

GAZETTE

PUBLISHED BY THE LAW SOCIETY OF UPPER CANADA / PUBLIÉE PAR LE BARREAU DU HAUT-CANADA

Thomas G. Conway

**The new Treasurer talks
Twitter and his new blog**

FOCUS

Alternative Business Structures

Developments in other jurisdictions that may impact the Canadian legal marketplace

Articling Debate 2012

First Convocation webcast draws record viewers

Retention of Women in Private Practice

Programs and resources to empower women lawyers

Tour d'horizon

Un débat animé et reporté
Le français : une valeur réelle dans l'appareil judiciaire

In Memoriam

The Honourable Lincoln MacCauley Alexander,
P.C., C.C., O.Ont., C.D., Q.C., LSM
1922-2012

Reginae Mae Tait, C.M.
1910-2012



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PRIX
du Barreau
2013

Appel de candidatures
Date limite : 31 janvier 2013

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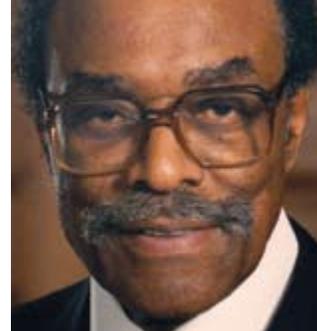
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THE LAW SOCIETY is engaging the legal profession online like never before. Using web-based platforms and social networks, we are harnessing more opportunities to share perspectives on regulatory issues. Treasurer Thomas Conway's new blog is one such platform. In this issue of the Gazette, he shares his thoughts on social media and how he intends to use it to connect with lawyers and paralegals.

LE BARREAU essaie d'engager la profession juridique en ligne comme jamais auparavant. Les plateformes Web et les médias sociaux nous donnent plus de moyens pour partager nos perspectives sur des enjeux de réglementation. Le nouveau blogue du trésorier Thomas Conway est un exemple de ces plateformes. Dans le présent numéro de la Gazette, il s'exprime sur les médias sociaux et la façon dont il entend s'en servir pour atteindre les avocats et les parajuristes.



You launched a Treasurer's Blog at the end of October. Why?

I think that blogging is a medium for reaching out to the newer generation of lawyers and paralegals — those who've entered the profession in the last 10 years. They're much more tech-savvy, and they use the Internet to talk to each other in ways that the older generation doesn't. So this is an opportunity to communicate with those members in the medium that *they've* chosen.

I also think the blog will let us gather together the views of lawyers and paralegals on regulatory issues and provide a forum for sharing those views. And by doing that I think we'll improve our regulatory process... We'll get constructive ideas about how we can do things better and how we can better respond to lawyers' and paralegals' needs.

So for me — at its core — the blog is another interesting way of communicating with our members. And the broader public, perhaps.

This is just one of several ways you and the Law Society as a whole are reaching out online. You're on Twitter, and the Law Society has Twitter accounts, Facebook pages and a YouTube channel. What kind of value do you think you can get from embracing social media?

I find that Twitter is a really interesting medium for communicating with people in real time. It's quite intriguing... You can be in a big conference hall or a meeting room and you're getting instant feedback about the issue that's being discussed.

I've found the interaction between other lawyers and me to be really helpful too. Social media lets you truly engage with people, and it gives you information that you wouldn't necessarily get from other sources.

I do wish I was in the habit of tweeting more, though.

Vous avez lancé un blogue du trésorier à la fin d'octobre. Pourquoi ?

Je crois que le blogage est un bon moyen pour s'adresser à la nouvelle génération d'avocats et de parajuristes — ceux et celles qui ont joint la profession au cours des 10 dernières années. Ils s'y connaissent très bien en technologie et utilisent l'Internet pour communiquer entre eux par des moyens que les anciennes générations n'ont pas apprivoisés. C'est donc une bonne occasion de communiquer avec ces membres par le média qu'ils ont eux-mêmes choisi.

Je crois aussi que le blogue nous permettra de colliger les perspectives des avocats et des parajuristes sur des questions de réglementation et constituera un forum pour partager ces perspectives. Ce faisant, je crois que nous allons améliorer notre processus de réglementation... Nous trouverons des idées constructives pour améliorer notre façon de faire et mieux répondre aux besoins des avocats et des parajuristes.

Donc pour moi, le blogue est essentiellement un autre bon moyen de communiquer avec nos membres, et peut-être même avec le grand public.

Ce n'est qu'un des nombreux moyens que vous et le Barreau utilisez pour atteindre les gens en ligne. Vous êtes sur Twitter et le Barreau a des comptes Twitter, des pages Facebook et un canal YouTube. Quel genre de valeur croyez-vous que vous pouvez tirer des médias sociaux ?

Je trouve que Twitter est un moyen très intéressant pour communiquer avec des personnes en temps réel. C'est très intrigant... Vous pouvez être dans une grande salle de conférence ou une salle de réunion et avoir une rétroaction instantanée sur les questions dont vous débattiez.

Je trouve que l'interaction entre les autres avocats et moi est vraiment utile aussi. Les médias sociaux permettent de nouer le dialogue avec les gens et de donner

It's interesting you bring that up, because you don't have a lot of time. Will you be writing your blog yourself?

I think it would be naïve of people to think that the Treasurer of the Law Society just goes out there and riffs on things without talking to people. I mean, I'm the Treasurer... I'm not just Tom Conway the blogger. I occupy an office, and I'm speaking as the person who's in that office. We have a complex regulatory environment with difficult challenges — no single person, especially the person who occupies an elected office like this one for one or two years, can be expected to speak personally for an institution like ours.

Now, to the extent that what I have to say may not be “authentic” in the way that social media circles use that word... OK, fine. But it's authentic in the sense that I'm speaking as the Treasurer, and the fact is that I speak as the Treasurer with the help of many dedicated professionals whose jobs are to regulate the profession in the public interest.

I think those people who want to know why we're taking a particular tack on an issue, or why we're responding to a particular challenge in a certain way, are more interested in an informed discussion than in whether or not I'm blogging without help. It's not just Tom Conway mouthing off about what he thinks the Law Society should do, it's the Treasurer speaking on behalf of Convocation and the Law Society.

So what kinds of things do you plan to blog about?

I think we need to be talking to the profession — and to the public — about what's happening in other jurisdictions, for example. In my role as Treasurer I travel all the time, and speak to a lot of people in other countries who are running other law societies and trying other approaches. Talking to them really puts things in perspective, and I want to be able to share that.

I'd also like to talk about the issues facing Convocation right now. The Articling Task Force is a good example... There were so many different views out there about what we should or should not be doing. People expected me, as the Treasurer and the chair of the Articling Task Force, to tell them what I thought, and we tried with the consultation to encourage others to tell us what *they* thought. In a similar situation in the future, a blog like this would be a great way for people to extend that kind of well-informed conversation.

Now... we may not like what we hear, but sometimes you have to read those things and you have to adjust and adapt. That's what social media is all about. 

de l'information qu'on n'obtiendrait pas nécessairement d'autres sources.

J'aimerais tout de même avoir le réflexe de tweeter plus souvent.

C'est intéressant que vous souleviez ce point, car vous êtes très occupé. Écrivez-vous le blogue vous-même ?

Je crois qu'il serait naïf de penser que le trésorier du Barreau se contente d'improviser sans pour autant consulter les gens. Vous comprenez, je suis le trésorier... je ne suis pas Tom Conway le blogueur. J'occupe une fonction dans le cadre de laquelle je m'exprime. Nous avons un milieu de réglementation complexe qui comporte des défis de taille — aucune personne, surtout celle qui occupe un poste élu comme celui-ci pour un an ou deux, ne peut vraisemblablement parler personnellement au nom d'un établissement comme le nôtre.

Maintenant, dans la mesure où ce que j'ai à dire peut ne pas être « authentique », comme les habitués des médias sociaux le disent... Bon, d'accord. Mais c'est authentique dans le sens où je parle en tant que trésorier, et je parle à titre de trésorier avec l'aide de nombreux professionnels dévoués dont le travail consiste à régir les professions juridiques dans l'intérêt public.

Je pense que les gens qui veulent comprendre pourquoi nous prenons une position particulière sur une question, ou pourquoi nous répondons à un défi précis d'une certaine façon, s'intéressent plus à avoir une discussion bien fondée qu'à savoir si je blogue avec ou sans aide. Ce n'est pas juste Tom Conway qui déballe ce qu'il pense que le Barreau devrait faire, c'est le trésorier qui parle au nom du Conseil et du Barreau.

Alors, de quoi allez-vous bloguer ?

Je crois que nous devons parler aux gens de la profession — et au public — de ce qui se passe dans les autres ressorts, par exemple. Dans mon rôle de trésorier, je me déplace constamment, et je parle à beaucoup de monde d'autres pays qui gouvernent d'autres barreaux et qui essaient d'autres méthodes. Leur parler remet les choses en perspective, et je veux pouvoir partager cela.

Je veux aussi traiter des questions actuelles qui préoccupent le Conseil. Le Groupe de travail sur le stage en est un bon exemple... Il y a eu tellement de points de vue différents sur ce que nous devrions faire ou ne pas faire. Les gens s'attendaient à ce qu'en tant que trésorier et président du groupe de travail, je leur dise ce que je pense, et nous avons essayé dans la consultation, d'encourager les autres à nous donner leur avis. À l'avenir, dans une pareille situation, un blogue comme celui-ci sera un moyen formidable de participer à ce genre de conversations bien fondées.

Maintenant, nous n'aimons peut-être pas ce que nous entendons, mais parfois il faut lire tous les points de vue et savoir s'adapter. C'est ce en quoi consistent les médias sociaux. 

FOCUS



*England
and Wales*

Australia

United States

Ontario

ALTERNATIVE BUSINESS STRUCTURES

LESSONS FROM OTHER JURISDICTIONS

SINCE THE MID-1990S, THE LAW SOCIETY HAS STUDIED developments in the ways lawyers can deliver legal services in Ontario. It has implemented regulatory schemes for professional corporations, multidisciplinary practices (MDPs) and limited liability partnerships (LLPs) beyond traditional partnership and sole practice models.

Earlier this year, Convocation agreed to review business structures/law firm financing as one of the Law Society's strategic priorities for the next four years. The Law Society's focus in regulating alternative business structures (ABSs) is to ensure they facilitate competent and professional delivery of legal services and ensure that licensees continue to fulfil the duties owed to a client and the administration of justice.

As the Law Society begins to explore alternative legal service delivery structures, financing arrangements, and regulatory challenges, it's helpful to examine developments in other global jurisdictions that may impact the Canadian legal marketplace.

AUSTRALIA

In 2001, New South Wales (NSW) became the world's first common-law jurisdiction to allow law firms to pursue alternative business structures (ABSs) as multidisciplinary or incorporated practices.

Perhaps it was the influence of Australia's remote and rugged Outback that influenced the legal profession in the country's most populous state to be adventurous.

They had already been allowed to form multidisciplinary arrangements since 1990 when law firms could form such partnerships as long as lawyers retained at least 51 per cent of the net income. But in 1998, the Australian government decided to review legislation regarding competition in every jurisdiction and determine whether barriers existed.

The 51-per-cent rule in NSW was found to be non-competitive. "With the stroke of a pen, multidisciplinary practices became totally unfettered under amendments to the *Legal Profession Act* (LPA) enacted in 2001," explains NSW's Sydney-based Legal Services Commissioner Steve Mark, who has held the position since its creation in 1994.

The law gave legal service providers the ability to register as a company with the Australian Securities and Investments Commission, which oversees compliance with the country's *Corporations Act, 2001*.

IN 2001, **NEW SOUTH WALES** (NSW) BECAME THE WORLD'S FIRST COMMON-LAW JURISDICTION TO ALLOW LAW FIRMS TO PURSUE ALTERNATIVE BUSINESS STRUCTURES (ABSs) AS MULTIDISCIPLINARY OR INCORPORATED PRACTICES.

For the first time in Australian legal history, law firms could now incorporate, share receipts and provide legal services either alone or with other legal service providers who may or may not be lawyers. However, an incorporated law firm has to appoint at least one lawyer as director, responsible for both managing legal services and ensuring those services comply with the professional obligations of lawyers under the LPA, regulated by the Office of the Legal Services Commissioner (OLSC).

About 20 percent of the legal profession – or over 1,200 law firms – are incorporated in New South Wales, which is home to nearly 30,000 lawyers – more than half the number across the country. About 20 percent of law firms throughout Australia are now also incorporated after all the other states, except for South Australia, followed NSW with their own legislation.

Law firms can also obtain external investment or have non-lawyer staff participate in the ownership.

"Initially, there was a fear that multidisciplinary practices would proliferate and we'd end up having accounting firms becoming law firms and taking over the legal profession and drowning it," Mark explains.

"There was also a fear that there would be all kinds of weird conglomerations of financial services merging with real estate agents and law firms – and indeed that did happen, but not anywhere near as much as what was expected."

He says the one-solicitor-director rule for law firms wanting to change from a partnership or multidisciplinary practice into an incorporated body ensured that the legal profession did not lose control in NSW.

"The solicitor-director has all the duties a lawyer has to the court and the client, as well as to the corporate regulator that any director would have.

“But as solicitor-directors under the *Legal Profession Act 2004*, they have several additional duties, one of which is the requirement that the solicitor-director ensures that the incorporated legal practice has appropriate management systems to meet compliance of the legal ethics required of all lawyers.

“Trouble is, the amended LPA did not define an appropriate management system, so overnight I also became a management consultant,” says Mark.

“I have to determine whether solicitor-directors have maintained their requirements, have complied with the Act, and have ensured there are management systems involved in the practice.”



New South Wales' Legal Services
Commissioner Steve Mark

The OLSC, in collaboration with several partners including the Law Society of NSW, developed a checklist for incorporated legal practices to self-assess their management systems and rate their compliance.

Failure to comply can amount to a finding of professional misconduct for the solicitor-director.

The management systems have proven to be enormously helpful for incorporated legal practices in New South Wales, most of which are small law firms, says Mark.

“They’ve become more profitable, better managed and more ethically based,” he explains.

“The legal profession has become more ethical and more professional because of this system.”

Australia’s two publicly listed legal practices, Melbourne-based Slater & Gordon – the world’s first publicly traded law firm – and Integrated Legal Holdings, have also stated in their prospectuses, constituent documents and shareholder agreements that their primary duty is to the court; their secondary duty is to the client; their tertiary duty is to the shareholder; and that where there is a clash between legal profession regulation and the *Corporations Act, 2001*, the former will prevail.

As Mark explains, the legal services director of an ABS firm in NSW must ensure that all employees, whether they’re licensed legal practitioners or not, act as if they had the ethical duty of a lawyer, and that the firm itself must also have an ethical profile.

“If the solicitor-director fails in that, I can remove that person’s practising certificate and the firm has seven days to replace that person or they go into involuntary liquidation,” he says. “And I have audit powers. I can walk in any time and audit their business, which doesn’t just mean financial audits but also practice reviews that look at their behaviour – how they handle their clients, file management, disclosure requirements for fees – to help them improve their behaviour so we don’t get more complaints.”

