



The Law Society of
Upper Canada

Barreau
du Haut-Canada

ONTARIO LAWYERS GAZETTE • LA REVUE DES JURISTES DE L'ONTARIO

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ONTARIO LAWYERS GAZETTE

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Notice

Annual General Meeting

Notice is hereby given that the Annual General Meeting of The Law Society of Upper Canada will be held at Osgoode Hall, 130 Queen Street West, Toronto, on Wednesday, May 5, 2010 beginning at 5:15 in the afternoon. All members of the Society are invited to attend.

Osgoode Hall
February 19, 2010

Katherine Corrick
Secretary

A motion has been proposed that can be viewed at:
<http://www.lsuc.on.ca/latest-news/a/notices/>

Avis

Assemblée générale annuelle

La prochaine assemblée générale annuelle se tiendra à Osgoode Hall, 130, rue Queen Ouest, à Toronto le mercredi 5 mai 2010 à 17 h 15. Tous les membres du Barreau sont invités à y participer.

Osgoode Hall
Le 19 février 2010

Katherine Corrick
Secrétaire

Une motion a été proposée. Pour la consulter,
veuillez cliquer sur le lien suivant :
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Supporting and maintaining professional competence

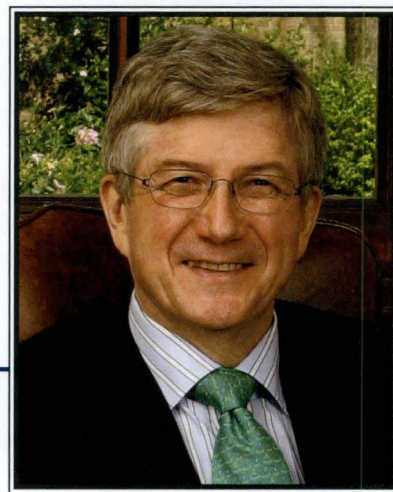
As I write this column, we have just completed the *Civility Forum*, a series of meetings that began in Sudbury in November of last year. Over 950 lawyers, paralegals, students and members of the judiciary attended one of the 11 sessions.

Our goal was to provide an open forum to promote dialogue within the profession on the importance of civility. At most meetings, our panel comprised the regional senior justice of the Superior Court, the regional senior justice of the Ontario Court, the regional senior justice of the peace and a senior member of the bar, along with a member of the Professional Regulation Division of the Law Society.

I was gratified that so many people took the time to attend the *Civility Forum* meetings. We probed the causes of incivility, and discussed practical and sensitive ways for lawyers to respond to it. There were many suggestions, but what was clear is that everyone has experienced incivility in some form, and feels it is unacceptable.

We also heard that uncivil behaviour isn't confined to the courtroom, or to one area of law, or to a particular demographic or geographic sector of the profession. Uncivil practitioners are found in large and small law practices, in the courtroom and in the office, among the newly licensed and the experienced, and everywhere that lawyers and paralegals provide legal services.

I would like to take this opportunity to thank all the members of the judiciary and practitioners who participated in the *Civility Forum* meetings as panellists. They brought their experience to the issues and confirmed that good advocacy skills do not include being overly aggressive or rude. I would also like to give special thanks to Allan Stitt, who acted as the facilitator for the meetings, and Law Society staff members Lisa Osak and



Treasurer W. A. Derry Millar

Message du trésorier

De l'aide pour maintenir la compétence professionnelle

Au moment d'écrire ces lignes, nous avons terminé la série de rencontres du *Forum sur la politesse* lancée à Sudbury en novembre 2009. Plus de 950 avocats, avocates, parajuristes, stagiaires et juges ont assisté aux séances dans 11 centres de la province.

Notre objectif était d'offrir une tribune pour promouvoir dans la profession le dialogue sur l'importance de la politesse. Dans la plupart des rencontres, notre panel était composé du juge principal régional de la Cour supérieure, du juge principal régional de la Cour de l'Ontario, du juge de paix principal régional et d'un avocat principal, ainsi que d'un membre de la division de la Réglementation professionnelle du Barreau.

J'ai été heureux de voir tant de monde participer aux rencontres sur la politesse. Nous avons exploré les causes de l'impolitesse et discuté de façons pratiques et sensibles dont les avocats peuvent y réagir. De nombreuses suggestions ont été émises, mais il est évident que tout le monde a été confronté à

l'impolitesse sous une forme quelconque et a trouvé la situation inacceptable.

Nous avons aussi entendu dire que les comportements impolis ne se manifestent pas qu'au tribunal ou dans un seul domaine du droit; qu'ils ne sont pas confinés à une région particulière ou à un groupe démographique précis dans la profession. Les praticiens impolis sévissent dans les grands comme dans les petits cabinets, dans les salles d'audience et au bureau, chez les nouveaux titulaires de permis et chez les anciens, partout où des avocats et des parajuristes offrent des services juridiques.

J'aimerais profiter de l'occasion pour remercier tous les juges et les praticiens qui ont participé aux rencontres sur la politesse à titre de panélistes. Elles et ils ont utilisé leur expérience pour parler des enjeux et ont confirmé que pour démontrer de bonnes habiletés de plaidoirie, il n'est pas nécessaire d'être agressif ou grossier. J'aimerais aussi remercier particulièrement Allan Stitt, qui a agi comme facilitateur pour les rencontres, et les membres du personnel du Barreau

Hershel Gross, who provided the regulatory input to our discussions. A report on the outcomes of the *Civility Forum* will be released shortly.


Last October, Convocation approved a consultation with the profession on a proposal to introduce a continuing professional development requirement (CPD) for lawyers and paralegals. The consultation showed broad acceptance of the CPD requirement, including support from important stakeholders. At February's meeting, Convocation approved the proposal, and as of January 2011, lawyers and paralegals will be required to undertake 12 hours per year of continuing professional development, three hours of which must cover topics related to ethics, professionalism and practice management.


This is an important component of our quality improvement program and one that I believe is essential to fulfil our mandate of ensuring that legal practitioners meet standards of learning and professional competence. Public confidence in the profession will be heightened if the profession demonstrates its commitment to competence.

Many of those who responded to the consultation raised specific questions about the accessibility of programs and the cost of fulfilling the CPD requirement. The program has been

designed to be both flexible and cost-effective for practitioners, with a wide range of eligible activities. In addition, the Law Society will provide programming that will meet the professionalism and practice management component with no charge for program registration or materials fees.

This issue of the Gazette features an article on diversity among sole and small practitioners. We have written about this important segment of the bar before and this article highlights again the vital contribution that these practitioners make to providing access to justice for residents of Ontario and to some of the most vulnerable members of society. We applaud the work of these practitioners who accept the challenge of working in the sole and small setting.

As the Gazette goes to press, the Ontario government has introduced legislation to amend the *Law Society Act* that will modernize our governance structure and foster renewal of Convocation. The proposed amendments reflect the reforms approved by Convocation in December following extensive study by the Governance Task Force and consultation with the profession. These reforms will ensure a dynamic, accountable and modern governance model for the Law Society. 



Message du Trésorier

Lisa Osak et Hershel Gross, qui ont assuré l'aspect réglementaire de nos discussions. Un rapport des résultats du *Forum sur la politesse* sera publié sous peu.


En octobre dernier, le Conseil a approuvé une consultation auprès de la profession sur une proposition d'exigence de perfectionnement professionnel permanent (PPP) pour les avocats et les parajuristes. L'exigence de PPP a été largement acceptée et les parties intéressées l'ont toutes appuyée. À la réunion de février, le Conseil a approuvé la proposition et dès janvier 2011, les avocats et les parajuristes seront obligés de suivre 12 heures par année de perfectionnement professionnel permanent, dont trois heures devront couvrir des sujets liés à la déontologie, au professionnalisme et à la gestion de la pratique.

Il s'agit là d'une composante majeure de notre programme d'amélioration de la qualité que je crois essentielle pour assurer des normes d'apprentissage et de compétence professionnelle à tous les praticiens juridiques. La confiance du public dans la profession s'en trouvera rehaussée si cette dernière tient son engagement envers la compétence.

Nombre de ceux et celles qui ont répondu à la consultation ont souligné des problèmes d'accessibilité aux programmes et de coûts pour satisfaire à l'exigence de PPP. Le programme est flexible et économique et admet un grand choix

d'activités de perfectionnement. De plus, le Barreau offrira une programmation visant le professionnalisme et la gestion de la pratique sans frais d'inscription ni de matériel.

Ce numéro de la Revue porte sur la diversité parmi les avocates et avocats exerçant seuls ou en petits cabinets. Nous avons déjà écrit sur cet important segment du barreau et cette fois, nous mettons l'accent sur la contribution vitale de ces praticiens et praticiennes à l'accès à la justice pour la population de l'Ontario et pour les membres les plus vulnérables de la société. Nous levons notre chapeau à ces hommes et ces femmes qui acceptent le défi de travailler seuls ou en petits cabinets.

Au moment de mettre la Revue sous presse, le gouvernement de l'Ontario a présenté une loi pour modifier la *Loi sur le Barreau* afin de moderniser sa structure de gouvernance et d'encourager le renouvellement du Conseil. Les modifications proposées tiennent compte de réformes approuvées par le Conseil en décembre après une grande étude du Groupe de travail sur la gouvernance et une consultation de la profession. Ces réformes offriront au Barreau un modèle de gouvernance moderne, responsable et dynamique. 





The small setting makes me approachable and allows me to be visible in the LGBT community.

Kelly Jordan

The backbone of the profession mirrors clients' diversity

Though Ontario has had an independent legal profession for over 200 years, the large law firm practice structure is relatively recent compared with the sole and small firm model – sole and small firm practices are the traditional backbone of the profession.

“Much academic research, media attention, fictional television shows, and even law students’ anticipations, are based on a particular image of what it means to be a lawyer. Typically, that image is one of lawyers working in law firms, often large law firms.”ⁱ However, 2009 Membership data shows that lawyers practising in a sole or small setting (fewer than 10 lawyers) account for 98 per cent of all the firms in the province and 63 per cent of practitioners.

According to the *2005 Report of the Sole Practitioner and Small Firm Task Force* (the 2005 Report), lawyers who work in this setting have noted that 77 per cent of their clients are individuals, compared to only 30 per cent of larger firms’ client bases. Because lawyers in these settings deal most commonly with individuals, they devote most of their practices to areas of law where individuals most need the service – sole and small firm lawyers reported the following main areas of practice: real estate (46 per cent of respondents practise in this area); civil litigation (39 per cent); wills, estates, trusts (35 per cent); corporate and commercial (33 per cent); and family (26 per cent).

The 2005 Report also states that sole and small practitioners are the most likely group to include lawyers from diverse backgrounds who can address the cultural, linguistic and community needs of Ontario’s diverse population. In this respect, it is encouraging that recent statistics show the legal profession is becoming increasingly diverse, with statistics for 2006 showing that 11.5 per cent of all lawyers are members of a visible minority, up from 9.2 per cent in 2001. For younger lawyers (aged between 25 and 34) the numbers are more compelling,

with members of a visible minority accounting for 20 per cent of their age group in 2006, up from 11 per cent five years earlier. 2006 statistics also show that women accounted for nearly 60 per cent of the youngest lawyers and 38 per cent of all lawyers in Ontario; racialized women accounted for no less than 16 per cent of all lawyers under the age of 30 in Ontario.ⁱⁱ

Findings from the 2005 Report also illustrate that lawyers choose to work as a sole practitioner or in a small firm for a variety of reasons, primarily because there is more independence and freedom in practice in the sole or small setting as opposed to a larger firm.

With this in mind, the *Ontario Lawyers Gazette* recently spoke to several sole and small practitioners who are members of diverse communities, and whose clients often come from diverse communities as well. The lawyers all agreed that being in a sole or small setting allows them to be independent; to choose the clients they want to serve and the fees they want to charge; and gives them the flexibility that they require for career enhancement activities, such as participating in community organizations. However, they all cited similar challenges as well.

Accessible and open

Kelly Jordan, a partner at Jordan Battista LLP in Toronto, self-identifies as a lesbian lawyer who focuses on family law with a particular area of expertise in issues that relate to the lesbian, gay, bisexual and transgendered (LGBT) community.



Being a sole practitioner gives me the opportunity to choose the clients that I can and want to assist.

Maria Deanna Santos

Jordan makes her office a comfortable environment for members of the LGBT community. "My partner and I are very visible in the LGBT community. We are known as the go-to firm that will be sensitive to the community. Anyone can feel safe here and that is an important part of my practice," she says.

"The majority of my clients have retained me because they feel comfortable with me. I make it a point in my practice to be available to everyone – for example, I make a special point of not turning any client away who is HIV positive," says Jordan. She says that although one-third of her practice is dedicated to work that relates to important issues for the LGBT community, such as assisted human reproduction, the firm also completes day-to-day transactions such as wills, estates and real estate matters.

When asked why she chose the small firm setting, Jordan says, "The setting gives me the flexibility that I wouldn't have in a larger firm. I oversee firm administration, and I am able to choose a focus that is of interest to me. But most importantly, I think the small setting makes me approachable and allows me to be visible in the LGBT community."

Jordan also says the setting gives her an opportunity to have better control over her hours as she is balancing her practice with her community involvement and raising twin six-year-olds. "We don't demand long hours here because I recognize the importance of community and family time. I think this sort of practice setting allows you to make that adjustment."

Flexibility

Maria Deanna Santos is a sole practitioner in Toronto who self-identifies as Filipino-Canadian. She says that approximately 60 to 70 per cent of her clients are from the Philippines, most of whom came to Canada under the Live-in Caregiver Program.

The focus of her practice is immigration law and she says that some of the common issues facing her clients include misrepresentation and other admissibility issues arising from recruiters' unscrupulous acts or advice. These can include assigning the workers to ghost employers and advising them not to disclose the existence of dependents in their work permit applications, among other problems.

Like Jordan, Santos chose the sole practitioner setting for reasons of flexibility. "Being a sole practitioner gives me the opportunity to choose the clients that I can and want to assist. It also lets me decide how I will allocate my time, and the fees that I will charge."

Shifting needs of the community

Ermelinda Nogueira notes that legal needs within the Portuguese community have shifted somewhat over the years. When she launched her sole practice some 20 years ago in a Toronto storefront location, she handled real estate, family matters, and wills and estates. She found that working in the heart of Toronto's Portuguese community was ideal for referral work, and approximately 80 per cent of her clients were from the Portuguese community.

She enjoyed focusing on her community and on the challenges of providing legal services without an interpreter. "It is more time consuming because you have to translate complex legal documents for your clients and then draft documents once all the pertinent information has been received in Portuguese. As well, family law and child protection matters are very emotionally charged and the legal system is new to many immigrants. They do not always understand what rights the state has and what rights they have as individuals," Nogueira explains.

Today, because second-generation Portuguese Canadians are fluent in English, they have more options when seeking legal representation. "There are no language barriers and they can access lawyers outside the Portuguese community," she says.

Nogueira's sole practice now focuses on family law clients – and most are funded by legal aid. The majority are women and approximately 20 per cent do not speak English as a first language, so interpreters are required. "I am finding it exciting and rewarding to represent clients from various communities in addition to those of my own community," she says.

Her new office location in the heart of downtown Toronto may be a factor in her shift of clientele, but she has also tapped into different resources. "I now have the benefit of representing women from an even more diverse community. Women have so many common issues, particularly single mothers with language barriers."

Like other sole practitioners, Nogueira enjoys the flexibility her practice affords her. "Work-life balance is important. My family and my volunteer activities help put my work in perspective."

