokes, unwelcome sexual overtures, demeaning sexist comments about women, etc.).
  - Three (3) involved complaints about gender-based workplace discrimination:
    - A partner in private practice complained about the sexist behaviour of her male partners and of a male opposing counsel.
    - A government lawyer complained about discrimination by opposing counsel based on her race (she identified as Black) and gender.
    - A government lawyer complained about systemic gender-based discrimination in her workplace.
29. All of the complainants who reported sex-based discrimination or harassment were female and all of the respondent lawyers were male.
30. There were 4 complaints against lawyers based on disability:
- Two government lawyers (both female) complained about employment discrimination based on their disabilities.

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- A lawyer in private practice reported harassment and workplace bullying based on his disability, as well as discriminatory termination of his employment.
- A lawyer in private practice complained that her employer was refusing to accommodate her disability.

31. There were 2 complaints based (in whole or in part) on race:

- A Black female government lawyer complained about discrimination by opposing male counsel based on her race and gender.
- An Asian female government lawyer complained about discrimination and harassment (bullying, intimidation, disrespectful and differential treatment) by opposing male counsel.

32. There was one complaint of discrimination in employment based on family status. A government lawyer reported that she suffered employment reprisals after seeking accommodation of her childcare responsibilities.

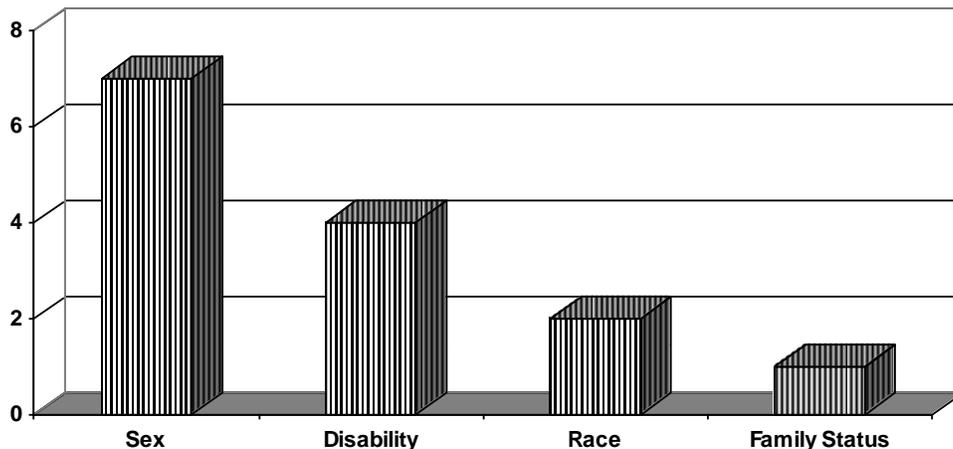
33. In summary, the number of complaints<sup>3</sup> by licensees in which each of the following prohibited grounds of discrimination was raised are:

- sex 7 (including 4 sexual harassment complaints)
- disability 4
- race 2
- family status 1

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<sup>3</sup> The total number exceeds 13 because one of the complaints involved two intersecting grounds of discrimination (race and sex).

Grounds Raised in Complaints against Lawyers by Licensees



**G. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC**

- 34. During this reporting period, there were 5 complaints about lawyers made by members of the public.
- 35. Four (80%) of the public complaints were made by women and one was made by a man.
- 36. Of the 5 public complaints, 2 involved clients complaining about the conduct of their own lawyer and 3 involved litigants complaining about the conduct of opposing counsel in their respective cases.
- 37. There were 2 complaints from members of the public based on sex. Both were client complaints by women about sexual harassment by male lawyers (unwelcome romantic overtures and sexual advances).

38. There were 2 complaints from members of the public based on disability. Both involved litigants who were complaining about opposing counsel:

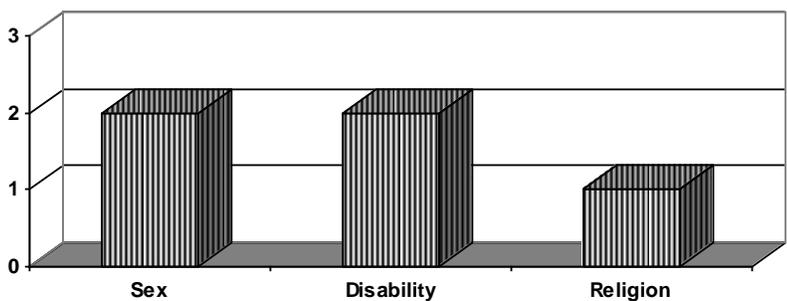
- A woman with a vision impairment reported that opposing counsel was refusing to comply with court orders to provide her with documents in an accessible format.
- A man reported that opposing counsel was stereotyping and stigmatizing him and making demeaning comments based on his mental health disability.

39. There was one complaint from the public based on religion. A Muslim male litigant reported that opposing counsel in his case made an offensive anti-Islamic comment.

40. In summary, the number of public complaints in which each of the following grounds of discrimination was raised are as follows:

- sex 2
- disability 2
- religion 1

Grounds Raised in Complaints about Lawyers by Members of the Public



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#### **H. COMPLAINTS AGAINST PARALEGALS**

41. During this reporting period, there were 2 complaints against paralegals:
- A female paralegal candidate reported sexual harassment by her employer (a male paralegal) during her student placement; and
  - A female administrative assistant reported that her employer (a female paralegal) was refusing to accommodate her disability in the workplace.

#### **I. GENERAL INQUIRIES**

42. Of the 80 new contacts with the DHC during this reporting period, 18 involved general inquiries about matters within the mandate of the DHC program but did not involve reports of misconduct by licensees.

#### **J. MATTERS OUTSIDE THE DHC MANDATE**

43. During this reporting period, the DHC received 42 calls and emails relating to matters outside the Program's mandate (such as complaints about workplace harassment that did not involve a licensee, complaints about discrimination by neighbours or the police, and complaints about lawyers that did not involve any allegations of discrimination or harassment, eg. a complaint that a lawyer was exceeding the limits of his restricted practice).
44. An explanation of the DHC's mandate, role and duties was provided to each person who called with a matter outside the Program's mandate. Some of these individuals were referred to other agencies for assistance. Although there are a number of these "outside mandate" contacts during every reporting period, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

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**K. PROMOTIONAL ACTIVITIES**

45. The LSUC maintains a bilingual website for the DHC Program. Periodic advertisements are placed (in English and French) in the *Ontario Reports* to promote the DHC Program. In addition, French and English brochures are placed in circulation in law firms, community centres, libraries, government agencies, faculties of law, etc.
  
46. The DHC also personally engages in a number of educational activities that increase the visibility of the program and promote awareness of the DHC's services. During this reporting period, the DHC worked closely with the Law Society's Director of Equity (Josée Bouchard) to design and deliver *Discrimination and Harassment Prevention* and *Violence Prevention* workshops to law firms across Ontario and also within the Law Society (for Law Society managers and staff). Presentations were also made to first year law students at Queen's University, Faculty of Law.

Tab 7.4

## **EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR 2016**

37. The Equity Legal Education and Rule of Law Series calendar is presented at [TAB 7.4.1](#).

## FOR INFORMATION

# EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR January – June 2016

## INTERNATIONAL WOMEN'S DAY EVENT

**Date:** March 8, 2016

**Time and Location:**

Panel Discussions: 5:30 – 7:30 p.m. in the Lamont Learning Centre\*

Reception: 7:30 – 8:30 p.m. in Convocation Hall

\*this program is also available via simultaneous webcast

**Description:** the Law Society and partner organizations will be hosting their annual panel discussion in honour of International Women's Day.