THE LEGAL SERVICES DIRECTOR OF AN ABS FIRM IN NSW MUST ENSURE THAT ALL EMPLOYEES, WHETHER THEY’RE LICENSED LEGAL PRACTITIONERS OR NOT, ACT AS IF THEY HAD THE ETHICAL DUTY OF A LAWYER, AND THAT THE FIRM ITSELF MUST ALSO HAVE AN ETHICAL PROFILE.

A study conducted in 2008 by the University of Melbourne’s law school on over 600 incorporated legal practices in collaboration with the OLSC, found that by simply becoming incorporated and undergoing the self-assessment process regarding appropriate management systems, the number of complaints launched against them dropped by two-thirds. (www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches under *OLSC Research Report on the Impact of Management Based Regulation on Incorporated Legal Practices in NSW*)

Furthermore, the OLSC received fewer complaints against law firms this year than when Mark was appointed Legal Services Commissioner 18 years ago and he says there are now more than two times the number of lawyers in NSW compared to some 12,000 in 1994.

Mark says that while Australian law firms incorporate for various reasons, such as obtaining tax breaks, liability protection or for income splitting, their prime goal should be to improve management, which he points out has been the biggest ramification of the ABS trend down under. “They likely become more profitable, better run and attract fewer complaints, so everybody benefits.”

THE BRITISH EXPERIENCE

Much like Australia, alternative business structures emerged in England and Wales as a result of concerns that the legal services market did not enjoy sufficient competition and was subject to restrictive practices.

In 2007, the British Parliament passed the *Legal Services Act (LSA)* to provide, in part, a new route for consumer complaints and to promote competition. It also created an independent body, the Legal Services Board (LSB), to oversee the “front-line regulators” of legal services, and modernize the provision of legal services by facilitating the development of ABSs.

With the new regime, law firms in England and Wales may be managed or owned by non-lawyers. A firm intending to provide certain legal services reserved for legal professionals, but which seeks to do so with the involvement of a non-

lawyer, and in which either corporate managers or non-lawyers together exercise control, must be licensed as an ABS.

Under the LSA – dubbed the “Tesco Law” because it makes legal services available in retail stores (although UK-based mega-retailer Tesco has yet to enter the picture) – law firms can also attract outside investment and offer non-legal services.

The legislation also established the Solicitors Regulation Authority (SRA) as an independent body of the Law Society of England and Wales that embarked on a two-year-long consultation within the profession on ABSs, explains Antony Townsend, Chief Executive of the SRA in Birmingham. “The proposal we put forward and which found favour said we shouldn’t start from the premise that alternative business structures are inherently risky, whereas traditional law firms aren’t,” he says.

“We should be looking at each alternative business structure on its merits, working out where the risks arise and then limiting those risks accordingly – and that’s the structure we now have in place.”

In early 2012, the SRA became an ABS licensing authority and has since approved 33 ABSs in England and Wales, as of October 2012. (Scotland is developing a more limited model of ABSs.) The SRA is considering another 100 applications, according to Townsend.

As he told the Westminster Legal Policy Forum in October, “ABS applicants [70 per cent of which are from existing regulated entities] have proved to be highly innovative and forward thinking, whether they are existing legal bodies taking external investment to grow successful business models, proposing to grow by acquisition or creating joint ventures, or entirely new entrants to the legal services market wanting to take market share in areas of law traditionally serviced purely by all-lawyer firms.”

ABSs that have been licensed range from the small – such as Lawbridge, a husband-and-wife-run law firm (he’s a solicitor; she has a background in accounting and tax) – to the large, most notably Co-operative Legal Services Ltd. of super-retailer Co-operative Group, which expanded its members-only legal-services menu in wills and estates, conveyancing, personal injury claims and employment law to the general public.

It also diversified into family law with plans to hire some 3,000 family-law lawyers across England and Wales.

The ABS landscape in England and Wales has a global

ALTERNATIVE BUSINESS STRUCTURES EMERGED IN ENGLAND AND WALES AS A RESULT OF CONCERNS THAT THE LEGAL SERVICES MARKET DID NOT ENJOY SUFFICIENT COMPETITION AND WAS SUBJECT TO RESTRICTIVE PRACTICES.

presence, thanks to Slater & Gordon’s acquisition of major UK practice, Russell Jones & Walker. A private equity firm, Duke Street, has invested in Plexus Law, part of the Parabis Group.

Accessing outside capital and widening ownership – either externally or within a law firm – have been two goals cited by firms pursuing the ABS model, explains Townsend.

“Another potential reason has been to create multidisciplinary practices, such as blending law with accounting, but that hasn’t happened much yet,” he says.

However, the results of a recent survey by Thomson Reuters’ legal publishing arm, Sweet & Maxwell, found that 77 of the 100 largest British law firms polled did not consider private equity investment as an appropriate source of external funding for law firms, while 88 would not consider listing on the stock market. Bank lending was the favoured choice for 85 firms.

The findings don’t surprise Townsend. “Alternative business structures are simply one model,” he says, noting that the arrival of ABSs have accelerated the consolidation of small traditional legal practices.

“But the big city London law firms, in what we call the Magic Circle, by and large aren’t interested because they don’t need the capital. They find being an alternative business structure might hamper them in terms of some of their international work and that’s simply not of interest to them.”

National brands have also emerged in response to the ABS model. Launched in May 2009, QualitySolicitors is an Internet-based alliance of independent UK law firms that in 2011 formed a national partnership with high-street stationery giant, WHSmith, to set up shop with “Legal Access Points” in over 150 branches across the country.

Townsend believes the drive toward further legal-practice consolidation will contribute to the growth in popularity of ABSs. “The trend will probably be towards more commoditized, low-level and fairly routine legal work, but will never become the exclusive model for a lot of law firms,” he explains.

The challenge for the SRA has been to enable economic liberalization while maintaining proper regulatory controls of ABSs.

“In addition to the code of conduct, which applies to them just as it does to traditional law firms, alternative business structures require the appointment of a lawyer as a compliance officer responsible for overseeing the core legal



Antony Townsend, Chief Executive of the Solicitors Regulation Authority

professional values [another compliance officer is responsible for finance and administration],” says Townsend. “That’s why we have a very intensive vetting process, not only for managers of ABSs, but also the owners – and all material interest holders undergo the same suitability tests as solicitors do.”

However, the SRA isn’t the only regulatory body licensing ABSs in England and Wales. As of October 2012, the Council for Licensed Conveyancers has licensed 12 ABSs.

Meanwhile, the Bar Standards Board, which regulates barristers in England and Wales, is set to apply to become an ABS licensing authority in early 2013 and expects to approve the first set of licenses in 2014.

The Chartered Institute of Legal Executives, the Intellectual Property Regulation Board and even the Institute of Chartered Accountants in England and Wales (which also seeks to become a probate regulator) are also hoping to issue ABS licenses.

This trend, along with nationwide branding campaigns, has changed the approach to the delivery of legal services in the UK, explains Neil Rose, editor of the British website for lawyers, *LegalFutures.co.uk*.

“Rather than people hunting to seek the law, the law is now very much going after them,” he says. “There’s a lot more high-street presence, a lot more advertising and marketing, and all these things make people aware of legal services.

“The hope is that will grow the market for everyone. The question is, who gets to share the market?”

A 2005 paper by James Dow, a business professor at the London Business School, and Carlos Lapuerta, a principal at London-based consultancy The Brattle Group, suggests the answer, for lawyers at least, may be more of them sharing in the profits if they’re allowed to have more of a stake in a practice.

THE UNITED STATES

In 2009, the American Bar Association established the ABA Commission on Ethics 20/20 to review the association’s Model Rules of Professional Conduct and American models of lawyer regulation in the context of the globalization of legal services and technological advancements.

A Working Group on Alternative Business Structures was established to look at how core principles of client and public protection could be satisfied while allowing the increased use of one or more forms of ABS. However, two years later, the commission ruled against recommending multidisciplinary practices (MDPs), passive equity investment in law firms, or public trading of shares in law firms as potential new business structures for the delivery of legal services in the U.S.

In early 2012, the working group issued a call for input regarding a proposal that the ABA Commission recommend that non-lawyer ownership be allowed in law firms in which non-lawyers would share in the profits of a law firm that

would solely provide legal services – a structure currently permitted in Washington, D.C. (where law firms can include such partners as accountants, social workers or engineers) and one that is similar to MDPs in Ontario.

“The U.S. has not followed suit because of the belief that fee-splitting is anathema and firms cannot share fees with non-lawyers and that includes staff,” explains the OLSC’s Mark. For instance Larry Fox, a vocal critic of ABSs and a long-time partner of the Philadelphia firm, Drinker Biddle & Reath LLP, told delegates attending the American Bar Association’s annual meeting in August, that “sharing fees is just as insidious when it is done overseas as it is in America.”

At the meeting the House of Delegates voted to postpone indefinitely a resolution reaffirming its policy prohibiting lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring ownership or control over law firms to non-lawyers.

Born in the U.S. and having practised law in England, Mark points out his role is to regulate firms and not advise them to go down the path toward incorporation. “Principle-based regulation does not require more prescription – it can improve the services of law firms.”

He believes that U.S. opponents of the ABS model need to recognize that the 21st century has created a new reality for the legal profession, with the emergence of virtual law firms and outsourcing, as two prime examples. “The question is not whether or not alternative business structures are allowed. But if they are, how can we make them work for the benefit of all, which is my goal and duty as a regulator.”

ONTARIO

Under By-Law 7 Part III, established in 1999, the Law Society of Upper Canada sets out regulations that govern the creation of MDPs, allowing a lawyer or paralegal to form a partnership or association with a non-licensure – for example, an accountant, tax consultant, or trademark and patent agent – as long as the lawyer or paralegal remains in control. Through an affiliation model, lawyers or paralegals also have the option of providing clients with the services of other professionals, although the practices of the law firm and the professional services firm are not integrated as they are within the MDP model.

In its 2005 report to Convocation, the Law Society’s Professional Regulation Committee also addressed the issue of financing law firms. It noted that “developments outside of Canada may eventually change the competitive environment in which Canadian firms practice and impact upon the capital requirements of Canadian firms,” such as through global consolidations or mergers or non-lawyer corporations providing certain legal services.

“Small and mid-size firms may also wish to access new methods of financing to facilitate consolidation of firms or franchise-type operations.”

However, the committee concluded that any form of financing must comply with the profession's core values: independence, confidentiality and conflicts of interest rules.

"The prohibition against fee-splitting with a non-lawyer is intended to avoid the risk that the lawyer's independence could be compromised by a third party's interest in the fee," the report said. "If unrestricted third party (non-lawyer) investment in law firms occurred, there is a risk that the interests of the non-lawyers could create an instability in the firm that affects how [it] manages itself, with a filter-down effect to client interests."

Furthermore, publicly traded law firms "would create a significant problem for a lawyer in fulfilling the role of independent counsel". The committee said it was unclear as to whether third-party financial interests could be structured in a way that they are limited to a monetary share with "no authority to interfere with the management or practice of the firm."

The report recommended that the Law Society not loosen regulatory restrictions to allow non-lawyer equity in law firms. However in April 2012, Convocation approved the creation of a working group that would examine how to structure a regulatory scheme that could facilitate ABSs and their financing.

Five months later, the Alternative Business Structures Working Group approved its terms of reference. These include looking at developments in Canada and abroad regarding ABS delivery models and structures, financing arrangements and related regulatory processes, and considering them in light of various criteria, such as access to justice, public protection and the Law Society's requirement that standards of professional conduct be "proportionate to the significance of the regulatory objectives sought to be realized."

University of Ottawa associate law professor Adam Dodek, who teaches legal ethics and professional responsibility and serves as vice-dean of research in the Faculty of Law, credits the Law Society for examining the issue of ABSs.

"It doesn't necessarily mean you adopt ABSs tomorrow, but the more the practice of law becomes globalized and impacted by changes in other jurisdictions, you have to look at what impact those changes are

going to have on the practice and provision of legal services in Ontario," he says.

"The biggest consideration will be the public interest and providing affordable and different legal services for consumers

in Ontario. That's always got to be balanced against competency and protection of the public."

However, Dodek adds that the risk with ABSs is that the practice of law as a profession could be lost and law could become a business like any other.

Ottawa lawyer Jordan Furlong, who is also a partner with global law firm consultancy Edge International, thinks it could be several years before ABSs arrive in Canada since the factors that precipitated the arrival of non-lawyer-owned firms in Australia, England and Wales don't exist here.

"In both places, there was a sense the profession was looking after its own interests first and the interests of its clients second," he says. "In both places, self-regulation has been removed to a great extent – and that's what every law society in Canada very much wants to avoid in preserving professional independence and self-governance."

Lawyers and corporate clients have not pressured for change since they have other avenues available, such as legal process outsourcing companies in Canada or in such other countries as India, as he points out.

"There's fierce resistance within the legal profession to the idea that law firms could be owned by 'non-lawyers.'"

In the coming decade, mid-size to large law firms will have to closely re-examine their capital base drawn from either making a cash-call to partners or, for larger investments, a bank loan or line of credit. "Banks are becoming more careful about how much they're lending or to whom they're lending and under what conditions," says Furlong.

"With widespread retirement of boomer partners on the horizon and fading interest by associates in achieving the brass ring of partnership, firms may soon face challenges in raising capital and may want more options than they have today."

He explains there is also not a strong push either from governments or consumers to overhaul the delivery of legal services in Canada, other than the ongoing problem of insufficient numbers of lawyers in small and rural communities. On the latter, Furlong notes that by licensing and regulating paralegals, the Law Society has helped address this access-to-justice issue.

Furlong says that if ABSs were sanctioned in Canada, they would spur innovation in legal-service delivery. "Greater access to justice is just one benefit that could flow from this new model for legal practices." 



Jordan Furlong, Ottawa lawyer and Edge International partner



University of Ottawa associate law professor Adam Dodek

ARTICLING DEBATE 2012

Convocation's first webcast draws record viewers

HUNDREDS OF ONLINE VIEWERS TUNED IN TO WATCH CONVOCATION'S first debate about the future of articling on October 25. The event was webcast live, showcasing the complexity of the articling debate and the diversity of positions it encompassed.

While Convocation unanimously agreed to defer a decision about what articling will look like for future law school graduates, the webcast and accompanying real-time discussion drew significant attention online.

A panel of lawyers was invited to watch the debate and simultaneously discuss the proceedings in a live blog that appeared on lawsocietygazette.ca. Blog comments from a range of people, including other lawyers and law school students who watched the debate in real time, were streamed.

Articling quickly became one of the most discussed topics on Twitter, trending Canada-wide and reaching No. 1 in Ontario, after being tweeted and re-tweeted hundreds of times. Nearly 1,100 posts were made to the Law Society Gazette liveblog from more than 165 unique accounts. The archived webcast and live discussion are available at live.lawsocietygazette.ca

Treasurer Conway acknowledges a new level of engagement between Law Society observers and benchers. Many benchers followed the online discussion as the debate unfolded.

"The interest garnered online during the Convocation debate is unprecedented. It was the first time in the Law Society's history that so many people could watch Convocation, witnessing firsthand the governing body



at work," says Treasurer Conway. "We welcome the opportunity to make the Law Society's processes more transparent. Questions around the future of articling are central to the legal profession."

Following a robust and informed discussion, Convocation voted to defer further debate and its decision until November 22, 2012. (See story, [this page](#).)

