



ANNUAL REPORT

2016



FEDERATION OF ONTARIO
LAW ASSOCIATIONS

FÉDÉRATION DES ASSOCIATIONS
DU BARREAU DE L'ONTARIO

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CHAIR'S REPORT

CHAIR'S REPORT

I am pleased and honoured to offer this comprehensive Annual Report for 2016 to the membership of the Federation of Ontario Law Associations (FOLA) and the practising bar across Ontario. It was a very busy year for FOLA as the length and detail of this report attests. It was also a very successful year as FOLA continued to extend its influence and as the membership of the forty-six local law associations across Ontario continues to grow. I hope that this report will serve as a record of all the good work we did over the past year for current members, and help future members to look back and understand how issues and initiatives evolve over time.



Eldon Horner, Chair

At the May Plenary, I made the remark that it seemed that the threats and challenges to the practicing bar were growing daily. For the most part, these threats are economic. There is increasing pressure on our fees, increased market competition both from lawyers in the market and para-professionals, increased regulatory compliance costs and increased pressure from clients who are expecting more from us every day.

The pressures on our profession are not just economic, however. Lawyers should also be leaders in society and the debates and issues we dealt with over the past year reflect this leadership and our role in promoting a just society. The Law Society's initiative looking at the unique challenges faced by racialized lawyers contained many important calls to action for all lawyers. The findings of the Truth & Reconciliation Commission of Canada looking at the history of how our First Nations have been treated had important calls to action for the justice sector and for lawyers in particular.

The debate over licensing standards of lawyers has important implications for the future of our profession and central to that debate is an examination of how the legal profession can become more accessible to low-income Canadians and racial communities reflective of the diversity of our country.

At a more granular level, our local law associations are also responding to the pressures we collectively face. There is growing pressure to provide greater value for the dollars spent on membership in the local associations, and for the most part, associations are responding to this pressure very well with more programming and higher quality service. Membership in our local associations is still trending upward, something our peer associations in the U.S. cannot report. Related to that is the pressure our practice resource centres face and we have more to report on that below. All in all, our associations are strong and the leadership of local law associations across Ontario remains committed to advancing the interests of the bar.

As you will see in this report, FOLA has been extremely busy responding to requests for input in relation to a number of subjects. We continue to believe that if we are to be heard we have to work collectively with other legal organizations and I'm pleased that we continue to coordinate efforts where we can with

CHAIR'S REPORT

the OBA and others. Once again, we had several attendees from a variety of organizations at our May and November Plenary meetings. We were also very pleased that our newly appointed Attorney General, Yasir Naqvi, accepted our request to attend Plenary in November and to speak directly to the Presidents about the ongoing and future projects in his Ministry.

At our May Plenary we thanked former Treasurer Janet Minor for her work and in June of 2016 we welcomed our newly elected Treasurer, Paul Schabas. Treasurer Schabas has already demonstrated a willingness to engage in candid discussions with the bar on many topics and seems to be dedicated to "getting things done". To get a better sense of his "agenda" we urge you to take a look at the letters he has written to each Committee Chair setting out what he wants to see done in the coming term. Commendably, he has published these letters on the Law Society web-site. <https://www.lsuc.on.ca/Committees/> We are looking forward to working with Treasurer Schabas and Convocation during his term.

Notably, the Treasurer's agenda closely mirrors our agenda. In the following pages of this report, you will see what FOLA has said in 2016 in areas as diverse as advertising and referral fees, the future of practice resource centres, paralegal scope of practice, legal aid, professional standards and licensing, real estate law, modernization of the courts, the challenges faced by racialized licensees and many more. We look forward to your continued engagement on these issues in 2017.

To conclude on a sad note, in early January of 2017, we said goodbye to a dear friend, Jackie McGaughey-Ward of Sudbury. Jackie was a long-time Northeast Regional Representative and a valuable contributor to the CDLPA Board. She had a long battle with cancer and passed away on January 8th at the too-young age of 56, surrounded by family and friends.



Jackie's commitment to her community, her faith and her profession, along with her infectious and constant positivity, remind us all as lawyers that this profession calls on all of us to fulfill a duty of civility and service to our community and profession. Jackie embodied that service and we are all better for having known her.

The current executive is working very hard and committing a tremendous amount of time on behalf of the Bar to ensure that any changes considered by the Law Society, the Attorney General and others duly consider the concerns of the Bar. We can only be successful with the continued support of the practising bar across Ontario. Together, we can make our profession and the administration of justice in Ontario stronger for everyone.

A handwritten signature in black ink, appearing to read "Eldon Horner".

Eldon Horner, Chair

EXECUTIVE DIRECTORS REPORT

EXECUTIVE DIRECTORS REPORT



**Executive Director,
Michael Ras**

I am pleased to report on the progress made against the three main aspects of the mandate of the Executive Director. Those being:

1. To represent FOLA to government, the Law Society and other stakeholders and advise the Federation Executive on ways to improve relations and maximize influence with key partners;
2. To build the capacity of FOLA by:
 - a. Improving financial resources
 - b. Improving communication and demonstrating value to members
 - c. Improving efficiency of operations
 - d. Increasing capacity and ability to take on more issues
 - e. Building partnerships;
3. To support the work of local associations.

Representing FOLA and Extending Influence

At each Plenary I report to the membership on our regular interaction with the Law Society, Attorney General and with stakeholders such as the legal media in Ontario. Just a few of the “issues” and initiatives we have dealt with in 2016 include:

- Family law/paralegal scope of practice
- Rainy River Crown issue
- Promotion of a new courthouse in Halton Region
- The future of LibraryCo (the ongoing saga ...)
- Pathways/LPP response
- Family law cost grid consultation response
- Advertising & Referral Fees consultation
- Real estate committee(s)
- Consultation on civil law e-filing pilot project
- Legal Aid
- TAG – The Action Group on Access to Justice
- Attendance at National Council of Bar Presidents and National Association of Bar Executives
- ... and much more ...

Advocate Daily

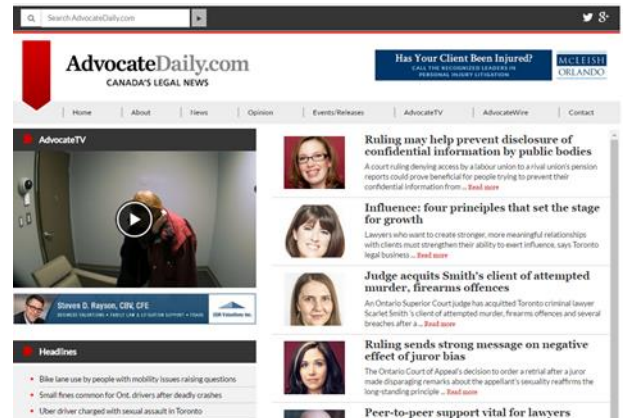
Advocate Daily is a new partnership for FOLA and a key part of our efforts to communicate and advocate on behalf of the practising bar. Advocate Daily is a wire service and professional writing service focused on lawyers and the legal community. Their site receives approximately 600,000 pages views/year focused on our core audience of legal decision makers. This partnership gives us access to content for

EXECUTIVE DIRECTORS REPORT

our own site, and a venue to distribute content and information about FOLA activities and the activities of our individual members.

From this partnership we receive:

- “Up to two strategically-developed stories per month written by Advocate Daily’s team of full-time and freelance journalists, featuring FOLA as the source in each post, publication on AdvocateDaily.com and promotion on social media (Twitter, LinkedIn and targeted LinkedIn discussion groups)”
- “One association-wide AdvocateWire membership providing unlimited posting of all FOLA news & events that we generate. Posts to AdvocateWire may feature any topic or individual we choose to highlight regardless of membership status with AdvocateDaily.com.”



What does this mean to you and your association? **Let me know about your events and initiatives and I will use our account to promote them.** Let me know about issues in your area and we can do stories about them. I’m excited by this partnership and look forward to doing much more with this in 2017.

Building Capacity

On the subject of “building capacity”, highlights from 2016 include:

- New and recurring financial partnerships with sponsors such as Thomson Reuters, CPD Online and others which are providing revenue to FOLA, but also provides benefits directly to members and local associations;
- Continuous improvement of post-plenary reports and other communications (and positive feedback from members across Ontario on these improvements);
- Ongoing evolution and redesign of a much more functional web-site with features such as a “Calendar of Events” page that is quite popular (multiple visits per day);
- An increased capacity and ability to take on more issues and a more sophisticated approach to dealing with those issues;
- Building relationships and collaboration with other associations, including the Ontario Bar Association, Family Law Association, etc. (This builds on the long-standing work done through channels such as the Alliance for Sustainable Legal Aid).

In 2016, our travel program continued to be a popular member benefit, but it was not as popular, or as lucrative as in past years. In total, our four trips to China netted a profit of \$91,000 for FOLA from 2014 – 2016, but projections for the 2017 trips are lower. There is still time to book our 2017 trip to experience the food and wine of Tuscany & Umbria, which departs for ten days July 29, 2017.

This travel program is an important benefit for our members and is a critical fundraiser for FOLA.

EXECUTIVE DIRECTORS REPORT

Supporting Local Associations

FOLA is interested in helping local associations wherever and whenever we can. Whether through promotion of local events, providing content to local associations for its newsletters or support on local government relations/lobbying efforts, we stand ready to help and in 2016, I was honoured to have the opportunity to speak at many meetings of local associations across Ontario. In 2017, I'm looking to get out to many more.

I am also planning to extend our social media reach by building a LinkedIn community for FOLA in the coming months. Within the LinkedIn community, I am hoping that more interaction between members can result in business referrals, job postings, etc.

Focusing on Advocacy & Government Relations

The provincial election is June 7, 2018 and this date dictates, to some degree, the issues and initiatives that will be the focus of the Provincial government. The next 12 months constitute the last realistic opportunity for government to get controversial or substantive legislative items done because the Spring 2018 legislative sessions before the election will be focused on partisan positioning and preparing for the election. The other milestone to note is that the government is on track for a balanced budget in 2017-18 and beyond and this means, to some degree, that the "spending taps" should be a little more open for some initiatives, especially capital/infrastructure investments. Now is the time to make the case for larger-ticket items such as new courthouses and expanding the judicial complement. It is our intent to do exactly that in the months leading up to the provincial election. If your local association has an initiative that it feels deserves Ontario government investment, let us know so that we can promote it as well.

The other focus is on growing the representation of lawyers in the Ontario Legislature. Presently, there are only a handful of lawyers in the Ontario legislature and this is reflected in the poor level of understanding of legal issues that is often seen in Legislative debates.

We encourage leaders of local law associations to get involved in local nomination races for all parties, and support local lawyers who are running. We are not necessarily suggesting that local associations take a partisan position. Instead, we are suggesting that local law associations can engage in activities that will educate and encourage both lawyers and non-lawyers seeking office to better understand the perspective of the local bar. Activities could include:

- Hosting a "meet the candidate" event allowing the candidate the opportunity to meet your membership, hear their concerns and sell memberships.
- Host a small fundraising "coffee party" that can help defray the costs of nomination campaigns.
- Host a courthouse tour and local legal issues briefing for candidates.

2019 Benchers Election

2019 seems far away, but really it's just around the corner! In the last Benchers election, though 20 new Benchers were elected, the results also showed that incumbency and high name recognition were critical factors in getting elected to Convocation. Cultivating allies and engaging in regular discussion with Benchers is a long-term, important strategy for FOLA. Simply put, it helps us if we have Benchers who understand what it takes to practice law in the counties and districts across Ontario.

EXECUTIVE DIRECTORS REPORT

In preparation for the 2019 Benchers election, we would encourage local associations to:

- Identify members of your local bar who have an interest in running
- Help them get out and network to raise their profile now (get them involved in local committees and initiatives, etc.)
- Prepare lists. Make sure you have current contact information for all your members and non-members (as much as possible) and identify these lawyers by their practice areas. These lists will become invaluable to our efforts in 2019 to turn out the vote.

Raising Funds and Supporting the work of FOLA

I would also remind members of the various partnerships that will help FOLA and local associations meet its goals. At our November Plenary, we announced on-going partnerships with [CPDOnline](#) and [Thomson Reuters](#) and a new partnership with the [Canadian Bar Insurance Association](#). We also welcomed new sponsorships from [FutureVault](#) and [Structured Settlements](#) and, of course, acknowledge the ongoing and generous sponsorship of our premier sponsor, [LAWPRO](#).

We are always looking for new and exciting marketing partnerships that can help enhance the value of being a member of a local law association and help those members with discounts and excellent experiences. Later in this report, we provide more details on some of these partnerships and what they could mean to your association and your members.



