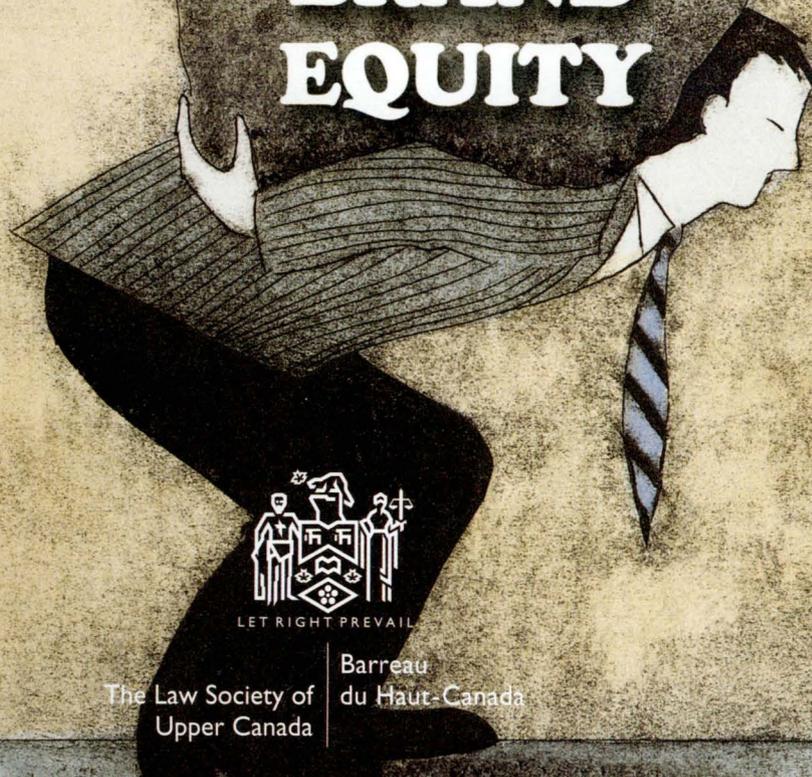


# ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO

**In-house  
counsel as  
guardian of  
BRAND  
EQUITY**



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

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KEY TO SELF GOVERNANCE

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PARALEGAL UPDATE

# ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES  
DE L'ONTARIO

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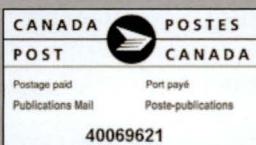
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## CELEBRATE THE OPENING OF COURTS OF ONTARIO

ON SEPTEMBER 14, 2009, AT THE CONCLUSION  
OF THE OPENING OF THE COURTS OF ONTARIO,  
THE LAW SOCIETY OF UPPER CANADA  
WILL HOST A RECEPTION FOR MEMBERS  
OF THE JUDICIARY, LAWYERS AND PARALEGALS.

THE RECEPTION WILL BE HELD AT 4:30 P.M.  
IN CONVOCATION HALL, 130 QUEEN STREET WEST,  
TORONTO. GUESTS SHOULD ENTER THE  
BUILDING THROUGH THE MAIN DOORS ON  
THE EAST SIDE OF OSGOODE HALL.

*PLEASE JOIN US TO CELEBRATE THE  
ACCOMPLISHMENTS OF OUR LEGAL SYSTEM.*

## CÉLÉBRATION DE LA RENTRÉE DES TRIBUNAUX DE L'ONTARIO

LE 14 SEPTEMBRE 2009, IMMÉDIATEMENT  
APRÈS LA RENTRÉE DES TRIBUNAUX DE L'ONTARIO,  
LE BARREAU DU HAUT-CANADA OFFRIRA UNE  
RÉCEPTION AUX MEMBRES DE LA MAGISTRATURE ET  
AUX AVOCATS, AVOCATES ET PARAJURISTES.

LA RÉCEPTION AURA LIEU À 16 H 30  
DANS LA GRANDE SALLE, 130, RUE QUEEN OUEST,  
TORONTO. LES INVITÉS DEVRAIENT ENTRER  
PAR LA PORTE DU CÔTÉ EST D'OSGOODE HALL.

*VENEZ CÉLÉBRER AVEC NOUS LES RÉALISATIONS  
DE NOTRE APPAREIL JUDICIAIRE.*

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## TREASURER'S MESSAGE

# Professionalism the key to self governance

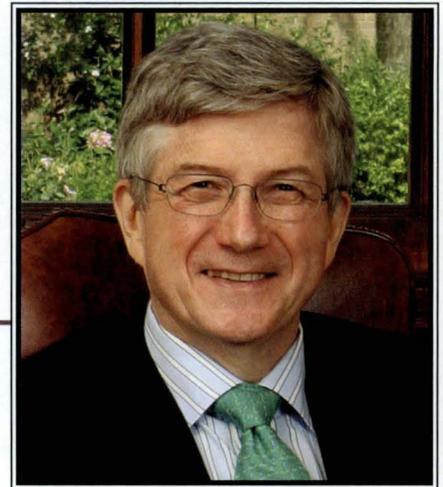
I AM VERY PLEASED TO WELCOME THE MORE THAN 1,200 new lawyers called to the bar at ceremonies held in London, Ottawa and Toronto in June. They join the nearly 40,000 lawyers and 2,400 paralegals already governed by The Law Society of Upper Canada. While these newly called lawyers are entering our ranks in a difficult economic climate, I am confident that the dedicated and enthusiastic people I met will thrive and take advantage of opportunities that will no doubt present themselves.

Speaking to the newest members of our profession reminded me of our need to remain vigilant as a profession against challenges to the independence of the legal profession. To maintain the rule of law in a democratic society there must be an independent legal profession – a profession committed to serving the public that can stand between the citizen and the state. And to maintain an independent legal profession we must preserve the privilege we have to govern ourselves. Public confidence in our ability to protect the public's interests is essential to the preservation of this privilege.

Professionalism is also key to our continued ability to regulate ourselves. Professionalism is a multi-faceted concept. One facet is discussed in our focus article on in-house counsel and the particular challenges they face in the performance of their duties.

Civility is another facet. Uncivil behaviour by a lawyer diminishes the public's respect for the administration of justice and the courts, and damages not only the reputation of that lawyer, but also the profession as a whole. With the loss of respect, comes a loss of confidence. Once lost, confidence can take months or even years to earn back.

Every participant in the justice system, lawyers, paralegals, judges and justices of the peace, has a role to play in encouraging and even enforcing civility. I have written before



Treasurer W.A. Derry Millar

---

## MESSAGE DU TRÉSORIER

# Le professionnalisme qui mène à l'autogouvernance

JE SUIS TRÈS HEUREUX DE SOUHAITER LA BIENVENUE AUX quelque 1 200 nouveaux et nouvelles juristes qui ont été assermentés en juin aux cérémonies de London, d'Ottawa et de Toronto. Ils viennent grossir les rangs des 40 000 avocats et avocates et des 2 400 parajuristes déjà réglementés par le Barreau du Haut-Canada. Malgré le climat d'amertume économique, je suis sûr que l'enthousiasme des personnes que j'ai rencontrées leur permettra de s'épanouir et de saisir les occasions qui se présenteront assurément.

Pendant que je m'adressais aux tout récents membres de notre profession, je me disais combien nous nous devons de garder l'œil sur les obstacles qui se dressent devant l'indépendance de la profession juridique. Pour maintenir la primauté du droit dans une société démocratique, la profession juridique doit être indépendante, au service du public, s'élevant entre le citoyen et l'État. Pour maintenir l'indépendance de la profession, nous devons protéger le privilège que nous avons de nous autogouverner, et la confiance du public dans notre capacité à protéger ses intérêts est cruciale pour ce faire.

Le professionnalisme est également essentiel pour maintenir notre habileté à nous autoréglementer. Le professionnalisme revêt divers aspects. L'un d'eux fait d'ailleurs l'objet d'un article sur les avocats d'entreprises et les défis particuliers qu'ils doivent relever dans leurs fonctions.

La politesse est une autre pierre angulaire du professionnalisme. Le comportement impoli d'un avocat détourne le respect du public envers l'administration de la justice et des tribunaux et peut endommager non seulement la réputation de cet avocat, mais celle de la profession dans son ensemble. La perte de respect entraîne la perte de confiance qui peut prendre des mois, voire des années, à reconquérir.

Tous ceux et celles que vise l'appareil judiciaire, les avocats, les parajuristes, les juges et les juges de paix ont un rôle à jouer pour encourager la politesse et même la faire mettre en application. J'ai déjà écrit des textes sur les réunions que j'ai eues avec les juges en chef et les présidents de l'Association des avocats criminalistes, l'Association des procureurs de la Couronne et la Société des plaideurs pour améliorer le

about my meetings with the Chief Justices, and the presidents of the Criminal Lawyers' Association, the Crown Attorneys' Association and The Advocates' Society to implement methods to facilitate the reporting of uncivil behaviour when it occurs in the courtroom. I also want to explore with members of the Society how we collectively and individually can do our part in this vital task. To this end, I will be arranging a series of meetings with members of the Society beginning this fall across the province to discuss civility issues. Notices of meetings will be sent to members in the relevant area, and details will be posted on the Law Society website so that as many members as possible can participate in these discussions.

Another facet of professionalism is a commitment to lifelong learning. The Chief Justice of Ontario's Advisory Committee on Professionalism includes scholarship as one of the building blocks of professionalism. Lawyers are not only expected to satisfy educational requirements to be admitted to the profession, but are expected to maintain their competence throughout their careers. "Professional expertise, gained through experience, reinforced by mentors, augmented by the example of peers, and developed by continuing legal education, gives the lawyer the ability to apply the relevant law to the client's factual circumstances."<sup>1</sup>

processus de dénonciation des comportements impolis démontrés en cour. Je veux aussi analyser avec les membres du Barreau la façon dont nous pouvons contribuer collectivement et individuellement à cette tâche importante et à cette fin, dès l'automne, nous organiserons une série de rencontres dans la province pour parler « politesse ». Des avis de réunion seront envoyés aux membres et les détails seront affichés sur le site web du Barreau pour générer la plus grande participation possible à cette discussion.

Le professionnalisme se manifeste aussi dans l'engagement envers l'apprentissage la vie durant. Le Comité consultatif du juge en chef de l'Ontario sur le professionnalisme a instauré une bourse à titre de composante du professionnalisme, signalant ainsi que les avocats doivent satisfaire à des exigences de formation pour être admis dans la profession et doivent maintenir leur compétence tout au long de leur carrière. « L'expertise professionnelle, acquise par l'expérience, renforcée par les mentors, augmentée par l'exemple des pairs et perfectionnée par la formation permanente donne à l'avocat la capacité d'appliquer les lois pertinentes aux causes de ses clients. »<sup>1</sup>

En septembre 2008, le Conseil a approuvé l'obligation pour les nouveaux avocats de suivre 24 heures de perfectionnement professionnel agréé en formation juridique permanente pendant leurs 24 premiers mois de pratique. Je crois que le

In September 2008, Convocation approved a requirement that newly called lawyers complete 24 hours of accredited continuing legal education during their first 24 months of practice. I believe that professional development is an integral component of professionalism, and is critical to maintaining the public's trust in the legal profession. Without this trust, our ability to regulate ourselves will be seriously threatened. I have therefore asked the Professional Development & Competence Committee to consider whether to introduce a continuing professional development requirement, and, if so, how such a requirement should be implemented. Such a requirement is already in place for lawyers in other provinces in Canada.

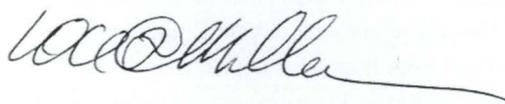
Finally, I want to thank my fellow benchers for their confidence in supporting me for a second term as Treasurer. Leading the Law Society is a tremendous privilege and I am particularly grateful for the opportunity to work with so many dedicated individuals, within Convocation, the Law Society staff and the legal and paralegal communities at large. ■



*I. Chief Justice of Ontario's Advisory Committee on Professionalism, "Elements of Professionalism", <http://www.lsuc.on.ca/media/definingprofessoct2001revjune2002.pdf>, October 2001 (revised December 2001 and June 2002).*

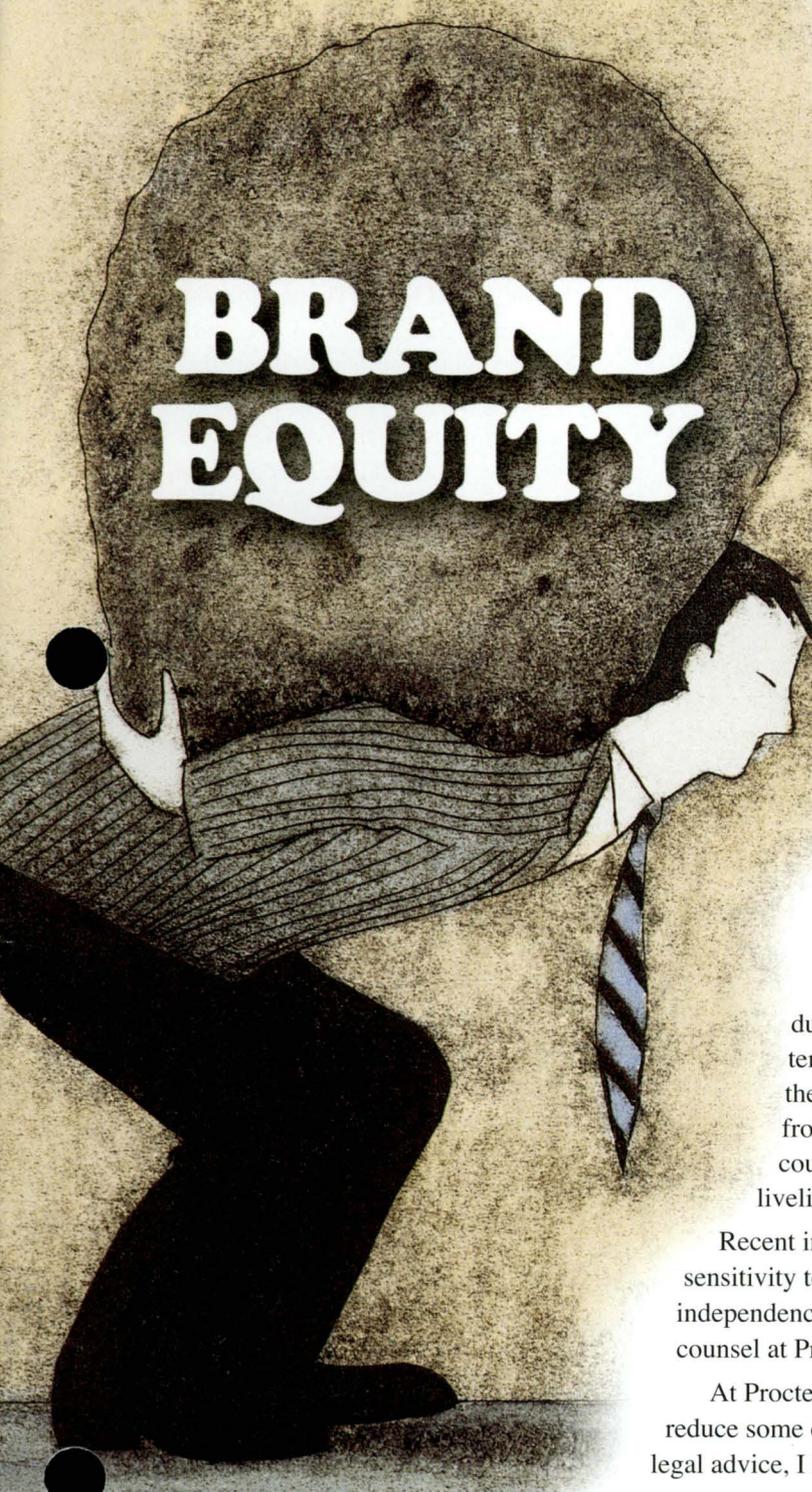
perfectionnement professionnel est partie intégrante du professionnalisme et est indispensable au maintien de la confiance du public dans la profession. Sans cette confiance, notre capacité à nous autogouverner serait sérieusement compromise. J'ai donc demandé au Comité du perfectionnement professionnel d'envisager une composante obligatoire de perfectionnement professionnel et de prévoir comment l'appliquer, le cas échéant. Une telle composante existe déjà dans d'autres provinces du Canada.

Enfin, je veux remercier mes collègues conseillers et conseillères pour la confiance qu'ils et elles m'ont témoignée en reconduisant mon mandat de trésorier. Être à la tête du Barreau est un privilège considérable et je suis particulièrement reconnaissant d'avoir eu la chance de travailler avec tant de gens si dévoués au Conseil, au Barreau et dans les communautés juridiques et parajuridiques en général. ■



*I. Comité consultatif du juge en chef de l'Ontario sur le professionnalisme, « Elements of Professionalism », <http://www.lsuc.on.ca/media/definingprofessoct2001revjune2002.pdf>, Octobre 2001 (révisé en décembre 2001 et en juin 2002).*

# In-house counsel as guardian of brand equity



## BRAND EQUITY

The introduction of the *Sarbanes-Oxley Act* in 2002 by the U.S. government, against the backdrop of the financial scandals that rocked companies like Enron, WorldCom and Adelphia, reverberated throughout the worldwide legal community.

Questions were raised then about the duty of confidentiality to the client and blowing the whistle on improper corporate conduct, and perhaps most importantly, about the independence of counsel, particularly in-house counsel. In response, the Law Society worked with members of the profession and the OSC to develop amendments to the *Rules of Professional Conduct* which strongly supported both solicitor-client privilege and lawyer independence, and gave clear guidance to in-house counsel facing ethical challenges like illegal corporate conduct. These were introduced in March 2004 (see *Relevant Rules of Professional Conduct* overleaf).

A test of the independence of in-house counsel may occur during the current recession, when corporate executives might be tempted to cut corners in an effort to stave off losses and perhaps the very collapse of their companies. Not only may the pressures from above be greater during a recession, but the perils of resistance could be severe for in-house counsel, who would be putting their livelihood on the line when alternative employment is least available.

Recent interviews with senior in-house counsel suggest a heightened sensitivity to recessionary pressures but no infringement on their duty of independence. Typical of the respondents was **Erin O'Toole**, corporate legal counsel at Procter & Gamble Canada, the consumer goods company.

At Procter & Gamble, he says, "There are pressures in terms of trying to reduce some of our costs of outside legal counsel, but in terms of providing legal advice, I have not experienced any incidents where the economic

emphasis has changed the way we give advice.”

While in-house counsel interviewed for this article were confident that their own duty of professionalism and independence had not been eroded by the recession, they could envision that colleagues at other corporations may not be immune to economic pressure.