In the meantime, individuals wishing to provide input on the report were invited to do so in writing by **5 p.m. on November 12, 2012**. All comments received by that date are posted on the Law Society's website at www.lsuc.on.ca/articling-task-force. 

Articling debate deferred

FOLLOWING VIGOROUS DEBATE ON OCTOBER 25, CONVOCATION unanimously agreed to defer a debate and decision regarding a pilot project for the transitional training component of the lawyer licensing process to November 22, 2012.

Convocation will debate and vote on the Articling Task Force's majority report, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, and the minority report, *Embracing Change in the Licensing Process: A Minority View*, to determine the best way forward. The November debate and decision will be available via webcast. Check the Law Society website for details.

Both the majority and minority reports, and background materials, are online at www.lsuc.on.ca/articling-task-force. 



Speaking out for those who cannot

A JUDGE IN BRAZIL KNOWN FOR HER TOUGH STANCE ON police corruption is shot 21 times in front of her house, murdered by masked assailants. A bounty is offered by paramilitary groups for the assassination of a human rights lawyer in Columbia. In the Sudan, lawyers objecting to the use of force on peaceful protesters are arrested and detained in centres known for the torture of prisoners.

Most people would agree that these are tragic stories, but how can individuals half-a-world away help? For Nobel laureate and human rights activist Dr. Shirin Ebadi, who was recently awarded an honorary LL.D. by the Law Society, the answer is straightforward: “Use your freedom and be the voice of people who do not have voices.”

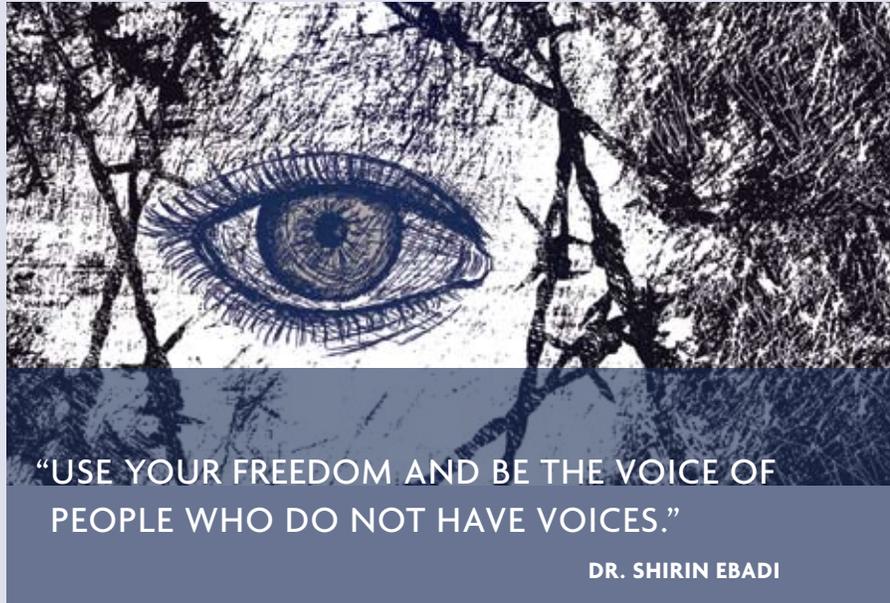
The Law Society, through its Human Rights Monitoring Group (HRMG), has been speaking out since 2006, sending letters of intervention and issuing public statements when human rights violations target members of the legal profession and the judiciary as a result of the discharge of their legitimate professional duties.

While these may seem like small gestures, they do have impact. Eight lawyers in Myanmar had their licence to practise law reinstated after the Law Society and other advocates for the rule of law and the independence of the legal profession intervened on behalf of 32 lawyers disbarred for political reasons.

One of the lawyers whose licence was reinstated thanked the Law Society via email for its actions and acknowledged that global support had played a part in the Myanmar Supreme Court’s decision to reinstate the lawyers’ licences.

Benchler Paul Copeland is a member of both the HRMG and the advisory council of the Canadian Friends of Burma. He is passionate about the need to take a public stand when the rule of law and human rights are violated. “When you don’t have the rule of law you have all sorts of oppressive regimes that get away with awful behavior,” says Copeland. “In repressive countries, it can be very difficult to be a lawyer and to be taking on the government. I think whatever international support we can give those lawyers who are trying to do that work is critically important to the changing of society in a way that I view is better.”

In Venezuela, a Law Society intervention letter regarding Judge Maria Lourdes Afiuni became front-page news. Judge Afiuni was arrested in late 2009 after ordering the conditional release of a man who had been in pre-trial detention for almost three years – a violation of the two-year limit prescribed by Venezuelan law. Judge Afiuni continues to be



“USE YOUR FREEDOM AND BE THE VOICE OF PEOPLE WHO DO NOT HAVE VOICES.”

DR. SHIRIN EBADI

detained. In September, a vehicle drove up to the building where she resides and individuals in the vehicle fired machine guns at the building.

People and organizations around the world have spoken up in support of Judge Afiuni. Most recently, the Canadian Association of Provincial Court Judges (CAPCJ) sent a public letter to President Chávez urging Afiuni’s release. The letter was the first of its kind sent by the association.

“Judicial independence is a hallmark of the rule of law and democracy,” says Justice David Stone, President of CAPCJ. “When the rule of law and judicial independence are, very apparently and after careful investigation, seen to be in real jeopardy, it is necessary for judges and the bar to speak out.

“I think many governments are first focused on how they are perceived by the people in their own country, but to some extent that image may be affected by how they are seen outside their own borders. If President Chávez comes to the view that his treatment of Judge Afiuni is becoming an international embarrassment, it may perhaps convince the government of Venezuela to take a fresh look at judicial independence and ensure that it is part of their rule of law.”

Josée Bouchard, Equity Advisor at the Law Society and staff support for the HRMG, echoes Stone’s sentiments on the importance of speaking out. “Knowing the world is watching gives support to the victims of human rights violations and it can influence the behaviour of the governments involved,” says Bouchard. “A solitary voice may not drive a change, but when added to other voices from around the world it can make a difference.” 

UPDATE FROM THE FEDERATION OF LAW SOCIETIES

THE LEADING ROLE THE FEDERATION OF LAW SOCIETIES OF Canada plays in national regulatory initiatives is growing with the increasing mobility of the legal profession. With the support of law societies across Canada, the Federation is currently engaged in a number of comprehensive projects, a few of which are highlighted below.

National Admission Standards

In September 2012, the Council of the Federation adopted a National Entry-Level Competency Profile as a standard for admission to the legal profession in Canada. This represents a significant step in the Federation's National Admission Standards Project.

The profile outlines the substantive legal knowledge and skills required for entry-level competence and tasks that applicants must demonstrate the ability to perform.

"To ensure we meet our mandate to regulate in the public interest, we need the assurance that all legal professionals practising in any Canadian jurisdiction have met the same standards of competence regardless of where they are first licensed," says Federation president John Hunter, Q.C.

The Federation undertook a large-scale national survey of members of the profession to test the frequency of use and relevance of the draft competencies and to validate the profile prior to finalizing it.

Currently, the profile is with the law societies for approval, with the understanding that adoption of the profile is subject to the development and approval of a plan for implementation.

Model Code of Professional Conduct

The Federation developed and approved a Model Code of Professional Conduct with the goal of harmonizing rules of conduct across the country.

The Law Society of Upper Canada's *Rules of Professional Conduct* were used as the basis for the model code, which is currently being implemented by the law societies. The code has been fully implemented in Alberta, Saskatchewan, Manitoba and Nova Scotia and it has been approved, but not yet implemented, in British Columbia. The Law Society of Newfoundland and Labrador has also approved the code and is working towards a January 1, 2013 implementation date. The remaining provinces and the three Territories are in the process of review.

The Law Society's Professional Regulation Committee proposed amendments to the Law Society's rules, as a result of the implementation of the code, and with Convocation's approval, sought comments from lawyers on those

"To ensure we meet our mandate to regulate in the public interest, we need the assurance that all legal professionals practising in any Canadian jurisdiction have met the same standards of competence regardless of where they are first licensed."

JOHN HUNTER, Q.C.
PRESIDENT, FEDERATION OF LAW SOCIETIES OF CANADA

amendments earlier this year. The committee is now considering the input received, prior to recommending amendments to Convocation.

The Federation has established a Standing Committee on the Model Code of Professional Conduct to monitor changes in the law, receive information from law societies on rule-related issues and to recommend amendments as the Model Code is implemented.

CanLII Survey

CanLII, which is funded through the Federation, recently released the results of a user survey it undertook to identify ways to improve and expand its services. The survey results underscored the importance of CanLII as a legal research tool for the profession.

Practising lawyers, Québec notaries and articling students from across Canada and from a variety of practice areas participated in the research, which was conducted by CorbinPartners Inc.

According to top line conclusions in the summary report on the survey:

- Close to 9 in 10 survey respondents had used CanLII in the previous 12 months
- CanLII is the 'First stop' for the majority of research needs, and
- Satisfaction among CanLII users is high.

Respondents were also asked to identify opportunities for improvement and expansion. Many of the comments received aligned with the goals outlined in CanLII's Strategic Priorities Report for 2012-2014.

The summary report is available on CanLII's website, www.canlii.org, and more information on all of the Federation's initiatives is available on the Federation's site, www.flsc.ca. 





Picture the holidays helping the hungry

The **Lawyers Feed the Hungry Program** helps people from all walks of life who have one thing in common: coping with the devastating effects of poverty and hunger.

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Donate online at: www.lawyersfeedthehungry.ca

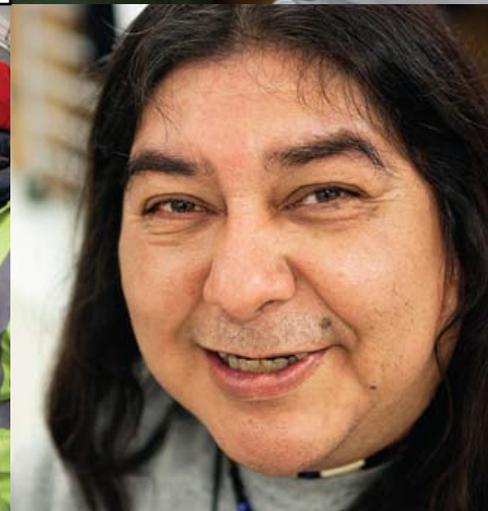
A SNAPSHOT TO CONSIDER

- \$5** cost of 1 meal
- 100,000+** meals provided in a year
- 90¢+** of every dollar goes directly to program operations

This essential year-round meal program, located in Toronto, London, Ottawa and Windsor, is only possible thanks to our generous donors and the countless number of volunteers who give of their time to help.

As you celebrate the holidays, please remember the **Lawyers Feed the Hungry Program**. Every contribution makes a difference.

*Tax receipts are issued for all contributions of \$20 or more.
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Q&A | NEW LATE FEE AND DEFAULT PERIOD POLICIES

RE: ANNUAL FEE PAYMENT AND ANNUAL REPORT FILING

What are the new policies?

The Law Society is implementing a \$100 late fee to be charged to lawyers and paralegals who fail to pay their annual fee or file their annual report on time, effective for 2013 fees and filings.

The Law Society has also reduced the default period for both annual fee payment and annual report filing to 90 days from 120 days. In 2013, lawyers and paralegals will have 90 days from January 1 to pay their annual fee and 90 days from March 31 to file their annual report.

The default period will be further reduced to 60 days, beginning in 2014.

Why is the Law Society introducing these new policies?

The Law Society adopted the new policies to save administrative costs by reducing the number of late payments and filings.

When do the new policies come into effect?

The new policies are effective for 2013 fees and filings.

The reduction in the default period will be phased in over two years. The default period will be 90 days for annual fee payment and annual report filing, in 2013. Beginning in 2014, the default period will be 60 days.

When do I have to pay my 2013 annual fee to avoid the late fee?

You must submit full payment by 5:00 pm, April 1, 2013.

When do I have to file my 2012 annual report to avoid the late fee?

You must file by July 2, 2013.

Why did the Law Society decide on a two-year transition for the reduction in the default period?

In September 2012, Convocation reduced the default period from 120 days to 60 days and approved the implementation of late fees, beginning in 2013. Further assessment following that decision identified that a phased implementation of the change from 120 days to 60 days would be less onerous for lawyers and paralegals. In recognition, Convocation approved a two-year transition phase at its October meeting. The default period for the payment of annual fees and filing of annual reports will be 90 days in 2013 and 60 days for subsequent years.

If I'm charged the late fee, am I still subject to administrative suspension?

Yes. All lawyers and paralegals who fail to pay their annual fee or file their annual report by the end of the default period will be charged the \$100 late fee and be referred for administrative suspension.

You will be required to pay the late fee as well as fulfil the other requirements during the suspension process, if you are to avoid suspension.

If you are suspended, you will be responsible for fulfilling all requirements including paying the late fee and the reinstatement fee, if applicable, in order to have your licence reinstated.

Will I be subject to administrative suspension if I don't pay a late fee?

Yes. You will be subject to administrative suspension for failure to pay a late fee.

How did the Law Society decide on the amount of \$100 for the late fee?

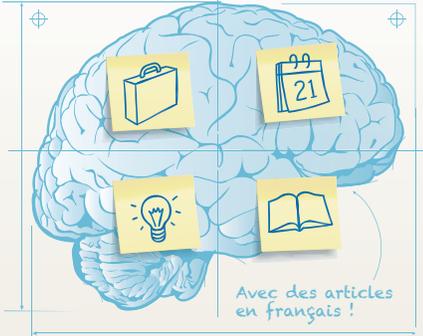
To determine the amount of the late fee, the Law Society examined administrative costs associated with late payments and filings as well as comparable fees imposed by other regulators.

Do other Law Societies have similar policies?

Yes. The Law Society of British Columbia charges a fee of \$100 for late annual fee payment. The fee is due on November 30. Lawyers who do not pay their annual fee by December 31 are charged the late fee.

Why was the default period reduced from 120 days?

The default period was reduced to better align the Law Society's policies with normal business practices. 