Michael Ras, Executive Director

FOLA SPONSORS & PARTNERS

FOLA SPONSORS & PARTNERS



THANK YOU TO THE LAW SOCIETY OF UPPER CANADA FOR ITS ONGOING

FINANCIAL SUPPORT OF FOLA



The Law Society
of Upper Canada

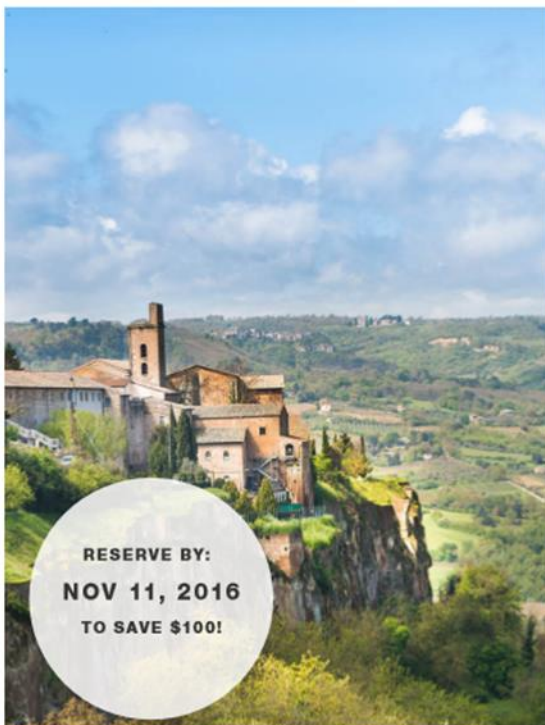
FOLA SPONSORS & PARTNERS

Go Ahead



FOOD & WINE: FLAVORS OF TUSCANY & UMBRIA

with the Federation of Ontario Law Associations



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FINANCIAL STATEMENTS

FINANCIAL STATEMENTS

The following pages highlight a financial status of our association that continues to demonstrate prudent management.

On the revenue side, we have benefited from four positive forces. First, in 2014, the Toronto Lawyers Association increased its contribution by \$10,000, from \$25,000 to \$35,000 in recognition of the valuable partnership that we share. Second, a number of the local law associations across Ontario have increased their own membership numbers through proactive outreach, improved service level and recruitment. These increased membership levels result in a larger levy back to FOLA. Third, we have undertaken a more aggressive effort to engage more sponsors at our Plenary meetings and for other activities. Fourth, we have enjoyed tremendous success with a travel program to China that has proven to be a popular and lucrative fundraiser for the Federation.

On the expense side, we have taken a number of steps to reduce our administrative and travel costs. We now use of a more effective and cheaper teleconferencing solution, a savings alone worth \$5,800. We have converted most of our paper files to a cloud-based document storage system and our printing and mailing costs have been reduced dramatically because we almost exclusively use electronic mail and no longer print plenary materials. Our improved website utilizes a simple and very inexpensive platform with a monthly hosting charge of less than \$20. We have implemented a more rigorous travel and expense policy that has seen our strategic planning, Plenary and executive meeting travel and accommodation expenses reduced overall. All of these savings will continue to be realized in future years, and we are always looking for ways to continue reducing our costs.

In 2016, we began the first of a new three year agreement with the Law Society for funding related to our bi-annual plenary meetings and executive travel and accommodation. This agreement allocates up to approximately \$256,000 annually to FOLA to cover these costs. In practice, for the past number of years we have consistently come in well “under-budget”. The Law Society has a legislated mandate to consult the bar in every county and judicial district in Ontario and our association helps the Law Society efficiently fulfil this mandate through our Plenary meetings and other events. Notably, the total contribution from the Law Society has fallen from 42% of total expenditures 2014 to 36% in 2015 and 38% in 2016 and we intend to see this ratio stay at around this level.

At the end of the year, some of our projections did fall short and we ended the year with a very modest deficit of \$7,409 which is mostly attributed to the higher-than-budgeted costs associated with our November 2016 Plenary held in Peel Region. Lessons learned from this meeting are already being applied to our May 2017 meeting planning.

FINANCIAL STATEMENTS

The plan in 2017 is to continue to show this prudent management through expenditure control and revenue growth through fundraising. Our 2016 financial statements are presented in the following pages.

Financial Statements of

**FEDERATION OF ONTARIO LAW
ASSOCIATIONS/FÉDÉRATION
DES ASSOCIATIONS DU
BARREAU DE L'ONTARIO**

(FORMERLY KNOWN AS THE COUNTY AND
DISTRICT LAW PRESIDENTS' ASSOCIATION)

Year ended December 31, 2016
(Unaudited)

FINANCIAL STATEMENTS



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REVIEW ENGAGEMENT REPORT

To the Directors of Federation of Ontario Law Associations / Fédération des Associations du Barreau de l'Ontario

We have reviewed the balance sheet of Federation of Ontario Law Associations / Fédération des Associations du Barreau de l'Ontario (Formerly known as The County and District Law Presidents' Association) (the "Association") as at December 31, 2016 and the statements of operations, changes in fund balances and cash flows for the year then ended. Our review was made in accordance with Canadian generally accepted standards for review engagements and, accordingly, consisted primarily of enquiry, analytical procedures and discussion related to information supplied to us by the Association.

A review does not constitute an audit and, consequently, we do not express an audit opinion on these financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian accounting standards for not-for-profit organizations.

A handwritten signature in black ink that reads 'KPMG LLP' with a horizontal line underneath.

Chartered Professional Accountants, Licensed Public Accountants

April 12, 2017
Hamilton, Canada

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.
KPMG Canada provides services to KPMG LLP.

FINANCIAL STATEMENTS

FEDERATION OF ONTARIO LAW ASSOCIATIONS / FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

(FORMERLY KNOWN AS THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION)

Balance Sheet

December 31, 2016, with comparative information for 2015

(Unaudited)

	2016	2015
Assets		
Current assets:		
Cash	\$ 115,041	\$ 34,589
Short term investments	100,250	152,119
Accounts receivable (note 2)	40,197	78,519
Prepaid expenses	4,096	-
	\$ 259,584	\$ 285,227

Liabilities and Fund balances

Current liabilities:		
Accounts payable and accrued liabilities (note 3)	\$ 12,405	\$ 10,639
Fund Balances:		
Unrestricted	247,179	254,588
	\$ 259,584	\$ 285,227

See accompanying notes to financial statements.

On behalf of the Board:

Director

Director

FINANCIAL STATEMENTS

FEDERATION OF ONTARIO LAW ASSOCIATIONS / FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

(FORMERLY KNOWN AS THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION)

Statement of Operations and Fund balances

Year ended December 31, 2016, with comparative figures for 2015
(Unaudited)

	2016	2015
Revenue:		
Donations	\$ 35,000	\$ 35,000
Exhibitors and sponsors	12,500	17,000
Fees and levies	238,650	235,525
Fundraising	37,270	43,321
Interest income	652	1,377
Law Society	200,587	195,110
Miscellaneous income	1,421	-
	526,080	527,333
Expenses:		
Executive meetings	56,944	55,971
Gift	559	1,879
Interest and bank charges	24	45
Materials and supplies	4,484	5,566
Office and general	10,739	15,987
Outreach meetings	26,457	21,042
Plenary (May)	62,694	56,790
Plenary (November)	52,407	65,118
Professional fees	166,553	144,536
Salaries and benefits	137,563	132,683
Strategic planning session	15,065	7,271
	533,489	506,888
(Deficiency) excess of revenue over expenses	(7,409)	20,445
Unrestricted fund balances, beginning of year	254,588	234,143
Unrestricted fund balances, end of year	\$ 247,179	\$ 254,588

See accompanying notes to financial statements.

FINANCIAL STATEMENTS

FEDERATION OF ONTARIO LAW ASSOCIATIONS / FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

(FORMERLY KNOWN AS THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION)

Statement of Cash Flows

Year ended December 31, 2016, with comparative figures for 2015
(Unaudited)

	2016	2015
Cash provided by (used in):		
Operations:		
(Deficiency) excess of revenue over expenses	\$ (7,409)	\$ 20,445
Changes in non-cash operating working capital:		
Short term investments	51,869	88
Accounts receivable	38,322	(43,412)
Prepaid expenses	(4,098)	-
Accounts payable and accrued liabilities	1,768	(12,108)
Increase (decrease) in cash	80,452	(34,989)
Cash, beginning of year	34,589	69,578
Cash, end of year	\$ 115,041	\$ 34,589

See accompanying notes to financial statements.

FEDERATION OF ONTARIO LAW ASSOCIATIONS / FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

(FORMERLY KNOWN AS THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION)

Notes to Financial Statements

Year ended December 31, 2016
(Unaudited)

Nature of operations:

Federation of Ontario Law Associations / Fédération des Associations du Barreau de l'Ontario (the "Association") was incorporated under letters patent on November 6, 1990. The mission of the Association is to promote information sharing among lawyers through conferences, gatherings, and newsletters. The Association is a non-profit organization within the meaning of the Income Tax Act (Canada) and, as such, is exempt from income taxes.

1. Significant accounting policies:

The financial statements have been prepared by management in accordance with Canadian Accounting Standards for Not-For-Profit Standards in Part III of the CPA Canada Handbook - Accounting:

(a) Capital assets:

Capital assets are stated at cost less accumulated amortization. Amortization is provided using the declining balance method and following annual rates:

Asset	Rate
Computer equipment	50%

(b) Revenue recognition:

Revenue from membership fees is recognized by the Association when levied, and collection is reasonably assured.

Revenue from unrestricted donations is recognized as received. Restricted donations are deferred and recognized in revenue in the year in which the related expenditures have been made.

Revenue from the Law Society is recognized by the Association when levied, and collection is reasonably assured.

FEDERATION OF ONTARIO LAW ASSOCIATIONS / FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

(FORMERLY KNOWN AS THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION)

Notes to Financial Statements (continued)

Year ended December 31, 2016
(Unaudited)

1. Significant accounting policies (continued):

(c) Financial instruments:

Financial instruments are recorded at fair value on initial recognition. Freestanding derivative instruments that are not in a qualifying hedging relationship and equity instruments that are quoted in an active market are subsequently measured at fair value. All other financial instruments are subsequently recorded at cost or amortized cost, unless management has elected to carry the instruments at fair value. The Association has not elected to carry any such financial instruments at fair value.

Transaction costs incurred on the acquisition of financial instruments measured subsequently at fair value are expensed as incurred. All other financial instruments are adjusted by transaction costs incurred on acquisition and financing costs, which are amortized using the straight-line method.

Financial assets are assessed for impairment on an annual basis at the end of the fiscal year if there are indicators of impairment. If there is an indicator of impairment, the Association determines if there is a significant adverse change in the expected amount or timing of future cash flows from the financial asset. If there is a significant adverse change in the expected cash flows, the carrying value of the financial asset is reduced to the highest of the present value of the expected cash flows, the amount that could be realized from selling the financial asset or the amount the Association expects to realize by exercising its right to any collateral. If events and circumstances reverse in a future year, an impairment loss will be reversed to the extent of the improvement, not exceeding the initial carrying value.

(d) Use of estimates:

The preparation of the financial statements in accordance with Canadian accounting standards for not-for-profit organizations requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenditures during the year. Significant items subject to such estimates and assumptions include the carrying amount of accounts receivable and accounts payable and accrued liabilities. Actual results could differ from those estimates.

FEDERATION OF ONTARIO LAW ASSOCIATIONS / FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

(FORMERLY KNOWN AS THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION)

Notes to Financial Statements (continued)

Year ended December 31, 2016
(Unaudited)

2. Accounts receivable:

Included in accounts receivable are government receivables of \$1,242 (2015 - \$nil), which includes amounts receivable for harmonized sales taxes.

3. Accounts payable and accrued liabilities:

Included in accounts payable and accrued liabilities are government remittances payable of \$nil (2015 - \$2,631), which includes amounts payable for harmonized sales taxes.

4. Financial risks and concentration of risk:

(a) Credit risk:

Credit risk refers to the risk that a counterparty may default on its contractual obligations resulting in a financial loss. The Association deals with creditworthy counterparties to mitigate the risk of financial loss from defaults. There has been no significant change to the risk exposures from 2015.

(b) Liquidity risk:

Liquidity risk is the risk that the Association will be unable to fulfill its obligations on a timely basis or at a reasonable cost. The Association manages its liquidity risk by monitoring its operating requirements. The Association prepares budget and cash forecasts to ensure it has sufficient funds to fulfill its obligations. There has been no significant change to the risk exposures from 2015.

