

President's Report – December 2009

County and District Law Presidents' Association Fall Plenary

Vice President Stephen Taran and I attended the fall plenary session hosted by CDLPA which was held in Guelph on November 12 and 13, 2009. A summary of the topics discussed is set out below.

Legal Aid

We were fortunate to hear from representatives not only from CDLPA but also from the Provincial Criminal and Family Law Associations, the Law Society and from Attorney-General Chris Bentley.

As you are no doubt aware, many criminal lawyers across the province including Middlesex County have refused to accept legal aid certificates for certain serious offences in an effort to obtain increased legal aid funding. Although additional funding of \$150,000,000 over the next four years has recently been announced by Mr. Bentley, there is still discontent because there has yet to be a review of the tariff in regards to both hourly rates and allowable time for various proceedings. This lack of compensation has in turn led to the inability on the part of many criminal practitioners to mentor junior lawyers.

Similar concerns were raised by the family bar, especially in child protection and custody matters where the tariff does not allow sufficient time to properly investigate, prepare for and attend hearings. The future strategy of the Provincial Family Law Lawyers Association is expected to be considered at its upcoming annual general meeting. We were told that a boycott of certain legal aid family proceedings will in fact be considered. In addition to funding issues, there is perhaps an even greater concern arising from what is perceived to be unnecessary steps as required by the family law rules which result in unduly delays and increased costs.

Attorney General Chris Bentley advised that there is simply no more money available but that a further review can be carried out at the end of the upcoming four year period. Instead, he emphasized his access to justice plan which will seek to streamline the process for both self-represented litigants and lawyers.

A Resolution was passed which amongst other things, sought a review of the current tariff. What remains to be seen is whether improving access to justice will be truly be possible without any further legal aid funding.

Family Law

The Law Commission of Ontario is currently conducting public consultations regarding family justice issues. A call for submissions has been made of a number of groups including the public, non-legal workers in the system and family law lawyers.

Submissions are due on December 1, 2009. CDLPA also intends to complete written submissions and accordingly, should you have any input, please either contact me or alternatively, you can voice your concerns on the CDLPA Information Exchange Platform found at www.cdlnpa.org. (see further reference below).

We also discussed Bill 133. Unfortunately, the key sections dealing with pension evaluations and applications for custody by non-parents have yet to be proclaimed. There is also some concern that this legislation has added even more unnecessary steps to proceedings. Again, CDLPA welcomes any submissions you may have in regards to Bill 133 through its Information Exchange Platform.

CDLPA continues to be represented on the Family Law Rules Committee. There is not a lot to report on this front at this time but for the fact that some of the Court Forms have been amended.

A representative of CDLPA recently attended the Justice Summit held in October 2009. The purpose of the Summit was to discuss reform in the Family Law process. Interestingly, 60 to 70% of litigants in the Ontario Court of Justice are unrepresented. Presenters from other provinces who have successfully implemented education programs for unrepresented litigants offered valuable suggestions.

We also discussed the current activities of the Advisory Committee on Child Protection Lawyers which group reports to the Family Law Steering Committee. As referenced above, there is a great deal of focus at this time on the lack of lawyers who practice in the child protection field and the lack of legal aid funding for these lawyers. Steps are being taken to offer legal education programs to new lawyers to train them to work in this area of law.

Civil Justice Review

Those practicing in the civil forum will no doubt have by now reviewed the new Rules coming into effect shortly. The Rules Committee is now considering whether or not Rule 76 (Simplified Rules) should be exempt from the Rule 77 Case Management provisions. If you do practice in Windsor or Toronto and or Ottawa and wish to make submissions, please contact me and I can put you in touch with the appropriate party.

Some discussion was also had in regards to the Rules Committee itself and the recommendations of Mr. Justice Osborne in respect of that committee which have yet to be considered. For example, Justice Osborne recommended that the committee be reduced in size from its current 29 member constitution, that the identity of its members be publicized and that minutes be produced from its meetings. A resolution was passed seeking further compliance with these additional recommendations.