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 **GAZETTE**

JOIN US ONLINE FOR FULL DETAILS OF:

- ▶ The outcome of the Articling Debate
- ▶ The Law Society's 2013 Budget

Visit lawsocietygazette.ca after November Convocation

IMPORTANT DATES

Mark your calendar for these important dates in 2013

JANUARY 2013

January 1	2013 Annual Fees due.
January 1	Foreign Legal Consultants' (FLC) annual renewal fee and form due for FLCs approved prior to April 2003. Failure to pay fee and submit form and insurance will result in expiry of permit. FLCs approved after April 2003 must pay the annual renewal fee and file the renewal form with insurance on the anniversary month of approval.
January 15	Application due for Pre-Authorized Monthly Payment Plan (PAP) for annual fee.
January 24	Convocation
January 31	Affiliations annual filing report due.
January 31	Multi-Discipline Partnership annual filing report due.
January 31	Certified Specialist annual fee and annual certification report due. Failure to submit report and payment by this date will result in revocation of certification.
January 31	Law Society Referral Service subscription fees due.
January 31	LAWPRO 2012 Fourth Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

FEBRUARY 2013

February 7	LAWPRO Lump Sum Payment Discount Deadline. Cheques must be dated and received by this date to qualify for the \$50 per lawyer discount on the LAWPRO insurance premium.
February 28	Convocation

MARCH 2013

March 31	2012 Lawyer Annual Report due. 2012 Paralegal Annual Report due. 2012 Class L2 Licence Annual Report due. 2012 Class L3 Licence Annual Report due.
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APRIL 2013

April 1	Final date to pay Annual Fees. Failure to pay fees will result in a \$100 late fee and referral for suspension on or about this date. (Not applicable to members enrolled in PAP)
April 25	Convocation
April 30	LAWPRO 2013 Real Estate and Civil Litigation Levy Surcharge annual exemption form due.
April 30	LAWPRO 2013 First Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

MAY 2013

May 8	Law Society Annual General Meeting
May 30	Convocation

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

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

JUNE 2013

June 27 Convocation

JULY 2013

July 2 Final date to file the 2012 Lawyer Annual Report, Paralegal Annual Report, Class L2 Licence Annual Report or Class L3 Licence Annual Report. Failure to file by this date will result in a \$100 late fee and referral for suspension on or about this date.

July 31 LAWPRO 2013 Second Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

SEPTEMBER 2013

September 15 LAWPRO Risk Management Credit deadline. Complete the online declaration by this date to receive the credit on your 2014 insurance premium.

September 25 Convocation

OCTOBER 2013

October 1 Professional Corporation annual renewal application and fee due.

On or about October 1 LAWPRO Online filing of Professional Liability Insurance applications for 2014 expected to begin.

October 24 Convocation

October 31 LAWPRO 2013 Third Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

NOVEMBER 2013

November 1 LAWPRO e-filing deadline. LAWPRO renewal applications for 2014 professional liability insurance must be e-filed by this date to be eligible for the \$25 per lawyer e-filing discount.

November 8 Final deadline to submit LAWPRO renewal application for 2014 professional liability insurance.

November 21 Convocation

DECEMBER 2013

December 6 Special Convocation (if required)

December 31 Failure to renew the Certificate of Authorization for Professional Corporations by this date will result in expiry of Certificate.

December 31 Final date for lawyers and paralegals subject to the CPD Requirement to complete all 12 CPD Hours and record them on the LSUC Portal. Failure to complete and record CPD Hours will result in referral for suspension.

YOUR PRACTICE

CPD REQUIREMENT – TIPS AND REMINDERS

With the December 31 deadline for completion fast approaching, here are some quick tips and reminders to help you complete the CPD requirement with ease.

Professionalism vs. Substantive Hours

- ✓ Experienced and new members must complete a minimum of 3 Professionalism Hours and up to 9 Substantive Hours per year. Professionalism Hours deal with topics related to professional responsibility, ethics and/or practice management. The remaining 9 Hours may cover substantive, procedural and law-related topics.
- ✓ Only programs and activities containing Professionalism Hours must be accredited by the Law Society. Programs and activities on substantive topics do not need to be accredited.

Changes to New Member Requirement

Early in the year, the Law Society made changes to the new member CPD requirement:

- ✓ Lawyers and paralegals in their first two full years of practising law or providing legal services may apply any program or activity that contains **a minimum of 0.5 Professionalism Hours** and is accredited by the Law Society toward the CPD requirement.

New ways to earn CPD Hours

The Law Society also approved new ways to earn CPD Hours:

- ✓ Viewing or listening to recorded CPD programs or courses without a colleague, or participating in online courses that prompt responses throughout the learning process, to a maximum of 6 CPD Hours per year.



Support for entering CPD Hours in the LSUC Portal

The Law Society has produced a number of helpful supports for entering CPD Hours in the LSUC Portal:

- ✓ *LSUC Portal 101* is a quick refresher on entering Hours. It is available on the online Gazette at www.lawsocietygazette.ca
- ✓ *The Portal Functionality Guide for CPD* is an overview of enhancements to the CPD portion of the Portal. It and the *Step-by-Step Guide for Entering Professionalism Program Hours on the LSUC Portal* are available through *LSUC Portal 101* and also at <http://rc.lsuc.on.ca/jsp/cpd/index.jsp#e>. 

Lawyers and paralegals must complete all 12 CPD Hours and record them on the LSUC Portal by December 31, 2012 or risk administrative suspension.

For more information about the CPD requirement and accreditation process, see the Law Society's website at <http://rc.lsuc.on.ca/jsp/cpd/index.jsp>.

RETENTION OF WOMEN IN PRIVATE PRACTICE

Programs and Resources continue to empower women lawyers

HUNDREDS OF WOMEN LAWYERS THROUGHOUT THE PROVINCE have benefited from the Law Society's Retention of Women in Private Practice initiatives. Introduced and implemented over the past five years, these programs and resources are helping women lawyers to take charge of their careers, while also helping to maintain the viability of small law firms.

The Law Society continues to work with its partners to further develop and enhance these innovative programs and resources, with the goal of generating sound and sustainable change within Ontario's legal profession.

In this issue, we highlight three of these initiatives: the Career Coaching Program, the Contract Lawyers' Registry and the Women's Online Resource Centre.

Career Coaching Program

A recent addition to the Retention of Women initiatives, this five-year pilot program was launched in April 2012, to help women lawyers who are sole practitioners or in firms of five or fewer lawyers maintain their practices while taking a maternity, parental or compassionate care leave.

The program offers eligible participants up to **6 hours** of confidential and professional career coaching, free of charge as follows:

- two hours **prior** to the leave to assist participants in ramping down their practices
- two hours **during** the leave to help participants maintain their practices during the leave, and
- two hours **following** the leave to help participants with reintegration.

There are now 14 participating career coaches located around the province and services may be offered in French or English.

More information, including an application form, eligibility criteria, frequently asked questions, and profiles of career coaches, is available on the Law Society website at www.lsuc.on.ca/with.aspx?id=2147487022.

Contract Lawyers' Registry (CLR)

Available online through the Law Society website, the Contract Lawyers' Registry (CLR) provides a province-wide listing of lawyers who are interested and available to provide legal services on a short-term or contract basis.

The Career Coaching Program helps women lawyers who are sole practitioners or in firms of five or fewer lawyers maintain their practices while taking a maternity, parental or compassionate care leave.

Contract lawyers can provide the support and flexibility to other lawyers requiring their services during a leave, extended holiday, or when extra help is required with a complex file.

To facilitate easy access, the registry is divided into eight geographical regions. Each listing includes a detailed profile for each contract lawyer, including areas of practice, duration of contract sought, location and availability for travel.

Sample contract clauses, a contract checklist and information about issues to consider when hiring a contract lawyer are all available on the site. Tools and information for lawyers seeking contract work is also provided.

A total of 259 lawyers have registered with the CLR since its inception in 2009 and there are currently 165 active participants. There have been 423 contact requests since the program began.

The CLR is available at <http://rc.lsuc.on.ca/jsp/contractLawyer/index.jsp>.

Women's Online Resource Centre (WORC)



Launched in 2010, the Women's Online Resource Centre (WORC) provides quick and easy access to practical online resources for women, including

a list of legal organizations for women lawyers, information about work-life balance, mentoring, marketing and networking, equity and diversity links, as well as resources for sole and small firm practitioners.

The WORC also includes a section on returning to practice, as recommended by the Return to Practice Working Group. Information on leaves, childcare and parenting is also available.

The centre continues to evolve with new resources and can be accessed at <http://rc.lsuc.on.ca/jsp/worc/index.jsp>. 

Law Society Referral Service (LSRS) expands service and attracts new members

OSHAWA LAWYER DALE TURNER ALWAYS dreamed of opening up his own legal practice. After completing his articles at the Regional Municipality of York in May and being called to the Bar in June, he realized his goal and everything was in place by the beginning of July. As part of establishing his practice, he subscribed to the Law Society Referral Service (LSRS).

“I’m visually impaired, and I have a lot of drive and ambition,” said Turner. “I was eager to take on the challenge of opening up my own practice and to be able to assist people.”

“In June, I was going through my call package with my girlfriend at the time. She picked up a flyer and asked, ‘What about this Law Society Referral Service?’ She read it to me and suggested [that] I register for it as part of my business plan. I think that’s what piqued my interest. I called the Law Society and asked about it... and subscribed to the service.”

ENHANCED SERVICE

In May, the Law Society enhanced the referral service to ensure greater access to legal services providers and add more value for subscribers. The Law Society also expanded the service to include paralegals.

As an alternative to the toll-free phone number, callers also now have the option to submit an online form outlining their legal needs.

Trained legal information officers help callers identify their legal issues,



Oshawa lawyer Dale Turner subscribed to the Law Society Referral Service to help establish his practice.

then refer them to a lawyer or paralegal that matches their needs, or to an alternative resource, where appropriate.

“As part of the expanded service, we are also guiding people to where they can find additional resources that could assist them with their legal problems,” says Terry Knott, director of Membership and Complaints Services. “This more targeted approach to providing referrals is more meaningful for subscribers.”

MEMBERSHIP PROVEN WORTHWHILE

Belonging to the Law Society Referral Service has been a great experience for Turner so far.

“As a civil litigator, it has been a valuable experience working on some

interesting files and helping those who need it. Probably more than half my cases now that are ongoing are because of the LSRS,” he says.

“It has also given me an opportunity to assist people who otherwise couldn’t find legal representation.”

As a subscriber, Turner finds the membership worthwhile and points to a number of potential benefits, including acquiring new clients, expanding his profile and contributing to his community.

“If you are a practitioner who is established in one or two niche areas of law, you can certainly tailor your LSRS membership and only receive referrals for those specific areas,” he explains.

“For example, if you are an employment lawyer, you can subscribe only to that area of law, so that you receive cases that you want and with which you are comfortable. If you are a lawyer who is just starting out, you can sign up for multiple areas to expose yourself to a variety of cases, take on different ones and gain experience while helping people who really need your services.”

HELPING PARALEGALS EXPAND REACH

Brantford paralegal Allison Armstrong, who joined the Law Society Referral Service in May, is pleased with how the service has helped her to expand her client base and her reach.

“If you choose other advertising vehicles, you don’t know what percentage of the population the ad is reaching and whether they are actually going to need your service,” she said. “What I liked about the LSRS is that you know that people who are calling the service are 100 per cent looking for assistance.

“I am also getting a lot of calls from the Cambridge area, which is an

“If you are a lawyer who is just starting out, you can sign up for multiple areas to expose yourself to a variety of cases, take on different ones and gain experience while helping people who really need your services.”

DALE TURNER

“If you choose other advertising vehicles, you don’t know what percentage of the population the ad is reaching and whether they are actually going to need your service. What I liked about the LSRS is that you know that people who are calling the service are 100 per cent looking for assistance.”

ALLISON ARMSTRONG

unexpected benefit. Clients who are satisfied with my service are recommending me to people they know, giving me valuable exposure in an area where I hadn’t advertised.”

Armstrong’s practice focuses on small claims court and landlord-tenant matters. She has been doing this work for 18 years and is receiving about three-to-four referrals from the LSRS per month. She says that word-of-mouth referrals are key.

“One of my referrals came from

someone living in Toronto who needed a paralegal in the Brantford area because that’s where their action had been started,” she said.

“If that Toronto caller hires me and they’re happy with my service, I can only benefit. I’ve had repeat customers over the years, and people who were happy with me referred friends of theirs to me. The word-of-mouth component is very important to me, because that’s how I’ve always generated my business. The LSRS is opening up new areas

where my name would not normally have been heard before, so I’m really pleased about that.”

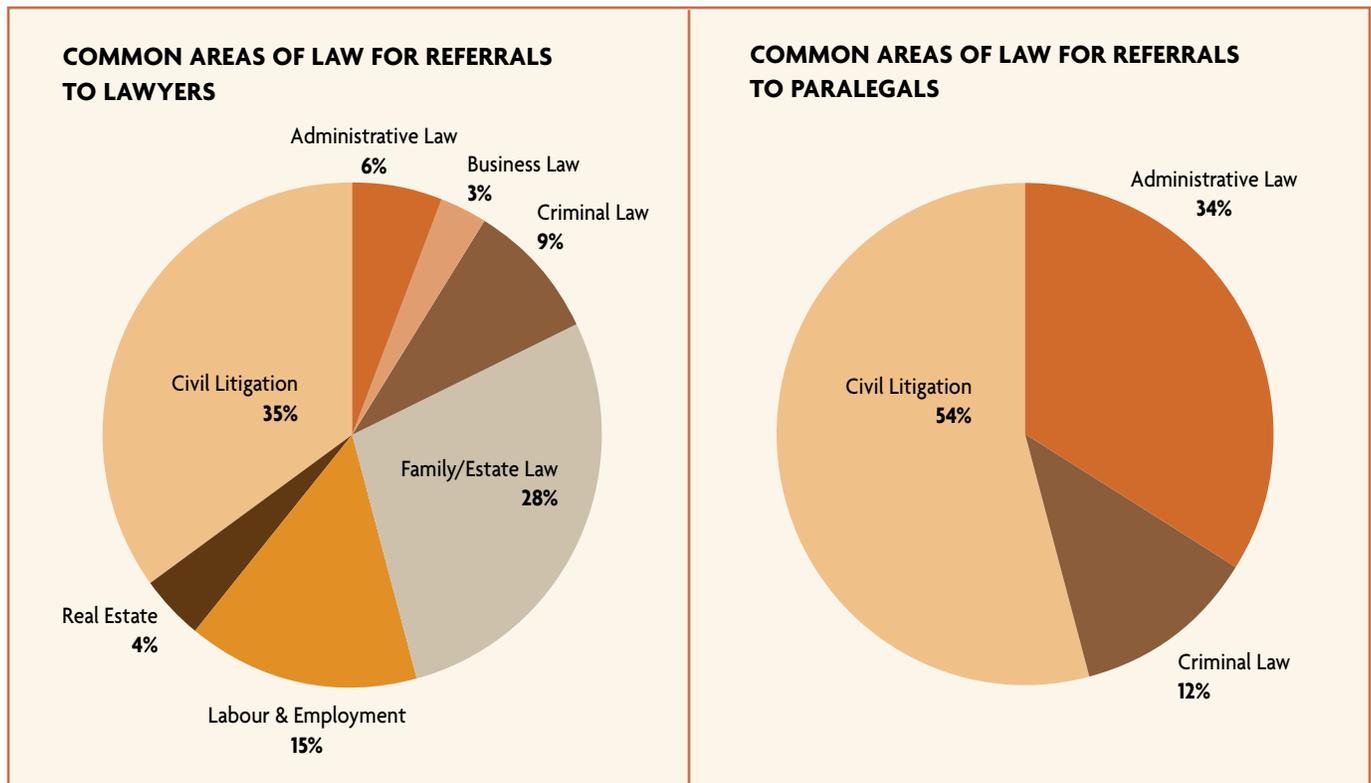
Armstrong urges other practitioners who are thinking of joining the LSRS to give it serious consideration, because even though not every call will turn into business, subscribers are still making an important contribution to the public.

“That’s why most of us got involved in the profession — to help people,” she says.

“I think the service has been working well. I’m glad the Law Society has opened it up to paralegals and I would hope that most paralegals would want to take advantage of it and think of it as a good promotion vehicle.”