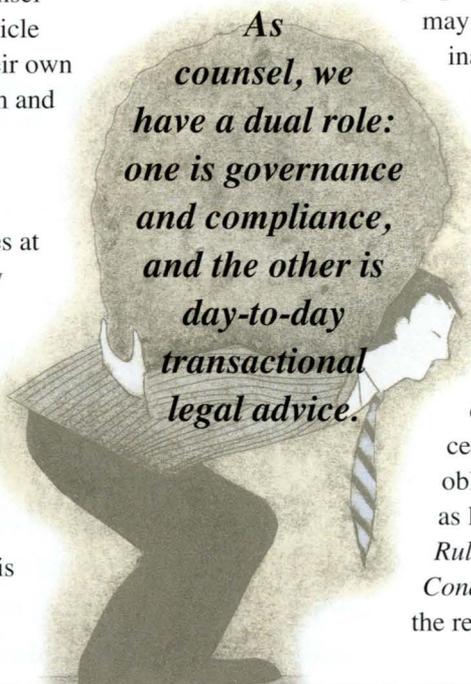
“I suppose that economic pressures might be a driver in some places, depending on what business the company is in, what sort of pressures they’re

under to survive, and what sort of potentially controversial options they might pursue that counsel may view as

inappropriate or over the line,” says **Brian Swartz**, senior vice president, legal of Aecon Group Inc., the construction and infrastructure development company. “But certainly the obligation we have as lawyers – the *Rules of Professional Conduct*, coupled with the regulatory

environment introduced with the advent of Sarbanes-Oxley in the U.S. and Bill 198 in Canada – puts a heightened awareness on counsel. It would be unfortunate if anyone felt that kind of pressure to support a position, initiative or disclosure issue which would be beyond the bounds of prudent legal advice. Certainly, it wouldn’t happen in our organization.”

Even the pressures to reduce outside legal costs can have the effect of infringing upon in-house counsel’s professionalism, says **Kathleen Flynn**, general counsel at Indigo Books & Music Inc. “I haven’t experienced this, but can foresee how counsel could be pushed to take certain positions that typically they would not be or may not be comfortable with. You may, for instance, be asked to render an



As  
counsel, we  
have a dual role:  
one is governance  
and compliance,  
and the other is  
day-to-day  
transactional  
legal advice.

## Relevant Rules of Professional Conduct

### Rule 2.02 (1) Honesty and Candour

When advising clients, a lawyer shall be honest and candid.

### Rule 2.02 (1.1) When Client an Organization

[Commentary] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a legal personality distinct from its shareholders, officers, directors, and employees. ... The lawyer should ensure that it is the interests of the organization that are to be served and protected.

### Rule 2.02 (5.1) and (5.2) Dishonesty, Fraud, etc. when Client an Organization

These are the up-the-ladder reporting provisions. [Commentary] Rules 2.02 (5.1) and (5.2) speak of conduct that is dishonest, fraudulent, criminal or illegal, and this conduct would include acts of omission as well as acts of commission. ... Once a lawyer acting for an organization learns that the organization has acted, is acting, or intends to act in a wrongful manner, then the lawyer may advise the chief executive officer and shall advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, then the lawyer reports the matter “up the ladder” of responsibility within the organization until the matter is dealt with

appropriately. If the organization, despite the lawyer’s advice, continues with the wrongful conduct, then the lawyer shall withdraw from acting in the particular matter in accordance with rule 2.09. In some but not all cases, withdrawal would mean resigning from his or her position or relationship with the organization and not simply withdrawing from acting in the particular matter.

These rules recognize that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organizations’ and the public’s interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization not only about the technicalities of the law but about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable, and consistent with the organization’s responsibilities to its constituents and to the public.

### Rule 2.03 (1) Confidential Information

[Commentary] A lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them.

opinion... on some matter that is outside your areas of expertise. I can sympathize with someone who's under pressure to do that in financially difficult times."

Whether in recessionary times or not, the key to maintaining independence is for in-house counsel to recognize that their client is the corporation as a whole, rather than the president or even the board of directors. While that principle is simple in theory, it can be complicated when an in-house lawyer wears more than one corporate hat.

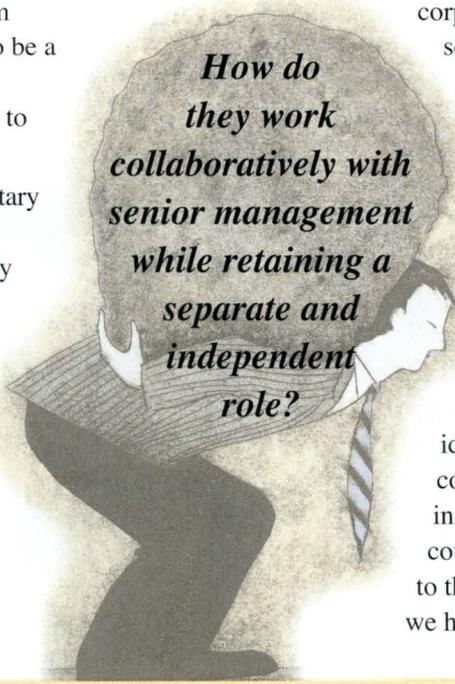
"I do think it would be a challenge for those lawyers who have a dual role," says P&G's O'Toole. "In some companies, legal counsel may serve as a vice-president of legal & corporate affairs. I think that might be more

challenging because they would have a business development role as well as a legal role. Our company is large enough that I am basically paid to be a lawyer and to provide counsel to management."

The commentary to Rule 2.04 (3) deals specifically with this situation. It says, "A conflict of interest may arise when a lawyer acts not only as a legal advisor but in another role for

the client. For example, there is a dual role when a lawyer or his or her law firm acts for a public or private corporation and the lawyer serves as a director of the corporation." In these situations, "Before accepting a dual role, a lawyer should consider these factors and discuss them with the client."

Aecon's Swartz, in his role as legal counsel, has no difficulty identifying his client as the corporation as a whole. But in addition to being in-house counsel, he is also secretary to the board. "As counsel, we have a dual role: one is



**Rule 2.03 (3) Justified or Permitted Disclosure**

[Commentary] A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act. This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the *Rules of Professional Conduct* make it clear that the lawyer shall not knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct (Rule 2.02 (5)) and provide a rule for how a lawyer should respond to conduct by an organization that was, is or may be dishonest, fraudulent, criminal, or illegal (Rules 2.02 (5.1) and (5.2)), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct. Rather, the general rule, as set out above, is that the lawyer shall hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Assuming the exceptions do not apply, there are, however, several steps that a lawyer should take when confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognise that his or her duties are owed to the organization and not to the officers, employees, or agents of the organization (Rule 2.02 (1.1)) and the lawyer should comply with Subrules 2.02 (5.1) and (5.2), which set out the steps the lawyer should take in response to proposed, past or continuing misconduct by the organization.

**Rule 2.04 (3) Avoidance of Conflict of Interest**

[Commentary] A conflict of interest may arise when a lawyer acts not only as a legal advisor but in another role for the client. For example, there is a dual role when a lawyer or his or her law firm acts for a public or private corporation and the lawyer serves as a director of the corporation. Lawyers may also serve these dual roles for partnerships, trusts and other organizations. A dual role may raise a conflict of interest because it may affect the lawyer's independent judgment and fiduciary obligations in either or both roles, it may obscure legal advice from business and practical advice, it may invalidate the protection of lawyer and client privilege, and it has the potential of disqualifying the lawyer or the law firm from acting for the organization. Before accepting a dual role, a lawyer should consider these factors and discuss them with the client.

**Rule 2.09 (7) Mandatory Withdrawal**

Subject to the rules about criminal proceedings and the direction of the tribunal, a lawyer shall withdraw if

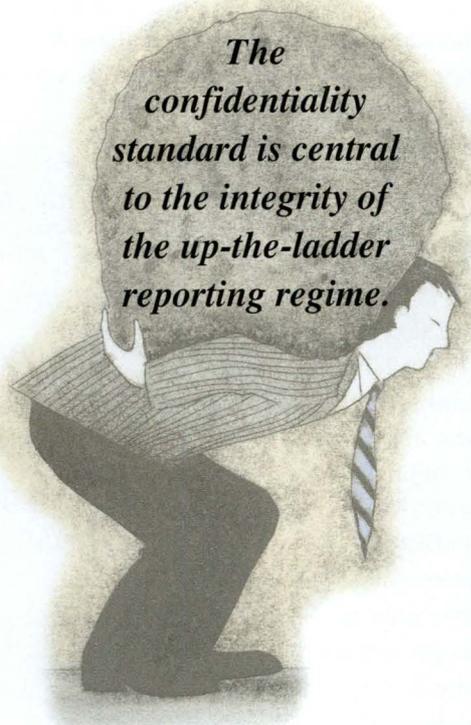
- (d) it becomes clear that the lawyer's continued employment will lead to a breach of these rules,
- (d.1) the lawyer is required to do so pursuant to Subrules 2.02 (5.1) or (5.2) (dishonesty, fraud etc. when client an organization).

governance and compliance, and the other is day-to-day transactional legal advice. At the end of the day, it's the corporation that gets the advice. If an internal client was to ask for something that pushed the envelope and tested independence, then we would push back, as proper governance and corporate compliance take precedence in protecting the overall interests of the corporation."

In the extreme, when counsel is faced with serious corporate misconduct, pushing back could mean in-house counsel reporting "up the ladder" within the organization. The amendments adopted in March 2004 included Rules 2.02 (5.1) and (5.2) to provide the kind of norms that might have prevented the financial scandals that previously occurred. The Rule says that a lawyer who is employed or retained by an organization must, "if necessary... to cause the wrongful conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the conduct was or is dishonest, fraudulent, criminal, or illegal and should be stopped..."

For in-house lawyers, this was not a huge conceptual stretch – escalating a matter up to the board to seek a satisfactory resolution is consistent with the lawyer's duty to the organization as a whole. Still, the practical implications can be significant.

Professor **Lorne Sossin** of the University of Toronto's Faculty of Law notes that being hired by the board rather than by the president or CEO would bolster the independence of in-house counsel. "You want to ensure that when necessary, in-house counsel can have *in camera* access to the board, to discuss matters of 'up-the-ladder reporting,' among other things. That's



*The confidentiality standard is central to the integrity of the up-the-ladder reporting regime.*

difficult when in many organizations, it's the president who does the hiring and firing of counsel."

**David Brennan**, senior vice president, law and general counsel at Ontario Power Generation Inc., warns that making the in-house counsel answerable to the board may have the unintended consequence of actually limiting counsel's ability to discover – and challenge – corporate misconduct. "If I was the CEO, then I would see the counsel as a person whose ultimate allegiance is not to me, but to the board. And I am going to control the information that that person is going to see. He would only be allowed to see the same information that I would let the board see."

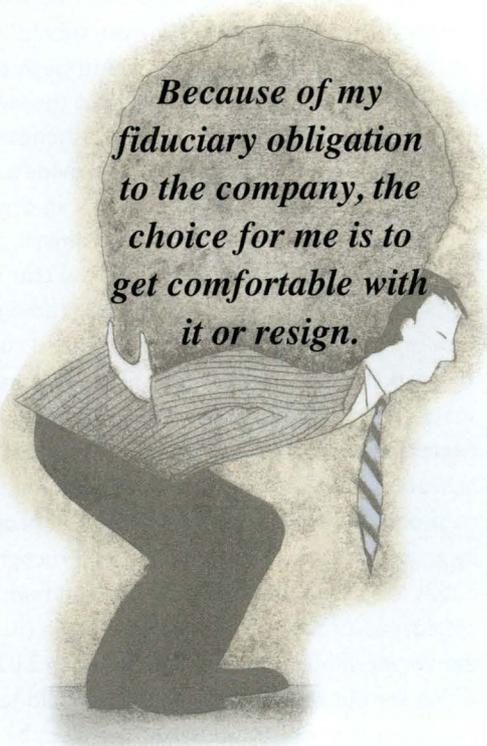
Sossin acknowledges there is no "silver bullet" to preserve in-house counsel's professionalism. There are inherent tensions. "How do they work collaboratively with senior management while retaining a separate and independent role, when it's necessary, in advising the board?"

He is "a little bit skeptical" that Rule 2.02 has indeed led to more

up-the-ladder reporting. But he does believe it has encouraged a culture of oversight and accountability within organizations and attention to special obligations on counsel that can deter misbehaviour. "What we want is not a situation where there is reporting, but rather a situation where there is nothing to report."

Indigo's Flynn agrees and suggests that Rule 2.02 has, on the one hand, heightened in-house counsel's sensitivity to reporting misconduct while, on the other, made them feel more vulnerable. "I think for some in-house counsel, it has created dilemmas and put them in a situation where they may have to make a career-limiting decision. Does that increase their sense of independence? It has certainly increased their duty of independence."

Rule 2.09 (7) (d.1) on mandatory withdrawal specifically states that a lawyer shall withdraw if the lawyer is required to do so pursuant to Subrules 2.02 (5.1) or (5.2)" dealing with dishonesty and fraud on the part of a client that is an organization.

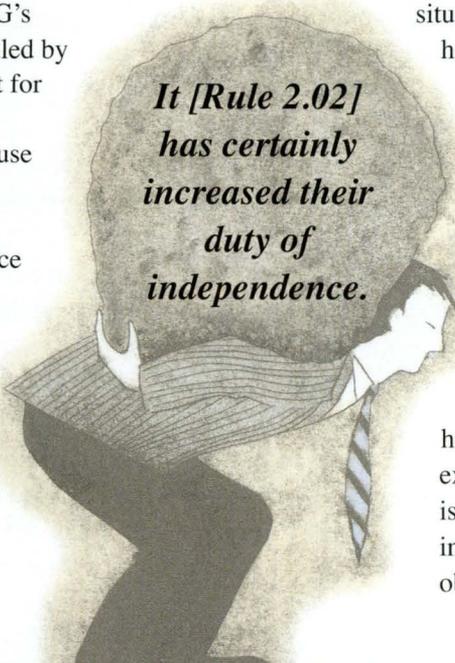


*Because of my fiduciary obligation to the company, the choice for me is to get comfortable with it or resign.*

While up-the-ladder reporting appears to have been widely accepted by in-house counsel, a huge controversy surrounded the U.S.'s initial SEC proposal that, if nothing happens to resolve the issue *within* the organization, the lawyer would be required to report *outside*. The proposed SEC rule called for counsel to make a "noisy withdrawal" whenever a client had not adequately addressed "evidence of a material violation" of the securities laws. U.S. lawyers vigorously opposed the proposed SEC Rule, arguing that it would violate the traditional lawyer-client relationship. This view ultimately prevailed.

In Canada, when considering the amendments to the Rules in 2004, the Professional Regulation Committee declared, "The confidentiality standard is central to the integrity of the up-the-ladder reporting regime. If the openness and candour of the lawyer and client relationship is compromised, the lawyer is much less likely to become aware of improper conduct and to be in a position to counsel the client against it or take appropriate steps to address it."

"I'm not sure I would ever go outside the company on an issue – assuming we're not talking about criminal activity," says OPG's Brennan. If overruled by the board, "It's not for me to go to some higher body. Because of my fiduciary obligation to the company, the choice for me is to get comfortable with it or resign. I don't see a third alternative. I'm bound [by solicitor-client privilege] to not say anything."



***It [Rule 2.02] has certainly increased their duty of independence.***

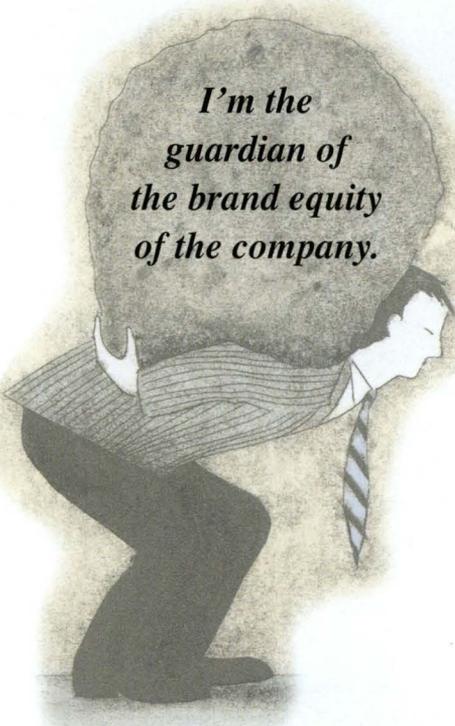
There are, however, limited circumstances other than financial irregularities in which in-house counsel are permitted to override their duty of confidentiality and disclose information to appropriate authorities. Rule 2.03 (3) provides: "Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required."

Says Brennan, "If it were a criminal matter, I would be seeking my own independent legal advice. And if my concern was imminent health issues, I would be getting that advice very quickly."

Asked about the question of disclosure, O'Toole says, "That's a situation that I've never encountered and would be very unlikely to encounter here because of the values and principles that P&G promotes among its employees. But in a hypothetical situation, I would probably

have to consult the Rules and of paramount importance would be my obligation as a lawyer." He would turn to the Law Society's confidential practice resource service for advice. "There's also the opportunity for in-house counsel to consult external counsel on any issue related to practice, including ethical obligations."

But, says O'Toole, "with all of these ethical questions – whether in a recession or not – it comes down to the personal ethics of the lawyer. I have no problem exercising my viewpoint and providing counsel, even if it's contrary



***I'm the guardian of the brand equity of the company.***

to the desires or the plans of one of my internal 'clients.' To do the job well, you have to have the personal confidence to provide counsel in a collaborative way but in a resolute way as well.

"I usually like to preface some of my difficult advice to clients by saying, 'I'm the guardian of the brand equity of the company. You don't want to jeopardize the corporate reputation based on a short-term opportunity.' That would be pivotal for in-house counsel, and if they're not prepared to take that role seriously, they might be in the wrong profession." ■

# The Canadian Corporate Counsel Association

By Leanne Andree, President, CCCA

DURING THE CANADIAN CORPORATE COUNSEL ASSOCIATION'S (CCCA) INAUGURAL WORLD SUMMIT HELD IN VANCOUVER THIS PAST JANUARY, I HAD THE OPPORTUNITY TO SPEAK WITH A NUMBER OF INTERNATIONAL IN-HOUSE COUNSEL AND ANSWER THEIR QUESTIONS ABOUT OUR ASSOCIATION. WHAT DO WE OFFER OUR MEMBERS? WHY HAS THE CCCA CONTINUED TO GROW AND THRIVE? WHAT ARE OUR PLANS FOR THE FUTURE?



**Leanne Andree,  
President, CCCA**

I was pleased to answer these queries, and even a little awed, when I thought about the new programs and services that CCCA continues to develop on behalf of our members. I'm also pleased to bring readers of the *Gazette* up to speed on many of the new – some of these “firsts” – CCCA initiatives.

The sold-out World Summit is a case right on point. This conference, which CCCA developed in concert with our sister associations around the world, was conceived prior to the current economic challenges. We knew that in-house counsel, given the nature of their responsibilities, have limited time to attend conferences and CLE events.

Yet the value of the World Summit – featuring speakers such as 2008 Nobel Prize Winner in Economics, Professor Paul Krugman; Professor Mervyn King, member of the Private Sector Advisory Group of the World Bank on Corporate Governance; and co-chairs Daniel Desjardins, general counsel of Bombardier and Leslie O'Donoghue, general counsel of Agrium – spoke for itself. The summit, just one of CCCA's many CLE-accredited events, drew attendees and speakers from across Canada, the U.S. and as far away as France, Australia, New Zealand, Hong Kong, Malaysia, Belgium, Mexico, the U.K. and South Africa.