(c) Interest and currency risk:

The Association believes that it is not exposed to significant interest rate or currency risk arising from its financial instruments.

REPORT ON ISSUES & INITIATIVES

REPORT ON ISSUES & INITIATIVES

PRACTICE RESOURCE CENTRE REPORT

LibraryCo Update

LibraryCo is an independent corporation owned by FOLA, the Law Society and the TLA. The LibraryCo Board, of which 3 of 8 directors are appointed by FOLA, has been working for some time to examine the current system of Practice Resource Centres (libraries) with a view to modernizing and improving the efficiency of the system.

The shareholders of LibraryCo met in February of 2016 and agreed that there would be no immediate changes to the existing governance structure of LibraryCo until the Transition Committee and Board of LibraryCo had come up with a comprehensive plan to modernize the system. Contingent on that plan being developed was the work of an outside consultant who would survey the users of the system and make recommendations based on need and identified “best practices” from around the world. That report took longer than expected to procure and for the work to be completed. The work was done by “Phase 5 Consultants” and was delivered to the LibraryCo Board in the Fall of 2016 for their consideration.

While the Phase 5 report was not made available for distribution by the end of 2016, we can report that the study contained many findings that affirmed our long-held view that lawyers across Ontario who use the system greatly appreciate it and that there is room for the system to improve service. The study did provide some useful general recommendations on initiatives and services that should be included in the modernization.

On a related note, at the November 2016 Plenary, we debated a motion which spelled out FOLA’s position with respect to funding for LibraryCo and the legal resource system in Ontario. The motion read as follows:

WHEREAS the Federation of Ontario Law Associations has long had the view that Practice Resource Centres are essential resources for the practising bar across every community in Ontario as they are the only space within the courthouse that is dedicated to lawyers to allow them to conduct their business;

AND WHEREAS the Federation of Ontario Law Associations believes that the physical space and staffing for our Practice Resource Centres should be maintained in order to continue servicing the bar in communities across Ontario;

AND WHEREAS the Federation of Ontario Law Associations believes that these practice resource centre spaces and associated staff are ideally situated resources to help facilitate initiatives such as the Law Society’s mental health strategy, mentoring, coaching and generally any initiative that is aimed at improving competence of legal professionals;

REPORT ON ISSUES & INITIATIVES

AND WHEREAS the Federation of Ontario Law Associations considers it critical to the ability of lawyers to provide access to competent legal counsel and access to justice that practitioners have adequate access to updated legal information in accessible formats;

AND WHEREAS the Federation of Ontario Law Associations, along with the other shareholders of LibraryCo Inc.– the Law Society of Upper Canada and the Toronto Lawyers' Association - has welcomed the comprehensive process to examine the governance, operations and funding for LibraryCo Inc. and our Practice Resource Centres with a view to making their operations sustainable and to improve service to practising lawyers in Ontario and to examine other issues related to these spaces;

AND WHEREAS this Plenary believes there are other revenue generating opportunities such as the delivery of continuing professional development programming in the Practice Resource Centres that could and should be encouraged by the shareholders.

NOW THEREFORE BE IT RESOLVED THAT:

This Plenary hereby instructs the executive of the Federation of Ontario Law Associations to make the case to the Board of LibraryCo Inc., and the Transition Committee that they should recommend to Convocation that a stable, separately identified levy as a portion lawyers' annual fees dedicated to Practice Resource Centres would provide the financial stability that the Practice Resource Centre system needs to be sustainable in the long run;

The Federation of Ontario Law Associations encourage all shareholders in LibraryCo Inc. to seek other revenue generating opportunities and that any such revenue be directed to improve the services provided in our local PRC's, and further that barriers standing in the way of these opportunities be removed, where practical.

This motion was carried unanimously and it is helpful to everyone working on behalf of the practising bar to preserve and enhance our practice resource centre system to know that they have the unanimous support of the Presidents.

As of the end of 2016 and into early 2017 a new round of discussions with the Law Society began and significant progress has been made as of the writing of this Annual Report. A full report of these changes will be made at the May 2017 Plenary.

In terms of LibraryCo governance, the only change to the composition of the Board was the elevation of **Dirk Derstine**, the Toronto Lawyers' Association representative, to the position of Chair. FOLA wishes to thank **Janet Whitehead** for her service to the Board as Chair and thanks her for her continued service as a member of the Board. By convention, the chair's position rotates through the Law Society, FOLA and TLA representative.

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PRC Committee “Innovation Award”

In 2016, the PRC Committee initiated a PRC “Innovation Award” contest which was meant to elicit and fund great ideas and innovations from practice resource centres that could be replicated across Ontario. The intent of the Committee was to fund an award that could be a catalyst to encourage innovative thinking in our PRCs. We received five excellent nominees, but in the end the committee awarded the \$5,000 prize to the County of Carleton Law Association who submitted a proposal to create a database of wills drafted on behalf of clients in Eastern Ontario. The data-base will let lawyers know of the existence of the will and where the will is held. This will help the CCLA provide a valuable service to solicitors and help the Association improve its value proposition to solicitors who are not as frequent users of the library. The intent is to initially roll this out in eastern Ontario, but the concept is easily scalable to the entire province. We have asked the CCLA to present an update at the May 2017 Plenary meeting.



Congratulations to the CCLA!

Practice Resource Centre Staff

In 2016, we also noted a number of changes among the front-line practice resource centre staff. The Federation of Ontario Law Associations and all the users of our county law library system welcome the new staff, honour the retiring and departing staff and mourn the staff and friends that we lost in 2016. We also say a hearty congratulations to Amanda Ward-Pereira and Amanda Elliott on the birth of their children, and to Pat Henry on her successful battle with illness that caused her absence for a few months (Pat – the lawyers of Simcoe County simply didn’t know what to do without you!)

Our Practice Resource Centres could not operate without the dedicated professionals who work on behalf of the practicing bar in Ontario.

New Staff:

- Laura Dobbie (*Peterborough*)
- Margaret Dewar (*Stormont, Dundas & Glengarry Law Association*)
- Kimberley Dirven (*Stormont, Dundas & Glengarry*)
- Nancy Lapointe (*Cochrane Law Association*)
- Janet Marchment (*York Region Law Association*)
- Paula Murray (*Frontenac Law Association*)
- Emily Shearer (*CCLA*) *Covering Amanda Elliott’s maternity leave as of Sept 2016*
- Sarah Pantusa (*Peel*)
- Leah Strudwick (*TLA*)
- Peter Thompson (*Nipissing*) *Contract covering Amanda Adam’s medical leave*

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Departing Staff:

- Brenda Carbone (*Algoma District Law Association*)
- Margaret Dewar (*Stormont, Dundas & Glengarry*)
- Jeremy Gardiner (*Frontenac*)
- Grace Paluzzi (*Peel*)
- Allison Killins (*Peterborough*)
- Lindsay Parsons (*TLA*)
- Jennifer Robinson (*Frontenac*)

Staff on Leave:

- Amanda Adams (*Nipissing*) *Medical Leave*
- Amanda Elliott (*CCLA*) *Maternity Leave as of Sept 2016*
- Amanda Ward-Pereira (*Algoma District Law Association*) – *returned from maternity leave January 2016*
- Pat Henry (*Simcoe*) – *Medical leave – returned to full work schedule Sept 2016*

Retirement:

- Jackie Lachance (*Cochrane Law Association*)
- Catherine Malvern (*Waterloo*)

Deaths:

- Paul Dumond (*Stormont-Dundas-Glengary*) – *January 2, 2016*
- Pat McPhee (*York Region*) – *February 29, 2016*

While 2016 was another year of study and contemplation of the law library system, we expect that 2017 will be a year of greater change. We anticipate that this change will be positive and are working hard with all the stakeholders to ensure that the changes we make are productive and continue to serve the profession.

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FAMILY LAW AND PARALEGAL COMMITTEES

A topic of great interest to many lawyers, and not just family law practitioners, was the move in early February 2016 by the Attorney General and Law Society to undertake a consultation on family law titled: “*Expanding Legal Services Options for Ontario Families*”. This review is being undertaken by former Ontario Court of Justice Chief Justice Annemarie Bonkalo.

As the consultation terms of reference noted, Justice Bonkalo was appointed to lead a review to determine how (not whether) paralegals and other professional might provide legal services to help address the critical challenges of access to justice in the family law system. Specifically, the mandate terms stated that Justice Bonkalo would:

- Identify the legal services at different stages in a family law matter which, if provided by persons in addition to lawyers, could improve the family justice system by better enabling people to resolve their family law disputes.
- Identify persons other than lawyers (e.g., paralegals, law clerks and/or law students) who may be capable of providing those family legal services, with appropriate safeguards put in place (e.g., education, training); and
- Recommend procedures, mechanisms and/or safeguards (such as education, training, insurance, regulation and/or oversight) to ensure the quality of family legal services provided by alternate legal service providers.

In our response paper, we stated:

“While we applaud the efforts by the Attorney General and the Law Society to examine the challenges of “access to justice” in the family law system, we believe that providing access to competent counsel and justice is a very complicated issue. A lack of access is rooted in many causes with many different possible solutions.

... the Federation of Ontario Law Associations and its members do not believe that the Ontario government can adequately or appropriately address and improve access to justice in family law by simply expanding the scope of practice for non-lawyers. In fact, we have serious reservations and doubts that expanding scope will, in fact, improve the situation except perhaps in superficial ways. Other potential reforms hold out more hope for greater impact and should be examined first.”

Our paper also sought to challenge the four underlying assumptions that, we believe, are underpinning the policy move to expand scope of practice for non-lawyers. Those assumptions, which we challenged, are:

- *that the growth of self-represented litigants in the court system is a result of high legal costs associated with high lawyer fees;*
- *that the self-represented litigant problem is suddenly growing to crisis levels;*
- *that paralegals would be less expensive; and,*

REPORT ON ISSUES & INITIATIVES

- *that there are many “simple” cases in the family courts that could be better dealt with by non-lawyers.*

We also commissioned expert research to help us refute some of these claims. Corbin Partners, a litigation support and public policy research firm based in Toronto, concluded that:

Based on an investigation of existing market intelligence, using a wide variety of sources within Canada, the US and the UK, it leads to the following inferences:

- *At the surface, there is a general impression given that the legal fees charged to clients by paralegals are lower than fees paid for similar services provided by lawyer.*
- *When delving deeper into an assessment of total case fees for comparable legal matters, we learn that there are doubts and uncertainties expressed in the legal marketplace on whether there is a significant cost difference at all.*
- *However, while anecdotal evidence exists to question comparative pricing, there is a lack of empirical evidence to gauge this issue. Fees for the services of a lawyer continue to be tracked in the Canadian market (nationally and by province). Similar tracking has not been found for the regulated paralegal market.*

In other words, the hard evidence doesn't exist to justify taking such a radical step, for which there is likely no (easy) return.

From the very first time that we sat down to think about our response we vowed that we would not fall into the trap of simply opposing an idea without offering an alternative solution to the problem. We recognized that opposing scope of practice expansion would simply look self-serving, when that is, in fact, the least consequential part of our opposition to this idea. We believe, foremost, that expanding scope of practice for paralegals and other professionals could have deleterious effects on family law litigants, could make the access to justice problem worse, not better, and that it would have a profound impact on the economics of family law practice which could have a long-term devastating impact on every part of the system.

Instead of providing one good idea and recommendation on ways to improve the family law system, we ended up providing or commenting on seven ideas and initiatives to make our system better, the details of which are found in our paper.

At the May Plenary meeting, one of those ideas featured in greater detail was a demonstration of an innovative idea emanating from our own membership. Stacy MacCormac, a past President of the Northumberland County Law Association and a family law practitioner in Cobourg, presented her idea for a “Day of Court Counsel”. She proposed that a roster of lawyers would sign-up to be at the courthouse every day and be available to provide counsel – for a fee – to family law litigants on an as-needed, ad hoc basis using limited scope retainers. Payment could be done through mobile credit card terminals and the limited scope retainer details would give sufficient protection to both the client and the lawyer. While not perfect – only full representation of every litigant would be perfect – this initiative demonstrates that, with a little creativity, solutions can be found that do not have to remove the lawyer from the centre of the legal transaction.

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In June, representatives of FOLA had the opportunity to meet Justice Bonkalo directly to present our views. We participated in a spirited round-table with representatives of the TLA, Advocates Society and OBA, and came away from that conversation quite optimistic that Justice Bonkalo heard and understood the concerns of the Bar with respect to expanding scope of practice for non-lawyer professionals. Since then, Justice Bonkalo was given a number of months to prepare her report which was due to the Attorney General and Law Society by December 31, 2016.