TRAINED LEGAL INFORMATION OFFICERS HELP CALLERS IDENTIFY THEIR LEGAL ISSUES, THEN REFER THEM TO A LAWYER OR PARALEGAL THAT MATCHES THEIR NEEDS, OR TO AN ALTERNATIVE RESOURCE, WHERE APPROPRIATE.





PARALEGAL UPDATE

PHOTO: ISTOCK

PARALEGAL LICENSING PROCESS TO BE REVISED

The paralegal licensing process will undergo a review and revision over the next three years to provide a more robust pre-licensing training and testing system that will result in strengthened entry-level standards. The project was approved by Convocation in October.

Substantive and procedural law concepts will be added to the existing licensing examination to ensure that testing has more breadth while still maintaining standardized, fair, transparent and defensible criteria.

The Paralegal Standing Committee recommended the revisions to Convocation following the completion of the Law Society's Five Year Review of Paralegal Regulation and the Legal Needs Analysis.

"The committee concluded that the Licensing Process must be strengthened to support the growth of the paralegal profession as well as the possibility of expansion into other areas of practice," says Paralegal Standing Committee Chair Cathy Corsetti. "By introducing more rigorous standards, we will ensure that the public interest is protected, while maintaining the high quality of new paralegal licensees."

The revision of the licensing examination will require three years for full implementation, with the first offering of the new examination in August 2015.

Revision of the licensing exam will involve reviewing the competencies in the licensing process. Development and

implementation of a substantive and procedural examination for paralegals would follow the highly standardized process that has been used for the development of the current lawyer licensing regime and recent revision to the lawyer competencies.

Since paralegals provide legal services in different areas, the new competency framework would likely be based on various core practice competencies and also the professional responsibility and ethics concepts represented in the current exam competencies.

The process will involve extensive consultation with internal and external subject matter experts. Focus groups would include a cross-section of paralegals providing legal services in major practice areas, including small claims, provincial offences and highway traffic violations, landlord and tenant issues and WSIB matters.

Once complete, colleges will be required to confirm and/or make changes to their learning outcomes to ensure the new competencies are embedded in their courses.

More information is available on the Law Society website at www.lsuc.on.ca. 

INDEPENDENT REVIEW NOTES “REMARKABLE SUCCESS” OF PARALEGAL REGULATION

AN INDEPENDENT REVIEW OF PARALEGAL REGULATION CONDUCTED for the Attorney General of Ontario describes paralegal regulation by the Law Society as an “unqualified success.”

Released by the Ministry of the Attorney General on November 1, 2012, the Report of Appointee’s Five-year Review of Paralegal Regulation is the second of two progress reviews conducted following five years of regulation and was prepared by appointee David J. Morris, a professional writer, communicator and strategist.

The first report, conducted by the Law Society of Upper Canada, was delivered to the Attorney General on June 28, 2012.

Both of the reviews are required under the *Law Society Act* and are designed to help ensure that paralegal regulation has been implemented successfully.

QUICK FACTS

Morris’s findings show that:

- satisfaction levels are generally high among members of the public
- regulation has elevated the reputation and image of the paralegal sector
- the Law Society has proven to be the appropriate regulatory authority
- fees compare favourably with other sectors.

Many of his recommendations for the future support the strategic direction already undertaken by the Law Society. This includes assessing the paralegal training and examination scheme and leaving the current scope of permissible paralegal practice as it is — pending improvements in the standards of learning, professional competence and professional conduct of the paralegal sector.

Convocation has already approved an upgrade to the licensing process, with tougher examinations being developed for 2015.

Other areas identified in the report that the Law Society is already working on include:

- reviewing the licensing exemptions now that the Integration Process is wrapping up
- working on the governance structure — as a first step, all five paralegal members of the Paralegal Standing Committee are welcome to attend and speak at Convocation
- being on the record regarding the need to amend provincial statutes such as the *Solicitors Act* and *Barristers Act*, so that exclusionary language that unnecessarily impedes access to justice is amended.

The report also notes that more public education is needed to raise public awareness of the kinds of legal services paralegals can provide.

The full report is available on the Ministry of the Attorney General’s website at: www.attorneygeneral.jus.gov.on.ca, under “Publications and Reports.” 



PHOTO: ISTOCK

EXCERPT THE PARALEGAL SECTOR IN A SNAPSHOT

As of mid-September 2012, there were 4,301 active paralegal licensees in the province, with another 596 inactive and former licensed practitioners. Remarkably, one-quarter of all licences issued have been issued since January 1, 2011. This leaves the sector somewhat evenly split between “old hands” who were licensed through introductory provisions of regulation (e.g., “grandparenting”), and recent graduates of accredited community college programs. The split tilts increasingly in favour of the latter.

Major areas of paralegal practice include Small Claims Court, *Provincial Offences Act* matters before the Ontario Court of Justice, Landlord and Tenant Board cases, and cases before administrative tribunals such as the Workplace Safety and Insurance Board.

Forty per cent of paralegals who responded to a Law Society-commissioned survey are in private practice as sole practitioners. One-quarter are in private legal/paralegal practice as employees. Another 20 per cent list themselves as “Otherwise employed: Other employment.”

David J. Morris, MBA

Maintaining Books and Records

You must maintain detailed records of the money received from each client, the money you disburse for each client and the unexpended balance for each client, on an ongoing basis. You are also required to retain copies of your bank statements as an independent record of your trust transactions.

THE LAW SOCIETY'S SPOT AUDIT PROGRAM IS A PROACTIVE, quality assurance program that assesses a firm's compliance with financial record-keeping requirements. The goal of the Spot Audit program is to audit every law firm in the province once every five years. Last year, over 1,850 audits were conducted. Some of the more significant books and records deficiencies are as follows:

- Lack of completeness of books and records information
- Monthly trust reconciliations were not up to date
- Lack of completeness of client ID information
- All cash receipts were not recorded
- Inactive accounts were not managed
- Security of E-reg diskette was not maintained
- Lack of currency of records.

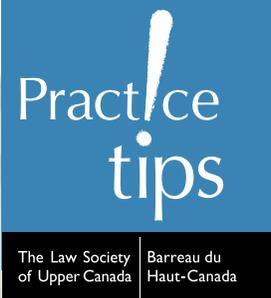
The Law Society sets out in By-Law 9, the *minimum* requirements for books and records to be maintained in a law practice. The minimum requirements are aimed at protection of the public and therefore focus on trust records.

General trust law requires trustees, including lawyers holding client funds, to be able to account to beneficiaries at any time. In order to meet this obligation, you must maintain detailed records of the money received from each client, the money you disburse for each client and the unexpended balance for each client, on an ongoing basis. You are also required to retain copies of your bank statements as an independent record of your trust transactions.

By maintaining complete, accurate and up to date records, you will have current financial information available so you can make sound financial decisions about your practice. Proper accounting records also help you to meet your statutory obligations in filing reports on time to the Canada Revenue Agency for income tax and HST, to the Lawyers' Professional Indemnity Company for transaction levies, and to the Law Society and the Law Foundation of Ontario for your Annual Report. ☐

THE FOLLOWING RESOURCES to help you maintain your books and records are available on the Law Society website in the Practice Resources section under the 'For Lawyers' tab:

- By-Law 9
- Subrule 6.01(2), *Rules of Professional Conduct*
- FAQs – Knowledge Tree: Clients > Client Identification and Verification; Fees, Billings and Collections; Trust Accounts, General Accounts > Books and Records
- How To Brief *How to Reconcile a Trust Account*
- How To Brief *How to Open and Operate Trust Accounts*
- Practice Management Guidelines, Financial Management, s. 4.1 to 4.18
- The Bookkeeping Guide
- Internal Control Self-Assessment Guide (page 86 of The Bookkeeping Guide)
- Real Estate Practice Resources > Electronic Registration of Title Documents > Qs and As



PERSPECTIVES

Innovations in education highlight the value of justice fellowships

How many of you have found yourself looking at your watch, looking at the open file in front of you, and wondering with frustration why your client missed yet another meeting? Have you considered the possibility that your client missed that meeting because a disability, perhaps invisible, interfered with her ability to keep track of time or to fully comprehend the importance of that meeting with you?

IF YOU WERE TO GRADUATE A FEW YEARS from now, you may leave school feeling better equipped to recognize and support clients with special needs, thanks to this year's Community Leadership in Justice Fellowships, funded by the Law Foundation of Ontario.

Marian MacGregor won a Fellowship to work at Osgoode Hall Law School to develop a clinical program that, subject to university approval, will give law students a unique opportunity to learn practical skills in disability law and the broader policy context of disability issues.

Sheila Burns won a Fellowship to work at Georgian College to develop several courses to teach students in all of its justice programs to better recognize and support clients with Fetal Alcohol Spectrum Disorder (FASD).

The two Fellowships represent two very different approaches to education design that both carry enormous potential.

MacGregor's work was based on the idea that legal education is highly effective when practice is combined with theory. By developing a specialized clinical intensive program, MacGregor aims to create placement opportunities for law students at ARCH Disability Law Centre to gain experience working with clients with disabilities and with ARCH's systemic policy initiatives, such as test

case litigation. This clinical experience, in turn, will be a valuable complement to their classroom studies.

While there are competing schools of thought on the merits of clinical versus classroom training for lawyers, the Law Foundation sees the greatest value in combining the best of each. Besides giving students an enriched education,



Marian MacGregor, Clinic Director for the Community and Legal Aid Services Program (CLASP) at York University's Osgoode Hall Law School.

the combined approach will also benefit ARCH and the local community. ARCH, like all non-profits, struggles to meet service demand and has to balance between serving individual clients and effecting systemic change. The addition of 12 law students each year will increase ARCH's ability to respond to access to justice needs, while also increasing the law school's community connections.

Burns' work was based on the idea that teaching students in many justice-related professional programs how to recognize a specific disability — in this case, the most common development disorder in Canada, FASD — will influence profound system-wide change. FASD affects 130,000 people in Ontario by impairing their cognitive and behavioural functioning. To make matters more difficult, people with FASD rarely present physical symptoms, nor do they necessarily realize themselves that they have this disability. In Burns' view, teaching future legal professionals how to apply specific intervention strategies is a vital first step towards fair and effective treatment of people with FASD throughout the justice system, and could even eventually reduce their numbers in prisons.

Burns created several new programs, including an undergraduate course, an online continuing education course, and subject to college approval, Ontario's first post-graduate certificate, all specializing in FASD. These programs will serve Georgian's many justice service programs, including policing, probation, and security, among others. She also organized a provincial conference and stakeholder discussion groups that brought together diverse justice system partners to consider systemic responses. Her research on the effectiveness of FASD screening tools in the justice system continues. >

PERSPECTIVES

“It was an amazing opportunity to integrate disciplines and show how academic learning can be applied to advance the contribution of several professions at once.” SHEILA BURNS

From the Law Foundation’s perspective, Burns’ work is leading-edge in its contribution to professional training in FASD issues and in the remarkable range of institutional partners she brought together to discuss strategic policy issues.

Both Fellows have initiated work that will influence hundreds of future legal professionals. Their legacy will have an enduring impact long past the short months they spent on campus.

The Fellows credit the Law Foundation for creating the opportunity to do work that can have proportionately greater effect. “It was amazing to be able to step away from the day-to-day pulls on my time as a clinic director and to do big-picture thinking on clinic design. Without the Fellowship, I would not have found the time to create this program,” says MacGregor. Burns says it was incredibly rewarding to foster a better

understanding of FASD among academics in a diversity of disciplines, at a time when FASD remains an emerging topic in post-secondary scholarship. “It was an amazing opportunity to integrate disciplines and show how academic learning can be applied to advance the contribution of several professions at once,” she says.

The extended benefits to community organizations, faculty and students, beyond the personal and professional benefit to the Fellows, serve to confirm the high value of the Law Foundation’s Community Leadership in Justice Fellowship program.

Further information on the Fellowships is available at www.lawfoundation.on.ca/fellowships.php. Joint applications from community organizations and academic institutions are invited each spring. ☐



Sheila Burns, Community Leadership in Justice Fellow, Law Foundation of Ontario/Georgian College.



The Law Foundation of Ontario receives the interest earned on lawyers’ and paralegals’ mixed trust accounts. It provides funding to Legal Aid Ontario, makes access-to-justice grants, awards fellowships, and supports the practice of public interest law and professional excellence. It updates the profession on its activities in each issue of the Gazette.

LAW SOCIETY’S CLIENT SERVICE CENTRE WINS CANADA AWARD FOR EXCELLENCE



Terry Knott, the Law Society’s Director of Membership and Complaints Services, (centre) with Robert Lapper, Q.C., CEO, to her right, is surrounded by her winning team: (l-r) Brian Gates, Sandra Vernon-Noble, Tom Levesque, Isabel Prudencio, John Peddie, Vaughan Kitson, Jay Brijmohan and Allison Cheron at the *Canada Awards for Excellence* ceremony on November 2.

THE LAW SOCIETY OF UPPER CANADA IS AMONG 29 CANADIAN organizations named by Excellence Canada as a recipient of the 2012 *Canada Awards for Excellence* for outstanding performance in categories that include Excellence, Innovation & Wellness, Quality, *Healthy Workplace*®, and Mental Health at Work.

The *Canada Awards for Excellence* is an annual awards program to recognize outstanding achievement by organizations in Canada.

“Award recipients have demonstrated that they are socially, environmentally, and economically responsible citizens and work hard each and every day to promote excellence, in their organizations,” said Allan Ebedes, President and CEO of Excellence Canada.

The Law Society’s Client Service Centre (CSC) was presented with a Silver Award for Quality at a ceremony in Toronto on November 2. The Quality award, which was presented by Ricoh Canada, is based on the Canadian Framework for Excellence, which is used by numerous organizations as a management model for continuous improvement and the achievement of significant operational results.

In May, the CSC received Level 3 Certification from Excellence Canada’s four-level Progressive Excellence Program and was commended by the organization for “its highly engaged employees, sense of social responsibility, and strong commitment to continuous improvement.” ☐

THE FUTURE OF THE FIRM

ALTERNATIVE COMMUNICATION CHANNELS ARE

redefining the traditional view of "the firm" and turning old business models upside-down.

Social media... Smart cards... Cloud computing... Video depositions and witness testimony... Once imaginative ideas, all of these are now effectively shifting staid ideals and practices.

Our natural tendencies toward cost- and time-saving habits leave us constantly searching for convenience and better outcomes. Recent advances have simplified this equation so much so that face-to-face business is yielding to handheld immediacy in any place at any time.

You can no longer afford not to analyze your current processes and needs, explore available communication systems that complement your practice, or enhance your internal and external relationships.

That's why the Ontario Bar Association (OBA) strives to keep you abreast of new practice developments as they arise. The information on this page was compiled from the OBA's 18,000 members, 37 practice section newsletters, and official magazine JUST. Don't know a term or acronym? Search it at www.oba.org 



Join the OBA on the web and tell us how you're working.



FEAR NOT! Everyone handles change differently, but it doesn't have to be an uphill climb.