This year's discussion will focus on violence against women, whether a culture shift is underway, and how we can create further positive change. The discussion will bring together speakers representing historical, Indigenous, criminal justice, on-campus and activist perspectives. Join them as they identify key issues and discuss meaningful approaches towards a solution.

A reception will follow the panel discussion.

**Moderator:** Bencher Teresa Donnelly, West Region Sexual Violence Crown, Ministry of the Attorney General

**Panelists:**

- Professor Constance Backhouse, University Research Chair on the Sexual Assault Legislation in Canada, University of Ottawa
- Beverly Jacobs, Lawyer and PhD Candidate, Wholistic Aboriginal Health, Law, and Indigenous Research Methodologies, University of Calgary
- Farrah Khan, Co-chair of Ontario's Roundtable on Violence Against Women, and coordinator of sexual violence education and support, Ryerson University

## **JOURNÉE INTERNATIONALE DE LA FRANCOPHONIE**

**Date:** March 22, 2016

**Time and Location:** 5:00-7:00\* p.m. in Convocation Hall

\*exact time to TBC

**Description:** The Law Society of Upper Canada, the Ontario Bar Association and the Association of French Speaking Jurists of Ontario (AJEFO) will be hosting their annual event celebrating the International Day of the Francophonie. Additional details will follow closer to the event date.

## **DIVERSE CAREERS FOR WOMEN IN LAW EVENT**

**Date:** April 19, 2016

**Time and Location:** 4:00-8:00\* p.m. Panel discussion and reception in Convocation Hall

\*exact time TBC

**Description:** The Women's Law Association of Ontario and the Law Society of Upper Canada will present their annual panel discussion and reception to promote diverse careers for women in the legal profession. Additional details will follow closer to the event date.

## **EARTH DAY EVENT**

**Date:** April 28, 2016

**Time and Location:** 4:00-8:00\* p.m. Panel discussion and reception in Convocation Hall

\*exact time TBC

**Description:** The Law Society will hold an event in honour of Earth Day, featuring a discussion on climate change from the Inuit perspective.

Additional details will follow.

## **MENTAL HEALTH AWARENESS EVENT**

**Date:** May 3, 2016

**Time and Location:**

Panel Discussion: 4:00 – 6:00\* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00\* p.m. in Convocation Hall

\*exact time to TBC

**Description:** In honour of Mental Health Week, the Law Society will be hosting a panel discussion and reception focused on mental health and fostering wellness in the legal profession. Additional details will follow closer to the event date.

## **HOLOCAUST REMEMBRANCE DAY EVENT**

**Date:** May 5, 2016

**Time and Location:**

Panel Discussion: 4:00 – 6:00\* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00\* p.m. in Convocation Hall

\*exact time to TBC

**Description:** The Law Society, the Human Rights League of B'nai Brith and the Canadian Race Relations Foundation will be hosting their annual event to commemorate Yom HaShoa, or Holocaust Remembrance Day. Additional details will follow closer to the event date.

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

**Date:** May 17 or 19, 2016 (TBC)

**Time and Location:**

Panel Discussion: 4:00 – 6:00\* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00\* p.m. in Convocation Hall

\*exact time to TBC

**Description:** The Law Society, the Canadian Association of South Asian Lawyers, the Federation of Asian Canadian Lawyers and the South Asian Bar Association of Toronto will be hosting their annual event in celebration of Asian and South Asian Heritage Month. Additional details will follow closer to the event date.

## **ACCESS AWARENESS EVENT**

**Date:** May 31, 2016

**Time and Location:**

4:00 – 8:00\* p.m. Panel discussion and reception in the Lamont Learning Centre

\*exact time to TBC

**Description:** The Law Society and the ARCH Disability Law Centre will be hosting their annual event in honour of Access Awareness Week. Additional details will follow closer to the event date.

## **ABORIGINAL HISTORY MONTH EVENT**

**Date:** June 23, 2016 (TBC)

**Time and Location:**

Panel Discussion: 4:00 – 6:00\* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00\* p.m. in Upper and Lower Barristers Lounges

\*exact time to TBC

**Description:** The Law Society will be hosting its annual event in honour of National Aboriginal History Month. Additional details will follow closer to the event date.

## **PRIDE WEEK EVENT**

**Date:** June 28, 29, or 30, 2016 (TBC)

**Time and Location:**

Panel Discussion: 4:00 – 6:00\* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00\* p.m. in Convocation Hall

\*exact time to TBC

Description: The Law Society and the Sexual Orientation and Gender Identity Section (SOGIC) of the Ontario Bar Association will be hosting their annual Pride Week discussion and reception. Additional details will follow closer to the event date.

**NOTE:** A number of the above events will also be available via simultaneous webcast. Additional information will be sent to benchers within 1-2 months of the event date, and will be posted here: <http://www.lawsocietygazette.ca/events/>

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*



**TAB 12**

**Report to Convocation  
February 25, 2016**

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**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  
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**Information**

PD&C Department Annual Resource and Program Report

**TAB 12.1**

## 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, 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 and Peter Wardle participated in the meeting on February 11, 2016. Staff members Priya Bhatia, Diana Miles and Sophia Sperdakos also attended.

INFORMATION

**PROFESSIONAL DEVELOPMENT & COMPETENCE (PD&C)  
DIVISION ANNUAL RESOURCE AND PROGRAM REPORT**

2. The PD&C Division Annual Resource and Program Report is set out at **TAB 12.1.1: Annual Resource Report 2015** for Convocation's information.
3. Providing an annual report to the PD&C Committee and Convocation enables benchers to see, at a glance, the operational effect of their approved PD&C policies and the work done within the PD&C Division.



## **Professional Development and Competence Division Resource and Program Report**

**2015**

FOR INFORMATION ONLY

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## PROFESSIONAL DEVELOPMENT AND COMPETENCE DIVISION

The Professional Development and Competence (PD&C) Division supports policy development and operational implementation for all activities, products and programs related to practice management and supports, continuing professional development, legal information services, the lawyer and paralegal licensing processes, and post-licensing quality assurance.

The Department focuses on the relationship between pre- and post-call substantive, procedural, practice management and professional responsibility competencies within the profession and strives to create a platform of services that assists lawyers and paralegals to maintain viable practices and provide competent service.

### LICENSING AND ACCREDITATION: LAWYER LICENSING

The following chart indicates the number of candidate registrations, and the number of lawyer licences issued in the past five years of the Licensing Process. The Process is governed by the three-year rule which requires a registered lawyer candidate to be called to the bar within three years from the time of their entry into a licensing year. In order to become licensed, lawyer candidates are required to pass two licensing examinations (the Barrister Examination and the Solicitor Examination), successfully complete the Experiential Training requirement, and demonstrate that they are of good character.

| Year | Registrants | Licensed |
|------|-------------|----------|
| 2011 | 1,973       | 1,707    |
| 2012 | 2,129       | 1,873    |
| 2013 | 2,214       | 1,995    |
| 2014 | 2,333       | 1,984    |
| 2015 | 2,336       | 2,201    |

### Experiential Training Requirement

Candidates have two main options available to fulfill the Experiential Training requirement: the Articling Program and the Law Practice Program. Candidates may also qualify for an exemption from the Experiential Training requirement based on an application process that requires at least 10 months of relevant practice experience in a common law jurisdiction. All Experiential Training options must support the skills and tasks set out in the Experiential Training Competencies.

