



REPORT OF THE MAY, 2015 PLENARY

REPORT FROM THE CHAIR

First of all, I want to say "thank you!"

Thank you for making the May 2015 Plenary in Thunder Bay one of the most successful meetings to date. Thank you for making the trek to Thunder Bay and experiencing a bit of what it takes for those of us from Northern Ontario to come "east" (southeast for most of you!) on a regular basis. Thank you for the stimulating dialogue, attention to our speakers and presenters and the camaraderie that we shared over dinner and in the hospitality suites.

This meeting was a great success and the post-plenary survey responses once again showed that you found the program, speakers and accommodations at the Valhalla Inn in Thunder Bay to be either "Good" or "Excellent". We are especially grateful for the hospitality afforded us by the Lakehead University Bora Laskin Faculty of Law which hosted our dinner on Thursday evening.

Our only regret from this entire meeting was that it happened just before the "May 24" holiday weekend and some of you had to delay your vacations by a few hours. But since you were already in the beautiful countryside of Northern Ontario, I hope you considered it an extension, rather than a delay, of your vacation!

For this meeting, we were pleased to offer 4 ½ CPD hours – 1 ½ for Substantive and 3 hours for Professionalism. This is something we aim to provide in all our future programs and will continue to work with the Law Society to see that this happens. We recognize the substantial personal and business sacrifice it takes for everyone to participate in these meetings and it is only fair that your time is recognized with CPD credits.

This meeting focused on four broad topics and themes which are taking the attention of CDLPA at present: The use of technology in the practice of law; the administration of our courts, with a particular focus on courthouse security; paralegal education and

competence; and, access to justice. Accounts of the discussion on each of these topics are provided later in this report and I would encourage the reader to also check out the links to the videos of each presentation.

Updates were also provided on the ongoing and very active discussions underway with respect to the future of our county law library system. On this topic, there wasn't much concrete for the Practice Resource Centre committee or the LibraryCo Board to report, except that the productive discussions are ongoing and that no firm conclusions have been reached. I can assure you that this report is accurate and that the debate about what the future of the system looks like continues to occupy a substantial amount of the Board's time and energy. I am excited by the direction and feel confident that the end result will be a better system for everyone.



Chery Siran, CDLPA Chair

Finally, I want offer a special thanks to all our guest speakers. **Professor David Blaikie** of the Bora Laskin School of Law travelled in from his home in Halifax; **Sheila Bristo**, Director of Divisional Support Branch, Court Services Division of the Ontario Ministry of the Attorney General; **Priya Bhatia**, Manager of Licensing and Accreditation, Law Society of Upper Canada; **Stephen Parker**, Chair of the Ontario Paralegal Association; **Joseph Neuberger**, Past President of the Toronto Lawyers Association; **Helen Heerema**, Librarian in the Thunder Bay Law Association; **Rae White**, Past President of the Peel Law Association; **Lou Milrad**, of Milrad Law; **Caterina Galati**, Senior Competence Counsel for the Law Society of Upper Canada; **Kathleen Waters** and **Dan Pinnington** from LawPRO.

I want to particularly thank **Rew Goodenow**, President of the National Council of Bar Presidents who travelled from Reno, Nevada all the way to Thunder Bay (and it will surprise no one that there is not a direct flight!). He gave a rousing and inspirational speech at Thursday's dinner and his presence throughout Plenary solidified and deepened the partnership between CDLPA and the NCBP.

Last, but not least, I want to thank the hard working members of my executive Board for their contributions. The number of hours they contribute to making CDLPA a success cannot be underestimated or appreciated enough.

Planning is already underway for the November 2015 Plenary meeting in Toronto with some interesting innovations and topics being planned for that meeting. As always, stay tuned and do not hesitate to provide us with your feedback, commentary or suggestions on ways CDLPA can help make your local law association even better and more relevant to the practising bar across Ontario.



Cheryl Siran
Chair, CDLPA

LINKS IN THIS DOCUMENT

Most of the Plenary was video-taped and recorded and those recordings are provided by clicking on the links that are embedded in the title/heading of each section. The in-camera sessions and the speeches which took place in the evening were not recorded and cannot be provided.

For speakers who used power-point, their presentations are embedded in the video.

Some speakers did not provide permission to broadcast their remarks and their sessions are omitted. If you have trouble with any of the links, please contact mike.ras@cdlpa.org.

PROFESSOR DAVID BLAIKIE – “WHY GOOD LAWYERS MATTER”

Professor David Blaikie, of the Bora Laskin Faculty of Law, spoke at the opening dinner about the lawyer-client relationship. The key point of his well-received and engaging remarks was that, in a world where the legal profession faces changes and challenges, lawyers should be guided by a concern to preserve and strengthen that relationship. After canvassing some of these changes, he described the central defining characteristics of the lawyer-client relationship and finished by proposing two ways the law profession should change in order to adapt to a changing world in ways that preserve and strengthen the relationship. The first was to become more adept at meeting clients' needs in the context of mediation and negotiation. The second was to reconceptualize and balance the lawyer's duty as zealous advocate in the context of the various other important duties a lawyer owes to the administration of justice and society.



Professor David Blaikie

Below are some excerpts that give the flavour of his talk.

Lawyers play a vital and important role in the administration of justice and society. We have important duties that define us and define our relationship to our clients. As lawyers, we have a set of skills that enable us to help our clients achieve their goals. We need to be sure that we fulfill and balance the various duties and that we possess the requisite skills.

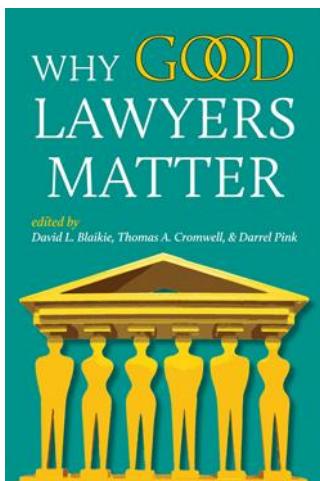
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To make wise decisions about the challenges facing us as a profession, we need to focus on the lawyer-client relationship. We need to ensure that this relationship is a strong and vibrant one. We need to ensure that we as a profession nurture and care for that relationship. Because without a strong lawyer-client relationship, we as a profession will be lost. That relationship is our raison d'être. It defines us and is the reason we exist. And we need to evaluate any and all changes to the profession, be it different sorts of business structures

or issues about advertising or interpreting the bright line rule from the Supreme Court of Canada in R. v. Neil, all our considerations and decisions should be measured against and take into account how this or that change, this or that decision, will affect the lawyer-client relationship.