As of the writing of this report, her findings have now been released and she makes 21 recommendations, many of which involve expanding the scope of practice for paralegals. Our response will be discussed in greater detail at the May 2017 Plenary meeting.

Cost Grid in Family Law

In the Fall of 2016, we worked on submissions to Justice Benotto, Chair of the Family Rules Committee, on the subject of a cost-grid or tariff in family law. In our submission, we attempted to challenge some of the underlying assumptions that are defining the problem and driving the development of a policy that seems to inevitably conclude that imposing a costs grid or tariff will be the answer to the “complexity and confusion” in costs decisions. We also make the case that the civil scales of partial, substantial and full indemnity should be adopted by the Family Law Rules and that the ranges should be more defined and narrowed and that this will assist in making the family law system more affordable and effective for the public we all serve. A link to our submission can be found [here](#).

As of the writing of this report, Justice Benotto’s report has also not yet been released. Once released, we will respond accordingly and inform the membership of the results.

Communication with the Family Law Bar

Starting in 2015, we have also sought to find at least one representative of the family bar in every local law association in Ontario and are pleased to report that we now have a complete list. It is hoped that these unofficial liaisons to the family bar spread across Ontario will help us communicate and activate the family bar more quickly when issues of concern arise.

Sonya Jain,
Family Law Committee Chair

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LEGAL AID

The legal aid file was not as active for FOLA in the first part of 2016 because the news was mostly positive as the new money to expand legal aid eligibility was flowing and resulting in many new certificates to be issued. This money was first announced in the 2014 Provincial Budget (which was overtaken by the election) and reiterated in the 2015 Budget so it was not until the summer of 2015 that the money began to flow. By 2016, new certificates were in the system and things seemed to be moving along. Things changed in late 2016 (December 18, in fact) when Legal Aid Ontario (LAO) announced that they were over-subscribed and running a substantial deficit of nearly \$26 million.

To deal with this deficit, LAO announced that they would be scaling back the number of certificates they issue under their expanded legal eligibility, along with other measures to cut costs.

FOLA responded to this announcement with a letter which criticized the ever-growing bureaucracy at LAO and defended the efficiency and effectiveness of the private-bar certificate system. LAO has since responded to that letter and has offered to meet our members across Ontario in town-hall format meetings or other gatherings where LAO can explain how they are dealing with their miscalculation.

You can expect FOLA will continue to watch this file closely and defend the certificate system in Ontario. We remain active members of the Alliance for Sustainable Legal Aid which is our primary vehicle for advocacy and communication with LAO and the Province. Throughout 2017, we will be working to get the Legal Aid system and the role of the private bar recognized in the 2018 election campaign by all three major parties and candidates across the province.

Role of the Law Society in Legal Aid

In 2016, the Law Society also announced that it was “getting back into Legal Aid” by creating a committee of Benchers to study the Legal Aid system in Ontario and to provide recommendations on how to make the system better. While the specific role of the Law Society in this topic remains unclear, FOLA welcomes all voices who will advocate for more resources to be added to the legal aid system and for anyone to advocate for the role of the private bar in that system.

The legal aid system is an important source of income for many of our members across Ontario and, more importantly, it is an important tool in providing access to justice to many thousands of low-income citizens. Preserving their right to access justice and proper representation is an important goal of FOLA and we will continue to be vigilant champions of the current system.

***Jane Robertson,
Legal Aid Committee Chair***

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PROFESSIONAL STANDARDS – ADVERTISING AND MARKETING

Throughout 2016, the Law Society undertook a comprehensive review of the advertising, marketing and referral fee rules that govern the conduct of lawyers. The Law Society was responding to the growing number of high-profile law firms that were heavily marketing and then, in turn, referring most of their cases out – often for hefty referral fees – and engaging in questionable marketing practices.

In 2015, FOLA submitted our first response to the initial consultations and that response can be accessed here: <https://app.box.com/s/q0s0a2e7yb7q0mw6d7af4rij5l8wd70z>

The Advertising and Referral Fees Working Group of the Law Society had further questions for the Bar and issued a second request for feedback in mid 2016. Our response is provided below:

Response to the Working Group Call for Input on Advertising & Fees



EXECUTIVE SUMMARY

The Federation of Ontario Law Associations (FOLA) commends the Working Group for its ongoing consultation and its work relating to the issue of advertising and fee arrangements within the legal profession. As an organization that represents approximately 12,000 lawyers in private practice in Ontario, FOLA is pleased to provide its input into those areas identified by the Working Group.

The issues raised in this consultation are issues of great concern to many of our members and we see this issue as having great importance because the issues go to the heart of our profession and our ability to conduct business. Our commentary will address:

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- *Our consideration of “taste in advertising”*
- *Advertising and fees in real estate*
- *Contingent fees*
- *Personal injury advertising, and in particular our consideration of referral or brokerage services*
- *The advertising of second opinion services*
- *Clear identification of the type of law license held by the advertiser*
- *The appropriate use and promotion of awards received by a lawyer*
- *Referral fees*

TASTE IN ADVERTISING

Before addressing the specific issues where input is sought in the consultation document, FOLA believes that it is important to provide comment relating to paragraphs 83 to 87 of the Working Group report dealing with taste in advertising. FOLA agrees with the Working Group proposition that the term “taste” is an inappropriate term to be used in regulating lawyer advertising. FOLA agrees that taste is highly subjective and evolves over time. However, FOLA is concerned that in focussing on taste in advertising, the real issue of concern, which is a high standard of professionalism in advertising, was not adequately addressed by the Working Group, despite the very real concerns expressed by a number of participants concerning the lack of professionalism in marketing.

As the Working Group correctly points out, the current lawyer and paralegal marketing rules require advertising to be consistent with a high standard of professionalism. FOLA submits that this is a much higher standard than “good taste” or “not in bad taste”. If the discussion revolves around taste in advertising, the import of the message received from a number of participants in the process will be missed. The discussion should, and must, revolve around ensuring that advertising by lawyers and paralegals meets a high standard of professionalism. This is the standard that the Law Society has set and which it must be prepared to enforce.

It can be debated whether personal injury advertising in washroom facilities, in and around hospitals, etc. is in poor taste. FOLA submits that such advertising clearly fails to meet the high standard of professionalism. While matters of taste are highly subjective, a high standard of professionalism is much less so, and would be somewhat easier to enforce and maintain as a standard over time.

A high standard of professionalism is about as high a standard as the Law Society could set. That standard has been in the marketing rule for a number of years and FOLA submits that it is a standard which is supported by the vast majority of lawyers in private practice. FOLA’s concern is not with the current rule, but rather with what is perceived to be a serious lack of enforcement. If the Law Society is not willing to enforce a high standard of professionalism in advertising, then the rule has no impact. Having a standard that is not enforced is no better than not having a standard at all. Therefore, FOLA respectfully suggests that the Working Group redirect the discussion from taste in advertising to high standards of professionalism in advertising and change the focus to how that standard is going to be

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applied and enforced. Respectfully, FOLA believes that the Working Group did not give this standard the serious consideration that it deserves.

Advertising and Fees in Real Estate Law

In our original submissions, FOLA expressed specific concerns regarding ‘all inclusive’ fees in real estate transactions and with respect to the definition of disbursements. In paragraphs 57 to 59 the Working Group is looking for further feedback on how to make ‘all in’ fee quotes “more consistent so that consumers may more easily compare services”.

FOLA maintains the position that ‘all inclusive’ fee quotes in real estate transactions should be prohibited. Real estate transactions can quickly and easily transform from simple to complex. A simple residential transaction can suddenly become a difficult and challenging file for a myriad of reasons, including without limitation, if a title problem is discovered, a writ of execution is found, an encroachment revealed, an easement is claimed, mortgage conditions are not satisfied or a closing needs to be extended. None of these issues can be identified at the outset of the retainer, so when fees are quoted as ‘all inclusive’ and the transaction becomes more difficult, some lawyers either increase the quoted fees or try to minimize additional disbursements to keep the legal fee portion of the ‘all inclusive’ quote as high as possible. Neither of these are in the public interest.

As noted by the Working Group, ‘all-in’ pricing can be misleading if it is not transparent and can result in deceptive pricing, with lawyers charging more than the ‘all-in’ price. This happens because additional legal fees are charged as a result of certain complexities not known at the outset, or because certain disbursements were not included in the fee quote in the first place. Either way, the public is not paying the quoted fee.

Even when a file remains ‘simple’, there are numerous due diligence searches that should be reasonably incurred to protect real estate clients. With ‘all-in’ fees, the types of due diligence searches that are completed may be compromised, as the cost of each additional search erodes the fees payable to the lawyer. In addition, the amount of time that is spent on such a file may be reduced, as there is no greater fee to be paid regardless of the amount of time spent on the matter.

In summary, ‘all inclusive’ fees may compromise the quality of service to the public, as they encourage lawyers to keep disbursements and attention to the file to a minimum. While this may not be the response of all lawyers providing ‘all inclusive’ quotes, this manner of quoting fees does allow some lawyers to respond this way.

The Working Group notes at paragraph 58 that Rule 4.2-2 already provides helpful general guidance, and suggests that although issues with these types of misleading fee arrangements are recognized, maintaining the status quo is a viable option. The Working Group also “does not believe that there is a need for the Law Society to fundamentally revise its complaints handling processes or significantly increase enforcement actions” (paragraph 113). These positions seem incongruous. If the Rules are sufficient to guide lawyers with all-inclusive pricing in real estate transactions, then there would not be

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a prevalence of misleading 'all-inclusive' fee quotes. If there will be no greater enforcement of the existing rules, then the existing rules need to be revised to address the issues.

Fixed or block fee quotes in real estate (excluding disbursements) are standard for residential transactions and are far more common than 'all-inclusive' fee quotes. Most block fee quotes are for residential transactions of ordinary complexity with one mortgage. With such a quote, there is some expectation by the consumer that the fees will be higher if any out-of-the-ordinary complexities arise or if there are additional mortgages involved. With 'all inclusive' fee quotes, the consumer is expecting to pay only the quoted amount, and no more, which is not always being honoured.

FOLA also maintains its original position that disbursements need to be defined in the interest of consistency among lawyers so that members of the public can 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. At a minimum, disbursements should be defined to exclude overhead or costs not actually incurred. As noted in our original submission, with basically no definition of disbursements by the Law Society, some solicitors in the real estate bar have taken to liberally interpreting the terms and passing onto the public costs which should normally be considered overhead. The simplest examples of these are references to "Document Preparation Fees" and "E-Reg User Fee" as disbursements, despite no actual disbursement having been incurred.

Contingent Fees

The current regulatory framework under the Solicitor's Act and the Regulations of the Solicitor's Act make contingent fee agreements more complicated and difficult to understand than they need to be. The requirements for a contingency fee agreement, particularly as outlined in Regulation 195/04, go far beyond what any lawyer would have to include in any other type of retainer agreement and borders on paternalistic. As a result, a retainer agreement that should be two or three pages in length, suddenly becomes a complicated and cumbersome document that is multiple pages in length. In no other type of retainer agreement are the provisions in Regulation 195/04 required. Some examples of the mandatory provisions include:

- *Section 2, article 3 relating to what must be contained within the agreement.*
- *Section 2, article 7 relative to structured settlements. Since the vast majority of personal injury settlements and judgments do not involve a structured settlement, particularly in this age of low bond rates, such a provision unduly complicates the agreement.*
- *Section 2, article 10 relative to the client retaining the right to make all critical decisions. Would this not be a part of all retainer agreements?*
- *Section 3 in its entirety makes a contingency fee agreement unduly cumbersome.*

In FOLA's view, the legal consumer, particularly in personal injury cases, is far more sophisticated than the Working Group credits. It is becoming quite common for those seeking representation in a personal

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injury matter to interview a number of lawyers before deciding on a retainer. This is particularly the case where a client has serious injuries. If the Working Group is interested in making contingent fees more transparent to consumers, a starting point would be to relax some of the provisions in the Solicitor's Act and Regulation 195/04. In combination, this legislation and regulation, if followed in every contingent fee agreement, complicates what should otherwise be a relatively straightforward transaction.

FOLA does not believe that lawyers and paralegals should be required to disclose their standard contingency fee agreement on their website. No other area of law has such a provision. The consuming public can, and does, ask questions about contingency fee agreements. A contingency fee agreement is a transaction between a solicitor and a client and should not be mandated to be accessible to the entire public. Mandating that a contingency fee agreement be included on a firm's website means that it is also available to the insurance company and its counsel retained to defend the action. How is it any business of the insurance industry or insurance defence bar what retainer agreement the plaintiff has with his/her solicitor? In fact, such information could become relevant to the legal negotiation and prejudice the outcome. Would the plaintiff and his/her counsel equally have the right to know the retainer agreement between defence counsel and the insurer client?