Community assistance

Gary Anandasangaree operates as a sole practitioner with an associate in Scarborough. He focuses on corporate and commercial work for small businesses, as well as real estate, wills and some tribunal work. Toronto has the largest Tamil community in North America, and Anandasangaree says that approximately 40 per cent of his clients are Tamil, with almost all his work – aside from the real estate, corporate and commercial work – done on a pro bono basis.

Anandasangaree likes his work setting for the same reasons as the others who were interviewed. “In a small firm, you can instantly react to your clients’ crises or predicaments, there are fewer people who you are accountable to – like partners, for example,” he says. “But that also means that you can be called at all hours, especially for human rights or advocacy cases.

“When you are working with individual clients or smaller scale business clients, you can find that their expectations are much greater and they want you to handle *all* their legal needs, including family work, immigration matters, their son’s car accident,” he says. “You have to manage their expectations and remind yourself that you are not and cannot be an expert in every area of the law. I have a network of firms that I can refer clients to, and I share office space with a criminal lawyer.”

Visibility in the community

All the sole and small practitioners interviewed have made a concerted effort to be visible in their communities. Jordan attributes a lot of her business to these efforts. “We’ve developed our firm to be visible and accessible in the community and *that* is what gets us work. We are present in community publications, I attend and speak at CLE programs relevant to my personal work and my interests in law, and I am a presence at the Law Society Equity Department Pride events.”

Santos has made similar efforts. “Community involvement and satisfied clients are the best marketing tools for me,” she says. “I try to attend Filipino community gatherings and volunteer my services to the Philippine consulate or local organizations whenever the opportunity arises. I believe that the exposure I gain in the community through my involvement helps me to build trust and rapport with prospective clients much more quickly. I also write a regular monthly column in a Filipino community newspaper and get free advertising in return.”

After he was called to the bar, Anandasangaree bought the practice of a retiring lawyer. “This meant that I had staff and files so my practice had a really good start,” he says. He is a past president of the Tamil Chamber of Commerce and is currently involved with the Canadian Tamil Congress. His business comes primarily through word of mouth and his profile within his community. In terms of marketing, he supports community events and does some formal advertising.

Professional networking

All practitioners agreed that community involvement is important, but having a professional network is also vital, both as a source of referrals and also as a sounding board for advice. “I think it’s important to remember that as a sole practitioner, you can’t become insular; you have to reach out and connect. When you do this, there is nothing to prevent you from connecting with the best of the profession,” says Courtney Betty, a sole practitioner who works in association with several lawyers (*see sidebar page 9*).

As an active member of the Family Lawyers Association, Nogueira finds great networking and educational opportunities through the Open Bar series, as well as CLE events held at the Law Society. Volunteering with the Lawyers Feed the Hungry Program also gives her the chance to network with the legal community and give something back at the same time. Nogueira agrees that exposure to clients and referrals from other lawyers are probably her main sources of new business. “You need to network with other lawyers whenever the opportunities arise.”

Along with his community associations, Anandasangaree is also involved with the Youth Challenge Fund and Lawyers’ Rights Watch Canada. Through this professional networking, he has been able to assist the Tamil community in other ways – for example, he was one of the first lawyers to go to Vancouver to help the Tamil refugees who arrived by boat in October 2009 to ensure that they received proper counsel. “When I went to Vancouver, I didn’t know

I find it exciting and rewarding to represent clients from various communities, in addition to those of my own community.

Ermelinda Nogueira





The Law Society should continue to work at raising the bar on equity issues.

Gary Anandasangaree

any practitioners who would be able to help these people. Lawyers' Rights Watch Canada gave me an incredible list of contacts, and I was able to help them almost immediately."

The challenges of running a practice

All the practitioners interviewed stated that, along with the advantages, they consistently deal with some challenges.

When asked about her greatest challenge, Santos replies, "Time and finances. As a sole practitioner with no full-time staff, I am juggling legal and administrative work all the time. Since I want to keep my overhead costs low, I do not have a full-time office that is easily accessible to clients so I tend to spend a lot of time on the road to meet with clients who do not drive and cannot meet me at my office during regular office hours.

"I am also constantly trying to find a balance between charging reasonable fees commensurate with the amount of work involved and in making justice accessible, especially to those who can hardly afford to pay. I often find myself struggling with this issue each time a client asks, 'How much will it cost?'"

"One problem is that law schools don't provide any practical learning on how to run a business," says Anandasangaree. "I was fortunate I had acquired this experience because I had a real estate business before I went to law school, but I think this is an area where young practitioners may face challenges. The Law Society should be more active in helping sole practitioners and small firms learn how to run their businesses with practical advice – who can I get to do my accounting? What kind of technology should I buy?"

Betty says finding the right balance is a great challenge for him. "I want to be an agent for change, but I still have to ensure I'm keeping up with the

everyday demands of my practice. I need that balance between looking toward the future and dealing with the realities of today. And I think I get advice here from great mentors and supportive individuals who can be honest and critical."

Diversity in the profession

As more members of equality-seeking communities enter law school and rise in the ranks, there is no doubt that the legal profession will become an increasingly better reflection of the diverse population of Ontario. Sole and small practitioners are an essential part of the process of diversifying the Ontario bar and ensuring access to justice for all residents of Ontario.

The Law Society has an important role in ensuring that both law and the practice of law are reflective of all the people of Ontario. As part of our mandate to ensure access to justice, equity and diversity values and principles have been built into our policies, programs and procedures. As Gary Anandasangaree says, "If we really want to promote an equity agenda, the Law Society should continue to work at raising the bar on equity issues.

"Tamils are a community that is recovering from a war and that causes issues on a daily basis for the community," he continues. "At this time in history, Tamils in Canadian society are marginalized in both sophisticated and unsophisticated ways. But after the Tamil community, there will be another marginalized group. Our engagement on equity has to be more meaningful in order to reach out to these communities."

For a list of equity initiatives, including public education activities, resources for the profession and members of the public, as well as publications, please visit the Law Society's Equity pages on its website at: <http://www.lsuc.on.ca/about/b/equity>. **ORG**

ⁱ Fiona Kay, *Integrity in a Changing Profession: Issues of Diversity and Inclusion*, November 2005

ⁱⁱ Michael Ornstein, *Racialization and Gender of Lawyers in Ontario*, April 2010

Join us at the Law Society on Friday, May 14 for the **5th Annual Solo and Small Firm Conference and Expo**. The focus of this year's conference is new technology and best practices to make you more efficient and cost effective. Master new ways to communicate and take your practice to a new level. Develop your own social media strategy and enhance marketing and networking capabilities. Meet other sole and small firm practitioners from across Ontario and discover innovative ways to increase your bottom line. If you are unable to join us in Toronto, watch the live webcast of the conference from your home or office. Register at <http://ecom.lsuc.on.ca/cle>.

An advocate for minority law

Courtney Betty, a sole practitioner who works in association with several lawyers, has evolved his practice from one that represents equality-seeking individuals on issues such as immigration, criminal, family and real estate law, into a firm that addresses diversity issues for law firms, and helps major corporations to recognize the benefits of retaining diverse law firms. "Though I started my practice almost 15 years ago, this is a vision that I've had for myself forever. I wasn't able to fulfil it until now because there were far too many challenges," says Betty. "There was no benefit for corporate Canada to use diverse law firms as opposed to retaining the Bay street structure." Now, he has become an advocate for minority law firms. He began this work by looking at successful models in the United States over the last 30 years where diversely-owned law firms have now been able to become dominate law players in the country. This may be, in part, because of the 1999 document titled *Diversity in the Workplace – A Statement of Principle*, signed by 500 major corporations showing their commitment to retaining law firms that make diversity a priority.

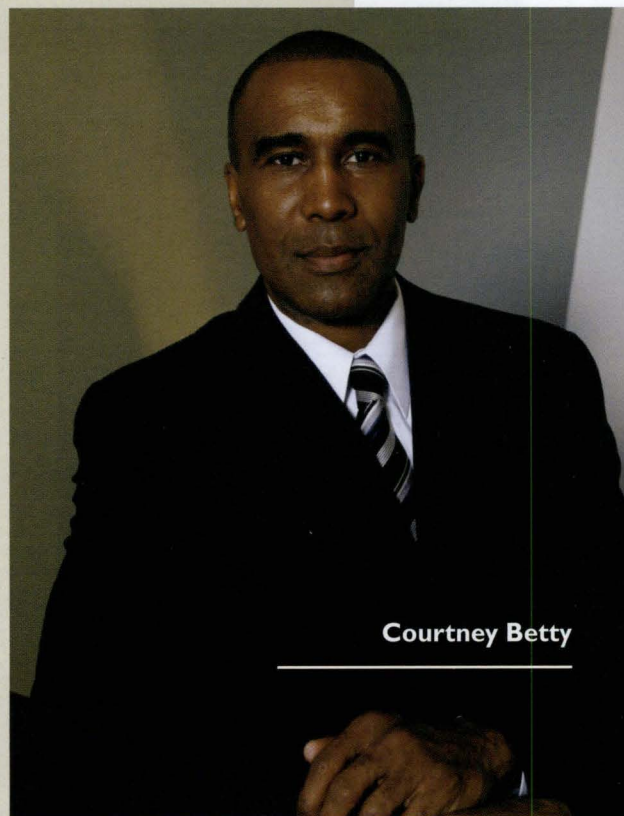
"The fascinating thing is that when you Google the top 50 law firms in the USA, you will find some notice of

diversity on their home page," affirms Betty. "If you Google even the top 100 firms in Canada, diversity does not exist. We need to have this be a priority in this country – it's strictly a model of economics in the United States, whereby corporate USA looks to diversity as a component in deciding whether or not they are going to outsource their law work to these law firms."

Betty still dedicates 20 per cent of his practice to pro bono work that focuses on challenging systemic issues rather than solving individual cases. "I do have individual clients who are from equality-seeking communities, and I do pro bono work because there are some issues that arise that can't be ignored," he says. "It's great to be able to deal with individual cases but it can become frustrating when I see the same case again and again. Now I'm trying to deal with these issues at the systemic level. And I have more opportunity to do this now, in my current work setting, than I had in the larger settings. The challenge in a large firm is that you become a source of billable hours only, and often aren't given the opportunity to look at the bigger picture."

Betty feels that diversity should become an important focus in firms, as many companies look for it as a component when choosing which firm to retain. "Canada is one of the greatest

multicultural countries in the world, but this is sadly not reflected within our large law firms. A lot of my work consists of lobbying efforts which allow diverse law firms to enter the supply chain here in this country." He stresses the importance of making the infrastructure of major firms, including technology and networking capabilities, available to sole and small firms to ensure their success in the market. "I do see myself and my lobbying work as an important way to open up some doors for small diverse law firms in this country. I'm one of those individuals who believe that if you go out and build it, you can make sure it happens for you."



Courtney Betty

Social media can provide helpful marketing tools – but lawyers must play by the rules

The use of social media, including social networking platforms like Facebook, MySpace, LinkedIn, as well as blogs, Twitter and YouTube, continues to grow with each passing day. These online interfaces can be a great way to market your practice since many more people are turning to online sources for information.

Online marketing and advertising may be a cost-effective option for marketing and networking, especially for sole and small practitioners during unstable economic times.

Garry Wise, who practises with three associates at Wise Law Office in Toronto, says he has found that using Facebook and maintaining a blog (*Wise Law Blog*) have helped his firm to connect with new clients.

In his article entitled *Untangling Web 2.0 – A Survival Guide for (Modern) Legal Professionals*, which discusses the importance of social media and social networking tools in a modern law

They allow lawyers to build law firm brands and develop brand awareness in the public mind, gain media exposure, enhance [their] professional profile, and generate new client referrals.”

In a recent interview, Wise said, “Social media can be a great source to tap into. With so many people now searching online for information, these tools have helped me to connect with some clients who have retained me who probably wouldn’t have found me otherwise.

“Facebook keeps you top of mind in your social circle – in fact, my presence online has made me something of an online fridge magnet,” he says.

“But also, I think our blog and website have made our firm more marketable. On many occasions, clients have contacted us because they have read an article on our blog that is relevant to their specific concerns.”

Social media is also a great way to close the gap between sole and small practitioners, and large law firms. As Wise points out, “With limited investment, even a fledgling law firm is able to showcase its professionals and services in the legal marketplace, and to compete worldwide on a relatively even playing field with large, well-oiled mega-firms.”

Enhancing connections with staff

Donna Neff, a sole practitioner at Neff Law Office Professional Corporation in Ottawa, uses social media to enhance connectivity among staff, as

her office has gone paperless and several employees work from home. “Everyone at the office has a private Twitter account which we use

WISE LAW BLOG
 The Toronto Lawyers' Legal and Political Blog

WEDNESDAY, MARCH 23, 2010
Ontario Judge Rules for Associates in Messy Law Firm Breakup

In law firms, as in life, breaking up is hard to do.

The ground rules governing the fallout, however, have now been made abundantly more clear.

A strongly-worded ruling by Mr. Justice Edward Belobaba of the Ontario Superior Court of Justice unequivocally articulates the very significant limits on the fiduciary duties that are owed by Ontario's associate lawyers when they leave the law firms that employ them.

In *Lorretto v. Little et al.*, a decision released February 21, 2010, Mr. Justice Belobaba dismissed a suit by a senior Toronto practitioner against four former employee-associates of his personal injury law firm.

In the end, the employer alleged that the departing associates breached their fiduciary duties to the firm after they opened a competing law firm and utilized their former firm's client lists to solicit the clients for whom they acted before their departure.

Justice Belobaba resoundingly disagreed with the employer.

The lawsuit ultimately boils down to a dispute over fees and ownership of client files in the context of a law firm that dissolved over partnership negotiations gone very sour.

While Justice Belobaba's ruling is not lacking in the predictably estimated details of the firm's messy breakup, it more importantly addresses key issues of concern to lawyers and clients alike in these regrettably common circumstances.

Constructive Dismissal

Interestingly, the Court held that the sheer velocity of the firm principal's highly vocal objection to the terms of a partnership agreement proposed by the firm associates in and of itself created an poisoned an environment that continuation of two associate's employment was rendered untenable.

Thus, they were constructively dismissed.

Mr. Justice Belobaba noted:

[25] This is not a case where the employer was being critical of the four lawyers' unsatisfactory performance – indeed Frank had been so pleased with their work and the financial contribution they were making to the firm that he had just offered them a partnership and had asked them to prepare a draft of the agreement. This is a case where the employer became increasingly defensive and paranoid and uncontrollably angry. This is a case where the employer decided to throw a temper tantrum for no apparent reason.

[26] But even so, not every workplace blowup automatically results in a poisoning of the working environment or in the constructive dismissal of the targeted employees. Cooler heads prevail; apologies are made and accepted and the workplace returns to normal. Here, however, in my view, law and common sense had good reason to conclude that Frank had crossed a line and they could not reasonably return to work with him at the LLM law firm. If they did, the office environment would be intolerable.

Mr. Justice Belobaba ruled that the employment of the two remaining Defendant associates had actually been terminated in the verbal blow-up that followed presentation of the proposed agreement.

Fiduciary Duty of Law Firm Associates

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EMPLOYMENT LAW UPDATES
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The Ontario Human Rights Tribunal has ordered National Money Mart Company to pay \$30,000 in compensation to a former, one-year employee of the company who had been subjected to ongoing, serious sexual harassment by her workplace supervisor.

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WISE LAW BLOG



GARRY J. WISE,
WISE LAW OFFICE
TORONTO

ABOUT

Wise Law Blog features timely articles on legal developments in Canada and the United States, along with commentary on Canadian politics, American politics, technology and noteworthy current affairs.

Launched on April 5, 2005, Wise Law Blog also highlights key decisions of Canadian courts, with focus on Ontario Family Law, Ontario Employment Law and other areas of interest.