Put another way, I could explain my thesis by asking the question, "Why do good lawyers matter?" Good lawyers matter because they meet the needs of their clients. They fulfill and realize the duties inherent in the lawyer-client relationship.

The book I edited Why Good Lawyers Matter with the



Honourable Mr. Justice Thomas Cromwell and Mr. Darrel Pink, the Executive Director of the Nova Scotia Barristers' Society, has a beautiful foreword written by Canadian poet and playwright, George Elliott Clarke. In that forward, Mr. Clarke sums matters up admirably "Ultimately" he writes, "the basic ideal of the law must be that every person or cause merits an advocate who must advance well-informed, well-crafted, truthful and persuasive arguments in aid of the client. That's why good lawyers matter."

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I remember reading my alumni magazine a few years ago. At the back of the magazine there was always an interview of an esteemed graduate, in this edition the past grad was a Swiss ambassador, nearing the end of a long and successful career. The interviewer asked him this question: "What was the most important skill you learned in law school?" His answer: "I learned to listen. I learned that each side of a dispute has a story to tell, and that disputes can be resolved if one listens and understands both sides." Listening is probably the skill of skills in dispute resolution. How many of us lawyers even think of it as a skill, let alone the most important of all?

PRACTICE RESOURCE CENTRES

Once again at this Plenary, the Practice Resource Centre discussion was both informative and elicited a spirited discussion.

Jackie McGaughey-Ward, Chair of the PRC Committee of CDLPA, moderated a panel with **Janet Whitehead**, LibraryCo Board Chair, **Jaye Hooper**, 2nd Vice Chair of CDLPA and a Board member of LibraryCo and **Helen Heerema**, from the Thunder Bay Law Library, representing OCLA (Ontario Courthouse Librarians Association) as Vice Chair of that association.

Janet started things off with a history of the Ontario courthouse library system and the work of the Library Information & Support Services (LISS) working group that reported back to the shareholders last Fall. As Janet noted, the LISS report affirmed the value of the county library system, endorsed the "Practice Resource Centre" concept and accepted that improvements could – and should - be made to make the system function better and in a more unified fashion.

She went on to report that LibraryCo has recently conducted two surveys: The first was a written survey on resources that are available in each library and the second was a visual survey utilizing video or pictures to allow the Board to visualize the configuration and layout of each library. As Janet noted, "it's one thing for the Board to make suggestions on how the space should be used, but context on how these changes might be implemented is needed." To that end, Janet reported that 100% of the libraries and associations had reported on the written survey and 2/3 have provided responses on the visual survey.

To end her presentation, Janet stated that it is far too soon to come to conclusion on the outcomes. She likened the process to solving a jigsaw puzzle. "We've dumped out the box and are sorting out the pieces. We're lining up the straight edges and starting to fill in the picture ... but no





Janet Whitehead, Chair,
LibraryCo

one has yet provided a picture of what this looks like at the end."

Jaye Hooper then spoke about the process that the Board has undertaken to review operations and develop a transition plan. It should be noted that the LibraryCo Board is, in fact, functioning in a dual-capacity. First, as an operating and policy Board with responsibility to manage the functions of the corporation

and oversee the Administrative Services Agreement with the Law Society. Second, they operate as a "Transition Committee" with the mandate to recommend to the Shareholders the changes that they believe should take place to the operations of LibraryCo.

Jaye reported that the Board is a very hard-working Board that meets frequently. She also reported that the Board has broken into four sub-committees of governance, finance/funding, physical space and competence. These sub-committees are setting out the "1000 foot view questions" for the entire Board and coming back with recommendations. To ensure consistency, Janet Whitehead and Susan Elliott are on each of the sub-committees.

Helen Heerema representing OCLA reported on the work of OCLA and their most recent professional development conference. She also reported that Chris Wyskiel has

been reaffirmed as Chair of OCLA after leaving Hamilton and joining the Brant Law Association as their librarian.

Helen noted that in their most recent meetings, OCLA has asked for better communication and, specifically, for a point-person for communication with LibraryCo. Janet Whitehead responded to this by saying that this was "a live issue with the Board" and something that she was looking to address.



In the Q&A session that followed the presentations, a lively discussion ensued that reflected the concerns and ideas of many in the audience. We would encourage anyone interested to review the video of this session.

In the concluding remarks, Cheryl Siran noted the take-away for Presidents and other local association delegates was to work with their local library staff to come up with more ideas and suggestions in anticipation of a joint session at the next CDLPA Plenary meeting in November. For that Plenary, COLAL (The Conference for Ontario Law Associations' Libraries) will be held at the same time and in the same hotel allowing for at least one joint session.

The moderator, Jackie McGaughey-Ward noted with appreciation that CDLPA is lucky that LibraryCo has a Board that is passionate about practice resource centres that is eager to support the system and make it better. *"We are lucky ... they are listening, and we thank them for their work."*

PARALEGAL EDUCATION UPDATE

The matter of education, licensing and regulation of paralegals was again on the agenda of a CDLPA plenary after a few absences from recent meetings. For this session, we were honoured to have **Priya Bhatia**, Manager of Licensing and Accreditation at the Law Society of Upper Canada, **Joseph Neuberger**, Chair of the Ad Hoc Paralegal Working Group and past President of the Toronto Lawyers Association and **Stephen Parker**, Chair of the newly formed Ontario Paralegal Association.

Alfred Schorr, CDLPA's Paralegal Committee Chair and Central East Regional Representative moderated this panel and started the presentation by offering a brief but informative history of the paralegal licensing system. He also touched on the result of the recent review of the licensing system that was concluded on the fifth anniversary of the paralegal regulation system coming into effect.

Priya Bhatia, briefed Plenary on the two major reforms coming to the [education and licensing regime](#) for paralegals that arose from the five year review.

