



The County & District
Law Presidents' Association

L'Association Des Bâtonniers
De Comtés et Districts

"The Voice of the Practising Lawyer in Ontario"

Cheryl Siran – Chair
Eldon Horner – Vice Chair

REPORT OF THE MAY, 2014 PLENARY

REPORT FROM THE CHAIR

The 2014 May Plenary was one of the most successful plenary's of CDLPA's history. And it's not just me that's saying so – the survey responses (35 in total – a new record) have been overwhelmingly positive. One respondent who has attended more than 20 plenary's on behalf of her local association commented that this plenary was "the best one yet". Well, I haven't been to 20, but I agree!

So what made this year's plenary so successful? First, the speakers and presenters were their usual provocative selves – and it didn't hurt that we have some "hot" issues such as ABS and the future of legal aid to discuss.

Second, the participants and delegates from local associations across Ontario – representing nearly every one of our 46 local associations – were vocal participants in the debate and discussion. They asked challenging questions and engaged in a thoughtful dialogue.

Third, the venue was comfortable and kept nearly everyone "on the campus" which resulted in some terrific discussion during the breaks and the evening hospitality. The Ivey Spencer Centre was an affordable venue – and while it may have some flaws and is showing its age in a few places, the food and accommodations suited our needs very well and the mostly positive survey responses reflected this. We learned some lessons from this experience at Ivey and will be applying them to future events as well.

To all who participated as delegates from their local associations, thank you for your contributions and support. To all who are reading this and could not participate, I urge you to click on some of the links to watch the sessions yourself. In past years we provided audio recordings of the sessions, but this year were able to provide a video recording for nearly the same price so decided that this would be a better way to record and share the sessions. I look forward to hearing feedback as

to whether this is something we should continue into the future.

The most important thing that arose out of our plenary meeting, however, is the consensus position from our members that CDLPA must focus on a few key issues and items in the coming year.



Cheryl Siran, CDLPA Chair

We heard the message loud and clear that CDLPA needs to be engaged in the discussion on alternative business structures – wherever that conversation takes us – with an eye on the impacts of ABS to the soles and smalls that make up the bulk of our membership.

Second, the membership has told us that they want us to continue our advocacy on behalf of the county law library system and to stand up against budget and staff cuts that could erode this essential service.

Third, they want us to remain active advocates on behalf of a sustainable, private-bar focused legal aid system.

Fourth, they want CDLPA to continue to lead the discussions around real estate and developing solutions to stop the economic erosion of the real estate practice in Ontario.

And fifth, we heard support for our efforts to improve the financial position of CDLPA by finding new sources of revenue and cost cutting where possible. All of these – and more – were discussed since Plenary at the CDLPA executive strategic meeting held in Kenora on June 5th and 6th.

At this Plenary meeting, I took the reins of CDLPA as Chair and I would be remiss if I didn't repeat some of words I shared at the Plenary to thank our outgoing Chair, Janet

Whitehead. In Janet's 18 month term, and over her entire career on the Executive, she has worked tirelessly as an advocate for CDLPA and for the constituency of practising lawyers across Ontario. She has set a high bar for her successors and I am so grateful that she will be remaining on the Executive Board as the Past Chair to continue to give guidance and advice.

It is fitting that Janet's last Plenary is the highest-rated plenary in our history because it reflects the fact that our association has never been stronger and that it continues to grow in relevance and influence. Janet – on behalf of the entire CDLPA Executive, all the Presidents and all the lawyers of the practising bar across Ontario, **thank you!**

*Cheryl Siran,
Chair, CDLPA*

2013 ANNUAL REPORT

The 2013 Annual Report for CDLPA was presented at the May Plenary. If you are interested in reviewing a copy, it can be downloaded at this [link](#).

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 in the dining room were not recorded and cannot be provided. If you have trouble with any link, contact mike.ras@cdlpa.org.

CARL SMALLWOOD, PRESIDENT, NATIONAL CONFERENCE OF BAR PRESIDENTS

"THINKING OUTSIDE THE BOX"

Carl Smallwood, President of the National Conference of Bar Presidents, brought greetings on behalf of our sister organization in the United States. Carl is based in Columbus, Ohio and drove through some bad thunderstorms to make it in time and we appreciate his

dedication to improving the practising bar on both sides of the border!