In 2015, most candidates selected the Articling Program as their Experiential Training path. There were 1830 articling placements that commenced in 2015 and 231 candidates selected the LPP in French or English. A total of 112 candidates were exempted from the Experiential Training requirement.

## Articling Program

The Articling Program requires candidates to work consecutively for 10 months with an approved Articling Principal. New documentation requirements approved under the Pathways Pilot Project require all principals and candidates to report to the Law Society at regular intervals. Compliance rates with the new reporting protocols has been very high, with 98% of principals filing Experiential Training Plans at the start of the placement and approximately 90% of principals filing reports related to exposure to the required competencies and candidate evaluations on core tasks. Similarly, approximately 95% of candidates have filed reports documenting their exposure to the required competencies during the placement.

In addition to a traditional 10-month full-time articling placement in Ontario, candidates have the option to fulfill the program requirements through a joint articling placement, a part-time articling placement, a national placement or an international placement. The number of articling placements completed outside of Ontario over the past 5 years has remained relatively small at approximately 2% of articling positions. Candidates may also obtain an abridgement of the 10 month term if they have legal experience relevant to the required competencies obtained after completing law school.

Candidates are responsible for finding their own articling placement. The Law Society provides supports such as the Articling Registry and the Mentorship Program to assist candidates with their search.

## The Law Practice Program

Now into its second year, the Law Practice Program (LPP) consists of a four-month training course followed by a four-month work placement. The LPP is provided by Ryerson University in English and the University of Ottawa in French. The 2015 training course component concluded at the end of December and candidates have commenced the work placement component as of January.

Listed below is the number of candidates who completed the 2014-2015 LPP and those who are currently enrolled in the 2015-2016 LPP:

| Program      | 2014-2015 LPP Enrollment | 2015-2016 LPP Enrollment |
|--------------|--------------------------|--------------------------|
| English      | 221                      | 220                      |
| French       | 17                       | 11                       |
| <b>Total</b> | <b>238</b>               | <b>231</b>               |

## LICENSING AND ACCREDITATION: PARALEGAL LICENSING

The following chart indicates the number of candidate registrations, and the number of P1 licenses issued in the past five years in the Licensing Process. The Licensing Process for paralegal candidates is governed by the three-year rule which requires a registered paralegal candidate to complete licensing requirements within three years from the time of their entry into a licensing three-year term. In order to become licensed, paralegal candidates are required to pass the Paralegal Licensing Examination and demonstrate that they are of good character.

| Year | Registrants | Licensed |
|------|-------------|----------|
| 2011 | 1,306       | 757      |
| 2012 | 1,460       | 1,051    |
| 2013 | 1,981       | 1,344    |
| 2014 | 1,559       | 1,156    |
| 2015 | 1,450       | 1,372    |

### Paralegal College Program Accreditation – New Standards for 2015

As part of its mandate to govern and regulate paralegals, the Law Society accredits paralegal education programs that have been approved by the Ministry of Training, Colleges and Universities. Institutions must submit a detailed application package and participate in a rigorous audit process in order to demonstrate that the program's curriculum, infrastructure and systems support the accreditation criteria. Audits consist of a documentation review and a two-day site visit at the institution to observe classes and facilities, and meet with program administrators, faculty and students.

In September 2015, the Law Society introduced stricter standards for accreditation which include more stringent requirements pertaining to faculty qualifications, minimum class sizes, program structure and scheduling, and assessment methodologies, all of which support effective pre-licensure training and address deficiencies that have been identified based on over five years of audit and monitoring activities. In addition, the new protocols involve a mandatory accreditation process every five years to confirm alignment of curricula, faculty and program structure with Law Society's criteria and requirements. All accredited programs are now required to comply with the new standards.

As of December 31, 2015, PD&C has approved the accreditation of 29 paralegal college programs at 42 college campus locations throughout Ontario. In addition, a total of five program audits were conducted in 2015.

### Expansion of Paralegal Licensing Examination

In 2015, PD&C completed the implementation of the expanded of paralegal licensing examination which includes substantive and procedural law competencies, in addition to ethics, professional responsibility and practice management. After 18 months of development

work with psychometricians and members of the professions to create, revise and validate the new competencies, examination items and examination study materials, the first administration of the new paralegal examination took place in August 2015 with 565 candidates in attendance. The administration of the new examination proceeded smoothly and candidates continue to be able to register for three sittings per year: February, August and October.

## **CONTINUING PROFESSIONAL DEVELOPMENT**

### **CPD Programs and Products**

In 2015, PD&C produced 128 CPD programs, including 89 live programs, 5 e-Courses and 34 replays. E-Courses are a relatively new CPD format, offering members an opportunity for interactive, self-paced learning in various practice areas. The courses provide substantive and/or professionalism content in an engaging manner, and build upon the capabilities of this offering from the initial e-Courses of 2014, with updated graphics, video clips and reflective exercises for the user. Additional e-Courses will be released in 2016 to add to the 12 e-Courses which will remain in the catalogue, and continue to be purchased by members after their initial release date.

In 2015, CPD reached its highest level to date of fee-paid substantive program registrations. Professionalism programs are offered at a nominal \$25 or \$50 charge. Registrations for the low priced professionalism programs represented only 21% of total registrations in 2015, versus 38% in the previous year. Total registrations, including professionalism-only programs which are at a lower price point, dropped by nearly 10,000 in 2015. This was attributable to one program, offered for Lawyers and Paralegals, on the update to their Rules of Professional Conduct related to the adoption of the Model Rules which took place in 2014 and in which almost 10,000 practitioners participated. Aside from this unusual circumstance, registration levels for non-professionalism programs increased in 2015 by 7%.

The CPD department goal of 90 original programs per year was again exceeded in 2015, with 94 original programs offered. However, fewer program replays were completed in 2015, as departmental resources shifted their emphasis to providing innovative new program offerings including completion of the next level of advancement for eCourses which were highly successful.

## Registration History

|  | 2011   | 2012   | 2013   | 2014   | 2015             |
|--|--------|--------|--------|--------|------------------|
| Registration for paid programs (all formats) | 33,504 | 36,118 | 37,449 | 39,453 | 42,309           |
| Registration for free programs (all formats) | 60,732 | 47,582 | 51,244 | 9,460  | 563 <sup>1</sup> |
| Registration for \$25/\$50 programs          | n/a    | n/a    | n/a    | 14,550 | 10,977           |
| Total number of registrants                  | 94,236 | 83,725 | 88,693 | 63,463 | 53,849           |
| Total number of programs (all formats)       | 164    | 145    | 149    | 143    | 128              |
| Average registrations at CPD programs        | 575    | 577    | 595    | 444    | 421              |

CPD provides members with a variety of flexible options for fulfilling their CPD requirement. Members can attend most programs in person or via live webcast. Since the CPD requirement was introduced in 2011, there has been a continual shift away from live attendance in favour of online viewing. In 2015 only 13% of registrants attended in person. CPD programs all contain an interactive component, either in the form of a question and answer period, a poll of the audience or a live online chat. As many more members are viewing their CPD programs online, there has also been an increase in members registering as a group and watching together.

## Live In-Person vs Online Attendance

|   | 2011   | 2012   | 2013   | 2014   | 2015   |
|---|--------|--------|--------|--------|--------|
| Number of programs offering <b>live, in-person attendance</b> | 114    | 78     | 72     | 72     | 73     |
| Number of live, in-person registrants                         | 14,306 | 9,562  | 8,595  | 9,517  | 6,883  |
| Average # of registrations in-person                          | 125    | 123    | 119    | 132    | 94     |
| Number of programs <b>offering online attendance</b>          | 157    | 141    | 143    | 139    | 124    |
| Number of online registrants                                  | 67,072 | 60,331 | 63,622 | 40,720 | 34,648 |
| Average # of registrations online                             | 427    | 428    | 445    | 293    | 279    |

<sup>1</sup> This number is related to a November 2015 program "Enhancing Access to the Courts" and to a replay of that program. The comprehensive offering of "free" CPD programs ended in 2013.