Thematically, the reforms reflected a need to expand the breadth and focus of entry level assessment and evolve the system from one designed largely for “grandfathered” practitioners to a new reality where paralegal candidates are generally younger, with much less practical “real world” experience. In short, the old system was “not sustainable for the new reality”. The changes “reflect the maturation of the profession and (seek to) continue to assure competence”.

The first of the reforms adds substantive and procedural law concepts to the existing license process by capture all of the required competencies in a standardized, fair and transparent process. Currently, the license examination involves a 120 multiple choice examination, taking about 3 hours to complete. The test covers 100 required areas of skill, knowledge and expected behaviours for a “minimally competent licensee”, focused on ethics, professional responsibility and practice management. The test reflects the paralegal rules of professional conduct.



Priya Bhatia, Law Society; Joseph Neuberger, Toronto Lawyers Association; Stephen Parker, Ontario Paralegal Association

The new test is much more comprehensive as evidenced by the new examination. The new test is a seven hour exam with 200 questions. The entire exam follows a rigorous examination blueprint that has been developed over the past number of years and allows for exam question writers to follow a template to create the large bank of questions that ensure no two exams are precisely. A standing advisory committee of veteran paralegal and lawyer practitioners has been struck to oversee the exams and ensure the questions are kept current and relevant.

The first sitting of the new examination is in August 2015 and the Law Society is working with candidates to ensure they are prepared for the new, more rigorous exam.

On the education side, the Law Society is implementing a new, more robust standard for training in Ontario’s college and private vocational education system to ensure the structure, content and delivery of education is more robust and turning out candidates who meet the tougher new licensing standards. In the new standard, each program must offer 18 required courses, plus options, totalling 300 hours of substantive, procedural and practice management instruction. Another 120 hours of optional courses, plus 120 hours of work experience pushes the total to 830 hours of instructional time.

The schools offering paralegal education must accredit every five years and the Law Society claims that these accreditations are now more rigorous and thorough involving in-class visits, and evaluations of every aspect of the student experience. Further, the schools must now pay for the cost of the accreditation and the new standards are much more strict. Going forward, schools can only have two class intakes per year, ending the practice of rolling enrolment; the program administrator must be a licensee (lawyer or paralegal) and cannot spend more than 50% of their time on instruction. Most importantly, each class must have more than 10 students enrolled to ensure a robust professional education experience.



Ontario Paralegal Association

Stephen Parker, Chair of the new Ontario Paralegal Association, related his personal observations that he has long felt the education standards for paralegals were far too lax and that he and his association are advocates for tougher standards, tougher exams and that they hope the new regime will “cull the herd” in an already “saturated market” for paralegals. Mr. Parker also affirmed his belief that there were clear lines of delineation between the practice of paralegals and lawyers and each had a legitimate role to play. And finally, Mr. Parker acknowledged the concern expressed

by many lawyers that some paralegals do not have an appreciation or respect for the rules of conduct and decorum expected of advocates who appear before the court.

All in all, the Plenary attendees found Mr. Parker's remarks refreshing as they came to understand that their position was not, in fact, different from that of the Ontario Paralegal Association and that both lawyers and established paralegals are eager to improve the professionalism, competence and standards of paralegals. Mr. Parker did note, however, that this goal of constant improvement should be something for all licensees, not just paralegals and on that, all agree.

The final speaker in the panel was Joseph Neuberger, past President of the Toronto Lawyers Association who struck the ad hoc paralegal working group during his term. The working group was struck so that various groups, including CDLPA, could speak with a unified voice about the issues of concern regarding paralegal licensing, standards and education. Mr. Neuberger applauded the work of the Law Society to improve the testing process and accreditation of the schools, but noted that his group would be watching closely to ensure the more stringent goals are being adhered to. He also noted that the working group remains particularly concerned with matters like the claims made by paralegals in advertising and in particular the claims made in various languages aimed at minority communities across Ontario where the clientele might not be aware of the distinction between the matters a paralegal can take on versus those in the purview of lawyers.

As in the session on Practice Resource Centres, the discussion that followed the presentations was lively and informative. We would also encourage the reader to review the video of this session.

Of particular note, as a final observation of the session, **Dan Pinnington**, Vice President of LawPRO noted that on the topic of limited licensing involving lawyers and paralegals, Washington State was undertaking an interesting experiment in [Limited License Law Technicians](#) (LLLT), specifically in family law, at least to start. This program requires one year of law school, and two years of specialized training allowing the LLLT to undertake a limited practice in family law (drafting of

documents, etc, but not appearing in court). Mr. Pinnington notes that a number of other states are watching the program and that at least a half-dozen other states are considering something similar in the area of immigration law.

In response, Mr. Parker noted that in the United Kingdom, scope of practice for paralegals – which is a well-established profession – is almost exactly opposite from in Ontario. Paralegals, for example, can appear in family court, but not in most other areas of the court and recently one paralegal in the U.K. was licensed as a solicitor based on his work experience in real estate conveyancing alone.

All of these developments in Ontario and around the world continue to be of great interest to CDLPA and are matters which we will continue to monitor and be active on.

DIRECTOR OF PUBLIC AFFAIRS UPDATE

Michael Ras, CDLPA's Director of Public Affairs, gave his report outlining his activities of the past few months and also reported on the status of various government and stakeholder relations initiatives.

Michael reported on each of the main pillars of his mandate:

- Improving the “share of voice” and advocacy positions of CDLPA on major issues affecting the practising bar in Ontario;
- Improving the communication and responsiveness of CDLPA to its members and to the practising bar that our members, in turn, represent;
- Improve the financial position of CDLPA by seeking new sources of revenue and improve the value proposition of CDLPA to its membership.

Improving the Advocacy Work of CDLPA

Michael highlighted:

We have added new sources of revenue, including a gross profit of \$45,000 from the most recent China trip, increased sponsorships for Plenary and in 2015 plan to roll out some more affinity marketing relationships and partnerships.

The other focus in 2015 will be to improve the value proposition for our members so that local associations can grow their membership numbers, which in-turn, has a positive follow-on impact on CDLPA's bottom-line.

Bencher Election

On the subject of the Bencher election, CDLPA took a great interest in this election, but struggled with where it could or should participate. Among all the concerns, the lack of solicitor representation at Convocation came to the top of our list and in the end, our efforts in this area were a modest success.

