The County & District
Law Presidents' Association
L'Association Des Bâtonniers
De Comtés et Districts

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Call for Input on the Rules of Professional Conduct
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Committee Members:

Please accept this submission from the County and District Law Presidents' Association (CDLPA) relative to the Call for Input on the proposed amendments to the Rules of Professional Conduct. Subject to our comments below, we are generally in agreement with the proposed changes relating to Conflicts, Doing Business with Clients, Short Term Legal Service and Incriminating Physical Evidence. However, we have significant comments and concerns with respect to the proposed amendments on Marketing, and therefore we begin our submission here.

Section One: Marketing

As a start, we note that Rule 4.2-0 of the proposed amendments maintains the existing definition of "marketing". To the extent that this is a definition section, we submit that it should be updated and made explicit to include all internet based advertising including websites and social media. Very clearly, law firms, like other professional services, are taking to the internet to market their services. This includes not just a law firm website, but also social media including Facebook, Twitter, and You Tube.

In reviewing the Report to Convocation of June 25th, 2015 from the Professional Regulation Committee, we were encouraged, particularly on reading the section entitled "Issues Raised About Advertising" on pages 128 and 129. However, on reading the actual proposed changes to Rule 4.2 and the corresponding Commentary, we felt that the proposed rule changes fell short of the mark in a few specific areas.

For ease of reference, we have prepared a chart (below) quoting the various sections under the heading entitled "Issues Raised About Advertising", and then, in the next column, quoted the relevant proposed rule/commentary change followed by a third column which contains our comments. We hope this method will be easy to follow.

Issues Raised About Advertising	Proposed Rule Amendment	Comment
(a) Lawyers sometimes use endorsements and awards in their advertising. This advertising may refer to professional publications and awards conferred by consumer organizations. The advertisements often contain insufficient detail about the award which means that it is difficult for members of the public to determine whether the lawyer paid to receive the award (either directly or indirectly through advertising); nor is it clear whether the lawyer received the award based on merit or any selection criteria.	Rule 4.2-1.1: For greater certainty, the following marketing practices would contravene the requirements of Rule 4.2-1: (f) referring to awards or endorsements unless accompanied by information sufficient for the public to make an informed assessment of the award including: the source of the award, the nomination process and any fees paid by the lawyer, directly or indirectly; Commentary [2]: Examples of marketing practices which may contravene these requirements include: (d) advertising awards and endorsements from third parties without disclaimers or qualifications.	We agree with the sentiment expressed that lawyers and law firms are currently using endorsements in their advertising when such endorsements are often for a fee or without any sense as to how an award or endorsement was bestowed upon the lawyer or law firm or what voting process took place for the lawyer or law firm to receive the award. However, we find it confusing that the proposed rule 4.2-1.1(f) states that referring to such awards or endorsement without additional information "would contravene" the requirements of rule 4.2-1 when commentary [2](d) seems to suggest that such marketing practices "may contravene" rule 4.2-1. CDLPA supports the proposed wording in rule 4.2-1(f) and submits that commentary [2](d) is superfluous, confusing and unnecessary.
(c) Some advertisements contain statements about fee arrangements, such as contingency fees, without a disclaimer. The advertising contains no reference to the client's responsibility to pay the lawyer's disbursements. For example, the client may well be required to cover the costs	Commentary [2](c): referring to fee arrangements offered to clients without qualifications.	We agree with the sentiment expressed by section (c) in the Issues Raised About Advertising. However, we find that commentary [2](c) falls short of that sentiment. We submit that commentary [2](c) is overly vague, as the profession may have some considerable difficulty understanding to what "without qualifications" is referring. While we agree that the commentary should not provide an