Garry J. Wise is primary contributor to Wise Law Blog. He is a Canadian litigation lawyer who practices with Wise Law Office, Toronto. He is a graduate of Osgoode Hall Law School and was called to the Ontario Bar in 1986.



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practice, Wise says, “The Internet has become the world’s irreplaceable communications backbone, and these [online] tools are extremely effective.

to keep connected. One law clerk works exclusively from home as she has two young children. Having the private Twitter accounts allow all of us to keep in touch when not in the office – a sort of replacement for the water cooler concept.”

Neff points out that she does not expect clients to contact her by Facebook or Twitter, but uses the tools primarily to network and establish professional relationships, as well as provide information and insights to her readers – often members of the legal community themselves. She is careful not to include any information in her Tweets or blogs that would identify a client.

She praises e-communication as a ‘fantastic’ tool for her and her practice. While helping her adapt her office to meet employees’ requests to work from home, it has also helped her to establish a much broader professional network than she would have without social media.

However, she is both cautious and aware of the fact that e-communications run the risk of being copied, forwarded and distributed virally. Wise notes that a lot of his materials get picked up by readers unannounced and used without permission. With this in mind, he always publishes with caution.

Cautious approach

Michele Allinotte, sole practitioner in Cornwall, Ontario, takes a cautious approach as well. “Though I have been retained by clients via Twitter and Facebook, I wouldn’t treat it any differently than typical client communications,” she says. “I know the same attitude I have to client information in general should apply when I’m updating my blog, or using Facebook.

“For me, maintaining professional integrity is always on my mind. I’m a lawyer – I’ve made certain commitments as such, and I’ve always governed myself accordingly,” adds Allinotte. “I use Facebook to connect with friends and family, and I maintain a legal blog that links to my practice website. But the whole while, I feel as though I’m not doing anything that will bring disrepute upon the legal profession.”

Wise agrees. “The notion of doing anything that would compromise the profession wouldn’t occur to me,” he says. “I am aware that for everything that I post, there are thousands of potential readers who will have an opposing point of view and will have no problems with voicing it colourfully in a comment. This is instant publishing, with something of a viral effect.”

Law Society rules

Diana Miles, the director of Professional Development and Competence at the Law Society, says the rules around marketing and advertising have been amended to be more concise. “The Law Society acknowledges that lawyers are going to take advantage of new media to market themselves,” she says. “Our expectation is that lawyers continue to conduct themselves in a professional capacity and adhere to the *Rules of Professional Conduct* when they are using these tools.”

Since social media can present some professional risks, all legal practitioners should carefully review the *Rules of Professional Conduct* when considering the use of social media for marketing or personal purposes. In particular, lawyers should look at Rule 3.02 on marketing which addresses the ways lawyers are able to market themselves to the public using various media, so long as 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.

In addition, when using social media for marketing or personal purposes, legal practitioners must remember they are subject to all of the rules including Rule 1, prohibiting conduct unbecoming of a barrister or solicitor, which is defined as “conduct, including conduct in a lawyer’s personal or private capacity, that tends to bring discredit upon the legal profession,” and Rule 2.03 relating to confidentiality.

Rule 2.03 states:

2.03 (1) A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

The Rule also makes specific reference to literary works, stating:

2.03 (6) If a lawyer engages in literary works, such as a memoir or an autobiography, the lawyer shall not disclose confidential information without the client’s or former client’s consent.

Though there may be a misconception that because online communications may seem more casual, the rules are relaxed as well, legal practitioners must, however, treat their clients’ information online the

same way they would in a face-to-face setting. When the impulse is there to blog about a day in court, a tough situation or an aggravating day, lawyers should remember that even when maintaining a personal online identity, acting with integrity underlies everything a legal practitioner does.


CBA guidelines

The Canadian Bar Association has used the *Rules of Professional Conduct* to develop advisory guidelines around online advertising and marketing called '*Your presence in the e-world*', which provide specific tools to ensure safe blogging and online marketing.

Some of the CBA's guidelines include:

- The nature of the information shared with a lawyer, not the way in which the lawyer received the information, is what is important. Treat online communications in the same way that you would a face-to-face exchange.
- It is no more acceptable to discuss a client's business, even without names, in a chat room than it is in a locker room.
- The lawyer should avoid indiscreet conversations, even with the lawyer's spouse or family, about a client's business or affairs and should shun gossip about such topics.

- Lawyers should assume that anything they write in an e-communication will be widely disseminated and read, and they must govern themselves accordingly.
- A good self-test before sending or posting a message might be to answer the question 'would I be comfortable if a judge read this email or post?'

"The Law Society encourages lawyers to use marketing and advertising tools that are practical and efficient for them," says Miles. "It's important to remember that writing blogs and using Facebook or Twitter still require a professional attitude. As communication options evolve, lawyers have the obligation to ensure that their communications practices still comply with the *Rules of Professional Conduct*." 

For reference, please refer to the Law Society's *Rules of Professional Conduct* at:

<http://www.lsuc.on.ca/regulation/a/profconduct/>

The CBA's *Guidelines for Ethical Marketing Practices Using New Information Technologies* at: <http://www.cba.org/CBA/activities/pdf/ethicsguidelines-eng.pdf>

The Ontario Reports are digital

After more than a century in print, the *Ontario Reports* will be available in digital format from the March 29, 2010 issue onward. The Law Society is happy to introduce a greener alternative to the printed reports.

Subscribers will continue to receive print copies of the *Ontario Reports* during a transition period, however those wishing to continue to receive the reports in print past May 3, 2010 can do so on request.

The benefits to the digital version include:

- Immediate access to the content
- A digital version that looks identical to the printed version
- An innovative format that is easy to search, navigate and read
- Useful tools to bookmark, share, link and save articles
- Online access to searchable, archived issues.

The digital *Ontario Reports* will be sent by email to all subscribers, so please ensure that the email address you have provided is up-to-date.



CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENT

Strengthening the culture of continuous learning

This past February, Ontario became the fifth jurisdiction in Canada to introduce a continuing professional development (CPD) requirement for the legal profession. Lawyers and licensed paralegals now join other regulated professions in Ontario, including accountants, doctors and architects, in having a form of required CPD. This new requirement takes effect in January 2011.

"The introduction of the CPD requirement confirms the commitment of lawyers and paralegals to provide the highest level of service to clients and fosters public confidence in the legal profession," says Law Society Treasurer W. A. Derry Millar.

The CPD requirement was introduced following a consultation with the profession, which included three free teleseminar sessions.

"With the input of lawyers, we've created a flexible, affordable and convenient way to enhance professional competence," says Laurie Pawlitz, chair of the Law Society's Professional Development and Competence Committee. "There is no question that lawyers have always recognized the importance of continuing professional development. Now the climate is such and the extent of programming is such that the

profession is ready to accept a CPD requirement."

CPD requirements are not new to the legal profession. Minnesota first introduced one in 1975. Since then, 45 American states have added an annual minimum CPD requirement. Most jurisdictions in Australia have a CPD requirement as do England, Wales, Scotland and Hong Kong.

The widespread adoption of CPD requirements reflects the shift of focus in professional regulation from disciplinary measures to supportive programs. "CPD is a quality improvement initiative," says Pawlitz. "It is not a reactive response to bad apples. Instead it is a proactive measure to ensure competence. It's about a profession-wide commitment to quality.

"The public also expects regulators to take measures to ensure life-long competence," adds Pawlitz. Although the Law Society consultation did not

include the public, an extensive research project on the topic by the College of Physicians and Surgeons found that a large majority of Ontarians support continuing educational requirements and indeed, according to the survey: "Six in 10 Ontarians find it unacceptable that physicians can receive a licence and not participate in any meaningful educational activity throughout their career."¹

While the Law Society CPD model is designed to be as flexible and practical as possible to ensure that practitioners can choose the type and method of CPD that best suits their individual needs, three of the required 12 hours of CPD must be taken in ethics, professionalism and/or practice management. This follows the models adopted in other jurisdictions and reflects the fact that the large majority of Law Society complaints and LAWPRO claims involve client and practice management issues rather than weaknesses in knowledge of substantive law.

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Treasurer W. A. Derry Millar

The public expects regulators to take measures to ensure life-long competence.

Laurie Pawlitza, chair, Law Society's Professional Development and Competence Committee

"Because most lawyers already recognize the importance of CLE and partake in at least 12 hours a year, this program is really about focusing and strengthening the existing culture of continuous learning," says Pawlitza.

Flexibility and convenience built into program

Getting together with colleagues for a 'learning lunch', during which you discuss current practice issues, will count toward your annual CPD requirement, provided the discussion falls within the CPD definition. This type of flexibility is one of the reasons why the Law Society's CPD model appealed to both benchers and the rest of the profession.

"It is not necessary to attend and pay for formal CPD sessions to meet the requirement," says Diana Miles, director of Professional Development and Competence. "Certainly, lawyers will continue to participate in traditional CLE, but there are numerous other flexible and cost-effective means to comply.

"We understand that lawyers are very busy and that many have limited resources to apply to CLE. We kept this top of mind in designing the model," Miles adds.

Study groups, mentoring and writing an article are some of the

ways to meet the requirement. A defining feature of eligible activities is an interactive learning environment, where there is an opportunity to exchange ideas with one's peers.

While some jurisdictions require lawyers to choose from approved or accredited suppliers, lawyers in Ontario are free to choose any eligible activity and courses or programs from any provider, as long as the activities meet the definition of CPD. Providers do not need to have programs approved by the Law Society unless they wish to provide program content in ethics, professionalism or practice management.

To ensure that lawyers have no difficulty obtaining the required three hours of ethics, professionalism and practice management content, the Law Society will deliver this content in a variety of formats without charging program registration or materials fees.


"For most lawyers, the main change will not be the amount of CPD they take but how they focus and track it," says Miles. "We are in the process of developing a web-based portal to aid lawyers in tracking their CPD. The Law Society will send out periodic updates to let lawyers know where they stand in terms of meeting the requirement."

Compliance will be monitored through self-reporting and random audits, with a total of 500 audits of lawyers and 25 audits of paralegals annually. In the audit process, lawyers will be asked to provide proof that they have undertaken the activity claimed on the portal. Typically, proof will consist of receipts for a course or program, a list of topics canvassed in a

discussion group along with the names of the participants, or copies of articles written. These records should be kept for one year following the year in which the activities were claimed.

New lawyers

In 2008, Convocation approved a requirement that new lawyers must take 24 hours of **accredited** continuing professional development within the first 24 months of practice as part of enhancements to the licensing process. The post-call CPD requirement was intended to create a tighter nexus between learning and day-to-day practice requirements, permitting new lawyers to relate their educational materials directly to the issues that confront them in their own law practice.

To preserve its original intent, the requirement for new lawyers will continue in a modified format to co-ordinate with the new CPD requirement for all practising lawyers. Rather than 24 hours of programming in 24 months, all new lawyers are required to take 12 hours per year for the equivalent of two full years of practice. They must choose from programming accredited by the Law Society. To be accredited, programming must include a minimum of 25 per cent ethics, professionalism and/or practice management content. The requirement for new lawyers will commence the January 1 following their call to the bar. 

¹ *Revalidation Consultation Summary*; College of Physicians and Surgeons of Ontario; April 7, 2006.

Quick Facts

- Requirement is 12 hours of continuing professional development (CPD) annually with a minimum of three hours to be taken in ethics, professionalism, and/or practice management.
 - Applies to all lawyers who practise law and paralegals who provide legal services: those in the Law Society's 100 per cent fee-paying category and lawyers who practise law and are excluded from paying fees.
 - Includes an allowance for exemptions to accommodate special needs and circumstances.
 - Comes into effect **January 1, 2011**.
- Continuing professional development is defined as the maintenance and enhancement of a lawyer or paralegal's professional knowledge, skills, attitudes and ethics throughout the individual's career.

Eligible Activities

- (a) **Participation in CPD courses:** This includes attendance at live programs or participating in online 'real time' courses; streaming video, web and/or teleconference courses, provided there is an opportunity to ask and answer questions; and viewing a previously recorded course with at least one other lawyer or paralegal. This includes programming offered by providers both in and outside Ontario. To qualify there must be the opportunity to interact with colleagues and/or instructors, for example in person, by email or on the phone.
- (b) **Participation as a registrant in a college, university or other designated educational institution program, including distance education:** This includes LL.M. programs.
- (c) **Teaching (to a maximum of six hours per year):** One hour of teaching equals three hours of credit to reflect preparation time. The teaching content must be law-related and within the CPD definition. There is no limit on the audience. If the same content is taught more than once in a year, credit is only available for the first time. The teaching credit will be available for volunteer or part-time teaching, not as part of full-time or regular employment.
Credit for chairing a program may apply, provided the chair does more than introduce speakers. Credit is as a facilitator of the program. Credit will be limited to time spent in the chair capacity.
- (d) **Acting as an articling principal or mentoring or being mentored or supervising a paralegal field placement (to a maximum of six hours per year):** The articling principal, mentor, paralegal who is supervising a field placement and lawyer or paralegal being mentored may claim the hours spent on topics within the CPD definition.
- (e) **Writing and editing books or articles (to a maximum of six hours per year):** The content must be law-related and within the CPD definition; must have been prepared solely by the person seeking the credit; and intended for publication or use in course materials, rather than for personal use or purposes or primarily for marketing purposes. Credit for an article or book may only be claimed once. The credit may also be claimed for editing legal texts or case reports and for preparing case headnotes, with the same restrictions as set out for writing. There is no limitation on the audience for whom the work is written.
Credit is only available for volunteer or part-time writing, not as part of full-time or regular employment.
- (f) **Study Groups:** This includes attendance in a group setting at an educational session of two or more lawyers or paralegals, the purpose of which is to consider content that comes within the CPD definition. This may include lawyers or paralegals in the same firm, legal department, government agency, clinic or other similar entity. File specific discussion is not eligible. No time may be claimed for preparation for the discussion group unless it comes within paragraphs (c) or (e) above.
- (g) **Educational components of bar and law association meetings:** Where lawyers or paralegals attend meetings that involve both business related to the association and substantive law content that comes within the CPD definition, the lawyer or paralegal may claim credits for the hours devoted to the substantive law content.



R. Lee Akazaki, C.S., is the OBA vice-president, chair of the OBA Mandatory Professional Development Working Group, chair of the OBA Governance Committee, and practises civil litigation at **Gilbertson Davis Emerson LLP**.

OBA support for mandatory professional development

By R. Lee Akazaki, C.S.

In November 2009, the Law Society launched a consultation on a proposal for a continuing professional development requirement.

Both the board of directors and the Council of the Ontario Bar Association (OBA) passed resolutions supporting the expansion of continuing professional development for all practising lawyers at their December 2009 meetings, and submitted recommendations to the Law Society on key details for implementation.

With Convocation's approval of a continuing professional development requirement at its February 2010 meeting, this marks the start of a generational transformation of lawyers' continuing education.

The OBA underpins its support for the new requirement with a commitment to ensure that lifelong learning for lawyers is meaningful, flexible and accessible. "As with many aspects of lawyer regulation," the OBA submission to the Law Society


consultation stated, "the Law Society must be responsive to the function of maintaining competence among members of the profession. The purpose of regulating learning in this way is to draw hitherto non-participants into the competence-seeking stream, and not to alienate them."

What will be the OBA's role in shaping this future? Will it deliver educational opportunities to its members across Ontario? The traditional CLE model, with leading practitioners and academics delivering formal papers updating the substantive law, remains an important cornerstone — the myriad complexities of modern legal practice and the pace of change make it ever easier for lawyers to fall behind unless they make time for periodic return to the classroom.