Nineteen solicitors who had real estate or business/commercial experience stood as candidates and CDLPA raised its profile with many of the candidates. In the end, six of these solicitors were elected. This is disappointing, but better than it could have been!

On the more disappointing side, the participation rate went from 37% to 34%, which is definitely a trend in the wrong direction. A survey of other law societies across the country shows that this participation rate is on the low-side compared to other jurisdictions but not out of line. (Quebec tops the list at 44.5% and Nova Scotia is lowest at 31%).

Over the coming months, CDLPA will be looking over the participation numbers, demographic trends and results and canvassing with both candidates and voters to determine if there are any recommendations that we can make to improve the system for next time. It is interesting to note that there is significant media and academic interest in this election result.

Looking forward ...

In the coming months, Michael reported that he will remain busy with a number of high-profile and time consuming initiatives including:

- TAG – The Advisory Group on Access to Justice.
 - Michael is now a member of the reference group with other association

staff helping to shape the agenda of this work.

- Legal Aid/ASLA, working on the criteria around new funding and improving eligibility
- Alternative Business Structures and Entity or Compliance-based regulation
- Practice Resource Centre system reforms
- Improving the membership value for our members, helping our associations become more dynamic and responsive to member needs.

TREASURER'S REPORT

Mike Winward, Treasurer of CDLPA, gave a report on the financial position of the Association. His report noted that our financial position is strong and that the budget is tracking at or better than projected on both revenue and expenditures. A significant reserve remains in place in a GIC giving CDLPA sufficient cushion to operate.



*Mike Winward, CDLPA
Treasurer*

Revenue is up this year due to a larger than expected net profit from the April 2015 China trip. While income is up, overall expenses continue to trend downward as a result of the concerted effort to cut expenses. A deficit was budgeted for 2015, but that deficit is tracking at less than forecast.

The long-term financial plan includes more revenue from sponsorships, fundraising on things like the China trip and other creative ways to identify more revenue streams. Mike also noted that CDLPA is coming to the end of its three year cycle of funding from the Law Society and will be applying for another three year cycle in July of 2015. There is discussion underway with the Law Society about finding creative ways to bolster that contribution in recognition of the increase in activities undertaken by CDLPA that have a benefit for the Law Society.

CPD ONLINE

CDLPA is pleased to welcome CPD Online as a new sponsor for this Plenary. CPD Online already enjoys a partnership with the TLA and CCLA and both **Joan Raitac-Lang** and **Rick Haga** spoke favourably about CPD Online's programs and revenue-sharing initiatives that are open to other associations across Ontario.



CDLPA encourages local associations to check out CPD Online and consider their programming as part of any CPD programs your association might be considering.

TECHNOLOGY TO HELP SOLES AND SMALLS – RISKS, REWARDS AND REQUIREMENTS

This session was worth two professionalism hours and featured a terrific line-up of experts in the use of technology to drive efficiency, build better security and create value for law practitioners.

Eldon Horner, Vice Chair of CDLPA moderated the panel that featured **Lou Milrad**, principal of Milrad Law and a well-established expert in the area of technology in the practice of law. Early in his career, Lou was Chair of the Canadian Bar Association Task Force on Computerizing the Legal Profession and since then has been a keen student of the technologies that could improve the practice of law.

Caterina Galati, the Law Society's Senior Competence Counsel spoke to the perspective that the Law Society has toward technologies and, in particular, spoke to the Law Society's position on the use of "cloud" storage for legal records.

Dan Pinnington, VP of Claims Prevention & Stakeholder Relations, and a noted "technophile" in his own right who frequently speaks and blogs about technology in law, spoke about the use of technology from the perspective of the steps that lawyers need to take to keep information safe and confidential.



Our panel ... apparently all using the technology they're speaking of!

The impetus for this session was two-fold. First, the ABS Discussion Paper from 2014 noted that one of the driving forces for ABS put forward by proponents is that lawyers will be able to access capital and innovation to utilize technology more. Our response countered that most sole and small practitioners feel constrained and confused about technology because of a lack of clarity around the rules provided by the Law Society and insurers and that the ownership structure and access to capital were secondary concerns, if they existed at all. Second, on behalf of many practitioners, CDLPA has recently made inquiries to the Law Society for a clarification of the rules around cloud-based services and received answers that were vague. Also, many practitioners are interested in learning more about the various technologies that can improve a practice, but do not have the time or skills to research this themselves.

A full report on the entire two hour presentation by this esteemed panel would fill a dozen pages in this format, and still not do it justice. We would encourage the reader of this report to view the entire presentation on-line at this link.

At the end of the session, a passionate plea from the audience was expressed by Alfred Schorr, Central East Representative, who called on the Law Society to do more to clarify the rules around cloud computing so that lawyers would have a more definitive and clear understanding of their obligations and what they are allowed to do. This plea was met with applause from most in the audience and is a matter that CDLPA continues to follow-up on with the Law Society.

COURTHOUSE ADMINISTRATION & SECURITY – THE PRIVATE BAR AS AN INTEGRAL STAKEHOLDER

This panel was initially to have featured Justice Joyce Elder of the Ontario Court of Justice in Thunder Bay, but a sentencing and the funeral of a friend prevented her from attending. Justice Elder's insights into the issue of courthouse security were discussed amongst the panelists before the session and her views expressed by CDLPA Chair Cheryl Siran during the session.

Despite Justice Elder's absence, the panel of **Sheila Bristo**, Director of the Divisional Support Branch, Court Services Division, **Rae White**, Past President of the Peel Law Association, **Cheryl Siran** and **Michael Ras**, Director of Public Affairs, made the session a constructive one. **Jaye Hooper**, 2nd Vice Chair of CDLPA moderated the panel.

CDLPA felt that this topic would be worthwhile based on the feedback of Presidents about a myriad of security questions in courthouses and in light of a number of recent high-profile incidences of court security problems. The fatal shooting at the Peel courthouse; at least two incidences of arrests of lawyers, while in full barristers' robes, in recent years; the recent passage of *Bill 35, the new Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act*; recent cases of judges intervening to order police to reconsider their use of restraints in certain cases on prisoners in the court; and the seemingly haphazard application of security standards in courts across Ontario have all been raised as issues of concern by the practising bar. Most importantly, the issue of courthouse security is fundamentally an issue of workplace safety. The place where lawyers work must be both accessible and safe.