incurred by the lawyer such as photocopying, even if the litigation is unsuccessful.		exhaustive list of fee arrangement qualifications, at least some guidance or example should be provided. We suggest that commentary [2](c) should be amended to read "Referring to fee arrangements offered to clients without qualifications such as whether the client is responsible to reimburse the lawyer for the disbursements incurred on the file, even if the litigation is unsuccessful". CDLPA's real estate group has further and more specific commentary with respect to "all in" fee quotes and "disbursements" specific to a real estate transaction. Their commentary is provided separately below.
(d) Some advertising may contain misleading information about the size of the firm, the number of offices or the areas of practice; The fact that the lawyer will likely refer the work to others is not indicated in the advertisement. The nature of the service provided to the client is in fact a referral for legal services, and not legal representation.	Commentary [2](b): misleading about the size of the lawyer's practice or the areas of law in which the lawyer provides services	Again, we endorse the sentiment expressed in paragraph (d) in the Issues Raised About Advertising. However, the sentiment is not reflected in the proposed amendment to commentary [2](b). What is missing in the proposed commentary is the size of the firm, the number of firm offices and the fact that the lawyer will likely refer the work to others for a referral fee. Our research has disclosed a number of objectionable practices within the profession. These objectionable practices are referenced in paragraph (d) in the Issues Raised About Advertising. First, some law firms misrepresent the size of the law firm (as opposed to the size of the lawyer's practice). Specifically, some law firm advertising, especially on their websites, will contain a firm photograph that includes not just the lawyers in the firm but any other person who is employed by the firm including law clerks and legal assistants. This gives the public a misleading sense that the law firm is much larger than it actually is in terms of the number of professionals on staff. (Note, we do not object to recognizing the non-lawyer staff on a web-site, but would simply suggest

		that it be made clear which staff are professional staff and which are support.) Second, a number of law firms advertise that they have offices in various cities across the province. Very often it turns out that these other locations are unstaffed empty offices to which a lawyer from the law firm's head office can attend if it is necessary to meet with a client in that locality. The result is that law firms who are advertising such offices give misleading information to the public as to the overall size of the law firm, ie, that it is a province wide law firm as opposed to a local law firm with rented space in other cities or towns. In those circumstances where a lawyer serving a particular rural or remote clientele has other offices to which she or he utilizes, we would simply suggest that they note in their advertising the address of the main office and denote which offices are secondary or temporary offices. Third, the Law Society and the profession knows that there are some law firms that spend very large sums of money to advertise when in fact they are little more than a referral source for legal services. We would submit that all three of these concerns should be reflected in commentary [2](b). These concerns are referenced in paragraph (d) under the Issues Raised About Advertising. We would suggest that commentary [2](b) be amended to read "misleading about the size of the firm, including the number of lawyers, the number of serviced offices or the areas of law in which the lawyer provides services". We would then recommend an additional paragraph (e) to commentary [2] which would state "advertising legal services without disclosing the reasonable likelihood of being referred to others outside the firm".

(e) In some cases the location and context of lawyer advertising may indicate a lack of professionalism.	Commentary [4]: Examples of marketing practices which may be inconsistent with a high degree of professionalism would be images, language or statements that are violent, racist or sexually offensive, take advantage or a vulnerable person or group or refer negatively to other lawyers, the legal profession or the administration of justice.	We submit that the proposed commentary [4] fails to take into account the concern raised in paragraph (e) under the Issues Raised About Advertising. Specifically, the location and context of the lawyer advertising is important. To be specific, we believe that members of the Law Society or Convocation are aware of advertising that has been placed within the men's washroom facilities at the Air Canada Centre, for example. The Law Society may also be aware that many personal injury law firms have very prominent advertising in and immediately adjacent to hospitals. We submit that the location and context of such advertising most definitely is inconsistent with a high standard of professionalism. It cannot seriously be contested that prominent personal injury firm advertising in and immediately adjacent to hospitals is anything other than blatant ambulance chasing. Such advertising disparages the reputation of all of the lawyers in the province. We therefore recommend that the following words be added to the end of commentary [4]: "or be in locations or in context that may indicate a lack of professionalism or lessen the public image of the profession".

<u>Specific commentary from the real estate bar on the subject of marketing:</u>

In the real estate bar, there appears to be a general reluctance to go near any issues involving fees and costs to the public so as not to create any issue with Federal Competition Bureau. That said, the proposals noted in this consultation with respect to "all-in fees" and a better definition of "disbursements" are, in our view, in the public interest and fall well short of anything that might concern the Competition Bureau. The basic premise behind these proposals is to provide members of the public with consistent information so that they can compare services and pricing. As matters now stand, "all in" fee quotes are generally misleading and subject to a wide interpretation, which is beyond the average member of the public. Often, they appear to be used in a manner to get the business in the door and then the quoted fees are inevitably added to as part of the "service".

