

# ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



LET RIGHT PREVAIL

The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

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# ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES  
DE L'ONTARIO

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Ontario Lawyers Gazette  
Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6  
tel: (416) 947-5220 fax: (416) 947-3335  
communications@lsuc.on.ca

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Pour communiquer avec nous, s'adresser à :

La Revue des juristes de l'Ontario  
Barreau du Haut-Canada

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Gavin MacKenzie

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**CONTRIBUTORS**  
William Holder  
Deborah Innes  
Denise McCourtie  
Deidre Rowe Brown  
John Starzynski  
Susan Tonkin  
Stephanie Wei

**PHOTOGRAPHY**  
Teckles Photography Inc.  
Johan Sörensen Photographer



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*Notice to Members*

## 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 7, 2008 beginning at 5:15 in the afternoon. All members of the Society are invited to attend.

Osgoode Hall  
February 22, 2008

Katherine Corrick  
Secretary

*Avis aux membres*

## Assemblée générale annuelle

La prochaine assemblée générale annuelle se tiendra à Osgoode Hall, 130, rue Queen Ouest, à Toronto le mercredi 7 mai 2008 à 17 h 15. Tous les membres du Barreau sont invités à y participer.

Osgoode Hall  
Le 22 février 2008

Katherine Corrick  
Secrétaire



## TREASURER'S MESSAGE

# Your views count – consulting the profession

*This spring we are consulting the profession on two important reports that have been received by Convocation.*

The first is the interim report of Convocation's Licensing and Accreditation Task Force. The issues raised go to the heart of our mandate to promote high standards of competence and ethics at the entrance to the profession. How should the Law Society collaborate with law schools to ensure that lawyers have the knowledge, skills and values required to

enable them to become effective practitioners? How should we respond to the pressures on our articling program created by a dramatically increased number of applicants for admission to the bar of Ontario?

The second report is that of Convocation's working group examining the retention of women in private practice. We all know that in recent years a majority of lawyers called to the bar have been women, yet at the same time women lawyers have been leaving practice in droves. The working group's challenge was not to identify the problem, but rather to propose constructive, workable solutions. The group correctly addressed both the challenges confronting women lawyers in large and medium-sized firms and the challenges confronting women in small firms and sole practices. It is costly for firms who have invested



**Treasurer  
Gavin MacKenzie**

## MESSAGE DU TRÉSORIER

# Le Barreau à l'écoute – consulter la profession

*Ce printemps, nous consultons la profession sur deux importants rapports que le Conseil a reçus.*

Le premier est le rapport intérimaire du groupe d'étude du Conseil sur l'accès à la profession et l'agrément. Les points soulevés sont au cœur de notre mandat visant à promouvoir des normes élevées de compétence et de déontologie à l'entrée dans la profession. Comment le Barreau devrait-il collaborer avec les écoles de droit pour s'assurer que les avocats ont les connaissances, les habiletés et les valeurs requises pour devenir de bons praticiens? Comment doit-on répondre aux pressions exercées sur notre programme de stage par un nombre croissant de

demandeurs à l'accès à la profession en Ontario?

Le deuxième rapport est celui du groupe de travail du Conseil qui étudie la rétention des femmes en pratique privée. Nous savons tous qu'au cours des récentes années, la majorité des avocats assermentés ont été des femmes, et pourtant ce sont les femmes qui laissent la pratique en masse. Le défi du groupe de travail n'était pas de cerner le problème, mais bien de proposer des solutions constructives et réalisables. Le groupe a bien su relever les défis en rencontrant les avocates des moyens et des grands cabinets, et les avocates autonomes et en petits cabinets. Les cabinets investissent de grosses sommes pour former leurs avocats; ils payent le prix fort lorsque ceux-ci partent. La société en général paye peut-être même davantage lorsque les avocates autonomes et en petits cabinets



significantly in training lawyers to lose them. It is perhaps even costlier for society as a whole to lose lawyers in sole and small firm practice, particularly in communities outside major urban centres, where the vast majority of individuals needing legal advice and representation in these communities turn to lawyers in sole practice and small firms. In my view, the working group has devised a series of creative recommendations which, if adopted by Convocation, would soon be emulated by other law societies in Canada and internationally.

I commend both of these reports to you and urge you to take time to reflect and comment on their proposals. We need the help of the profession as a whole to resolve these issues in a way that responds to the needs of the public we serve.

As I approach the end of my final term as Treasurer, I wish to thank the profession for extending to me the

opportunity to serve. It has been a rare privilege to work with the benchers, Law Society staff and the lawyers of Ontario, to move the profession forward on important issues affecting the independence of the bar and access to justice. I believe we can take great pride in what we have accomplished together.

I am confident that the next Treasurer and the benchers will begin a new term with the strong foundation of an open, accessible and effective organization focussed on providing the people of Ontario with legal services of the highest quality. ■

*Gavin MacKenzie*

partent, surtout dans les communautés hors des grands centres urbains, où la majorité des personnes qui ont besoin de conseils juridiques et de représentation se tournent vers les juristes autonomes et les petits cabinets. À mon avis, le groupe de travail a proposé une série de recommandations créatives qui, si le Conseil les adopte, seront bientôt émulées par d'autres barreaux au Canada et du monde.

Je vous conseille vivement de prendre le temps de réfléchir aux questions soulevées dans ces rapports et de donner vos commentaires sur leurs propositions. Nous avons besoin de l'aide de la profession dans son ensemble pour régler ces questions d'une façon qui réponde aux besoins du public que nous servons.

Au terme de mon dernier mandat comme trésorier, je désire remercier la profession de m'avoir donné la chance de la servir. Je considère comme un rare privilège d'avoir travaillé avec les conseillers et les conseillères, le personnel du Barreau et les avocats et avocates de l'Ontario pour faire avancer la profession sur des questions importantes pour l'indépendance du

Barreau et l'accès à la justice. Je crois que nous pouvons être fiers de ce que nous avons accompli ensemble.

Je suis sûr que le prochain trésorier et les conseillers et conseillères entreprendront un nouveau mandat sur les solides bases d'une organisation ouverte, accessible et efficace, déterminée à fournir à la population de l'Ontario des services juridiques de la meilleure qualité. ■

*Gavin MacKenzie*



## CONSULTATION ON THE Retention of Women in Private Practice

THE REPORT IS THE RESULT OF A YEAR AND A HALF OF RESEARCH BY THE WORKING GROUP, WHICH WAS ESTABLISHED BY CONVOCAION IN 2005 TO DEVELOP STRATEGIES TO ADDRESS THE TREND THAT LAW FIRMS ARE LOSING THEIR WOMEN LAWYERS IN GREATER PROPORTION THAN MEN. WHILE OVER 50 PER CENT OF LAW SCHOOL GRADUATES ARE WOMEN AND ALMOST ALL FIRMS REPORT WOMEN IN EQUAL OR GREATER NUMBERS THAN MEN AT THE ARTICLING AND JUNIOR ASSOCIATE LEVELS, MOST ALSO REPORT LOSING WOMEN DISPROPORTIONATELY AT THE SENIOR ASSOCIATE LEVEL.

Benchers Bonnie Tough spoke first to the motion to consult with the profession about the report's proposed solutions. She summed up the general feeling, "In many ways, this is the issue of our times because it is an issue that affects access to justice," she said. "We simply cannot have 50% of our graduates leaving private practice and expect that we are going to serve the public or the public interest in the long run."

The working group conducted a wide-ranging review of current research and best practice in Ontario and other jurisdictions to propose a number of recommendations on how to address the issue of women leaving private practice. Their work was supported by the ongoing advice of an expert advisory group comprising women of different ages and experience, from firms of various sizes, across different regions, from various areas of practice, and from various equity-seeking communities.

The proposed recommendations are divided into two categories: those aimed at medium to large firms and those aimed at small firms and sole practitioners. "It made sense to us to consider the issues that way," says Law Society Equity Advisor Josée Bouchard. "The reality is that a woman working as a sole practitioner has a different experience and faces different challenges than a woman in a large firm. The child-bearing and rearing years are exciting, but can also be challenging and strategies to assist women may be different depending on the practice environment."

The report is now out for consultation with the profession. "We very much look forward to receiving feedback from practising lawyers. We believe that we have identified a number of practical ways of moving forward, but there are bound to be comments and other ideas that will broaden the debate. Systemic change can only happen with the ongoing engagement of the profession," says Bouchard.

### **Small Firms**

In its approach to the issues as they affect sole and small firm practitioners, the working group proposed to offer parental leave for practices of five lawyers or less where the claimant has no access to other maternity/parental/adoption financial benefit programs. Funded by a small increase in the Law Society annual fee, the program would provide \$3,000 per month for a maximum of three months to cover expenses associated with maintaining a practice during the period of leave.

This idea received strong support from benchers. "The recommendations for small firms and sole practitioners are really very forward-looking proposals, and will be of great assistance at a very modest cost," said Derry Millar. "We should support taking this out to the profession."

Another proposal is to develop an alternate lawyer program, with the ultimate goal being the development of a locum registry. The working group looked at the experience of other jurisdictions, including Australia, the U.K. and the U.S. While the only Canadian jurisdiction where a law society has established a practice locum registry is B.C., this proposal is probably a formalization of what has occurred on a more ad hoc basis in the past.

"We want to work closely with legal organizations to develop an alternate lawyer program for all regions of Ontario," says Benchers Bonnie Warkentin, co-chair of the working group. "We believe that we can achieve a win/win for both the profession and the public we serve. Having access to names of those willing





Laurie Pawlitza and Bonnie Warkentin co-chairs of the Retention of Women Working Group

to provide a locum service will ensure that a leave of absence for any reason can be well managed — clients will be served during the lawyer's absence and the lawyer will have the break they need, whether to take a parental leave, deal with an illness or take a needed longer vacation. This will also be an opportunity for someone needing a break from full-time practice to offer locum services and thus remain current, maintain an income and return to practice in due course without feeling they have lost their skills."

The flexibility offered by alternate lawyers can be used by all sole and small firm practitioners, both men and women, to cover leaves for a variety of reasons. Combined with the parental leave proposal, locums could secure a small or sole practice at a particularly vulnerable time. "One of the difficulties faced by women lawyers in particular, is that if they want a family it often coincides with their early years in practice, before they have become established," says Warkentin. "This is most difficult for women in sole and small firms where they are not eligible for employment insurance benefits. These lawyers rarely have sufficient cash flow to enable them to hire a locum to serve their clients and still cover their overhead expenses. The parental leave program would enable them to take a short leave from work,

while ensuring their clients are not left without a lawyer managing their files. In our discussions with women lawyers around the province we realized that without the parental leave program, the locum service would not be a meaningful option."

The working group proposes to offer model codes of practice, particularly with respect to client conflicts and non-compete clauses, as well as develop a registry that standardizes information with respect to qualifications, discipline history, availability and remuneration.

### Medium to Large Firms

The issues faced by women in larger firms relate to cultural issues arising out of traditional working patterns. "Systemic cultural change requires leadership and commitment from managing partners," says Bencher Laurie Pawlitza, co-chair of the working group.

The working group is seeking to establish Justicia, a three-year pilot project for firms of more than 25 lawyers and the two largest firms in each region. Participating firms will be asked to commit to adopting programs for the retention and advancement of women, focusing on:

- tracking demographic information within firms
- maternity/parental leave and flexible working arrangements

The working group has established an ambitious schedule of consultations with stakeholder groups across the province. Meetings have been arranged in all the regions of the province with invitations going out to associations. Full copies of the consultation paper are available at <http://www.lsuc.on.ca/about/bl/equity/retentionofwomen/>

Written submissions should be sent to:

Josée Bouchard, Equity Advisor  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N6  
E-mail: [lawconsultations@lsuc.on.ca](mailto:lawconsultations@lsuc.on.ca)

- networking and business development
- mentoring and women in leadership roles.

Each firm will be asked to designate a gender diversity officer to represent the firm in the project, and managing partners will attend a separate network group.

Does the working group have a wish list of working practices they would like to see adopted? "Of course, I have ideas about what I would like to see. Every firm has different needs so no two firms will be exactly the same. Both associates and partners need to recognize that retention is a two-way street. Partners must remember that the most demanding family obligations coincide with the most difficult learning years in practice, but our careers span 35 years," says Pawlitza. "Associates don't just need to learn the law, they also need to learn the 'business of law', including how much it costs to run the practice. When we have best practices that join those two solitudes, we will have achieved our goal."

What the report does do is outline the types of issues and policies that will be under consideration. Apart from leave, these include preparing for and returning from leave, maintaining the partnership track, flexible and alternative work schedules, business and client support such as networking and business development, and mentoring. Research highlights the efficacy of business development training, networking



opportunities and formal mentoring programs, specifically tailored for women lawyers.

Tracking demographics for the benefit of the firm will be good business practice for firms that are serious about making a cultural change. Many American corporate clients now set diversity targets for their legal advisors, a practice that is slowly entering the Canadian market and is likely to become more common with time.

How does the profession of law compare with other industries? The report acknowledges that the practice of law is a competitive business and market-driven, like any other industry. Reports from Catalyst and the Conference Board of Canada emphasize that companies with the highest representation of women on their senior management teams not only perform better financially, they have higher employee recruiting and retention rate – important in the high employment, labour tight marketplaces we are experiencing now. As the Conference Board report says: “Workplaces that work for women...also work for men and for employers.”

“We are excited that law firm management have already shown leadership and are committed to addressing this issue,” says Pawlitza. “We believe that when practices to support women are just as readily accepted by men as they are for women, our programs will have been a success.” ■

#### References:

*Catalyst, The Bottom Line: Connecting Corporate Performance and Gender Diversity, 2004.*

*McLean, Denise, Workplaces that Work: Creating a Workplace Culture that Attracts, Retains and Promotes Women, The Centre of Excellence for Women's Advancement, The Conference Board of Canada, 2003.*

## The working group recommendations are:

### 1) *Justicia Pilot Project*

That the Law Society implement a three-year pilot project (the Justicia Pilot project) for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women.

### 2) *Direct support for women*

That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women in large and medium firms through programs such as a leadership and professional development institute and on-line resources.

### 3) *Practice locums*

That the Law Society develop a five-year pilot project to promote and support practice locums.

### 4) *Funding for leaves*

That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective January 1, 2009 as follows:

- a) benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans
- b) provide a fixed sum of \$3,000 a month for three months (maximum \$9,000 per leave per family unit) to cover, among other things, expenses associated with maintaining their practice during a maternity, parental or adoption leave.

### 5) *Direct resources*

That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms, through programs such as on-line resources and practice management and career development advice.

### 6) *Beginning at law school*

That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practicing in diverse work settings and available resources.

### 7) *Creation of advisory group*

That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equity-seeking communities to assist with the implementation of the recommendations.

### 8) *Networking*

That the Equity and Aboriginal Issues Committee facilitate the development of networking strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities in firms of all sizes.

### 9) *Review programs and next steps*

That, after a period of three years from implementation of programs developed or at the end of each pilot project, the Law Society assess their effectiveness and identify further strategies, if appropriate, for the retention and advancement of women in private practice.

For a full copy of the Consultation Paper please see <http://www.lsuc.on.ca/about/b/equity/retentionofwomen/>



# Parental Leave Programme

## What is this?

This program is designed to provide financial benefits to lawyers in firms of five lawyers or less who have no access to other maternity/parental/adoption financial benefits under public or private plans.

## Why?

The purpose of the parental leave benefits program is to reduce the financial hardship that arises when a lawyer in a small firm or sole practice takes parental leave. The program is not intended as income replacement, but rather to help defray some of the costs and overheads of running an office during the period of leave. Combined with the proposed locum registry, the working group believes that this will allow more practitioners to stay in practice after having a child.