Ms. Bristo started the presentations by providing a "who-does-what" briefing of the various parties that have responsibility for court security.

In short, local police have the primary responsibility for court security, including determining the right level of security and procedures to be used, depending on local circumstances. Presiding judicial officials work with local police to set local policy. The Ministry of Community Safety & Correctional Services set, audit and enforce general guidelines on court security plans and ensure that

each police force establishes local court security committees. The Attorney General, through the Business Continuity and Emergency Management Unit (BCEM) works with local court staff to write emergency management programs and procedures. These plans include things like the codes you might hear over the public address system in a courthouse. The Attorney General also works with Infrastructure Ontario agency on the capital plans associated with any spending on courthouse security infrastructure.



Cheryl Siran, Rae White and Sheila Bristo

The most important part of Ms. Bristo's presentation, however, was her assurance that every court must have a local court security committee in place and that committee must include all the relevant stakeholders, including representatives of the private bar. She noted, however, that there was a wide inconsistency in participation with some regions having moderate or low-levels of participation.

Rae White focused her presentation on the fall-out from the Peel courthouse shooting and of the number of court-security problems that were exposed by this emergency. Among the examples cited, one judge continued to hold court, breaking the protocol where he was to retire to chambers and enter a protected area; a door that was left unguarded that the police were unaware of; Crowns who insisted on being let out of their offices and many other examples. In the post-incident period, the Peel Law Association encountered great difficulty in being considered as a stakeholder by the "after-action report" committee and it took an intervention from the judiciary to get Peel forced into the conversation.

Ms. White also made reference to the [R.v. Fortune](#) case, which is a ruling on the use of restraints in the courtroom.

It is the policy of the Peel Police in the Brampton courthouse that all prisoners remain handcuffed while in the prisoners dock, even though the dock itself is quite secure. Mr. Justice P.A. Schreck of the Ontario Court of Justice raised questions about the liberal use of restraints and ordered that they be removed. He also ruled that,

... when accused persons are brought into the courtroom, handcuffs should be removed as soon as they are placed into the dock unless the court officers are aware of a security concern respecting that particular accused. If that is the case, the officers should notify Crown counsel, preferably in advance, so that he or she may make the appropriate application before the presiding judge.

Clearly, this has widespread implications for the application of court security procedures across the entire system.

Ms. White also made the point that each Association has a responsibility to consider the security and safety of their own staff and should work with local police to determine whether cameras, special locks, card locks, panic buttons or other measures should be considered in the courthouse libraries. Every association will have different needs and these need to be considered.

In her presentation, Cheryl Siran noted that there was a very inconsistent application of court security standards across Ontario and in particular with standards in places like the temporary courts used in fly-in communities in the far North. This diversity of circumstance makes it very hard to set consistent standards, but the system must work to ensure there is some degree of common sense that balances the need to have secure courts that remain accessible.

She went on to note that it was extremely important for the local associations to get involved in their local court security committees, if for no other reason than to be informed of what's going on. The committees are called different things in different courts, but they all serve a similar function and it's up to each Association to ensure fight for their place to be heard.

In Michael Ras' presentation, he posed the rhetorical question around "why do we care ... why is CDLPA interested?" The answer, of course, is that the private

bar are integral and important stakeholders. The private bar and local associations need to be involved and must take advantage of the opportunities afforded it.

In conversation following the presentations, a number of associations reported problems in finding information about their local security committees and, in at least one case, a local association was met with near hostility for trying to force their way onto the committee and to making security-related suggestions. CDLPA continues to urge Presidents and Associations to report instances where they encounter problems through to your Regional Representatives or Director of Public Affairs, Michael Ras. If enough of these local circumstances can be documented, CDLPA will make a representation to the Attorney General and others in an attempt to get the situation fixed.



***REW GOODENOW, PRESIDENT –
NATIONAL CONFERENCE OF BAR PRESIDENTS,
UNITED STATES***

The partnership between CDLPA and the NCBP deepened with the presence of **Rew Goodenow** at our Plenary meeting. Rew travelled from his home in Reno Nevada all the way to Thunder Bay and delivered a fantastic speech to accompany our "Treasurer's Reception and Dinner" at the Bora Laskin Faculty of Law.



Mr. Goodenow's speech ([found at this link](#)) focused on the U.S. Bar's approach to, so-called, "Alternative Business Structures". His speech laid out a startlingly

similar view to ABS as CDLPA's view and the similarity between where many U.S. states lie and where Ontario and the Law Society are situated. For example, as Mr. Goodenow noted, "Long on anecdotal input and short on data is the way that I would describe the current state of the literature and research into ABS."

While Mr. Goodenow doesn't come to a definitive conclusion or opinion on ABS, he does raise some important questions and his speech is an entertaining read which we commend to you. Though reading it does not do nearly the justice as seeing it live. We just wish we had video-taped it!



LAW SOCIETY UPDATE – REPORT FROM ROB LAPPER, CEO OF THE LAW SOCIETY OF UPPER CANADA

Please note, the video of this session is not available.



Robert Lapper, CEO of the Law Society of Upper Canada

A standard feature of CDLPA Plenary's is the report by the CEO of the Law Society and once again, Rob Lapper offered a very good overview of activities over the past six months and touched on a number of items that will be worked on over the next six months.

Bencher Election

Mr. Lapper noted that there are now 18 new benchers on Convocation, the largest change or turnover since 1995. The reason is mostly to do with new rules which limited the terms of benchers to twelve years and caused a number of long-standing benchers to retire. It was also noted that all the incumbents who stood for re-election were elected.

Presently, strategic planning with all the Benchers is underway to map out the priorities the next four years

for this Convocation and it is expected that a new strategic plan will be ready for October. CDLPA looks forward to a presentation on that plan at the November Plenary.

For the issues that were raised in the Bencher election campaigns, Mr. Lapper provided an update on the status of some that received a lot of attention.

On [articling reform and the Law Practice Program](#) ... during the campaign the future of articling and the LPP received a great deal of attention, particularly after a controversial [Notice of Motion](#) was filed at the Law Society AGM. At the AGM, this motion was defeated, but it did succeed in sparking considerable [discussion](#).