With basically no definition of Disbursements under the Rules of Professional Conduct, some solicitors in the real estate bar have taken to liberally interpreting the term and passing on to the public costs which should normally be part of overhead. The most simple examples of these are references to "Documentation Preparation Fee" and "E-Reg User Fee" as disbursements, despite the fact that no actual disbursement is incurred and likely the documents have been prepared by the lawyer's own staff.

CDLPA has received input from several lawyers across Ontario asking for this issue to be discussed with the Law Society, as these lawyers feel that the Law Society has not been providing adequate assistance or clarification on what constitutes a disbursement. The proposed amendments to the Rules of Professional Conduct offer an opportunity for the Law Society to offer this clarity which should result in a decrease in potentially questionable practices.

"All-in Fees"

In our view, a strong argument exists for the Rules of Professional Conduct to outright ban "all in" fee quotes in advertising. Arguments in favour of this position include:

- "All-in Fees" leave the public with the impression that all real estate deals are the same. If lawyers can set one price, in advance, then the real estate transaction is "widgetized" in the mind of the public and this has a long-term, negative impact on both the business of the real estate bar and on the public's understanding of what is actually involved in a real estate transaction.

- Faced with a self-imposed fee ceiling, at least notionally, there will be pressure, conscious or not, to skimp on disbursements in order to maximize fees. Standards are inevitably compromised in the quest for margin.

- Faced with a truly complex transaction and a fixed return, the temptation to find a way to charge additional fees will be strong.

- The public is better served by having an upfront and detailed discussion of fees and disbursements with a lawyer before the retainer is finalized. The lawyer is made aware of the true scope of the transaction, quotes fees and disbursements accordingly, and the potential client makes an informed decision about going forward with this lawyer, or not.

The CDLPA Real Estate Committee further believes that all quotations should be broken down between legal fees and disbursements, including land transfer tax. It would not be difficult to draft appropriate regulations and standard forms to address this. Once in place, the public would be capable of comparing apples to apples. They would also be able to look at the difference in

disbursements being quoted to them by different law offices and, presumably, ask knowledgeable questions about why one office quotes higher or lower disbursements than another. These new rules, regulations, and forms could be accompanied by a public information campaign (done in partnership with the real estate bar) which, handled correctly, could do much to restore the credibility of our profession in the real estate industry.

Regardless of whether they are banned or regulated, there is plenty of precedent for trying to level the playing field for the public in terms of pricing goods and services. Three examples from other industries are provided in the Appendix A to this letter.

Disbursements

It is our view that "disbursements" need to be defined and regulated by the Law Society in the interests of consistency among lawyers so that members of the public may be able to adequately compare fee quotes. This cannot be done if what is treated as overhead by one lawyer is charged as a disbursement by another lawyer.

The Law Society could assist itself and lawyers by developing a list of acceptable disbursements in various practice areas. The existence of the list would mean that the Law Society would not be constantly fielding questions as to what is an acceptable disbursement. The profession would have a list to which it could refer. In the presumably rare instances where something is not on the list, consultations could be had with the appropriate staff at the Law Society, a ruling could be made, and, in appropriate circumstances, an addition could be made to the list of acceptable disbursements. One would anticipate that the list of acceptable disbursements would be updated regularly, posted on a website, and available to all with a few key strokes.

<u>Application of these Rules to Paralegals</u>

While we appreciate that the call for input relates to the proposed amendments to the Rules of Conduct, we would also strongly submit that whatever amendments are in place for the lawyers in the province, also be in place relative to the paralegal profession. Currently, Rule 8.03 of the Paralegal Rules of Conduct is the same as the current Rule 4.02 of the lawyers' Rules of Professional Conduct. Therefore, to the extent that there are amendments to the lawyers' Rules of Professional Conduct on marketing, those same amendments should apply to paralegals, and that no changes should ever be made to marketing rules for paralegals or lawyers without a parallel change in the other.

Unlike the Rules for lawyers, there is no commentary in the Paralegal Rules of Professional Conduct. Rather, paralegals are governed by Professional Conduct Guidelines. Guideline 19(5) is comparable to the existing commentary with respect to lawyer marketing. Again, if the commentary for the legal profession is going to be amended, Guideline 19 for the Paralegal Profession should be similarly amended.