The Law Society's mandate is to regulate the legal profession in the interests of the public. Sole and small firm practices are important actors in the provision of legal services, and indeed are the face of the profession for most members of the public, particularly as they are often found in non-urban areas. It is important that the public have access to a diverse pool of lawyers. Support to ensure that lawyers can maintain their practices is one means of ensuring this.

## Is this new?

The Law Society supports other programs that assist lawyers to remain in the profession and in private practice. For example, the Society provides annual funding to the Ontario Lawyers' Assistance Program which provides assistance to lawyers dealing with stress or addiction related problems. We also support CDLPA, the Advocates Society,

Pro Bono Law Ontario, Legal Aid Ontario and the Federation of Law Societies of Canada, among others.

## Why only firms of five or less?

Difficulty in financing practices is a challenge unique to lawyers in this size of firm, and is linked to the nature of their client base, rising overheads and general market pressures to reduce fees with narrow margins. These firms are the gateway to justice for many members of the public – they comprise 52 per cent of lawyers in private practice and 94 per cent of all law firms in the province.

## Has this been done before?

The Barreau du Québec's program offered up to \$1,500 per month for maternity leave for a maximum of three months and up to \$1,500 for parental leave for one month. Funds were to be used to cover operating expenses where the claimant had no other public or private assistance programs. This program has now been superseded by Quebec government legislation with respect to benefits for the self-employed, but while in operation was very positively received. The Law Society of British Columbia has approved, but not yet launched, a benefits program based on loans for maternity leave.

## Why should we all pay for this?

This is a positive benefit for the profession as a whole with important ramifications for ensuring that the public has access to justice in all parts of the province. Providing economic security on a temporary basis can help ensure reintegration of practitioners into the

labour market and the continuing viability of the claimant's practice.

## How would the program operate?

Detailed guidelines have yet to be developed for the program but applicants would have to cease operations for the period covered by the claim, and provide an affidavit to support this. Based on actuarial projections, it is estimated that approximately 60 lawyers would take advantage of the program in 2009. The working group is proposing a three-year pilot project and will assess its continued viability at the end of that period.

## How has the project been costed?

The working group retained the services of the actuarial firm Eckler Ltd. to make projections of take-up based on current demographics in the province. The maximum cost per lawyer licensee is \$15 per annum.

## What has been the reaction in the profession?

Consultations with members of the profession to date confirm that maternity decisions have a profound effect on women's career choices. Working as a sole or small firm practitioner compounds any of the normal stresses involved with having new children by adding financial pressure that can amount to the very survival of a practice. Given that 94 per cent of firms in Ontario are small, it is apparent that they are an essential component in securing access to justice for all members of the public and the support of the Law Society for practitioners at this vulnerable point in their lives is important. ■



# CONSULTATION ON THE *Licensing and accreditation process*

CONVOCATION HAS ISSUED A WIDE-RANGING CALL FOR INPUT FROM THE PROFESSION ON THE LICENSING AND ACCREDITATION PROCESS AS A RESULT OF THE INTERIM REPORT OF THE LICENSING AND ACCREDITATION TASK FORCE, PRESENTED AT JANUARY'S MEETING.

The report is the result of almost a year's study of the issues that are challenging the Law Society and the legal profession with respect to licensing, and delineates both the parameters of the discussion and possible solutions. Convocation's decision to consult on the options recognizes that the wider input of the profession is essential to ensure that the proper response is adopted going forward.

## The Task Force

Established in March 2007, the mandate of the task force is to:

- ❖ make recommendations on the most effective means by which established competencies for the call to the Bar of Ontario can be achieved
- ❖ review the criteria for approving law degrees
- ❖ analyze the impact of increasing numbers of both domestic and international applicants for admission to the bar on the viability of the licensing process.

In June 2007, the Federation of Law Societies established its own task force to consider a number of issues related to legal education, including the content of the approved common law degree, the implications of fair access to regulated professions and the National Committee on Accreditation requirements. Because the two groups were working on many of the same issues, it was felt that the Law Society Task Force should participate on

the overlap issues in the Federation work, and focus its own work on the viability of aspects of the licensing process for Ontario lawyers. The Federation Task Force is expected to issue a consultation report this summer on the approved law degree issues.

The Law Society Task Force looked at the continuum of legal education from law school to licensing to continuing legal education. Its consultation report focuses on two components of the licensing process, namely articling and the professional responsibility and skills program.

## Numbers of articling candidates

Figures cited in the report show that in 2007/08 there were 1,408 new candidates eligible for articling, together with approximately 125 returning candidates. Previous experience suggests that approximately 20 to 40 candidates will remain unplaced by the end of the year.

The task force extrapolated figures based on an average increase of 4 per cent per annum for new candidates for articling. With an increase in the class size at the University of Ottawa Law School and students applying from foreign law schools, particularly Australia, it forecast that in 2009 there will be approximately 1,733 students looking for articles. This could be compounded by applications to establish new law schools from at least two

Ontario universities and growing numbers of Canadian students studying law internationally who return to Canada to work.

Data also shows that currently there are approximately 1,300 articling positions across the province. Assuming a stable economy, this figure may not change significantly leading to concerns that the rapidly growing gap between available places and candidates will become untenable pressure, to which the Law Society will be called upon to respond.

## Options

Convocation agreed that the profession should be consulted on four options for dealing with the challenges facing the articling program:

### **1. Continue articling but make it clear that the Law Society does not guarantee that all candidates will find articling positions**

This option explicitly states that, while the Law Society supports candidates in their articling search and tries to expand the number of placements available, the completion of a law degree does not guarantee that a student will find an articling placement. This option in effect reflects the current approach, but in the past there have typically been sufficient jobs for the number of applicants.



Under this option, unplaced students in larger numbers may become a feature of the licensing program. In the short term, this option allows for more time to assess the degree to which numbers will actually increase, the opportunity to further explore the expansion of articling placements, and to investigate the feasibility of the establishment of a practical legal training course (option 2). The task force recognizes that this may not be a palatable solution, given the substantial commitment that law students make to their education in terms of time and money, and consequent expectations they have of entering the profession.

## **2. Continue articling and provide an alternative means of meeting the training position**

This option would entail the introduction of a practical legal training course modeled on those established in Australia, successful completion of which would enable candidates to be called to the Bar. The course would be *an alternative to* articling, for those unable to find articling positions.

The advantages of this option are that it will enable all those who want to practise law to be called to the Bar. There are practical hurdles to the introduction of this type of program, however, including the identification of third party providers to establish schools, the quality of the programs that are offered, costs, and how candidates who complete the program rather than article are viewed within the profession.

## **3. Abolish the articling requirement**

The task force recognized that this is a radical proposition. The report highlights the possible negative implications of this step, including the fact that it could be perceived as a reduction in standards and contrary to the public interest; and Ontario would have a licensing process different from the other provinces, which

## *Is there a better way to achieve our objectives?*

Vern Krishna  
Chair, Task Force

could have consequences for the National Mobility Agreement. Abolishing articling might lead to changes to the licensing examination or the introduction of mandatory professional development.

## **4. Any additional options that provide a practical solution to the challenges facing articling**

In addition to comments on these three options, Convocation would like to hear any alternative suggestions from members of the profession.

## **Skills and professional responsibility program**

The task force also considered the Skills and Professional Responsibility program that was introduced in 2006. It is now a four-week course that candidates attend after law school and before articling. It

was designed to fill a perceived gap in law school education, in terms of equipping candidates with practice skills and training on professional responsibility and ethics issues.

The task force sought to establish whether the program was meeting its objectives of ensuring competencies amongst candidates, efficiently and effectively. The task force considered the courses offered at law schools that either teach professional responsibility and/or ethics, or offer clinical training, as well as the difficulties that have been encountered in running the course, particularly in securing the participation of practising lawyers as teachers. Students' evaluations of the course, that it is of only modest benefit if any, were also considered. Based on its research, the task force is recommending that the skills and professional responsibility program be discontinued.

The task force proposed that the professional responsibility and ethics portions of the barrister and solicitor licensing examinations be increased to ensure that candidates for the call to the Bar have the requisite competency in these areas. Law schools would be encouraged to increase this component of their course offering, and there may be a place for post-call professional development to meet this need. ■

To view the full report, visit the Law Society's website at [www.lsuc.on.ca/media/licensing.pdf](http://www.lsuc.on.ca/media/licensing.pdf)

Written comments should be received by May 31, 2008 and should be sent to:

Sophia Sperdakos, Policy Counsel  
Policy Secretariat  
Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N6  
Email: [ssperdak@lsuc.on.ca](mailto:ssperdak@lsuc.on.ca)



## REAL ESTATE UPDATE

*Lawyers play a unique and important role in real estate matters. As this area of law continues to evolve in significant ways, the Law Society has been active in a number of areas, working with both the profession and the government.*

*Below is a summary of current initiatives. More detailed information and useful links are available on the News for the Real Estate Bar page of the Law Society website at: [www.lsuc.on.ca/latest-news/a/hottopics/news-for-the-real-estate-bar/](http://www.lsuc.on.ca/latest-news/a/hottopics/news-for-the-real-estate-bar/)*

## Working with the Real Estate Bar

### The Real Estate Issues Working Group

The Real Estate Issues Working Group was formed in 2005 to bring together real estate practitioners and representatives from the OBA, CDLPA and the Law Society to manage emerging real estate matters in a comprehensive and unified way.

The working group focuses on issues arising in real estate practice that relate to the Law Society's regulatory responsibilities and public protection mandate. Mortgage fraud, standards of practice and facilitating the public's access to lawyers knowledgeable about real estate law are examples of the issues being addressed by the group.

#### Key activities include:

*Recommended due diligence process for mortgage and loan transactions for lenders and lawyers*

Taking proper care to detect and deter fraud is essential for public protection in real estate matters. The working group has prepared a due diligence document outlining best practices for lenders and lawyers to help ensure that adequate care is exercised in the funding of mortgage or loan transactions.

*Consultations with profession on rule amendments*

The Law Society, with the support of the working group, has consulted with the profession twice regarding amendments to the *Rules of Professional Conduct* aimed at increasing public protection in real estate transactions.

Most recently, the profession was consulted on amendments requiring that there be two lawyers for transactions involving a transfer of title and whether two lawyers from the same firm should be allowed to represent the transferor and transferee.

Comments from the profession informed the Professional Regulation Committee's recommendations to Convocation, which were approved at February Convocation. New Rule 2.04.1 requires that an individual lawyer not act for both the transferor and the transferee in a transfer of title to real property. The rule does not prevent two lawyers from the same firm from acting for the transferor and the transferee respectively, so long as the general rules on conflicts of interest in Rule 2.04 are observed.

Comments from the profession also informed certain exceptions. The rule states:

So long as there is no violation of Rule 2.04, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if

- (a) the *Land Registration Reform Act* permits the lawyer to sign the transfer on behalf of the transferor and the transferee,
- (b) the transferor and transferee are 'related persons' as defined in section 251 of the *Income Tax Act (Canada)*, or
- (c) the lawyer practices law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

See below for more information on government exceptions.

The working group also consulted with the profession in 2006 on amendments to the *Rules of Professional Conduct* regarding disclosure requirements and reports on mortgage transactions. Convocation approved amendments to Rules 2.02 and 2.04 requiring a lawyer acting for a borrower and lender to make full disclosure of material facts in writing to the lender and borrower before the release or advance of mortgage funds, and a lawyer acting for a lender to provide final reports to the lender within 60 days of the registration of a mortgage.



## Residential Real Estate Transactions Practice Guidelines

In 2007, the working group released the *Residential Real Estate Transactions Practice Guidelines*. The guidelines are designed to inform and educate the profession on the generally accepted standards of practice by lawyers involved in residential real estate transactions and to demonstrate the inherent value in retaining a lawyer for real estate transactions. The guidelines are available in the Resource Centre of the Law Society website at <http://rc.lsuc.on.ca/jsp/residentialRealEstate/>.

Current members of the working group are:

Bencher Brad Wright - co-chair  
Don Thomson - Toronto practitioner - co-chair  
Bencher Bob Aaron  
Clare Brunetta - County and District Law Presidents' Association (CDLPA)  
Sally Burks - Ottawa practitioner  
Ray Leclair - Ontario Bar Association  
Greg Mulligan - Orillia practitioner  
Bencher Nick Pustina  
Bencher Alan Silverstein

## Working with the government

### New Mortgage Brokerages, Lenders and Administrators Act

In February 2006, the Ministry of Finance introduced legislation to replace the current *Mortgage Brokers Act* to establish a comprehensive and streamlined system of rules governing mortgage brokers and agents.

The new *Mortgage Brokerages, Lenders and Administrators Act* will come into full effect July 1, 2008. The act will regulate the following activities:

- carrying on the business of dealing in mortgages in Ontario
- carrying on the business of trading in mortgages in Ontario
- carrying on business as a mortgage lender in Ontario
- carrying on the business of administering mortgages in Ontario.

Four types of licences will be issued by the Superintendent of Financial Services.

### Exemption for lawyers

The Law Society was successful in advocating for the exemption of lawyers from regulation under the act. Under the regulations, lawyers are exempt from the requirement to be licensed if they are dealing in mortgages (except for soliciting a person to borrow money on the security of real property), trading in mortgages or administering mortgages as currently defined in the act, provided that the lawyer is acting in his or her professional capacity as a lawyer on behalf of a client and does not hold himself or herself out as carrying on these activities.

However, lawyers engaging in activities regulated under that act that do not fall within the ambit of the above exemption must apply for a licence.

### Advance application process runs to June 30, 2008

Lawyers who are licensees under the current *Mortgage Brokers Act* must apply to be licensed under the new act. The Advance Application Period runs from March 1 to June 30, 2008. On July 1, 2008, the current act will be withdrawn, all current Ontario mortgage broker registrations will expire and the new act will go into effect.

### The Real Estate Fraud Stakeholder Consultation Group

The Law Society has also been actively participating in the Real Estate Fraud Stakeholder Consultation Group and working with the Ministry of Government and Consumer Services on the implementation of the provisions of Bill 152 (*Consumer Protection and Service Modernization Act*) and the related Real Estate Fraud Action Plan. The Real Estate Fraud Stakeholder Consultation Group comprises representatives from all areas of the real estate industry, including lenders, title insurers, LAWPRO, the Real Estate Council, the OBA, the police, Teranet and the government.

The government is currently implementing a number of initiatives aimed at enhancing the security of transactions in the electronic land registration system. These include new access requirements, registration requirements for transfers of title, and new registration requirements for powers of attorney and any documents registered under the authority of a power of attorney.



### Requirements for access to the Electronic Land Registration system

The ministry has introduced three criteria that must be met by anyone who wishes to submit documents for registration:

- 1) Identity – to ensure that only those who are entitled to have access to the system are registering documents
- 2) Financial resources – sufficient to compensate victims of fraud
- 3) Good character / accountability – to ensure that only those with appropriate qualifications and integrity are dealing with the registration system

The authorization for access process is being rolled out in two phases. During Phase 1, which ended on March 31, lawyers and law firms were required to submit their application for authorization to register documents electronically. Effective April 7, 2008, if authorization was not obtained, a lawyer or law firm's Teranet account was switched to search-only access. Phase 2, which will end in summer 2008, requires all other account holders to obtain authorization.

lawyer to sign for completeness and no law statement will be required.