Mr. Lapper acknowledged that the "[Pathways](#)" project (which introduced both the LPP and reforms to the traditional articling process) was controversial, but he urged patience with the process that is only in its first year of a three year pilot program.

On [Alternative Business Structures](#) ... The ABS Working Group is presently reviewing the feedback from the 40+ submissions, including CDLPAs, and is "taking a considered and measured approach" before deciding next steps, if any. The Law Society is looking at the entire question of ABS through the lens of the protection of public interest and through that lens is studying all options.

On [libraries](#) ... it is "*safe to assure you the Law Society understands the important role of libraries in the provision of legal information and the maintenance of member competence and look forward to the recommendations ...*"

On [access to justice](#), Mr. Lapper noted that most of the candidates touched on this issue in their campaigns, in some way, and that it would likely remain a top priority for Benchers in the coming term. A session on [TAG, The Advisory Group on Access to Justice](#), is reported on later in this session.

On the issue of [racialized licensees](#), Mr. Lapper reported on the Working Group on Racialized Licensees and their efforts to find strategies to improve inclusion for lawyers at all stages of their professional lives. The working group is reporting to Convocation by the Fall of 2015.

On the subject of the **Law Society budget**, many candidates called for tighter budgeting, greater accountability and for holding the lines on fees. In light of this, the Law Society is looking at some potential storm clouds on the horizon as there is at least one serious claim on the compensation fund. A \$10.2 million claim resulting from a high-profile condominium case could drain the reserves of the Law Society, if the matter results in a payout from the Compensation Fund. The concern is that if another large claim comes forward, the reserves will need to be replenished.

Looking forward, subject to changes that might arise from the strategic planning process underway, Mr. Lapper reported on a few matters that he expects will become “hot topics” in the coming months. They include:

Entity and Compliance Based Regulation

The Law Society feels it must always be looking at innovations in regulatory structures and is currently undertaking a detailed examination of compliance-based regulation.

By definition, compliance-based regulation is an outcomes focused regulatory approach. The standards are set and the regulator provides flexibility to the regulated entity on how the outcome should be achieved. This type of system is most effectively implemented if the regulator can regulate firms or entities because the regulation often involves firm-based processes, rather than individual behaviours.

Any changes to this direction will require legislative change, so the committee is writing a report which could form the basis of legislative change that would be introduced in the Ontario Legislature sometime in the next few years. Mr. Lapper noted that Manitoba recently passed legislation on this topic and that other provinces are looking to follow suit.

He did note that the early research indicates that there is evidence that such a system generally reduces complaints and improves ethical conduct and it makes compliance and enforcement more efficient and therefore less costly for both the regulator and regulated entity.

There is more on this topic expected by the Fall of 2015, including a plan for an extensive engagement with the

profession, including CDLPA. Since “entity” regulation will have the greatest impact on small and medium firms, it is expected that CDLPA will be very active in this discussion.

Mental Health

The subject of mental health in the legal profession will rise near the top of the list of priorities in the coming months and there is evidence of growing interest in the topic. A [webinar](#) on the subject held by the Law Society May 6th saw over 1,500 on-line participants join the conversation. As Mr. Lapper noted this is “an area the profession can’t ignore” as it has an impact on both the mental health of professional colleagues, but it is also important for lawyers to better understand the mental health of their clients. As always, the greatest barrier to overcome is the stigmatization of mental health and this will be a focus of the work.

Aboriginal Engagement

The Law Society has made it a priority to better understand the role of the legal profession in the process of reconciliation with Canada’s First Nation, Metis and Inuit communities. As a first step, the Law Society has begun an extensive outreach to First Nation, Metis and Inuit community leaders to better understand justice from their perspective. This involves a number of community visits and discussions about what the Law Society can do to improve access to justice for these communities.

On the related topic of complaints against the profession arising from **Indian Residential School representation**, Mr. Lapper noted that these complaints represent a particular challenge for the Law Society. Presently, there are approximately 30 cases before the Law Society alleging misconduct on the part of lawyers who represented Indian Residential School victims. These cases require “special handling” because the victims are often from remote communities, often lack the ability to communicate through phone or e-mail, have a language barrier to overcome and are dealing with varying degrees of psychological trauma. The Law Society is taking a proactive approach to these cases and is travelling to many of the communities to hear first-hand accounts and has also allowed for Band Leaders to file claims and make representations on behalf of the victims to at least help get the process started.

On the ever popular topic of the **complaints** against the profession, Mr. Lapper reported:

1. 6,155 new complaints in 2014
2. 4,781 referred to professional regulation
 - o 504 of these complaints were of legal representation by non-licensees
 - o 543 against paralegals
 - o The balance against lawyers
3. In 2014, 2,640 cases were closed based on jurisdiction, early resolution or insufficient info
4. 1,863 were investigated
5. 127 cases involving 227 complaints were resolved after a hearing

Overall, there was a slight downward trend in complaints, but the complaints received today are generally more complex, involving tougher, more complicated cases and come from more sophisticated and demanding complainants.

On the specific issue of mortgage fraud, the Law Society averages 4.5 new cases per month and this trend has generally held steady for each of the last number of years. Since 2001, 109 prosecutions for mortgage fraud have been undertaken and currently 75 lawyers being investigated for mortgage fraud. In the first half of 2015, the average number of new cases has dipped to 2.75 per month, but it is too soon to say whether this is an anomaly or the start of a positive trend.

Among the questions asked from the floor, **Craig Rogers** of the Lanark Law Association, asked a question regarding interprovincial lawyer mobility and Mr. Lapper reported that all but Quebec and the Territories had signed on to agreements allowing for full mobility of lawyers across Canada. The hold up in the Territories was some “technicalities” and in Quebec, the hold-up was a political reaction to the Marc Nadon, Supreme Court appointment and some concerns with insurance, but that both of these would be cleared shortly paving the way to full mobility across Canada.

We thank Mr. Lapper for his candid and informative report on the state of affairs at the Law Society and look forward to welcoming him again to our next Plenary meeting to report again on the progress from many fronts.