PERSONAL INJURY ADVERTISING

Referral/Brokerage Services

In FOLA's submission, absent some special case, the only circumstance in which a referral fee should be paid is when the referring lawyer is not competent to deal with the matter, is unable to fully serve the client for reasons such as a health issue, a pending retirement or the referring lawyer is referring the client outside her or his geographic area of practice, in which case the file should be referred to competent counsel. (For clarification, the hiring of more senior counsel to aid at trial should not be considered a "referral fee", especially if retaining that senior counsel did not increase the fee to the client.) Therefore, in FOLA's submission, advertising for the purpose of obtaining work to be referred to others in exchange for a referral fee should be banned. Permitting mass advertising for the sole purpose of obtaining a file to refer out is clearly not in the best interest of the public. It is a classic "bait and switch" tactic. It does not enhance the reputation of the profession in the eyes of the public, and it misleads the public into thinking that the advertising firm will have carriage of the action when it will not.

If the Law Society is not going to ban advertising for the purpose of obtaining work to be referred to others, it should at least set very strict requirements on the advertising firm to make it perfectly clear that it will be referring the client out to another firm. If such restrictions are not imposed the result is advertising which is inaccurate, is misleading and is a disservice to the legal consumer.

Advertising Second Opinion Services

It would be the height of naivety to believe that second opinion service advertising is for any other reason than to obtain a file from an existing lawyer. A true second opinion, particularly in personal injury matters, would involve the secondary lawyer obtaining a full copy of the file, reviewing that file (which

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literally could be boxes in length or involve terabytes of data and documentation), sitting down with the client and providing a second opinion. Such a process would take any competent counsel many hours. How would the client, who has presumably retained their current lawyer on a contingency fee basis due to a lack of funds, pay for the second opinion? The only reason a law firm would advertise second opinions would be to obtain the file from the handling lawyer.

One Toronto law firm actually takes second opinion advertising one step further, by suggesting that other lawyers are incompetent: “At Mazin & Associates PC, we are frequently retained to take corrective action to fix the damage done by a less qualified lawyer. Unfortunately, in many of these situations when we are not retained first, only some of the damage done by the first personal injury lawyer can be rectified”. See <http://www.mazinlawyers.com/> This type of second opinion advertising, in our view, brings disrepute to the profession and hurts both the profession and consumers.

Second opinion advertising should either be banned outright or, if not, the second opinion counsel should be prohibited from taking the file from the handling lawyer. FOLA would suggest that if the provider of the second opinion is prohibited from taking on the file, second opinion advertising will disappear overnight. Obviously, to suggest that other lawyers ought not to be retained because their work requires to be “fixed” is totally improper and violates the current Rule 4.2 of the Rules of Conduct. This is but one example of just how aggressive personal injury advertising is becoming.

Identification of Type of Licence

In its original submissions, FOLA (then CDLPA), argued that paralegals should be mandated to identify themselves as such in all advertising. We continue to maintain that position. To make our point, we enclose a portion of a web page from De Rose Personal Injury Lawyers and the profile page of Dominic De Rose. We would encourage members of the Working Group to look at the De Rose Personal Injury Lawyers website and then determine whether Mr. De Rose is a lawyer or a paralegal. Would a member of the public understand? This is just one of many examples of paralegals who, we contend, deliberately mislead the public into believing they are lawyers.

Our members frequently report paralegals who sign their e-mail and post correspondence with a salutation such as “Of the Law Society of Upper Canada” or “Licensed by the Law Society of Upper Canada”, without distinguishing that they are paralegals. In these cases, the paralegals are deliberately trying to obfuscate the difference between their license, and associated scope of practice, and that of a lawyer. This is misleading to the consumer.

The protection of the public interest should be a focus of the Law Society of Upper Canada, particularly for vulnerable groups. Those members of the public who have difficulties with the English language are particularly at risk of being deceived or misled by references in advertising to “membership” or “licencing” by the Law Society.

In FOLA’s view, the simple solution to this problem is to make a rule that no licensee of the Law Society (lawyer or paralegal) should be permitted to use the name of the Law Society of Upper Canada in their

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advertising unless it is to confirm their status as a “specialist”. There is simply no legitimate need to invoke the name of the professional regulator in legal services advertising.

Use of Awards

If the Working Group considers that awards be allowed to be included in lawyer advertising, only those for which the lawyer has not paid for in any way (either to receive the award or so the award can be used in advertising) should be permitted in public-facing ads. “Consumer choice” awards are rarely, if ever, based on merit and are very often awards for which the lawyer has paid a fee.

As an example, one member of our Committee has been listed by “Best Lawyers in Canada”. He did not submit an application for the award and, to the best of his knowledge, has never had his skills or practice reviewed by his peers in an objective manner. However, he has been advised that he can, for a fee, include the Best Lawyers’ logo in his advertising. The consuming public would have no idea that such an award is not based on any type of legitimate peer review or objective analysis.

In FOLA’s submission, it is not enough that the recipient of an award be made to disclose the source of the award. The problem will lie in how full disclosure will be implemented. On websites, for example, the full disclosure could be buried in the small print, while the award itself is prominent and on the home page. Additionally, the Law Society does not have the resources to properly police and monitor the disclosure concerning these awards. The best approach to regulating the advertising of awards is to ban the practice of advertising any award for which the lawyer pays a fee to be considered for the award, and to enforce strict guidelines with stiff penalties for contravention of that professional standard.

REFERRAL FEES

In FOLA’s submission, absent some special case, the only circumstance in which a referral fee should be paid is when the referring lawyer is not competent to deal with the matter, is unable to fully serve the client for reasons such as a health issue, a pending retirement or the referring lawyer is referring the client outside her or his geographic area of practice, in which case the file should be referred to competent counsel. By implication therefore, advertising expertise in an area of law for the purpose of referring the file out should be banned. If the advertising lawyer has expertise in personal injury and advertises as such, other than in a conflict, the advertising lawyer would have no reason to refer the file out.

A referral fee is appropriate in circumstances where the referring lawyer is not competent to take on the file, or is unable to serve on the matter. However, the fee should be limited to 10% to 15% of the ultimate fee charged by the handling lawyer. Any fees above this threshold, even if disclosed and agreed to, represent a payment which far exceeds the value to the client and inevitably leads to a reduction in the public’s respect for the profession.

When a file is referred, and the referral fee is paid, the transaction should be fully transparent to the client. The client should be made aware of the fact that the referring lawyer will receive the fee, exactly what percentage of the final fee the referring fee will be and all fees paid and received should be recorded

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in the respective lawyer's financial records. Lastly, in no circumstance should the fee paid to the referring lawyer be an additional fee to the client. The referral fee should come out of the fee that would otherwise have been earned by the handling lawyer. To the client, the referral fee should be neutral. It should not cost the client more money because his/her file was referred from a lawyer who did not have competence in the matter to a lawyer who did.

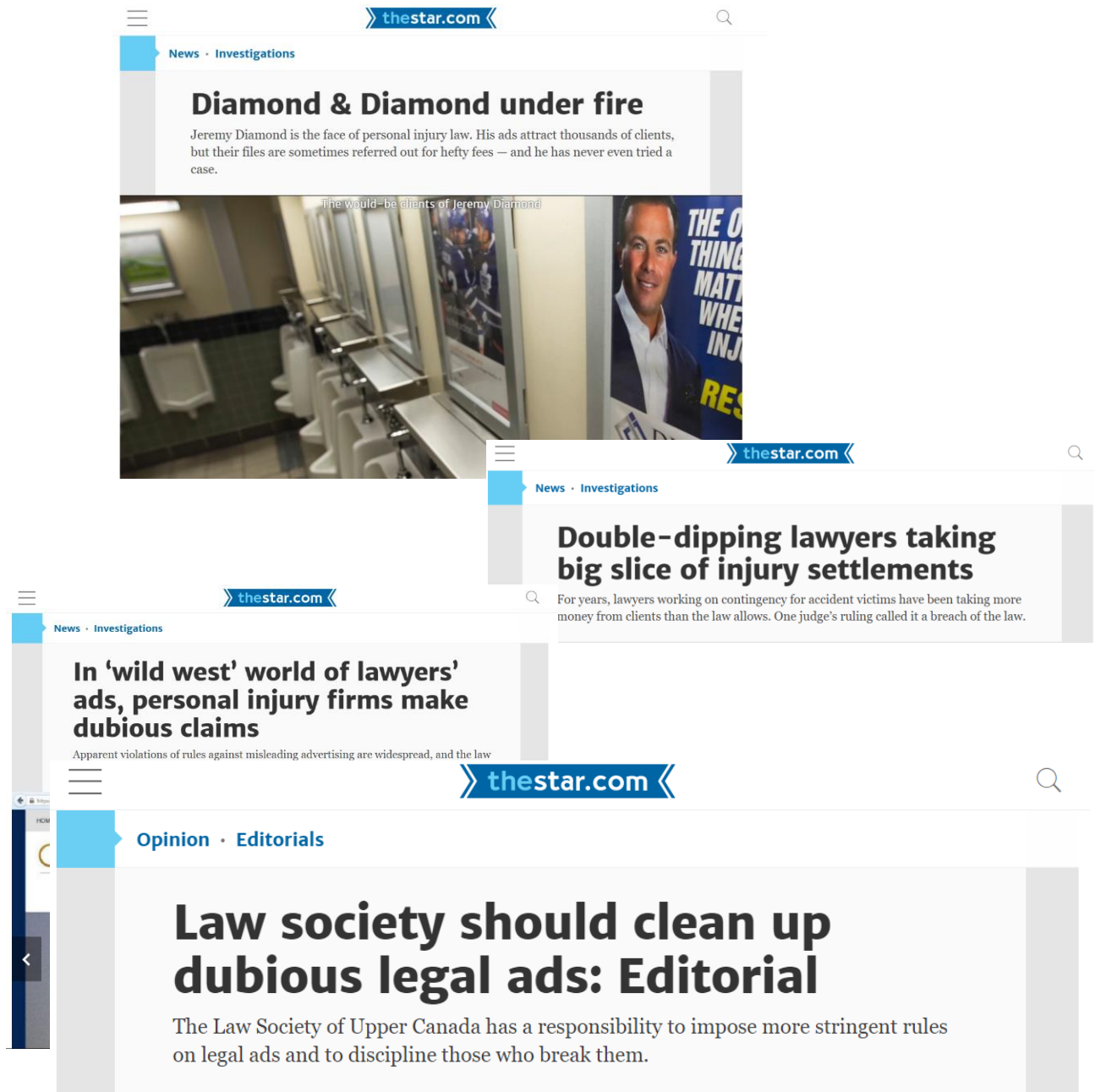
An example of a circumstance where referral fees are appropriate, and fit within the circumstance noted above, is the case of a retiring lawyer or a lawyer who is transitioning out of practice but has not sold (or is unable) to sell her/his practice. This is a common occurrence in smaller centres. After many decades of building up a practice, a lawyer may want to slow down but still wants to ensure their long-standing clients are well cared for. In these cases, a lawyer with a long-standing relationship with the client may refer to another lawyer "in town" and it would be appropriate for the referring lawyer to receive a reasonable referral fee. In fact, in this circumstance, these referral fees may be the only way the retiring lawyer may be able to fully realize the equity built up in their business over time, especially during a transition to retirement.

CONCLUSION

At FOLA we are grateful that the Working Group has devoted significant time and attention to these very important issues. We have attempted to summarize the position of our members in a thoughtful and constructive way while recognizing that there is some difference of opinion among individual lawyers regarding the issues addressed above. Nevertheless, we feel that the changes proposed and the enforcement requested are vital to maintaining the reputation of the profession and to the protection of the public who we serve. We hope that the Working Group and the Law Society will consider carefully the input of our members and look forward to receiving the final report.

REPORT ON ISSUES & INITIATIVES

As of the writing of this report, the Toronto Star has done a two-month-long series of investigative stories on lawyer advertising, culminating in an editorial calling on the Law Society to take action. The Law Society is expected to release new regulations governing lawyer advertising by the end of February, 2017.



REPORT ON ISSUES & INITIATIVES

REAL ESTATE ISSUES

The challenges faced by the Real Estate bar in Ontario are well known to many FOLA members. While the real estate market has boomed in general, fees for residential real estate legal work has flat-lined or diminished. At the same time, the regulatory burden and “paperwork” burden for lawyers engaged in solicitor work has gone up with no commensurate increase in fees.