The exceptions to this requirement, where only one lawyer will be required to sign a transfer of title are outlined below:

- Transfers where the transferor and transferee are the same, and
  - the transfer is to effect a change in legal tenure; or
  - the transfer is to effect a severance of land prior to a certain expiry date;
- Transfers from an estate trustee, executor or administrator to a person who is beneficially entitled;
- Interfamily transfers, related party transfers and transfers occurring in remote communities. In these circumstances one lawyer may sign a new statement stating that he/she is signing for both the transferor and the transferee and that the transfer is being completed in accordance with the lawyer's professional standards. The Law Society has recently passed New Rules of Professional Conduct to address this situation.

### New registration requirements for transfers of title

In November 2006, the Minister of Government and Consumer Services announced that the right to register most transfers of title would be restricted to lawyers only. According to a government bulletin:

Transfers are one of the main documents involved in title fraud. By restricting the ability to register most transfers of title to lawyers, who are part of a self-governing body with a legislative framework that deals with integrity and practice standards for members, we (the government) can further secure the system, isolate documents and provide consumers with additional protection. In implementing these requirements, most transfer of title documents will require two different lawyers to sign for completeness, one for the transferor and one for the transferee. These requirements do not apply to other types of interests. Transfers of easement, for example, do not need a

The screenshot shows the Law Society of Upper Canada website. The browser address bar displays the URL: <http://www.lsuc.on.ca/latest-news/a/hottopics/news-for-the-real-estate>. The page title is "News for the Real Estate Bar". The main content area features a section titled "News for the Real Estate Bar" with the following text: "Lawyers play an important role in real estate matters and are uniquely positioned to help homebuyers and the integrity of Ontario's land registry system. The Government of Ontario has recognized this by ensuring that... is involved with a transfer of a real estate title. Government transfer... are exempt from the requirement. The government will... Regulations to i... registration require...". A blue callout box with white text is overlaid on the page, reading: "Would you like more information? Visit the News for the Real Estate Bar page in the latest news section of the Law Society's website for more information on these and other real estate matters." The callout box also mentions "Requirements" and "new re...".



Government transfers, where land is acquired or disposed of by the Crown in Right of Ontario or the Crown in Right of Canada, including any Crown corporation or any agency, board or commission of the Crown, or by municipal corporation pursuant to municipal by-law, will not require a lawyer to sign for completeness.

The complete bulletin is available in the ServiceOntario section of the Government of Ontario website at [www.gov.on.ca](http://www.gov.on.ca).

## Who Loses in Mortgage Fraud?

Mortgage fraud poses a serious problem for all parties to a real estate transaction. Despite misconceptions that it is a victimless crime or that the only victim is the financial institution, this is far from true. In his 2006 decision in *Rabi v. Rosu*, the Honourable Mr. Justice Randall Echlin wrote that "Ontario is currently experiencing a serious mortgage fraud plague." The mortgage fraud plague is facilitated every time a single fraudulent transaction is registered, because each transaction opens the door to the processing of further fraudulent transactions.

### Property valuation

In most fraudulent mortgage transactions, the value of a property is artificially inflated as part of the fraud. When a property is transferred at an inflated value, the inflated value is registered on title. With each inflated property value registered on title, the integrity of computer-automated property-valuation systems based upon registered property values becomes compromised.

With an increasing number of inflated property values registered on title it becomes easier to commit further fraud, since automated valuation systems will permit further property transfers at inflated values in neighbourhoods where one or more inflated property values have already been registered. Automated systems will assume that, because one neighbourhood property has been sold at a high value, further properties can also be sold at similar values. In this way, fraudulent mortgage transactions using inflated property values beget further fraudulent mortgage transactions.

In addition, according to a 2007 report by the Criminal Investigation Service of Canada (CISC), there are adverse effects for homeowners associated with the registration of inflated property values causing homeowners having to pay artificially high property taxes.

### Financial losses

It is axiomatic that mortgage fraud adversely affects lending institutions. Lending institutions are harmed in fraudulent mortgage transactions when they lend more than they would have had they known the true value of a property. Some or all of the funds advanced by lending institutions are often lost in fraudulent mortgage transactions. It is believed that lending

## Powers of attorney

The ministry is implementing changes in regards to the use of powers of attorney in real estate transactions by instituting a registration requirement that a law statement will be necessary when an individual registers any document under the authority of a power of attorney. In these cases, a lawyer will be required to discuss the power of attorney with the clients and provide the requisite law statement.

A law statement will not be required in documents signed under the authority of a power of attorney given by a corporation or a bank. In those cases, the attorney will be required to make a statement that they are acting within the scope of the power of attorney. ■

institutions and insurers in Canada lose hundreds of millions of dollars annually as a consequence of mortgage fraud; conservative estimates published as far back as 2001 suggest that the total exposure to the industry, including both conventional and insured loans, was around \$300 million, almost quadruple the amount of the previous year.

But it is not just lending institutions that are harmed by mortgage fraud; the public at large is also harmed by the knock-on effects. CISC reports that mortgage fraud may lead to increased mortgage insurance premiums, increased mortgage loan rates, and increased fees paid for by consumers. It follows, too, that if property values in particular neighbourhoods can be artificially inflated by mortgage fraud, legitimate buyers will be obliged to purchase properties at artificially-inflated prices.

### Social Harm

The CISC report notes that there are other social harms caused by mortgage fraud, including identity theft and impaired personal credit ratings. CISC has also found that organized crime groups in Canada perpetrate mortgage fraud to "further other criminal activities." In other jurisdictions, including the United Kingdom and the United States, it has been reported that the proceeds of mortgage fraud are being used to fund terrorist groups.

### Costs to the professions

Members of regulated professions, too, end up paying the costs associated with labour-intensive, time-consuming investigations and prosecutions that ensue. And each time a fraudulent mortgage transaction is processed despite the involvement of a regulated professional, the reputation of the regulated profession is diminished.

For sole and small firm lawyers in particular, there is the potential for further harm resulting from mortgage fraud. As reported to Convocation in January of 2007, "If the Law Society is unable to demonstrate that it can regulate this problem, institutional lenders may lose confidence in the legal profession with the possible consequence that lenders will use only selected large law firms or in-house counsel for all mortgage work in the province."



# Mentoring and your practice

*At the March 3 symposium on disability rights, the Equity and Aboriginal Issues Committee of the Law Society launched a new mentoring program aimed at law students and lawyers with disabilities.*

The new program was announced by Margherita Bracchio, a member of the Law Society Disability Working Group and counsel in the Immigration Law Section of the Department of Justice,

"The program will provide peer support, networking opportunities and lasting professional relationships for members with disabilities, beginning at the law school stage and continuing throughout their careers," she said. "It will also promote the presence of members with disabilities by increasing awareness of lawyers with disabilities within the profession."

The program arose out of the Law Society Disability Working Group's consultation with law students and lawyers with disabilities to identify systemic issues faced by people with disabilities in the legal profession. As a result of the report, the working group decided that its priority would be to develop strategies to assist students and new lawyers to access and remain in the profession.

The mentoring program will provide two types of relationships: mentoring relationships between students and junior lawyers with senior lawyers, and peer relationships between lawyers with similar experiences.

Mentors will be recruited who have and do not have disabilities. Mentors with disabilities are uniquely positioned to provide students and new lawyers with advice about any potential impact their disability may have upon their career.

The Law Society has operated mentoring programs since 2000. The Equity and Diversity Mentoring Program

has two components, the first aimed at students before they start to study law. Volunteer lawyers attend events at schools, career fairs and various organizations to share their knowledge about the profession and the legal system. They give practical advice on what it's like to be a lawyer, what kind of

*It is impossible to be successful at a large corporate firm without a mentor*

academic subjects should be taken, and even provide job-shadowing and co-op experiences.

By encouraging students from diverse backgrounds to pursue legal careers, the diversity of the legal profession can increase; it is only with a Bar that is representative of all the diverse communities that it serves that we can achieve a legal system in Ontario that is accessible to all.

The second component of the Equity and Diversity Mentoring Program is aimed at law school students, candidates for lawyer licensing and new lawyers. The program facilitates matches with an experienced lawyer, primarily based on the objectives of the mentee. It is important that the mentee and mentor identify early on what they want from the

relationship for it to be successful. For this reason, mentees are advised to think through a list of questions and topics of discussion before they first meet with their mentors.

Co-ordinators of the program match participants as well as possible, taking into consideration the backgrounds and objectives of the mentors and mentees involved. "A newly licensed lawyer's objective, for example, may be to achieve an associate position in an intellectual property firm," says Rudy Ticzon, Community and Policy Advisor, Equity Initiatives. "They may want to discuss the requirements of the position or how to network effectively to secure the position they want. In this case, the mentor would be someone who practices in IP law, who can also provide advice on the culture and dynamics of how a law firm works."

Another scenario that can arise is when the mentee wants advice on how to negotiate a specific problem. "A young lawyer may have difficulties managing a client, for example, or someone may face discrimination or harassment, and not know who to turn to discuss options and solutions. In these cases, we would try to match the mentee with a lawyer who has hands-on experience with that particular type of situation, with sufficient experience, or from a similar background," notes Ticzon.

Two other mentoring programs are the Articling and Placement Mentorship, where an experienced lawyer provides support to lawyer candidates in their search for an articling position, and the Practice Mentoring Initiative, where a lawyer is connected with experienced practitioners in relevant areas of law to help deal with complex, substantive legal issues, or specific procedural issues outside of the Law Society's advisory mandate.

The importance of mentoring, particularly for lawyers and law students from equality-seeking communities was



highlighted at another recent Law Society Equity event. On February 6, the Law Society and the Canadian Association of Black Lawyers hosted a panel discussion and reception with keynote speaker Margaret Best, Ontario's Minister of Health Promotion, a lawyer and a strong advocate of mentoring in her community.

The event was held in conjunction with Black History Month. The panel discussion was entitled *Managing Your Law Practice and Legal Career: The Business Case for Mentoring*. Panellists

included lawyers Aston Hall of Hall & Vaughan Criminal Law, Sue-Lynne Noel, partner at Owens Wright LLP, Linc Rogers, partner at Blake Cassels & Graydon LLP, benchers Joanne St. Lewis, assistant professor of law at the University of Ottawa, and Osgoode Hall Law School students Lori Anne Thomas and Denise Ann Williams.

Panellists agreed that mentoring is an important component in successful career management, beginning as a student and carrying on throughout a legal career. "It's impossible to be successful at a

large corporate firm without a mentor," said Linc Rogers, who confirmed that mentoring programs are now an integral part of law firm management. Student Lori Anne Thomas agreed, saying, "The earlier you start, the better." ■

## THE ONTARIO LAWYERS ASSISTANCE PROGRAM (OLAP)

# Learning About OLAP's Services Online



Information about the services OLAP provides to the profession is available in a few ways. One is to call our toll-free number and speak to a member of OLAP staff. You may then be transferred to a peer volunteer to discuss your concerns, or referred to our Counselling Service.

You can also visit our website at [www.olap.ca](http://www.olap.ca) – the Work-Life Balance section shows all the services you are entitled to access. When you speak to one of OLAP's staff, you will be given a code to enter the website where you surf at your leisure. Some of the issues addressed include:

**Achieving personal well-being:** personal stress, depression, grief and loss, anxiety, aging/midlife issues, life transitions, managing anger, mental health and well-being, crisis situations, trauma

**Marriage relationships and family:** communication, relationship conflict, separation/divorce, parenting, domestic abuse, blended family issues, family relationships, aging parent concerns

**Financial clarity:** credit/debt management, bankruptcy, early retirement, financial aspects of separation/divorce, financial emergencies

**Researching child and elder care resources:** child care, adoption, maternity/parental leave, schooling, adult day programs, nursing/retirement homes

**Workplace challenges:** workplace conflict, workplace performance, career planning, violence, harassment, work-life balance, work-related issues

**Addictions:** alcohol, drugs, tobacco, gambling, other addictions such as internet and sex, post-recovery support

**Nutrition:** weight management, addressing high cholesterol, high blood pressure, diabetes, heart disease, boosting energy and stress resilience

OLAP provides assistance to lawyers, law students and their immediate families with issues of stress, burnout, addictions, mental wellness and work-life balance concerns. The OLAP team includes Leota Embleton, MSW, program manager; Doron Gold, BA, LLB, case manager; Terri Wilkinson, BA, LLB, case manager; and John Starzynski, LLB, volunteer executive director. You can reach the program at 1-866-576-6227. John Starzynski can be reached at 1-877-584-6227. Visit the website at [www.olap.ca](http://www.olap.ca)



## How to make the most of a mentoring relationship

From the outset, the mentor and the mentee should **establish clear objectives**, both short- and long-term, to set the parameters for the relationship. Having specific goals enables both parties to be realistic about what can and cannot be achieved, and to assess the value of the relationship as it progresses.

It is important that **ground rules are established**: how and where mentor and mentee are going to meet and how often. The rules should respect the busy schedules of both parties. Electronic or telephone contact can be just as useful as face-to-face meetings, and can facilitate the relationship through busy times. What is important is to ensure that contact is regular.

Mentees should set goals, and then outline what they think the steps are that are necessary to achieve them. This gives a **planning process** – showing that the mentee is proactive and committed to undertaking their part of the relationship. These can be used as a basis for the partners to brainstorm how they can work together.

Mentees have to understand what the mentor is there to provide – namely **insight or guidance on the practice of law or career management**. The mentoring relationship will not flourish if it is seen primarily as a means for securing a job.

Both parties have to understand the **mentor's limitations** in providing information or advice, and acknowledge that one person is unlikely to be able to deal with all situations that arise.

Part of being a mentor has to include an ability to acknowledge that something is beyond their expertise or experience, and to direct the mentee to other resources if possible. A comfortable mentoring relationship can mean that the mentee has **access to the wider network of the mentor**. "If you approach me to be your mentor with integrity about what you want to do, I will be ready to open my personal networks to you and give you full access," says bencher Joanne St Lewis. "This can become mutually beneficial as you develop your own networks too."

A **network of mentors**, some formal, some informal, can help mentees with different aspects of their career development. "I advise people to select more than one mentor," says Sue-Lynn Noel. "It's important to have a wide variety that you can call on for different issues."

A mentor can, but **does not have to have a life experience that mirrors your own**. However, there are some situations where sharing similar experiences can be useful. For example, a lawyer with disabilities may be able

to provide concrete advice to a student with disabilities on issues like accommodation. "There is no doubt that the chemistry has to be there, there must be a real connection," says Noel. "But there may be other common denominators that you don't necessarily think about – it may be a shared interest outside of the office, or a passion about a particular area of the law that brings people of different cultures, ages and genders together. Anything that you feel passionate about can form a bond that leads to exploring other issues."

**Mentors don't have to be senior lawyers**, and, in fact, lawyers with five to 10 years' experience are often in a better position to advise junior associates, because their experience is closer in time.

Mentors should look for opportunities to enable their mentee to **interact with their professional environment** – shadowing them at the office or in court, attending a conference or a lecture, or participating in a legal education event. At these kinds of events, the mentee can learn about the practicalities of the practice of law or make other networking connections.

The mentoring role is **more about guiding than teaching**. The mentor should be prepared to offer answers and solutions, and challenge the mentee to think through problems and questions to help in the development of critical thinking skills. The mentor must resist telling the mentee what to do, or pushing them to duplicate their own experience.

Both parties must recognize that **problems may arise**. Some common ones are that the mentee requires more time from the mentor than is possible or agreed upon, or that the mentee seeks advice or help with issues that are outside agreed boundaries. The parties have to be prepared to discuss these issues openly and to conclude the relationship when it fails. However, this doesn't mean that the parties can't continue to interact and be part of each other's networks on an informal basis.

A great mentoring relationship is undoubtedly one where **both parties perceive a benefit to the relationship**. A mentor may receive unexpected benefits from a younger mentee – such as information about new markets, new skills. "It's important to make sure that people know who you are, to show that you are a real person, then seek out those you admire," says Noel. St. Lewis agrees. "What I am seeking and what I sought was someone who is passionate about the things that I'm passionate about."