On the subject of paralegal advertising, CDLPA would like to make two additional submissions:

- We continue to receive anecdotes from amongst our membership that report some paralegals are marketing their services in a manner that might lead a potential client to think that the paralegal is actually a lawyer. This is particularly so in communities where English is a second language, but not exclusively so. We understand that in some languages, the literal translation of paralegal and lawyer is the same leading to further confusion.

  CDLPA would like to see an amendment to Guideline 19 that would mandate that any paralegal marketing or advertising specifically identify the individual as a paralegal. For example, a paralegal advertisement that stated: "John Smith, a Member of the Law Society of Upper Canada" would violate the Guideline because a member of the public may reasonably conclude that John Smith is a lawyer. However, if the advertisement read: "John Smith, a Paralegal Member of the Law Society of Upper Canada", there would be no objection. Concomitantly, if a lawyer wishes to identify their standing with the Law Society, they would say "Lawyer Member of the Law Society of Upper Canada" or simply "lawyer".

- We further recommend that paralegals and lawyers advertising or marketing their services in languages other than English and French should be compelled to provide to the Law Society, on request, a certified translation in either English or French and verify that the wording used does not violate either of the respective Rules of Conduct or Guidelines.

<u>Commentary on Enforcement</u>

Lastly, amending the Rules of Professional Conduct for lawyers and paralegals will only address the various concerns that have been expressed if enforcement of the rules is expeditious and effective. While it may be that the Law Society investigates breaches of the rules on a complaints basis, the current means by which potential rule violations can be brought to the attention of the Law Society does not work well in the context of marketing and advertising.

The current complaint process and complaint form may be appropriate in the context of a client complaint such as delay, failure to reply to communications, rude behaviour, etc. but it does not work well where a member of the profession wishes to bring a potential marketing/advertising violation to the attention of the Law Society. We submit that there should be a separate and distinct complaint process in place when it comes to lawyer/paralegal marketing and advertising. This process should include the option of anonymity for the complainant, since the subject of the complaint is very easily verifiable by the Law Society. After all, we are dealing with information that is in the public domain and not confidential information that may be sitting within a lawyer's file.

In short, it should be enough for at least a preliminary investigation to be launched that the Law Society receives a copy of a printed advertisement, a screen shot, a picture of a billboard, an audio recording of a radio ad, a video from a TV ad, etc. where the content is potentially in violation of the Rules.

Section Two: Short Term Legal Services

We agree with the Committee proposing the removal of the word "limited" in Rule 3.1-3.4. There is no need to have the word "limited" with the term "short term legal services" as it does nothing to change the nature of the phrase. In fact, given the increasing thrust on "limited scope retainers", we believe the removal of the word will prevent confusion for the profession regarding this Rule and any perceived connection to limited scope retainers.

However, we will express one issue with the proposed Rule that we are concerned may lead to confusion or be open to interpretation by the profession. In reviewing the Report to Convocation of June 25th, 2015 from the Committee, we understand the proposed amendments arise from requests from various pro bono legal service providers, not exclusively Pro Bono Law Ontario, to address the varied and expanding short term legal services being provided in the province.

The issue is that there is not a definition of "not-for-profit legal services provider" under Rule 3.4-16.2. Without a definition, we see the potential for an individual lawyer, not acting for a formal organization such as Legal Aid Ontario or Pro Bono Law Ontario, to incorrectly assume that they are able to offer these services in accordance with this Rule as a "provider".

To the extent that there is a definition section under 3.4-16.2, we strongly suggest the Committee consider adding a definition of "not-for-profit legal services provider", in particular to make abundantly clear that this would not include an individual lawyer or law firm, unless that is the intent.

We concur with the balance of proposed amendments in the Rule, and in particular, are pleased with the proposed Rule 3.4-16.5 not permitting lawyers in these situations to seek consent or waiver of an individual in a conflict situation.

Section 3: Conflicts of interest

We note that the Committee has been guided by the Supreme Court of Canada decision in *Canadian National Railway Co.* v. *McKercher LLP*. As many practising lawyers may not be familiar with this decision, any efforts to enhance guidance to the profession in the Commentary of Rule 3.4 is well received.

We would note that with respect to the removal of "express or implied consent" in favour of "fully informed and voluntary after disclosure from all affected clients" from Rule 3.4-2 may place an unreasonable barrier for solo and small practitioners particularly those in rural and remote locations, thus denying access to justice for the individuals in those areas.