But a 'one size fits all' model will falter, if traditional CLE is all that is available. It is hard to package the lecture hall experience and deliver it to a remote audience or to pipe it down a dial-up Internet connection.

We believe that the answer is not to produce more of what we already have. Rather, providers of legal education have to reconsider what lawyers need to maintain competence. An essential element of this, for both individual lawyers and for law associations, is a recognition of the distinction between 'continuing legal education' and 'professional development.' We are witnessing a comprehensive shift in lawyer education, from just knowledge of the law, to the sharing of and improvement in common standards in all aspects of membership in the profession, including professionalism and practice management.

Lawyers, like people from all walks of life, avail themselves of learning opportunities outside formal settings. One way legal associations will be able to assist their members is to track these activities in easy, verifiable ways. The 'PD Tracking Tool,' which has recently debuted on the CBA website, can already help CBA/OBA members do this. However, tracking is only a start. Today, the OBA is at work devising ways in which members from across Ontario can meet their requirements without feeling daunted by new professional burdens. The OBA will continue its delivery of the highest quality CLE, only now, it will also help its members obtain credit for many existing methods of acquiring and imparting professional 'life lessons'. Here are just three ways the OBA will serve its members:

- ✓ OBA will 'think provincially' and 'work locally' by teaming up with the Law Society and local law associations to provide under-served regions with more *live* programming. Education and networking often go hand in hand.
- ✓ OBA will continue to expand opportunities for remote learning via Webinars, free MP3s for OBA section members, and reasonably priced CD-ROMs and paper materials from past programs.
- ✓ OBA will identify and obtain accreditation for the professional responsibility, ethics and practice management quotient of the mandatory learning requirement, both in dedicated programs and as part of substantive legal programs. 

CBA PD Tracking Tool

<http://www.cba.org/pd/trackingTool.aspx>

Conflicts of interest standard modified

Convocation has voted to modify the conflicts of interest standards for lawyers providing 'brief services' under Pro Bono Law Ontario's (PBLO) Law Help Ontario program, so that lawyers will be able to act for PBLO clients unless they know of a disqualifying conflict of interest. This permits lawyers to forego time-consuming conflicts checks when providing these PBLO services. The *Rules of Professional Conduct* will be amended at a future Convocation to reflect the new policy.

Concerns had been expressed that the current obligations around conflicts created a barrier to justice for those who need to access PBLO programs. Under the current *Rules of Professional Conduct*, lawyers need to conduct an extensive conflicts check before providing legal services to pro bono clients. These checks can sometimes take hours to perform, and PBLO's Law Help Centre has at times turned people away because of the delays. Some law firms have also had to cancel participation in the pro bono program because their conflicts departments have

been overwhelmed by the volume of names they have had to review.

The amended rule will address these concerns within the ambit of PBLO's Law Help Ontario program, where the provision of the 'brief services', to be defined as "short-term limited legal services," will not require a conflicts check. In approving this approach, Convocation determined that the limited nature of the legal services being provided significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm.


The amended rule will also provide that confidential information obtained by the lawyer representing the PBLO client will not be imputed to the lawyer's partners, associates or employees. These individuals may continue to act or may act in the future for another client with conflicting interests to the PBLO client. Appropriate screening measures must be put in place to prevent disclosure of confidential information relating to the PBLO client.

The Law Society portal to launch in June!

The Law Society is set to launch a portal in June 2010 that will provide lawyers and paralegals with an online option for reporting changes to business and personal information, as well as submitting status changes. The portal will provide lawyers and paralegals with a secure facility to make changes to personal information while eliminating opportunities for fraud. The online Change of Information submission will speed up the processing time it takes to make the changes to the Law Society's database. As the portal is established, there will be future developments including continuing professional development reporting, online billing and payments of annual fees.

You must have a unique email address on file with the Law Society.

Registration for the portal will require all users to have a unique email address registered with the Law Society. If you haven't provided Membership Services with an email address, or if you currently share an email address, you will not be able to register for access to the portal. Your unique email address is one of the many pieces of information that verifies you as the authenticated user. It is also the vehicle for transmitting secure information from the portal to you.

In order to ensure access to the portal, the Membership Services Department will need your name, Law Society number, and your unique email address. 

Law Society Portal Request

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

NAME:

LAW SOCIETY NUMBER:

EMAIL ADDRESS:

TYPE (Home or Business):

SIGNATURE:

DATE:

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

Accessibility in the courts

Lorin MacDonald, alumna of the University of Western Ontario's Faculty of Law, is an articling student at the Morris Law Group, a personal injury firm in Hamilton, Ontario. In September 2004, the summer before she entered law school, she co-organized Still Waiting: A Forum for Moving Ahead, discussing the need for stronger disability rights legislation. Several key policy-makers, including the minister with the disability portfolio, were in attendance.

The Accessibility for Ontarians with Disabilities Act (AODA) was introduced in October of 2004 and passed in May 2005 due to the hard work and dedication of those who pushed to see changes in the provincial government's disability rights legislation. MacDonald was named to the City of London Mayor's New Year's Honour List in 2006 for her disability rights advocacy work. She recently spoke about her experiences as an articling student and the accessibility accommodations that have helped her in her career so far.



As an individual going through law school with a profound hearing loss, I needed a few accommodations to assist me in order to succeed in this communication-intensive career.

I discovered and made use of Communication Access Realtime Translation (CART) – a tool that allows a trained operator using a keyboard to transcribe speech into text and display it on a screen for persons with hearing loss.

In 2005, during my first year of law school, I was inspired by the Hon. Roy McMurtry, former Chief Justice of Ontario, who established the Courts' Disabilities Committee to assist in achieving the goal of full participation of people with disabilities in court proceedings. At Toronto's official Opening of the Courts ceremony in January 2005, the Chief Justice announced, "The judiciary is determined to play its part and we look forward to working with the Ontario government and the bar in providing persons with disabilities better access to our justice facilities."

The Courts' Disabilities Committee released its report in 2007, noting that many barriers impede access to the court system by persons with disabilities. Six comprehensive recommendations were made to remove those barriers, encapsulating a vision of a barrier-free court system.

Thomas Heintzman, a bencher of the Law Society and former president of the Canadian Bar Association, spearheaded the Disability Working Group's initiative in 2004 to make the legal

profession more inclusive and accessible to lawyers and students with disabilities. This was no easy task, given the rather sobering statistics: while persons with disabilities make up approximately 15.5 per cent of Ontario's population (1.85 million people), only 50.5 per cent are employed, compared to 75.5 per cent of their non-disabled counterparts. While the number of lawyers working with disabilities in Ontario is currently unknown, only 1.9 per cent of the 2008 licensing process candidates voluntarily identified themselves as persons with a disability.

The Disability Working Group conducted a study with law students and lawyers with disabilities to identify systemic issues generally faced by persons with disabilities and within the legal profession. In December 2005, the working group released its report, entitled *Students and Lawyers with Disabilities: Increasing Access to the Legal Profession*, noting, "Lawyers with disabilities have been graduating from law schools and entering the legal profession for decades. However, studies show that law students and lawyers with disabilities still face barriers in accessing and remaining in the legal profession."

In early 2006, I was appointed to the Customer Service Standards Development Committee, the first committee established to develop an accessibility standard under the AODA (*see sidebar*). The standard outlines what businesses and other organizations in Ontario must do to provide their goods and services in ways that are accessible to people with disabilities.

Greatly encouraged by these initiatives, but mindful of the caveats noted by the Law Society's

Disability Working Group, I began articles in July 2009. With the robust support of my law firm, I met with court services personnel at the John Sopinka Courthouse in Hamilton to discuss my need for CART in the courtroom and what other procedures could assist me in my duties. Though CART had worked well for me in law school, I had a lot of questions about how I would fare in a real courtroom. I was informed that I was the first articling student (or lawyer, for that matter) with a profound hearing loss to ever require accommodation in Hamilton so this would be a learning process for all involved. As for me, I was unsure of the process of appearing in court and had many questions. My worries were for naught, as Regional Senior Justice Stephen Glithero embraced our initiatives to make the John Sopinka Courthouse a shining example of accessibility and collaborative partnership.


In September 2009, I appeared in court for the first time with great success, speaking to four status hearings and four motions. The judiciary and court services personnel have been tremendously supportive; members of the bar are intrigued by the novelty of CART and the access it provides to me as an advocate with a profound hearing loss; my employer is pleased that I am able to effectively advocate for our clients; and most importantly, I am relieved to hear all that is said in the courtroom.

On October 30, 2009, I was fortunate to hear Madam Justice Rosalie Abella of the Supreme Court of Canada deliver the Koskie Minsky University Lecture in Labour Law at the

University of Western Ontario. Madam Justice Abella reflected on advances made (and yet to occur) in employment equity in the past 25 years as it relates to equality-seeking groups: women, Aboriginal peoples, visible minorities and people with disabilities.

"Each of us is limited by what we don't know and by what the others don't know. With knowledge comes understanding. With understanding comes wisdom and with wisdom comes justice and to have justice, we must never forget how the world looks to those who are vulnerable. I will never forget the people who taught me to see the world through their eyes."

I truly enjoy advocacy, which CART makes possible; CART also enables me to attend examinations for discovery and participate in conferences and continuing legal education programs. While I represent one disability in one courthouse, I can personally attest to the realization of the vision of the Courts' Disabilities Committee and the Ministry of the Attorney General of a barrier-free court system. Through education, collaborative partnerships, creative solutions, and a good dose of humour when times get frustrating, I believe the challenges that may be presented by any disability can be overcome.

To quote poet Maya Angelou, "We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value no matter what their colour." It is my belief that the same can be said of ability. 

Developing accessibility standards for Ontarians with disabilities

The Ontario government is developing standards that businesses and organizations (including law firms) will have to follow to identify, remove and prevent barriers to accessibility. These standards will include the steps and timelines that businesses and organizations will have to follow, and some are now in effect.

The *Accessibility Standards for Customer Service Regulation* is now law. This standard applies to persons or organizations that provide goods or services to members of the public or other third parties and that have at least one employee in Ontario. Public sector organizations had to meet this standard by January 1, 2010. The private sector, including law firms and non-profit organizations, will follow by January 1, 2012.

Standards are being developed in these areas:

- customer service
- employment
- information and communications
- public transportation
- built environment (buildings and other structures).

Standards are being developed by committees of people from the disability, business and public communities, who:

- develop proposed accessibility standards
- submit an initial proposed standard for public review
- revise the proposed standard to incorporate public input
- submit a final proposed standard to the government for consideration as law.

The remaining standards are being finalized now.

For further information about the AODA, the Customer Service Standards and Standards under development, please consult the Ministry of Community and Social Services website at <http://www.mcscs.gov.on.ca/en/mcscs/programs/accessibility/>.

Congrès de l'AJEFO 2010

Le 31^e congrès de l'AJEFO aura lieu à Strasbourg en France du 1^{er} au 3 juillet. Cette excellente occasion de vous perfectionner professionnellement se déroulera dans le décor enchanteur de cette ville biculturelle classée au patrimoine mondial de l'humanité par l'UNESCO et capitale de l'Europe. Les organisateurs du Congrès ont toujours préparé des séances de formation des plus intéressantes et cette année s'annonce prometteuse. Pour connaître le programme et pour vous inscrire, rendez-vous sur le site web Ajefo.ca.

Maître Ghina Al-Sewaidi : au service de sa communauté

L'Ontario compte une population des plus diverses. Cette population est-elle bien servie par nos avocats exerçant seuls? En 2009, on a recensé 12,8 pour cent d'avocats qui s'étaient identifiés comme étant de groupes diversifiés.


À Toronto, M^{re} Ghina Al-Sewaidi, une avocate qui pratique à son compte, a une clientèle arabophone à 90 pour cent, et dessert à l'occasion des francophones. M^{re} Al-Sewaidi a étudié en Suisse où elle a appris le français. Elle a obtenu son LLB de la University of Buckingham en Angleterre, puis sa maîtrise en droit pétrolier international à la University of Dundee en Écosse, pour aboutir à l'Université d'Ottawa où elle a fait un second LLB. C'est en 1993 qu'elle a été admise au Barreau du Haut-Canada. Elle fait aujourd'hui du droit de l'immigration et surtout du droit de la famille.

M^{re} Al-Sewaidi fait tous les jours du travail pro bono dans sa communauté. Elle observe que le problème majeur de ses clients immigrants tient à la difficulté de s'adapter à la législation canadienne. « Je suis convaincue, affirme-t-elle, que les avocats ont l'obligation d'expliquer les droits et les règles à leurs clients pour les aider à se retrouver dans notre appareil judiciaire. »

M^{re} Al-Sewaidi est membre de plusieurs organismes sans but lucratif comme l'Iraqi Canadian Society of Ontario, le Centre de Communauté Arabe de Toronto, la Canadian Arab Network, la Family Law Association et l'Association des juristes d'expression française de l'Ontario. Enfin, elle fait partie du comité consultatif pour le relais de la diversité de la Société d'aide à l'enfance de Toronto et du sous-comité de la magistrature et du barreau sur le modèle type d'ordonnance présidé par le juge Craig Perkins.

Pour atteindre sa clientèle, M^{re} Al-Sewaidi se sert des journaux de sa communauté et bien sûr, du bouche à oreille. Elle fait également partie du réseau de l'aide juridique dont elle accepte de nombreux certificats. Pour elle, la pratique en solo offre un avantage indéniable pour les clients : le contact est direct et elle est disponible. « L'avantage, dit-elle de cette situation qui s'avère souvent difficile, c'est que je suis au courant de tout ce qui se passe dans mon cabinet ».

Il y a certes des contraintes à travailler en solo lorsque par exemple, on veut consulter des collègues sur certaines questions.

M^{re} Al-Sewaidi s'en remet alors à ses nombreux réseaux de contacts pour trouver conseil auprès d'autres avocats. Il est également ardu de tout jongler seule sans risquer de faire des erreurs, mais la contrainte qui rend la pratique autonome le plus difficile, est d'après elle, l'équilibre entre le travail et la famille. Elle passe en effet de longues heures au bureau et avec les clients. Cependant, la liberté que lui procure son autonomie, le contrôle qu'elle a de sa situation professionnelle et surtout la capacité de rendre un précieux service à sa communauté lui conviennent davantage que tout autre type de pratique. 



Maître Ghina Al-Sewaidi

Julie Lassonde, avocate, artiste et fière de la Maison d'hébergement francophone de Toronto

Le 17 février, le ministère des Services sociaux et communautaires de l'Ontario annonçait qu'il prêtera main forte pour construire la première maison d'hébergement pour femmes francophones de Toronto. Ce centre offrira vingt lits aux femmes francophones et à leurs enfants qui fuient la violence.



Cette bonne nouvelle pour la communauté francophone est le fruit des efforts du comité de la Maison d'hébergement francophone de Toronto dont M^e Julie Lassonde est présidente du conseil d'administration. Avec les 5,2 millions de dollars que la province verse au projet, le conseil pourra acheter un terrain, bâtir la maison et payer les frais d'architecte entre autres.

Julie Lassonde est heureuse. Cette maison, qui devrait ouvrir en 2011, permettra d'augmenter l'espace francophone dans la région, essentiel au processus de guérison des femmes aux prises avec la violence qui, explique-t-elle, ne peut se faire que dans sa propre langue. Son conseil d'administration, dont M^e Josée Bouchard, conseillère principale de l'équité au Barreau, est secrétaire, a travaillé pendant plusieurs années sur ce projet. L'an dernier, M^e Lassonde s'apprêtait à quitter une réception d'affaires, quand elle trouva son auto en panne. Elle revint dans la salle pour attendre la dépanneuse et tomba face à face avec la ministre Madeleine Meilleur, profitant de l'occasion pour lui rappeler ce projet qui mûrissait depuis une

dizaine d'années avec un groupe de femmes déterminées. Mme Meilleur prit les choses en main et la maison est devenue réalité. Le hasard fait bien les choses.