- Unleash your innovative energy
- Expose regulations and codes of conduct that hinder
- Challenge the norm; step out
- Treat early disappointments as part of learning
- Share and research ideas at all levels and from different sources
- Think beyond products to processes, structure, models and services
- Keep your eyes open to more innovation
- Don't get stuck struggling for perfection

VIRTUAL ADVANCEMENT

Mobile computing in the cloud: virtual firms and practitioners, anywhere, any time

RISKS

- Confidentiality of personal information
- Changes in warranties
- Intermediaries
- Performance
- Single data point

SOLUTIONS

- Confidentiality covenants
- Data encryption end-to-end
- Understanding the technology that firms/clients use

Un débat animé et reporté

LE 25 OCTOBRE 2012, LE CONSEIL DU BARREAU A DÉBATTU LA question présentée dans le rapport du Groupe de travail sur le stage concernant le problème de la pénurie de stages en Ontario. La question étant extrêmement complexe et délicate, les membres du Conseil ont convenu à l'unanimité de reporter le débat au 22 novembre.

Le rapport sur le stage ainsi que tous les documents connexes sont disponibles en français sur le site Web du Barreau à www.lsuc.on.ca. M^e Raj Anand a fait une partie de sa présentation en français.

Le débat qui était diffusé en direct sur le Web affichait les tweets du public à mesure qu'ils arrivaient, une première au Barreau. La minorité du Groupe de travail sur le stage propose d'abolir les stages. La majorité propose d'avoir un programme de pratique du droit ainsi que des stages. La minorité craint l'instauration d'un système à deux vitesses pénalisant les étudiants moins chanceux. La majorité craint l'abolition complète des stages, ce qui placerait l'Ontario dans la position unique d'être le seul ressort au Canada à ne plus compter ce genre de formation. Les statistiques démontrent que les étudiants d'autres pays ont plus de mal à trouver un placement, et dans un climat où les stages sont rares, ils craignent d'être laissés pour compte dans le système actuel. Cependant, on a informé les participants que les avocats formés à l'étranger sont exemptés du stage s'ils ont un minimum de 10 mois d'expérience.

En bref, les opinions publiques émises étaient très diverses et les commentaires sur les interventions des conseillers ont démontré que le sujet ne laisse personne indifférent.

RAPPEL DE L'HISTORIQUE

Le Conseil avait confié au groupe un vaste mandat pour étudier les objectifs liés à la compétence que le stage est censé permettre d'atteindre, son efficacité, sa place dans le processus d'accès à la profession ainsi que d'autres méthodes pour satisfaire aux exigences de formation transitionnelle.

Il est clair que les difficultés soulevées par le système actuel ne se prêtent pas à des solutions faciles. Le groupe de travail a consacré plus d'un an à examiner en profondeur les nombreux sujets qui relèvent de son mandat. Il a consulté la profession et les écoles de droit, un peu partout en Ontario. Le groupe de travail a reçu 125 mémoires publics de particuliers, d'organisations juridiques, de facultés de droit, d'étudiants de droit, de juges et d'autres ordres de juristes. Le groupe a aussi tenu compte des plans d'admission des autres



ressorts, dont certains ont mis en œuvre des programmes de formation juridique pour satisfaire aux exigences de formation transitionnelle. Il a aussi sollicité les commentaires de la Fédération canadienne des ordres professionnels de juristes.

LA MAJORITÉ

La majorité des membres du groupe de travail recommande que le Conseil approuve un projet pilote qui permettra au programme de stage et à un nouveau programme de pratique du droit (PPD) de fonctionner en parallèle pendant cinq ans. Le stage continuerait d'être le chemin par lequel la plupart des candidats obtiendraient leur permis, mais le PPD, qui serait offert par l'intermédiaire de fournisseurs tiers, comprendrait à la fois un programme de formation de compétences et un stage coopératif.

LA MINORITÉ

Quatre membres du groupe de travail ont conclu que le stage ne peut plus être justifié du point de vue de la réglementation et devrait être aboli. De plus, ils s'opposent à un processus en deux volets et préfèrent adopter une seule voie pour délivrer des permis. Leur proposition vise à créer un programme transitionnel détaillé précédant le programme d'accès à la profession sur deux ou trois mois, incluant l'apprentissage en ligne et des examens pour évaluer les habiletés juridiques, commerciales, professionnelles et déontologiques de base. Pour les nouveaux titulaires de permis qui choisissent d'exercer seuls, ils proposent le mentorat et une supervision accrue pour les aider durant leurs premières années de pratique, afin d'assurer la protection du public.

En conclusion, le débat est loin d'être clos. On peut cependant être sûr d'une chose : le processus démocratique prévalant, aucune décision ne sera prise sans l'accord de toutes les parties concernées. À suivre ! 

Le français : une valeur réelle dans l'appareil judiciaire

LE 25 JUIN 2012, LE COMITÉ CONSULTATIF de la magistrature et du barreau sur les services en français auprès du procureur général de l'Ontario publiait son rapport tant attendu.

Le comité s'est penché sur les mesures à prendre pour que l'appareil judiciaire soit réellement accessible en français. Pour y parvenir, le comité a étudié les obstacles qui demeurent occultes pour de nombreux participants clés du système. Il a donc consulté ces intervenants et analysé le contenu des plaintes faites auprès du commissaire aux services en français.

La création du comité représente une occasion de collaborer pour surmonter ces obstacles.

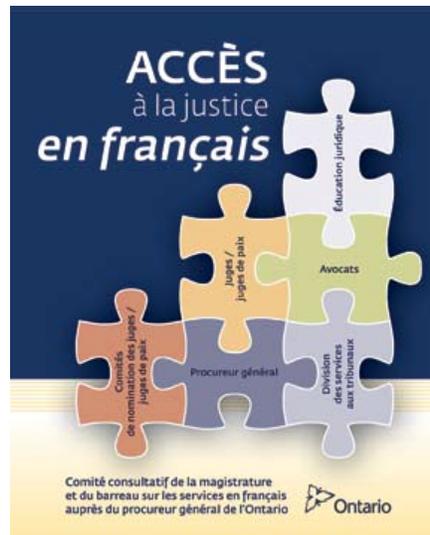
En résumé, le comité a constaté que la magistrature n'était pas assez informée des droits linguistiques, dont l'existence seule ne garantit pas que tous les points de contact soient en français dans le cadre d'une instance. Le comité a aussi constaté qu'il peut être difficile, long et coûteux d'entamer des procédures en français. Les services en français ne sont pas uniformes, ni facilement accessibles. Le besoin d'assurer l'accès à la justice pour les francophones n'est pas nécessairement pris en considération lorsqu'il est question des aptitudes linguistiques, du nombre et du placement des juges et juges de paix bilingues.

Pour assurer l'accès à la justice en français aux francophones, le comité fait plusieurs recommandations que nous résumons dans le présent article.

Le procureur général pourrait adopter un objectif de service clair et cohérent pour que son ministère assure un accès égal qui n'entraîne pas de frais supplémentaires.

Pour mieux informer la magistrature, le procureur général pourrait proposer aux juges en chef d'intégrer une formation à cet égard, accompagnée des ressources appropriées.

Pour pallier les lacunes des lois qui limitent l'accès aux services en



français, et dans le but d'améliorer l'harmonisation des droits prévus par la *Loi sur les services en français* et la *Loi sur les tribunaux judiciaires*, le procureur général pourrait examiner les changements législatifs en tenant compte des droits linguistiques prévus dans le *Code criminel*.

La technologie aiderait à assurer un service en français dans les régions qui ne sont pas désignées, et permettrait d'accorder des enquêtes en français (ou bilingues) sur le cautionnement à quiconque a droit à un procès bilingue en vertu de l'article 530 du *Code criminel*.

Les parties d'expression française ne sont pas nécessairement informées assez tôt de leur droit aux services en français dans le cadre d'une instance. Au moment où elles en sont informées, il se peut qu'elles aient déjà retenu les services d'un avocat anglophone et soient réticentes à changer d'avocat pour continuer en français. Si la décision d'agir en français est prise dès le début de l'instance, le tribunal est à même de mieux établir son calendrier, ce qui entraîne une réduction du nombre de comparutions. À cet égard, le ministère du procureur général pourrait réviser les formulaires et les procédures en usage dans les instances en matière criminelle,

civile et familiale pour s'assurer que les clients du système judiciaire sont informés de leurs droits linguistiques à la première occasion.

On pourrait se servir d'avis dans les tribunaux, de modèles, de documents et d'affiches pour faire mieux connaître le droit aux instances bilingues et aux instances en français.

La définition de juge ou de juge de paix bilingue pourrait être uniformisée et on devrait appliquer un mode de collaboration pour évaluer le bilinguisme des juges à tous les échelons du système.

Une des dernières recommandations du comité vise la collaboration de la profession juridique pour mettre en place des instances bilingues ou des instances en français.

En collaboration avec le Barreau et les facultés de droit, le procureur général pourrait examiner les moyens permettant de soutenir l'enseignement du français et la formation en matière de droits linguistiques, et prendre les mesures nécessaires pour qu'un plus grand nombre d'avocats fournissent des services juridiques en français. Le comité suggère que le procureur général propose au Barreau d'évaluer la connaissance des droits linguistiques dans le cadre du processus d'accès à la profession pour élaborer des stratégies à cet égard.

Le procureur général propose que le Barreau travaille avec les associations d'avocats et de parajuristes pour s'assurer que les nouveaux clients soient informés des droits linguistiques pertinents et pour concevoir une façon d'identifier les avocats et les parajuristes francophones de la province, afin que ces derniers soient faciles à trouver par les francophones requérant leurs services.

Le rapport complet, avec des statistiques sur les juges bilingues, se trouve à www.attorneygeneral.jus.gov.on.ca/french/about/pubs/bench_bar_advisory_committee/full_report.pdf. 

L'ART DE PLAIDER EN FRANÇAIS

LE 2 NOVEMBRE 2012, LE BARREAU DU HAUT-CANADA OFFRAIT sa première formation professionnelle continue en français depuis l'adoption de la nouvelle exigence. Les distingués présentateurs étaient le juge Paul Rouleau, de la Cour d'appel de l'Ontario, la juge Julie Thorburn, de la Cour supérieure de justice, le président de l'AJEFO, M^e Paul Le Vay, de Stockwoods s.r.l. et M^e Daniel Boivin, de Gowling Lafleur Henderson s.r.l. Cette formation, diffusée en webémission et offerte également sur place, était accessible par tous les membres concernés de la profession juridique. Cette FPC donnait droit à 1,5 heure de professionnalisme.

Invoquant la règle 1.03 du *Code de déontologie*, le panel a rappelé aux avocats leur responsabilité d'informer leurs clients de leur droit d'ester en justice en français. Il a aussi indiqué l'importance de souligner les coûts et les délais qui peuvent découler d'un procès bilingue, tout en faisant valoir ses avantages. Par exemple, sous le stress, un témoin qui s'exprime dans sa langue seconde peut manquer de précision et risquer sa crédibilité. De plus, l'avocat bilingue pourra mieux planifier ses attentes s'il connaît l'approche des juges bilingues, dont le nombre est plutôt restreint.

La formation comportait un scénario pour mettre en évidence la réalité d'un procès bilingue avec interprète. Le témoin, M. Tremblay, camionneur francophone de Longueuil impliqué dans une collision dans le nord de l'Ontario, était

joué par le juge Rouleau. M^e Boivin jouait son avocat bilingue et M^e Le Vay jouait le procureur unilingue anglophone. La juge Thorburn tenait le rôle de la juge bilingue.

L'interprète devait composer avec des questions parfois trop longues et souvent interrompues. Certaines erreurs de traduction venaient aussi compliquer les choses.

Ce scénario a fait ressortir dans la bonne humeur des problèmes comme la cacophonie qui peut s'ensuivre et les délais de réponse qui empêchent de faire des interrogatoires en rafale. Il a aussi fait ressortir la nécessité de bien écouter l'interprétation et d'être patient. Les juges ont fait remarquer que dans la réalité, il y a un interprète par langue et la traduction est généralement chuchotée et non consécutive. À noter que les frais d'interprètes sont défrayés par le tribunal et non par le client.

En conclusion, les juges ont rappelé aux avocats de bien préparer leurs dossiers, en démontrant dès le départ le but désiré, en prévoyant les points qui seront soulevés par la partie adverse, en écrivant dans un langage clair et simple, et en précisant ce qu'on demande à la fin. Il est également conseillé d'utiliser les demandes d'aveux pour éventuellement raccourcir les procès et de bien préparer les exposés préliminaires pour présenter sa version des faits clairement. En un mot, aider le juge à prendre sa décision.

Les avocates et avocats qui ont manqué cette séance peuvent se rattraper en demandant sans frais l'accès à la webémission à <http://ecom.lsuc.on.ca/cpd/calendar.jsp>. ☐

Les présidents passent et ne se ressemblent pas



M^e PAUL LE VAY

LE NOUVEAU PRÉSIDENT DE L'AJEFO,

Paul Le Vay, est associé au cabinet Stockwoods s.r.l. à Toronto où il exerce le droit depuis plus de 20 ans. Il est

Fellow du American College of Trial Lawyers et est agréé comme spécialiste en litige civil par le Barreau du Haut-Canada. Il plaide des causes de droit commercial, des valeurs mobilières, de la négligence professionnelle ainsi que du droit du travail et de la réglementation professionnelle.

Il a été nommé président de l'AJEFO lors du congrès de juin 2012. M^e Le Vay a toujours été un participant actif aux congrès de l'AJEFO et aux activités de formation du Barreau, dont il a aidé à organiser la première formation professionnelle continue sur l'art de plaider, laquelle a eu lieu le 2 novembre à Osgoode Hall. En 2010, il s'est investi dans l'organisation du congrès de l'AJEFO à Strasbourg, en France, où il avait obtenu en 1988 un diplôme d'études approfondies en

droit de l'Université Robert Schuman.

Durant son mandat de deux ans à la présidence de l'AJEFO, il entend mettre l'accent sur le développement de partenariats solides au palier provincial et fédéral pour affermir le rôle incontournable de l'AJEFO sur la scène de l'accès à la justice en français en Ontario.

Les justiciables ontariens et ontariennes sont encore une fois en bonnes mains : les compétences de M^e Le Vay sont reconnues non seulement par le Barreau, mais aussi par *Lexpert/American Lawyer Guide to the Leading 500 lawyers in Canada*.

Lui qui jadis a joué Beaumarchais et Molière sur scène saura mettre à profit ses excellentes techniques pour défendre les justiciables francophones dans leur quête d'accès à la justice. ☐

DIVORCE ET CERVEAU

APRÈS PLUSIEURS ANNÉES DE MARIAGE, MONSIEUR ET MME ROBERGE décident de divorcer. Ils ne se supportent plus. Les tensions familiales sont trop fortes et ils ont atteint un point de non-retour.

C'est un scénario des plus communs pour les avocats en droit de la famille. Cependant, des recherches en neurologie offrent des outils permettant d'aborder plus efficacement cette situation.