Members have a variety of post-program products from which to choose to obtain CPD program content. The formats have changed dramatically over the last several years, with printed copy sales continuing to decline and online viewing increasing. On-demand webcasts are a very popular resource for Law Society members, and resulted in more than 12,000 purchases for this delivery format in 2015.

### Post Program Products

|                               | 2011          | 2012          | 2013          | 2014          | 2015          |
|-------------------------------|---------------|---------------|---------------|---------------|---------------|
| On Demand (video stream, MP4) | 4,946         | 13,832        | 16,476        | 13,226        | 12,368        |
| Printed Publications          | 14,131        | 16,833        | 14,534        | 9,443         | 7,077         |
| PDF Publications              | 1,521         | 1,816         | 775           | 1,112         | 729           |
| <b>Total</b>                  | <b>20,598</b> | <b>32,481</b> | <b>31,785</b> | <b>23,781</b> | <b>20,174</b> |

CPD works with the Law Association Librarians to arrange local group replay sessions. In 2015, 14 counties scheduled a total of 225 sessions, with a total of 1552 members participating across the province.

The CPD team works closely with volunteer lawyers and paralegals to develop programs for members across a variety of practice areas and different levels of experience. Each year, the CPD department works to engage at least 25% of program presenters who are new to Law Society CPD as a means of content renewal and succession planning.

In addition to 2-day Summit programs in the major practice areas and the well-known 6-Minute series, programs considered to be vital annual updates for members, the team also strives to create new and unique content offerings. In 2015, approximately 30% of the programs produced in 2015 were *entirely* new issues and content. New content programming included the following programs: Issue Identification and Analysis for Junior Lawyers, Criminal Law and the Young Person, Crowdfunding Primer for Business Lawyers, Accommodating Age in the Workplace, Discoveries: Five Years Post-Change, Retainer Agreements for Paralegals.

In 2015, the most popular CPD programs included several flagship Summit programs, as well as lower cost Professionalism programming. They are as follows:

| Program Name  | Format                     | Registrations |
|---|----------------------------|---------------|
| 12th Annual Real Estate Law Summit – 2 Days                         | Live in-person and Webcast | 1366          |
| The Six-Minute Real Estate Lawyer 2015                              | Live in-person and Webcast | 1,162         |
| The Mechanics of Good Writing: For Lawyers                          | Webcast                    | 1098          |
| 18th Annual Estates and Trusts Summit – 2 Days                      | Live in-person and Webcast | 1,074         |
| The Estate Administration Tax Act, 1998: New Reporting Requirements | Live in-person and Webcast | 969           |
| 9th Annual Family Law Summit 2015                                   | Live in-person and Webcast | 962           |
| Ethical Issues in Employment Law                                    | Webcast                    | 915           |
| Oatley McLeish Guide to Motor Vehicle Litigation                    | Live in-person and Webcast | 906           |
| The New Estates Tax Act: Town Hall Q&A                              | Webcast                    | 718           |
| Solo and Small Firm Conference 2015                                 | Live in-person and Webcast | 702           |

## PRACTICE MANAGEMENT RESOURCES AND SUPPORTS

### Practice Management Helpline

The Practice Management Helpline provides licensees with assistance and insight regarding the application of the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and other Law Society by-laws and regulations. The service is confidential and the Helpline strives to return all calls within 24 hours.

Representatives screen the call, assist the caller to identify the issue(s). This may include referring the caller to: existing resources such as articles, professional development programs, online FAQs, and other resources; transferring the call to other more appropriate departments within the Law Society for additional information; recommending alternatives for additional support, such as LAWPRO, Legal Aid, Teranet, etc.; and escalating the call to lawyer counsel, for complex or multi-faceted issues. Counsel will discuss the ethical issues, applicable legislation, potential options and the advantages and disadvantages of each option with the caller.

In 2015, the Practice Management Helpline received approximately 7,173 inquiries from licensees for an average of over 600 calls per month. Of the calls that were received, 85% were handled by representatives, meaning the question could be answered by reference to existing resources, and 15% were answered by counsel, meaning an interpretation of the *Rules of Professional Conduct* or a discussion of ethical issues was required.

The calls received as at December 31, 2015 broken down by size of practice:

#### PMH Calls from Lawyers

| Size of Practice            | Number of Calls | Percentage of Total |
|-----------------------------|-----------------|---------------------|
| Sole Practitioner           | 2,725           | 45.3                |
| Small Firms (2 to 5)        | 1,515           | 25.2                |
| Medium firms (6 to 10)      | 440             | 7.3                 |
| Larger firms (more than 10) | 625             | 10.4                |
| Other                       | 715             | 11.9                |
| <b>Total</b>                | <b>6,020</b>    | <b>100</b>          |

The majority of lawyers who called the Helpline in 2015 defined their primary areas of practice (more than 30% of their practice) as real estate law and civil litigation. The most frequent calls from lawyers by practice management issue were:

Conflicts of Interest  
 Trust Accounts  
 Confidentiality  
 Lawyer Annual Report  
 Withdrawal from Representation  
 Client Property  
 Client Identification and Verification  
 Fraud  
 File Ownership/Transfer  
 Referral Fees and Fee Splitting

#### PMH Calls from Paralegals

| Size of Practice            | Number of Calls | Percentage of Total |
|-----------------------------|-----------------|---------------------|
| Sole Practitioner           | 691             | 59.9                |
| Small Firms (2 to 5)        | 209             | 18.1                |
| Medium firms (6 to 10)      | 14              | 1.2                 |
| Larger firms (more than 10) | 13              | 1.1                 |
| Other                       | 226             | 19.6                |
| <b>Total</b>                | <b>1,153</b>    | <b>100</b>          |

The majority of paralegals who called the Helpline in the same period defined their primary areas of practice as Small Claims Court and *Provincial Offences Act* matters. The most frequent calls from paralegals by practice management issue were:

Paralegal Scope of Practice  
 Conflicts of Interest

Trust Accounts  
 Paralegal Annual Report  
 Confidentiality  
 Withdrawal from Representation  
 Advertising/Marketing  
 File Ownership/Transfer  
 Firm Name  
 Practice Arrangements

### Practice Management Resources

By tracking frequently asked questions, the Helpline identifies areas of concern within the lawyer and paralegal professions and responds to those concerns by developing new resources and relevant information pieces through the e-Bulletin and Manage Your Practice section of the Law Society Web site. In response to feedback from members, 12 new Technology Practice Tips were developed in 2015. The Technology Practice Tips are podcasts that provide practical information on a variety of issues in MP3 format and are also transcribed. The latest podcasts include tips on file management, desktop search tools, cloud location and voice recognition software.

### CERTIFIED SPECIALIST PROGRAM

In order to qualify for the Certified Specialist Program, a lawyer must meet the following criteria:

- practised for a minimum of seven years prior to the date of the application
- substantial involvement in the specialty area during five of the seven years,
  - o mastery of substantive law, practices and procedures, and
  - o concentration of practice in the specialty area;
- complied with the professional development requirements; and
- complied with the professional standards requirements.