### References:

Abbott, Ida O, *Women and Mentoring: Debunking the Myths*, American Bar Association Perspectives, Fall 2001.

Law Society of Upper Canada, *Orientation Guides for Mentors and Mentees*.

Peer Systems Consulting Groups (2003) *Mentors Peer Resources*, [www.mentors.ca](http://www.mentors.ca)



# Ontario Justice Education Network (OJEN)

*Lawyers collaborate to bring justice education to classrooms and communities*



Ontario lawyers are contributing in innovative ways to promoting and ensuring access to justice across the province. Each year, hundreds of lawyers work with the Ontario Justice Education Network (OJEN), enthusiastically devoting their time and energy to justice education programs. Lawyers act as mock trial coaches, guest speakers in school, and mentors in classrooms and community centers. They share legal knowledge and assist youth to advocate for themselves by increasing their familiarity with the justice system before they are involved in a dispute, witness a crime, or are called to jury duty.

Lawyer involvement in these programs is critical to ensuring that Ontario youth have opportunities to interact positively with members of the justice sector, in a time in their lives when they are making career decisions and forming conclusions about our civic institutions and their ability to engage as active citizens.

OJEN was founded in 2002 by former Chief Justices Roy McMurtry, Brian Lennox and Patrick LeSage, to address gaps in public understanding about the justice system and to expand the network of individuals working on justice education programs across the province. Funded by the Law Foundation of Ontario, OJEN brings together the justice and education institutions to collaborate on a range of programs: For example, 55,000 students across Ontario visit courthouses annually as a result of OJEN's *Courtrooms & Classrooms* initiative. In addition to supporting mock

trials and law symposia, creating Adopt-a-School relationships, and developing teacher curriculum resources, OJEN focuses on outreach and youth engagement in communities which have historically had negative relationships with the justice system. To respond to needs in these communities, OJEN offers innovative experience-based programming tailored to Aboriginal, Francophone, immigrant and at-risk youth.

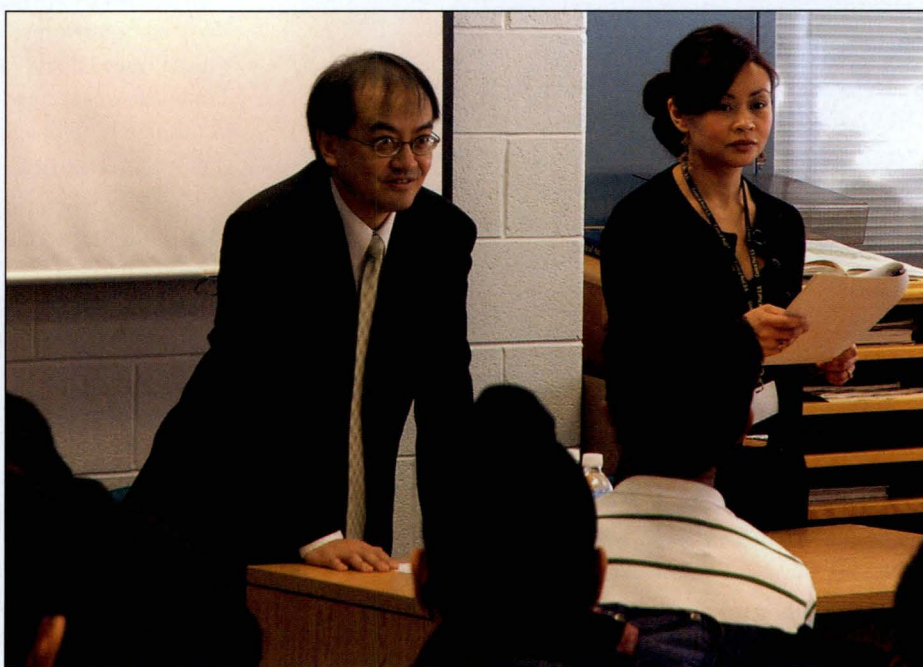
Lawyers who participate in OJEN programs have honest dialogue with youth, are open to challenging the public's perception of the justice system, as well as their own, and work hard to build an accessible and accountable justice system. There is a wealth of challenge and opportunity for lawyers to engage

with communities and enable youth to seek out answers about justice issues.

"Justice Education is one of the ways that lawyers are enhancing access to justice in Ontario. Youth who have positive exposure to our institutions and those involved in the justice sector are better informed about the law, more confidently participate in their futures, and may consider rewarding careers in one of the various aspects of our justice system," says Sarah McCoubrey, OJEN's executive director.

## **Lawyers Connect with Newcomer Youth**

Over the last year, OJEN has launched a new initiative to introduce newcomer



*Maria Gaspar, Crown counsel, and Ngai On Young, defence counsel, speak about the Youth Criminal Justice System with ESL students at Central Peel Secondary School*



youth to the Canadian justice system. With the assistance of lawyers, ESL teachers and settlement workers in schools, OJEN has delivered justice education workshops in ESL classes in Windsor, Peel and Toronto. Members of the local Bar participate in interactive sessions tailored to language and learning levels of newcomer youth, which focus on how criminal, civil, human rights, immigration and employment law issues are dealt with in Ontario. Involved lawyers act as an important point of contact for referring newcomer youth and their families to legal resources in their communities.

"These workshops are empowering and bring to light legal issues that students may face without being properly informed or supported. These students don't get exposure to these kind of

workshops and they are much needed as they and their families confront new legal challenges in Canada. Lawyers who treat students respectfully and listen to their concerns are a credit to the profession," says a teacher in the Peel Region about the impact lawyers are having on her students and their families.

### **Lawyers Share Knowledge and Robes with TCHC Youth**

OJEN in partnership with the Toronto Community Housing Corporation (TCHC), runs six-week *Justice 101* sessions, which give youth living in these priority neighbourhoods the opportunity to learn about the justice system and then try their hands as a Crown or defence counsel, court clerk, jury member, court reporter or court services officer during a

mock trial. Lawyers act as mentor coaches during this program, enhancing participants' public speaking skills and improving their legal knowledge. At the end of the program involved youth get to take part in a realistic trial during which they argue their cases in a real courtroom, before an actual judge and have a chance to wear lawyers' robes.

Lawyers involved in these programs often have links with TCHC communities themselves or are interested in reaching youth who may feel disillusioned with the justice system. A Toronto lawyer who regularly volunteers for this program comments, "It is important for youth in

underprivileged communities to meet professionals and lawyers, especially from groups that are underrepresented in the profession. I think one of the most positive things is seeing the youth open up and realize the possibilities of what they can do. Watching them build confidence through the mock trial coaching process is a real highlight, and has the potential to impact on the their lives and the face of our justice system."

OJEN is always looking for lawyers to assist with its province-wide justice education programming. There is a particularly high demand for civil lawyers, immigration lawyers, employment and labour law lawyers, and Crown and defence counsel. Volunteer commitments range from delivering one-hour workshops, to reviewing curriculum resources for legal accuracy, to coaching mock trials or 'adopting' a school. The level of time commitment can be tailored to a lawyer's interest and availability. For more information visit [www.ojen.ca](http://www.ojen.ca) or contact [info@ojen.ca](mailto:info@ojen.ca) ■



Youth participants at Old City Hall during an August 2007 OJEN TCHC mock trial

### **In 2007:**

- 55,000 students visited Ontario courthouses
- 11 active OJEN Committees delivered justice education across Ontario
- 1,800 copies of *Making the Case*, a mock hearings toolkit, were distributed to teachers
- 182 Adopt-a-School matches took place
- 500 teachers attended OJEN professional development seminars
- 700 justice sector professionals' efforts were recognized by the Chief Justice of Ontario



## Tous dans le même bateau

DU 6 AU 8 FÉVRIER 2008 SE DÉROULAIT la 7<sup>e</sup> réunion annuelle des intervenants francophones du secteur de la justice provinciale à Toronto. Onze divisions\* des ministères du secteur de la justice ont présenté leur rapport de progrès, ont priorisé avec la communauté leurs activités et solidifié leurs engagements pour les trois prochaines années. L'Association des juristes d'expression française de l'Ontario (AJEFO) faisait partie des intervenants communautaires. Cette initiative vise à accroître la capacité bilingue dans les ministères, à informer la population de ses droits aux services en français, à accroître l'accès aux services existants, à développer une stratégie efficace de recrutement de personnel bilingue et à moderniser les institutions. Bref, assurer un meilleur accès à la justice en français.

Durant les deux jours de conférence, l'AJEFO était de toutes les interventions. L'AJEFO est très active dans ses partenariats pour faire avancer la cause de l'accès à la justice dans les deux langues officielles. N'oublions pas que c'est en partenariat avec le Barreau du Haut-Canada qu'a été produit le dépliant bilingue *Connaître ses responsabilités* sur l'emploi du français dans un contexte judiciaire. Comme l'explique Sonia Ouellet, directrice générale, « en travaillant avec le réseau de chaque intervenant, on partage ce qu'on apprend des autres, on évite les recoupements, on diffuse sur une plus grande échelle les réalisations faites au niveau de l'accès à la justice en français. On se rend compte que les besoins des autres sont souvent similaires et en se regroupant, on se donne de la force pour faire avancer les dossiers. » Ces partenariats aident l'AJEFO à mousser son site web *Carrières en justice*, un site très complet et très dynamique qui explique en détail

toutes les possibilités de carrières, que ce soit dans la police, comme avocat, comme agent de probation ou comme traducteur juridique, et à en tirer le maximum. Par exemple, l'AJEFO travaille avec la Fédération de la jeunesse franco-ontarienne pour que celle-ci fasse connaître à ses membres les possibilités de carrières dans le secteur de la justice. La Police provinciale est un autre partenaire de l'AJEFO pour *Carrières en justice* et les deux produisent ensemble un dépliant et une affiche antitaxage pour les jeunes dans les écoles. L'AJEFO a invité la Gestion des situations d'urgence de l'Ontario à s'inscrire dans le site *Carrières en justice* et lui a offert son appui pour faire augmenter la proportion d'agents bilingues dans la province. Louise Hurteau, la présidente de l'AJEFO, a proposé au ministère de mettre sur pied un comité de juges et de juges de paix bilingues pour anticiper les problèmes qui peuvent se poser aux justiciables francophones dans les tribunaux. Comme le dit M<sup>e</sup> Hurteau, « un des problèmes qui se posent vient de l'insuffisance de juges bilingues véritablement capables d'entendre et de rédiger en français. L'AJEFO préconise que toute nomination future tienne compte des compétences linguistiques des juges avant même leur nomination. »

L'AJEFO a créé une trousse pédagogique pour les élèves de la 4<sup>e</sup> à la 6<sup>e</sup> année intitulée « Vis ta justice en français ». Ce programme sera relié au curriculum à l'aide d'outils pour les salles de classe. En mars 2008, le ministère aidera l'AJEFO à promouvoir la justice en français dans les médias. On offrira des ateliers juridiques aux aînés, avec des exposés PowerPoint sur les testaments, les procurations, les voyages, les droits de visite et la fonction de juré.

Cette année, l'AJEFO a participé aux consultations du gouvernement du Canada sur la dualité linguistique et les langues officielles, étant d'ailleurs la seule association juridique invitée par Bernard Lord, qui les présidait. Elle a fait des recommandations pour le rapport Osborne, dont le juge a d'ailleurs tenu compte au chapitre du manque de juges bilingues. Les réalisations de l'AJEFO font d'elle à la fois un moteur et un outil d'accès aux services juridiques en français avec lequel il faut compter.

### Recrutement, bilinguisme et demande

De nombreux intervenants ont parlé de méthodes de recrutement de personnel bilingue. La Police provinciale de l'Ontario a informé l'assemblée qu'elle avait recruté 53 employés bilingues en 2007, ce qui est un accomplissement en soi au dire de tous. Non seulement la PPO a de bonnes sources de recrutement, mais on encourage les employés bilingues à viser des postes plus élevés et les nouveaux employés à s'identifier comme francophones. En effet, dans de nombreuses communautés de l'Ontario, les francophones minoritaires ont parfois des réticences à s'exprimer en français en public, dénotant une sorte de complexe, comme l'a décrit Gabrielle Roy dans le récit de son enfance au Manitoba : « Cette humiliation de voir quelqu'un se retourner sur moi qui parlais français dans une rue de Winnipeg, je l'ai tant de fois éprouvée au cours de mon enfance que je ne savais plus que c'était de l'humiliation ». N'en demeure pas moins que les efforts se font surtout à l'interne pour intensifier la conscience du français dans le secteur de la justice.

La porte-parole du Curateur public a annoncé la création d'un nouveau poste bilingue et d'entêtes bilingues. Elle a cependant soulevé un problème : celui



d'avoir la capacité de donner des séances de formation en français, mais d'être très peu invitée à le faire. Par exemple, sur 9 500 demandes, 261 sont faites en français. Sur 125 séances de présentation en anglais, deux ont été réclamées en français. Même son de cloche du côté du Bureau de l'Avocat des enfants. Aucun litige n'est entamé en français du côté des biens, bien qu'il y ait une demande du côté des droits personnels. Il serait facile d'invoquer l'absence de besoin de services en français, mais tous conviennent que ce serait une erreur. Les besoins sont là, les intervenants le savent et les personnes sur le terrain en sont conscientes. Plusieurs explications ont fusé de l'Assemblée : les personnes vulnérables ne sont pas militantes et n'oseraient rien réclamer à grands cris,

encore moins des services en français et des bons; il manque d'avocats francophones en droit de la famille, a suggéré une avocate de Thunder Bay; l'information n'est pas suffisamment diffusée. Encore de nos jours, certains avocats francophones croient qu'il faut déposer tous les rapports et documents officiels en anglais en Ontario. Tous admettent qu'il y a un besoin, mais si les gens ne s'identifient pas et n'osent pas exiger leurs services en français, la situation risque de se détériorer. Autre chose : Quand les services en français sont de mauvaise qualité, les usagers ne se plaignent pas nécessairement. L'AJEFO a donc insisté pour dire qu'il faut que les organismes en assument la responsabilité et insistent sur la valeur de l'offre active.

Les participants sont sortis de ces deux jours d'ateliers contents d'avoir fait connaître leurs progrès et conscients du travail qui reste à faire. Ils ont une autre année pour accomplir d'autres avancées dans l'accès à la justice en français et venir en parler à la prochaine réunion des intervenants organisée par la coordonnatrice des services en français du secteur de la justice. ■

*\* Division des services aux tribunaux, Division du droit criminel, Division de la sécurité publique, Aide juridique Ontario, Bureau du Tuteur et curateur public, Bureau de l'Avocat des enfants, Police provinciale de l'Ontario, Gestion des situations d'urgence de l'Ontario, Secrétariat ontarien des services aux victimes, Services correctionnels communautaires pour adultes et Services en établissement pour adultes.*

## Attention, rétention

Plus de cinquante pour cent des diplômés des facultés de droit ontariennes sont des femmes. Presque tous les cabinets en Ontario comptent autant ou plus de femmes que d'hommes parmi leurs stagiaires et leur nouveau personnel, mais la plupart disent perdre les femmes de façon disproportionnée aux échelons supérieurs.

Pour le Barreau, cette réalité n'est pas propice à l'efficacité des services juridiques. Pour tenter d'y voir, un groupe de travail a été formé pour faire des recommandations sur la question, recommandations qui sont au cœur d'une consultation auprès de la profession. Ces recommandations visent l'expérience des femmes et les défis qu'elles doivent relever. Par exemple, il leur faut trouver le temps de donner naissance et d'élever des jeunes enfants, et ce, souvent dans une pratique dont les fondements tiennent rarement compte des femmes.