The first issue relates to Independent Legal Advice, which may be prohibitive to the client by way of geography or costs. The second and potentially more problematic barrier is the requirement of "all affected clients". In many areas in the province, it can be difficult to maintain contact with clients, and the expectation that you would contact each potentially affected client may place an unreasonable requirement on the lawyer, to the detriment of the client. Again, these situations will be exponentially problematic in rural and remote areas where there may be limited availability of lawyers. We submit the Committee should consider these issues in its final deliberations regarding the proposed amendments and their effect on the public needing these services.

Section 4: Doing business with a client

We would like to provide comments on two specific items in the proposed changes to the rules under this section, and otherwise take no issue with the prosed amendments.

In Rule 3.4-29, the Committee is proposing to add a reference to "nominal value" as an exception to the Rule regarding transactions between lawyers and clients. First, we would comment that this is an excellent recognition of the practical realities of the relationship, particularly in smaller communities, between lawyers and clients. In reviewing the Report to Convocation of June 25th, 2015 from the Committee, we were pleased with the justification for this proposed change, in the example at page 115 relating to a lawyer using a client's company to plow their driveway of snow for a nominal value. As such, we support the Committee's addition of this term.

The concern remains the openness of the definition of "nominal value" and the lack of commentary on this following Rule 3.4-29. It is noted at page 115 that the term "nominal value" is a consideration depending on the circumstances, and that there is a risk that the lawyer and the client may not agree on what qualifies as nominal. Given that this risk is already identified, it seems prudent for the Committee to add commentary to guide lawyers on its expectations of "nominal", so as not to leave the section so broad. Although we appreciate the term is meant to be left open to some interpretation so as not to limit the effective and practical nature of the term "nominal", some guidance would be useful.

With respect to Rule 3.4-39 and Testamentary Instruments and Gifts, we find the wording of the Rule potentially problematic. We would seek clarification, either in the drafting of the Rule or a short commentary that follows, whether Rule 3.4-39 would force a client who wishes to provide for a gift or benefit to their lawyer, to leave the firm entirely in order to draft that instrument. In rural and remote areas, where there can be limited lawyers performing these services, it could place a disproportionate burden on the client who wishes to make such an instrument if they cannot use a lawyer in the same firm to affect their wishes. The use of the word "associate" in this Rule seems to imply that no firm could ever draft an instrument where a benefit would flow to any lawyer of that firm. If that is the intent, then the consequence in certain areas in the province would be to limit the public's access to legal services. If it is not the intent, the wording should be clarified with the use of the word "associate".

Section 5: Incriminating Physical Evidence:

We take no issue with the proposed additional commentary under this section. We are pleased with the direction provided in the commentary to assist lawyers dealing with these types of scenarios.

Closing

We acknowledge the work of Convocation and in particular, the Professional Regulation Committee in their efforts to continue to evolve the Rules of Professional Conduct in response to the changes in the legal profession, especially technology.

As noted, we do appreciate that the call for input relates to the proposed amendments to the Rules of Professional Conduct for Lawyers, however, we strongly maintain that the same Rules must be in effect for the paralegal profession, where the Rules coincide, to prevent a misunderstanding in both professions, and more importantly, in the public.

We hope the Committee finds our submission of assistance in their deliberations and appreciate the opportunity to respond to same.

On behalf of the County & District Law Presidents' Association,

Cheryl Siran,
Chair

Mike Winward
South-Central Regional
Representative

Merredith MacLennan
Real Estate Committee
Chair

cc. CDLPA Executive
Presidents of the County & District Law Associations

Appendix A

Examples of "All-in fee" regulation from other industries.

Motor Vehicle Dealers

Section 36 of the Regulations under the *Motor Vehicle Dealers Act in Ontario* was amended in recent years to deal with the issue of "sticker prices." The entire section is included because it is instructive, however, we draw your attention to sub-section (7) of it as being most relevant to our discussion. A "sticker price" on a windshield has to be an "all in" price.

Advertising

36. (1) A registered motor vehicle dealer to whom this section applies shall ensure that any advertisement placed by the dealer complies with this section.

(2) Subject to subsection (3), an advertisement that attempts to induce a trade in a motor vehicle shall include, in a clear, comprehensible and prominent manner, a registered name and the business telephone number of the motor vehicle dealer.