The number of certified specialist lawyers in the profession has changed only marginally in the past 10 years and remains low at approximately 2.0 % of practising lawyers.

|                             | 2011 | 2012 | 2013 | 2014 | 2015 |
|-----------------------------|------|------|------|------|------|
| Total Number of Specialists | 775  | 763  | 766  | 797  | 824  |
| Specialists in Toronto Area | 443  | 442  | 459  | 460  | 477  |
| Specialists outside Toronto | 332  | 321  | 307  | 337  | 347  |
| Number of Specialty Areas   | 15   | 15   | 15   | 15   | 15   |

The following chart breaks down the number of certified specialists by practice area in 2015.\*

| Areas of Specialization                                | Number of Specialists |
|--|-----------------------|
| Bankruptcy and Insolvency Law                          | 11                    |
| Citizenship and Immigration Law                        | 55                    |
| Civil Litigation                                       | 301                   |
| Construction Law                                       | 35                    |
| Corporate and Commercial Law                           | 23                    |
| Criminal Law   | 95                    |
| Environmental Law                                      | 39                    |
| Estates and Trusts Law                                 | 39                    |
| Family Law   | 67                    |
| Health Law   | 17                    |
| Intellectual Property Law (Trademark/Patent/Copyright) | 48                    |
| Labour Law   | 23                    |
| Municipal Law  | 32                    |
| Real Estate Law  | 26                    |
| Work Place Safety and Insurance Law                    | 11                    |

\*The total number of specialists in this chart is slightly greater than the total number of specialists in 2015 (first chart above) as some specialists are certified in more than one area of law.

Development of the new specialty area in Indigenous Legal Issues continued in 2015. Working Groups comprised of subject matter experts from a diverse array of practice contexts engaged in the development and validation of new standards and learning criteria. Further review and validation activities are scheduled to take place in 2016, with implementation of the new specialty likely to be completed by the fall of 2016.

The ongoing program maintenance and promotional activities for the Certified Specialist program continue to be completed within an operating budget that maintains costs at the lowest possible levels. The program is supported by one full-time coordinator who is assisted as required by legal counsel in other areas of PD&C as required.

## **LEGAL INFORMATION – GREAT LIBRARY, CORPORATE RECORDS AND ARCHIVES**

The Legal Information team supports research and information needs of Law Society licensees and staff. Lawyers and paralegals access the Great Library's large print collection and electronic databases, as well as electronic resources available from within the library on the Great Library and licensees' personal computers. While the Great Library is the Law Society's primary legal research resource for paralegals, lawyers also use the Great Library's services through their local law associations.

## New App

The Great Library's mobile app hit the iTunes Store and Google App Store in September and has been downloaded by nearly 1,000 users. The app offers the ability to search the Great Library's catalog and digital libraries, as well as access research guides and contact the library. Over 5,600 searches have been made using the app.



A cross-library team of Technical Services and Reference staff developed the app. The Communications and Marketing department provided support in promoting the app over social media and in the Ontario Reports.

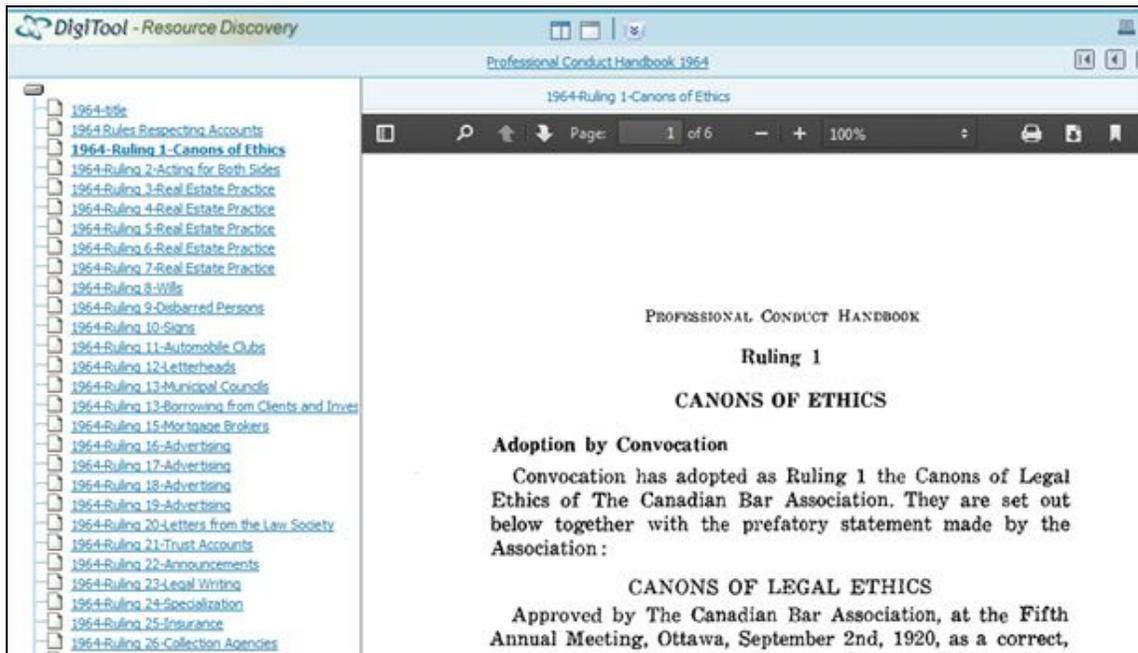
## Great Library Province-Wide Support

While the Great Library's reference team provides nearly 60 hours of reference support each week, it also supports lawyers and paralegals around the province in other ways. Through local law associations, the team loaned 83 books and sent nearly 8,000 electronic pages in 2015. In addition, they sent over 40,000 electronic pages to licensees directly.

A primary function of the reference team involves working with Toronto-based lawyers, articling candidates, paralegals, and librarians. The team answered nearly 21,000 questions in 2015. While it is a slight drop from 2014, it also reflects a continuing plateau of questions. There had been a dramatic drop in 2012, from 27,000 to 21,000 questions, reflecting a reduction in the number of reference staff. Similarly, e-requests have also plateaued, hovering at just under 4,000 contacts a year. Not surprisingly, reference requests in person and electronically are tied to the number of available staff and hours.

## Historic Professional Rules Digitized

The Great Library worked with Corporate Records and Archives to publish the historic – 1964 to 1992 – Professional Rules Handbooks on the library’s digital library collection. The rules are keyword searchable and browseable, ordered by year.



Like other content in the digital library, which includes Convocation’s Minutes and Transcripts and Law Society CPD articles since 2004, the Professional Rules content in the digital library is available for free download.

## Electronic Records Retention

The Law Society’s adoption of SharePoint created an opportunity to bring the corporate records retention schedule to electronic records. While the Law Society has had a records retention program for more than a decade, SharePoint’s focus as a replacement for shared network drives allows the creation of metadata and its application to corporate documents.

The Corporate Records and Archives team has converted the retention schedule into a SharePoint taxonomy term set and is working with Information Services and Shared Support Systems to implement the tagging of records by departments. It is the first stage of an ongoing process to enable long-term management of electronic corporate records stored within SharePoint.

## QUALITY ASSURANCE: SPOT AUDIT, PRACTICE REVIEW, PRACTICE AUDIT PROGRAMS

The audit and review programs of the Law Society are an integral part of the Law Society's quality assurance activities in the public interest. These programs have also received extremely positive feedback from lawyers and paralegals. The programs are making a measurable impact on law practices and legal services practices, with sole and small firm sustainability significantly improved for those firms that receive an audit.

### Spot Audit Program: Lawyers

Spot Audit is a proactive quality assurance program that assesses a firm's compliance with financial record keeping requirements.