In August, CCCA will publish the first-ever Corporate Counsel Compensation Survey in Canada. This groundbreaking survey, developed with The Counsel Network, will provide valuable knowledge about salary, benefits and working conditions of corporate counsel by industry group and geography.

This new survey complements our annual – and significantly expanded – In-House Counsel Barometer, developed with Davies Ward Phillips Vineberg LLP, that measures the pulse of the current state of in-house counsel.

As I spoke with the international corporate counsel at the World Summit, I reflected on the continuing growth of the CCCA.

Formed in 1988, as an affiliate of the CBA, our members encompass corporate counsel regular members, as well as

private practitioners who

participate as associate members. We are a national association, with 12 chapters, welcoming members from all parts of Canada. In 2008, our 20th year, we passed the 10,000-member mark. As a mature association, we still show remarkable growth; in the past three years we have welcomed more than 2,000 members.

Looking forward, later this year CCCA will unveil our online *CCCA Community*. We've been working very closely with Igloo, a company owned by Jim Balsillie of Research in Motion, to create a website that brings together Web 2.0 technology to create an interactive and dynamic site.

I work as an in-house counsel in Waterloo, Ontario. Like many other in-house counsel, especially our sole in-house members, those practising in small departments, in rural areas or smaller urban centres, it is not always easy to connect, share ideas or learn from other in-house counsel.

Thanks to this new online *Community*, all CCCA members will be able to participate in discussion groups, industry and geography forums, network before conferences and events, and continue discussions thereafter.

The new *CCCA Community* underscores our belief that one of the real strengths of the CCCA is our ability to help our members help each other. Currently, the second round of our mentoring program is underway; former mentors and mentees describe their participation as incredibly rewarding.

We look forward to continuing to provide our members with international, professional relationships, and programs and services, always designed with the needs of Canadian corporate counsel in mind. If you would like to know more about the CCCA, please e-mail me at [leanne@ccca-cba.org](mailto:leanne@ccca-cba.org). ■

# Call to the Bar ceremonies

A TOTAL OF 1,239 NEW LAWYERS WERE CALLED TO THE BAR OF ONTARIO AT FIVE CEREMONIES HELD IN JUNE IN LONDON, OTTAWA AND TORONTO. MORE THAN HALF THE CANDIDATES WERE WOMEN (52.7 PER CENT). APPROXIMATELY 20 PER CENT OF THE 215 NEW LAWYERS CALLED AT THE OTTAWA CEREMONY WERE FRANCOPHONE.

O. Ont., K.St.J., C.D., Of.L., Q.C., A.deC. and a Chevalier de la Légion d'Honneur, and the Honourable Madam Justice Frances Kiteley. Detailed biographies of the recipients are available on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca), together with the full texts of their speeches.

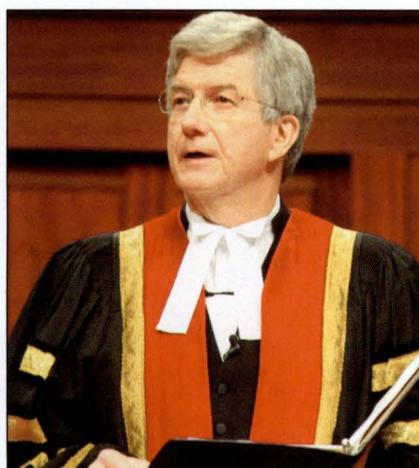
Treasurer W. A. Derry Millar addressed the new lawyers, saying, "I am privileged to be the first person to speak to you after you have been called to the Bar of Ontario. Congratulations. You are becoming members of a noble, learned and honourable profession. It is not a business and you cannot act as business people do.

"In return for your membership in this learned profession, there are a number of obligations that you must fulfil:

- You must act in a professional and ethical manner adhering to the rules that your governing body has regulated.
- You must assume an adversarial role and defend your clients to the best of your ability, but you must do so with civility and integrity.
- You must be loyal to your clients and maintain our sacred oath of solicitor/client confidentiality.
- You must adhere to your duty as an officer of the court and promote the efficient administration of justice.

"Whether you enter the practice of law or exercise your legal knowledge and skills in some other endeavour, I urge you to be responsible for upholding the values of this great profession by ensuring access to justice for all, maintaining the independence of the bar and preserving the rule of law.

"Congratulations once again. Be proud of your accomplishment and be proud of your profession."

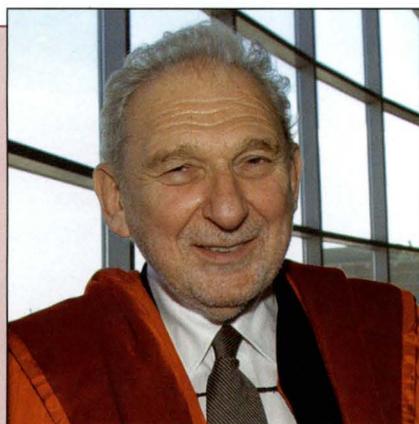


**Treasurer W. A. Derry Millar**

Each year, the Law Society recognizes outstanding achievement by distinguished members of the profession by awarding honorary Doctorate of Law degrees at the Call ceremonies.

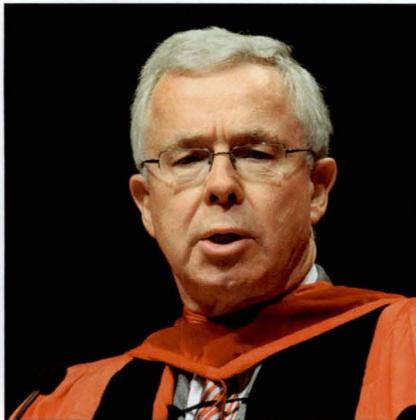
This year, the degree of Doctor of Laws, *honoris causa* (LL.D.), was

awarded to: the Honourable Mr. Justice Sidney B. Linden, Mr. George Thomson, the Honourable Madam Justice Harriet Sachs, Major-General Richard Rohmer, O.C., C.M.M., D.F.C.,



**The Honourable  
Mr. Justice Sidney B. Linden**

**The Honourable Mr. Justice Linden** spoke at the first Call to the Bar ceremony on June 15 in London. "As a profession, we are committed to respecting and upholding the rule of law in a democratic society, and fundamental to that is an independent bar and judiciary. If we as lawyers wish to maintain our profession's independence and high place in society, we must continually demonstrate not only that we possess current knowledge and skills, but that we also possess the core values of honesty, integrity and diligence." Justice Linden then referred to a commencement speech by President Obama where he touched on the importance of civility in an increasingly diverse world. "He was telling us that people can disagree without being disagreeable, and we should return to a more civil public discourse and open our hearts and our minds to those who may not think precisely as we do, or believe precisely what we believe."



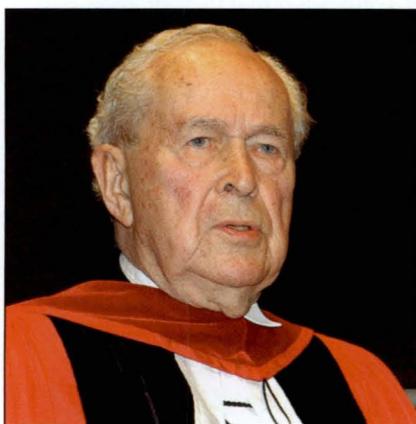
**Mr. George Thomson**

**Mr. George Thomson** addressed the new lawyers at the Ottawa Call to the Bar ceremony on June 17. He urged them to, “Be open to the breadth of possibilities that are available to you: in law, near the law, or in completely different roles that will allow you to use the extraordinary skills that you now possess. Be careful not to see the road too clearly, too narrowly, or too soon. I stand here as a poster person for the possibilities of career change, as someone who has done just about everything except the private practice of law. If I were to identify the one thing that has brought me the most personal and professional satisfaction, it would be this openness to change, the chance to learn something new, and the opportunity to contribute in ways that I couldn’t have imagined when I graduated.”

**The Honourable Madam Justice Harriet Sachs** spoke at the first Toronto Call ceremony on June 18. She spoke of the fundamental human need for connection, saying, “Who is better equipped to rebuild our workplaces and our profession so that they foster, rather than destroy, connection?” She turned to the culture of billable hours. “Billable hours have become the measure of participation and contribution. Yes, they offer the advantage of objectivity. But, in a fundamental way, they miss the point. Participation, human participation in a collective enterprise, cannot be reduced to a number. If you do that, you destroy what makes working together and living together worthwhile – a sense of connectedness – the recognition that we can depend on each other for our mutual survival and well-being.” Justice Sachs then quoted Marcus Aurelius, the Roman philosopher, who said, “Always remember this doctrine: Reasoning beings were created for one another’s sake.”



**The Honourable  
Madam Justice Harriet Sachs**



**Major-General  
Richard Rohmer**

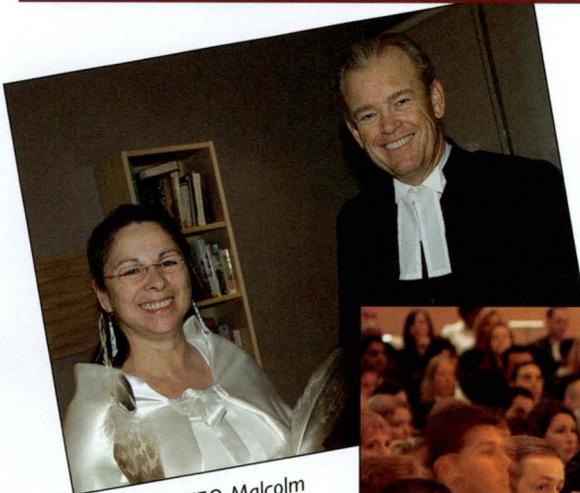
**Major-General Richard Rohmer** addressed newly called lawyers at the afternoon ceremony in Toronto on June 18, and celebrated the number of women in the group, saying, “What a wonderful, amazing, positive change in the gender complexion of the profession.” He exhorted the audience to take pride in the law as a “superb profession. As a lawyer, you have an intellectual background that can take you anywhere. You can flourish in a big law firm or in your own little one. You can move into the corporate world or the academic scene. You can go to the bench – yes, I see several potential judges out there. I can see politicians, a prime minister, many cabinet ministers. I can even see an admiral or two in the military, and several authors of fiction and non-fiction works, even a few university chancellors or the chair of a royal or not so royal commission.”

**The Honourable Madam Justice Frances Kiteley** spoke at the final Toronto ceremony on June 19, highlighting the role that technology can play in lawyers' careers, in responding to work/life balance challenges, and in expanding lawyers' ability to give back to their communities. Calling the new lawyers 'the Net Generation,' she said, "Armed with your law degrees and your status as lawyers, you are the leaders of the connected generation. You have the opportunity to bring that knowledge to bear in the legal world both as service providers and as service consumers. What is important is that technology can provide greater efficiencies and that you can and will establish boundaries between your many professional and family responsibilities."

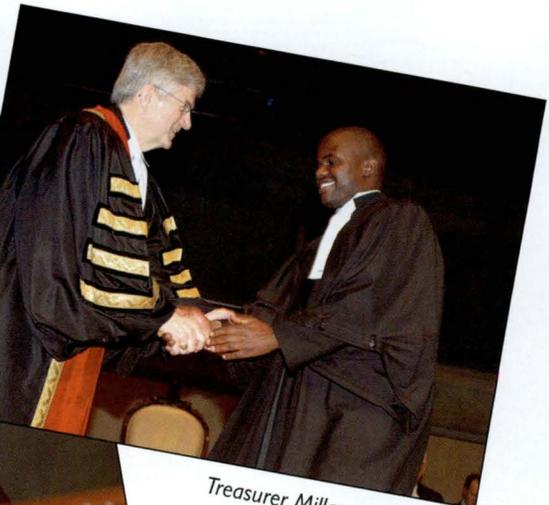
**The Honourable Madam Justice Frances Kiteley**



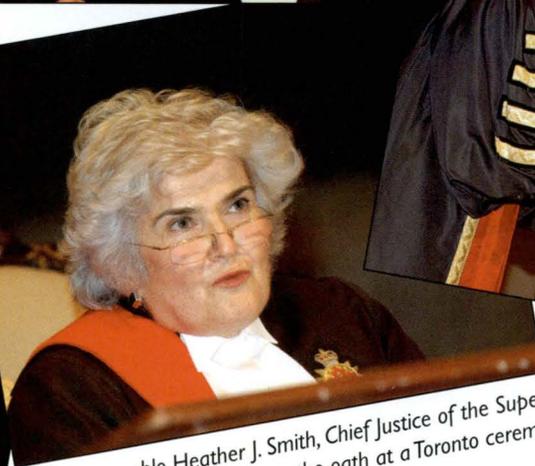
**Images from the 2009 Call to the Bar ceremonies**



Law Society CEO Malcolm Heins with spiritual teacher Anne Solomon who participated in the Toronto Call ceremonies.



Treasurer Millar congratulates a new lawyer.



The Honourable Heather J. Smith, Chief Justice of the Superior Court of Justice, administering the oath at a Toronto ceremony.

# The paperless office

by Donna Neff

INTERESTINGLY, IT HAS BEEN SUGGESTED THAT “THE FIRST STEP IN GETTING TO A PAPERLESS SOCIETY IS GETTING RID OF THE LAWYERS.”<sup>1</sup> DESPITE SUCH SENTIMENTS, WITH CAREFUL PLANNING AND PREPARATION, LAW OFFICES CAN AND ARE GOING PAPERLESS WITH TREMENDOUS SUCCESS.

## Benefits

Law practices have always relied heavily on physical paper documents. Much time and effort is expended in the filing, storing, locating and retrieving of physical documents. Every facet of this process is simplified by converting to a paperless practice, with the actual physical handling of a document reduced to a single occurrence, scanning, making electronic filing far more efficient and less time-consuming.<sup>2</sup>

With the implementation of a well thought-out naming and storage process, going paperless can dramatically decrease the amount of time spent locating and retrieving documents, both current and archived.

The actual use of documents is also improved. Documents are instantly accessible and can be simultaneously accessed by more than one staff member. The cumulative effect of these benefits is increased productivity and efficiency for all staff members.

Most firms have a finite amount of on-site storage for both current and archived files, and the cost of off-site storage is often prohibitive, especially for smaller firms. A paperless office can greatly reduce, if not eliminate, this cost.

More and more, people are choosing to work away from the office. A paperless office allows staff to remotely access the firm’s files and work effectively and productively off-site.

Last, but certainly not least, is the reduction in the firm’s environmental impact — the amount of paper saved is tremendous. Similarly, valuable real estate is not needed for the storage of physical documents.

## The process

An absolutely critical first step is the development of a plan as to how your firm’s transition will be realized. Buy-in by affected staff members is also crucial.

The initial planning stage should involve brainstorming the goals you hope to achieve in going paperless. These should be prioritized according to importance. Ongoing reference should be made to your goals while developing your plan in order to ensure your ultimate objectives are met.

## Scanning

The standard for electronic documents in the legal profession is a Portable Document Format (PDF) file.<sup>3</sup> The advantage of PDF is that it affords a



practical and user-friendly format for working with electronic documents which is consistent across varied applications and platforms.<sup>4</sup>

Every document received, whether electronically or in paper form, by your office, should be turned into an electronic or digital copy (PDF). Electronic documents, such as incoming and outgoing e-mails, are also converted to PDF files.

A process for scanning should be created that addresses when a document is to be scanned or printed to PDF, by which staff member, and what is to be done with the original document. This process should be routinely reviewed and revised until you are able to determine the most efficient practice for your firm.

At our office, the administrative assistant who opens incoming paper mail is the person who scans each letter, invoice or other document, and electronically names and files it in the correct folder.

As a practical tip, it is advisable not to scan existing documents and closed files. We found that it made sense to commit to going paperless for all new files from a specific date forward. Another approach may be to select a practice area or a small committed group as a pilot project, and then to expand to other areas once you have a standardized practice in place.

### **Document naming**

Once scanned (or converted to a PDF file), all electronic documents should be named in a consistent, standardized manner by creating a standardized protocol.

Develop a naming process that will allow documents to be easily identified in order to facilitate retrieval. For many offices, it will be practical to begin the name of each file with a date to ensure that all documents in a given folder are sorted chronologically.<sup>5</sup> We use the date of the document and not the date on which it was scanned or printed. It may also be helpful to develop a system to differentiate

between received and sent documents; for example, we include "SENT" in the file name for all documents that have been physically and/or electronically delivered.

### **Storing**

A logical storage structure for electronic documents is critical to the success of a paperless office. It may be helpful to think of the storage structure of your electronic documents in terms of basic filing cabinets which exist in virtual space and are shared over a local network.<sup>6</sup>

You may have various filing cabinets with names such as "Clients," "Closed Files," "Administrative Work," etc. Each computer, whether in the office or at a remote location, links to the filing cabinets by mapping a network drive, e.g. C:\Clients. The cabinet called "Clients" may have subfolders within it labelled A to Z, e.g. C:\Clients\S.<sup>7</sup>

You may have subfolders for each client, e.g. C:\Clients\S\Smith\Real Estate. Within each matter subfolder, there may be subfolders to aid in the organization of the various types of documents particular to each matter, such as correspondence, drafts, etc., e.g., C:\Clients\S\Smith\Real Estate\Correspondence. The entire path and file name should not exceed 128 characters as some software is unable to deal with longer names.

To ensure consistency, create a set of predefined folders and subfolders for each type of matter (we refer to ours as 'folder templates') your firm handles.<sup>8</sup> When a new file is opened, the appropriate template is simply copied and pasted into the correct alphabetical folder and the client-specific information inserted.

Using these examples, anyone can create similar templates tailored to a firm's needs and areas of law. By using folder templates, not only are all folders named consistently, but significant time is saved by not having to create the same folders every time a new matter is opened.

## **Do we have your e-mail address?**

The Law Society is encouraging members to provide their e-mail addresses as an environmentally friendly means of exchanging official correspondence.

Members are requested to provide their e-mail addresses to Membership Services at [records@lsuc.on.ca](mailto:records@lsuc.on.ca). Please specify if it is a personal or business e-mail and whether or not we can publish your business e-mail in the Law Society Directory. Personal e-mail addresses will be kept confidential, and only used when the Law Society needs to contact members.



## Backups

As physical paper files will eventually be destroyed, reliable and frequent backups are the most important component in any plan to go paperless. At our office, multiple layers of backups have been established including incremental and full backups, as well as on-site and off-site backups.

When we reviewed our backup system, our goal was to be able to recover from a major catastrophe as quickly as possible. We also wanted to be able to recover a single file that was corrupted or inadvertently deleted. Our backup system addresses both scenarios. We also ensured there were different types of backup media and verified that a backup could be restored in the event of a hard drive failure.