(3) Subsection (2) does not apply to an advertisement that,

(a) indicates that it is being placed by a registered motor vehicle dealer; and

(b) is a classified advertisement in a newspaper, magazine, or similar publication, is broadcast on radio or television, is displayed on a billboard or bus board or is made through any other medium that has similar practical limitations on the amount of information that can be included in the advertisement.

(4) Despite clause 4 (2) (b) of the Act, an advertisement placed by a motor vehicle dealer registered as a lease finance dealer who trades through one or more registered general dealers may invite the public to deal with the lease finance dealer at the place from which any of the general dealers is authorized to trade.

(5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

(a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;

(b) used as a police cruiser or used to provide emergency services; or

(c) used as a taxi or limousine.

(6) If an advertisement that attempts to induce a trade in a specific motor vehicle discloses the model year of the vehicle and the model year so disclosed is the current model year or the immediately previous model year, the advertisement shall indicate, in a clear, comprehensible and prominent manner, that the vehicle is a used motor vehicle, if that is true of the vehicle.

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

(a) the amount that a buyer would be required to pay for the vehicle; and

(b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

(8) If an advertisement that indicates a price for a motor vehicle is placed jointly by two or more registered motor vehicle dealers, the advertisement shall state that the price for the vehicle in an actual trade may be less than the price set out in the advertisement.

(9) Subject to subsection (10), if an advertisement that indicates a price for a motor vehicle is placed jointly by two or more registered motor vehicle dealers and if an amount of a charge mentioned in clause (7) (b) varies as between the dealers, the advertisement shall indicate, in a clear, comprehensible and prominent manner,

(a) that a buyer of the vehicle may be requested to pay that amount in addition to the price Indicated in the advertisement; and

(b) what the charge is for.

(10) Clause (7) (b) and subsection (9) do not apply to amounts under the Retail Sales Tax Act or to the federal goods and services tax if the advertisement indicates, in a clear, comprehensible and prominent manner, that those amounts are not included in the price indicated in the advertisement.

(11) If an advertisement that indicates a price for a motor vehicle is placed jointly by two or more registered motor vehicle dealers, each of the dealers shall

ensure that the advertisement complies with subsections (7), (8), (9) and (10).

(12) An advertisement that advertises a motor vehicle for sale shall not indicate the price of the vehicle unless the vehicle is available from the registered motor vehicle dealer at that price during the time to which the advertisement applies.

(13) If an advertisement indicates the price of a motor vehicle and if there are a limited number of vehicles available at that price, the advertisement shall indicate, in a clear, comprehensible and prominent manner, the number of vehicles available.

(14) An advertisement that indicates that an extended warranty is included with the purchase of a motor vehicle shall indicate, in a clear, comprehensible and prominent manner, the term of the warranty and the maximum individual claim limits, if any, for the warranty.

Mortgage Brokers

The following regulation under the Ontario *Mortgage Brokers Act* sets out the disclosure which must be made to borrower by the broker regarding compensation being received by the broker from any source in relation to the mortgage transaction.

Ontario Regulation 188/08 - Mortgage Brokers Act

Information about Fees and Other Payments Representations re status of payments

20.(1) A brokerage shall not, directly or indirectly, represent to any person or entity that any amounts payable to the brokerage in connection with carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender are set or approved by any government authority. O. Reg. 188/08, s. 20 (1).

20.(2) Subsection (1) does not apply with respect to disbursements that may be made by a brokerage for fees payable to register or deposit instruments under the Land Titles Act or the Registry Act. O. Reg. 188/08, s. 20 (2).

Fees, etc., payable by others

21.(1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal that it presents for the borrower's consideration:

1. *Whether the brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.*

2. *If a fee or other remuneration is or may be payable to the brokerage, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.*

3. *Whether a broker or agent who is authorized to deal or trade in mortgages on the brokerage's behalf has received, may receive or will receive payment of an incentive from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.*

4. *If an incentive is or may be payable to a broker or agent, the nature of the incentive and the identity of the other person or entity. O. Reg. 188/08, s. 21 (1).*

21.(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section. O. Reg. 188/08, s. 21 (2).

Airline Seat Sales

The issue of "all in" pricing for airline seat sales received a lot press in last few years and federal regulations now require advertisements to reflect the full cost to consumers.