In 2014, the audit routines changed in accordance with Convocation's approval to streamline these activities. The Law Society had conducted a review of its operations with the intention of improving effectiveness and efficiency in the delivery of its programs. As a result, the Spot Audit program refined its risk management strategy to focus on sole practitioners and two lawyer firms with a real estate practice, as they are the group of practitioners posing the documented highest risk to the public. Under the new selection criteria protocols, these firms will be audited every five years. The remaining lower risk sole practitioner and small firms (2-5 lawyers) will be audited every seven years, and the very low risk firms (mid-large sized firms) will be audited every ten years.

The changes to Spot Audit program goals met the corporate objective of generating over \$500,000 of savings, and resulted in the reduction of annual audits from 1,800 to 1,400.

Firms selected for an audit continue to report extremely high approval ratings for both the auditors (100%) and the overall experience (98%).

Some of the more significant books and records deficiencies are as follows:

| <b>Books and Records Issues</b>                              | <b>Percentage Failed to Fully Comply with Requirements (%)</b> |
|--|--|
| Completeness of books and records                            | 83   |
| Completeness of client ID information                        | 62   |
| Inactive accounts managed                                    | 48   |
| All cash receipts recorded                                   | 47   |
| Currency of records  | 23   |
| Transfer funds from trust account after delivery of fee bill | 17   |
| Maintained security over E-reg diskette                      | 8  |

## Practice Review Program

A Practice Review addresses an individual licensee's practice activities and management. The Law Society now conducts four separate types of reviews of a practice:

- 1) Focused Practice Review: for licensees showing significant signs of deterioration in their practices as evidenced by increases in complaints and other indicia. The number of focused reviews varies, but is generally between 20 and 40 per year;
- 2) Re-entry Review: replaced the former Private Practice Refresher Program. Lawyers re-entering the private practice of law after a hiatus of five years are required to undergo a review within 12 months from their return to practice as a sole or small firm practitioner. Approximately 20 or fewer reviews are conducted in this category;
- 3) Practice Management Review: risk based random selection process of lawyers in their first eight years of practice, and which also ensures that those selected reflect the percentage of law firms represented in Law Society conduct matters, segregated by firm size (50% soles, 25% firms with 2 to 5 lawyers, etc.). Approximately 400 originating practice management reviews are conducted annually and an additional 75-100 revisits;
- 4) Practice Audits: combined financial audit and practice management review conducted on paralegal practices. Approximately 125 originating practice audits, and an additional 70 revisits are conducted annually, within the budget allocated.

### Practice Management Review Program: Lawyers

Practice management reviews ensure that practitioners meet competency standards and identify areas for improvement in managing the lawyer's practice. Reviewers provide practical suggestions on how to maintain practice at optimal levels, leading to greater efficiencies, high quality service and greater lawyer and client satisfaction.

In 2015, 531 practice management reviews were conducted (443 initial reviews plus 88 revisits). Approximately, 30% of initial attendances of lawyer's practices found that the practitioner was not meeting standards of professional competence. Of those who were not meeting standards, sole practices made up 72%, small firms 19%, and mid/large firms 9%. As a result, a follow-up is required to assess the implementation of recommendations made in the initial reviewer's report.

Over 96% of lawyers that underwent a practice management review responded that they found the process to be constructive and value-added to managing their practice.

### Common Practice Deficiencies: Lawyers

The majority of law firms in Ontario are either sole practices or small firms (2 to 5 lawyers), making up approximately 94% of all law firms in the province. The following charts provide information on the breakdown of deficiencies found in practice reviews of sole and small firm lawyers in 2015 compared to 2009 when the program first initiated a risk based approach in selecting lawyers, based on the percentage of law firms represented in Law Society conduct matters and LawPRO negligence claims. The specifics of each deficiency, the

recommendations to remediate and reference to resources, are made in the Reviewer's report to the lawyer for response.

| Practice Activity                       | Percentage Failed to Meet Minimum Standards |      |            |
|---|---|------|------------|
|   | 2009  | 2015 | Difference |
| <b>General Observations on Law Firm</b> |   |      |            |
| Power of Attorney to another lawyer     | 78  | 71   | (7)        |
| Written office manual                   | 60  | 47   | (13)       |
| Written business arrangements           | 49  | 31   | (18)       |
| Contingency planning                    | 34  | 26   | (8)        |
| Data security                           | 22  | 11   | (11)       |
| <b>Client Service and Communication</b> |   |      |            |
| Written retainer agreements             | 44  | 33   | (11)       |
| Sufficiency of written retainers        | 34  | 33   | (1)        |
| Phantom clients                         | 32  | 25   | (7)        |
| Conflicts management                    | 29  | 29   | (-)        |
| <b>File Management</b>                  |   |      |            |
| Limitation periods and other key dates  | 27  | 17   | (10)       |
| Key information in files                | 25  | 10   | (15)       |
| Adequate documentation in file          | 17  | 13   | (4)        |
| File management system                  | 12  | 9    | (3)        |
| <b>Financial Management</b>             |   |      |            |
| Duplicate cash receipts                 | 45  | 16   | (29)       |
| Books and records are current           | 24  | 22   | (2)        |
| Manage financial health of the firm     | 23  | 25   | 2          |
| Trust reconciliations done monthly      | 18  | 11   | (7)        |

For many of these top practice management deficiencies, there has been a significant improvement for practitioners across the life of the program. A number of program initiatives have had a cumulative positive impact on making the membership more aware of the importance of effective practice management processes in their firm and for their clients. The Review team has a presence at the annual Sole and Small Firm Conference and presents at many practice management CPD sessions. All have made a difference in getting the word out and making effective practice management top of mind.

### Spot Audit and Practice Management Review Revisits: Lawyers

A follow-up by an Auditor or Reviewer is required any time the lawyer (practice review) or law firm (spot audit) fails to meet minimal expectations of competence and the issues are significant enough (contrary to the public interest, could result in direct harm to clients) to warrant another visit to assure improvements have been made. In some cases, a desk review would be conducted to assess the remediation implemented by the licensee. Under appropriate circumstances, this option is a more efficient application of resources where compliance can be demonstrated.

Of those lawyers who underwent a follow-up review, almost all of them (99%) were found to have implemented the recommendations from their initial practice management review report and were now meeting minimum competence standards.

There has been a slight upward trend in the most recent five year period in the number of revisits that must be conducted.

| <b>Spot Audit History of Revisits for Sole and Small Firms</b> | <b>Number of Firms Audited</b> | <b>Follow-up Required</b> | <b>Follow-up Percentage(%) of Total</b> |
|--|--------------------------------|---------------------------|---|
| 2011 – 2015  | 7,045                          | 538                       | 8                                       |
| 2006 – 2010  | 4,997                          | 365                       | 7                                       |

| <b>Practice Review History of Revisits of Lawyers in Sole and Small Firms</b> | <b>Number of Lawyers Reviewed</b> | <b>Follow-up Required</b> | <b>Follow-up Percentage (%) of Total</b> |
|---|-----------------------------------|---------------------------|--|
| 2012 – 2015   | 1,228                             | 404                       | 33                                       |
| 2009 – 2011   | 919                               | 270                       | 29                                       |

### **Paralegal Practice Audits: Paralegals**

Practice audits of paralegals mirror the format of practice management reviews for lawyers, with the goal of providing targeted advice to achieve effective and efficient practices.

In 2015, there were 173 practice audits of paralegal practices conducted (134 initial audits plus 39 revisits). The program has been well received by paralegals, with over 98% of those who underwent a practice audit finding it to be constructive and value added.