CDLPA's RESPONSE TO TAG – THE ACTION GROUP ON ACCESS TO JUSTICE

The Action Group on Access to Justice has been very successful in putting the issue of access to justice on the agenda, but CDLPA has struggled with the question: “What does it mean?”, or more specifically, “What can (or should) CDLPA do about it?”

To that end, CDLPA invited three distinguished speakers back to our Plenary to discuss their thoughts around access to justice to stimulate the conversation and help us formulate a response. **Chris Bentley**, former Attorney General and now Executive Director of the [Law Practice Program](#) and the [Legal Innovation Zone](#), both at Ryerson University; **Professor Lee Steusser**, Founding Dean of the Bora Laskin Faculty of Law at Lakehead University; and **Grant Wedge**, Executive Director of Policy, Equity & Public Affairs at the Law Society and lead staff member responsible for the TAG initiative all joined us to give their perspective.

Mr. Wedge started off giving an update on the status of TAG asking the question “What is TAG?”

In summary: “*TAG is a community of organizations and individuals committed to working collaboratively to find new solutions to access to justice challenges in Ontario.*”



Over the past few months, TAG has begun to hold a series of meetings and symposia on various topics, such as limited scope retainers to explore them as possible contributing solutions.

The Law Society has also hired, thanks to a grant from the Law Foundation, Sabreena Delhon as Manager of TAG to work as a connector and coordinator of all the various strings of activity. The goal of Sabrina and TAG is to “make ideas and activities real, whether they be local, regional or provincial”.

The work of TAG is mostly focused on five “clusters” of activity:

- *Targeted Legal Services* (also known as “limited scope retainers” or “unbundled legal services”);
- *Assessor Task Force*, bringing together family justice participants to address the impact of frivolous and vexatious complaints against custody and access assessors;
- *Family Law Online-Shared Step*, led by CLEO (Community Legal Education Ontario), this online service will provide practical legal information that is accessible to the public and trusted intermediaries
- *Rural Libraries* working with the “Community Advocacy & Legal Centre” and the “Boldness Project Rural and Remote Access to Justice”, this cluster will engage public library staff to increase access to legal information and quality referrals to accessible clinics across Ontario.
- *Mental Health & Wellness* – working to increase the training for licensees who work with clients that have mental health issues.

Some clusters in development include:

- *Aboriginal Justice*, focusing on collaborative work that promotes Aboriginal restorative justice and will proceed in conjunction with the Debewin (Implementation) and Advisory Committees established in response to Justice Iacobucci’s Report on Aboriginal Participation in Juries.
- *Technology/Legal Information* will involve broad engagement of community and legal

Notably, Dean Steusser has since suddenly resigned from Lakehead, effective June 30th. No reasons have been given, but we are sad to see this great champion of affordable, accessible legal education in Ontario leaving the field. We look forward to Dean Steusser’s next role and remain confident that he will always be fighting for what is right. In whatever role he next tackles, he will have a friend in CDLPA.

organizations to develop principles that ensure that technology is used to increase access to justice.

- *Public Legal Information (PLE)* – will facilitate information sharing and collaboration among PLE organizations in order to enhance impact and reduce duplication of resources.

Professor Lee Steusser, Dean of the Bora Laskin Faculty of Law at Lakehead University addressed Plenary and spoke to three aspects of “access to justice” and about what his law school was doing in these areas.

He spoke to

- Accessibility
- Affordability
- Action

On accessibility, Professor Steusser spoke to the simple concept of physical accessibility and the particular challenge of overcoming barriers of distance and weather that so many in rural and remote communities have to face. “it’s a simple thing, but it matters ... and having a school in the north makes a difference”. He also noted that there were many other “simple” things that could be done to help remove accessibility barriers. Examples such as a call to the bar ceremony in Thunder Bay or holding a sitting of the bar exams in Thunder Bay.

On the question of affordability, Professor Steusser noted that: “*I cannot justify the levels of tuition in Ontario*”. *University of Toronto law school tuition is \$30,200; Lakehead \$15,594. It shouldn’t be the reality ... If we want our young people to be professionals ... we should be demanding that tuition be funded through the tax base ... because it is a barrier to entry to the profession and to where they practice when they graduate.*” He went on to urge Plenary delegates to “contact your MPP”.

And on “action”, Dean Steusser noted that “a lot of ‘little things’ could be done and that are being done at Lakehead and in communities across Ontario that ‘just do it’”. On the video, he gives a number of these “little” examples that are low-dollar, high-impact ways that professionals can come together to take action.

His closing message: “Fight for accessibility; fight for affordability ... and, just do it! Take action.”

Chris Bentley was the next to speak and focused his remarks on innovation in legal services. As he noted, “innovation” is the buzzword in justice today, but as he

sees it: “*The need for looking at justice differently, as well as the need to deliver the highest quality service, and the opportunity for you in your individual practices have now come together ... and what moves me is that the time for action is past ... there is an urgency to this (need to innovate).*”

“*The need to innovate is a desire to ensure access and ensure that those in the legal profession are leading the charge, rather than responding to it.*”

In his remarks, he noted that “access to justice” is no longer (just) about dealing with the poorest of the poor. Access to justice is “*a huge market opportunity*” and that’s the way it must be approached. Too much about the current conversation is looking at the justice system in its current, paper-intensive iteration. “*Every successful business starts with cutting out the paperwork, leaning the process and cutting through to the decision maker faster ... Skinny out the paper; skinny out the steps and get to the stuff you (as trained professionals) can deliver value on.*”

To take action on this, Mr. Bentley has been the driving force behind the creation of the [Legal Innovation Zone](#) (LIZ) at the Digital Media Zone at Ryerson University. This is Canada’s (and possibly the world’s) first “legal incubator”. It is an attempt to help the legal world adapt to change, but more importantly, to get out ahead of the change.

The LIZ will have three streams:

1. For the individual entrepreneur who has a “smarter, faster, better” idea, service or product and needs help to bring it to market.
 - The LIZ and DMZ will provide space, access to advisors and a network of colleagues to help collaborate.
 - At first, rent is free with a small escalation as the product succeeds. If it doesn’t move forward, they are moved out. “*Up and on, or out.*”
2. For law firms, corporations, financial institutions, organizations, government who have an idea or innovation:

- The LIZ and DMZ will be a platform to help bring an idea to life by creating a culture of innovation

3. “Designing the 21st century justice system”

- The LIZ will pick issues or processes in the justice system and say “this is how we do it now” and come up with ideas of “how it could be done” better, faster, cheaper.