We use four portable hard drives which are rotated out of the office each week. Each portable hard drive contains a full backup which is created on the weekend, as well as daily incremental backups that are created each weekday that follows. The portable drive is rotated off-site on Fridays and the next portable hard drive brought on-site. At all times, there are three hard drives off-site.

## The equipment

The next step is to identify what tools will be needed to carry out your plan. One crucial piece of software is Adobe Acrobat Professional. This software, along with a scanner, allows you to easily convert physical documents to PDF, as well as documents from other electronic formats like Word and Outlook.<sup>9</sup>

You may also want to consider the use of a document management system, which can assist in organizing, managing and retrieving electronic documents.<sup>10</sup>

Despite a standardized naming and storage protocol, electronic documents can still go missing. Free or low-cost desktop search engines, such as Copernic, can be used to locate misfiled electronic documents. These create an index of your computer network allowing them to locate an electronic document quickly based upon a certain phrase, unique word or other criteria.<sup>11</sup>

A critical hardware component is a scanner. In choosing scanners for your office, you will want to consider both speed (pages per minute) and size of sheet feeder.<sup>12</sup> The type and number of scanners your office will need depends upon the size of your practice and your scanning protocol. You may want to consider providing some or all staff members with personal (desktop) scanners, as well as a high-speed scanner placed in a central location. Personal scanners maximize efficiency as they allow for scanning contemporaneously with the creation or handling of a document.<sup>13</sup>

In my view, it is extremely important to provide each staff member with a second monitor. It should be possible to see at least two (or more) documents side-by-side on the monitors in the same way that we lay out physical documents on our desk.

In our office, all computers (including two that are home-based) are connected to our office network. This allows

everyone to access the central databases where documents and data are stored.

## Our experience

Going paperless does not have to mean going completely without paper. At our office, going paperless has meant going with much less paper. We continue to open a physical paper file for each new client or matter and store papers in the file while it is active. When any document is received, it is immediately scanned if paper, or printed/converted to PDF if it arrives electronically.

Although most paper that passes through our office is eventually shredded, certain original documents such as wills, court orders and agreements must be kept in their original paper form. They are stored in the traditional manner in fire-proof, secure cabinets.

The advantages of going paperless have been tremendous. Locating documents is quick and easy due to our consistent naming and storage structure. Practically everything is available online from anywhere. Going paperless can result in increased productivity and efficiency, and reduced storage, filing and staffing costs. Who knows? Maybe the first step in getting to a paperless society will be taken by the lawyers. ■

This article has been abridged from a paper entitled: *Moving to a Paperless Office: It's Easier Than You Think* presented by Donna Neff to the 4th Annual Solo and Small Firm Conference and Expo, held May 7, 2009 at the Law Society. Donna Neff is the principal in Neff Law Office Professional Corporation, based in Ottawa. A full copy of this and other papers presented at the conference are available at <http://ecom.lsuc.on.ca/cle/product.jsp?id=CLE09-0050201->



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# Fraud, money laundering and other illegal activity

LAWYERS ARE ATTRACTIVE TO FRAUDSTERS WHO ARE CONTINUALLY CREATIVE IN THE DEVELOPMENT OF SCAMS FOR THE UNSUSPECTING.

The prevalence of real estate fraud, the possibility of using trust funds to launder money and the opportunity to present counterfeit drafts in any kind of transaction make lawyers susceptible to illegal activity. As reported in the *Gazette* (Summer 2008, Vol. 12, No. 2), it is essential that lawyers take steps to reduce the risk to their businesses by being alert to the possibility of fraud and aware of the various modus operandi that fraudsters employ.

“We continue to hear of incidents of real estate fraud,” said Caterina Galati, senior counsel, Professional Development & Competence, at the 4th Annual Solo and Small Firm Conference and Expo.

Real estate transactions are not the only ones where lawyers must be vigilant, however. Lawyers have been retained on transactions for business loans or in matters involving debt collections which appear legitimate, but involve the lawyer depositing a counterfeit cheque, money order or bank draft into the lawyer’s trust account against which the fraudster then directs the lawyer to pay out funds, often into another account.

“Any of these transactions can be used by the fraudster to effect illegal activity,” said Galati.

William Holder of the Professional Regulation Department highlights another type of fraud: advance-fee and investment fraud schemes. In these, the client retains a lawyer to receive funds in trust from members of the public, typically as an advance payment for a service or an investment opportunity. By retaining a lawyer to act as the recipient and conduit of funds in their scheme, the purpose of which is just to extract money from members of the public, the client adds legitimacy to their scheme. Funds collected are ultimately disbursed to the fraudster.

In addition, those wishing to launder money may attempt to use a lawyer’s trust account for that purpose. Money laundering is basically the act of making the proceeds of illegal activity

appear as if they come from a legitimate source. A launderer may engage in a series of transactions to distance the funds from their source.

The introduction by the Law Society of rules such as the two-lawyer requirement for transfers of real property and client identification and verification are essential tools in battling fraud and money laundering.

Lawyers who have any concerns about the legitimacy of a cheque or bank draft should take steps to protect themselves, particularly where there are other red flags about the transaction. In a recent alert, LAWPRO has advised lawyers not to rely on oral confirmation from their bank at the time of deposit that a bank draft is good and to wait until they have second bank-to-bank verification before issuing funds from their trust account (see <http://www.practicepro.ca/practice/pdf/fraudblast20090708.pdf>).

## *Inside the firm*

Galati also advised lawyers not to discount the possibility of fraud or illegal activity occurring within their firm. “Sometimes, fraud involves a trusted employee who has been with the firm for many years; it may involve a dishonest partner. Sometimes an employee will obtain employment with a law firm for the purpose of carrying out illegal activity.”

She advised law firms to review both hiring and supervisory practices, as well as accounting controls. With respect to recruiting new employees, it is important to verify past employment, call references and if needed, undertake background checks. In a small office, where staff usually handle most aspects of the accounting, billing and payment cycle, as well as the receipt and processing of trust funds, this is especially important. Equally important is for practitioners to understand all aspects of the operation and reconciliation of their trust accounts and other bookkeeping records.<sup>1</sup>

## *10 tips for fighting back*

Fraudsters look for easy targets – lawyers who ask no questions, or have no systems in place to fight fraud or other illegal activity. Knowledge is the key to fighting back.

1. Understand how fraud and money laundering can occur – learn to recognize the red flags. The Law Society and LAWPRO regularly publish articles and fraud warnings on

- their websites and in journals. The Financial Action Task Force, an intergovernmental body that develops policies to combat money laundering and terrorist financing, publishes information on money laundering – see [www.fatf-gafi.org](http://www.fatf-gafi.org).
2. If you have staff, train them to recognize the red flags, and set up procedures for them to bring red flags to your attention. Supervise your staff to ensure that procedures are implemented properly (See *Gazette*, Fall/Winter 2006, Vol. 10, No. 3 available at <http://www.lsuc.on.ca/news/b/olgf/fallwinter-2006-vol10-no3> for red flags).
  3. Know your retainer. Ask questions and undertake additional investigations if you suspect that your client is engaged in illegal activity and that you might be assisting in such activity or illegal conduct. Keep notes of your inquiries. The *Rules of Professional Conduct* say that you must make reasonable inquiries if you suspect that you might be assisting your client in illegal conduct.
  4. Withdraw from representing a client if you become aware that you would be assisting or encouraging illegal activity. If a client is perpetrating a fraud against you, consider reporting the matter to the authorities.
  5. Know your client. Obtain identity information and verify identity in accordance with the Law Society client identification and verification requirements. Also, be sure to follow client instructions regarding identification, such as lender instructions, when you act for a bank in a mortgage or loan transaction.
  6. Keep copies of all documents and notes made to the file.
  7. Safeguard the information you collect and store.
  8. If you act in a joint retainer, make material disclosure to all clients in the retainer. In particular, if you act for a borrower and a lender in a mortgage or loan transaction, the disclosure must be in writing before the advance of funds.
  9. Ensure that you only use your trust account to deposit monies relating to a matter for which you are retained.
  10. Never share your personalized specially encrypted diskette (PSP) or key to access the e-reg<sup>TM</sup> system and implement procedures to ensure your staff do not share their diskettes or keys.

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Reference: I. Elliott LSM, E. Susan, *Is there a crook in the firm?* LAWPRO Magazine Issue 4, Vol. 3, December 2004.

## How to protect your law practice from fraud

- Set an example – act ethically in your own practice.
- Be an active participant in all aspects of your firm's file processing, particularly the movement of funds in trust and general accounts. Understand the recording processes and do your own spot audits of files.
- Ask your staff to identify fraud risks and suggest ways to protect against them.
- Develop sensible hiring policies, and at a minimum, check references and employment history.
- Separate the processes of creating, posting and reconciling cheques and receipts.
- Keep computer passwords fresh, changing them periodically on a random basis.
- Consider having two signing authorities for cheques over a certain amount.
- Reconcile your accounts, checking source documents and original bank statements.
- Do not let accounting records fall into arrears; keep them current daily.
- Have a sensible cheque signing policy and stick to it. At a minimum, do not sign blank cheques or ones with no payee.
- Do not sign cheques when you are distracted or in a hurry.
- Speak with your accountant and banker about steps you can take to minimize risk and install better controls.

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Excerpted from: ***Is there a crook in the firm?*** by E. Susan Elliott LSM. First printed in LAWPRO Magazine Issue 4, Vol. 3, December 2004. Reprinted with permission of LAWPRO. The full article is available at <http://www.lawpro.ca/LAWPRO/FraudCrookinFirm.pdf>

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For more information on internal fraud, see ***When the unthinkable happens: What to do when partners, associates or staff commit fraud***, published in LAWPRO magazine, Fall 2008 (Vol. 7 No. 4) and available at [http://www.practicepro.ca/LAWPROMag/Debenham\\_InternalFraud.pdf](http://www.practicepro.ca/LAWPROMag/Debenham_InternalFraud.pdf)

# New registries support lawyers

TWO NEW REGISTRIES HAVE RECENTLY BEEN LAUNCHED ON THE LAW SOCIETY WEBSITE WHICH ARE DESIGNED TO SUPPORT LAWYERS AND LAW STUDENTS.

## Articling Registry

The Articling Registry, an initiative proposed by the Licensing and Accreditation Task Force Report and approved by Convocation in September 2008, was launched in mid-June.

The registry is designed to assist law school students and licensing candidates in their job searches to find more information about articling positions that are available across the province. It is also designed to assist firms, including small- and medium-sized firms outside of major urban centres, to tap into the people who are available to take up articling positions. This is a free service for both firms and candidates.

Firms can post articling opportunities on the registry that include information like a firm profile, details about the position available and starting date.

Individuals can also post profiles setting out information about the law school they attended, the areas of practice they are interested in, whether they are willing to relocate, and their availability in terms of start date.

Only firms with an articling opportunity will be able to search the individual profiles. Individual contact information is protected so firms are able to contact a candidate by sending an automated e-mail to articling candidates they are interested in, to which the candidate can choose to reply or not.

“One of the advantages of the registry is that the whole process is automated,” says Daphne Simon of the Professional Development & Competence department.

“This allows firms and articling applicants to edit their listings. Also, firms that have filled positions and candidates who have taken up jobs can remove their information from the registry themselves.

“The registry is up and running,” says Simon. “This is the time when many candidates are looking for articling positions so that they can meet the 10-month articling requirement before calls next summer.”

## Practice Locum Registry

You’re a hard-working sole practitioner and you love your practice, but you’re worried about burnout. A proper vacation – more than the odd day here and there that you’ve been able to snatch over the past few years – would revitalize you. Who will take care of your clients while you’re away?

Your firm has just been retained on a major file when your partner is hired on a six-month contract to serve as in-house counsel with one of your corporate clients. You have a full caseload – how are you going to handle the extra work?

Your partner suffers an unexpected illness. Happily, the prognosis is good, but he’s going to need a few months to get back on his feet. How can you cover his work while he recuperates?

Any of these scenarios can cause enormous stress for solo or small practitioners, in some cases threatening their ability to deliver the level of service that their clients are entitled to expect and that they want to give.

## New service

This past May saw the launch of the Practice Locum Registry on the Law Society website which is designed to support practitioners who need to be away from their practice or require temporary help for any number of reasons – parental leaves, vacations, illnesses, other family issues, or work pressures.

“The idea of the Practice Locum Registry is to facilitate a network that puts firms who need assistance together with qualified lawyers who are willing to offer their services on a temporary basis,” says Laurie Pawlitzka, co-chair of the Retention of Women Working Group. “This is a new service that allows firms of any size to register and set out their requirements, and lawyers who are offering their services to highlight their qualifications, experience and availability.”

## What is a locum?

A locum lawyer is a lawyer who stands in for another practitioner while the practitioner is away from his or her practice, whether for a short period or an extended leave. Generally, a locum will be retained to work in the contracting law firm or lawyer’s offices, to deal with files handled by the firm. A locum may also be brought in to handle specific types of matters or a particular project, and can work full-time or part-time, depending on the requirements of the situation. The logistics of each arrangement are at the discretion of the contracting parties.

Lawyer Shelley Kaufman has worked on a contract basis for law firms for over 10 years, primarily on planning and municipal law cases. “The image of outsourcing legal work has changed considerably over that time,” she says.

“Law firms are more open to new ways of working and realize that it doesn’t always make sense to incur more overhead costs for a particular file or for a fixed period that needs to be covered like a maternity leave.”

Oakville lawyer Karen Thompson was a sole practitioner with a busy family law practice who hired a locum when she scheduled an extended holiday. “I let my clients know that I was going to be away, but knew that there were a couple of files

that would need watching,” she says. “I found a colleague who had some spare capacity, and introduced her to my clients. She then came in a few days a week and dealt with issues as they arose. Both my clients and I knew there was a competent person available to provide services as required.”

#### Online resources

The Practice Locum Registry on the Law Society website has a wealth of

resources about how to structure a locum relationship, as well as contract considerations and sample clauses dealing with issues like fee arrangements, supervision, termination and confidentiality. Ethical issues, such as conflicts of interest, client management and rules of professional conduct, are also covered. Visit <http://rc.lsuc.on.ca/jsp/locum/index.jsp> for more information. ■

## GUIDE TO

# Developing a harassment and discrimination policy for law firms and legal organizations

The Ontario Human Rights Commission has stated that the best defence against human rights complaints is to be fully informed and aware of the responsibilities and protections included in the Ontario *Human Rights Code*. It is well established that the adoption of effective harassment and discrimination policies and procedures, and the design and delivery of education programs assist in creating a respectful work

environment and in reducing the risk of liability for employers.

The Law Society has developed a model harassment and discrimination policy for law firms and legal organizations. The model policy includes guidelines to assist firms, large and small, in the development of their own policies.

### What are the relevant laws and rules?

The Ontario *Human Rights Code*, Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct* and Rule 2.03 of the *Paralegal Rules of Professional*

*Conduct* prohibit harassment and discrimination in the legal workplace, in professional dealings and in the delivery of services.

### What are the advantages of written policies?

The advantages of written policies include:

- promoting a respectful workplace environment
- demonstrating that management takes its legal and professional obligations seriously
- providing procedures for handling complaints
- encouraging the prompt resolution of workplace incidents
- setting out preventive, remedial and disciplinary actions that may be taken
- minimizing the risk of harm to staff and lawyers, as well as risk that the firm will be held liable.

*What steps should a firm take?*

► **Establish a policy drafting committee**

To enhance the credibility of your policies within the firm, establish a drafting committee that is composed of partners, associates, paralegals and staff of both sexes and reflects diversity within the firm. Individuals with expertise in employment and/or discrimination law should also be included.

► **Develop the policy**

Committee members should know the applicable law and any relevant existing firm practices and policies. The policy should be developed via a consultative process to increase buy-in by all members of the firm.

► **Communicate the policy**

Once adopted, it is important to develop an education strategy and to communicate the policy to all members of staff. Clear management support is vital to this process.

► **Implementation**

Firms may wish to give the responsibility of implementing and applying the policy to specific individuals, such as appointed advisors, or to an equality committee. Those responsible for the implementation should have a thorough understanding of the specifics of the policy, the law, interviewing techniques and information gathering.

► **Complaint procedure**

The model policy sets out various options as to how a complaint procedure can be handled. Some elements of a successful process to be considered include time limits; investigation; mediation; temporary accommodation; remedial action; and appeal processes and other avenues of recourse.

► **Review of the policy**

It is suggested that the policy be reviewed on a periodic basis, with the first review one year after adoption so that firms can assess its effectiveness.

Find the new model harassment and discrimination policy in the Resource Centre of the Law Society website at <http://rc.lsuc.on.ca/pdf/equity/modelHarassmentPolicy.pdf>

Other model policies available on the Law Society website include:

- Advising a Client of French Language Rights in the Judicial and Quasi-Judicial Context
- Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment: A Model Policy for Law Firms and Other Organizations
- Guide to Developing a Policy Regarding Workplace Equity in Law Firms
- Guide to Developing a Policy Regarding Flexible Work Arrangements
- Guide to Developing a Law Firm Policy Regarding Accommodation Requirements
- Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices

## L'AJEFO à Kingston

Cette année, l'Association des juristes d'expression française de l'Ontario tenait son 30<sup>e</sup> Congrès annuel à Kingston sous le thème *Célébrons notre vitalité*. Encore une fois, le Congrès a permis à ses membres de suivre de la formation permanente en français dans divers domaines. À cet effet, le trésorier du Barreau, Derry Millar, a exprimé, dans son allocution en français, son espoir que la formation juridique permanente devienne une composante obligatoire du perfectionnement professionnel pour tous les membres du Barreau, faisant remarquer que déjà, en suivant ce congrès, les avocats et avocates présents auraient accumulé douze des vingt-quatre heures que le Barreau envisage d'exiger. Ce Congrès a aussi été l'occasion de souligner la désignation de Kingston comme 25<sup>e</sup> région désignée bilingue ainsi que le 40<sup>e</sup> anniversaire de la *Loi sur les services en*

*français*. Joignant l'utile à l'agréable, une partie du Congrès s'est déroulée dans le cadre historique du Fort Henry, inscrit comme site du patrimoine mondial de l'UNESCO en 2007. De plus, l'Ordre du mérite a été remis à la ministre Madeleine Meilleur ainsi qu'à M<sup>re</sup> Ronald Caza en reconnaissance de leur dévouement à la cause francophone et à l'amélioration des services juridiques en français en Ontario. M<sup>re</sup> Joseph Roach a aussi reçu les honneurs de l'AJEFO pour sa longue carrière de professeur de droit. Enfin, les congressistes se sont donné rendez-vous l'an prochain dans la ville biculturelle de Strasbourg, du 1<sup>er</sup> au 3 juillet. Détails à suivre dès 2010!