Le cheminement de Julie Lassonde n'est cependant pas une question de hasard. Jeune femme pleine d'idées et de projets, elle devient avocate en Ontario en 2005 et au Québec en 2008. Bilingue et bijuridique, elle partage son temps entre Montréal et Toronto.

Avant de choisir le droit, elle avait étudié le théâtre puis le mime corporel. Julie s'est rendu compte qu'une carrière comme mime corporel risquait d'être plutôt « déséquilibrante ». Le droit lui est apparu comme un bon outil pour défendre ses idéaux de justice et de féminisme. Étudiante, elle avait observé le feu qui animait d'autres étudiants lorsqu'ils se promettaient de devenir riches. Si elle mettait autant d'ardeur à façonner sa carrière à son goût que ces jeunes en mettraient à s'enrichir matériellement, elle pourrait certainement combiner sa passion pour les arts de la scène avec une carrière en droit.

Ainsi, elle a proposé à l'Université de Victoria, où elle a

fait sa maîtrise, un projet de thèse portant sur la performance du droit dans le cadre du programme en droit et société. À l'aide d'un site web bilingue, elle explorait l'application et le développement du droit dans les gestes de tous les jours, dans les gestes de communication, dans l'expression par le corps du concept de normativité juridique. Sa thèse visait à démontrer que notre paysage juridique est façonné par les gestes corporels, même les plus banals. Elle démontrait comment les expériences vécues dans d'autres disciplines pouvaient enrichir notre compréhension du droit.

La grande originalité de son projet était de combiner les arts visuels, le féminisme et le droit. À partir de textes et de courts scénarios tout simples qui la mettaient en scène, elle illustrait par exemple l'équilibre et le déséquilibre du droit en répétant, devant un groupe d'étudiants, des mouvements où elle tombait et se relevait, pendant la lecture d'un texte de littérature autochtone.

***Notre
paysage
juridique
est façonné
par les
gestes
corporels,
même les
plus banals.***

La performance était suivie d'une discussion de groupe. Ou encore, pour illustrer la prise de conscience de l'écrasement de la femme dans la société, elle comparait l'espace qu'un homme prend dans les transports en commun et l'espace que la femme s'empresse de ne pas prendre. M^e Lassonde poursuit ses activités artisticojuridiques et dernièrement, elle a été invitée à une conférence à l'Université de Toronto pour présenter une performance sur le thème de l'art défiant le droit, pour illustrer comment l'art peut forcer le droit à voir les choses différemment. Sa présentation a été reçue avec enthousiasme.

Un autre pan de sa vie professionnelle est la recherche. Parmi ses nombreux projets, elle compte celui qui porte sur les

pratiques exemplaires aux points d'entrée du système de justice familiale pour la Commission du droit de l'Ontario. Ce projet vise à rendre le système de justice familiale plus accessible, en s'attaquant aux étapes d'amorce du processus de résolution de conflits familiaux. La question de l'accessibilité y est abordée sous plusieurs angles et notamment d'un point de vue francophone. Son rapport devrait sortir à l'automne 2010.

Elle travaille aussi pour des organisations non gouvernementales, des cabinets privés et pour le gouvernement. Concrètement, ses recherches portent sur le leadership des femmes, l'inconduite sexuelle ou la santé des femmes. Elle trouve des articles, des décisions, des

textes de loi; les compare, les analyse; mène des entrevues, organise des consultations de groupes et de particuliers et enfin, produit des rapports.

La rigueur que Julie Lassonde met à conjuguer toutes ses aspirations lui permet d'assurer des collaborations fructueuses : à preuve, la nouvelle maison d'hébergement pour femmes francophones de Toronto. M^e Josée Bouchard est très fière de Julie, qu'elle a rencontrée il y a quelques années et pour qui elle a joué un rôle de mentor : « Julie est un atout pour la communauté juridique. On sait que tout projet qu'elle entreprend sera bien fait, et que les droits des femmes et des francophones lui tiennent à cœur ». 

Petit-déjeuner bilingue de l'ABO : Maître Michel W. Drapeau, colonel à la retraite

Le 16 février, l'Association du Barreau de l'Ontario tenait son institut annuel et offrait son traditionnel petit-déjeuner bilingue avec comme conférencier, le colonel à la retraite M^e Michel Drapeau. Ce dernier a entretenu son auditoire de la réalité peu connue de la vie en milieu militaire et du droit qui s'y rattache.

Le colonel Drapeau a été militaire pendant 34 ans dans les forces armées canadiennes avant de devenir avocat. Il est aujourd'hui à la tête du cabinet juridique Michel Drapeau qui compte cinq membres. Commentateur très recherché, il pratique à Ottawa entre autres le droit administratif, le droit de la personne et bien sûr le droit militaire. Il a écrit des ouvrages et enseigne à l'Université d'Ottawa.

Son ascension de fantassin à colonel lui a ouvert les yeux sur les différences d'ouverture de diverses armées à la société. S'il semble un peu critique de la culture militaire au Canada, c'est qu'il déplore le manque d'influence de la société civile. Le colonel Drapeau s'est cependant réjoui que trois commissions dont il a beaucoup poussé la création aient exploré les possibilités d'ouverture.

Le monde militaire canadien est entièrement autonome. M^e Drapeau a expliqué que l'armée possède ses hôpitaux avec ses médecins, ses propres aumôniers, ses universités, son propre corps policier, son centre de détention, et son corps diplomatique, avec 60 militaires servant par exemple à l'ambassade du Canada aux États-Unis, et ses propres tribunaux avec ses propres juges, ses propres avocats et ses règles de preuve. Rien ne transpire de la société extérieure, dont les militaires ne connaissent pas souvent la réalité. M^e Drapeau donne en exemple le cas d'un commandant militaire qui, au même titre que ses ascendants, est militaire, dont la femme est fille de militaire et dont les enfants sont aussi militaires et résident tout au long de leur carrière dans des logements familiaux sur des bases militaires.

L'ampleur de l'autonomie de l'armée se mesure à son énorme budget annuel de 17 milliards de dollars.

Le droit militaire comprend un code de discipline, qui intègre le *Code criminel* et tout le corpus pénal canadien. Seules trois catégories d'infractions ne sont pas assujetties à la Cour martiale : le meurtre, les homicides involontaires coupables et l'enlèvement d'enfants. C'est d'ailleurs pourquoi le colonel Russell Williams qui a fait les manchettes au début de 2010 sera jugé devant une cour civile.

Parmi les infractions militaires, on retrouve : se laisser constituer prisonnier de guerre, désertre, avoir une conduite déshonorable, se mutiler volontairement et perdre un navire de guerre. Il est aussi bien sûr défendu de désobéir aux ordres de son supérieur. En 1998, dans la foulée de la guerre du Golfe, le sergent Mike Kipling par exemple, avait refusé un vaccin contre le charbon bactérien. Il fut renvoyé au Canada et accusé de désobéissance, risquant deux ans d'emprisonnement, avant que l'affaire soit déboutée par la Cour d'appel de la Cour martiale. M^e Drapeau a défendu un soldat à qui son supérieur avait ordonné de rester debout à sa porte jusqu'à ce qu'il l'appelle. Malheureusement, le soldat s'est absenté le temps de répondre à un appel de la nature, désobéissant ainsi à son supérieur et risquant la détention et la destitution déshonorable! Un véritable fer rouge pour tout militaire, affirme M^e Drapeau.

En droit martial canadien, applicable n'importe où dans le monde, il n'existe pas de mesure d'adoucissement pour les punitions; et le tribunal a des moyens restreints. La sentence est globale et se passe d'explications. La procédure privilégiée par les militaires est le procès par voie sommaire, qui ne tolère pas d'avocats, ne procure pas de transcription, n'offre pas de voie d'appel ni de grief. C'est une procédure rapide et plus expéditive que la Cour martiale, mais peut être très coûteuse pour un accusé en terme de sanction et de stigmates, soutient M^e Drapeau.

Les membres des Forces ne sont pas seuls à être assujettis à la loi militaire : il en va ainsi des accompagnateurs, des médecins, des journalistes et même des personnes à charge. Leur procès est présidé par un juge seul par opposition à un juge et un comité de militaires.


Depuis 2008, il y a deux types de cour martiale : procès devant une cour martiale permanente ou une cour martiale générale. Avant juin 2008, le directeur des poursuites militaires avait le pouvoir absolu de déterminer le type de cour martiale pour l'accusé. Cette disposition a été contestée et jugée

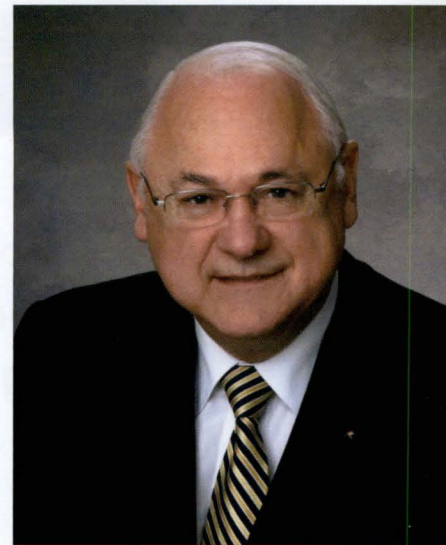
inconstitutionnelle dans la décision *Trépanier c. R.*, rendue en avril 2008 et entraînant d'importants changements à la *Loi sur la défense nationale*. Cette cause a souligné le fait que l'appareil judiciaire militaire est assujéti à l'examen de la *Charte* et continuera d'évoluer en vue de s'assurer que les personnes accusées sont traitées conformément aux exigences du droit canadien.

Ce développement encourage M^e Drapeau qui s'inquiète de l'imperméabilité de la culture militaire à la société civile. À ce propos, évoquant l'affaire du Colonel Williams, il explique la difficulté d'une jeune femme qui aurait par exemple voulu déposer une plainte de harcèlement contre le Colonel. Les plaintes doivent systématiquement passer par la chaîne de commandement.


Il n'existe pas de mécanisme pour faire une plainte à un organisme indépendant. Il serait donc difficile de se plaindre auprès de subalternes dont les ambitions ou les réactions face à leur supérieur pourraient par ailleurs entraîner des représailles.

Dans la même veine, M^e Drapeau souhaiterait que les policiers militaires acceptent de collaborer avec les policiers civils qu'il considère mieux placés pour mener certaines enquêtes criminelles. Pour lui, une plus grande ouverture à la société civile permettrait d'améliorer l'institution militaire, pour laquelle il a par ailleurs un grand respect. C'est justement ce grand respect qui le rend critique.

Pour pratiquer le droit militaire, il faut s'armer d'une excellente connaissance de cette société encore fermée et qui comporte ses défis, ne serait-ce que le délai de prescription pour les litiges civils qui est de six mois, constituant, pour le colonel Drapeau, une véritable course contre la montre. Toutefois, M^e Drapeau invite les jeunes avocats à s'intéresser au droit militaire puisqu'il reçoit de plus en plus de demandes depuis les récents développements dans ce domaine. 



Pour pratiquer le droit militaire, il faut s'armer d'une excellente connaissance de cette société encore fermée...



CONVOCATION

February 2010 highlights

Continuing professional development requirement supports professional competence

Convocation approved a continuing professional development (CPD) requirement of 12 hours per year for practising lawyers and licensed paralegals who provide legal services and are in the 100 per cent fee paying category. Lawyers and paralegals may choose from a wide range of eligible CPD activities including study groups. Three of the required 12 hours must be taken in ethics, professionalism, and/or practice management. The requirement takes effect in January 2011. (*See report on page 13.*)

Integration program for categories/groups exempted from paralegal licensing approved

Paralegals who are members of certain groups exempt from Law Society licensing requirements will be given the opportunity to become licensed through a new integration program. Ontario collection agents will also be permitted to apply under the new program, which was approved at February Convocation.

Law Society to sign Québec Mobility Agreement

Convocation authorized the Law Society to sign the Federation of Law Societies of Canada's *Québec Mobility Agreement*. As a signatory to the agreement, the Law Society agrees to implement provisions that will permit members of the Barreau to become licensees of the Law Society and practise federal, public international and Québec law in Ontario.

Further consultation on rules relating to communications with represented organizational clients

The Law Society is undertaking further consultation on a revised proposal for amendments to Rule 6.03(9) of the *Rules of Professional Conduct*. The amendments address concerns raised about the restrictions in the current rule when a lawyer is dealing


with a represented organizational client opposed in interest to the lawyer's client.

Federation's report on Canadian Common Law Degree approved

Convocation approved the final report of the Federation Task Force on the Canadian Common Law Degree, which recommends that law societies in common law jurisdictions establish a uniform educational requirement for entry to their bar admission programs or licensing processes.

The Law Society will recommend to the Federation that the committee responsible for implementation include appropriate representation from Canadian law schools, and that law societies have an opportunity to approve the implementation committee's recommendations. (*See report on page 33.*)

Law Society Awards Committee Composition

The Law Society Awards Committee will now include the chair of the County and District Law Presidents' Association in addition to the Law Society Treasurer, five benchers, the Chief Justice of Ontario, the chair of the Ontario Law Deans, the president of the Ontario Bar Association and the president of The Advocates' Society. 

Visit our website for full Convocation reports:

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

January 2010 highlights

Conflicts of interest standard for PBLO's 'brief services' adopted

Convocation agreed to modify the standard for conflicts of interest for lawyers participating in Pro Bono Law Ontario's (PBLO) court-based 'brief services' programs. The modified conflicts standard means that a lawyer may provide these services under the PBLO program unless the lawyer knows of a conflict of interest that would prevent the lawyer from acting. (See report on page 17.)

Law Society makes regulatory proceedings more transparent

The Law Society will now start posting notices of application and referrals on its website, once they have been issued and served. Previously, notices of application and referrals for hearing were distributed only upon request, and a summary of the notice was posted on the Law Society's website two to four weeks in advance of a hearing.

Exemptions to paralegal licensing reviewed

Convocation approved the Paralegal Standing Committee's interim report on exemptions to paralegal licensing, a number of recommendations regarding specific exemptions as well as recommending further consideration of the remaining exemptions.

Pre-proceeding consent resolution conference approved

As an alternative to the regular investigations and hearing process, Convocation approved an expedited process for lawyers and paralegals who admit to misconduct allegations against them. The new process is called the pre-proceeding consent resolution conference. (See report on page 31.)

Compensation Fund Committee reconstituted

The Compensation Fund Committee was reconstituted as a more streamlined, five-member committee. The new committee will perform all committee functions related to the oversight of and policy-making for the Compensation Fund, including the grant approval function previously performed by the review sub-committee. Two lawyer benchers, one

of whom will serve as chair, two lay benchers and one paralegal bencher will sit on the committee. Certain specific quorum and voting requirements were also established.

The Law Society will also recommend an amendment to the *Law Society Act* to enable licensed paralegals, who are members of the Paralegal Standing Committee but who are not benchers, to sit on the committee.

Human Rights Monitoring Group

Convocation approved the Human Rights Monitoring Group's recommended interventions in the following cases:

- China – suspension, disbarment, detention and disappearance of human rights lawyers
- Colombia – illegal surveillance and harassment of lawyers and judges
- Syria – lawyers Haytham al-Maleh and Muhannad al-Hassani
- Turkey – lawyer Filiz Kalayci.

Appointments

The following benchers were appointed to the Law Society Medal/Lincoln Alexander/Laura Legge Award Committee: Glenn Hainey, Carol Hartman, Doug Lewis, Susan McGrath and Baljit Sikand.