In response to these and other challenges facing the Real Estate bar, the FOLA Real Estate Committee has been active on a number of fronts:

- ***Local Real Estate Reps***

Nearly every Association has identified a designated contact for FOLA on real estate matters. These representatives will be contacted from time-to-time as need arises to consult or disseminate information. We thank all associations for their help in identifying these contacts and urge these contacts to go one step further and create their own lists of local practitioners in their area. It will be critical to our ability to influence real estate law matters to have the ability to quickly communicate with and mobilize real estate lawyers in every corner of the province.

- ***Condo Deposits***

The Law Society has accepted the idea put forward by the Real Estate Action Committee of FOLA and the OBA to require lawyers to declare whether they accept condo deposits and how much, so that Law Society auditors can better target those lawyers who accept deposits (which are often very large amounts of money) to ensure they are properly managed and that the lawyer fully understands their obligations.

The new questions are:

- Did you, in the past year, receive, hold or disperse any condominium deposits?*
- I declare that I complied with my obligations to receive, hold and disperse these deposits.*
- The total value of the deposits at December 31 was \$_____*
- I declare that the total value indicated is recorded in the firm’s accounting and trust records.*

- ***Electronic Funds Transfer***

On the topic of electronic funds transfer, FOLA has long felt that there should be a reliable, safe and easy-to-use electronic funds transfer system for real estate transactions. In 2016, First Canadian Title made moves to step into this space, but significant concerns were heard with the system they have developed and, of course, with the fear that FCT or other third-party money conduits like it could use this as a pretense to further erode the role of lawyers in real estate transactions.

REPORT ON ISSUES & INITIATIVES

FOLA continued to urge the Law Society and other interested parties such as LawPRO to join the effort to lobby the Canadian Payments Association (a coalition of the major banks and other players in payments) to develop an electronic funds transfer system for real estate and FOLA was pleased to report some progress on this front in the course of 2016. It is too soon to declare victory, but there is some reason to be optimistic that there will be progress on this front in the coming year.

In the meantime, FOLA is encouraging lawyers who do consider using third-party payment processors to ask a series of questions to protect themselves. These questions are:

1. Disbursement of funds – since you will not be controlling the funds, you will not have copies of cheques or confirmation of deposits. How will you be able to confirm delivery of the funds for follow up purposes, if required? If you are not controlling the release of the funds, how can you ensure that funds are not released before registration of the required documents? Who is liable for delays in delivery of funds?
2. Client consent to release funds to an unrelated party – what authorizations or consents will you required to provide funds to a third party? What kind of advice are you required to give a client regarding the risks if there are any issues related to the involvement of the money conduit in the transaction?
3. Additional costs – how will the additional costs be disclosed to the client? Will you need to negotiate with the other lawyer(s) in the transaction each time the money conduit is used?
4. Three lawyer deals – will the money conduit system work for private mortgages or deals where the mortgagee has a separate lawyer? What additional agreements will be required for these transactions?
5. Stacked deals – will the money conduit system work for stacked transactions (where sales funds are required to complete a purchase on the same day?)
6. DRA - will the standard DRA approved by the Law Society be required to be amended? The third party money conduit is not a party to the DRA – how do you ensure the timely return of the funds if the transaction doesn't close?
7. Tender – is delivery of funds to the third party money conduit delivery of funds to the Vendor for purposes of tendering? What type of written agreement must there be between the lawyers to ensure this? Timing issues – how long will it take your bank to wire funds to the money conduit? Will you be required to

REPORT ON ISSUES & INITIATIVES

receive client or mortgage funds earlier than you now are? If you don't receive mortgage funds until 4pm on the day of closing (which is typical when a third-party intermediary is involved on behalf of the mortgagee), will this money conduit system still work? How long will it take for funds to be received by the payees? Who pays the interest if the delivery of funds is delayed?

8. Identifying funds – if you have a number of deals going through the money conduit on the same day, how will you keep track of the funds per deal? What will your trust records show?
9. Compliance with Rules of Professional Conduct – lawyers are required to supervise nonlegal staff working with them on transactions. Are you required to adequately supervise the money conduit? Are there sufficient safeguards in place to ensure that confidential client information is not disclosed contrary to the Rules? Are there sufficient record keeping systems in place with the money conduit to ensure compliance with financial transaction and records requirements under the Rules?
10. Insurance – is there coverage under your LAWPRO insurance if you use a third-party money conduit? What about your excess insurance coverage?
11. Liability – what types of limits on liability and/or indemnities are provided in the agreement/acknowledgment with the money conduit?

These are some of the concerns that have been raised, but each lawyer considering using a third-party money conduit should carefully review the relevant documentation and issues themselves.

- ***Three Party DRA***

When electronic registration was first introduced in Ontario, an escrow closing procedure was developed to deal with the delivery of purchase funds, keys and off title documents. The Joint Committee on Electronic Registration of Title Documents adopted a form of Document Registration Agreement (DRA) that has been published on the [Law Society website](#) (see page 127 at this [link](#)) and referenced in the Law Society's Practice Guidelines for Electronic Registration of Title Documents .

This DRA has routinely been amended for use when there are three lawyers involved (when there is a private mortgage or when there is a separate lawyer representing the lender), and REAC wanted the standard form of Three Party DRA endorsed and published by the Law Society in the same way the DRA has been.

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At an earlier Real Estate Liaison Group meeting, the Law Society denied FOLA's request to endorse a standard form of Three Party DRA, citing concerns that the Law Society would have to undertake extensive (and costly) consultation before endorsing a specific template. LAWPRO, however, agreed to look at it with a view to endorsing it.

At our last meeting, LAWPRO confirmed that it has reviewed the standard Three Party DRA, but realized that the standard OREA agreement references the DRA endorsed by the Law Society and that we will need to either request an amendment to the OREA agreement or convince the Law Society to re-consider endorsing it.

We are pleased to report that the Law Society has reconsidered its position and as a result, the RELG made a recommendation to the Real Estate Issues Working Group (Benchers) to consider a recommendation to Convocation. We remain hopeful that at a future meeting, the Working Group will do just that.

While this may not seem to be a big deal and while LAWPRO reports that it is not aware of any claims relating to breach of a DRA to date, we think it is an important exercise and will have a positive impact on the real estate bar. We still encounter lawyers who have never seen and never used a Three Party DRA. If it is endorsed by the Law Society, it will be easier for diligent practitioners to get lawyers on the other side of a transaction to use it when necessary.

- ***Standard Closing Documents***

We strongly believe that the real estate bar benefits greatly from working with a set of standardized closing documents for residential real estate transactions.

More than a decade ago, the Working Group on Real Estate & Lawyers reviewed the standard closing documents being used successfully by lawyers in Ottawa, Barrie, Cambridge, Hamilton, Lincoln/Welland and Windsor for residential re-sale transactions and embarked on a mission to create standard closing documents for all of Ontario. These standard closing documents include the following:

- a) Vendor's Closing Certificate;
- b) Purchaser's Undertaking & Direction re: Title;
- c) Lawyer's Direction re: Funds;
- d) Lawyer's Undertaking; and
- e) Lawyer's Delayed Closing Escrow Agreement.

Copies are available at:

<http://www.lawyersworkinggroup.com/OnStandardClosingDoc.html>

REPORT ON ISSUES & INITIATIVES

Notwithstanding their clear utility to the lawyer and the clients, the standard closing documents have not been fully adopted across the province, and FOLA has agreed to promote their use by all counties and districts in the province.

LAWPRO, for its part, has endorsed our efforts to promote a set of standardized closing documents. Kathleen Waters has written us to say:

... I write to confirm that LAWPRO is pleased that FOLA is continuing with its process to promote adoption of the Ontario-wide standard closing documents prepared by the Working Group on Lawyers and Real Estate for residential transactions.

The use of standard forms, when implemented appropriately by the lawyer in the individual transaction, can help to minimize risk by ensuring that important issues are not overlooked and can help to minimize client cost. Overall, they streamline the work of the lawyer to the benefit of the public ...

LAWPRO's endorsement is critical, because it gives this initiative heft and credibility. If real estate lawyers understand that using these forms will not only simplify their practice, but could also lead to an eventual reduction in premiums and client cost, there should be fewer barriers to adoption in nearly every circumstance.

We will be calling on the local real estate representatives to encourage the use of the standard closing documents within their association and to notify the Working Group once their association has adopted the documents for use.

Presently, effort is being made to translate these documents into French and more will be said on the topic at our next Plenary meeting.

- ***Land Registry Office Closures***

Another issue we looked at in 2016 was the decision by the Ministry of Consumer Services to close and consolidate some Land Registry offices. The offices affected were:

Oct 28/16

- Milton moving to Brampton
- Guelph moving to Kitchener

Nov 28/16

- Morrisburg moving to Prescott
- Embrun moving to Ottawa

REPORT ON ISSUES & INITIATIVES

- ***Response to Advertising Rules***

FOLA provided a response to the Advertising and Fee Issues Working Group on September 30, 2016, which included specific responses regarding advertising and fees real estate matters. In particular, comments regarding the advertising of “all inclusive” fees and a call for a definition of disbursements were included in our response. FOLA’s response can be found at this [link](#).

- ***Federal Relocation Contract***

Together with the Canadian Bar Association, FOLA undertook a lobby of the Federal government to encourage them to reconsider some of the provisions of the federal relocation services contracts. These contracts are offered to relocation services companies to move federal employees, including members of the military, diplomatic service, RCMP, etc. across Canada and around the world. A provision of these contracts, in effect, sets the rate for real estate legal services and this rate is artificially set well below market rates, depending on where a practitioner is located in the country. Further, these rates were set without consultation with the Bar and set arbitrarily by the third-party relocation service contract provider putting the real estate practitioner at a distinct disadvantage.

Unfortunately, our argument fell on deaf ears and was probably made too late to have an impact on the tendering process and final contract won by Brookfield Relocation Services. Our argument was also undercut somewhat by the fact that Brookfield was able to secure commitments at the lower prices from a number of practitioners across the country. We expressed our concerns that these lower prices might tempt some solicitors to “cut corners” or not engage in some of the necessary due diligence and searches that should accompany all property transactions, but could find no absolute proof that this was happening or would happen.

This is an issue we are continuing to monitor and we predict that Federal government employees might have trouble finding solicitors to take on their files at the rates set by Brookfield in the years to come. The contract does not come up for renewal again for at least another five years, but we will be sure to make our case known to the Federal government well in advance.

Merredith MacLennan
Real Estate Committee Chair

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COMPLIANCE-BASED ENTITY REGULATION

Early in 2016, a major initiative of the Law Society was the proposal to revamp the regulatory system of the Law Society in two major ways. First, to move to “Compliance-based” regulation and second, to regulate “entities” instead of individuals.

As the Law Society web-site describes it:

Compliance-based regulation emphasizes a proactive approach in which the regulator identifies practice management principles and establishes goals and expectations. Lawyers and paralegals report on their compliance with these expectations, and have autonomy in deciding how to meet them.

Entity regulation refers to the regulation of the entity through which lawyers and paralegals provide services. Entity regulation recognizes that many professional decisions that were once made by an individual lawyer or paralegal are increasingly determined by firm policies and procedures.

Proactive regulation may serve the public interest by helping lawyers and paralegals improve their practice standards and client service.

This report from the May 2016 Plenary is a good summary of the issue and of FOLA’s position:

Bencher Teresa Donnelly addressed Plenary in her capacity as a member of the Task Force on Compliance-Based Entity Regulation. This is an extremely important matter of interest to the practising bar, but also a matter that is not widely understood so we appreciate that Bencher Donnelly could provide this briefing.

Ms. Donnelly noted that the legal profession was undergoing tremendous change and challenges and that in response the Law Society has undertaken a review of the regulatory system in place today to determine whether it is appropriate and suitable for this changing world.

FOLA’s submission on this matter to the Task Force can be found at this [link](#) and can be summarized as follows:

FOLA supports many of the principles and objectives contained in the consultation paper for Compliance-Based Entity Regulation. It is a laudable initiative of the Law Society to seek ways to modernize our regulatory systems in a way that is designed to value flexibility and lower the cost of compliance.

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FOLA also generally supports a proactive approach to competency rather than awaiting and responding to a complaint by a member of the public. We support providing guidelines to sole and small firm practitioners, particularly newly called lawyers and paralegals embarking on their legal careers, provided those guidelines are specific and achievable. Our members have long expressed strong concerns that changes in educational and training requirements combined with increased numbers of individuals entering the profession would diminish professional standards. If this initiative can help to preserve and restore the public's confidence in the legal profession, by ensuring that high standards are maintained, then we will be supportive.