Le texte du discours du Trésorier Millar est disponible dans son intégralité sur le site du Barreau à [www.lsuc.on.ca](http://www.lsuc.on.ca). ■

VOICI QUELQUES POINTS SAILLANTS DES CONFÉRENCES AU CONGRÈS DE L'AJEFO DE CETTE ANNÉE. M<sup>es</sup> GUY RÉGIMBAL, JULIE AUDET, MIMI MARELLO, CHANTAL TOURIGNY ET RON CAZA SE SONT PARTAGÉ LE MICRO À TOUR DE RÔLE POUR PARLER DES SUJETS SUIVANTS. (UNE VERSION PLUS LONGUE DE CET ARTICLE SE TROUVE SUR [WWW.LSUC.ON.CA](http://WWW.LSUC.ON.CA).)

### **Aliénation parentale**

Les intervenants en droit de la famille ont parlé d'aliénation parentale, ce syndrome où un parent conditionne l'enfant à haïr l'autre parent. L'intervention des tribunaux dans l'aliénation parentale est un concept relativement nouveau. On s'est demandé si l'appareil judiciaire était le meilleur endroit pour traiter des droits de visite et de garde. La Commission du droit de l'Ontario proposera un rapport en 2010 sur le système de justice familiale et les besoins des utilisateurs, et les

propositions des travailleurs du système de justice pour y apporter des améliorations.

### **Pension alimentaire**

Dans *Serra c. Serra*, la Cour a tenu compte des effets de la crise économique pour faire changer les aliments en expliquant que M. Serra, qui avait vraiment tout fait pour se conformer à l'ordonnance alimentaire, n'avait pas la maîtrise de sa situation économique. Les avocats et les juges préoccupés par le fait que les règles régissant la pension

alimentaire sont de nature très discrétionnaire devraient lire la version définitive des lignes directrices facultatives en matière de pensions alimentaires pour époux, publiée par le ministère de la Justice du Canada en juillet 2008, qui visent à introduire plus de prévisibilité dans les règles en fonction du cadre législatif actuel.

### **Droit linguistique : Caldech**

Dans la décision *Desrochers c. Canada (Industrie)*, dont la lecture a été fortement recommandée, le Centre francophone d'avancement et de leadership en développement économique communautaire de la Huronie (CALDECH) se battait depuis des années pour obtenir du financement d'Industrie Canada. La Cour suprême a reconnu en 2009 que le gouvernement fédéral a l'obligation constitutionnelle de mettre à la disposition du public des services de qualité égale dans les deux

langues officielles et que, pour réaliser l'égalité linguistique, le gouvernement peut avoir à offrir des services dont le contenu est distinct. L'égalité réelle par opposition à l'égalité formelle doit être la norme, et l'exercice des droits linguistiques ne doit pas être considéré comme une demande d'accommodement. Bien que l'organisme n'ait pas eu gain de cause sur toute la ligne, la décision aura toutefois permis à toutes les minorités linguistiques au Canada de faire reconnaître la notion de « service de qualité égale ». Ce jugement permettra de sensibiliser davantage le gouvernement fédéral à ses obligations linguistiques envers les minorités.

### **Droit immobilier**

M<sup>e</sup> Raymond Leclair a démontré que la recherche de titre est nécessaire pour assurer l'intégrité du système de droit immobilier dans l'intérêt public. Il a parlé par exemple des nouveaux défis que pose l'énergie solaire ou éolienne : comment négocier les servitudes sur les fermes où on pose les éoliennes, comme celles de Kingston, ou le droit au soleil d'un voisin dont l'espace visuel serait bloqué par un étage potentiel de panneaux solaires. Il a prié les avocats de protéger l'excellente réputation des titres en Ontario en ne négligeant pas de faire des recherches qui pourraient détecter des problèmes.

### **Fraude immobilière**

M<sup>e</sup> Raymond Gouin a donné un abécédaire éloquent de la fraude par faux chèques ou par prêt commercial qui vise particulièrement les petits cabinets et les avocats exerçant seuls. Heureusement, la nouvelle règle de mars 2008 du Barreau obligeant d'avoir deux avocats dans les cessions de titres, a rendu difficiles certains scénarios de fraude. Il a fait remarquer que quand une grosse fraude est commise, tous les avocats payent une surcharge, tout le monde en souffre et tout le monde devrait se sentir responsable et agir au lieu de subir. ■

## **Le Meilleur ordre du mérite**



*Mme Meilleur entourée de Daniel Boivin et de Sean McGee, président de l'AJEFO*

Cette année, l'AJEFO a décerné l'ordre du mérite à la ministre Madeleine Meilleur. L'ancien président de l'AJEFO Daniel Boivin a présenté l'ordre à Mme Meilleur, qu'il a qualifiée de grande amie de l'AJEFO dont elle participe régulièrement aux congrès. Mme Meilleur a commencé une carrière d'infirmière pour devenir avocate en droit du travail et de l'emploi. Elle a commencé sa carrière politique sur la scène municipale pour se rendre au gouvernement provincial en 2003 où elle s'occupe maintenant des services sociaux et communautaires, des personnes handicapées en plus des affaires francophones.

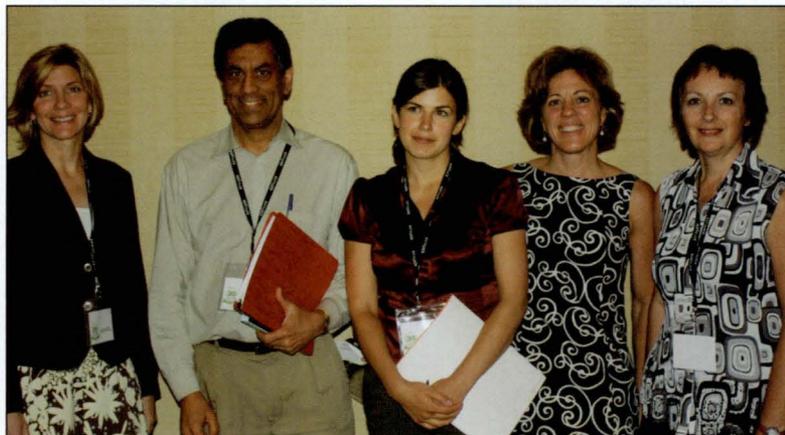
Il y a deux ans, Mme Meilleur annonçait la création du poste de commissaire aux services en français. Depuis, le bureau du commissaire est devenu une institution importante pour la francophonie ontarienne.

M<sup>e</sup> Boivin a souligné le courage de Mme Meilleur pour avoir créé ce rôle de critique de son propre gouvernement et l'a remerciée pour son engagement concret à faire avancer la francophonie.

Par ailleurs, le ministère de Mme Meilleur vient de proposer une nouvelle définition inclusive de francophone pour refléter la diversité des communautés francophones de l'Ontario. Cette définition englobe les personnes dont la langue maternelle n'est pas le français, mais qui en ont une bonne connaissance comme langue officielle et qui l'utilisent à la maison. Enfin, les efforts de Mme Meilleur ont entraîné la désignation de Kingston comme 25<sup>e</sup> région désignée par la *Loi sur les services en français*. Pour lire le discours de la ministre Madeleine Meilleur, consultez le site [www.oaf.gouv.on.ca/fr](http://www.oaf.gouv.on.ca/fr)

## Justice sociale pour les francophones

Le panel organisé par M<sup>e</sup> Josée Bouchard et présidé par M<sup>e</sup> Louise Hurteau portait sur l'aide juridique, sur les droits de la personne, sur les programmes de la Société des plaideurs et sur les initiatives du Barreau pour les femmes dans la pratique privée. Une version plus longue de cet article est publiée sur le site [www.lsuc.on.ca](http://www.lsuc.on.ca).



Stephanie Spiers, Raj Anand, Anne Lévesque, Louise Hurteau et Chantal Gagnon

Le conseiller du Barreau **Raj Anand** a d'abord parlé du Centre d'assistance juridique en matière de droits de la personne dont il est président. Le Centre est né le 30 juin 2008 de la réorganisation par le gouvernement du système des droits de la personne qui compte maintenant trois composantes : le Tribunal des droits de la personne qui reçoit les demandes pertinentes; la Commission des droits de la personne qui s'occupe de sensibiliser la population, de faire des recherches et d'intervenir dans des affaires d'intérêt public; et enfin, le Centre, qui offre des services juridiques aux personnes qui estiment avoir été soumises à de la discrimination aux termes du Code. Le Centre reçoit plus de cent demandes de renseignements par jour. M<sup>e</sup> Anand a donné l'exemple de deux francophones congédiés pour s'être parlé en français au bureau dans une entreprise anglophone. La cause est devant le Tribunal.

**Chantal Gagnon** a discuté des réformes d'Aide juridique Ontario en soulignant entre autres que la nouvelle définition de francophone élargira sa clientèle. La présentation d'**Anne Lévesque** portait sur le travail des cliniques communautaires. M<sup>e</sup> Lévesque a particulièrement touché son public en parlant du projet de loi 106, la *Loi visant à accroître la sécurité des collectivités et des quartiers*, qui selon elle minerait les droits des locataires, criminaliserait la pauvreté et promouvrait l'itinérance. Cette loi permettrait aux municipalités de nommer un directeur qui pourrait enquêter sans mandat et expulser les locataires sans qu'une audience équitable n'ait lieu. La loi permettrait aussi à n'importe qui de comparaître devant la Cour supérieure pour faire évincer un locataire sans audience équitable. Comparaître devant la Cour supérieure coûte très cher et on n'y offre pas d'avocat de service. De plus, les agences communautaires ne pourraient pas comparaître devant cette cour. La loi prévoit que le locataire n'est pas partie à l'instance. Selon M<sup>e</sup> Lévesque, ce projet de loi, basé sur une loi

du Manitoba, défavoriserait les communautés racialisées, les personnes dont la santé mentale est fragile et les pauvres. Ainsi, M<sup>e</sup> Lévesque craint que cette loi ne cible de nombreux clients francophones de la clinique juridique et elle a demandé l'appui des avocats.

M<sup>e</sup> **Stephanie Spiers**, nouvelle directrice des programmes de formation

à la Société des plaideurs, a parlé de quelque 70 programmes de formation offerts en Ontario et ailleurs par la Société des plaideurs qui a commencé à discuter avec l'AJEFO et le Comité mixte de formation permanente d'Ottawa pour offrir des programmes en français. Un des programmes envisagés vise le déroulement d'un procès en français qui porterait sur la différence entre le procès en français et le procès bilingue, les droits des clients à un procès en français, la compétence des tribunaux en français et les questions pratiques quant aux interprètes, la disponibilité des juges bilingues et les défis du litige en français.

Enfin, **Louise Hurteau** a parlé des initiatives du Barreau visant à retenir les femmes dans la pratique privée, et particulièrement des avocats et avocates locum (ou suppléants), du programme d'aide au congé parental des avocats et avocates et du projet Justicia. Le projet locum de cinq ans encourage les avocates et avocats exerçant seuls ou en petits cabinets à recourir à des avocats suppléants pour pouvoir s'absenter temporairement de leur pratique sans interrompre les activités du cabinet. Dans le même esprit, le Barreau a lancé le 12 mars 2009 son programme de trois ans d'aide au congé parental pour permettre aux avocates et avocats exerçant seuls ou en petits cabinets de prendre un congé parental après la naissance ou l'adoption d'un enfant. Enfin, le projet Justicia vise le soutien et l'avancement des femmes dans la pratique privée. Déjà, plus de 50 moyens et grands cabinets se sont inscrits à ce projet pilote de trois ans, lancé à l'automne 2008. Ces cabinets s'engagent entre autres à réviser leurs politiques de congés parentaux et d'horaire flexible, et à aider les femmes à développer leurs habiletés en leadership pour atteindre des postes de haute direction. Le bénéfice ultime de ces projets est d'assurer ainsi un accès continu à la justice sociale. ■

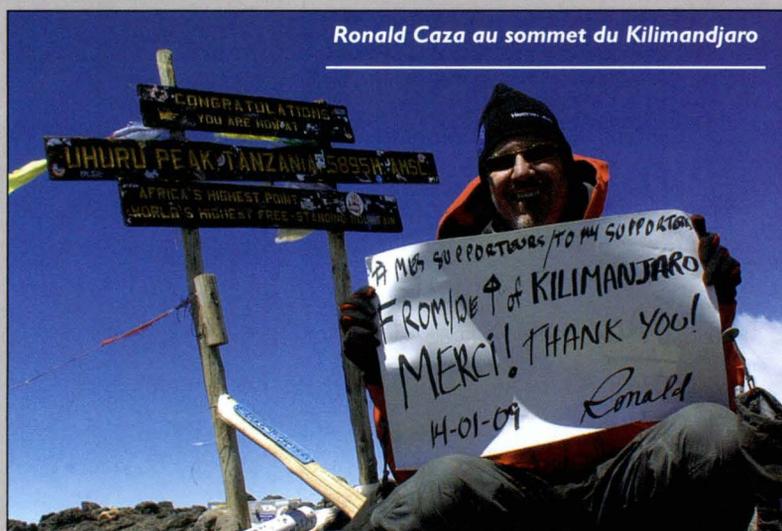
## Accès à la justice, à la santé et au Kilimandjaro

L'AJEFO A PROFITÉ DU DERNIER CONGRÈS POUR DÉCERNER SON ORDRE DU MÉRITE À M<sup>e</sup> CAZA EN RECONNAISSANCE DE TOUT CE QU'IL A FAIT POUR ASSURER L'ACCÈS À LA JUSTICE AUX FRANCOPHONES DE L'ONTARIO.

Or, la dernière aventure de M<sup>e</sup> Ronald Caza liée à la défense des services en français a eu lieu très loin de Kingston où il se préparait à recevoir son prix. En effet, en janvier 2009, M<sup>e</sup> Caza est parti avec un groupe de vingt-deux autres personnes et une équipe d'appui gravir le Kilimandjaro en Tanzanie pour ramasser des fonds pour l'hôpital Montfort. Rappelons que M<sup>e</sup> Caza a défendu avec succès cet hôpital en Cour supérieure et en Cour d'appel pour en empêcher la fermeture par le gouvernement en 1997. Dans son argumentation au nom de S.O.S. Montfort, M<sup>e</sup> Caza avait plaidé que les principes non écrits de la Constitution canadienne donnaient une protection spéciale aux institutions de la communauté franco-ontarienne et que les Pères de la Confédération cherchaient à protéger la minorité francophone lorsqu'ils avaient rédigé ce texte. La mission de Montfort faisait partie du principe large de ne pas brimer le droit des francophones de vivre en français à l'extérieur du Québec, et Montfort étant le seul hôpital universitaire francophone en Ontario, il devait continuer à exister pour servir les francophones. M<sup>e</sup> Caza a gagné sa cause de droit linguistique dans une décision historique en 2001 devant la Cour d'appel.

Cependant, maintenant sauvé, l'hôpital se doit de maintenir la qualité de soins qui s'impose, et en 2008, il a eu grand besoin d'un mammographe digital dont le prix était très élevé. La Fondation de l'hôpital a donc sollicité l'appui de la communauté pour amasser les fonds nécessaires à cet achat et M<sup>e</sup> Caza, en fervent défenseur de l'hôpital, s'est joint à l'expédition africaine. Le premier objectif était de 250 000 \$. Cet objectif a été révisé à 500 000 \$ et le total amassé a été de 750 000 \$.

M<sup>e</sup> Caza s'est préparé pendant six mois pour ce voyage exigeant sur le plan de l'endurance. Il a fallu à son groupe huit jours pour arriver tout en haut. À 5 895 mètres, le mont Kilimandjaro est la plus haute montagne au monde qui n'est



Ronald Caza au sommet du Kilimandjaro

pas dans une chaîne. À titre de comparaison, l'Everest en mesure 8 850. Il faut quelques jours pour s'acclimater lentement mais sûrement, bien que trois personnes ont été contraintes de redescendre parce que le niveau de pression rendant difficile la prise d'oxygène s'est révélé trop dur à assimiler. Il faut prendre cette montagne pas à pas, en pôlant méthodiquement sinon, gare aux gens pressés, ils n'y arriveront pas! Le cerveau gonfle sous la pression et risque l'embolie.

M<sup>e</sup> Caza raconte avec verve comment ses vingt-deux compagnons et compagnes d'expédition ont eu le temps de tisser des liens solides à vivre 24 heures par jour ensemble et à traverser la même épreuve pour le grand objectif commun d'assurer la bonne santé de Montfort. Ce qui l'a peiné le plus a été de voir partir certains de ses camarades lorsque les personnes attirées l'ordonnaient. Car chaque jour, les organisateurs de la montée étaient à l'affût et au moindre signe de changement de personnalité, au moindre mal de tête lancinant ou soudain, le signal était donné et aucun plaidoyer si éloquent soit-il ne pouvait faire changer le verdict. C'était en effet une question de vie ou de mort. M<sup>e</sup> Caza décrit ce qui semble être un jeu de télé-réalité, avec ses délations, ses incertitudes, l'espoir de réussir et les larmes des départs forcés. Chacun craignait chaque jour de savoir qui devrait redescendre avant la fin et surtout, de penser que ça pouvait être soi-même.

M<sup>e</sup> Caza est revenu avec des souvenirs indélébiles de la Tanzanie. La beauté de la jungle au pied de la montagne aux airs surréalistes et son dénuement graduel; l'expérience humaine non seulement de vivre avec ses camarades d'aventure, mais de rencontrer les Tanzaniens et leur joie de vivre, leur générosité toute simple; et par-dessus tout, l'absence de hiérarchie chez les villageois.

Une fois arrivé au faite, M<sup>e</sup> Caza a appelé sa femme à Ottawa pour partager son accomplissement d'équipe. Eh oui, son BlackBerry captait bel et bien les ondes ! ■

## CONVOCATION June 2009 Highlights

### Statement on Legal Aid

The Treasurer made a statement in support of continuing to work with the Attorney General in support of the legal aid system.

“The Law Society of Upper Canada has been on the record for many years as supporting a sustainable, well-funded legal aid system in Ontario. We are pleased to have a strong supporter of legal aid in the current Attorney General of Ontario, and look forward to continuing to work with him and the Alliance for Sustainable Legal Aid over the coming months on improvements to legal aid that will promote access to justice in Ontario. We believe that access to justice is not an abstract notion but a constant public policy challenge that requires adequate public funding.

“The Law Society of Upper Canada supports a vibrant legal aid system for all vulnerable Ontarians, in family law, poverty law, immigration and refugee law, and criminal law.”

#### **Paralegal election plans approved**

The first election for the five paralegal members of the Paralegal Standing Committee is planned to take place in 2010. Any paralegal licensee in good standing will be eligible to stand for election and to vote. Following the election, the five paralegal and three lay bench member members of the Paralegal Standing Committee will elect two paralegals as benchers and the committee as a whole will choose one of the five paralegals as committee chair. (See report page 36.)

#### **Update on the Governance Task Force consultation**

Throughout April and May 2009, 102 lawyers and paralegals participated in ten consultation sessions on Law Society governance in five locations across Ontario. Lawyers and paralegals invited to the meetings included sole, small and large firm practitioners, corporate counsel and academics. Three additional meetings were held with representatives from legal organizations.

The sessions constituted the second phase of a consultation process which began last

November with a workshop for benchers. The results of the bench workshop and the external consultations will be assessed by the Task Force in preparation for its next report to Convocation in the fall of 2009.