The following benchers were appointed to the LL.D. Advisory Committee: Glenn Hainey, Carol Hartman, Doug Lewis, Susan McGrath and Baljit Sikand. [lso.org](http://www.lso.org)



Constance Backhouse awarded the Order of Ontario

Constance Backhouse was awarded the Order of Ontario in recognition of her contributions to the profession in a special ceremony in Toronto on January 28. A law professor at Ottawa University, Professor Backhouse is internationally recognized as a legal historian for her feminist research and

publications on gender and race within the Canadian legal system. She is the recipient of numerous awards and honours, including an honorary doctorate in 2002 and the Law Society Medal in 1998. She has served as an elected bencher since 2002.

December 2009 highlights

Governance Task Force's recommendations approved

Convocation approved the Governance Task Force's recommendations to improve governance of the Law Society by Convocation, intended to modernize the Law Society's governance structure and foster renewal of Convocation.

The reforms set a 12-year term limit for elected benchers and will reduce the number of unelected benchers by ending *ex officio* bencher status. Former treasurers and benchers who reach the term limit are now eligible for the newly introduced *emeritus* status. *Emeritus* benchers may be appointed to committees and the Hearing Panel, but do not participate in the monthly meetings of Convocation.

The Governance Task Force recommended the reforms to December Convocation to address issues identified during the task force's research and consultation phases. These include the increasing number of non-elected benchers, which was on track to exceed the number of elected benchers, as well as the benefit to Convocation of a balance between experienced benchers and those with new perspectives.

"Our consultations with benchers, lawyers and paralegals made it clear that we needed to make these changes to renew and modernize our governance structure so that the Law

Society can continue to lead the profession in the current business and legal environment," says Thomas Heintzman, chair of the Governance Task Force.


The Governance Task Force was given a mandate in May 2006 to consider and recommend to Convocation improvements to the corporate governance of the Law Society. See December Convocation News on the Law Society website for more information.

Appointments

Cynthia Petersen was reappointed as Discrimination and Harassment Counsel.

Bencher Carl Fleck was appointed and Bencher Carol Hartman was reappointed to the Board of Directors of LibraryCo.

James Leal was reappointed as the Law Society's representative on the Research Advisory Board of the Law Commission of Ontario.

Bencher Christopher Bredt was reappointed as the Law Society's representative on the Law Commission of Ontario. 

Roll-call votes

December 4, 2009

FINAL REPORT OF THE GOVERNANCE TASK FORCE

Mr. Heintzman presented the Report.

RECOMMENDATION 1

(amended as set out in the Memorandum to Convocation)

MOTION

That Convocation:

- a. end *ex officio* bencher status for elected benchers who have served 16 years as a bencher (life bencher); and
- b. grandparent all current life benchers and benchers who will qualify in the current bencher term ending May 2011 and the bencher term ending May 2015 as *ex officio* life benchers with the current rights and privileges attaching to the status of life bencher, with the following conditions:
 - i. A life bencher who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an

- ex officio* bencher, and
- ii. Rights and privileges lost under i. will be reinstated after the life bencher attends three of five consecutive regular Convocations.

Re: Recommendation 1 a.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –
Convocation

- a. end *ex officio* bencher status for elected benchers who have served 16 years as a bencher (life bencher).

Carried. Vote: For – 32; Against – 23.

Re: Recommendation 1 b.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –
Convocation

- b. grandparent all current life benchers and benchers who will qualify in the current bencher term ending May 2011 and the bencher term ending May 2015 as *ex officio* life benchers with the current rights and privileges attaching to the status of life bencher, with the following conditions:
 - i. A life bencher who fails to attend

- regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* bencher, and
- ii. Rights and privileges lost under i. will be reinstated after the life bencher attends three of five consecutive regular Convocations.

Carried. Vote: For – 46; Against – 6; 3 Abstentions.

RECOMMENDATION 2

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- a. limit the length of time a person may serve as an elected bencher; and
- b. provide that once a bencher reaches the limit for service as an elected bencher, that bencher becomes an *emeritus* bencher, as defined in this report.

Carried. Vote: For – 35; Against – 20.

RECOMMENDATION 3

MOTION

That Convocation choose the following as the maximum length of time that a person may serve as an elected bencher:

at the later of twelve years, which need not be served consecutively, or the completion of the bench term in which the elected benchers has completed at least 12 years.

It was moved by Mr. Aaron, seconded by Mr. Wright, that Recommendation 3 be amended by changing the maximum length of time from twelve years to sixteen years that a person may serve as an elected benchers.

Lost. Vote: For – 5; Against – 48;
2 Abstentions.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that Recommendation 3 be approved.

Carried. Vote: For – 39; Against – 13;
2 Abstentions.

RECOMMENDATION 4 **MOTION**

That Convocation

- a. end *ex officio* benchers status for former Treasurers;
- b. provide that once a Treasurer completes his or her term of office, the former Treasurer becomes an *emeritus* benchers, as defined in this report; and
- c. grandparent all current former Treasurers and the current Treasurer when that Treasurer's term is completed as *ex officio* benchers with the current rights and privileges attaching to the status of a former Treasurer as benchers, with the following conditions:
 - i. A former Treasurer who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* benchers, and
 - ii. Rights and privileges lost under i. will be reinstated after the former Treasurer attends three of five consecutive regular Convocations.

Re: Recommendation 4 a.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- a. end *ex officio* benchers status for former Treasurers.

Carried. Vote: For – 27; Against – 25;
1 Abstention.

Re: Recommendation 4 b.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- b. provide that once a Treasurer completes his or her term of office, the former Treasurer becomes an *emeritus* benchers, as defined in this report.

Carried. Vote: For – 44; Against – 4;
5 Abstentions.

Re: Recommendation 4 c.

It was moved by Mr. Aaron, seconded by Mr. Wright, that Recommendation 4 be amended by deleting the conditions under Recommendation 4 c.

Lost. Vote: For – 15; Against – 33;
4 Abstentions.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- c. grandparent all current former Treasurers and the current Treasurer when that Treasurer's term is completed as *ex officio* benchers with the current rights and privileges attaching to the status of a former Treasurer as benchers, with the following conditions:
 - i. A former Treasurer who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* benchers, and
 - ii. Rights and privileges lost under i. will be reinstated after the former Treasurer attends three of five consecutive regular Convocations.

Carried. Vote: For – 46; Against – 2;
4 Abstentions.

RECOMMENDATION 5 **MOTION**

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- a. end *ex officio* benchers status for former Attorneys General; and
- b. grandparent all current former Attorneys General and the current Attorney General when he becomes a former Attorney General as *ex officio* benchers with the current rights and privileges attaching to the status of a former Attorney General as benchers, with the following conditions:
 - i. Former Attorneys General who fail to attend regular Convocation four consecutive times will cease to have the rights and privileges of an *ex officio* benchers; and
 - ii. Rights and privileges lost under i. will be reinstated after the former Attorney General attends three of five consecutive regular Convocations.

Carried. Vote: For – 34; Against – 14;
3 Abstentions.

January 28, 2010

REPORT OF THE COMPENSATION FUND COMMITTEE

Mr. Heintzman presented the Report.

Re: Proposed Amendment to By-Law 12 (Compensation Fund)

It was moved by Mr. Heintzman, seconded by Mr. Swaye, –

MOTION 1: That Convocation approve in principle, subject to formal by-law amendment, a change in the structure of the Compensation Fund Committee, to make it a committee of five (5) members with the following composition and features:

- a. A Chair who is able to vote on all matters, including grant approvals
- b. Membership as follows:
 - i. Two (2) lawyer benchers, one of whom shall serve as Chair.
 - ii. Two (2) lay benchers.
 - iii. One (1) paralegal benchers.
- c. A quorum requirement of three members for any meeting of the Committee, with the following additional requirements for approval of grants:
 - i. for any grant in excess of \$5,000 in respect of lawyer dishonesty, the approval of at least one (1) of the two lawyer benchers, plus any two other members of the Committee; or
 - ii. for any grant in excess of \$5,000 in respect of paralegal dishonesty, the approval of the paralegal benchers, plus any two other members of the Committee.

MOTION 2: That Convocation seek an amendment to the *Law Society Act* that would enable persons licensed to provide legal services who are members of the Paralegal Standing Committee to be appointed by Convocation to serve as members of the Compensation Fund Committee created by the amended By-Law 12.

It was moved by Mr. Wright, seconded by Mr. Aaron, that the words "not less than" be added before the word "five" in Motion 1. Lost.

It was moved by Mr. Wright, seconded by Mr. Aaron, that the words "one of whom shall serve as Chair" be deleted in 2b.i. and that a further subparagraph that reads "iv. One other benchers" be added. Lost.

It was moved by Mr. Wright, seconded by Mr. Aaron, that paragraph 2c. i. and ii. be deleted so that it would then read: A quorum requirement of three members for any meeting of the Committee. Lost

The Heintzman/Swaye motion was voted on and carried.

Vote: For – 38; Against – 2.

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

	Attendance			Motions*											Jan. 28
				Dec. 4/09											
	Dec. 4/09	Jan. 28	Feb. 25	1	2	3	4	5	6	7	8	9	10		
Aaron, Robert	✓	✓	✓	A	A	A	F	A	A	F	F	F	F	A	
Anand, Raj	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Backhouse, Constance	✓		✓	A	A	A	A	A	A	A	F	F	A		
Banack, Larry	✓		✓	F	F	F	A	F	F	F	A	F	F		
Boyd, Marion	✓	✓	✓	A	F	F	A	F	A	F	F	F	Ab	F	
Braithwaite, Jack	✓	✓		A	A	A	Ab	A	A	A	F	A	A	F	
Bredt, Christopher	✓		✓	F	F	F	A	F	F	F	A	F	F		
Campion, John	✓		✓	F	F	F	A	F	F	F	A	F	F		
Caskey, James	✓	✓	✓	F	F	F	A	F	F	F	F	F	F	F	
Chilcott, W. Dan	✓			A	A	A	A								
Conway, Thomas	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Crowe, Marshall	✓	✓	✓	A	A	A	F	A	A	A	F	F	A	F	
Daud, Aslam	✓			F	F	F	A	F	A	F	A				
Dickson, Mary Louise	✓		✓	A	F	A	A	F	A	F	A	F	A		
Dray, Paul	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Elliott, Susan	✓	✓	✓	F	F	F	A	F	F	F	Ab	Ab	F	F	
Epstein, Seymour	✓	✓	✓	A	Ab	A	Ab	A	A	Ab	Ab	F	A	F	
Eustace, Lawrence	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Fleck, Carl	✓		✓	F	F	F	A	F	F	F	A	F	F		
Go, Avvy	✓	✓	✓	F	F	F	A	F						F	
Gold, Alan	✓	✓	✓	A	F	A	F	Ab	A	F	Ab	F	Ab	F	
Gottlieb, Gary L.	✓	✓	✓	A	F	A	F	A	F	F	A	A	A	F	
Hainey, Glenn	✓	✓	✓	F	F	F	A	F	A	F	A	F	F	F	
Halajian, Jennifer	✓	✓		F	F	F	A	F	F	F	F	F	F	F	
Hare, Susan	✓	✓		F	F	F	A	F	F	F	A	F	F	F	
Hartman, Carol	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Heintzman, Thomas G.	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Henderson, Paul	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Hunter, George															
Krishna, Vern	✓	✓	✓	A	F	A	A	F	A	F	F	F	F	F	
Lawrie, Brian	✓	✓	✓	A	F	A	A	A	A	F	A	F	A	F	
Legge, Laura			✓												
Lewis, Doug	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
MacKenzie, Gavin	✓		✓	F	A	F	A	F	A	F	A	Ab	F		
Marmur, Dow	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
McGrath, Susan	✓	✓	✓	A	F	F	A	F	A	F	F	F	A	F	
Minor, Janet	✓	✓	✓	F	F	F	A	F	F	F	A	F	Ab	F	
Pawlitza, Laurie	✓	✓	✓	F	F	F	A	F	A	A	A	F	F	F	
Porter, Julian	✓	✓	✓	A	F	A	A	A	A	F		F	A	F	
Potter, Judith	✓	✓	✓	A	F	A	A	A	A	F	A	F	A	F	
Pustina, Nicholas J.	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Rabinovitch, Jack	✓	✓	✓	F	F	F	A	F	F	F	F	F	F		
Robins, Sydney	✓	✓		F	F	F	A	F	Ab	Ab	Ab	Ab	F	F	
Rock, Allan															
Ross, Heather	✓		✓	A	F	A	A	F	F	F	A	F	F		
Rothstein, Linda	✓		✓	F	F	F	A	F	F	F	A	F	F		
Ruby, Clayton	✓	✓	✓	A	Ab	A	A	A	A	Ab	F	F	A	F	
Sandler, Mark	✓		✓	F	F	F	A	F	A	F	A	F			
Scace, Arthur															
Schabas, Paul	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Sikand, Baljit	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Silverstein, Alan	✓	✓	✓	F	F	F	A	F	F	F	A	F	F	F	
Simpson, William	✓	✓	✓	A	F	A	A	F	A	F	A	F	A	F	
Strosberg, Catherine	✓	✓	✓	A	F	A	A	A	A	F	F	F	F	F	
Strosberg, Harvey	✓			A	Ab	A	A	Ab	A	F	F	F	F		
Swaye, Gerald	✓	✓	✓	A	F	F	A	F	A	F	A	F	F	F	
Symes, Beth	✓	✓	✓	A	F	A	A	A	A	Ab	F	F	A	F	
Tough, Bonnie	✓			F	F	F	A	F	F	F	A	F	F	F	
Wright, Bradley	✓	✓	✓	A	F	A	F	A	A	Ab	F	Ab	A	A	
Millar, Derry (Treas.)	✓	✓	✓												

Non-voting benchers in attendance:

December 4, 2009 –

A. Feinstein, N. Finkelstein, P. Furlong,
R. Murray, R. Topp, J. Wardlaw.

January 28, 2010 –

P. Furlong, R. Murray, J. Wardlaw, R. Yachetti.

February 25, 2010 –

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

*Motions A=against F=for Ab=abstain

There were no motions in the February 25 Convocation requiring a roll-call vote.

PARALEGAL UPDATE



Robert Burd



Cathy Corsetti



Paul Dray



Michelle L. Haigh



Kenneth C. Mitchell

2010 PARALEGAL Standing Committee ELECTION

THE LAW SOCIETY OF UPPER CANADA

Ontario's licensed paralegals marked a major milestone in March 2010 when they participated in the first election to choose five of their colleagues to join the Paralegal Standing Committee of the Law Society of Upper Canada. The five elected members are: Cathy Corsetti, Paul Dray, Michelle L. Haigh, Kenneth C. Mitchell, and Robert Burd.


A total of 39 candidates were nominated to run for the five paralegal

seats on the Paralegal Standing Committee. Paralegal members of the committee will serve a term of four years.

Voting in the online election began on March 4, 2010 and ended on March 31, 2010.

The Paralegal Standing Committee's mandate is to develop and recommend policies to govern and regulate licensed paralegals in the public interest. The committee is made up of five paralegals, five lawyer benchers and three lay benchers. Paralegal committee members attend monthly meetings and may participate on other Law Society committees, task forces or

working groups. They also sit on hearing and appeal panels to adjudicate cases related to licensing, competence, conduct and capacity of paralegals.

Michelle Haigh and Paul Dray have been elected as the two paralegal benchers by the newly elected paralegal members and lay bencher members of the Paralegal Standing Committee. Cathy Corsetti was elected committee chair. Paralegal benchers perform all the duties of the paralegal members of the Paralegal Standing Committee and, in addition, have the duties of Law Society benchers, including attending and voting at Convocation. 