Below is one story that appeared in the Star on this issue in December of 2011 heralding the news of the impending regulations.

The Star

By: Vanessa Lu Business Reporter, Published on Fri Dec 16 2011

Goodbye $99 seat sale, hello truth in advertising.

Frustrated consumers have long complained the $99 ticket really wasn't $99, once taxes, airport improvement fees, security charges and fuel surcharges were added in.

The federal government announced Friday it will bring in new regulations requiring all Canadian airlines to clearly advertise what the passenger will pay.

"This will allow consumers to easily determine the full cost of airfares in order to make informed choices," said Steven Fletcher, minister of state for transport.

However, it will probably take a year before the new rules go into effect as the government consults with airlines.

"It's long overdue — truth in advertising," said Michael Pepper, president of the Travel Industry Council of Ontario. "It's great for consumers."

Pepper said this finally levels the playing field especially in Ontario, Quebec and British Columbia, where travel agencies, which are provincially regulated, are required to advertise the total cost.

The airlines have long resisted such a move, but as other countries have adopted such requirements, they now say they're willing.

New rules in the United States go into effect in January while Europe has had a similar consumer protection rule in place since 2008.

"It's an evolution," said George Petsikas, president of the National Airline Council of Canada, which represents the country's largest passenger carriers. "We're happy to work with the government in setting up the rules."

For Canadian airlines, the key is ensuring all carriers are subject to the same rules. That means foreign carriers that market their flights here must abide by Canadian regulations, Petsikas said.

WestJet said it welcomes "all-in pricing to provide the travelling public with comparability among all airlines."

Air Canada said for years it has publicly stated "we would happily comply with whatever advertising rules the government wishes to implement provided they apply equally to all carriers, domestic and foreign, against which we compete."

Echoing its rivals, Porter Airlines said: "We look forward to working with others to create a level playing field for how fares are advertised."

Olivia Chow, the NDP's transport critic, called it outrageous that it's taken so long for the government to act.

Sections 135.8 to 135.92 of the Air Transportation Regulations SOR/88-58 of the *Canada Transportation Act* state:

- *135.8 (1) Any person who advertises the price of an air service must include in the advertisement the following information:*
  (a) the total price that must be paid to the advertiser to obtain the air service, expressed in Canadian dollars and, if it is also expressed in another currency, the name of that currency;

  (b) the point of origin and point of destination of the service and whether the service is one way or round trip;

  (c) any limitation on the period during which the advertised price will be offered and any limitation on the period for which the service will be provided at that price;

  (d) the name and amount of each tax, fee or charge relating to the air service that is a third party charge;

  (e) each optional incidental service offered for which a fee or charge is payable and its total price or range of total prices; and

  (f) any published tax, fee or charge that is not collected by the advertiser but must be paid at the point of origin or departure by the person to whom the service is provided.

(2) A person who advertises the price of an air service must set out all third party charges under the heading "Taxes, Fees and Charges" unless that information is only provided orally.

(3) A person who mentions an air transportation charge in the advertisement must set it out under the heading "Air Transportation Charges" unless that information is only provided orally.

(4) A person who advertises the price of one direction of a round trip air service is exempt from the application of paragraph (1)(a) if the following conditions are met:

(a) the advertised price is equal to 50% of the total price that must be paid to the advertiser to obtain the service;

(b) it is clearly indicated that the advertised price relates to only one direction of the service and applies only if both directions are purchased; and

(c) the advertised price is expressed in Canadian dollars and, if it is also expressed in another currency, the name of that other currency is specified.

(5) A person is exempt from the requirement to provide the information referred to in paragraphs (1)(d) to (f) in their advertisement if the following conditions are met

(a) the advertisement is not interactive; and

(b) the advertisement mentions a location that is readily accessible where all the information referred to in subsection (1) can be readily obtained.

135.9 ***A person must not provide information in an advertisement in a manner that could interfere with the ability of anyone to readily determine the total price that must be paid for an air service or for any optional incidental service.***

135.91 ***A person must not set out an air transportation charge in an advertisement as if it were a third party charge or use the term "tax" in an advertisement to describe an air transportation charge****.*

135.92 A person must not refer to a third party charge in an advertisement by a name other than the name under which it was established.