#### **Law Society awards honour the best of the profession**

The Law Society will present awards to nine lawyers who represent the highest level of achievement and commitment to serving society and the profession at a special ceremony on September 23, 2009. (See report page 35.)

#### **Finance Committee report**

Convocation approved the updated investment policies for:

- the General Fund and Compensation Fund
- the Errors and Omissions Insurance Fund

Convocation also approved the continued retention of Foyston, Gordon & Payne and CIBC Asset Management Inc. as Law Society investment managers.

#### **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).

### **Appointments**

Bencher Bob Aaron was reappointed as the Law Society's representative on the Canadian National Exhibition Association.

Bencher Avvy Go was appointed to the Ontario Justice Education Network for a period of three years to replace Janet Minor who resigned.

Bencher William Simpson was appointed to the Audit Committee to replace Larry Banack who resigned.

Bencher Larry Banack was appointed to the Finance Committee.

Bencher Raj Anand was removed from the Tribunals Committee at his request and was appointed to the Government and Public Affairs Committee. ■

May 2009  
Highlights

## **Law Society Treasurer elected by acclamation for second term**

Treasurer W. A. Derry Millar has been elected by acclamation for a second term as head of The Law Society of Upper Canada. (*See report page 31.*)

### **Voluntary demographic data collection**

In an effort to better understand demographic trends in the profession, to develop programs and initiatives within the mandate of the Law Society, and to promote equality and diversity, the Law Society will ask lawyers and paralegals to self-identify as members of equality-seeking communities beginning in the 2009 Annual Reports. The question will be voluntary and the information will be kept confidential and used only in aggregate form in accordance with human rights and privacy legislations. (*See report page 35.*)

### **New oaths for lawyers and paralegals**

New oaths to be sworn by lawyers upon call to the bar and paralegals upon entry to the paralegal profession were approved by Convocation. (*See report page 33.*)

### **Non-bencher adjudicators appointed to Hearing Panel**

Lawyers Margot Blight, Howard Ungerman, Adriana Doyle, Jacques Ménard and lay person Sarah Walker were appointed as non-bencher adjudicators to the Law Society Hearing Panel. Convocation approved the inclusion of

non-benchers on the Hearing Panel in April 2007 to assist in scheduling a lay person on every hearing and to provide the Hearing Panel with additional lawyer adjudicators.

### **Discrimination and Harassment Counsel program six-year review**

The Discrimination and Harassment Counsel's semi-annual report includes a six-year review of the program. Since the program was launched in 2003, there have been 338 complaints of discrimination or harassment against Ontario lawyers, averaging approximately 56 complaints per year. The program was expanded to include paralegals in 2008.

### **Update on the Ontario Civil Legal Needs Project**

Convocation received an update on the Ontario Civil Legal Needs project. This is a comprehensive, empirically based study designed to build an understanding of the legal needs of low and middle-income Ontarians and to determine how the legal community can better meet those needs.

### **Human Rights Monitoring Group**

Convocation approved the Human Rights Monitoring Group recommended intervention in the case of lawyer and former judge Birtukan Mideksa (Ethiopia).

### **Finance Committee report**

Convocation approved two adjustments to the capital expenditure budget approved in November 2008, for the replacement of water pipes in the south wing and the refurbishment of certain washrooms in the north wing.

Convocation also approved the renewal of the lease of space at 393 University Avenue.

### **Appointments**

Bencher Paul Henderson was reappointed and bencher Gerald Swaye was appointed to the LibraryCo Board of Directors commencing May 31, 2009 for a term of one year.

Bencher Paul Henderson was appointed a member of the Appeal Panel and the Vice-Chair of the Appeal Panel.

Bencher William Simpson was appointed and bencher Susan McGrath was reappointed to the Ontario Bar Association Council commencing June 28, 2009 for a term of two years.

Benchers Julian Porter (Chair), Beth Symes (Vice-Chair), Glenn Hainey, Brian Lawrie, and Alan Silverstein were reappointed to the Proceedings Authorization Committee for a term of one year, commencing June 26, 2009.

Kim Bernhardt was appointed to the Ontario Judicial Council for a term of four years, commencing August 17, 2009. ■

## **April 2009 Highlights** **Honorary degrees to be awarded**

Convocation approved the award of the degree of Doctor of Laws, *honoris causa*, to the Honourable Mr. Justice Sidney B. Linden, Mr. George Thomson, the Honourable Madam Justice Harriet Sachs, Major-General Richard Rohmer, O.C., C.M.M., D.F.C., O. Ont., K.St.J., C.D., Of.L., Q.C., A.deC. and a Chevalier de la Légion d'Honneur, and the Honourable Madam Justice Frances Kiteley. The degrees were conferred at the June Call to the Bar ceremonies in London, Ottawa and Toronto.

### **Update on Retention of Women initiatives**

A report with an update on Retention of Women initiatives was presented to Convocation, which included details of:

*Parental Leave Assistance Program* - Effective March 12, 2009, the program provides business income replacement to sole practitioners and practising lawyers who are partners in firms of five lawyers or fewer who do not have access to other maternity, parental or adoption benefits and who meet the eligibility criteria.

*Practice Locum Program* - Starting May 1, 2009, the program is a registry of lawyers who are available to provide legal services on an interim basis. The program will allow practitioners to rely on competent lawyers to maintain their practice while on a leave of absence.

*Justicia Project* - More than 50 medium and large firms have signed on since the project was launched in the fall and are committed to sharing best practices and adopting programs to support women lawyers. (See report page 32.)

### **Certified Specialist program 'recent experience' redefined**

The "recent experience" requirement of the Certified Specialist program is now more flexible. The prerequisite for application is still seven years experience, but the revised definition permits practice experience in common law jurisdictions outside Ontario to count towards this requirement. The definition was revised to accommodate the varied life experience of the bar and absences from practice, such as parental leave. (See report page 36.)

### **Harassment and discrimination model policy redrafted**

The Law Society has released a revised model policy that sets out a template for law firms to address harassment and discrimination. The model policy can be used by firms of all sizes, and by legal clinics and other legal organizations. The new model policy has been redrafted to be more user-friendly and to reflect changes in legal obligations. (See report page 20.)

### **New policy on Foreign Legal Consultant participation in arbitrations**

Convocation approved a policy to permit Foreign Legal Consultants to participate in arbitrations held in Ontario:

- where the law governing the proceeding and the law at issue is either international law or the law of the Foreign Legal Consultant's home jurisdiction or,
- when assisted by counsel licensed to practise law in Canada, where the law at issue is either international law or the law of the Foreign Legal Consultant's home jurisdiction and the law governing the proceeding is Canadian.

The policy originates from ongoing consultations between the Federation of

Law Societies and the Department of Foreign Affairs and International Trade (DFAIT) on issues relating to international trade in legal services. Canada has been asked to expand its trade commitments to permit Foreign Legal Consultants to appear as counsel in arbitrations in certain circumstances.

### Law Society supports expansion of Lawyers Feed the Hungry Program

The Lawyers Feed the Hungry Program will now serve a Friday meal in addition to the meals already served on Wednesday, Thursday and Sunday. Convocation approved a request from the Law Society Foundation for the additional support from the Law Society. As it does for the existing meals, the Law Society will contribute facilities and staff resources.

### Financial statements approved

Convocation approved the following financial statements:

- General Fund - Audited Financial Statements for the year ended December 31, 2008
- Compensation Fund - Audited Financial Statements for the year ended December 31, 2008
- LibraryCo Inc. - Audited Financial Statements for the year ended December 31, 2008
- Combined Financial Statements

of the Errors and Omissions Insurance Fund for the year ended December 31, 2008.

Convocation also appointed Deloitte & Touche LLP as the auditor of the Law Society's General Fund, Compensation Fund and LibraryCo Inc. for the 2009 financial year.

### Convocation authorizes Treasurer 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 AGM of Shareholders of the Lawyers' Professional Indemnity Company on May 5, 2009.

### Motion re: amendment to lawyer's Rule 3.03(1)

A motion to amend Rule 3.03(1) of the *Rules of Professional Conduct* regarding the use of the word "expert" was withdrawn.

### Appointments

Benchler Janet Minor was appointed a trustee of the Law Foundation of Ontario.

Benchler Dow Marmur was appointed to the Complaints Resolution Commissioner Selection Committee. ■

## Roll-call votes

May 28, 2009

### Paralegal Standing Committee Report

Mr. Dray presented the Paralegal Standing Committee Report.

It was moved by Ms. McGrath, seconded by Mr. Caskey, that Convocation approve as amended, the oath for paralegals on page 5 of the Paralegal Standing Committee Report and the oath for lawyers at the bottom of page 6 of the Report. Carried. Vote: For – 37, Against – 5. ■

## CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

|                        | Attendance |        |         | Motions* |
|------------------------|------------|--------|---------|----------|
|                        | Apr 30     | May 28 | June 25 | May 28   |
| Aaron, Robert          |            |        |         |          |
| Aitken, Melanie        |            | ✓      | ✓       | F        |
| Anand, Raj             | ✓          |        | ✓       |          |
| Backhouse, Constance   | ✓          | ✓      | ✓       | F        |
| Banack, Larry          | ✓          | ✓      | ✓       | F        |
| Boyd, Marion           | ✓          | ✓      | ✓       | F        |
| Braithwaite, Jack      |            | ✓      | ✓       | A        |
| Bredt, Christopher     | ✓          | ✓      | ✓       |          |
| Campion, John          |            | ✓      | ✓       | F        |
| Caskey, James          | ✓          | ✓      | ✓       | F        |
| Chabbar, Abdul Ali     | ✓          | ✓      | ✓       | F        |
| Chilcott, W. Dan       | ✓          |        | ✓       |          |
| Conway, Thomas         | ✓          | ✓      | ✓       | F        |
| Crowe, Marshall        | ✓          | ✓      | ✓       | F        |
| Daud, Aslam            |            | ✓      |         | F        |
| Dickson, Mary Louise   | ✓          | ✓      | ✓       | F        |
| Dray, Paul             | ✓          | ✓      | ✓       | F        |
| Elliott, Susan         | ✓          | ✓      | ✓       | F        |
| Epstein, Seymour       | ✓          | ✓      | ✓       | F        |
| Go, Avvy               | ✓          | ✓      | ✓       | F        |
| Gold, Alan             | ✓          | ✓      | ✓       | F        |
| Gottlieb, Gary L.      | ✓          |        |         |          |
| Hainey, Glenn          | ✓          | ✓      | ✓       | F        |
| Halajian, Jennifer     | ✓          |        |         |          |
| Hare, Susan            | ✓          |        | ✓       |          |
| Hartman, Carol         | ✓          | ✓      | ✓       | F        |
| Heintzman, Thomas G.   | ✓          | ✓      | ✓       | F        |
| Henderson, Paul        | ✓          | ✓      | ✓       | F        |
| Hunter, George         |            |        |         |          |
| Krishna, Vern          | ✓          |        | ✓       |          |
| Lawrie, Brian          | ✓          | ✓      | ✓       | F        |
| Legge, Laura           | ✓          |        |         |          |
| Lewis, Doug            | ✓          | ✓      | ✓       | F        |
| MacKenzie, Gavin       | ✓          |        |         |          |
| Marmur, Dow            |            | ✓      | ✓       | F        |
| McGrath, Susan         | ✓          | ✓      | ✓       | F        |
| Minor, Janet           | ✓          | ✓      | ✓       | F        |
| Pawlitza, Laurie       | ✓          | ✓      | ✓       | F        |
| Porter, Julian         | ✓          | ✓      | ✓       | F        |
| Potter, Judith         | ✓          | ✓      | ✓       | A        |
| Pustina, Nicholas J.   | ✓          | ✓      | ✓       | F        |
| Rabinovitch, Jack      | ✓          | ✓      | ✓       | F        |
| Robins, Sydney         | ✓          | ✓      |         | F        |
| Rock, Allan            |            |        |         |          |
| Ross, Heather          |            |        |         |          |
| Rothstein, Linda       | ✓          |        | ✓       |          |
| Ruby, Clayton          | ✓          | ✓      | ✓       | F        |
| St. Lewis, Joanne      |            |        | ✓       |          |
| Sandler, Mark          | ✓          | ✓      | ✓       | F        |
| Scace, Arthur          |            |        |         |          |
| Schabas, Paul          | ✓          |        |         |          |
| Sikand, Baljit         |            | ✓      | ✓       | F        |
| Silverstein, Alan      | ✓          | ✓      | ✓       | A        |
| Simpson, William       |            | ✓      | ✓       | F        |
| Strosberg, Catherine   |            | ✓      | ✓       | F        |
| Strosberg, Harvey      |            |        |         |          |
| Swaye, Gerald          | ✓          | ✓      | ✓       | A        |
| Symes, Beth            | ✓          | ✓      | ✓       | F        |
| Tough, Bonnie          |            | ✓      | ✓       | F        |
| Wright, Bradley        | ✓          | ✓      | ✓       | A        |
| Millar, Derry (Treas.) | ✓          | ✓      | ✓       |          |

### Non-voting benchers in attendance:

April 30, 2009 – P. Furlong, R. Murray, J. Wardlaw. May 28, 2009 – P. Furlong, R. Murray, R. Topp, J. Wardlaw. June 25, 2009 – A. Feinstein, P. Furlong, D. Murphy, R. Murray.

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

There were no motions in the April 30 and June 25 Convocations requiring a roll-call vote.

## NOTICE TO THE PROFESSIONS

# Recent Rule and By-Law amendments

Convocation made a number of amendments to Law Society Rules and By-Laws at its June and April meetings.

### June 2009

#### By-Law 4 amended

By-Law 4 [Licensing] was amended to incorporate the oaths approved at May 2009 Convocation. (See report page 33.)

#### Rules of Professional Conduct amended

The *Rules of Professional Conduct* were amended to clarify that certain ethical duties are owed to both licensees in Ontario and other Canadian lawyers. A definition of 'legal practitioner' was added and will replace "licensee(s)" and "lawyer(s)" in appropriate places throughout the rules. Legal practitioner means a person who is a licensee; or who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction.

#### Hearing Panel Rules of Practice and Procedure amended

Convocation approved housekeeping amendments to the new Hearing Panel Rules of Practice and Procedure as well as the addition of the French version of the rules.

### April 2009

#### By-Law 7 amended re: professional corporation names

By-Law 7 [Business Entities] was amended to ensure uniform regulation of the names for professional corporations and other business entities for the provision of professional services by lawyers and paralegals. In October 2008, Rule 3 of the *Rules of Professional Conduct* and Rule 8 of the *Paralegal Rules of Conduct* on marketing and advertising were amended to articulate key principles applicable to marketing and advertising professional services including firm names. As the provisions on names of professional corporations in By-Law 7 included some of the language now deleted from the rules, it was amended to be consistent with the rules.

#### Form 7A of By-Law 7 [Business Entities] amended

Form 7A (Notice of Intention to Surrender a Certificate of Authorization) of By-Law 7 was amended to include reference to the provision of legal services, in addition to the practice of law. The amendments to the form follow amendments made to the by-law in April 2007. Convocation amended the by-law at that time to bring paralegals within the provisions governing professional corporations.

#### By-Law 3 amended re: policy on compliance with the federal *Lobbying Act*

Convocation amended By-Law 3 [Benchers, Convocation and Committees] to reflect a previously approved policy regarding the Federal *Lobbying Act*. In October 2008, Convocation established a policy that benchers obtain authorization from the Treasurer or CEO prior to communicating with officers and employees of the government of Canada on behalf of the Law Society.

#### By-Law 8 amended

By-Law 8 [Reporting and Filing Requirements] was amended to reflect previously approved policy changes. The amendments reflect Convocation's decision, in January 2009, to end a requirement that lawyers provide the Law Society with certain information about the lawyer's fiscal year. The information is no longer required for regulatory purposes.

#### By-Law 14 [Foreign Legal Consultants] amended

By-Law 14 was amended to reflect policy changes related to Foreign Legal Consultants, approved February 2009, that remove the residency requirement and the requirement for foreign legal consultants to carry defalcation coverage. ■

*More information and printable versions of the Rules and By-Laws are available on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca).*

## PUBLIC AFFAIRS

# Harmonized sales tax and the Green Energy and Green Economy Act

THE LAW SOCIETY RECENTLY MADE SUBMISSIONS TO LEGISLATIVE COMMITTEES ON BILL 150, THE *GREEN ENERGY AND GREEN ECONOMY ACT, 2009* AND BILL 162, THE *BUDGET MEASURES ACT, 2009*.

As originally drafted, the *Green Energy Act* would have introduced mandatory home energy audits; the enforcement provisions regarding the mandatory audits raised concerns regarding possible interference with solicitor-client privilege. Section 15 of the original act provided that an inspector might enter any place where the inspector had reasonable grounds to believe that there were documents relating to an offer to sell or lease a property that was subject to a mandatory energy audit.

The Law Society's submission to the Standing Committee on General Government emphasized the paramount

nature of solicitor-client privilege in Canadian law and underscored that it is critical to the public interest that the inspection powers contained in section 15 be limited by the law protecting solicitor-client privilege.

Enforcement provisions for home energy audits, including section 15, were not in the final act, which received royal assent in May 2009.

The Law Society also made a presentation to the Standing Committee on Finance and Economic Affairs regarding the *Budget Measures Act* and the harmonized sales tax. In its

submission, the Law Society expressed concern about the potential negative impact on access to justice as a result of the additional tax on legal services. The Law Society reiterated its concerns in a public letter to the premier, emphasizing the potential for increased self-representation:

"Any increase in the cost of legal services will lead to more self-representation, which strains court resources and too often results in unsatisfactory outcomes for vulnerable Ontarians. In addition, Ontarians of modest income will be discouraged from seeking proper advice when buying or selling their home or making other important financial decisions. All of the above risk causing further costs to other parts of the legal system."

The *Budget Measures Act*, including the provisions for tax harmonization, received royal assent in June 2009.

The Law Society regularly reviews provincial and federal legislation to determine the impact on the Law Society's mandate which includes a duty to protect the public interest, advance the cause of justice and facilitate access to justice.

## Treasurer W. A. Derry Millar acclaimed for a second term



W. A. Derry Millar was elected by acclamation for a second term as Treasurer of The Law Society of Upper Canada at May's meeting of Convocation.

"Leading the Law Society is a tremendous privilege," says Treasurer Millar. "I am particularly grateful for the opportunity to work with so many dedicated individuals, within Convocation, the Law Society and the legal and paralegal communities at large. I am proud of all we have accomplished over the last year. Much of what we have done will have an enduring impact on access to justice for Ontarians."

During his first term, Treasurer Millar has overseen the initiation and implementation of a number of vital projects, including the launch of the Justicia Project; the Parental Leave Assistance Program; the Practice Locum Registry; and the Ontario Civil Legal Needs Project. Raising the level of civility and professionalism within the legal community is another key focus for Treasurer Millar, and he has led a number of initiatives in this regard in conjunction with the judiciary, the bar, the government, Legal Aid Ontario and legal organizations.