Integration program for categories/groups exempted from paralegal licensing approved

A new program has been approved that will allow paralegals who are members of certain groups exempt from Law Society licensing requirements to apply to become licensed. Ontario collection agents will also be permitted to apply under the new integration program.

The program was proposed by the Paralegal Standing Committee to February Convocation following consultations with exempted groups, many of whom expressed interest in further opportunities to become licensed.

The new integration program will include an online educational component offered by the Law Society. In addition to completing the educational program and writing an examination, applicants must be a member of one of the eligible groups, have three years experience, provide references, have professional liability insurance and be of good character.

The program will not be available to non-exempt individuals who didn't apply for the grandparent licensing stream in 2007.



The outgoing Paralegal Standing Committee who had been appointed by the attorney general. Back row, left to right: Sheena Weir, Government Relations, Margaret Louter, Catherine Strosberg, Stephen H. Parker, Paul J. Henderson, Seymour Epstein, Marion Boyd, Michelle Haigh, and Julia Bass. Front row, left to right: Brian J. Lawrie, Treasurer W. A. Derry Millar, W. Paul Dray.

New Complaints Resolution Commissioner looks forward to role

Fairness, openness, patience and integrity are essential traits for a good mediator and for a balanced resolution process, says the Law Society's new Complaints Resolution Commissioner, Stindar Lal, Q.C.

Lal, who began his two-year term on April 1, has adhered to these principles throughout a distinguished career that has spanned both the private and public sectors. He has worked as a lawyer, an arbitrator, a consultant, and served as a deputy minister in six different government ministries (see sidebar for details).

"The legal profession has been very good to me and has given me tremendous experience in my career," he

says. "The Law Society is my legal home and I feel very privileged to have the opportunity to make a contribution in serving the public as the Complaints Resolution Commissioner."

As the new Complaints Resolution Commissioner (CRC), Lal will play a vital role in the Law Society's complaints resolution process. In cases where a complaint against a lawyer or paralegal has been closed and the complainant is unsatisfied with this result, he or she can apply to the commissioner to review the case. The commissioner will review the file to ensure that the complaint was handled appropriately and the results were reasonable. The CRC also has the authority to provide alternative dispute resolution between lawyers or paralegals and their clients for issues that don't require a regulatory response.

Lal, who is a former general counsel to the Canadian Human Rights Commission, has worked within a complaints-driven process which has many similarities to the Law Society's CRC process. "I've developed some relevant skills that have become almost second nature to me and these will be extremely helpful in this new position," he says.

As a seasoned mediator and arbitrator, he is used to dealing with competing interests and understands the fine balance that the CRC must bring to every case.

"The complaints commissioner is not there to support the perspective of any particular group but to seek a resolution of a complaint in appropriate situations," Lal explains. "At the end of the day, the complainant should feel that he or she was given sufficient time, consideration and respect to express their point of view."

It's also critical that complainants are given the opportunity to understand what the process entails. "Managing expectations is important so that all parties understand the statutory limitations under which a solution can be found," he adds.

Challenges

Looking ahead, the new commissioner identified a few challenges, including the number of complaints against lawyers and paralegals. "We need to continue to enhance the integrity of the process, so it is seen as an open and fair process. There is an increase in the numbers of requests for CRC reviews and these must be dealt with in a timely fashion."




New Complaints Resolution Commissioner Stindar Lal, Q.C. (left), receives congratulations from Clare Lewis, Q.C., the Law Society's first Complaints Resolution Commissioner.

The new commissioner also comments that cultural diversity must be respected and understood as part of the process. "Many Ontarians face language and cultural barriers and our public institutions need to develop the capability to deal with issues arising from our diverse society." Lal says it's imperative for the CRC to ensure these factors are addressed so that all complainants have equal access to the process.

Succeeds Clare Lewis, Q.C.

Lal succeeds Clare Lewis, Q.C., who has held the post since 2005. Prior to becoming the Law Society's first Complaints Resolution Commissioner, Lewis served as the Ontario Ombudsman for several years. His distinguished career has also included work as a defence counsel, a prosecutor and a provincial court judge. As well, he served as Ontario's Police Complaints Commissioner and chair of the Alcohol and Gaming Commission, and as a member of the Board of Governors of the Canadian Centre for Police-Race Relations.

"I have been both honoured and privileged to have been chosen as the first Complaints Resolution Commissioner of the Law Society," says Lewis. "It has been a most fulfilling role and I am grateful for having the opportunity. Having known Mr. Lal for many years, I am confident that he will serve both the Law Society and the public with distinction."

Says Lal, "Clare Lewis has made a very significant contribution in setting up the system since the legislation was passed and he's had perhaps the more difficult task of building the system from scratch. My hope is to continue to build on what Mr. Lewis has done." 

Distinguished Career

Stindar Lal, Q.C., is a former deputy minister of six different ministries of the Ontario government, including Environment, Consumer and Commercial Relations, Municipal Affairs, Citizenship, Management Board Secretariat, and the Solicitor-General. He served as a Deputy Minister of Justice and lawyer for the government of the Northwest Territories; was involved in the patriation of the Canadian Constitution, particularly as it related to the entrenchment of Aboriginal rights; and was instrumental in the establishment of a self-regulating Law Society of the Northwest Territories.

Lal is a long-serving chair of the Inuvialuit Arbitration Board established to resolve disputes arising out of the Land Claims Agreement of the Western Arctic Inuit and the Government of Canada or industry. He also served as *General Counsel* to the Canadian Human Rights Commission. As a lawyer and consultant, Lal has advised governments in Canada and the world, in countries as diverse as Qatar, Russia and Vietnam, on the establishment of more accountable governmental and regulatory processes.

Expedited investigations and hearings process introduced

A new pre-proceeding consent resolution conference will provide a faster alternative to the regular investigations and hearing process for lawyers and paralegals who admit to misconduct allegations.

"The conference provides a flexible option for lawyers and paralegals who are interested in securing a faster, more certain resolution by making an early admission," says Zeynep Onen, director of Professional Regulation. "Only certain cases will be eligible, but for those that are, there is potential for significant time and cost savings both for the lawyer or paralegal and the Law Society."


"Early admission by the lawyer or paralegal will allow for a fast-track investigation and hearing – however, like the regular process, it will result in a public hearing and order," adds Onen.

How the conference will work

Lawyers and paralegals will be notified of the availability of the conference at the start of an investigation. As director of Professional Regulation, Zeynep Onen will determine which cases are eligible. The lawyer or paralegal must make a full

admission and the investigation must be sufficient to establish that the regulatory issues are known and complete. Other criteria must also be met. For instance, a case of a serious nature that presents a novel issue will not be considered for the conference, as it should be fully tried at a hearing to establish appropriate precedent.

Once the Law Society and the lawyer or paralegal agree that the conference process is appropriate, they will reach an agreement as to the facts and the penalty. There is a limit of 30 days to arrive at an agreement. The matter will then go before the Proceedings Authorization Committee for approval. If the committee authorizes the matter for the consent process, the agreement is then considered by a resolution panel, and if that panel agrees, a notice of application is issued. A hearing panel is then convened to hear and decide the matter.

The new process was approved as a pilot project and will be reviewed in two years time. Amendments to the Rules of Practice and Procedure to implement the process will be considered at a future Convocation. More information is available in January Convocation news on the Law Society website. 

Benchers Janet Minor to receive OBA Tom Marshall Award of Excellence in Public Sector Law



Janet Minor, one of Canada's leading constitutional and public law litigators, received the 2010 Tom Marshall Award of Excellence. The award is sponsored by the Ontario Bar Association's Public Sector Lawyers Section.

The Tom Marshall Award, named in honour of the former president of the OBA, celebrates the outstanding achievement of Ontario lawyers whose work focuses on representing the public interest.

Since 1989, Minor has been counsel with the Ministry of the Attorney General's

Constitutional Law Branch, where she now serves as General Counsel. She has represented the province at all levels of court and through her advocacy, has made a tremendous contribution to the development of constitutional law in Canada.

She is an elected benchers and chairs the Equity and Aboriginal Issues Committee. In 2003, she was awarded the President's Award from the Women's Law Association of Ontario. [ora.ca](http://www.ora.ca)

LAWYERS FEED THE HUNGRY PROGRAM EVENTS

Mark your calendars! 6th Annual Bugsy & Ken Charity Golf Tournament

Each year, the colleagues, friends and families of David H. Newman, Q.C., and Ken Danson pay tribute to their memory by organizing and supporting this successful event. More than \$60,000 was raised in support of the Lawyers Feed the Hungry Program at last year's event.

This year's event will be held on June 9, 2010 at the DiamondBack Golf Club. Over the past five years the tournament has raised more than \$210,000 for the program. For more information on this event visit the Lawyers Feed the Hungry website at www.lawyers-feedthehungry.ca.

2010 Law Firm Bowling Challenge – Thank you Sponsors!

The Law Society Foundation would like to thank the Toronto Lawyers Association and Teplitsky Colson LLP for hosting the 2010 Law Firm Bowling Challenge on April 11. Special thanks to all sponsors who have generously supported the event. We are especially grateful to the smaller firms for their generous support of this worthy cause by sponsoring lanes. For a complete list of sponsors see the Lawyers Feed the Hungry website.

The Lawyers Feed the Hungry – Ottawa looking for volunteers

Lawyers Feed the Hungry will host its first meal in Ottawa on April 20, 2010 at the Ottawa Mission. Dinner will be served monthly on the third Wednesday of each month to the homeless and the needy of the city. The program expects to serve approximately 400 guests per meal.

"We are excited to kick off the campaign in Ottawa and hope to garner the support from the local legal community. It is my hope that we can support those in need with the same fervor that we support our legal clients," says Ottawa lawyer Jonathan Richardson, program co-ordinator for the Ottawa service.

The program needs both volunteers and financial support, and hopes to be self-sustaining by raising \$20,000 the first year. If you are interested in donating, please visit the Lawyers Feed the Hungry website at: www.lawyersfeedthehungry.ca. Please donate through the Ottawa portal of the website, or by cheque to The Law Society Foundation.

Just as the Toronto program relies heavily on donations from firms and individual lawyers, the Ottawa branch of the program is hoping to gain support from local firms and individuals to meet this fundraising goal.

If you are interested in volunteering in any capacity, visit the Lawyers Feed the Hungry website for information, or contact Jonathan Richardson at JMR@ablegal.ca. The Mission can accommodate 20 volunteers per meal.

UPDATE

Federation of Law Societies of Canada

An increasingly integrated Canadian legal profession along with international developments in professional regulation are keeping the Federation of Law Societies of Canada very active. The co-ordinating body for Canada's 14 law societies is in the process of approving and implementing three major initiatives: the Québec Mobility Agreement, a Model Code of Professional Conduct and the final report of the Task Force on the Common Law Degree.



Task Force on the Canadian Common Law Degree

Following two years of research and consultation, the Federation's Task Force on the Canadian Common Law Degree released its final report in October 2009.

The task force's mandate is to review academic requirements for entry to Canadian law societies, in large part due to increased applications to practise law in Canada from internationally trained individuals, interest from a number of universities to establish new law schools and greater emphasis on regulatory transparency and objectivity.

Generally, law societies similar to those in Canada use one of two approaches to determine if an applicant meets academic requirements: successful completion of specified academic courses at an accredited law school, which is essentially the current Canadian model, or passage of a standard, substantive law examination along the lines of the American model.

Both have advantages, however the task force decided, in light of the Canadian context and recent international trends, to propose a national requirement expressed in terms of competencies. The competencies involve basic skills, awareness of appropriate ethical values and core legal knowledge that law students are expected to acquire during law school. The task force also recommends certain institutional requirements, such as prerequisites for entry and length of program, that law schools are expected to meet. The national requirements will provide appropriate guidance to the National Committee on Accreditation when assessing the equivalency of graduates with international law degrees consistent with graduates from Canadian law schools. The requirements will also provide guidance to those institutions seeking to establish new law faculties.


A committee will be established to implement the recommendations with a deadline of 2015. The Law Society has recommended to the Federation that the committee include appropriate representation from Canadian law schools, and that law societies have an opportunity to approve the implementation committee's recommendations.

Model Code of Professional Conduct

In an effort to achieve uniform standards of conduct for the legal profession across Canada, the Council of the Federation approved a Model Code of Professional Conduct. The Code sets out expected standards of ethical conduct for lawyers and is now being considered by member law societies.

Québec Mobility Agreement

The ability of lawyers to work across Canada, either permanently or temporarily, continues to increase with the finalization by the Federation of the Québec Mobility Agreement. The Québec Mobility Agreement extends the scope of the 2002 National Mobility Agreement to facilitate reciprocal, permanent mobility between Québec and the rest of Canada.

Law societies signing the agreement commit to implementing provisions permitting members of the Barreau to practise federal, public international and Québec law in the reciprocating province. Québec lawyers partaking in the agreement must hold membership in both the Barreau and the reciprocal law society. They are also required to hold appropriate insurance in Québec. The Barreau created a similar form of membership for lawyers from common law jurisdictions, known as the Canadian Legal Advisor, in 2008. The Law Society agreed to become a signatory to the agreement at February Convocation. 

John A. Champion the new president



The Federation is pleased to announce that John A. Champion, senior partner with Fasken Martineau DuMoulin LLP, is the new president for the 2009/10 term.

Champion is an experienced litigator, recognized both nationally and internationally as a leading trial, appellate and arbitration advocate. He is certified by the Law Society as a specialist in civil litigation and has been a benchler since 2000.



Robert Zochodne,
is the chair of County
and District Law
Presidents' Association
and is certified by
the Law Society as
a specialist in civil
litigation.

The practice of law is changing

By Robert Zochodne

Changes in ethnic and cultural diversity aside, the *geographic* diversity of lawyers is far different today that it was even 15 years ago.

The Law Society's 2005 *Report of the Sole Practitioner and Small Firm Task Force* includes a study completed by Strategic Communications, Inc. examining the demographic data of the profession.

Over 60 per cent of lawyers work either as a sole practitioner or in a small firm. The number increases to about 80 per cent in non-urban areas. From 1995 to 2002, the proportion of small firm lawyers between the ages of 25 and 35 fell from 20 per cent to 9 per cent. The average age of a small firm practitioner is 49, which falls to 42 for larger firms.

Those statistics taken together demonstrate that young lawyers are not choosing to practise law in smaller centres and that shortages are developing as a result.

To understand why this is happening one must reflect upon the decision-making process of law students when deciding where to article and then, ultimately, where to practise law.

One might state that as the law has become more complex, specialization is required to service the needs of the client. That being so, the argument goes, clients will choose large urban firms to resolve their legal problems.

I disagree. In my judgment, the small firm is the backbone of the legal community and in many instances, lawyers in small firms are the leaders of their communities.

The general practitioner's work remains as it has been, to undertake a real estate conveyance, to draw up a will, to advise on a collection matter or small business issues, and the myriad of other miscellaneous legal problems that the general practitioner resolves in his or her everyday work.

It is axiomatic to state that an articling student whose articling experience consists of reviewing a prospectus, working in mergers and acquisitions and legal research may well be ill-equipped for the world of general practice in a small firm.

That being so, it is essential that articling students be encouraged to seek out and secure articling positions outside of the large urban centres so that they are exposed to the benefits of the practice of law in smaller communities. While the transition from articling in a large firm to practising in a smaller community is possible, if students are exposed to smaller communities, it is possible that the students will remain in that community to practise law.

One possible solution involves joint articles, meaning several lawyers can jointly hire an articling student for work in each of the firms. This is an excellent way to introduce articling students to even the smallest of communities.