M^e Nathalie Boutet, fondatrice de l'Institut du cerveau et du droit de la famille, affirme que les avocats doivent tenir compte de la recherche menée dans le domaine neurologique. En effet, nos habiletés intellectuelles diminuent lorsque nous faisons l'expérience d'émotions fortes, car celles-ci stimulent la sécrétion d'adrénaline et de cortisol. Ces hormones de stress inhibent les facultés du cortex frontal, principal responsable de notre capacité à raisonner et à prendre des décisions. Les couples qui se séparent sont souvent dans un état émotif résultant d'années passées dans un mariage malheureux. Leurs réactions à certains événements vont vraisemblablement les empêcher de raisonner logiquement. Paradoxalement, nous nous attendons à ce que les couples continuent de coopérer pour résoudre des problèmes complexes et prendre de grandes décisions.

En cas de séparation ou de divorce, il y a de nombreuses situations qui risquent de provoquer des émotions fortes chez les clients : « Voulez-vous vos aliments avec ou sans impôt ? Voulez-vous signer un accord intérimaire ? Voulez-vous un avocat de droit collaboratif ? » La liste est longue.

« Il n'est pas question de jouer les thérapeutes, mais d'être conscient de ce qui cause les émotions fortes chez nos clients et d'en tenir compte. Si nous abordons les situations en comprenant ce qui se passe dans le cerveau des clients du point de vue neurologique, nos interventions peuvent être plus efficaces tout en ayant un effet calmant.

Les clients qui divorcent se sentent facilement pris dans un étai. La façon dont leur cerveau fonctionne a de sérieuses répercussions sur leurs décisions, leurs enfants, leur travail, leurs familles. On n'enseigne pas cela à la faculté de droit », explique M^e Boutet.

Monsieur Roberge est un exemple de calme et de diplomatie. Dans ses rencontres avec son avocate pour prévoir l'accord de séparation, il demeure toujours respectueux et compréhensif. Le jour de la négociation avec Mme Roberge, lorsque celle-ci présente son offre initiale, M. Roberge rouge de colère, se lève d'un bond, hurle que cette situation est ridicule et part en claquant la porte.

Sans le savoir, M. Roberge a réagi à une provocation puisée dans sa mémoire d'interactions avec des gens et des endroits. Après des années d'interactions négatives avec son ancienne conjointe, M. Roberge a explosé avant même de réfléchir. Le

processus de divorce peut raccourcir la mèche des candidats les plus sereins...

Parfois, un client se plaint que son ex le regarde de travers et s'insurge automatiquement, fermant ainsi les valves de la communication. Il est inutile que l'avocat lui dise de ne pas se tracasser, car le sentiment est réel pour le client. Au contraire, l'avocat a un rôle à jouer pour désamorcer les émotions du client. L'avocate de M. Roberge devrait être en mesure de travailler avec lui pour lui faire retrouver son calme et ses capacités intellectuelles.

Il existe plusieurs façons de travailler avec des clients qui réagissent fortement. M^e Boutet suggère

- de sympathiser avec le client pour désarmer la panique.
- de prendre une pause pour permettre au corps de dissiper l'adrénaline.
- de présenter les situations sous différents angles. Changer la perspective peut aider à calmer le système limbique, qui est l'ensemble des zones du cerveau connues pour jouer un rôle sur les émotions.
- d'encourager les clients à prévoir ce qui risque de déclencher leurs émotions.
- d'encourager les clients à prendre des notes pendant les réunions et leur demander de répéter les sujets discutés pour bien absorber l'information et comprendre les conséquences de leurs décisions. « Nous savons bien que les clients ne retiennent rien de ce qui s'est dit à la première réunion. Vaut mieux leur envoyer une lettre de confirmation ».

Un modèle populaire d'intervention auprès des grands émotifs est ce qu'on appelle en anglais le modèle SCARF : statut, certitude, autonomie, rapport et équité (fairness), soit cinq grandes catégories d'expériences sociales. Selon l'auteur de cette méthode, M. David Rock, une menace à l'une d'elles déclencherait une réaction émotive. Mais s'il comprend dans quelle catégorie le client se trouve, l'avocat pourra mieux intervenir. Par exemple, lorsque M. Roberge a réagi émotivement à l'offre de son ex-conjointe, offre perçue comme inéquitable, son avocate aurait pu lui faire articuler ses sentiments pour désamorcer son conflit intérieur.

Selon M^e Boutet, on peut mieux servir ses clients si l'on tient compte des turbulences émotives qu'ils vivent durant la période extrêmement difficile de la séparation. 



M^e NATHALIE BOUTET

IN RECOGNITION

This section is devoted to recognizing the achievements of members of the judiciary, current and former members of Convocation, as well as individuals who have made significant contributions to the Law Society and its efforts to advance the cause of justice and promote greater access to legal services.

MEMORIAL CATZMAN AWARD PRESENTED TO CONNIE REEVE

CONNIE REEVE WAS PRESENTED with the 2012 Catzman Award for Professionalism & Civility at the Opening of the Courts Ceremony in Toronto on September 12.

Ms. Reeve is the first woman to receive the Catzman Award, which was created in 2008 in memory of The Honourable Marvin A. Catzman of the Court of Appeal for Ontario. It was created by the Catzman family, together with The Advocates' Society and the Chief Justice of Ontario's Advisory Committee on Professionalism. The annual award recognizes individuals who demonstrate the qualities exemplified by Justice Catzman throughout his distinguished career: knowledge of the law, integrity, fairness, civility, generosity of time and expertise, and dedication to the highest ideals of the legal profession through writing and lecturing.

Ms. Reeve has more than 25 years of experience as an advocate, including 14 years as a specialist in employment law. She leads the Employment and Labour group at Blake, Cassels & Graydon LLP in Toronto, where she is a partner. Her peers describe her as a generous mentor and inspirational leader, particularly of women, both within her firm and the larger profession. She is also a well-known author and a frequent speaker on a range of employment law topics.



PHOTO: EVA DONALD GREENLAND

(Left to right): Julie Catzman; Connie Reeve; Peter H. Griffin, President, The Advocates' Society

Ms. Reeve co-chaired the Return to Practice Working Group, which was created as part of the Law Society's Retention of Women in Private Practice Project. She has taught at both Osgoode Hall and Queen's law schools, and has chaired and taught many CLE programs at The Advocates' Society.

Ms. Reeve received her LLB from Queen's University in 1982 and was called to the Bar in 1984. She has a Master of Law degree from Osgoode Hall Law School (Alternative Dispute Resolution), and in 2002, she was certified as a specialist in Civil Litigation. 

THE ADVOCATES' SOCIETY MEDAL TO MARLYS EDWARDH



PHOTO: EVA DONALD GREENLAND

Marlys Edwardh, C.M., LSM, and The Advocates' Society President, Peter H. Griffin.

MARLYS EDWARDH, C.M., LSM, was awarded The Advocates' Society Medal in early September. The Medal is the highest expression of esteem that The Advocates' Society can convey to one of its members.

Ms. Edwardh is the 23rd recipient of the Medal and the third woman to be honoured with the award in its 38 year history.

The Medal honours those who have demonstrated their pre-eminence as counsel and who are acknowledged unequivocally as leaders of the Bar; who have been dedicated and active members of The Advocates' Society; and who have made a significant contribution to the profession of law and to the well-being of the community at large.

Ms. Edwardh practices criminal, constitutional and administrative/regulatory law, with an emphasis on civil and human rights, and national security litigation at Sack Goldblatt Mitchell LLP in Toronto. She has been involved in numerous high-profile criminal and constitutional cases, including the wrongful conviction cases of Donald Marshall, Guy Paul Morin and

Steven Truscott. She has also served as counsel to and before several Commissions of Inquiry, including the Krever Inquiry on the blood system in Canada and the Maher Arar Inquiry.

Ms. Edwardh's commitment to social justice and her contributions to the profession have been widely recognized. She has received numerous awards and honours, including the Law Society Medal in 1998. She was appointed a Member of the Order of Canada in 2010.

Ms. Edwardh received her law degree from Osgoode Hall Law School and was called to the Bar in 1976. She holds a Bachelor of Arts degree in political science from Carleton University, a Master of Laws degree from Boalt Hall – University of Berkeley, and Honorary Doctor of Laws degrees from York University and the Law Society. 

IN MEMORIAM

REGINAE MAE TAIT, C.M. 1910–2012



PHOTO COURTESY OF THE OSGOODE SOCIETY

“THE LAW SOCIETY OF UPPER CANADA HAS women among its benchers for the first time since its incorporation in 1822,”¹ wrote *The Globe and Mail* on December 7, 1974, when Reginae Tait became the first of two women, and the first of four ever lay benchers historically appointed by the Ontario government to sit on the Law Society’s governing board, Convocation.

Reginae Mae Tait, C.M., died on September 19, 2012, in her 102nd year. She leaves a legacy of dedicated volunteer service and lasting contributions to many organizations and to the legal profession.

Born in Watford, Ontario in 1910, Mrs. Tait chose a career in teaching, obtaining her “teacher training education in London, Ont., her special art training in Toronto and her undergraduate work at the University of Western Ontario.”² She was married for 62 years to the late George E. Tait, professor emeritus of education at the University of Toronto. Mrs. Tait was the loving mother of son Gary (Sue Bath) and the devoted grandmother of Jackson (Irene), Jasmine and James.³

Mrs. Tait served as a lay bencher from November 1974 to June 1987. She sat on over 10 committees in her nearly

13 years as a lay bencher, including the Legal Education Committee (1975-87), the Libraries & Reporting Committee (1975-87), and the Legal Aid Committee (1978-87).

As longtime chair of the Muniments and Memorabilia Committee, the predecessor to today’s Heritage Committee, Mrs. Tait was instrumental in establishing an archives and Museum of Law (Chair, 1980-87). Operating since 1983, the Law Society’s archival program is now a dynamic component of Law Society activities.⁴

One of Mrs. Tait’s most significant contributions as a lay bencher was the installation of the 10 heraldic stained-glass windows in Convocation Hall.⁵ “I was in England,” she said in an interview with the *Gazette* in 2010 in celebration of her 100th birthday, “and I decided because I was a bencher, I would go to all the Inns of Court. And I saw these glorious windows and I thought, that’s what should happen to Osgoode Hall, they should have stained-glass windows in that very old building.”⁶

Canadian artist Christopher Wallis of London, Ont., who trained in England by masters of stained-glass, was commissioned to design the windows and the windows were sponsored by individual lawyers, law firms and legal associations. Each window illustrates a legal theme, such as Canadian law, education, ancient law, and the Inns of Court. They were installed between 1986 and 1989.

Mrs. Tait, who was invested as a member of the Order of Canada in 2002, reflected with pride on her contributions to the Law Society in an appended memorandum to her oral history for The Osgoode Society, conducted by Christine Kates, LSM, legal oral historian, in 1989:

“Throughout all my duties and offices in the volunteer organizations on which I served it was my aim to introduce, commence and

complete projects which would fulfil needs and have lasting results. This aim was realized at the Law Society by contributing an annual record number of duties on discipline panels; by acting as Chairman of the first Complaints Committee; by being an active Chairman of the Muniments and Memorabilia Committee; by commencing the first archives of any Law Society in Canada; by inaugurating the extension of the Museum of the Law Society, a first in North America; and by developing the project for ten historic stained-glass windows in heraldic design placed in Convocation Hall — stained-glass windows which, I believe, will be recognized as Canadian, even international masterpieces in the art of stained-glass.”⁶



¹ “Two women among newest benchers” *The Globe and Mail*, Saturday, December 7, 1974 ² Biographical information submitted to the Law Society by Reginae M. Tait, January 18, 1975.

³ “Reginae Mae Tait (Stapleford), C.M., July 9, 1910-September 19, 2012” *The Globe and Mail*, Friday, September 21, 2012

⁴ “Pioneering lay bencher Reginae Mae Tait, C.M., turns 100” *Ontario Lawyers Gazette*, p. 36, Summer/Fall 2010 ⁵ *Ibid.* 4 ⁶ *Ibid.* 4

THE HONOURABLE LINCOLN MACCAULEY ALEXANDER, P.C., C.C., O.Ont., C.D., Q.C., LSM 1922–2012



The Honourable Lincoln MacCauley Alexander, (right) stands with the first-ever Lincoln Alexander Award recipient, Jean Teillet, Métis lawyer and great grand niece of Louis Riel (centre), and then-Treasurer Vern Krishna (left) in June 2002.

A TRAILBLAZER THROUGHOUT HIS LIFE, THE HONOURABLE Lincoln MacCauley Alexander, P.C., C.C., O.Ont., C.D., Q.C., LSM, died on October 19, 2012, at the age of 90. As Ontario's 24th Lieutenant Governor, Mr. Alexander was the first person of colour to be named to Ontario's viceregal role (1985-91).¹

Lincoln Alexander was born in Toronto on January 21, 1922. His mother, who had immigrated from Jamaica, worked as a maid, and his father, from St. Vincent and the Grenadines, was a porter with Canadian Pacific Railway. In his memoir, Mr. Alexander credited his mother, Mae Rose, with instilling in him the belief in the fundamental importance of education having taught him that "success was possible, and education was the vehicle to take you there."²

Mr. Alexander graduated from McMaster University (BA) in 1949 and went on to study law at Osgoode Hall in Toronto after he was denied work in the white-collar offices of the steel plants in Hamilton where he desired to work. He graduated from Osgoode Hall in 1953 ranking in the top 25 per cent of his class. Despite his success in law school, in 1953, Mr. Alexander had difficulty obtaining an articling position in a law firm in Toronto and Hamilton. The few articling positions for minorities were mostly in firms operated by Jewish lawyers and this became a common course of action for minority law students in need of an articling placement.³ Mr. Alexander articulated with Sam Gotfrid, Q.C., and their friendship lasted through their lives.

He was a longtime partner at Millar, Alexander, Tokiwa and Isaacs beginning in 1963. He was appointed Queen's Counsel in 1965. In 1968, Mr. Alexander was elected a Member of Parliament representing Hamilton West, thus becoming the first Black MP in Canada. He was re-elected in 1972, 1974, 1979 and 1980. He remained with his law firm until 1979 when he became Minister of Labour.

Mr. Alexander was made an honorary bencher of the Law Society of Upper Canada at a special Convocation held at Osgoode Hall on June 10, 1992.

Then-Treasurer-elect Allan Rock read in his citation: "...[Mr. Alexander's] long career of service has been aptly described as a journey of pride and excellence. It is a journey which he has invited people of all circumstances to share and to make their own. In doing so, he has helped us all, not least the lawyers, to see our public responsibilities more clearly, and we are greatly in his debt."

The Law Society's Lincoln Alexander Award was established in February 2002 to recognize his dedication to the people of Ontario and the legal community.

Law Society Bencher Gerald Swaye paid tribute to Mr. Alexander at October Convocation. "...Hamilton and the country has suffered a great loss. Our friend and colleague, Lincoln Alexander, has passed on. It seems that I have always known him, but if you asked around Hamilton, everybody in the community feels that they have always known him. Linc changed people's lives, and always for the good. He was vibrant, intelligent, compassionate and gracious. He was a man of the people and never aloof. His titles changed, but the man never did."

On October 26, 2012, Treasurer Conway, who attended the state funeral for Mr. Alexander on behalf of the Law Society, called the ceremony "a moving tribute to a great Canadian and an honorary bencher."

Mr. Alexander was father to son, Keith, father-in-law to Joyce, and grandfather to Erika and Marissa Alexander. He was a husband of over 50 years to his first wife, Yvonne Alexander (Harrison), and to his second wife, Mrs. Marni Alexander (Beal), whom he married in 2011.