COMMITTED TO  
**JUSTICIA**  
ON S'Y ENGAGE

## Justicia progress report – Enabling professional excellence

SINCE ITS LAUNCH IN NOVEMBER LAST YEAR, LAW FIRMS PARTICIPATING IN THE JUSTICIA PROJECT HAVE ROLLED UP THEIR SLEEVES AND MET REGULARLY TO SHARE INFORMATION AND DEVELOP BEST PRACTICES TO PROMOTE THE RETENTION AND ADVANCEMENT OF WOMEN IN PRIVATE PRACTICE.

Three working groups have been established for: Outside GTA and Ottawa firms; firms of 25 to 100 lawyers; and firms of more than 100 lawyers. In addition, there are more than 10 sub-groups working on projects such as guides to developing policies on pregnancy and parental leave; a toolkit for new parents; a guide on developing customized work arrangements; and a template for gender data collection.

“We’re gratified at how hard the participants are working and at the level of sharing that is occurring at these meetings,” says Josée Bouchard, Equity Advisor at the Law Society. “What’s remarkable about this project is that it’s the first time a large group of law firms have come together to identify best practices about these issues that is based on hard data and their practical experiences.”

“Firms are really engaged,” says Megan Shortreed, co-chair of the mid-sized firm working group. “People are quite hungry to contribute and take away from the collaborative process.”

Heather Williams, co-chair of the Outside GTA and Ottawa firms working group, agrees. “I’ve observed a very high level of engagement from the firms participating in the Justicia Project – I’m delighted by the level of interest we are seeing from managing partners and firm representatives.”

Participants are not only bringing a wealth of experience to Justicia discussions, they are taking ideas from their session and translating them into something that can be effectively incorporated into the way their firms work. Shanin Lott, from the large firm working group says, “What I’ve found particularly encouraging is that firm representatives appear to be taking steps to engage the lawyers, management and appropriate committees at their firms in the Justicia Project. They are keeping them apprised of the projects and initiatives we are examining and seem to be really thinking through how they will bring back and implement in their particular firms, the best practices and initiatives that have emerged from the Justicia working groups to date.”

An initial study of firm practices and policies was conducted which provides a benchmark of firm practices and useful information for the development of programs. The goal is for participating firms to use the best practices, templates and guides to develop their own programming.

“The project is moving faster than I anticipated – giving participants the opportunity to implement incentives and programs on a shorter timeline,” says Boris Fesyk of Sudbury. “The availability of model policies and other templates is very helpful in allowing firms to establish appropriate standards and best practices. We are looking at introducing changes to our policies that will help ease the transition of lawyers back to work following a leave and allow for better work-life balance.”

Participating firms confirm the goals for the project as expressed by co-chair Laurie Pawlitza at the project’s launch: “Justicia is designed to create a shift in our legal culture to ensure women lawyers have practices in which to thrive and lead.” Joanne Guarasci of Hamilton says, “Firms that are part of Justicia acknowledge that working in private practice is a different experience for women than it is for men. These firms are exceptionally committed to accommodating those differences – moving beyond just talking about the issues to putting ideas into action.”

Shortreed echoes this sentiment. “The Justicia Project is really about assisting firms in providing associates with clarity around the availability of supports that will assist them to remain in practice. You can only foster equality if all lawyers in the firm feel support and can benefit from these initiatives.”

While firms express their satisfaction at the pace of progress, they still acknowledge that there is much work to be done. “There is no overnight answer to this problem, but we’re coming up with solutions by engaging participants in discussions to identify the issues and then working collaboratively to develop appropriate tools,” says Shortreed. “The Justicia Project certainly provides a strong foundation on which to build, beginning with the development of model policies that are there for firms to customize and adapt to fit their economic model.”

A complete list of the more than 50 firms participating in Justicia can be found on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca). Firms that are interested in joining the project or who would like more information should contact Josée Bouchard, Equity Advisor, by telephone (416) 947-3984, or e-mail [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca). ■

# New oaths for lawyers and paralegals

THE FOLLOWING OATHS TO BE SWORN BY LAWYERS UPON CALL TO THE BAR AND PARALEGALS UPON ENTRY TO THE PARALEGAL PROFESSION, WERE APPROVED AT MAY CONVOCATION.

## Barristers and Solicitors

I accept the honour and privilege, duty and responsibility of practising law as a barrister and solicitor in the Province of Ontario. I shall protect and defend the rights and interests of such persons as may employ me. I shall conduct all cases faithfully and to the best of my ability. I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client. I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice anyone, but in all things I shall conduct myself honestly and with integrity and civility. I shall seek to ensure access to justice and access to legal services. I shall seek to improve the administration of justice. I shall champion the rule of law and safeguard the rights and freedoms of all persons. I shall strictly observe and uphold the ethical standards that govern my profession. All this I do swear or affirm to observe and perform to the best of my knowledge and ability.

## Paralegals

I accept the honour and privilege, duty and responsibility of providing legal services as a paralegal in the Province of Ontario. I shall protect and defend the rights and interests of such persons as may employ me. I shall conduct all cases faithfully and to the best of my ability. I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client. I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice anyone, but in all things I shall conduct myself honestly and with integrity and civility. I shall seek to ensure access to justice and access to legal services. I shall seek to improve the administration of justice. I shall champion the rule of law and safeguard the rights and freedoms of all persons. I shall strictly observe and uphold the ethical standards that govern my profession. All this I do swear or affirm to observe and perform to the best of my knowledge and ability.

## Professional Responsibility and Practice course

The new Professional Responsibility and Practice course for licensing candidates was launched on August 4, 2009. The online course was developed as part of changes to the licensing process that were approved in September 2008 by Convocation.

Licensing candidates can undertake the components of the course at any time during their 10-month articling term. The course is designed for self-directed learning and provides training on competencies related to professional responsibility, ethical issues and practice management. Candidates can apply the learning to their day-to-day practice training.

At the completion of the course, articling principals will administer an assessment which consists of brief scenarios and questions based on the ethical principles and practice management concepts candidates have learned. This oral assessment should take approximately 60 to 90 minutes to complete. The objective of the assessment is to ensure that articling candidates, who have completed the course, are able to demonstrate the required professional responsibility and practice management competencies for entry-level practice.

Principals are not required to access the online course in order to administer the assessment.

Articling principals approved for the 2009 term will be provided with a copy of the assessment, together with a *Guide to the Professional Responsibility and Practice Course* and an *Answer Guide*. The *Answer Guide* contains model responses and discussion points to aid in the administration of the assessment.

If you have any questions about the articling process, the new Professional Responsibility and Practice course or the assessment, please contact us at:  
Phone: 416-947-3315 or 1-800-668-7380, ext. 3315  
Fax: 416-947-3403  
E-mail: [articling@lsuc.on.ca](mailto:articling@lsuc.on.ca)

## New Friday meal service launched in June thanks to cy près award

THE LAW SOCIETY FOUNDATION IS THE grateful recipient of a cy près award made possible by a recommendation in a class action settlement. On January 23, 2009, the Ontario Superior Court of Justice ordered that a cy près award be paid to the Foundation with the consent

of The Bank of Nova Scotia in the case of *Meretsky v. The Bank of Nova Scotia*.

The \$1 million award will provide the necessary funding to enable the Toronto's Lawyers Feed the Hungry Program to expand its meal program to include a Friday dinner service. The Lawyers Feed

the Hungry program will now serve four sit-down meals through the week and provide three take-away meals for those in need. The Foundation expects the new Friday dinner will serve an additional 250 people weekly.

Foundation Chair Marion Boyd says, "The Foundation is extremely grateful for the award. The award will go a long way to ensuring the long-term viability of the program."

## Fifth Annual Buggy and Ken Charity Golf Tournament scores big win for Lawyers Feed the Hungry

REMEMBERING TWO OF TORONTO'S BEST TRIAL LAWYERS "who were a joy to watch in full flight," golfers and volunteers descended on DiamondBack Golf Club on June 10, driving the Fifth Annual Buggy and Ken Charity Golf Tournament to its best result ever.

The event is organized in memory of David H. Newman, Q.C. (Bugsy) and Ken Danson by a large committee and supported by their friends, colleagues and family.

The organizers extend thanks to all the generous donations from golfers and supporters. This year's tournament raised more than \$60,000 to benefit Lawyers Feed the Hungry and Camp Oochigeas, a summer camp for children with cancer.



From left to right: Bo Afrai, Frank Crewe, Rachel Grinberg, organizing committee, Jon Rosenthal, organizing committee.

## [www.lawyersfeedthehungry.ca](http://www.lawyersfeedthehungry.ca) Long-time program supporters and volunteers honoured on new website

In May, the Law Society Foundation proudly announced the launch of its new website [www.lawyersfeedthehungry.ca](http://www.lawyersfeedthehungry.ca).

Wendy Tysall, secretary-treasurer of the Foundation, explains the goal of the site is to recognize "the commitment of the London and Toronto legal communities to assisting individuals and families in need."

The new website will assist the Foundation in administering the program. Donors who wish to support the program can conveniently make a secure online donation and receive an immediate charitable tax receipt.

### Come out and volunteer!

There is always a need for volunteers. Come join the team and make a difference to those in need. It doesn't take much – just a couple of hours of your time.

For more information contact the volunteer coordinator for the meal program:

- **Wednesday Dinner at 5 p.m.**  
Volunteer coordinator Alison Rose  
[aer@inigofilms.com](mailto:aer@inigofilms.com)
- **Thursday Breakfast at 6:45 p.m.**  
Volunteer coordinator Jay Brecher  
[jay.brecher@gmail.com](mailto:jay.brecher@gmail.com)
- **Friday Dinner at 5 p.m.**  
Volunteer coordinator Esther Facchini  
[efacchini@teplitskycolson.com](mailto:efacchini@teplitskycolson.com)
- **Sunday Breakfast at 9 a.m.**  
Volunteer coordinator David Bronskill  
[dbronskill@goodmans.ca](mailto:dbronskill@goodmans.ca)

## 2009 Medallists announced

We are pleased to announce this year's recipients of the Law Society's awards, given to lawyers who represent the highest level of achievement and commitment to serving society and the profession. The Law Society Medal, the Lincoln Alexander Award and the Laura Legge Award will be presented by Treasurer W. A. Derry Millar at a special ceremony at Osgoode Hall on September 23, 2009.

Established in 1985, the Law Society Medal is presented to outstanding Ontario lawyers whose service reflects the highest ideals of the profession. The award is given for outstanding service whether in a particular area of practice, in the academic sphere, or in some other professional capacity. This year's Law Society Medal recipients are: **Professor Nicholas Bala, George Biggar, Elizabeth Goldberg, James Douglas Grenkie, Q.C., Peter Hrastovec, Patricia Jackson and Susan Vella.**

The Lincoln Alexander Award is presented to a lawyer who has demonstrated a commitment to the public and its well-being through community service. The award was created in 2002 in honour of former Lieutenant Governor of Ontario, Member of Parliament, and 2002 Law Society Medal recipient the Honourable Lincoln M. Alexander, P.C., C.C., O. Ont., Q.C., in recognition of his dedication to the people of Ontario and the legal community. This year's recipient of the Lincoln Alexander Award is **Sandra Thomas.**

The Laura Legge Award recognizes an Ontario woman lawyer who has exemplified leadership within the profession. The award was established in 2007 in honour of Laura Legge, O. Ont, Q.C., the first woman elected a bencher of the Law Society and the first woman to serve as its Treasurer. This year's recipient of the Laura Legge Award is **Janet Leiper.**

Full biographical details of the medallists are available on the Law Society website [www.lsuc.on.ca](http://www.lsuc.on.ca)

## Voluntary self-identification promotes equality and diversity

IN AN EFFORT TO BETTER UNDERSTAND demographic trends in the profession, the Law Society will ask lawyers and paralegals whether they self-identify as members of equality-seeking communities beginning in the 2009 Annual Reports to be filed by lawyers and paralegals under By-Law 8 (formerly known as the MAR and PAR). The question is voluntary and the information will be kept confidential and only used in aggregate form in accordance with human rights and privacy legislation.

The regular collection of demographic data will support the assessment and analysis of the changing composition of the legal profession and allow the Law Society to develop programs and initiatives to further enhance the profession's diversity. Awareness of the extent to which the legal profession is reflective of the broader community will also be helpful in serving the interests of the public.

Convocation approved the inclusion of the voluntary question in the Annual Reports at its May 2009 meeting. The decision was supported by requests to gather demographic data by groups and associations that promote equality and diversity. These include the Ontario Bar Association, the Canadian Association of Black Lawyers and the Equity Advisory Group (EAG). The EAG is a group of institutional and individual members that assists the Law Society's Equity and Aboriginal Issues Committee in the development of policy options that promote equality and diversity in the legal profession.

More information, including Frequently Asked Questions, is available on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

THE FOLLOWING HIGHLIGHTS SUMMARIZE SOME OF THE MOST RECENT DEVELOPMENTS RELATED TO PARALEGAL REGULATION AND LICENSING.

**Paralegal election framework approved**

The very first election of the five paralegal members of the Law Society’s Paralegal Standing Committee will take place in 2010. The election will be electronic, making it environmentally friendly and more cost-effective than a paper-based election. The five paralegals will be elected at large, in a province-wide vote. Any paralegal licensee in good standing will be eligible to stand for election and vote.

Once the paralegal members are elected, the five paralegal and three lay bench members of the Paralegal Standing Committee will select two paralegals as benchers and the entire committee will choose one of the five paralegals as its chair. An election will then be held every four years.

The first five paralegal members of the present committee were appointed by the Ontario government in November

2006 to develop the paralegal regulatory framework and take the lead in policy recommendations regarding the licensing and regulation of paralegals.

**Good character matters**

The Law Society continues to hold licensing hearings for grandparent paralegal applicants who have disclosed matters that require an investigation.

To help ensure protection of the public, applicants for a paralegal or lawyer licence are required to be of good character under section 27(2) of the *Law Society Act*. The Act also states that no one who meets the other qualifications for licensing can be denied a licence without a hearing. Issues in an applicant's background that may require investigation and, if warranted, a licensing hearing, include past criminal convictions and penalties imposed by a court, administrative tribunal or regulatory body.

In most cases, grandparented paralegal applicants who otherwise qualify for paralegal licensing but are facing licensing hearings, may continue to practise pending completion of their hearings, providing they maintain professional liability insurance and comply with the *Paralegal Rules of Conduct*.

To date, the Law Society has sent 32 paralegal licensing candidate files related to good character issues to Tribunals for hearing. Of these, four matters were disposed of by the hearing panels and three applications were abandoned by the applicants before they went to the hearing panel. The remaining 25 are at various stages of the hearing process.

**Upcoming CLE**

In addition to its “Best Practice” series of CLE designed specifically for paralegals, the Law Society is introducing “The New Paralegal” series in the fall. The new programs will provide practical advice to paralegals who are new to the profession.

**Number of licensed paralegals**

There are presently 2,375 licensed paralegals in Ontario. ■



**Certified Specialist Program ‘recent experience’ redefined**

THE “RECENT EXPERIENCE” REQUIREMENT OF THE CERTIFIED SPECIALIST PROGRAM IS NOW MORE FLEXIBLE.

Seven years’ experience is still a prerequisite for application, however, the revised definition permits practice experience in a common law jurisdiction outside Ontario to count toward this requirement, and the seven-year requirement may be met over a

longer period prior to application.

The new definition is as follows:

- 1) Applicants must have engaged in the practice of law for at least seven years before the day they apply for certification.

## Law Society salutes

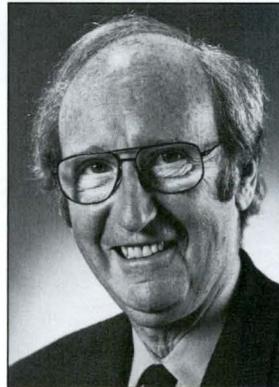
The Law Society is pleased to congratulate benchers the Honourable R. Roy McMurtry, O.C., O. Ont and Jack Rabinovitch, O.C., O. Ont, who were both created Officers of the Order of Canada in the Canada Day announcement of awards. The award of Officer of the Order of Canada recognizes a lifetime of achievement and merit of a high degree, especially in service to Canada or to humanity at large.

Mr. McMurtry's award recognizes "his distinguished career of public service, notably as chief justice of Ontario, and for his extensive volunteer involvement in many social and multicultural initiatives."

Mr. Rabinovitch's appointment was a promotion within the Order in recognition of "his continued dedication to the Giller Prize, one of Canada's top literary awards, as well as to institutions focussed on scientific innovation and governance." Mr. Rabinovitch founded the Giller Prize in honour of his late wife Doris Giller. ■



**Honourable R. Roy  
McMurtry, O.C., O. Ont**



**Jack Rabinovitch, O.C., O. Ont**



**Larry Banack**

The Law Society is pleased to congratulate Bencher Larry Banack on his appointment as chair of the board of governors of the Law Commission of Ontario. A bencher since 1995, he also served for seven years as the chair of the Law Foundation of Ontario and participated in discussions to create a new law reform body which resulted in the launch of the Law Commission of Ontario. ■

2) Applicants must have practised in the area of law in which they seek to be certified for at least five of the seven years, as follows:

- In Ontario, for two years immediately before the application
- Any other three years in Ontario or any common law jurisdiction

The changes were made to accommodate the varied life experience of the bar and absences from practice, such as parental leave.

The Certified Specialist Program recognizes lawyers who have met established standards of experience and knowledge requirements in one or more

designated areas of law and have maintained exemplary standards of professional practice.

To qualify for certification lawyers must have:

- practised for a minimum of seven years prior to the date of the application
- had substantial involvement in the specialty area during five of the seven years, i.e.,
  - mastery of substantive law, practices and procedures, and
  - concentration of practice in the specialty area
- complied with the professional development requirements
- complied with the professional standards requirements.

### Areas of Specialization

- Bankruptcy and Insolvency Law
- Citizenship and Immigration Law (Immigration/ Refugee Protection)
- Civil Litigation
- Construction Law
- Corporate and Commercial Law
- Criminal Law
- Environmental Law
- Estates and Trusts Law
- Family Law
- Health Law
- Intellectual Property Law (Trademark/Patent/Copyright)
- Labour Law
- Municipal Law
- Real Estate Law
- Workplace Safety and Insurance Law

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## Children and their families at SickKids get free help when legal issues complicate health outcomes

*On a recent walk to pick up her eldest daughter from kindergarten, Cindy Desbiens heard the words she'd been dreaming about for years.*

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“Mom, keep up!”

The tiny voice from far ahead was that of Desbiens' three-year-old daughter Charolette. An outspoken preschooler with boundless energy, the youngest in the family wasn't always the one doing the yelling or the running. Charolette was born with a rare form of congenital heart disease called Hypoplastic Right Heart Syndrome that essentially left her with half a working heart. She spent the first four-and-a-half months of her life in Toronto's Hospital for Sick Children where she endured two heart surgeries and a long list of other complicated medical procedures.

Every step of the way, her parents were by her side.