Le Groupe de travail du Barreau sur la rétention des femmes en pratique

privée a déterminé des façons pratiques de faire changer cela et espère obtenir d'autres propositions de la profession lors de sa consultation. Il va de soi cependant que pour opérer un changement de fond tel que celui-ci, l'engagement de la profession est essentiel, selon Laurie Pawlitza, coprésidente du groupe de travail avec Bonnie Warkentin.

Le Groupe propose notamment des congés parentaux pour les cabinets de cinq avocats ou moins, là où il n'existe pas d'avantages sociaux pour la maternité ou l'adoption. Ce programme serait facilement financé par une petite augmentation de la cotisation annuelle et offrirait 3 000 \$ par mois pendant trois mois maximum pour permettre de couvrir le maintien du cabinet pendant le congé.

Une autre proposition intéressante est de développer un registre de juristes suppléants. L'expérience a été faite dans d'autres ressorts, comme en Australie, en GB, aux ÉU et en Colombie-Britannique.

Enfin, il y a le projet Justicia, un projet-pilote sur trois ans visant les cabinets de plus de 25 avocats et les deux plus grands cabinets de chaque région. Les cabinets participant au projet devront adopter des programmes pour retenir les femmes dans la profession et permettre leur promotion. Il leur faudra recueillir des renseignements démographiques dans les cabinets, offrir des arrangements de travail flexible, des congés parentaux, développer des réseaux et des relations d'affaires et promouvoir en les guidant des femmes à des rôles de chefs.

Comme le dit Laurie Pawlitza, lorsque les hommes accepteront aussi aisément que les femmes ce genre de soutien, c'est que les programmes proposés auront porté des fruits.

Pour en savoir davantage sur le rapport du Groupe de travail, veuillez lire l'article en anglais à la page 5 de la *Revue des juristes*.



# Un congrès à la source

L'AJEFO TIENDRA SON 29<sup>e</sup> CONGRÈS À QUÉBEC DU 14 AU 17 AOÛT 2008. TOUT COMME L'ASSOCIATION DU BARREAU CANADIEN, DONT LE CONGRÈS SUIVRA CELUI DE L'AJEFO, CETTE DERNIÈRE PROFITERA DES FESTIVITÉS QUI SE DÉROULERONT EN L'HONNEUR DU 400<sup>e</sup> ANNIVERSAIRE DE LA FONDATION DE QUÉBEC POUR TENIR SON CONGRÈS SOUS LE THÈME « LA JUSTICE AU-DELÀ DES REMPARTS ».

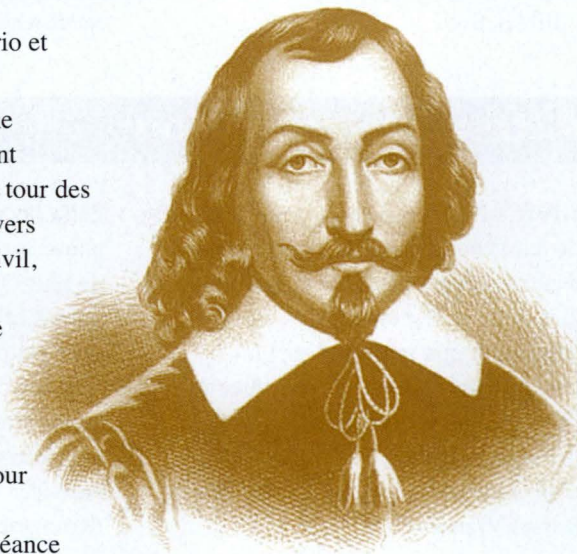
Le programme, qui se trouve sur [www.ajefo.ca](http://www.ajefo.ca), s'ouvre avec un atelier d'une journée sur l'art de la plaidoirie, offert conjointement par l'AJEFO, la Société des plaideurs et l'Université d'Ottawa et le Centre de traduction juridique, dans lequel on fera une démonstration d'un interrogatoire et d'un contre-interrogatoire, sous l'œil observateur d'un juge de l'Ontario et d'un autre du Québec.

Pouvant être considéré comme une occasion de perfectionnement professionnel, le Congrès fera le tour des récents développements dans divers domaines, notamment le litige civil, le droit de la preuve, le notariat, le droit des contrats et le droit de la famille.

Le Congrès est une affaire sérieuse, mais n'exclut certainement pas un brin d'humour pour mieux faire passer ses enseignements, comme dans la séance intitulée *Plaidoiries écrites : trucs et astuces pour perdre sa cause avant même de comparaître*. De même, on apprendra un peu d'histoire, vu les circonstances, lors de la séance intitulée *Quand Toronto faisait partie de la Province de Québec : les débats entourant la common law et les institutions britanniques de 1774 à 1791*.

La conseillère principale en matière d'équité du Barreau du Haut-Canada, M<sup>e</sup> Josée Bouchard, animera un des ateliers dans lequel les conférenciers et conférencières discuteront de différents modèles qui visent l'accès à la justice pour le justifiable francophone, comme

les programmes d'Aide juridique Ontario, de Pro Bono Law Ontario et du Barreau du Haut-Canada. L'importance de programmes de subventions, comme le Programme de contestations judiciaires, ainsi que l'impact des décisions judiciaires sur le droit aux dépens lorsque les tribunaux sont saisis



d'une question d'importance pour le public feront aussi l'objet de discussions.

M<sup>e</sup> Yves LeBouthillier touchera quant à lui un sujet qui a fait les manchettes au Québec toute l'année dernière, soit les accommodements raisonnables. Un panéliste viendra commenter dans quelle mesure la loi québécoise a fait l'objet de commentaires lors des travaux de la Commission de consultation sur les pratiques d'accommodement reliées aux mesures culturelles. En essence toutefois, l'atelier de M<sup>e</sup> LeBouthillier réunira des praticiens de l'Ontario et du Québec pour expliquer les différences entre la loi

fédérale et la loi québécoise sur l'immigration en matière de sélection des travailleurs qualifiés, des gens d'affaires et des réfugiés outre-mer.

## Jeu-questionnaire télévisé

Fidèles à la (jeune) tradition, les organisateurs du Congrès présenteront les droits linguistiques d'une façon originale. Cette année, ils ont concocté un jeu qui exigera une connaissance approfondie des thèmes de l'actualité dans le domaine du développement des droits et de la jurisprudence en matière de droits linguistiques, que ce soit en droit civil ou en common law. Les animateurs du jeu poseront des questions originales et variées à des participants passionnés des droits linguistiques.

Le Congrès se terminera dans le décor de style Beaux-Arts du restaurant « Le Parlementaire » dans l'édifice de l'Assemblée nationale, dont l'architecture fut inspirée par le Louvre.

Au-delà des remparts, au-delà de l'anniversaire de la ville, au-delà du droit, il y a 400 ans de présence francophone en Amérique du Nord, depuis le 3 juillet 1608 quand le navigateur et géographe français Samuel de Champlain vint fonder la ville de Québec. Le Congrès de l'AJEFO viendra renforcer dans cette atmosphère historique son objectif primordial de promouvoir le français au sein de l'appareil judiciaire de l'Ontario et d'assurer l'égalité des deux langues officielles auprès des tribunaux ontariens. ■



## Formation juridique en français : déjà trente ans

En mars, le Programme de **common law** en français de l'Université d'Ottawa a fêté ses 30 ans en tenant une journée d'activités pour rappeler l'importance de ce programme juridique pour la communauté et la population francophone de l'Ontario.

Les étudiants et étudiantes des universités d'Ottawa et de Moncton ont participé à un concours de plaidoirie. Ces deux universités canadiennes sont les seules qui offrent un programme de **common law** en français. Le débat portait sur un pourvoi sur les droits linguistiques dans l'enceinte de la Cour suprême du Canada.

Le nouveau commissaire aux langues officielles de l'Ontario, François Boileau, a animé un colloque sur l'avenir des droits linguistiques au cours des 30 prochaines années. Selon la vice-doyenne du programme français, Nicole LaViolette, « le rôle institutionnel du programme comprend notamment de

maintenir la langue française et de favoriser la solidarité au sein des minorités francophones. Ayant été conçu expressément pour les francophones de l'Ontario, le programme compte aujourd'hui parmi les institutions essentielles de la culture minoritaire. »

Depuis sa fondation, le Programme de **common law** en français a formé plus de mille diplômés qui offrent des services juridiques en français en Ontario, ailleurs dans le pays et dans le monde.

De plus, l'Université d'Ottawa offrira à compter de septembre 2008 le Programme de droit canadien : une formation de trois ans menant à l'obtention de deux diplômes (LL.L. et LL.B.) principalement donnée en français. Ce programme répondra à une demande des étudiants et des employeurs pour une formation bilingue et bijuridique avec une dimension internationale.

## En bref

### Règlements administratifs

Le Règlement administratif n° 4 a été modifié pour empêcher les avocats, dont ceux qui ont perdu leurs privilèges, d'agir comme parajuristes. Le permis d'exercer le droit est distinct du permis de fournir des services juridiques. Le Règlement administratif n° 5 inclut maintenant les catégories de cotisation des parajuristes. Les règlements administratifs 7.1 et 9 ont été modifiés pour décrire les obligations des titulaires de permis suspendus ou restreints. Le Conseil a également modifié des règlements administratifs pour faire appliquer certains règlements aux parajuristes. Le Règlement administratif n° 6 [Les cotisations d'assurance responsabilité civile professionnelle] a été modifié pour inclure les parajuristes. Les parties III et IV du Règlement administratif n° 7 [Entreprises] ont été modifiées pour

permettre aux parajuristes de faire partie de cabinets multidisciplinaires avec des professionnels ne détenant pas de permis. Le Règlement administratif n° 9 [Opérations financières et registres] a été modifié pour mettre en œuvre des politiques approuvées en septembre 2007 sur les comptes en fiducie, la tenue de registres et le traitement de biens de clients par les parajuristes.

### Codes de déontologie

Le Conseil a approuvé la règle 2.04.1 exigeant deux avocats pour les cessions de titre de propriété. La règle 6.07 du Code des avocats et la règle 6.01 du Code des parajuristes ont été modifiées pour décrire les obligations des titulaires de permis suspendus ou restreints en parallèle du Règlement administratif n° 7.1.



## CONVOCATION March 2008 Highlights

### Dismissals of Law Society applications to be published

The Law Society will now publish hearing panel decisions to dismiss conduct and other applications. Traditionally, notices of application are published on the Law Society website, and most hearing panel decisions are posted on the website and published in the *Ontario Reports*. Convocation agreed that going forward, decisions to dismiss applications will be published in the same manner as other decisions.

#### **Human Rights Monitoring Group**

Convocation approved the Human Rights Monitoring Group recommendation to send letters of intervention in the following cases:

- Anwar al-Bunni (Syria)
- Nguyen Van Dai and Le Thi Cong Nhan (Vietnam)
- Li Jinsong and Li Fangping (China)
- Haroun Ndubi (Kenya)
- Hisham Bastawissi and Ashraf El-Baroudi (Egypt)

The Human Rights Monitoring Group was established to monitor human rights violations that target lawyers and judges arising out of the discharge of their legitimate professional duties.

#### **Committee of benchers established to consider applications for review and appeal under By-Law 7 [Business Entities]**

Benchers Paul Dray, Seymour Epstein, Susan McGrath and Bonnie Tough were appointed to a committee of benchers under s. 37 of By-Law 7. The committee will consider applications for review and appeal of Law Society staff decisions regarding business structures by which the practice of law and the provision of legal services may be carried out by licensees. It is anticipated that applications for review or appeal may be requested as paralegal licensees seek approvals under By-Law 7.

#### **Errors and Omissions Insurance Fund Financial Statements approved**

Convocation approved the audited, combined financial statements for the Law Society of Upper Canada Errors & Omissions Insurance Fund for the year ended December 31, 2007.

#### **Guidelines for Adjudicators Respecting Oral/Written Reasons for Decision amended**

Convocation approved housekeeping amendments to the guidelines for adjudicators respecting oral/written reasons for decision. Convocation also voted to permit the Tribunals Committee to make future housekeeping amendments to the guidelines without seeking Convocation's approval. Convocation adopted the guidelines in 2006 for Law Society adjudicators to consider when assessing whether to provide Hearing or Appeal Panel reasons for decision orally or in writing.

#### **Treasurer authorized to vote the proxy in favour of proposed LAWPRO shareholder resolutions**

Convocation authorized the Treasurer to vote the proxy in favour of proposed LAWPRO shareholder resolutions at the annual general meeting of shareholders of the Lawyers' Professional Indemnity Company to be held April 23, 2008.

#### **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](http://www.lsuc.on.ca)



## Equivalency granted to retiring Justices of the Peace

It was agreed that equivalency would be granted to retiring Justices of the Peace permitting them to apply to sit the paralegal licensing examination without an accredited diploma, provided they have a minimum of three years' experience as a sitting Justice of the Peace. Retiring Justices of the Peace are required to fulfil all other requirements for paralegal licensing.

## Summary Disposition Benchers

Convocation ratified and confirmed the appointments of benchers Tom Heintzman as summary disposition bencher and Paul Schabas as alternate summary disposition bencher to make orders under sections 46, 47, 47.1, 48 and 49 of the *Law Society Act*.

## Appointments

Bencher Brian Lawrie was appointed to the Proceedings Authorization Committee. Bencher Laurie Pawlitza was appointed to the LAWPRO board of directors. Paralegal Standing Committee members Michelle Haigh and Stephen Parker were appointed to the Compensation Fund Committee. ■

## February 2008 Highlights

### Retention of Women in Private Practice

The Retention of Women in Private Practice Working Group presented a report identifying best practice to promote the retention and advancement of women in private practice. Recommendations are aimed at large and medium-sized firms, small firms and sole practitioners, working with law schools, and women from Aboriginal, Francophone and equity-seeking communities. Consultations with the profession will continue until April 18. (*See page 6 for more details*).

### Paralegal budget and 2008 annual fee approved, start-up budget extended

The 2008 paralegal annual fee and operating budget were approved at February Convocation. The annual fee was set at \$845; as the first paralegal licences will be issued part way through 2008, the annual fee will be prorated for the year. The annual fee includes a \$625 general licensee fee, a \$145 compensation fund levy and a \$75 capital levy that applies to all licensees.

The annual operating budget of \$1,868,500 covers the costs of paralegal related regulatory activities and the licensing exam. The budget includes a grant from the Law Foundation of Ontario in the amount of \$300,600.

Convocation also voted to extend the startup budget to the end of 2008 to cover on-going startup costs, including licensing hearings for grandparent candidates.

Significantly more grandparent and transitional applications were received than was originally estimated in the startup budget. As a result of the increased revenue from associated fees, the Finance Committee projects that there may be a small surplus in the startup budget as opposed to the original projected deficit of \$1.5 million.

### Rules of Professional Conduct amended to require two lawyers for transactions involving a transfer of title

Following consultations with the profession on new rules for real estate practice, Convocation approved Rule 2.04.1 of the *Rules of Professional Conduct* requiring that there be two lawyers for transfers of title to real estate, one lawyer for the transferee (buyer) and one lawyer for the transferor (vendor). The two lawyers may practise in the

same law firm as long as the general rules on conflicts of interest in Rule 2.04 are observed. The new 'two-lawyer rule' strengthens public protection in the electronic land registration system.

Rule 5.01 was also amended to advise lawyers that they assume complete responsibility for any documents registered under their e-reg account, including those signed by a non-lawyer. The amended rule reflects the policy underlying the requirements of By-Law 7.1 [Operational Obligations and Responsibilities].