He received countless honours and awards over his lifetime. In 1992, he was appointed both an Officer of the Order of Ontario and a Companion of the Order of Canada. He received the Lifetime Achievement Award from the Canadian Association of Black Lawyers in 1997 and has been awarded honorary Doctor of Laws degrees from five universities. 

1 "Remembering Lincoln Alexander", The Honourable David C. Onley, Lieutenant Governor of Ontario, October 19, 2012 www.lt.gov.on.ca/en/LA/LA.asp

2 Shoveller, H., "Go to School, You're a Little Black Boy": *The Honourable Lincoln M. Alexander: A Memoir*, p. 14, Dundurn Press Toronto, 2006

3 *Ibid.* 2, p. 65

CONVOCATION DECISIONS

OCTOBER 2012 HIGHLIGHTS

Articling debate deferred to November 22

After vigorous debate, Convocation unanimously agreed to defer a decision regarding a pilot project for the transitional training component of the lawyer licensing process, as outlined in the Articling Task Force's final report, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*. A report prepared by a minority group of the Articling Task Force, *Embracing Change in the Licensing Process: A Minority View* was also presented. Convocation will consider both reports at its November 22 meeting.

Paralegal Licensing Process to be revised

The Paralegal Licensing Process will undergo revisions to strengthen entry-level standards through the addition of substantive legal knowledge to the licensing examination. The Paralegal Standing Committee recommended the revisions to Convocation for approval following the completion of the Law Society's Five Year Review of Paralegal Regulation and the Legal Needs Analysis. The Committee concluded that the Licensing Process must be strengthened to support the growth of the paralegal profession and the possibility of expansion into other areas of practice. The revision of the licensing examination will require three years for full implementation.

Working Group on Challenges Faced by Racialized Licensees

The Working Group on Challenges Faced by Racialized Licensees reported its Terms of Reference to Convocation. The Working Group will identify the unique challenges faced by racialized licensees and develop preventive and proactive strategies to address those challenges.

Discrimination and Harassment Counsel rate increased

Convocation approved an increase in the Discrimination and Harassment Counsel ("DHC") hourly fee from \$250 to \$315. The annual budget for the DHC program will remain unchanged.

Human Rights Monitoring Group interventions approved

Convocation approved the following requests for intervention from the Human Rights Monitoring Group:



- Syria – arrest and disappearance of human rights lawyer Khalil Maatouk
- Haiti – threats and intimidation against lawyers Mario Joseph, Newton St-Juste and André Michel

Earlier in October, the Monitoring Group considered the case of the arrest, detention and prosecution of lawyers in Turkey, and in light of the urgency in the matter, requested that the Treasurer approve a letter of intervention.

APPOINTMENTS

Bencher Christopher Bredt was reappointed as the Law Society's representative on the Law Commission of Ontario for a term of three years. Bencher Gerald Sheff was appointed to the Tribunals Committee.

SEPTEMBER 2012 HIGHLIGHTS

LAWPRO insurance premiums announced

Convocation accepted LAWPRO's report outlining the Law Society's professional liability insurance program for 2013. The base premium for professional liability insurance coverage for Ontario lawyers in 2013 will be \$3,350 per lawyer, the same premium charged in 2012 and 2011. The premium for the Real Estate Practice Coverage Option will also remain the same at \$250. The only program change is a reduction in the minimum

CONVOCATION DECISIONS

period for which a lawyer can purchase insurance from 60 days to 30 days. The LAWPRO CPD Premium Credit has become the LAWPRO Risk Management Credit.

Human Rights Monitoring Group intervention approved

Convocation approved the Human Rights Monitoring Group's proposed intervention in the case of the harassment of human rights lawyer Mohamed Issa Al Tajer in Bahrain.

Alternative Business Structures Working Group terms of reference established

The Alternative Business Structures Working Group will begin its study in developments, in Canada and abroad, in alternative legal service delivery models and structures and financing arrangements and on related regulatory processes, according to the working group's terms of reference.

Amendments to *Law Society Act* to protect privilege approved in principle

Convocation approved, in principle, amendments to the *Law Society Act* to increase the protection of privileged information received by the Law Society. The proposed amendments to the Act make clear that the Law Society may receive information from licensees' clients and use that information in regulatory proceedings without any loss of privilege.

Revised Business Conduct Policy approved

Convocation approved a revised Business Conduct Policy for employees of the Law Society.

AUGUST 2012 HIGHLIGHTS

APPOINTMENTS

Convocation approved a series of committee and other appointments.

Law Society committee and working group chairs and vice-chairs

Access to Justice

Marion Boyd (Co-Chair)
Michelle Haigh (Co-Chair)
Michael Lerner (Vice-Chair)
Adriana Doyle (Vice-Chair)

Appeal Panel

Mark Sandler (Chair)
Christopher Bredt (Vice-Chair)

Articling Task Force

Thomas Conway (Chair)

Audit & Finance

Christopher Bredt (Co-Chair)
Carol Hartman (Co-Chair)
John Callaghan (Vice-Chair)

Certified Specialist Board

Gerald Swaye (Chair)

Compensation

Thomas Conway (Chair)

Compensation Fund

Peter Wardle (Chair)

Equity and Aboriginal Issues

Howard Goldblatt (Chair)

Julian Falconer (Vice-Chair)

Susan Hare (Vice-Chair)

Government Relations

William McDowell (Co-Chair)
Julian Porter (Co-Chair)

Hearing Panel

Alan Gold (Chair)
Adriana Doyle (Vice-Chair)

Heritage

Constance Backhouse (Chair)

Inter-Jurisdictional Mobility

Janet Minor (Chair)

Law Society Awards

Thomas Conway (Chair)

Law Society LLD Advisory

Thomas Conway (Chair)

Litigation

John Champion (Chair)

Paralegal Standing

Cathy Corsetti (Chair)
Susan McGrath (Vice-Chair)

Priority Planning

Thomas Conway (Chair)

Proceedings Authorization

Paul Schabas (Chair)

Professional Development and Competence

Janet Minor (Chair)
Wendy Matheson (Vice-Chair)
Barbara Murchie (Vice-Chair)
Alan Silverstein (Vice-Chair)

Professional Regulation

William McDowell (Chair)
Malcolm Mercer (Vice-Chair)
Susan Richer (Vice-Chair)
Paul Schabas (Vice-Chair)

Summary Disposition

Malcolm Mercer
Peter Wardle

Tribunals

Raj Anand (Chair)
Adriana Doyle (Vice-Chair)

Working groups

Alternative Business Structures

Susan McGrath (Co-Chair)
Malcolm Mercer (Co-Chair)

Challenges Faced By Racialized Licensees

Raj Anand (Chair)

Retention of Women

Thomas Conway (Co-Chair)
Laurie Pawlitza (Co-Chair)

Visit the Law Society website at www.lsuc.on.ca/convocation/ to view the full reports to Convocation.

RECENT RULE AND BY-LAW AMENDMENTS

Convocation recently made the following amendments to Law Society Rules and By-Laws:

OCTOBER 2012

By-Laws 5 and 8 amended re: fee for late annual fee payment and late annual report filing; reduction in default period

Effective for 2013 fees and filings, licensees who fail to pay their annual fees or file their annual report on time will be subject to a late fee of \$100 in addition to potential administrative suspension. Convocation also approved a reduction in the default period during which licensees may pay their annual fees or file their annual report without penalty. The default period for the payment of annual fees and filing of annual reports will be 90 days in 2013 and 60 days for subsequent years.

In September, Convocation reduced the default period from 120 days to 60 days and approved the implementation of late fees. Further assessment following that decision identified that a phased implementation of the change from 120 days to 60 days would be less onerous on licensees. In recognition, Convocation approved the two year transition phase at its October meeting.

The Audit and Finance Committee recommended the policy changes to Convocation to save on administrative costs by reducing the number of late payments and filings. By-Laws 5 and 8 were amended to implement the new policies.

Lawyer conduct rules amended re: real estate red flags

Convocation amended the commentary to Rule 2.02 (5) of the *Rules of Professional Conduct* to add a section on Red Flags in Real Estate Transactions, related to the issue of knowledge of the fraudulent nature of a real estate transaction. This is an issue in certain regulatory cases in which lawyers are alleged to have engaged in illegal conduct.

Paralegal conduct rules amended re: communicating with a represented party

Convocation amended the *Paralegal Rules of Conduct* to clarify requirements regarding communications with a person who is represented by another licensee. The amended rule makes clear that communications with respect to the matter at issue, rather than all matters including unrelated matters, are prohibited. An exception regarding the provision of a second opinion was also added. In addition, the rules were re-organized to consolidate all provisions on communications with a represented party into new Rule 7.02.

By-Law 4 amended re: mobility

Convocation amended By-Law 4 [Licensing] to more closely mirror the language of the National Mobility Agreement.

SEPTEMBER 2012

By-Law 6 amended re: professional liability insurance

By-Law 6 [Professional Liability Insurance] was amended to clarify insurance reporting requirements for paralegals. The amendments remove the requirement that proof of insurance be in written form. This will permit paralegals to submit insurance information via the LSUC Portal. The amendments also add wording requiring paralegals to provide details about the claiming of an exemption.

BENCHER NEWS



New lay bencher appointed

Gerald Sheff was appointed a Lay Bencher of the Law Society by the Government of Ontario.

Co-Founder and Chairman of Gluskin Sheff + Associates Inc., a wealth management firm, Mr. Sheff is an emeritus member of the Board of Governors of McGill University as well as a member of its Investment Committee. He is a trustee of the Art Gallery of Ontario Foundation and its Investment Committee. He is also a member of the Board of Directors of the Canadian Centre of Architecture and a member of the Advisory Board of the Scotiabank Giller Prize.

CONVOCATION DECISIONS

CONVOCATION ATTENDANCE				
	Attendance			Motion*
	Aug. 21	Sept. 27	Oct. 25	1
Conway, Thomas (Treas.)	✓	✓	✓	
Anand, Raj		✓	✓	F
Backhouse, Constance	✓	✓	✓	F
Boyd, Marion	✓	✓	✓	F
Braithwaite, Jack		✓	✓	
Bredt, Christopher		✓	✓	F
Callaghan, John	✓	✓	✓	F
Campion, John	✓	✓	✓	F
Chilcott, W. Dan	✓	✓	✓	F
Daud, Aslam	✓			
Dickson, Mary Louise		✓	✓	F
Doyle, Adriana	✓	✓	✓	F
Dray, Paul		✓	✓	F
Earnshaw, Ross	✓	✓	✓	F
Elliott, Susan		✓	✓	F
Epstein, Seymour	✓	✓	✓	
Eustace, Lawrence		✓	✓	F
Evans, Robert	✓	✓	✓	F
Falconer, Julian	✓	✓	✓	F
Ferrier, Lee		✓		F
Gold, Alan		✓		
Goldblatt, Howard	✓	✓	✓	
Haigh, Michelle		✓	✓	F
Halajian, Jennifer		✓	✓	F
Hare, Susan	✓	✓	✓	F
Hartman, Carol	✓	✓	✓	F
Horvat, Jacqueline	✓	✓	✓	F
Hunter, George			✓	
Krishna, Vern	✓	✓	✓	F
Leiper, Janet	✓	✓	✓	F
Lerner, Michael	✓	✓	✓	F
MacKenzie, Gavin			✓	
MacLean, Virginia		✓	✓	F
Marmur, Dow	✓	✓	✓	F
Matheson, Wendy	✓	✓	✓	F
McDowell, William	✓	✓	✓	F
McGrath, Susan	✓	✓	✓	F
Mercer, Malcolm	✓	✓	✓	F
Millar, W. A. Derry				
Minor, Janet	✓	✓	✓	F
Murchie, Barbara	✓	✓	✓	F
Pawlitza, Laurie H.				
Porter, Julian	✓	✓	✓	F
Potter, Judith	✓	✓	✓	F
Pustina, Nicholas J.	✓	✓	✓	F
Rabinovitch, Jack	✓	✓	✓	F
Richardson, Jan	✓		✓	
Richer, Susan	✓	✓	✓	F
Robins, Sydney		✓	✓	F
Rock, Allan				
Rothstein, Linda	✓	✓	✓	
Sandler, Mark	✓		✓	
Scace, Arthur				
Scarfone, James	✓		✓	
Schabas, Paul	✓	✓	✓	F
Sheff, Gerald				
Sikand, Baljit			✓	
Silverstein, Alan	✓	✓	✓	Ab
Strosberg, Catherine	✓	✓		F
Strosberg, Harvey	✓	✓	✓	F
Sullivan, Joseph	✓	✓	✓	A
Symes, Beth		✓	✓	F
Wadden, Robert		✓	✓	A
Wardle, Peter		✓	✓	F

Motions* A=AGAINST F=FOR Ab=ABSTAIN

ROLL-CALL VOTES

September 27, 2012

EQUITY AND ABORIGINAL ISSUES COMMITTEE REPORT

Mr. Schabas presented the report.

Re: Human Rights Monitoring Group Intervention Request

Motion: It was moved by Mr. Schabas, seconded by Ms. Potter that Convocation approve the proposed intervention in the case of the harassment of human rights lawyer Mohamed Issa Al Tajer in Bahrain.

The motion carried.

Vote: For – 43; Against – 2; Abstain – 1

There were no motions at the Aug. 21 or Oct. 25 Convocations requiring a roll-call vote.

Non-voting Benchers in attendance:

August 21, 2012 — P. Furlong, G. Gottlieb, R. Manes, D. Murphy, G. Swaye, B. Wright

September 27, 2012 — L. Banack, N. Finkelstein, P. Furlong, G. Gottlieb, R. Manes, D. Murphy, R. Murray, H. Ross, G. Swaye, B. Wright

October 25, 2012 — R. Aaron, L. Banack, P. Copeland, P. Furlong, G. Gottlieb, R. Manes, D. Murphy, R. Murray, H. Ross, C. Ruby, G. Swaye, J. Wardlaw, B. Wright, R. Yachetti



The Law Society of
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JUDICIAL APPOINTMENTS

ONTARIO SUPERIOR COURT OF JUSTICE

Effective November 11, 2012

The Honourable Irving W. André

Effective November 2, 2012

The Honourable Victoria R. Chiappetta

The Honourable Robert J. Nightingale

Effective October 5, 2012

The Honourable Antonio Skarica

The Honourable E. Ria Tzimas

ONTARIO COURT OF JUSTICE

Effective August 15, 2012

Justice Melanie Darlene Dunn

Effective June 27, 2012

Justice Cynthia Johnston

Justice Allan Gary Letourneau

Justice Martin Lambert

LIFE MEMBERS

Life membership is granted to members of the Law Society who have been entitled to practise law in Ontario for a period of 50 years. The following lawyers have been awarded life membership since the last issue of the Gazette.

Gerald David Hyman, Q.C. — Toronto

The Honourable Bernard Joseph Manton — Ottawa



2013 Winter-Spring CPD Calendar



- ADMINISTRATIVE
- CIVIL
- CORPORATE & COMMERCIAL
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- EMPLOYMENT & LABOUR
- FAMILY
- IMMIGRATION
- INTELLECTUAL PROPERTY
- REAL ESTATE
- WILLS & ESTATES

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