

President's Report – June 2010 by Stephen Taran

Tracy Leckie and I attended the annual general meeting of the Law Society and the CDLPA's plenary at the beginning of May. This year there was a bit of a buzz before the AGM due to the motion brought by paralegals to have the Paralegal Standing Committee and the Benchers review the expansion of permitted areas of paralegal practice in the areas of family and corporate law. A day before the AGM, the LSUC announced that the motion would not be moved. The Treasurer (W. A. Derry Millar) confirmed at the AGM that a wide consultation process would be used before any decision was made regarding paralegal's scope of practice. Some highlights from the presentation of the financial statements are:

- The bad news: There was a large reduction in the E&O Fund in 2009 primarily due to the retrospective impact on the cost of claims of \$10.5 million from the pending HST. This is a one-time revaluation of existing reserves since HST will increase legal fees on outstanding claims liabilities by eight per cent.
- The good news: The LSUC received \$8 million in settlement of an E&O Insurance Fund litigation matter with its previous accountant. This resulted in the LSUC's ability to defer needing a \$450 special levy on all lawyers to replenish the E&O Fund due to the impact of HST.
- The local news: Special thanks was given to David S. Thompson (Chair, LibraryCo) for his work in reducing the expenses in 2009 for electronic products and services by over \$1.1 million

CDLPA

Law Society: Malcolm Heins, the CEO of the Law Society, spoke at the CDLPA plenary. The digital Ontario Reports has been well received, but he mentioned that lawyers preferring to continue receiving them in paper can contact LexisNexis. The LSUC will be releasing a File Retention Guide in June to provide us with guidance on how long we have to retain our client files. The law society is acutely aware of the problems facing the profession due to the graying of the bar. This issue is intertwined with the issues of access to justice, survival of the sole practitioner and small firm, joint articling initiative and paralegal scope of practice. For those planning for retirement, a succession planning toolkit is available on their website. These issues were also discussed during the last day of the CDLPA plenary.

Real Estate: CDLPA's real estate committee encourages all real estate lawyers to use newly approved Ontario-wide standard closing documents (click <http://www.lawyersworkinggroup.com/OnStandardClosingDoc.html>). The committee also reported that the single biggest issue facing the real estate bar was the increasing propensity of lenders to "in source" their mortgages. We heard a story of a client being quoted \$399 ALL IN for a bank to complete her mortgage transaction including all of the paperwork.

HST: Alan Silverstein presented a primer on Ontario's new harmonized sales tax. He provided an HST Transitional Rules Chart which is designed so users can determine at a

glance the provincial tax consequences for any particular new home or new condominium transaction. The chart is available at <http://www.cbn.on.ca/pages/HST-chart.htm>

Family Law: The Honourable Chris Bentley spoke to us at lunch about the recent changes in family law and told us that work continues in this area to simplify procedures and re-allocate resources to where they are needed. CDLPA's Family Law Committee presented an update on the recent changes to family law including restraining orders. The *Family Law Rules* have been amended to provide that the court clerk shall prepare all restraining orders under s. 35 of the *Children's Law Reform Act* and s. 46 of the *Family Law Act*. Lawyers will be able to prepare draft orders as long as they use the prescribed form and standard wording, which is available at <http://www.ontariocourtforms.on.ca/english/family/auto-complete-restraining-orders>. Police officers found it too difficult to enforce restraining orders that contained the old wording of "not to annoy, molest or harass". Christine Torry is a member of the Family Law Rule Committee as the CDLPA representative for the Law Society. She informed us that the following matters are currently pending before the Family Rules Committee and being actively addressed by the various sub-committees:

- (a) Expert Reports: Including in the Family Rules an equivalent to the new civil rule 4.1.01, outlining a duty that experts owe to the court which prevails over any duty owed to the parties; include an equivalent to the new civil rules 50.07(1)(c) and 20.05(2)(k) that the court may order experts to meet to identify areas of agreement/disagreement and prepare a joint statement; and include an equivalent to civil rule 52.03(1) for the judge to appoint one or more independent experts.
- (b) Rule 17(8)(b): To consider changes to the rules relating to the making of temporary or final orders at conferences.
- (c) Possible changes to the Family Law Rules, in response to the recent changes to the civil rules that came into effect on January 1, 2010, such as timelines for motions; availability of mini-trials/summary judgment motions; directions in relation to trials; procedures for 14B motions; the requirement of refusal and undertaking charts where there is questioning and a refusal; whether directions or orders should be required for the production of affidavits of documents; whether the presumption of costs against an unsuccessful party on a motion for summary judgment should be removed.

Legal Aid: As of April 1, 2010, the maximum hourly rate moved from \$98 to \$120 per hour. There have been many changes to Legal Aid including the dismissal of all the retained Area Directors throughout the province, whose responsibilities have now been downloaded to regional Area Directors or directors in the larger cities. Many Legal Aid offices have been downsized, relocated to offices within the courthouse, or closed. The new protocols and procedures for applying for Legal Aid have caused a few problems, including the duplication of the assessment process and further downloading of extra responsibility to an already over-worked duty counsel system. CDLPA is a member of the Alliance for Sustainable Legal Aid who continues to advocate about the best strategy for Legal Aid Ontario in today's difficult economic environment.

Continuing Legal Education

If you missed our Straight from the Bench conference, you can purchase materials for \$60 plus tax.

I encourage corporate lawyers to register for the 6th Annual Business Breakfast at the London Club on June 24th. This year's conference will cover topics on tax, bankruptcy & insolvency, guarantees and conflicts of interest.

Now that the monetary jurisdiction of the Small Claims Court is \$25,000, you might be interest in registering for our Small Claims Court Update on August 4th from 9 – 11 am.

Social Events

The retirement dinner for The Honourable Mr. Justice Campbell and The Honourable Mr. Vogelsang will be held on June 23, 2010 at the Hunt Club.

FireRock Golf Club will be hosting our Annual Golf Tournament on Thursday, September 16th. Register and pay by August 13th to qualify for the early bird prize. We were sold out last year so don't put off registering until your game improves.

Civil Rules Committee

The Secretariat of the Civil Rules Committee has consulted with CDLPA regarding two proposed changes to the Rules of Civil Procedure regarding:

1. Maximum rates for fixing costs (Rule 57); and
2. Audio or video recording of defence medicals

Two letters from Jeff Cowan to CDLPA requesting its input was emailed to our membership and posted on the bulletin board at the library. Please contact the librarians if you did not receive a copy of the letter and would like one. If you are interested in providing any comment in relation to either of these proposed changes please direct them to my attention at (taran@virtualassociates.ca or by fax 519-432-8626). I will forward your comments onto the CDLPA executive, who are preparing a submission prior to July 15th. Receiving your comments prior to my next CDLPA conference call on June 7th would be ideal.