The amendments took effect March 31, 2008.

### Paralegal Compensation Fund provisions established

Convocation approved a series of provisions to establish the Paralegal Compensation Fund, which will be used to compensate clients who have lost

#### Consultation Report – Retention of Women in Private Practice Working Group



February 21, 2008





money due to a licensed paralegal's dishonesty.

Licensed paralegals will finance the fund through an annual levy, with the levy for 2008 set at \$145. The per claimant limit is capped at \$10,000. Convocation also approved the Compensation Fund Guidelines for the processing of claims involving paralegals and the addition of two paralegal members of the Paralegal Standing Committee to the Compensation Fund Committee.

### **By-laws amended**

Amendments were made to Law Society by-laws to make certain regulatory requirements applicable to paralegals. By-Law 6 [Professional Liability Insurance] was amended to implement the current requirements regarding paralegal insurance. Parts III and IV of By-Law 7 [Business Entities] were amended to permit paralegals to enter into multi-discipline partnerships with

non-licencee professionals and to form affiliations with non-licencees. By-Law 9 [Financial Transactions and Records] was amended to implement policies approved in September 2007 on trust accounts, record keeping and the handling of client property for paralegals.

### **Proceedings Authorization Committee expanded to include paralegal benchers**

The Proceedings Authorization Committee (PAC) was expanded to include a paralegal benchers. The primary function of PAC is to consider requests to authorize hearings concerning the conduct, capacity and competence of lawyer and paralegal licensees.

### **Exemption from requirement to hold a paralegal licence**

Pro Bono Students Canada, a program through which law students provide services to non-profit groups and public

interest organizations, was granted an exemption from the requirement to hold a paralegal licence.

### **Appointments**

Benchers Heather Ross was appointed to the Professional Development & Competence and Government Relations & Public Affairs Committees. Bencher Doug Lewis was appointed to the Small Firm and Sole Practitioner Working Group. Bencher Christopher Bredt was appointed to the Professional Regulation Committee and as the Law Society's representative on the Law Commission of Ontario. Bencher Bonnie Warkentin was appointed to the Priority Planning Committee. Benchers Susan Hare and Paul Henderson were appointed to the Equity and Aboriginal Issues Committee. Bencher Roy McMurtry was appointed to the Law Society Medal/Lincoln Alexander/Laura Legge Award Committee. ■

## **January 2008 Highlights**



**Christopher Bredt**

### **New Bencher Elected**

Christopher Bredt was elected to fill the vacancy created by the appointment of Carole Curtis to the Ontario Court of Justice.

### **Support for the Civil Justice Reform Project Report**

The Law Society strongly supports the approach to increasing access to justice proposed in the Summary of Findings and Recommendations Report of the Civil Justice Reform Project.

### **Licensing and Accreditation Task Force**

The profession will be consulted on proposals presented by the Licensing and Accreditation Task Force on the skills and articling components of the licensing process.

Specifically, the task force proposes that the skills and professional responsibility program be discontinued, and presented the following options with respect to articling:

- 1) continue the current program with clear communication that not all candidates will be able to secure an articling position
- 2) develop an alternative stream for candidates unable to find a placement
- 3) abolish the articling requirement.

The profession is invited to offer any other options considered appropriate. Written comments must be received no later than **May 31, 2008**.

### **Lawyers may not be licensed as paralegals**

By-Law 4 was amended to provide that lawyer licensees, including those whose licences are suspended, may not also be licensed as a



paralegal. A licence to practice law is separate from a licence to provide legal services.

### Licensees whose licences are suspended

Amendments to By-laws 7.1 and 9, rule 6.07 of the *Rules of Professional Conduct* and rule 6.01 of the *Paralegal Rules of Conduct* were amended to set out the obligations of licensees whose licences are suspended or who are subject to other restrictions on practice. Four new guidelines describe the mandatory activities, prohibited activities and permitted activities for paralegal and lawyer licensees whose licences have been suspended or revoked.

### Portraits of Chief Justices

Convocation voted to reverse a previous decision and continue its long-standing tradition of contributing to the cost of painting portraits of the Chief Justices of

the Superior Court and Chief Justices of Ontario, which will be added to our extensive collection.

### Paralegal annual fee

By-Law 5 was amended to include paralegal fee categories approved at September Convocation.

### Rule 2 of Rules of Professional Conduct

A housekeeping amendment was made to the commentary of Rule 2.04 (10.3) of the *Rules of Professional Conduct*.

### Appointments

Benchers Carol Hartman was appointed as the Law Society representative on the board of directors of LibraryCo. Benchers Susan Hare was appointed to the Advisory Committee on Attracting New Child Protection Lawyers. Benchers Christopher Bredt was appointed to the Hearing Panel. ■

## Roll-Call Votes

January 24, 2008

### Re: Licensing and Accreditation Task Force Report

Professor Krishna presented the interim report of the Licensing and Accreditation Task Force.

It was moved by Professor Krishna, seconded by Ms. Pawlitza, that Convocation approve the dissemination of this report to the profession, law schools and legal organizations for the purposes of receiving written comments on Part 3 (Skills and Professional Responsibility) and Part 4 (Articling).

That written comments be accepted until May 31, 2008 after which the task force will prepare a further report for Convocation's consideration. Carried. Vote: For – 44, Against – 2.

February 21, 2008

### Re: Composition of Proceedings Authorization Committee

It was moved by Mr. Ruby, seconded by Mr. Dray, that the Proceedings Authorization Committee be expanded to include a paralegal benchers and that By-Law 11, Part VI be amended as set out at Appendix 1 to the Report. Carried. Vote: For – 33, Against – 5. ■

## CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

	Attendance			Motions*	
	Jan 24	Feb 21	Mar 27	Jan 24	Feb 21
Aaron, Robert	✓	✓	✓	A	A
Aitken, Melanie	✓		✓	F	
Anand, Raj	✓	✓	✓	F	F
Backhouse, Constance	✓	✓	✓	F	F
Banack, Larry	✓	✓		F	
Boyd, Marion	✓		✓	F	
Bredt, Christopher	✓		✓	F	
Campion, John	✓	✓	✓	F	
Carpenter-Gunn, Kim	✓			F	
Caskey, James	✓	✓	✓	F	F
Chahbar, Abdul Ali	✓	✓	✓	F	
Chilcott, W. Dan					
Conway, Thomas	✓	✓	✓	F	F
Crowe, Marshall	✓	✓	✓	F	F
Daud, Aslam	✓				
Dickson, Mary Louise	✓	✓		F	F
Dray, Paul	✓	✓		F	F
Elliott, Susan		✓			F
Epstein, Seymour		✓	✓		F
Finlayson, George D.	✓	✓		F	F
Go, Avvy	✓	✓			F
Gold, Alan	✓		✓	F	
Gottlieb, Gary L.	✓	✓	✓	F	A
Halajian, Jennifer		✓	✓		A
Hare, Susan	✓	✓	✓	F	F
Hartman, Carol	✓	✓	✓	F	F
Heintzman, Thomas G.	✓	✓	✓	F	F
Henderson, Paul	✓	✓	✓	F	
Hunter, George					
Krishna, Vern	✓	✓	✓	F	F
Lawrie, Brian	✓	✓	✓	F	F
Legge, Laura	✓	✓	✓	F	F
Lewis, Doug		✓	✓		F
Marmur, Dow					
McGrath, Susan	✓	✓	✓	F	
Millar, Derry	✓	✓	✓	F	F
Minor, Janet	✓	✓	✓	F	F
Pawlitza, Laurie	✓	✓		F	F
Porter, Julian	✓	✓	✓	F	F
Potter, Judith	✓	✓	✓	F	A
Pustina, Nicholas J.	✓	✓		F	
Rabinovitch, Jack	✓	✓	✓	F	F
Robins, Sydney	✓	✓		F	F
Rock, Allan	✓			F	
Ross, Heather	✓	✓	✓	A	A
Rothstein, Linda			✓		
Ruby, Clayton	✓	✓	✓	F	F
St. Lewis, Joanne	✓	✓	✓	F	F
Sandler, Mark			✓		
Scace, Arthur					
Schabas, Paul	✓		✓	F	
Sikand, Baljit	✓	✓		F	F
Silverstein, Alan	✓	✓	✓		F
Strosberg, Catherine	✓	✓	✓	F	F
Strosberg, Harvey					
Swaye, Gerald	✓	✓	✓	F	F
Symes, Beth	✓		✓	F	
Tough, Bonnie	✓	✓	✓	F	F
Warkentin, Bonnie	✓	✓	✓	F	F
Wright, Bradley	✓	✓	✓	F	F
MacKenzie, Gavin (Treas.)	✓	✓	✓		

### Non-voting benchers in attendance:

Jan. 24, 2008 – Feb. 21, 2008 – Mar. 27, 2008 –  
P. Copeland, J. Ground, A. Feinstein, P. Furlong, P. Furlong, J. Ground,  
A. Lawrence, D. Murphy, A. Lawrence, R. Murray, D. Murphy, R. Murray,  
R. Murray, J. Wardlaw.

There were no motions in the March 27 Convocation requiring a roll-call vote.

\*Motions A=against F=for Ab=abstain



## First group of grandparent paralegal applicants receive licences

*Several experienced paralegals and graduates of post-secondary paralegal courses started receiving their licences from the Law Society in April 2008, making them the first in North America to become licensed to provide legal services. These applicants applied under a "grandparent" provision.*

*In this issue of the Ontario Lawyers Gazette, we continue to highlight key developments in the establishment of the new paralegal regulatory framework.*

### Grandparent Examination Results

Of the 1,930 grandparent candidates who wrote the first licensing examination on January 17, more than 95 per cent met the competency requirements to become licensed paralegals in Ontario.

Those who didn't meet the competency requirements had an additional opportunity to rewrite the

examination on February 27. A third and final opportunity to rewrite the examination was offered on April 2.

### New Applicants

More than 340 **new** applicants have applied to write the next paralegal licensing examination on August 26, 2008, for non-grandparented applicants. Their deadline for submitting applications was January 14, 2008.

These new applicants have graduated within three years prior to applying to the Law Society – or they will be graduating from an legal services education program. They will not be able to provide legal services until they are licensed.

These candidates will also have two additional opportunities to rewrite if they don't meet the competency requirements.

### Paralegal 2008 Annual Fee Approved

The Law Society's governing board of directors recently approved the 2008 annual fee for paralegals. The fee of \$845 includes a \$625 general licensee fee, a \$145 compensation fund levy (with a per-claimant limit of \$10,000) and a \$75 capital levy that applies to all licensees.

Since the first paralegal licences weren't issued until this spring, the annual fee will be prorated for the year. For example, paralegals receiving their licences at the beginning of April can expect to pay a fee of approximately \$635 for 2008.

## Paralegal regulation timeline – at a glance

- **September 2005:** Report to Law Society's governing body
- **October 2006:** Access to Justice Act passed
- **January 2007:** Law Society's Paralegal Standing Committee established
- **2007:** The *Paralegal Rules of Conduct* are created, policies and bylaws are introduced to mirror lawyer regulation, and accreditation criteria are established for colleges interested in offering accredited paralegal programs
- **May 1, 2007:** Beginning of six-month application period for experienced (grandparent) paralegals / beginning of insurance requirement for practising paralegals
- **October 31, 2007:** Closing of special application period for grandparent paralegals
- **January 14, 2008:** Deadline for new paralegal candidates (those who have either graduated within three years prior to applying, or will be graduating from a legal services education program in Ontario)
- **January 17, 2008:** Licensing examination for experienced paralegals
- **February 27 & April 2, 2008:** Licensing examination rewrite opportunities for candidates who do not meet competency requirements
- **April 2008:** First paralegal licences issued
- **August 26, 2008:** Licensing examination for new candidates



Convocation has also approved compensation fund guidelines for processing claims involving paralegals. As well, two paralegal members of the Paralegal Standing Committee have been added to the Law Society's Compensation Fund Committee.

### Other Developments

The Law Society received \$300,600 from The Law Foundation of Ontario (LFO) to support educational components of the paralegal licensing process. The grant will help fund the first year of the regular licensing process for graduates of legal services programs. The first candidates of this process will write the licensing examination in August 2008.

Specifically, the grant will help fund support for licensing candidates with special needs, the production and translation of educational materials and e-Learning initiatives, as well as other educational components of the licensing process. The LFO agreed to fund the entire amount of the estimated costs of the educational component of the regular licensing process for the first year.

### Licensee Directory

The Law Society's new Licensee Directory now includes paralegals, as well as lawyers. Located on the Law Society website, this new, user-friendly directory is designed to make it easy for the public, the legal professions and the courts to see at a glance all those who are eligible to practise or provide legal services. The new directory includes a page of status definitions – one for lawyers and one for paralegals. Searches can be undertaken by name, city or postal code.

### PAC to Include Paralegal Benchers

Other recent developments include the addition of a paralegal benchers to the

Law Society's Proceedings Authorization Committee (PAC). The decision was made at February Convocation, so that a PAC member with knowledge of paralegal practice can aid in committee deliberations.

The main role of PAC is to consider requests to authorize hearings regarding the conduct, capacity and competence of both lawyer and paralegal licensees.

### Justices of the Peace

Retiring Justices of the Peace will be permitted to apply to write the paralegal licensing examination without an accredited diploma, providing they have a minimum of three years' experience as a Justice of the Peace. They will be required to fulfil all other requirements for paralegal licensing – such as obtaining professional liability insurance.

### New Brochure for Public

The Law Society has produced a helpful new brochure for the public, which explains the difference in the types of legal services that lawyers and paralegals can provide. It answers questions about representation before tribunals and courts, as well as in family law matters, real estate and other situations where legal services are required.

A copy of the new brochure is available online at the Law Society's website or if you wish we can send you one by e-mailing [communications@lsuc.on.ca](mailto:communications@lsuc.on.ca).

For more information on paralegal regulation and ongoing developments, check the paralegal pages of the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca). ■

## 2ND NATIONAL PRO BONO CONFERENCE

### Pro Bono: Spanning the Nation September 18 – 19, 2008 Work Centre for Dialogue, Vancouver

Pro Bono Law Alberta, Pro Bono Law of British Columbia and Pro Bono Law Ontario are proud to host the second biannual national pro bono conference, which will be held this year in Vancouver, on September 18 and 19.

The conference will provide a national forum for the exchange of knowledge and ideas concerning pro bono legal service provision. It will combine plenary sessions that address major issues and themes related to pro bono culture and practice, and breakout sessions that take a "nuts and bolts" approach to various aspects of developing pro bono projects and delivering pro bono services.

The two-day event will also feature a conference dinner and the 2008 Canadian Pro Bono Awards ceremony to honour a lawyer, a law firm and a community service organization for distinguished service in the provision of pro bono legal services to the poor and disadvantaged.

The Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada, will deliver the opening speech.

**Early bird registration for the conference opened March 15, 2008.**  
**Visit [www.probonoconference.ca](http://www.probonoconference.ca) for details.**



## SPOTLIGHT ON:

# Monitoring and Enforcement Department



The Monitoring and Enforcement team (from left to right): Michael Elliott, manager, Christine Phillips, officer, Tanya Munro, counsel, Mariana Oliveira, student and Dawn Dumont, administrator

An essential part of the Law Society's regulatory process, the Monitoring & Enforcement Department of the Professional Regulation Division has been operational since 2003. "Our role is to monitor compliance with orders and undertakings that are the result of any

part of the regulatory process," says Michael Elliott, manager. A small department of five, their activities formalize what previously had been done on a more ad hoc basis.