Since the inception of the Practice Audit Program in late 2008 and to December 31, 2015, 59% of initial attendances found that paralegals were not meeting standards of professional competence and a follow-up would be required to assess the extent of remediation. This would be conducted through a revisit scheduled after six months. For some engagements, a desk review would instead be conducted as a more appropriate and efficient means to assess the paralegal's remediation.

Of those paralegals who underwent a follow-up review, almost all of them (96%) were found to have implemented the recommendations from their initial practice audit report and were now meeting minimum competence standards.

| Practice Audits                               | Number of Audits | Percentage Revisit (%) |
|---|------------------|------------------------|
| Number of paralegals reviewed since inception | 707              |                        |
| Follow-up Review Required                     | 416              | 59                     |

The top ten practice management deficiencies found in conducting a practice audit of paralegal practices in 2015 and compared to 2009 (the first full year of the practice audit program), are:

| Practice Activity                                    | Percentage (%) Failed to Meet Minimum Standards |      |            |
|--|---|------|------------|
|  | 2009  | 2015 | Difference |
| Power of Attorney to another legal services provider | 87  | 73   | (14)       |
| Written business arrangements                        | 75  | 54   | (21)       |
| Phantom clients                                      | 72  | 52   | (20)       |
| Written office manual                                | 80  | 23   | (57)       |
| Time docketing                                       | 62  | 21   | (41)       |
| Conflicts management                                 | 60  | 53   | (7)        |
| Duplicate cash receipts                              | 51  | 40   | (11)       |
| Books and records comply with By-Law #9              | 53  | 52   | (1)        |
| Data security  | 37  | 29   | (8)        |
| File management                                      | 35  | 14   | (21)       |

The type of practice management deficiencies found in paralegal practices is similar to those found in practice reviews of lawyers. The major difference is in the extent of failure in each of the categories where paralegal practices have failed to meet minimum competence standards. The percentage of practice management deficiencies in every one of these practice areas has declined, and in the majority of cases significantly, over the past six years.

### Audit and Review Engagement Process

Audit or Review engagements require significant planning and follow through. In order to provide perspective on the extent of the activities conducted in PD&C on quality assurance processes, the following information outlines the breadth and scope of a typical engagement in the Spot Audit and Practice Review departments, providing a sense of the detail and effort each individual audit or review entails, why they are so successfully supporting improvements in members' practices and are so well received.

### General Summary of Practice Management Review Tasks and Timelines

#### 1) Planning (4 to 7 hours)

Planning and due diligence by examining:

- Spot audit history of firm
- Practice review history of other licensees in the firm

- Lawyers/Paralegals' Annual Report
- Regulatory history and open cases
- Discipline flags
- Undertakings/Orders
- Practice status

Clearance from Professional Regulation, if there are any open regulatory matters, to avoid dual and possibly conflicting regulatory processes on the same member.

Contact licensee to schedule review, usually within 4 to 6 weeks:

- Provide an overview of the practice management review program, process, selection and expectation of licensee's involvement
- Advance preparation required (i.e., completion of Basic Management Checklist (BMC), financial records and documents, CPD)
- Letter is sent confirming scheduled attendance date and review process. Enclosed package includes applicable legislation and the BMC to be completed and returned prior to the attendance date.

## **2) Review Attendance (4 to 6 weeks from initial contact)**

- Timing – engagements typically commence between 9:00 a.m. and 9:30 a.m. and conclude between 3:30 p.m. and 5:00 pm. The total time for the attendance varies and is significantly impacted by the level of engagement of the licensee. The licensee's active involvement is required for the interview (usually completed between 9 a.m. and 12 p.m.). The licensee must be available for questions during the paper file review (usually completed between 12 p.m. and 3 p.m.). The licensee must be available for the exit interview (typically ½ hour).
- Interview – Practice Reviewer reviews the completed BMC with the licensee to confirm and elaborate on the responses; reviews the physical organization of the work space, and how electronic information is managed. The discussion prompts real case examples of how various issues have been addressed in the practice.
- File Review – Five to seven files are selected for review. This may be a truly random selection if the licensee has independent carriage of his or her entire caseload, or if the licensee is a junior, the file selection may be guided by input from the licensee to ensure the files selected are reflective of the scope and nature of their practice. The licensee is asked to provide an overview of the files. The Practice Reviewer then conducts a detailed, independent review of the physical client files. The practice reviewer will ask to see additional files if they are not satisfied with the information provided.
- Financial Review – In each engagement, the Practice Reviewer will examine examples of dockets, invoices and will review the licensee's client trust ledger for inactivity. If a full financial review is being conducted, then the licensee is also asked to have available: last journal entry posted to General; last journal entry posted to Trust and a copy of the most recent Trust deposit slip; most recent completed Trust Reconciliation, the related Bank statements, cheques, and associated Client Trust Listing; Client Trust Ledger showing the balance in trust and the last transaction date; and licensee's Client summary listing.

- Exit Interview – Practice Reviewer addresses questions that arose from the file review; provides feedback; confirms recommendations that will be included in the report; leaves a copy of the PR Survey and two pamphlets which include references to additional Law Society resources.

### **3) Report Writing and Submission for File Review**

- Report is due 21 working days from date of attendance. On average, it takes between one and two days to draft, include references to relevant resources to assist the licensee, review related PMR reports for consistency and submit the draft with a recommended disposition.
- The file is then submitted to one of the Practice Review's Senior Counsel/Assistant Managers for review within three to four weeks' time from its submission. However, a file will be prioritized for immediate review if there are serious competence concerns.
- The Senior Counsel/Assistant Manager finalize the practice management review report containing an analysis and assessment of the practice, including recommendations for appropriate remedies.

### **4) Report Release and Opinion on Competence**

- The report is submitted to the licensee with a covering letter requesting a response within eight weeks on the identified issues and requesting the provision of evidence of, or commentary on, the implementation of the recommendations.
- If the report is a final report, an opinion on competence will be rendered. If the report is an initial report, then a re-attendance will be scheduled after six months. The re-attendance will permit an assessment of the implementation of recommendations made in the initial report.
- If at the first attendance or following the second attendance the licensee is failing to meet the standards of competence as defined by section 41 of the *Law Society Act*, then Practice Review may ask the licensee to enter into a Proposal Order or may be obliged to refer the matter to Professional Regulation.

## **Summary of Spot Audit Tasks and Timelines**

### **1) Audit Planning (approximately 3 to 4 hours)**

Planning and due diligence by examining:

- Spot audit history
- Practice review history
- Lawyer's Annual Report
- Regulatory history and open cases
- Discipline flags
- Undertakings/Orders
- Real estate insurance coverage

Clearance from Professional Regulation, if there are any open regulatory matters, to avoid dual and possibly conflicting regulatory processes on the same member.

Contact lawyer to schedule audit within two to three weeks:

- Provide an overview of the spot audit process
- Outline/discuss type of financial records and documents to be available for the audit
- Letter sent by email/facsimile confirming scheduled audit date and outlining the spot audit process, timelines and documents under review.

## **2) Audit Field Work (2 to 3 weeks from initial contact)**

Introductory meeting with the lawyer and any other person maintaining the books and records, to discuss the firm's financial management processes.

The audit is conducted following the guidelines and parameters set out in the Spot Audit Program.

The number of audit days is dependent on several factors, such as:

- Size of firm
- Type of practice
- Number of transactions
- Condition of financial records

On average, a simple audit (books and records) lasts one to two days, a complex audit (private mortgages and/or estates) lasts two to three days and, for the largest firms, as many as five days (two auditors in attendance).