Notwithstanding our support in principle, we have very substantial concerns with the specifics of what is proposed (or what we believe is being proposed) and offer some suggestions that should be considered by the Task Force and Law Society should it decide to move down this path.

Generally, our concerns are focused on four areas:

First, we do not believe this matter has received enough attention from the Bar and consultation has been inadequate given the scope and scale of the proposed change.

Second, it is clear from the consultation document that the area of greatest concern to the Law Society as a regulator is the demographic of soles and smalls. This is the area of the Bar that receives the most complaints related to practice management, according to the provided statistics. Yet, the Task Force contained no sole practitioners and there has been no focused consultation with sole practitioners to determine whether this method of regulation will help or hinder sole practitioners.

Third, we have strong doubts that an added regulatory layer on top of soles and smalls (entity regulation on top of the regulation of the individual lawyers as is currently practiced) would net the results the Law Society is looking for.

Fourth, we find it extremely difficult to comment and provide feedback on the concept of compliance-based regulation without looking at the specific draft guidelines that are being contemplated. This is where "the devil is in the details". In concept, practice management guidelines can be a useful tool for both regulator and practitioner, but we are concerned with the actual text of these documents and how they are intended to be applied.

Ms. Donnelly responded to each of these concerns and questions in her presentation to Plenary. In the context of how compliance-based entity regulation applies to the concept of professionalism, Ms. Donnelly quoted Justice Abella who said that "professionalism" is defined as a merger of three basic values in a good lawyer: A commitment to competence, which is

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about skills; a commitment to ethics, which is about decency; and, a commitment to professionalism which transfuses the public interest into the other two values.

The task force is looking at whether “Compliance-Based Entity Regulation” could be used as a platform to better meet these objectives of professionalism.

She also noted that “compliance-based” and “entity” regulation are two separate, but related, concepts. Entity regulation refers to regulation as the business entity through which a lawyer or paralegal provides services. In 2016, it is no longer acceptable or feasible to treat law firms as a collection of autonomous individual practitioners who happen to share the same firm name. Firms are created on the basis of fact that many things done in a law firm are best done by a collection of lawyers and that decisions are often based on collective policy and consensus in the firm. Yet the Law Society only regulates the individual. The Task Force recognizes this incongruity and also that this situation can affect efficiency and effectiveness of the regulatory system and sometimes the fairness of professional accountability.

By moving to entity regulation, the Law Society believes there would be efficiency and effectiveness gains, benefits from harmonization of regulation across the country (as other provinces move in this direction) and that the Law Society would be in a better position to respond to innovations in legal service delivery models that they are asked to comment on and approve from time-to-time.

On the concept of “compliance-based” regulation, Ms. Donnelly noted that this form of regulatory model is sometimes known as “proactive, management-based” approach to regulation. It is premised upon the recognition that lawyers and paralegals should be obliged to adopt and abide by policies and procedures in their practices to fulfill their professional obligations. Presently, lawyers are sanctioned after a breach in professional conduct and that serves to protect from preventing negative conduct from happening again, but does not stop the bad behavior (except through deterrence) and negative consequences for the public, from happening in the first place.

By regulating in a proactive manner, the hope is that problems are prevented, thus enhancing public protection and lowering the costs for lawyers. As part of this exercise, the Law Society is looking at “practice-management principles” that would help guide practitioners on their conduct and practice. (It is these “guidelines” that give FOLA the greatest concern because, as we noted in our submission, the specific detail of what is in these practice-management guidelines is important to know, and the fact that “guidelines” meant to steer general direction often evolve to become full-blown and rigorously applied “rules”, thus defeating the purpose of this move to “lighter-touch” regulation.)

Ms. Donnelly noted that it is not the intent of the Law Society Benchers to add to the regulatory burden, particularly for “soles and smalls”, and she acknowledged that this concern is shared

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by the Task Force who is very much alive to the concern that any regulatory system not be costly or overly burdensome. In fact, Ms. Donnelly noted that the Task Force and all of Convocation was open to the idea of reducing or eliminating some current regulatory requirements if they were found to be duplicative or overly burdensome in the context of new “compliance-based” or “entity” regulations.

The video of Ms. Donnelly’s full report to Plenary can be accessed at this [link](#).

Since the presentation of this report, the issue of “Compliance-Based Entity Regulation” has been reviewed at the [May 2016 Convocation](#) with the conclusion being that **further study and consultation is needed for both of these matters, but that sufficient momentum existed for the Law Society to ask the Provincial legislature for amendments to the Law Society Act to allow the Law Society to regulate entities.** The feeling was that while the Provincial Legislature debates “whether” to give this authority (which they undoubtedly will), the Law Society could continue “meaningful dialogue” with the Bar on the specific form of “how” this would take place. A full report on what Convocation debated can be found at this [link](#). A news article in the Law Times, quoting the Federation position on this move by the Law Society, can be found at this [link](#).

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ADDRESSING CHALLENGES FACED BY RACIALIZED LICENSEES

At the November Plenary, Grant Wedge, Executive Director of Policy, Equity & Public Affairs at the Law Society, gave an excellent [briefing](#) on the work of the [Equity & Aboriginal Issues Committee](#) of the Law Society examining the challenges faced by racialized licensees.

The full report to Convocation was tabled in September of 2016 and can be accessed at this [link](#).

This Report represents the final stage of a lengthy consultative and study exercise which has led to the conclusion that racialized licensees face widespread barriers within the professions at all stages of their careers. As the title “Working Together for Change” bears out, the Challenges Faced by Racialized Licensees Working Group is confident that there is a unique opportunity for change, based on collaborative, concrete steps to implement solutions. That said, the challenges faced by racialized licensees are both longstanding and significant. In our view, the Law Society must take a leadership role in giving legal workplaces reasonable deadlines to implement steps that are important to bringing about lasting culture change. The Working Group has concluded that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession — obligations already required by the Rules of Professional Conduct, the Paralegal Rules of Conduct and, more generally, the Human Rights Code.

Reform in addressing barriers faced by racialized licensees is an essential component of ensuring a healthy and successful legal profession, and to advancement of the public interest — goals that we all share and must achieve.

As a result of the lengthy and comprehensive consultation process, the committee made 13 recommendations, summarized here:

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the Rules of Professional Conduct, the Paralegal Rules of Conduct, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices

The Law Society will:

- 1) require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;

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- 2) require a representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement;
- 3) require a representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress by:

- 1) asking licensees to answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and
- 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf). The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

Recommendation 8 – Progressive Compliance Measures

The Law Society will consider developing and implementing progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

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Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The Law Society will:

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;
- 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society;
- 3) require each licensee to complete, once every three years, three hours of an accredited program focused on equality and inclusion, which will count as the licensee's professionalism hours for that year;

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

The Law Society, in light of the findings of this project and emerging issues in the professions, will:

- 1) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address complaints of systemic discrimination;
- 2) revise the Rules of Professional Conduct and the Paralegal Rules of Conduct, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;
- 3) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and
- 4) create a specialized and trained team to address complaints of discrimination.

Recommendation 13 – Leading by Example

1) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:

- a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;
- b) measuring quantitative progress through a census of the workforce or other method;
- c) measuring qualitative progress by conducting inclusion surveys;
- d) conducting regular equality, diversity and inclusion self-assessments; and
- e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;
- f) publishing relevant findings from b), c), d) and e); and
- g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.

REPORT ON ISSUES & INITIATIVES

2) The Law Society will:

- a) conduct an internal diversity assessment of the bench composition and publicize the results;
- b) provide equality and inclusion education programs for Convocation on a regular basis.

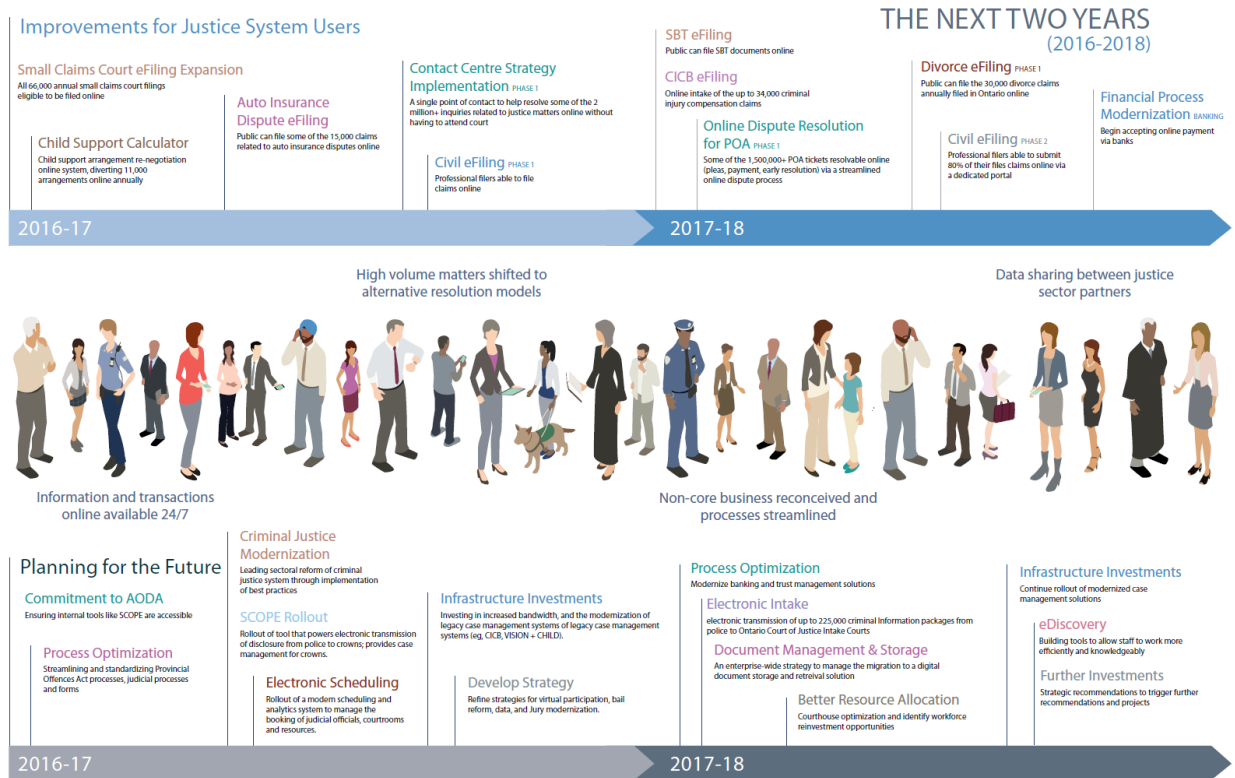
FOLA generally supports and endorses this report and applauds the committee for the hard work put into addressing this challenge. FOLA's formal response to this report can be found at this [link](#).

REPORT ON ISSUES & INITIATIVES

COURT MODERNIZATION

An initiative that FOLA is watching closely is the work of the Ministry of the Attorney General to modernize our courts. Investments in technology will have a lasting and profound impact on our justice system and on the operations of many of our members across Ontario. Christopher Johns, Executive Director of the Innovation Office at the Ministry of the Attorney General spoke to Plenary in November and based on that presentation has a standing invitation to address all Plenary meetings in the foreseeable future. His November presentation can be viewed at this [link](#).

This summary chart is an excellent visual representation of the plans of the Ministry in the coming few years:



REGIONAL REPORTS

In lieu of region-by-region reports, for this annual report of the Federation we have decided to focus on those issues that are common across all or most regions. On the regular bi-monthly or quarterly conference calls that each regional representative has with the Presidents in their region, certain themes and common issues arise beyond those which have been discussed already in other parts of this Annual Report.

Judicial resources – appointment of judges

A consistent concern is raised by our regional representatives that the appointment of judges to fill vacancies, particularly Superior Court Justices, is slow and the resulting lag is causing undue delays in courts across Ontario. Coupled with the general perception that Ontario does not have enough judges in its complement, and it is clear that in 2016 the biggest emerging issue has been judicial appointments.

FOLA welcomed and applauded the Provincial government's announcement of 13 new judges to the Ontario Court of Justice in December of 2016 (along with the appointment of 32 assistant Crown attorneys and 26 court staff), but FOLA has joined the chorus of those calling on the Federal government to speed up their appointment process, fill vacancies quickly and ensure that these vacancies do not lag in future.