The reasons lawyers are disciplined are diverse, arising out of financial

mismanagement, integrity issues, such as breaches of undertakings or civility issues, or service complaints, such as failure to communicate or follow instructions. "Our work is pretty varied," says Elliott, "depending upon what the Hearing Panel orders or the undertaking the lawyer in question has given to the Law Society. We are here to protect the public by ensuring that lawyers whose licences have been suspended or revoked are not practising law.

"Hearing Panel orders are always tailored to the specific case. This means that they can impose any conditions on the lawyer being able to continue practising that the Hearing Panel decides are necessary." These can range from restricting a lawyer from practising in a certain area of law, to requiring a lawyer to provide monthly accounting records and trust account reconciliations, to working with an approved supervisor under an approved plan of supervision.

In instances where a lawyer's licence has been revoked or suspended, or where the lawyer has undertaken not to practise, Monitoring & Enforcement staff may go to the lawyer's office to ensure that the practice has actually been closed down. Staff also ensure that the lawyer has dealt appropriately with client trust funds and client files. Because financial management issues are often part of the orders and undertakings that Monitoring & Enforcement are working on, one member of the department is an officer with long experience in legal books and records issues. Other staff have experience in litigation, discipline, investigations and complaints resolution.

"Our role is not only to ensure that suspended lawyers close down their practices and to collect costs owed to the Law Society", says Elliott. "In many instances, a Hearing Panel may decide that lawyer needs some additional

Amendments to By-Law 7 – Operational Obligations and Responsibilities, and By-Law 9 – Financial Transactions and Records, the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* were approved by Convocation in January. The amendments define what a licensee who is not permitted to practise or provide legal services as a result of the revocation, surrender or suspension of their licence or an undertaking not to practise or provide legal services must do in relation to clients, clients files, trust funds, and what they cannot do in relation to practising or providing legal services.

An amendment to By-Law 4 specifically provides that lawyers, including those whose licences have been suspended, may not be licensed as paralegals. Lawyers whose licences are revoked, surrendered, suspended or who have given an undertaking not to practise, cannot act as paralegals. This reflects the new licensing regime whereby a licence to practise law (for lawyers) and a licence to provide legal services (for paralegals) are separate.



support or training when they return to practice. The panel may determine that financial training with ongoing supervision will be effective, or improved case management skills, or professional development in the form of continuing legal education will help address the conduct issues that resulted in the lawyer being disciplined. In those situations, we help the lawyer connect with the Practice Review program or the CLE provider. Our job is to make sure that lawyers get the support and remedial help they need so that at the end of the process they are better practitioners."

Another important area of the department's work is monitoring compliance with By-Law 9 regarding bankrupt licensees. "Monitoring & Enforcement ensures that the bankrupt licensee's trust accounts are transferred to another approved licensee for the duration of the bankruptcy," says Elliott. "That way, the client's funds won't be

confused with the lawyer's own money and won't be included in the bankruptcy. We will also participate in the bankruptcy on behalf of the Law Society if we are owed money."

Part of the department's enforcement activities is collecting costs that have been awarded to the Law Society and amounts lawyers have been ordered to repay to the Compensation Fund. "We do this so that the lawyers who make up the Law Society's membership are compensated, at least to some degree, for the costs of the regulatory work of the Society."

Monitoring & Enforcement has reporting duties as well. They advise the Ministry of Government Services and County & District Law Association presidents about the terms of any revocations, suspensions or other restrictive orders that have been made. The public is also advised of restrictions on lawyers through the Licensee Directory on the Law Society website.

As the name implies, monitoring is an ongoing process – the department may have to investigate alleged breaches of undertakings or orders, and have new conduct applications authorized. In addition, lawyers may request that undertakings be waived or varied, and Monitoring & Enforcement will examine the application and advise the Director of Professional Regulation on appropriate action.

Since taking on the role four years ago, Elliott and his staff have dealt with hundreds of cases. Each one is different, but he is single-minded about the department's mandate. "We give effect to the Law Society's regulatory process," he says. "The Law Society takes its governing role seriously. Monitoring & Enforcement is here to make sure that licensees and the public know that we do." ■

## Community Leadership in Justice Fellowships

The Law Foundation of Ontario invites applications for the 2008/2009 Community Leadership in Justice Fellowships.

The purpose of the fellowships is to bring leaders from public interest organizations which interact with the justice system to Ontario universities, colleges and law schools to spend a six-month period (one academic term) in residence. The responsibilities could include undertaking research, teaching or co-teaching courses, and enriching the academic experience at the host institution. The fellow may also focus on less traditionally academic contributions and more on mentorship, activism and leadership through discussion groups, collaborative projects and advocacy, public lectures and developing networks between researchers and the public interest community.

**Value:** Up to two awards to a maximum of \$50,000 for each award, plus a grant to the host organization of up to \$15,000 for equipment and overheads.

**Eligibility:** Candidates must be active in public organizations dedicated to law reform, legal advocacy or the justice system.

**Where tenable:** One award is tenable at any Ontario law school, the second at any university or college in Ontario

with a faculty, department or program dedicated to legal or justice studies, including but not limited to criminology, sociology, social work, political science, and law and society programs.

**Selection:** In assessing applications, the committee will consider not only a fellowship candidate's leadership in the community and justice-related areas, but also the extent to which the fellowship will have a transformative effect on legal education, legal research and/or law reform.

**The application:** Applications must come jointly from the fellowship candidate and the host academic institution, and must include a letter of support from the public interest organization's chair or executive director. For further details please visit [www.lawfoundation.on.ca](http://www.lawfoundation.on.ca)

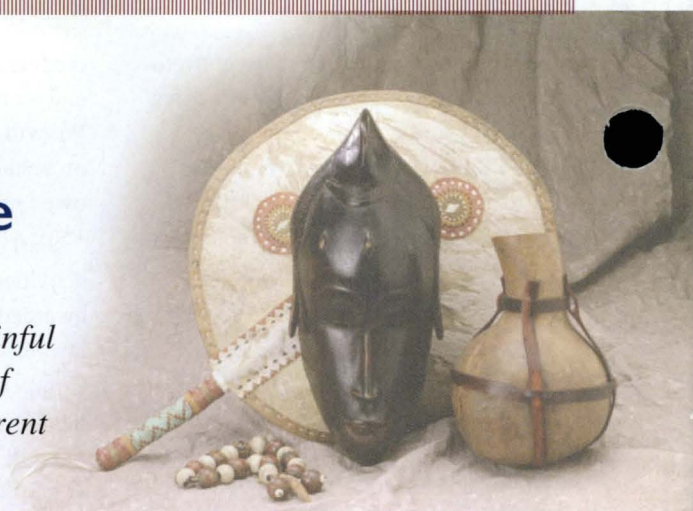
Applications must be received by **May 21, 2008**. Only hard copy applications will be accepted. They should be forwarded to:

The Executive Director  
The Law Foundation of Ontario  
20 Queen Street West, Suite 3002  
PO Box 19  
Toronto, Ontario M5H 3R3



# Ottawa conference marks 200th anniversary of abolition of slavery in the British Empire

*"On one hand, the subject is something that is painful, the abolition of the slave trade and the slave trade itself is a painful memory, but I think there are some aspects in it of growth, of celebration, of shaking our minds up and thinking in a different way."* – Joanne St. Lewis



The Law Society was proud to be involved in *Routes to Freedom: Reflections on the Bicentenary of the Abolition of the Slave Trade* held March 14-16 at the University of Ottawa Faculty of Law. The conference was organized and chaired by bencher Joanne St. Lewis, assistant professor of law at the university, and was sponsored by the Ontario government. Over 100 people attended the two-day event.

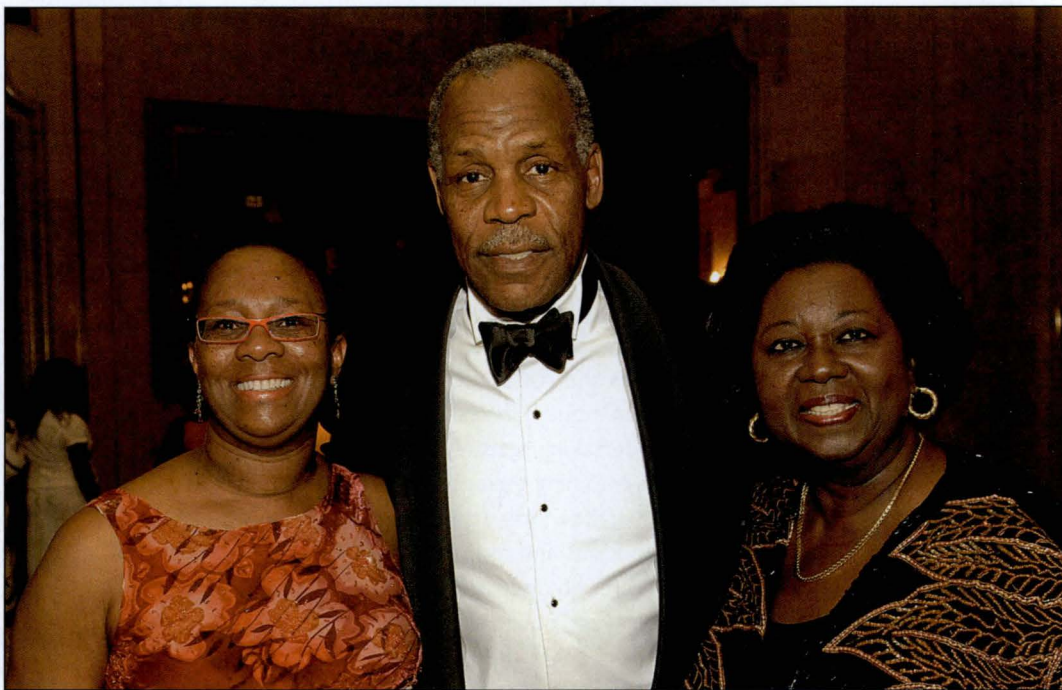
To open the conference, Professor St. Lewis introduced The Honourable Jean Augustine, P.C., saying, "This conference is happening in part because of her work as the chair of the Ontario Bicentenary Commemorative Committee of the Abolition of the Slave Act of 1807." Augustine is Ontario's first Fairness Commissioner.

"When I was asked to lead the Ontario Bicentenary Commemorative Committee," said Augustine, "it was because the Ontario government recognized the bicentenary as an opportunity to do several things: to help Ontarians deepen their understanding of the province's past; to raise awareness of the little known and

unspoken fact that slavery existed in Ontario; to recognize the struggle of African-Canadians, then and now; and to honour those who fought for freedom and justice and equality."

"When most Canadians think of slavery and racism, we tend to think of

Canada is depicted as an enlightened safe haven – the place of freedom slaves ran to on the underground railway. This writing out of slavery from the historical narrative was accomplished so successfully that, in contemporary Canada, few Canadians are aware of this history."



From left: Bencher Joanne St. Lewis, Danny Glover, The Honourable Jean Augustine, P.C., at the *The Routes to Freedom Endowment Fundraiser Gala*

the U.S.," said Tamara Extian-Babiuk, of Duke University, "when in fact, slavery existed on Canadian soil for over 200 years. White supremacy is viewed largely as an American phenomenon, while

Legal academics, historians, political economists and writers addressed the issue of slavery from a variety of perspectives at this multi-disciplinary international conference. Presenters

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### Panel: Women and Slave Resistance

From left: Professor Camille Nelson, School of Law, Saint Louis University; Professor Rebecca Hall, S.J. Quinney College of Law, University of Utah; Moderator: Professor Lucie Lamarche, Gordon Henderson Chair, Human Rights Research and Education Centre, University of Ottawa; Professor Marlene Thelumsa Rémy, Department of Sociology, Collège Boréal de Toronto; Dr. Aoua LY-Tall, Research Associate Institute of Women's Studies, University of Ottawa & Researcher in Residence, Institut des Etudes Africaines, Université Mohamed V-Soussi, Rabat, Morocco.

included benchers Constance Backhouse, who spoke on the presence of the Ku Klux Klan in Canada in the 1920s and 1930s; Deidré Rowe Brown, who presented the story of Ontario's first black lawyer, Robert Sutherland; and author Lawrence Hill, who read from his award-winning novel *The Book of Negroes*.

One of the themes of the conference was the law and how it first supported the system of slavery, and how legislation was then used in its abolition. Rebecca Hall, Visiting Professor at the University of Utah's S.J. Quinney College of Law stated, "Before the law of abolition, there was the law that created and maintained the trade: military law, maritime law, insurance law, acts of navigation, and so on. The slave trade needed the law to exist and thrive."

Professor Camille Nelson, from Saint Louis University, discussed property law and its impact on slave women in the United States. "When we look at slavery, we see that the law really functioned not as a shield, but as a sword. Slaves were no different than any other type of property either alternatively categorized

as real property, or in most cases chattel property, moveable property or personal property. So you have lots of cases where we have a disposition of slaves, be they for sale, bequests, transfers, leases, rental agreements. You have taxation, depreciation. The legal mindset did not distinguish in this person-property conflation."

Discussion of contemporary issues in labour exploitation reminded participants



The Honourable Justice Rosalie S. Abella speaks at the Law Society reception.

that modern forms of slavery continue to exist, as did the discussion of whether law can overcome the legacy of slavery through redress and/or reparations.

In the panel discussion entitled, *Can the Law Overcome the Legacy of Slavery?* Professor Carol Aylward, Dalhousie Law School, discussed legal solutions for redress and reparations for descendants of slaves in the context of the *Canadian Charter of Rights and Freedoms*.

"One of the main arguments against a legal solution has been that discrimination, particularly racial discrimination, was not a crime at the time of slavery. And because it was not a crime, then you cannot apply constitutional principles. So in Canada, the argument goes something like this: because the right not to be discriminated against on the basis of race was not a pre-existing right, i.e. a right that existed prior to the implementation of the charter, that right is not protected under section 15. Therefore, there is no legal foundation for compensating descendants of slaves for the crime against their ancestors, when in strictly legal terms, no crime was committed."

Aylward then demonstrated how the charter provides avenues for redress and reparations for the harm caused by slavery. "The right not to be discriminated against based on race has always existed and was not merely created by section 15 of the charter. Slavery was discriminatory because it violated pre-existing equality rights. The fact that the government violated these rights is not justification for finding that they cannot be redressed by the remedial provisions of the charter. As the Supreme Court ruled in the *Reference re Secession of Quebec* case, 'the Constitution Act 1982 removed the last vestige of British authority over the Canadian constitution and reaffirmed Canada's commitment to the protection of its minorities, Aboriginals, equality, legal and language rights, and fundamental freedoms as set out in the charter.'"

TECKLES PHOTOGRAPHY INC.



On Friday March 14, the Law Society of Upper Canada, in partnership with the Canadian Association of Black Lawyers, the Black Law Students' Association of Canada and the University of Ottawa's Faculty of Law, hosted a reception at which The Honourable Justice Rosalie S. Abella and M. NourbeSe Adamu Philip – well-known poet, essayist, novelist, playwright and author – spoke. The reception was held in celebration of the International Day for the Elimination of Racial Discrimination and was part of the Law Society's Equity Public Education Series.

In her keynote address, Justice Abella stated, "The story of the 200 years since the slave trade was abolished is the story of the incremental, often glacially incremental, struggle for equality for blacks in Canada and in the United States."

Justice Abella's address focused on the history of the legislation and jurisprudence dealing with discrimination against Black people in North America after the abolition of slavery. "The *British Imperial Act* abolished slavery in



### Panel: Legal Constraints

From left: Professor David Gilles, Chargé de cours, Faculté de droit de l'Université d'Ottawa; Rosalia de la Cruz Gitau, Fellow, Center for Human Rights and Global Justice, NYU School of Law; Deidre Rowe Brown, Ph.D. candidate, OISE, University of Toronto & Executive Assistant to the Treasurer of the Law Society of Upper Canada; Constance Backhouse - Distinguished University Professor, University Research Chair, Faculty of Law, University of Ottawa; Bencher, The Law Society of Upper Canada; Professor Daphne Gilbert, Faculty of Law, University of Ottawa; Moderator: Professor Pacifique Manirakiza, French Common Law, University of Ottawa.