But when Cindy and Jeff Desbiens tried to claim a tax credit for the more than \$12,000 in expenses the family incurred travelling back-and-forth from their Waterloo home, the Canada Revenue Agency said their presence at the hospital was unnecessary. They were just visiting and their claim was denied.

Frustrated by their failed attempts at appeal, the couple turned to SickKids for help. They received some hopeful news: the access-to-justice charity, Pro Bono Law Ontario (PBLO), had just launched a unique new project at SickKids that brought health care and legal care together to help low-income pediatric patients and their families.

The Family Legal Health Project is a first in Canada and landed a two-year funding grant in September from the Law Foundation of Ontario. By May 1, PBLO triage lawyer, Lee Ann Chapman, was on site at the hospital fielding inquiries from social workers and healthcare providers, and referring cases to Legal Aid Ontario and PBLO's roster of volunteer lawyers at law firm partners McMillan and Torkin Manes Cohen Arbus.

In the first month alone, Chapman received 30 referrals on cases involving everything from healthcare access and immigration, to education, consent and capacity.

“There are a multitude of issues that can affect a child's health and not all of them are medical,” explains SickKids social work director Ted McNeill. “Without being sensitive to the social context, we may be ineffective in delivering health services.”

The Desbiens were matched last summer with McMillan partners and tax lawyers Michael Friedman, Ryan Morris and Michael Templeton, who agreed to tackle the case for free.



*The Desbiens family: Theo (6 days), Cindy Desbiens, Olivia (5 yrs), Jeff Desbiens and Charolette (3 1/2 yrs). In the photo, Theo is only one day older than Charolette was when she had her first surgery.*

They promptly prepared and filed a Notice of Appeal to the Tax Court of Canada to secure the Desbiens' right to a tax credit for their expenses. By January, the Desbiens had their second round of good news – the Canada Revenue Agency decided not to contest the Desbiens' appeal. A favourable judgment was rendered by the Tax Court of Canada, and the Desbiens were permitted to fully claim a tax credit for their expenses.

With the continued pro bono support of the lawyers at McMillan, the Desbiens are now lobbying the government for a change in the definition of medical expenses. Another win would mark a first for PBLO's Family Legal Health Project toward its mission of systemic advocacy.

For his part, Friedman is happy to help ensure other families don't have to endure the tax challenges that confronted the Desbiens.

“When taxpayers face tax disputes with the government, it's hard to get effective representation without having to incur significant costs. Families in this kind of situation have enough to worry about without adding the cost of legal representation. They should be focusing their attention on other, more important things.”

Thanks to McMillan, PBLO and SickKids, the Desbiens family is doing just that.

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*Join Pro Bono Law Ontario in September for the official launch of the Family Legal Health Project at SickKids. Visit [www.childadvocacy.ca/flhp](http://www.childadvocacy.ca/flhp) for details of the event.*

## When ethical issues turn into personal health issues

*The study of ethics has been defined as the science of morals, the rules of conduct.*

The law of ethics for lawyers in Ontario is encapsulated in the *Rules of Professional Conduct*, as well as many unwritten rules and codes of behaviour that constitute the rules for the entity we call with pride the “profession.” We are careful to avoid sharp practice, touting and the many examples of conduct that could bring the reputation of our calling into disrepute. We jealously guard the good name that we have inherited from the lawyers who have gone before us.

Every now and then, OLAP gets a call from a lawyer who is in the middle of an ethical dilemma: Is this behaviour correct? Should this action be reported? Should I tell my client this information? Am I obliged to ask the next question in my analysis or just leave it alone in case I get an answer I might not want to hear? There are many, many examples as practising lawyers all know.

OLAP is not a service that offers legal advice. We refer this type of question to private counsel or to the confidential Lawyer Referral Service at the Law Society or Practice Advisory. However, lawyers usually call because they are in difficulty with some sort of personal issue caused as a fallout from trying to deal with the ethical issue – substance abuse (alcohol or drugs), gambling, sex addiction, process addiction (the internet), burnout, depression, mania or some other personal issue that exhibits by the person’s life being out of control such as anger issues. They may be in deep debt; their marriage or relationship may be in dire straits or finished; there may be a complaint to the Law Society, an investigation or even a hearing; there

may be lawsuits; there may be partnership dissolutions; there may be threats of bankruptcy. In short, things may be desperate.

Rule 6.01 (3) of the *Rules of Professional Conduct* [Duty to Report Misconduct] talks about ethical instances where you, as a licensee, must report misconduct, unless to do so would be unlawful or involve a breach of solicitor-client privilege. The duty to report includes instances such as the misappropriation of trust funds, abandonment of a law or legal services practice, participation in a serious criminal activity related to the licensee’s practice, the mental instability of a licensee of such a serious nature that the licensee’s clients are likely to be severely prejudiced, and any other situation where a licensee’s clients are likely to be severely prejudiced.

The Commentary to the Rule states: “Often, instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports the Ontario Lawyers Assistance Program (OLAP) and other support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for OLAP and other support groups will not be called by the Society or by any investigative committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer’s practice. The Society cannot countenance such conduct, regardless of a lawyer’s attempts at rehabilitation.”

Lawyers are faced with ethical issues every day. Sometimes, a lawyer needs a friendly, non-judgmental ear to talk to, not necessarily to solve his problem but to just, well, talk. OLAP has a corps of peer support volunteers who have those ears for the profession. If you need to talk, we’ll listen.

OLAP, the lawyers’ wellness people, is a 24-hour, confidential, peer support and counselling service for lawyers, law students and their immediate families for issues of stress, burnout, addictions, mental health, and wellness concerns.

To contact OLAP, please call the Program Manager Leota Embleton, MSW, Doron Gold, BA, LLB, Terri Wilkinson, BA, LLB, RN, Jill Fenaughty, BA, LLB, at 1-877-576-6227. To contact the Volunteer Executive Director, John Starzynski, LLB, please call, 1-877-584-6227. ■

OLAP UNDERSTANDS LAWYERS  
OLAP REACHES OUT TO LAWYERS



Visit us at:  
[www.olap.ca](http://www.olap.ca)

## The Future of Equality at Pride Week

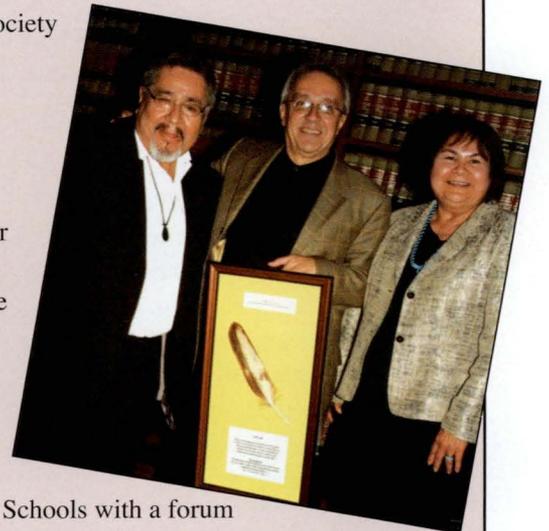


Forty years after the Stonewall Riots in New York, the Law Society and the Sexual Orientation and Gender Identity Section of the Ontario Bar Association hosted a panel discussion at the Law Society to celebrate Pride Week. Panellists explored the history of the political activism in support of rights for LGBT people, and the progress that has been made on many fronts, and then examined contemporary issues that face the community.

Pictured (left to right) are moderator Milé Komlen, chair of the Sexual Orientation and Gender Identity Section of the Ontario Bar Association; and panellists Douglas Elliott, Roy Elliot O'Connor LLP; Diego Macias, co-ordinator 519 Church Street Community Centre's Among Friends project; Zahara Dhanani, activist and 2008 YWCA Toronto Women of Distinction award for social change; and Jamie Watt, Chair and Senior Partner, Navigator Limited. ■

## National Aboriginal Day

The Law Society celebrated National Aboriginal Day and marked the one-year anniversary of the Prime Minister's apology to former students of Indian Residential Schools with a forum followed by a reception held at Osgoode Hall on June 11. The forum looked at the role of the Aboriginal Bar and the legal profession in the Indian Residential Schools Adjudication process. Pictured are Professor Herb Nabigon (left) with Justice Harry LaForme and Law Society Bencher Susan Hare. Justice LaForme holds a gift presented to him by Michael Cachagee, executive director of the National Residential Schools Survivor Society. The gift is an eagle feather which is an important symbol of truth to the Aboriginal community. ■



## Raising Access Awareness

In honour of National Access Awareness Week, the Law Society and ARCH Disability Law Centre hosted a forum and reception on access to justice for people with disabilities. The event featured a panel of legal experts and a presentation by the Lieutenant Governor of Ontario. Shown here, from left to right (front row) are: Law Society Bencher and Equity & Aboriginal Issues Committee member Mary Louise Dickson; and the Honourable David C. Onley, Lieutenant Governor of Ontario. Second row: Peter Wells, Chair, ARCH Disability Law Centre; Justice Anne M. Molloy, Superior Court of Justice of Ontario; W. A. Derry Millar, Treasurer; Josée Bouchard, Equity Advisor; Cynthia Harper, Regional Business Manger, GTA, Legal Aid Ontario; and Deidré Rowe-Brown, Executive Assistant to the Treasurer. Back row: Katherine Laird, Executive Director, Human Rights Legal Support Centre; Cara Wilkie, Barrister and Solicitor; Tess Sheldon, Project Lawyer, ARCH Disability Law Centre; and Ivana Petricone, Executive Director, ARCH Disability Law Centre. ■



## Celebrating Asian and South Asian Heritage month

To celebrate Asian and South Asian Heritage Month, The Law Society of Upper Canada hosted a forum to discuss immigration issues and trends affecting diverse communities on May 5. Speakers discussed problems that Asian and South Asian immigrants encounter from immigration and family law perspectives, as well as how specific laws prove to be barriers to family reunification and sponsoring children and partners to Canada.

Shown here (back row, left to right) are panellists: Maria Deanna Santos; El-Farouk Khaki; Asmaa Khadim; (front row) Janice Joyce Lepiten (moderator), Mississauga Community Legal Services; Avvy Go, clinic director of the Metro Toronto Chinese & Southeast Asian Legal Clinic and Bencher; and Shalini Konanur, Executive Director, South Asian Legal Clinic of Ontario. ■



## Student advocacy project wraps up inaugural year

The Medico-Legal Society of Toronto (MLST) Advocacy Project recently celebrated its first year of providing pro bono legal services to people appearing before the Health Professions Appeal and Review Board (HPARB). Shown here, at a congratulatory luncheon held at The Law Society of Upper Canada on May 4, are the four law students who participated in the program (front row, left to right): Imtiaz Yakub, Christine Hunter, Mark Edelstein and Patrick Riesterer.

Congratulating them are, back row, left to right: Justice Stephen Goudge, Court of Appeal for Ontario, keynote speaker at the luncheon; Law Society Treasurer W.A. Derry Millar; and lawyer Joseph Colangelo, of the Medico-Legal Society of Toronto.



In addition to the MLST and the HPARB, other project participants include Osgoode Hall Law School, University of Toronto Law School and Pro Bono Students Canada. Next year, 28 students will participate in the advocacy project. ■

## Law Day 2009



2009 OBA Secondary School Mock Trial Tournament winning team from Assumption College School, Brantford.

Law Day 2009 events and programs took place in cities and towns across the province on Thursday, April 16. Hundreds of volunteer lawyers and members of the judiciary engaged 15,000 students and members of the public through programming that included: the Phone-a-Lawyer program, secondary and elementary school mock trials, law symposia and debates, career and general information seminars and court tours, among other programs. Started in 1983, by the Canadian Bar Association, Law Day is aimed at educating and informing the public about the role and importance of the law and the legal profession. For further information, please visit [www.lawdayontario.ca](http://www.lawdayontario.ca). ■

## Rule of Law Event



A panel of distinguished experts in human rights, foreign policy and international law discussed “reconciling state sovereignty with the global responsibility to protect,” at a forum held at the Law Society on April 6, 2009.

Hosted by the Law Society and its Human Rights Monitoring Group, the event was the first in its Rule of Law Education Series, and attracted some 200 people. Event partners included Amnesty International Canada, Canadian Lawyers Abroad, Canadian Lawyers for International Human Rights, Human Rights Watch and Lawyers’ Rights Watch Canada.

Shown here from left to right are (back row): Anna Maria Tremonti, award-winning journalist and host of the CBC radio program, *The Current*; Sharmini Peries, *The Real News Network*; Bob Rae, Toronto MP and Liberal Foreign Affairs Critic; (front row) Pacifique Manirakiza, Assistant Professor, Faculty of Law, University of Ottawa; Steve Crawshaw, UN Advocacy Director, Human Rights Watch and Justice Harry LaForme of the Court of Appeal for Ontario. ■



## Métis Rights in the Era of Consultation

The Métis Nation of Ontario held a symposium entitled *Perspectives on Métis Rights 2009* at Osgoode Hall on March 27. An overflow audience heard a panel of speakers address issues related to the government’s duty to consult and accommodate Métis interests in light of the landmark 2003 *Powley* decision. The conference looked at how Métis rights will develop in the future because of the foundations set by this important decision, which defined a Métis community as a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life, and found that Métis rights could overlap existing Aboriginal group rights. Shown here from left to right (front row) are speakers Jean Teillet, Partner with Pape Salter Teillet LLP; and Tracy Campbell, Partner with Calliou Group; (back row) speaker Jason Madden of JTM Law; Clint Davis, President and CEO of the Canadian Council for Aboriginal Business, who served as panel moderator; and speaker Bob Waldon, Director, Natural Resources, Environment & Community Relations, Métis Nation of Ontario. ■

## National Holocaust Memorial Day

As part of its Public Education Series, the Law Society, in partnership with The League for Human Rights of B’nai Brith Canada, hosted a forum commemorating National Holocaust Memorial Day on April 21. A panel of experts explored how the involvement of professionals such as doctors, musicians, teachers and lawyers supported anti-Semitism, genocide and the rise of Nazi Germany. Speakers discussed the historical and social context, and looked at analogies in current world events. Opening remarks were given by Marvin Kurz, national

legal counsel for B’nai Brith Canada’s League for Human Rights. The forum was moderated by Bencher Mark Sandler, chair of the Law Foundation of Ontario.

Shown here from left to right (back row) are panellists: Dr. Yoel Abells, University of Toronto, Faculty of Medicine and columnist for the *National Post*; Kristen Rundle, University of Toronto, Faculty of Law; and David Matas, Senior Legal Counsel, B’nai Brith Canada; and front row: Dr. Judith Cohen, York University,



Faculty of Fine Arts, Department of Music; and Dr. Amanda Grzyb, University of Western Ontario, Faculty of Information and Media Studies. ■

## LIFE MEMBERS

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

David Baird, Q.C., Toronto  
 Lewis B. Baker, Q.C., Toronto  
 Jules N. Berman, Q.C., Toronto  
 The Hon. John H. Brockenshire, Windsor  
 Ralph Brown, Q.C., Toronto  
 Barry Browning, Burlington  
 Robert Chevrier Ottawa  
 Gordon Cooper, Q.C., Toronto  
 R. Cowitz, Toronto  
 R.B. Cumine, Q.C., Toronto  
 G.M. Devlin, Q.C., Don Mills  
 L. Murray Eades, Mississauga  
 Peter A. Gifford, Q.C., Guelph  
 Marvin Givertz, Q.C., Toronto  
 Jesse T. Glass, Q.C., Toronto  
 Arnell Goldberg, Q.C., Ottawa  
 Rose Greenstein, Toronto  
 The Hon. Mr. Justice J.D. Greco,  
 Sault Ste. Marie  
 N.D. Griesdorf, Q.C., Toronto  
 The Hon. John D. Ground, Toronto

H.C. Holden, Brantford  
 J.W. Huckle, Q.C., Toronto  
 Seymour Iseman, Thornhill  
 Paul Jewell, Q.C., Toronto  
 The Hon. Gordon P. Killeen, London  
 James D. Kokonis, Q.C., Toronto  
 Malcolm C. Kronby, Q.C., Toronto  
 Murray M. Lipton, Ottawa  
 The Hon Ernest Loukidelis, North Bay  
 D.H. McGuire, Ottawa  
 John D. McKellar, Q.C., Toronto  
 R.D. McLean, Q.C., Toronto  
 Thomas McPherson, Aurora  
 Sydney Moscoe, Q.C., Thornhill  
 Louise Mostyn, Q.C., Toronto  
 N.J. Munn, Q.C., Toronto  
 H.B. Noble, Downsview  
 Saul Nosanchuk, Windsor  
 The Hon. H.M. O'Connell, Toronto  
 Bruce A. Owen, Barrie  
 Theodore H. Rachlin, Q.C., Toronto

The Hon. John D. Richard, Ottawa  
 David M. Rogers, Q.C., Toronto  
 Ronald Romanick, Oakville  
 Reuben M. Rosenblatt, Q.C., LSM,  
 Toronto  
 Cecil Rotenberg, Q.C., Toronto  
 S.I. Shier, Q.C., Toronto  
 P.H. Sims, Q.C., Waterloo  
 William Slovak, Niagara Falls  
 S.H. Starkman, Q.C., Toronto  
 Richard Stephenson, Toronto  
 H.J. Stitt, Q.C., Toronto  
 David Thompson, Q.C., Ottawa  
 Herman Turkstra, Hamilton  
 J. Peter Vance, Hamilton  
 Louise Vincent, Ottawa  
 M.T. Wadsworth, Toronto  
 Peter A.B. Weatherhead, Toronto  
 J.R. Weir, Q.C., Toronto  
 W.M.D. Wilkins, Q.C., Sudbury  
 Frederick Wood, Whitby

## JUDICIAL APPOINTMENTS

### Federal Court of Canada

The Honourable Justice David G. Near – (*effective June 19, 2009*)

### Tax Court of Canada

The Honourable Justice Steven Kenneth D'Arcy (*effective April 29, 2009*)

The Honourable Justice Frank J. Pizzitelli (*effective June 19, 2009*)

### Superior Court of Justice

*Effective May 15, 2009*

The Honourable Mr. Justice Craig Perkins

The Honourable Madam Justice Heather McGee

*Effective May 20, 2009*

The Honourable Mr. Justice Michael Code

*Effective June 19, 2009*

The Honourable Mr. Justice Rick Leroy

The Honourable Mr. Justice Michael Dale Parayeski

The Honourable Mr. Justice Edward E. Gareau

The Honourable Thomas John McEwen

The Honourable Hugh K. O'Connell

The Honourable Madam Justice Susan E. Healey

The Honourable Madam Justice Caroline E. Brown

Case Management Master Donald Short  
 (*effective May 21, 2009*)

### Ontario Court of Justice

*Effective June 17, 2009*

The Honourable Madam Justice Mara Beth Greene

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The Honourable Madam

Justice Heather Elizabeth Perkins-McVey

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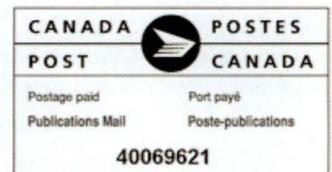
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