“*Systems are built for the rule, not the exception ... we need to find a safe place for the exception to be explored.*”

All three speakers challenged CDLPA to think innovatively, challenge convention and take action. Their presentations were informative, entertaining and provocative and we thank all three.

LAWPRO UPDATE

Another staple of CDLPA Plenary's is the update provided by LawPRO on the state of the professional liability insurance company for the profession. Once again LawPRO CEO Kathleen Waters delivered an informative presentation on the activities of the company and the trends taking place in the industry.

Ms. Waters' presentation, together with her slide presentation can be viewed [here](#).



Kathleen Waters,
LawPRO CEO

A major highlight of her report was a report that the financial position of LawPRO is very strong because of a strong equity market for investments and a very low general expense ratio of 18%, which compares against an insurance industry average of 25 - 30%.

She also reported that LawPRO has a minimum capital test ratio of 251%, which is well above the preferred range set by the regulator (214%) and internal targets of 220-230%. For the 15th year in a row, LawPRO has been rated as a "A" company by A.M. Best rating agency. This is exceptional for an insurance company of their type and size.

The full financial story can be accessed at this [link](#).

The claims results for 2014 showed steady progress:

- 2,572 claims reported
- Claims per thousand lawyers was 103 – down slightly over prior year
- The number of open files is up to 3,800, but it is also harder to close those claims as they more complex and have complainants that are more sophisticated and dogged in their determination to continue with action.

Litigation and real estate still lead the pack among number of claims with 34.4% and 26.6% respectively. In trends, wills and estates claims are rising, perhaps because of Ontario's aging population and the "boomer" generation starting inherit, leading to more litigation.

Ms. Waters also noted that 43% of files closed with no payment; 41% closed with defense payment only and 16% with defense and indemnity.

Ms. Waters also gave a briefing on how LawPRO is dealing with Rule 48 that will bring major changes to administrative dismissals. An article published by PracticePRO on the topic can be accessed [here](#).

CDLPA is also very appreciative of the sponsorship support that is provided by LawPRO and its other product titles at every Plenary and we look forward to a continued strong relationship going forward.



OTHER BUSINESS TO ARISE

Arising from the Regional Roundtables, a resolution was introduced and passed unanimously respecting the recent practice directive issued across Ontario that consolidates where mortgage actions are to be initiated.

The issue raised by **Gordon Campbell**, President of the Stormont, Dundas & Glengarry Law Association in the East Region, came down to two issues: First, a decision by the Regional Senior Justice that will impede access to justice, particularly for those in outlying areas; and second, a decision taken without any consultation with the practising bar that continues a trend that is slowly marginalizing the voice of the front-line practising bar in the administration of courts.

The basic facts of the issue are that on March 31, 2015 a rule came into effect in East Region that required all mortgage actions should be initiated in the Ottawa courthouse. For lawyers working in other towns and cities throughout the East Region this would require either that they drive to Ottawa (and for some this is up to a three or four hour drive), refer the case to Ottawa-based counsel or share the file (and fees) with an Ottawa counsel. The point was made that there have always been specialized courts in larger centers, but mortgage actions have been handled quite competently by experienced Judges in courts like Cornwall and other centers for many years.

In subsequent discussion about the resolution, it came to light that a notice was filed in the Ontario Reports March 13th that gave the Regional Senior Justice in every jurisdiction the ability to designate any county court as the designated courthouse for the filing of any mortgage action. In the case of Central East, all motions are now required to be filed in Oshawa. It seems this is now a province-wide issue and not just confined to East Region.

The initial resolution read:

Be it resolved that CDLPA opposes the amendment which came into force on March 31, 2015, to the consolidated practice direction for the East Region pursuant to rule 13.1.01, sub 3 of the Rules of Civil

Procedure designating Ottawa as the place for commencement of mortgage proceedings for property located anywhere in the East Region.

CDLPA maintains that significant practice direction changes require advance, meaningful consultations with the Bar and that mortgage proceedings should be able to commence in jurisdictions where properties are located.

CDLPA believes this practice direction change will lead to an erosion of access to justice and increase cost to clients.

A series of friendly amendments were put forward to differently structure the wording of the motion and to make it a more general and broad-based resolution to give CDLPA the mandate to enter into a discussion with the Attorney General and others to address this issue at a system-wide level.

The amended resolution, passed unanimously read as follows:

Whereas the East Region on March 31, 2015, issued a consolidated practice direction for that region pursuant to Rule 13.1.01(3) of the Rules of Civil Procedure, designating Ottawa as the place for the commencement of mortgage proceedings for property located anywhere in the East region;

And whereas CDLPA believes practice directions may have been issued in other areas of the Province similar to this;

And whereas CDLPA believes this practice direction or types of practice directions of this nature will lead to an erosion of access to justice and increased cost for clients;

Be it resolved that CDLPA maintains that significant practice direction changes should require advance, meaningful consultations with the Bar and that mortgage proceedings should be able to be commenced in the jurisdictions where the properties are located.

Please note that the final wording of this motion is written based on the discussion held at Plenary and which can be viewed and heard at this [link](#).
<http://streaminginc.com/cdlpa/2015-spring/d2-04.html>

Next Steps and Follow-Up Actions:

1. All Presidents are encouraged to examine the practice directives in their region to determine if the mortgage rule has been implemented. Please report this to Michael Ras, Director of Public Affairs.
2. Please provide a list of any other practice directives or major changes to the administration of courts that have been implemented without consultation with the Bar.
3. CDLPA will write a letter to be sent to the Attorney General and copied to other appropriate bodies requesting a review of the specific decision with respect to mortgages and in general with respect to unilateral decisions affecting the administration of the Courts.
4. CDLPA will undertake a lobbying effort over the coming number of months to bring pressure on the Province of Ontario so that further decisions that erode the work of smaller courthouses are avoided.
5. CDLPA will provide an update on these efforts at future Plenary meetings and in regular correspondence to the Presidents.

Please distribute this report to your members!

We encourage you to share this newsletter with all of the members of your association. If you wish for us to e-mail this document directly to anyone, please let us know.



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