Followup to the conference will include a dedicated issue of the *Ottawa Law Review* for selected papers presented at the conference, a DVD of the conference, an academic publication, and curriculum materials for high schools.

the British Empire in 1834, but, like the American experience, the reality of discrimination remained vigorous. Our litigation story includes *Christie v. York*, where the Supreme Court of Canada said that the Montreal-based proprietor who refused to serve beer to a Black person was entitled to do so. On the other hand, over 40 years later, the Supreme Court of Canada decided the *Andrews* case, which created a new and unique constitutional equality guarantee that respects and accommodates differences."

The conference was capped by a gala fundraiser chaired by actor and activist Danny Glover. He chairs TransAfrica Forum, an African American human rights and social justice advocacy organization. Funds raised from the gala will be used to establish two scholarships, the first for an Ontario law undergraduate and the second for a doctoral candidate from Africa that will be named in honour of Glover.

In her introduction, Professor St. Lewis explained that she asked Glover to lend his name to the doctoral fellowship, "because she wanted someone who embodied the social activism, the level of engagement and the stature to engage people in the African diaspora and outside of our community on this issue, and Glover was the first person I thought of." ■



Professor Carol Aylward, of Dalhousie Law School spoke on the panel discussion: *Can the Law Overcome the Legacy of Slavery?*



## Black History Month symposium looks at the win-win of mentoring

Strategic mentoring benefits mentees, their mentors and the entire legal profession, panel speakers told a forum of 120 people gathered at the Law Society on February 6 to celebrate Black History Month. Panel speakers included Black lawyers from diverse backgrounds and Black law students, who shared their personal mentoring experiences and insights.

Both the symposium and the reception that followed were hosted by the Law Society of Upper Canada and the Canadian Association of Black Lawyers (CABL).

Shown here, from left to right: second year law student Denise Ann Williams; lawyer Linc Rogers; former CABL Vice-President Sue-Lynn Noel; lawyer and panel moderator Jason Bogle; benchner and law professor Joanne St. Lewis; and lawyer Aston Hall. Standing in front is third-year law student Lori Anne Thomas.



## Access awareness event examines UN Convention regarding disabilities



More than 170 people attended a symposium at the Law Society on March 3 to learn more about disability issues and human rights law. Legal experts focused on the impact of the United Nations Convention on the Rights of Persons with Disabilities. Designed to promote greater access awareness and accessibility for persons with disabilities, the event was hosted by the Law Society and ARCH Disability Centre.

Shown here, from left to right, are panel members: Ivana Petricone, executive director of ARCH Disability Law Centre; Michael Gottheil, chair, Human Rights Tribunal of Ontario; Debra McAllister, a lawyer with ARCH Disability Law Centre; Faisal Bhabha, lawyer and panel moderator; Anna McQuarrie, director, Government Relations and Strategic Initiatives, Canadian Association for Community Living; and Fiona Sampson, director of litigation, Women's Legal Education and Action Fund.



## Law Society launches Disability Mentoring Program

Lawyer Margherita Braccio introduced the Law Society's Disability Mentoring Program at a special reception held during the access awareness event hosted by the Law Society and ARCH Disability Law Centre on March 3.

Braccio, who is a member of the Law Society's Disability Working Group and counsel with the Immigration Law Section of the Department of Justice Canada, told those gathered that the Disability Mentoring Program is designed to promote awareness and accommodation for those with disabilities – "from law school, to the Bar and beyond."

The program matches up law students with disabilities with lawyers with disabilities, and lawyers without disabilities, as well as peers throughout law school and post-call. The program provides networking opportunities and lasting professional relationships.



Braccio called on lawyers to join the program and "gain new experiences through exposure to new communities." Volunteering with the Disability Mentoring Program will also help lawyers to help incorporate accommodations for the disabled into their practices, she said.

## International Women's Day event on the 20th anniversary of the Morgentaler decision

In recognition of International Women's Day, the Law Society of Upper Canada – in partnership with the Barbra Schlifer Commemorative Clinic, the Feminist Legal Analysis Section of the Ontario Bar Association and the Women's Law Association of Ontario – hosted a symposium to mark the 20th anniversary of the Supreme Court of Canada's decision to strike down Canada's abortion laws as being a violation of the Canadian Charter of Rights and Freedoms.

A panel discussion entitled *Laws and Policies on Abortion and their Impact on Women's Rights* was held, followed by a reception.

The panelists were Joanna Erdman, co-director, International Reproductive and Sexual Health Law Program and director,

Health Equity and Law Clinic, adjunct professor, Faculty of Law, University of Toronto; Notisha Massaquoi, executive director, Women's Health in Women's Hands Community Health Centre; Lina Anani, Amnesty International; and Jessica Yee, chair Aboriginal Realities, Aboriginal Choices and Toronto Action Committee, Canadians for Choice.

Discussion focused on the importance of accessibility and availability in ensuring equality of treatment and choice for women across the country. While a 2004 decision confirmed that denying access to abortion violates a woman's rights of equality, there are inconsistencies between provinces in terms of availability, accessibility and funding. Panelists also discussed the issue



of access for immigrant women and women from racialized communities. Lina Anani of Amnesty International discussed the formulation of that organization's policy on abortion following a study of violence against women around the world, including sexual violence, pregnancy, stigmatization and criminal sanctions. Their policy calls upon states to decriminalize abortion and to protect access to it.



## Mark your calendar for these important dates in 2008

### April 2008

**Apr. 24** Convocation.

**Apr. 30** LAWPRO 2008 Real Estate and Civil Litigation Levy Surcharge annual exemption form due.

**Apr. 30** LAWPRO 2008 First Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

### May 2008

**May 1** Final date to pay 2008 annual fees. Failure to pay fees will result in referral for suspension on or about this date.

**May 7** Law Society Annual General Meeting.

**May 22** Convocation.

**May 31** Final date to file Multi-Discipline Partnership annual report. Failure to file by this date will result in referral for suspension on or about this date.

**May 31** Final date to file Affiliations annual report. Failure to file by this date will result in referral for suspension on or about this date.

### June 2008

**June 26** Convocation.

### July 2008

**July 29** Final date to file the Member's Annual Report (MAR). Failure to file by this date will result in referral for suspension on or about this date.

**July 31** LAWPRO 2008 Second Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

### September 2008

**Sept. 15** LAWPRO CLE Premium Discount deadline: Complete the online declaration by this date to receive the CLE premium credit on your 2009 insurance premium.

### October 2008

**Oct. 1** Professional Corporation annual renewal application and fee due.

**Oct. 31** LAWPRO 2008 Third Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

### November 2008

**Nov. 1** LAWPRO E-filing deadline. LAWPRO renewal applications for 2009 professional liability insurance must be e-filed by this date to be eligible for the \$50 per lawyer e-filing discount.

**Nov. 8** Final deadline to submit LAWPRO renewal application for 2009 professional liability insurance.

### December 2008

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

## Congratulations to our newest Certified Specialists



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

### Bankruptcy and Insolvency Law

Alexander Ilchenko, Toronto

### Citizenship and Immigration Law: Immigration

Ravi Kumar Randal Jain, Toronto

### Civil Litigation

Michael David Crawford Laplante, Midland

Kevin K. V. Doan, Toronto

### Corporate and Commercial Law

Bruce Frederick Duggan, Brampton

### Criminal Law

Clayton John Conlan, Owen Sound

### Estates and Trusts Law

Joanna Ringrose, Oakville

### Family Law

Brahm Darrell Siegel, Toronto

### Municipal Law: Local Government

Bruce William Banting, St. Catharines

John Vincent Cosman, Cambridge

The entire list of Certified Specialists can be found in the online Directory of Certified Specialists at [www.lsuc.on.ca](http://www.lsuc.on.ca).

Visit the Resource Centre at [www.lsuc.on.ca](http://www.lsuc.on.ca) to learn more about the Certified Specialist Program, or phone us at 416-947-3315 or 1-800-668-7380, ext. 3315.



## APPOINTMENTS



### ***Bencher Carole Curtis appointed to the Ontario Court of Justice***

The Law Society is pleased to congratulate long-time bencher Carole Curtis on her appointment to the Ontario Court of Justice for the Toronto Region. Justice Curtis was first elected as a bencher in 1991.

Over the past 17 years, she has made enormous contributions to Convocation, including chairing the Professional Regulation Committee, co-chairing the Sole Practitioner and Small Firm Working Group, serving as the Law Society's representative on the board of CanLII, and acting as the Hearing Management Tribunal Bencher. Her extensive work and

contributions on committees dealing with legal aid in the 1990s is particularly noteworthy; she chaired, was a vice-chair or was a member of 14 committees or subcommittees that dealt with issues such as legal aid for young offenders, the family law tariff and legal aid services for remote Northern communities.

At the time of her appointment to the Ontario Court of Justice, Justice Curtis was the longest-serving elected woman bencher and the first woman to be eligible for life bencher status.

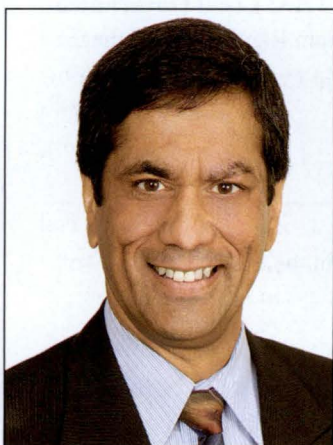
### ***Bencher Kim Carpenter-Gunn appointed to the Superior Court of Justice***

The Law Society is pleased to congratulate long-time bencher Kim Carpenter-Gunn on her appointment as a judge of the Superior Court. Justice Carpenter-Gunn was first elected as a bencher in 1995.

She has contributed to the work of Convocation in many ways, including chairing the Task Force on Employment Opportunities for Articling Students, co-chairing the Litigation Committee, and serving as vice-chair of the Professional Development, Competence and Admissions Committee. She served on

many discipline hearing panels and as a member of the Appeal Panel, as well as being the Treasurer's designate on the Ontario Bar Association Council.

Perhaps most notably, for the past five years, Justice Carpenter-Gunn has served as the chair of the board of LawPro. LawPro has been a great success story since the insurance crisis of the 1990s, and Justice Carpenter-Gunn is deserving of her share of credit for that success through her leadership of the board.



### ***Bencher Raj Anand nominated to chair Human Rights Legal Support Centre***

Law Society of Upper Canada bencher and respected Toronto human rights lawyer Raj Anand has been nominated as chair of the board of directors of Ontario's new Human Rights Legal Support Centre. The appointment is subject to review by the Standing Committee on Government Agencies.

As chair, Anand will lead the new publicly funded and publicly accountable Human Rights Legal Support Centre. The Centre is set to

open in Toronto on June 30, 2008. The Centre will be responsible for administering a province-wide system to provide legal and other support services related to all aspects of applications to the Human Rights Tribunal of Ontario.

The Centre is the first human rights support agency of its kind in Canada. It will offer independent human rights information and services to the people of Ontario.



## IN MEMORIAM

### *The Honourable George D. Finlayson 1928-2008*

by: Deidré Rowe Brown

We were saddened to learn that a great leader of the legal profession, the Honourable George Duncan Finlayson, passed away suddenly on the morning of March 23. George Finlayson served the administration of justice in Ontario with devotion and distinction for 55 years and was an integral part of the history of the Law Society of Upper Canada.

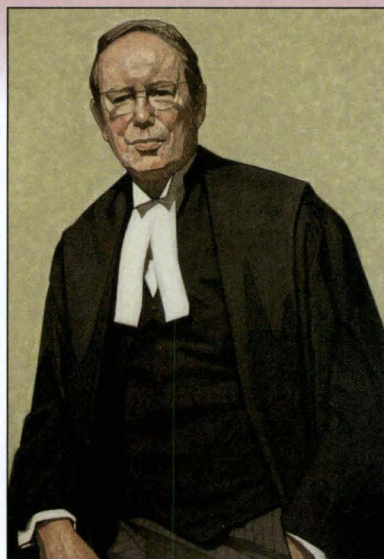
George was born in Winnipeg in 1928. His father was called to the Bar of Manitoba but practised law only intermittently — his real passion was politics and he worked with the Conservative party. As a result of his father's career, George spent time with many prominent people during his youth, including R. B. Bennett, Sir Lyman Duff, Lester Pearson, Louis St. Laurent, and C.D. Howe. George shared his father's interest in politics.

After an uninspiring year in a pre-med program, George enrolled in an Honours Arts program at the University of Toronto. He did not do well, and transferred to the Pass Arts program, graduating in 1949. It was not his lack of intellect that was the problem but rather his lack of interest in his courses. After graduating, George decided that it was time to earn a living and that he would enter the legal profession. For the first time since high school, he took his studies seriously. In 1949, he entered the four-year program at Osgoode Hall, undertaking two years of academic study, a year of articles and a combination of lectures and articles in his final year.

George articulated with McCarthy and McCarthy under Beverley Matthews. During this period he formed a close association with John Robinette. He often accompanied Robinette to court cases and it was due to his connection with this legal great that he developed his interest in litigation.

After being called to the Bar of Ontario in 1953, George was hired by McCarthys. He quickly earned a reputation as a top litigator and "an aggressive, hard-nosed individual who did not shy away from controversy."<sup>1</sup> In 1963, he was appointed Queen's Counsel and in 1974 and 1977, he was called to the Bars of Alberta and Newfoundland respectively.

In 1970, George became a benchler of the Law Society of Upper Canada. He was an active member of numerous standing



and special committees, the vice-chair of the Admissions Committee, and the chair of the Legal Education Committee.

He was elected Treasurer in 1978. Christopher Moore wrote in his bicentennial history of the Law Society that Treasurer Finlayson was "a no-nonsense chairman whose brisk style and ready use of the gavel shocked some benchers."<sup>2</sup>

Upon taking office, George quickly locked horns with several long-term staff members about the administration of the Law Society. George felt that the Law Society was in a complete state of disarray,

which he blamed on the power of the Society's staff over Society affairs, openly describing it "as a collection of petty empires run by quill-pen accounting and private convenience"<sup>3</sup>. Throughout his term as Treasurer, George worked to re-establish the authority of the benchers and to professionalize the administration of the Society.

In 1981, the Law Society of Upper Canada conferred the degree of Doctor of Laws, *honoris causa*, upon George Finlayson in recognition of his contributions to the justice system.

George was appointed to the Ontario Court of Appeal in 1984. During his time on the Bench, Justice Finlayson's reputation as being aggressively independent, blunt and brutally honest became legendary. He said, "My whole approach is to be a problem solver. I don't have an agenda. I don't favour the charter or adopt a conservative approach. I don't favour the Crown or the defence. I just look at every case as something that has to be dealt with properly."<sup>4</sup> He flourished on the Court of Appeal and was one of the court's hardest workers and most prolific authors of judgements.

Upon his retirement, George returned to Convocation and remained a faithful attendee and a frequent member of hearing panels until his death. George Finlayson's wisdom, common sense and wit will be sorely missed at Osgoode Hall and beyond. ■

<sup>1</sup> Toronto Star: December 5, 1984.

<sup>3</sup> Ibid. 296.

<sup>2</sup> Christopher Moore, *The History of the Law Society of Upper Canada 1797-1997*, 295.

<sup>4</sup> The Globe and Mail: June 9, 1999, 9.



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