Mr. Smallwood's address focused mostly on the similarities between the challenges facing the practising bar in the U.S. and in Canada. He also focused his remarks on the various innovative ways that the private bar in the U.S. is dealing with the universal challenge of access to justice.

His comments about "legal incubators", pointing in particular to the [Columbus Bar inc Professional Development Center](#) project in Carl's hometown, are particularly interesting to CDLPA. This project accelerates the successful development and integration of new lawyers in practice by providing start-up business resources such as an office facility, office equipment, access to mentors, training on law practice management and networking opportunities. In exchange for the services provided by the Columbus Bar, participants agree to accept at least one pro bono case during their one-year term, creating an additional resource for serving unmet legal needs in the community.



This particular project was pioneering because it focused on new lawyers interested in establishing a solo law practice and the program has received praise across the U.S.

These are the types of innovations that CDLPA will be encouraging to become part of the dialogue about access to justice that are being undertaken by the Law Society in the coming months.

In the conclusion of Carl's remarks, he noted the growing relationship between the National Conference of Bar Presidents and CDLPA and how this relationship can further blossom in the future as we exchange ideas, experiences and learn from each other. We look forward to continuing this dialogue.

(Note: Carl Smallwood's presentation was not recorded as it was delivered over dinner on Wednesday evening.)

OPENING ADDRESS BY ROBERT LAPPER, LAW SOCIETY OF UPPER CANADA



The Law Society of Upper Canada | Barreau du Haut-Canada

Rob Lapper, CEO of the Law Society of Upper Canada kicked off the morning session of our Plenary with a summary covering the waterfront of issues and initiatives that are presently facing the Law Society. As Mr. Lapper himself noted, there is no unifying theme to all of these issues, except perhaps that they are all urgent and all require a great deal of time and attention of the Law Society staff.



Robert Lapper, CEO of the Law Society of Upper Canada

Likewise, these are all issues that have the attention of CDLPA.

TAG – The Action Group on Access to Justice

At the last Plenary the work of TAG (The Treasurers Advisory Group on Access to Justice) reported on the process that they were undertaking to fulfill their legislated responsibility to promote access to justice in Ontario. The Advisory Group reported to Convocation in February and was re-named “*The Action Group*” on

Access to Justice with a mandate to “foster change and collaboration” in the profession. (And may have also chosen the new name to save on printing costs!) Convocation also

voted to dedicate resources and support from the Law Society and staff to ensure its success. To that end Mr. Lapper has reorganized some senior staff positions and brought in Grant Wedge as the new Executive Director of Policy, Equity and Public Affairs with a specific mandate to oversee TAG.

It is early days in the life of TAG – and in fact, the official “launch” was held June 3rd – but already some of the activities of TAG include some public outreach initiatives. A brochure on “Handling Everyday Legal Problems” was



Grant Wedge, Executive Director, Policy, Equity & Public Affairs at the Law Society of Upper Canada

published as an attachment in Toronto Life Magazine and will soon be attached to other publications across Ontario and made available at ServiceOntario offices and other public institutions. You can see that brochure yourself by clicking [here](#).

Articling and Law Practice Program

Mr. Lapper reported on the progress of the “Pathways” project that now offers candidates for licensure two



options – 10 months of articling or an 8 month “Law Practice Program” offered through Ryerson University (for English) or University of Ottawa (for French).

He also noted that there were now changes to the articling program – effective May 1st – to strengthen and improve the program. Those changes can be found [here](#). The changes seek to enhance the experiential part of the articling process and puts an onus on the articling candidate and the principal to develop an Experiential Training Plan.

With respect to the LPP program – to be discussed later in the Plenary program – Mr. Lapper reported that nearly the full complement of 400 candidates had enrolled in the program and he assured CDLPA plenary attendees that the program remained on track to deliver on its goals.

Alternative Business Structures

Also foreshadowing a session to be held later in the plenary, Mr. Lapper reported on the decision of Convocation to approve consultation on four models of alternative business structures. Convocation is seeking feedback on these possible business entity models that would have:

- legal services only, and allow non-licensees up to 49 per cent ownership.

- legal services only, with no restrictions on ownership by non-licensees.
- both legal and non-legal services, except those identified as posing a regulatory risk, where non-licensees would be permitted up to 49 per cent ownership.
- legal and non-legal services and any other services, except where there is sufficient regulatory risk, where non-licensees would be permitted unlimited ownership.