At the beginning of the audit some time is spent with the lawyer, to establish rapport and to have upcoming audit questions answered in advance. The rest of the day is spent with the bookkeeper or a legal assistant, and the lawyer is only asked occasional questions during the audit.

If the lawyer does not have a bookkeeper present, the lawyer is asked to work with the auditor off and on, throughout the day.

Particularly for newly formed sole practices and small firm audits, time is usually spent during the day answering the lawyer's questions and discussing samples of journals and ledgers set out in the Bookkeeping Guide (an essential tool). This is critical due to the fact that these lawyers usually do not have staff or any bookkeepers, and have generally not maintained some or all of the required daily records themselves.

Often, even long-established firms' bookkeepers or lawyers have questions concerning books and records that they would like to have answered.

An exit meeting will then be conducted with the lawyer(s) and bookkeeper to discuss the audit findings. All deficiencies are communicated and solutions to rectify these concerns are presented. The Audit Report is provided to the lawyer.

Finally, the firm is provided with a Law Society information package including documents such as: (a) Spot Audit Process memorandum; (b) Unclaimed Trust Funds Application Form; (c) Land Transfer Tax Procedural Document; (d) The role of executor and solicitor with respect to Estate files; (e) Post Audit Survey; and (f) Bookkeeping Guide, among other supports that may be included as necessary and in light of the type of practice and any deficiencies noted by the auditor.

### **3) Finalize Report and Submit for Review**

Once the audit is completed, the final process of writing up the file commences. At this time, follow up with the lawyer on any outstanding documents will be conducted. During this stage the auditor ensures the working papers are in proper order, accurately referenced and all items of concern are properly documented. Usually this requires one day of effort, however, complicated audits can take a few days to finalize.

The file is then submitted to a Supervisor for review on a first in/first out basis. On average, a file will receive its full review within one to two months following submission. However, a file will be prioritized for immediate review if there are serious concerns of possible misconduct. In such situations, the Supervisor will consider escalating the file to Investigations.

The majority of audit engagements are found to have no or insignificant financial deficiencies and the file is then closed.

If the Supervisor decides that additional information and documentation is required from the lawyer to confirm the closure of financial issues (i.e., registration of discharged mortgages, monthly trust reconciliations), then the file is placed in “monitoring”. The average duration of an audit file in monitoring is two months. Approximately 35% of all files require monitoring.

In some cases, the financial issues are serious enough to warrant a re-audit in nine to 12 months to assess their remediation.

### **Spot Audit and Practice Review Educational Initiatives**

General aggregated information and trends on areas of deficiency encountered in reviews of lawyer and paralegal practices is exchanged with other areas of PD&C for the purpose of developing resources and tools that will assist practitioners to avoid/address these problems.

Practice Review has continued to develop CPD programs on effective practice management processes. Reviewers have presented to local law associations on key practice management deficiencies, the steps to remediate and a list of applicable resources.

Specifically, over the past year, Practice Review responded to invitations from legal aid clinics and educational institutions such as: Queen’s Legal Aid Clinic, the Nunavut Legal Aid Services Board, and the University of Ottawa Law School. Additional programming was conducted through the Ontario Bar Association Young Lawyers Division in Toronto, London, and Ottawa, and through the Toronto Lawyers Association. Practice Review also offered its support to the Law Society of Nunavut in the presentation of their first CPD programming focused on practice management.

Outreach to paralegal practitioners in the past year included practice management and agency issues seminar in Barrie, new programming developed for the Ontario Paralegal Association, and a best practices presentation at Conestoga College.

Spot Audit also continues to be actively involved on a number of educational initiatives ranging from developing CPD courses such as the very successful podcast, “How to Reconcile a Trust Account” to “How to Manage a Trust Account”. Spot Audit also provided an educational presence at the Sole Practitioner & Small Firm Conference’s Ingenious Bar in which a team of Spot Auditors informed our Licensees on bookkeeping requirements. The team also supported various Lawyers’ Associations (i.e., Barrie and Toronto) to discuss the Spot Audit process and a variety of financial books and records topics, and collaborated with various Law Societies throughout the country including Alberta, Newfoundland and Nunavut to discuss trust accounting processes and audit procedures.

### **Continuing Professional Development Compliance Audit Program**

The CPD compliance audit program’s objective is to assess licensees’ compliance with the documentation requirements as proof of their CPD reported activities, as per section 4 of By-Law 6.1. The CPD Audit program’s goal is to conduct 1,000 CPD audits (lawyers: 900 and paralegals: 100) through a combination of desk audits and practice review engagements which assess a licensee’s compliance to the Law Society’s CPD documentation requirements.

Staffing complement for the CPD audits is included in the Practice Review and Practice Audits departments. For 2015, the team conducted 1,031 CPD compliance audits, comprised of 467 CPD desk audits and 564 audits integrated into practice reviews.

Approximately 91% of licensees were in full compliance with the Law Society’s CPD record keeping requirements, 8% were in partial compliance, and less than 1% were not compliant.

Detailed and specific information were provided to licensees to assist them in ensuring full compliance with their CPD record keeping requirements for future reported professional development activities.

In April 2015, Convocation determined that the Law Society will no longer be conducting desk audits to monitor CPD compliance as at January 1<sup>st</sup>, 2016. This will provide cost savings of approximately \$55,000. The desk audits of randomly selected lawyers and paralegals were determined no longer necessary following assessments of CPD compliance information. The number of licensees with CPD record keeping deficiencies was extremely low (less than 1%) and the Law Society now has robust reminder processes and sanctions to ensure that licensees maintain their CPD requirements. CPD audits will continue to be part of lawyer practice management reviews and paralegal practice audits, on site, at the time of those visits.



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

February 17, 2016  
Update Report

TAG – The Action Group on Access to Justice

## **RECENT ACTIVITIES**

### **National Action Committee on Access to Justice in Civil and Family Matters**

The National Action Committee on Access to Justice in Civil and Family Matters is in the process of renewing its membership and is holding a related planning meeting on March 3 in Montreal. A second meeting that brings together representatives from provincial/territorial access to justice committees is scheduled for March 4. TAG will participate in both sessions.

### **ACORN Internet for All Report Launch**

On February 1, TAG supported the launch of ACORN's (Association of Community Organizations for Reform Now) *Internet for All*. This report advocates for affordable internet access for low income families and individuals. Findings from the report received coverage in the [Toronto Star](#) and [Metro News](#). Findings from *Internet for All* are of interest to members of the Inclusive Technology cluster.

### **Ryerson University's Legal Innovation Zone Family Reform Initiative**

On January 23, Sabreena Delhon attended the final of five sessions in [Ryerson University's Legal Innovation Zone Family Reform](#) initiative. It is anticipated that Executive Director Chris Bentley will review input from participants and deliver a "better approach" to the Attorney General within the coming weeks.

### **Launch of LawConnect**

On January 20, TAG supported the launch of LawConnect, a joint initiative that brings together the Ontario Justice Education Network (OJEN) and Community Legal Education Ontario (CLEO). LawConnect marks the start of a collaborative venture that will see CLEO content drawn on to support OJEN's classroom based programs.

### **January Newsletter**

TAG released its [monthly newsletter](#) on January 25. You can subscribe to the newsletter at [this link](#).

## **CLUSTERS**

### **Inclusive Digital Technology**

Members of the Inclusive Digital Technology cluster held their first meeting on February 3. This cluster is considering developing principles that can govern the design and implementation of technology to promote access to justice for marginalized populations.