Law schools hold annual job fairs for law students to assist them to obtain articling positions. Historically, they have been populated by large firms, but the County and District Law Presidents' Association (CDLPA) now participates in them. Starting in 2009 and again this year in March, CDLPA executive members and local law association presidents will attend job fairs at the six law schools across Ontario, with the purpose of promoting the benefits of articling in smaller communities.

CDLPA will also continue to develop our Information Exchange Platform (IEP) located at www.cdlpa.org to provide more information for students.

Beyond this, CDLPA supports and encourages lawyers to make use of the Law Society's articling registry. This tool can help law firms in smaller communities, who may not have had articling applicants in the past, search the database to find individuals who are looking for a placement. Those looking for articling positions may search firms with available positions as well. [lso.org](http://www.lso.org)

Visit the Articling Registry at:

<http://articlingregistry.lsuc.on.ca/ArticleRegistry/article/Login.action>

Diversity and the sole practitioner

Membership of the legal profession is growing at a rate of approximately 1,500 new calls annually. The profession is also becoming more diverse with a greater number of women than men entering the profession, bringing with them a diverse range of knowledge, skills and experience that enables the profession to better understand and address Ontario's rapidly changing communities.

– (Josée Bouchard, Equity Advisor, the Law Society)

The importance of a diverse legal profession is evident when one reflects on how diverse the population of Ontario is. On the whole, the public will have more confidence in a legal system and the administration of justice when the legal profession, as well as the courts, reflect the face of the public. As highlighted in the feature story of this issue, diversity amongst sole practitioners and small firms adds a special dimension to the ability of Ontario residents to access the justice system.

Sixty-three per cent of Ontario lawyers work in firms of one to 10 lawyers, who face unique pressures that arise out of their practices. Many feel a sense of isolation from colleagues, handling files and cases without a colleague with whom to share their thoughts, fears, strategies, challenges and triumphs. Often, the financial realities are such that hiring support and administrative staff is not feasible, so sole practitioners have to handle all the administrative aspects of running their practices alone. Keeping current with substantive law, procedures and

tax considerations, as well as new technology and professional obligations can at times seem insurmountable.

Sole and small practitioners who are members of an equality-seeking community have these and other challenges. Their job is to work within the established system while interpreting it for their clients in a way that gets the best results legally and culturally. This can be a challenge depending on client expectations, needs or traditions that may not easily fit into the Canadian legal system model. Often the trust placed in a legal advisor is enormous as he or she is called upon to act as a friend, counsellor, interpreter and wise advisor.

The general stress of the profession along with the individual pressures of representing a diverse community can cause personal problems, including excessive stress, burnout, addictions and concerns about mental wellness. OLAP can help by providing counselling on all the problems that can arise. A complete list of services is available at www.olap.ca.

OLAP runs a facilitated support group for lawyers called The Lawyers Group, which meets the first and third Wednesday of every month from 5:30 p.m. to 7 p.m. at the OBA office, 20 Toronto Street, Toronto. Anyone looking for support is welcome to attend. We also have a Women's Wellness and Balance group that meets quarterly. Contact Jill Keaney at 1-877-576-6227 for details and registration.

Call for volunteers


OLAP receives calls for help from lawyers, law students and their immediate families for help in crisis situations and needs volunteers who can help us respond to the needs of lawyers from equality-seeking communities.

If you are interested in helping OLAP meet the unique needs of diverse communities, please volunteer. Simply fill out the volunteer application form on our website www.olap.ca, or call the OLAP volunteer co-ordinator, Jill Fenaughty at 1-877-576-6227. Volunteers will receive a one-day training session, plus a two-day retreat in July in Pickering.



The Ontario Lawyers Assistance Program is a 24-hour, peer support and counselling program that offers help to lawyers, law students and their immediate families with issues of stress, burnout, addictions and mental wellness concerns. To have your needs assessed and to find out how OLAP can help you, contact:

- Leota Embleton, MSW, IACAD, leota@olap.ca,
- Doron Gold, BA, LLB, doron@olap.ca,
- Terri Wilkinson, BA, LLB, RN, terri@olap.ca or
- Jill Fenaughty, BA, MA, LLB, jill@olap.ca, at 1-877-576-6227.

You can reach the Volunteer Executive Director, John Starzynski at 1-877-584-6227 or john@olap.ca. 

First annual Women's Symposium a success

The 1st Annual Women Lawyers Symposium, held in Ottawa at the National Arts Centre on February 5, was a real success. With more than 145 participants attending the symposium, the full-day event was designed to celebrate, inspire and foster success among women in the legal profession.

Participants discussed what it takes to thrive as a woman in practice, as well as the challenges they may face in their careers. Among the many speakers were the Honourable Madam Justice Louise Charron of the Supreme Court of Canada and professional coach Dr. Mamta Gautam, M.D., as well as many colleagues from law firms of all sizes.

Madam Justice Charron shared insights she has gained throughout her distinguished career. "We recognize that retaining and advancing women in all areas of legal practice makes good business sense," she said.

Madam Justice Charron also spoke about the necessity for law firms to adapt and accommodate their practices to "the *current* realities of women's lives, namely their disproportionate responsibilities for domestic duties and childcare. This means providing flexible work arrangements." She said, "I wonder if it is necessary to operate the way that we do with the whole culture of billable hours. Billable hours and face time at the office are interpreted as indicators of a lawyer's dedication, talent and likely success."

She also touched on the issue of 'priority of profit'. "Priority of profit represents a significant barrier to institutional change in the private practice environment. Lawyers who value non-monetary goods, including

family, social time or community endeavours, may feel they simply cannot, or do not wish to compete in the money-driven world of a law firm." For firms, she argued, "Prioritizing the health and happiness of employees and their families is likely to lead to increased productivity, fewer sick days and less risk of burnout and attrition."

Participants also heard an interesting discussion from the architects of the Law Society's Retention of Women in Private Practice Working Group. Josée Bouchard, Equity Advisor for the Law Society, moderated the discussion about the status and progress of various initiatives now underway to retain and advance women lawyers in private practice.

Sue Lynn Noel, corporate counsel at Livingston International Inc. and a panellist for the topic *Diversity of Women: Strength in Differences*, said there are two things diverse women should remember. "Firstly, be excellent; don't give anyone an excuse not to promote you. Secondly, be special. Don't be afraid to be the Black woman lawyer and stand out in the firm. You can define your own career for yourself." She spoke of the ways in which women will struggle that men won't, saying, "Women can't do business development in the same lock-step way that men do but we can adapt. I hope that what we do instead of focusing on the challenges

is discover the ways in which we can work around these challenges."

Over lunch, co-chair Fay Brunning gave a heartfelt talk about how important women are in private practice. "If women are opting out of private practice, women are opting out of the heart of our justice system and the justice system loses," she said. "This symposium is an opportunity for women to reach out and make connections. This whole day is about mentoring. We all have experiences that have affected us and we don't want to be spectators on the sidelines of the law."

The event was one of a number of initiatives of the Law Society's Retention of Women in Private Practice Working Group. The forum was co-sponsored by The Law Society of Upper Canada and the County of Carleton Law Association. The symposium was co-chaired by Lise Parent of Parent Carr and Fay Brunning of Sack Goldblatt Mitchell LLP. The Law Society would like to thank all the panelists, speakers and coordinators for their support and interest in the symposium. The feedback received will enable organizers to provide further programs that will meet the specific practical needs of women to give them the skills and confidence that they need to stay in or return to private practice and to run their own firms if they so choose.

Access Awareness: Parenting with a Disability and the Legal System

Speakers from diverse backgrounds talked about the legal needs of parents with disabilities at a symposium that took place on February 3 at the Law Society. They also discussed the challenges these parents face in the legal system when their disabilities intersect with issues of race, culture, faith and economic and family status.

The event was hosted by the Ethno-racial People with Disabilities Coalition of Ontario (ERDCO), in collaboration with ARCH Disability Law Centre, the Law Society and community partners. Funding was provided by the Law Foundation of Ontario.

Shown here are some of the symposium speakers. Front row: Keynote speaker and award-winning CBC Radio producer Ing Wong-Ward. Back row, left to right: Deborah Bluestein, Parenting Enhancement Program therapist, Surrey Place Centre, Toronto; James Holzbauer, Assessment and Referrals co-ordinator, Adult Protective Service Worker Program, Toronto; and Rabia Khedr, ERDCO Project Consultant and symposium chair.

Other speakers at the event included lawyers, an accessibility planning specialist, a family service worker, legal program director, and an occupational therapist.

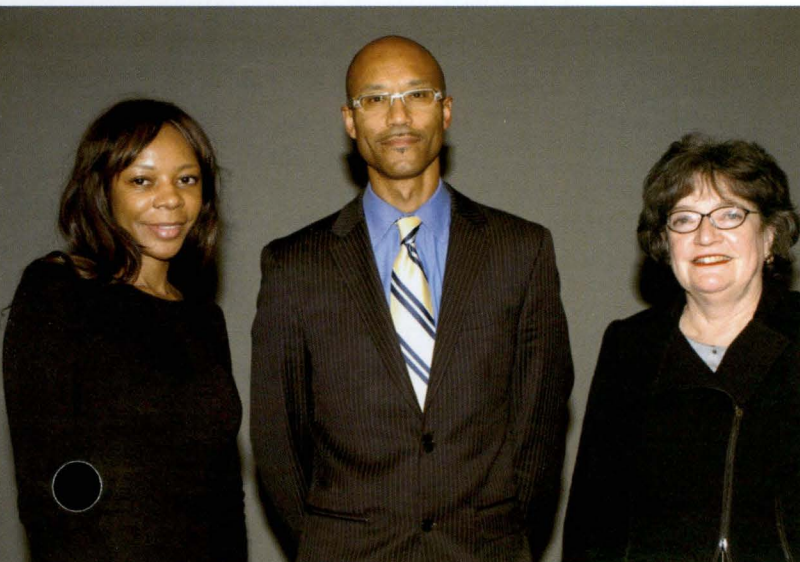


Lawyers and best-selling author celebrate Black History Month

Dambisa Moyo, well-known economist and author of the bestseller *Dead Aid: Why Aid is Not Working and How There is a Better Way for Africa*, was keynote speaker at a special reception at the Law Society on February 10 in celebration of Black History Month. The event marked the 10th anniversary honouring Black History Month at the Law Society.

A panel of leading scholars and lawyers examined the interconnection of law, commerce and development in different regions in Africa, and discussed how Africa has shaped international law, democratic building, and human rights. The panellists were: Kim Bernhardt, Barrister and Solicitor (moderator); Hon. David MacDonald, Former Canadian Ambassador to Ethiopia and Sudan and Canadian African Famine Co-ordinator; Dr. Obiora C. Okafor, Professor of Law, Osgoode Hall Law School; and Mark A. A. Warner, Legal Director, Ontario Ministry of Economic Development & Trade and Ministry of Research & Innovation.

Benchet Janet Minor welcomed guests to the reception on behalf of Treasurer W. A. Derry Millar and offered congratulations to CABL and the Law Society's Equity Initiative team for "another stellar event." The event was hosted by the Canadian Association of Black Lawyers (CABL) and The Law Society of Upper Canada.



(Left to right): Best-selling author and one of *TIME* Magazine's 100 most influential people, Dambisa Moyo; Frank Walwyn, president of the Canadian Association of Black Lawyers (CABL); and Benchet Janet Minor.

Guide to Success: A Dialogue with Women in Law



(Left to right): Kathy Laird, Anne Ristic, Sharon Davis, Kim Bernhardt, Beth Symes and Ronda Bessner.

A snowstorm didn't stop over 40 women attending a joint symposium presented by the Women's Law Association of Ontario and the Law Society on February 22. Moderated by Ronda Bessner, the chair of the WLAO Mentoring Initiative, a panel of four women lawyers answered questions about the choices they made to achieve success in their careers. Panellists included Beth Symes, benchler and partner at Symes & Street; Kathy Laird, executive director of the Human Rights Legal Support Centre; Kim Bernhardt, partner at Grant and Bernhardt; and Anne Ristic, assistant managing partner at Stikeman Elliott.

All recognized that the bar is higher for women than for men in the legal profession, but stressed the importance of analyzing your career goals and making choices based on what matters to you personally, and what will make you feel accomplished in your career. Though women face unique challenges especially when combining children with a career, there are many options available that may help you to achieve some kind of work-life balance and pursue a successful career. All agreed on the importance of a network of mentors and colleagues in the development of a legal career.



(Left to right): moderator Audrey M. Johnson, panellists Kelly Jordan and Sherry Dale. Front row: Rachel Epstein and Dr. Marjorie E. Dixon.

International Women's Day

On March 8, in celebration of International Women's Day, the Law Society hosted a panel of experts who discussed assisted human reproduction (AHR) technologies.

The panel, moderated by Audrey M. Johnson, executive director of the Women's Legal Education and Action Fund (LEAF), discussed the difficult social and ethical questions that AHR raises, as well as the legal implications. The panel focused on the impact that the 2004 *Assisted Human Reproduction Act* has had upon women and their children, as well as the creation of families, and the way in which it may affect the development of family law in Ontario.

Panellists included Sherry Dale, an infertility counsellor; Dr. Marjorie E. Dixon, MD, FRCS(C), FACOG, fertility specialist; Rachel Epstein, co-ordinator of LGBTQ Parenting Network, Sherbourne Health Centre; and Kelly Jordan, Jordan Battista LLP.

The symposium was hosted by the Law Society, the Feminist Legal Analysis Section of the Ontario Bar Association, the Women's Law Association of Ontario, LEAF and the Barbra Schlifer Commemorative Clinic. The event was part of the Law Society's Public Education Equality and Rule of Law Series.

LIFE MEMBERS

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

Donald P. Hamilton, Q.C. - Manotick, ON

JUDICIAL APPOINTMENTS

Federal Court of Appeal

The Honourable Mr. Justice David W. Stratas
(Effective September 10, 2009)

Federal Court of Canada

The Honourable Mr. Justice Paul S. Crampton
(Effective November 27, 2009)

Superior Court of Justice

Effective September 9, 2009

The Honourable Mr. Justice Robert N. Beaudoin
(Correction from the Winter 2009, Vol. 13 No. 3 issue of the *Ontario Lawyers Gazette*.)

Effective October 2, 2009

The Honourable Madam Justice Caroline E. Brown

The Honourable Mr. Justice Richard A. Lococo

Effective October 23, 2009

The Honourable Mr. Justice R. Dan Cornell

The Honourable Madam Justice Cindy A. M. MacDonald

Effective November 27, 2009

The Honourable Madam Justice Lynne C. Leitch, Puisine Judge of the Superior Court of Justice

The Honourable Mr. Justice Edward Ducharme, Regional Senior Judge of the Superior Court of Justice

The Honourable Mr. Justice Michael A. Penny

The Honourable Mr. Justice John S. Fregeau

Ontario Court of Justice

Effective October 14, 2009

The Honourable Justice Patrick James Boucher

The Honourable Justice Jean Legault

His Worship Thomas Andrew Stinson, Justice of the Peace to the Ontario Court of Justice

His Worship Mangesh Singh Duggal, Justice of the Peace to the Ontario Court of Justice

His Worship Alston Anierood Gunness, Justice of the Peace to the Ontario Court of Justice

Her Worship Patrice Valeriano, Justice of the Peace to the Ontario Court of Justice

Her Worship Carolyn Rosemary Humeniuk, Justice of the Peace to the Ontario Court of Justice

Effective December 2, 2009

The Honourable Justice Joyce Susan Elder

The Honourable Justice Steve Anthony Coroza

The Honourable Justice Leslie Chapin

The Honourable Justice Neil Kozloff

The Honourable Justice Diane Oleskiw

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