Mortgage action consolidation (again)

In 2015, the Civil Rules Committee gave Regional Senior Justices the ability to consolidate where mortgage actions initiated in their jurisdiction would be heard. In 2015, the east region consolidated mortgage actions at the Ottawa courthouse, causing counsel who do not work in Ottawa to either refer the file to an Ottawa counsel, hire an agent who would file in Ottawa or travel often great distance to properly represent their client. While done in the name of judicial system efficiency, the result of these changes cause undue expense and time to the practising bar outside of major centres and we have spoken out against any judicial district who has made this move. In 2016, the East region reversed course, but other regions have sent signals that they are considering consolidating mortgage actions. FOLA will continue to take the position that moves such as this to consolidate any matters does harm to the practising bar in smaller communities and we will oppose these moves.

Administrative staff in courts

REGIONAL REPORTS

Another common concern raised by Presidents is the number of court staff that are available in courts across Ontario. As austerity measures have frozen or, in some cases, cut staff in courts, some Presidents have reported that existing staff are overworked and that delays are often the result of paperwork that simply does not make its way through the system quickly enough. These delays have been especially bad in courts where some of the staff have gone on long-term disability and their position has not been replaced, even on a temporary basis.

We have lobbied the Attorney General on this matter throughout 2016 and encouraged the Ministry to ensure there is adequate staff in all courts at all times as a cornerstone of an efficient justice system.

The Strength of Our Local Associations:

The other theme that has emerged from all the regional teleconference calls and from the bi-annual plenary meeting is that most of our local associations are strong and vibrant. Across almost all associations report stable or growing membership; many associations are expanding their offerings of CPDs and other programming; most associations report a positive and stable financial position. This is all good news and a testament to the hard work of many volunteers who work hard for their colleagues across Ontario. It is also a testament to the work of the association staff who are the backbone of many associations and who work hard, often in relative isolation, to ensure both their practice resource centre and their association are strong and vibrant.

As in anything there is always room for improvement and this continues to be a primary focus of the Federation as we move into 2017. We are eager to have associations share their “best practices” in association management and programming and to bring good ideas from other jurisdictions to the operation of the local associations across Ontario. To that end, CDLPA/FOLA is proud to be a member of the ***National Conference of Bar Presidents*** and the ***National Association of Bar Executives*** in the U.S. where we have access to what more associations across the U.S. are doing on behalf of their members. In 2017, watch for us to bring more of these ideas and best-practices to the attention of local association Presidents. Likewise, if there are any associations that want to tap into what is happening in the U.S., please do not hesitate to ask Executive Director Mike Ras.

The Board of the Federation is eager to help local associations grow and become stronger so if there is anything we can do, please do not hesitate to call upon us. Strengthening associations across Ontario is key to ensuring that we have a vibrant and healthy practising bar across the entire province.

PARTNERSHIPS

PARTNERSHIPS

Partnership with the Canadian Bar Insurance Association (CBIA)

At the November 2016 Plenary meeting, FOLA was pleased to introduce a new partnership with the Canadian Bar Insurance Association (CBIA) which they bill as “your one-stop shop for all your protection needs”.

For over a quarter of a century the CBIA have been providing a wide range of insurance products designed for the specific needs of legal professionals, law firm staff, and their families. Unlike a typical association program, the CBIA doesn't simply endorse an insurance company's products. They employ insurance experts who, with the assistance of actuaries and the underwriting insurers, design, price, and manage their own products to ensure a superior designed benefit at the lowest possible price.

More than 30,000 Canadian legal professionals and family members trust the CBIA with their insurance protection. If you are in the market for insurance products, we urge you to get in touch with the CBIA and ask for a quote.

Toll free : 1-800-267-2242

Toronto : (416) 221-4119

By email: customerservice@barinsurance.com



PARTNERSHIPS

Thomson Reuters' Exclusive Law Association Membership Offer:

Steven Iseman, Segment Product Manager from Thomson Reuters, introduced three programs that are exclusive to FOLA affiliated Associations, with offers that are available to eligible member lawyers. These offers are designed to be highly beneficial to members, and in particular solos and smalls and to provide a direct benefit to the local association. Thomson Reuters has already signed up the Toronto Lawyers' Association and hopes to partner with more associations across Ontario.

Highlights of the programs:

- a collection of their marquee research and workflow products to new and small law firms;
- pricing of these products and services is designed to fit the economic realities of start-up firms (including free for up to one year); and
- there is no fee to the Association for participating.

Thomson Reuters has provided some details about their programs in the attached briefing. If interested, contact them at the numbers listed on the attached document and sign up for their affinity program. If you have questions, you can contact Steven Iseman at steven.iseaman@tr.com or 416-298-5152.

THOMSON REUTERS EXCLUSIVE LAW ASSOCIATION MEMBERSHIP OFFERS

AVAILABLE TO LAW ASSOCIATION MEMBERS IN FIRMS OF 1-3 LAWYERS

Thomson Reuters is pleased to announce four Law Association Member Offers designed to help new firms get up and running, and offer all small law firms a unique pricing opportunity that reinforces the benefit of being a Law Association member.

DO YOU HAVE MEMBERS STARTING UP THEIR OWN FIRMS?

Lawyers starting their own practice can take advantage of two new programs specifically designed to address the realities of new firm start-ups. These programs are designed to get new firms started on the right path by ensuring they have the resources and tools for success without cost being a barrier.

Thomson Reuters Practice Starter offer is for new calls starting up new firms of 1-3 Lawyers. Our Practice Accelerator offer is for established lawyers starting up their own firms of 1-3 Lawyers.

PRACTICE STARTER AND PRACTICE ACCELERATOR OFFERS INCLUDE:

- **WestlawNext® Canada** – Canada's award-winning online legal research service, including LawSource, FamilySource, CriminalSource, Estates&TrustsSource, Solicitor's Core, and Litigator
- **Firm Central** – Cloud-based legal practice management software for solo and small law firms, including tools for Time and Billing, Matter and Document Organization, Deadline Assistant, and Calendaring
- **FindLaw.ca** – an enhanced law firm listing to help generate business for member firms
- **Law Times and Canadian Lawyer** – Digital editions of renowned legal publications that keep you current on the latest legal issues and news
- **Print Discount** – Thomson Reuters Canada best discount on books (eReference included)

WHAT ABOUT MEMBERS IN EXISTING SMALL LAW FIRMS? WE ALSO HAVE AN OFFER FOR THEM.

Thomson Reuters Preferred Pricing Offer for existing firms of 1-3 lawyers – this unique offer is only available through affiliated Law Associations and represents the best rate available from Thomson Reuters.



How do I make these offers available to our Members?

Your first step is to contact Lyda Berger at the email address below, expressing your interest in providing these offers to your members. She will provide you with details about how to get your Association signed up.

Let's team up to help your members add value to their membership.

Contact us



Lyda Berger
Legal Product Developer, Legal Canada
Thomson Reuters
lyda.berger@tr.com

If you have additional questions or comments, please contact:

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PARTNERSHIPS

CPD Online

Paul Byrne, CEO of CPD Online, once again joined our Plenary meeting as a sponsor and spoke about the innovative partnership they are offering to local associations and your members.



Paul is offering two options to his “Association Partners”:

Option One: CPD Online videotapes, posts and hosts your content

Association Partners allow CPDOnline to videotape their events and post the videos to the CPD site for sale. Association members get a 20% discount for all association content. Associations earn up to \$5,000 per video posted via a royalty schedule.

Posting your video content serves to,

- Promote your content and expertise to a wider audience
- Repurpose your live content to your members and beyond
- Generate an ongoing revenue stream
- The association is responsible for obtaining speaker permissions to videotape and CPD Online does the rest. There is no cost to the association for this service.

Video viewers receive an email confirmation upon the completion of a video for proof of attendance records. This proof of attendance is the reason why posting on public sites such as You Tube is not recommended.

Option Two: You videotape and CPDOnline posts and hosts your content

CPDOnline’s Association Partners videotape their own events and send CPDOnline the content to be posted and hosted on its site. Association members get a 20% discount for all association content. Associations enter into a revenue sharing agreement with cpdonline.ca per video posted.

Once again, FOLA encourages all associations to look closely at CPDOnline to help provide more content and programming for your practice resource centres. It is a great revenue source for your local association, but more importantly, it is an easy way to make your PRC more dynamic and to reach new audiences for membership.

PARTNERSHIPS

FutureVault

FutureVault is a new partner of FOLA's and we were pleased to have their participation as a sponsor and to have Richard Adair, Vice Chair, participate in our "Innovation" panel.



FutureVault is a secure digital safety deposit box that is delivered by partner organizations, such as lawyers and law firms, to their customers allowing them to digitally deposit, store, collaborate and manage important financial, legal and personal documents. FutureVault is a highly-structured filing cabinet in the cloud that allows for document storage and filtering across an unlimited number of entities including family members, corporations, sole proprietorships, trusts, foundations, etc.

FutureVault fosters a completely new type of collaboration between clients and their network of Trusted Advisors, including wealth advisors, accountants, lawyers, insurance agents, and others. FutureVault increases trust and opportunity between parties, helping to simplify document and asset management, grow relationships and capitalize on opportunities.

For more information, check out www.futurevault.com

2016 FOLA EXECUTIVE

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BILL WOODWARD, Southwest Region

Email: WWoodward@dyerbrownlaw.com

PAST CDLPA CHAIRS

PAST CDLPA CHAIRS

Willson McTavish	1980 – 1982
Colin McKinnon *	1982 – 1984
Douglas Thoman	1984 – 1986
Lloyd Brennan *	1986 – 1988
Nancy Mossip *	1988 – 1990
Michael O’Dea †	1990 – 1992
David Lovell	1992 – 1994
Harrison Arrell *	1994 – 1996
Richard Gates *	1996 – 1998
Johanne Morissette *	1998 – 2000
Lawrence Eustace	2000 – 2002
David Sherman	2002 – 2004
W. Ormond Murphy	2004 – 2006
Paul Kowalyshyn †	2006 – 2008
Randall Boccock §	2008 – 2009
Robert Zochodne	2009 – 2011
Michael Johnston	2011 – 2012
Janet Whitehead	2012 – 2014
Cheryl Siran	2014 – 2015

* Now of the Ontario Superior Court

† Now of the Ontario Court of Justice

§ Now of the Tax Court of Canada

2016 PRESIDENTS

2016 PRESIDENTS

The following individuals served as Presidents and leaders of their local law associations in 2015. This list is of the Presidents as of December 2016, so if your term ended earlier in 2016 and your name is not listed here, we apologize for the oversight, but respect your service to the profession.

Algoma Law Association	Eric McCooeye
Brant Law Association	Wendy Newton
Bruce Law Association	Sophia Newbould
Carleton Law Association	Lynne Watt
Cochrane Law Association	Lisa Barazzutti
Dufferin Law Association	Alayna Woodley
Durham Law Association	Deborah Hastings
Elgin Law Association	Keli Mersereau
Essex Law Association	Philip Chandler
Frontenac Law Association	Kristin Muszynski
Grey Law Association	Greg Deakin
Haldimand Law Association	Caitlin Murray
Halton Law Association	Rachael Pulis
Hamilton Law Association	Michael Bordin
Hastings Law Association	Pieter Kort
Huron Law Association	Jenn MacMillan
Kenora Law Association	Sayer Down
Kent Law Association	Timothy Mathany
Lambton Law Association	Terry Brandon
Lanark Law Association	Craig Rogers
Leeds & Grenville Law Association	Scott Laushway
Lennox & Addington Law Association	Barbara Burford
Lincoln Law Association	Bobbie Walker
Middlesex Law Association	Dagmara Wozniak
Muskoka Law Association	Carrie Campbell
Nipissing Law Association	Leigh Van Gorder
Norfolk Law Association	Cary Vervaeke
Northumberland Law Association	Jason Schmidt
Oxford Law Association	Sandra Carnegie
Parry Sound Law Association	Bonnie Oldham
Peel Law Association	Mahzulfah Uppal
Perth Law Association	Kathryn Ritsma
Peterborough Law Association	Michael Semple
Prescott & Russell Law Association	Marc Gauthier
Rainy River Law Association	Barbara Morgan
Renfrew Law Association	Mary Fraser
Simcoe Law Association	Derek Friend
Stormont, Dundas & Glengarry Law Association	Gordon Campbell
Sudbury Law Association	James Ross
Temiskaming Law Association	Brigid Wilkinson
Thunder Bay Law Association	Rene Larson
Toronto Lawyers Association	Stephen Mullings
Victoria-Haliburton Law Association	Brent Walmsley

2016 PRESIDENTS

Waterloo Law Association
Welland Law Association
Wellington Law Association
York Law Association

Kelly Griffin
Chris Durdan
Cherloyn Knapp
Wayne Kitchen

CONTACT INFORMATION

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