Information Exchange Platform

As referenced above and in a previous President's Report, you can access CDLPA's interactive website at www.cdlnpa.org. When you first sign on, you will be requested to complete your profile and you will require your LSUC number as your password.

I again urge you to view this site which includes a forum for discussion of CDLPA issues, access to each of the Law Associations websites or postings including practices specific areas and interactive maps.

Bencher Elections

Although elections are still a couple of years away, CDLPA is asking for input as to their role. For example, in the past they have delivered questionnaires to all candidates, in certain circumstances endorsed candidates and advertised on their behalf. If you have any suggestions, please contact me.

Law Society of Upper Canada Report

As always, LSUC CEO Malcom Heins attended to provide a state of the union address touching upon the following topics:

a) Premium Increase

As you know there has been increase in our insurance premiums. Mr. Heins warned us that another will likely be forthcoming next year assuming the HST comes into force in July 2010 which will cause the Law Society to have to substantially increase its reserves to account for the additional sums to be paid for HST on costs.

b) Locums

Individuals available to fill locum positions in all counties have registered. If you are a sole practitioner or practice in a small office and require parental or other leave, you are welcome to contact the Law Society for further details.

c) Articling Registry

For those firms who have articling positions available, you can post particulars on this site which seems to have become a valuable resource for students.

d) Greying of the Bar

A brand new initiative is just getting off the ground which, with the cooperation of the law schools will provide certain spaces to individuals from rural communities in exchange for their commitment to return to those communities to practice. Arrangements will also be made to assist in the facilitation of summer and articling positions in those areas.

This was CDLPA's first notice of this venture and I expect that further discussions will follow as it continues to lobby for a law school in northern Ontario.

e) New Licensing Requirements

In addition to the usual Bar Admission course, new calls will also now be required to complete 24 hours of accredited continuing legal education over their first 24 months of practice. Programs to be offered will be specific to practice areas.

f) Mandatory CLE

Convocation is currently considering mandatory CLE for all lawyers across the province. More specifically, every lawyer would be required to participate in 12 hours of education per year, three of which must include discussions of ethics, professionalism or practice management. For a complete copy of the report of the Professional Development and Competence Committee, please see the link on the News section of the MLA website. You can make submissions to the LSUC in regards to this initiative until January 15, 2010.

g) Justicia Project

This project is well underway with its objective being to retain women in the practice of law. Any firm with more than six lawyers is welcome to join the initiative and in exchange for that commitment, will gain access to valuable precedents in the forms of policies regarding pregnancy and parental leave, flexible work arrangements and tool kits.

h) Governance

The Task Force on Governance is scheduled to report to Convocation in December. The recommendations to be discussed will include the termination of Life Bencher status, the limitation of Bencher terms to 12 years, and the elimination of ex-officio status for former Treasurers and Attorney Generals, and the encouragement of the appointment of non-Bencher lawyers and paralegals to the Law Society Committees.

For a full report of the Governance Task Force please see the link on the News section of the MLA website.

i) Lawyer Referral Services

The Law Society is currently working on restructuring this service to include internet access as opposed to telephone access only. In doing so, they will be able to provide more information.

Continuing Legal Education

For all of our members who practice in the personal injury field, I urge you to attend our upcoming Personal Injury Fall Conference on December 8, 2009 at the Delta London Armouries.

Please also save the date for our annual Straight from the Bench Dinner and Conference scheduled for April 21 and 22, 2010.

Social Events

About 125 of our members and their partners enjoyed a great evening in celebration of the 130th Anniversary of the incorporation of the MLA on November 13, 2009 at Aroma. The music of Sonja Gustafson added a special touch. We hope that those that attended enjoyed the evening which was a new format for us but which allowed for a more casual evening following a long week of work with time still available to get home to one's family or enjoy the evening out following the event. Given its success, we will likely hold similarly formatted events in the future. A special thank you to our Trustees, Lindsay Kirk, Denise Marshall, Charlie Walters and Liane Armstrong for organizing the event.

Our annual Courthouse Holiday party will be held on Thursday, December 17, 2009 at 4:30 in our library. Please come and join us for some holiday cheer.

Future events include a family skate at the JLC in February and Court House Rocks on March 26, 2010.