The Law Society will launch a formal consultation later this Fall that seeks feedback on these ownership structures and focus on questions around what regulation by the Law Society would look like in these scenarios; how the Law Society can build a more flexible business and regulatory model; how the Law Society might handle regulation of law firms vs the present situation where individuals are regulated; and, the implications, benefits and challenges of compliance-based regulation that is less prescriptive and provides greater flexibility in how lawyers might meet their regulatory objectives.

Mr. Lapper noted that many of these same questions are being looked at across the country and that the Federation of Law Societies will be holding their own consultations.

CDLPA will be very involved in the conversations and consultations about ABS – particularly as these new business structures might impact soles and smalls – and will be coming back to the membership regularly to help us formulate our position.

Legal Information & Support Services Working Group (LISS)

Mr. Lapper reported on the progress of the LISS and acknowledged the hard work that CDLPA – and in particular our past Chair, Janet Whitehead – continues to do in support of LISS. Without foreshadowing anything, Mr. Lapper noted that a report from Susan Elliott, the Chair of LISS, was coming to the Law Society soon and that it would be up to the new Treasurer to determine next steps.

Real Estate

Mr. Lapper acknowledged the lively discussion that took place in the Fall of 2013 at the last CDLPA Plenary and reported on the progress that had been made, including the appointment of Merredith MacLennan as the Chair and Gord Mackenzie as Vice Chair of the CDLPA real estate committee and their subsequent appointment to the newly created Real Estate Liaison Group of the Law Society. That Liaison Group is chaired by Bencher Ross Earnshaw where he is joined by fellow Bencher Alan Silverstein and supported by staff Sheena Weir and Caterina Galati. Also represented on this Liaison Group are representatives of LawPRO and the Ontario Bar Association. The intention is that this Liaison Group will meet regularly over the coming months to systematically go through the list of grievances and problems facing the Real Estate bar in an effort to develop solutions that can be recommended to the Law Society or other stakeholders including the Province of Ontario.

Mr. Lapper went on to reiterate and “underscore the Law Society’s deep commitment to the real estate bar” and these were certainly welcome words to those in attendance.

Note: Please see the section below on Real Estate for further comment on this matter.

Trinity Western University

Mr. Lapper reported that on both April 10th and April 24th, Convocation met to consider accreditation of Trinity Western University. Dedicating space to the issue here is not necessary, but Mr. Lapper reiterated that the Law Society considered this matter carefully in recognition of the fact that this consideration was a departure from the norm for Convocation in that it was dealing with more than policy, but also adjudicating on interests and entitlements. The Law Society received over 200 submissions – all of which can be viewed on the Law Society [website](#).

The final vote was 28 – 21 with one abstention against accrediting TWU. Since then, TWU has applied for a judicial review of the decision.

Complaints & Discipline

As has become tradition at CDLPA Plenary's, Mr. Lapper brought a [report](#) of the number of complaints that have been filed with the Law Society and a report on how effectively and efficiently they are dealing with these complaints.

In 2013, the Law Society received 6,442 complaints and re-opened 126 for a total of 6,568 active complaints. 5,040 of these were referred to the professional regulation division of the Law Society. 4,480 were matters of lawyer competence, 560 dealt with unauthorized practice of law. Of these, 2,595 were closed because the matter was not within the jurisdiction of the Law Society, there was a lack of information, early resolution or it was found in the preliminary investigation that the charge had no merit to commence an investigation. A further 2,246 were investigated and closed with a staff caution, advice to the licensee on best practice or the conclusion that the allegation was not established. 104 case closures resulted in appropriate diversion, including a practice spot audit recommendation, an Invitation to Attend, or a Letter of Advice. Only 117 matters – involving 248 complaints – were closed after a tribunal hearing on conduct or capacity.

Disturbingly, a full 83% of all complaints filed in 2013 were to lawyers who practice in sole or small firms. This contrasts to the fact that only 54% of lawyers practice in sole or small practice in Ontario.

All in all, the number of complaints have gone up year over year, but so does the membership of the Law Society so the ratio of complaints to lawyers and paralegals remains constant. Notably, in 2013 there were significantly fewer complaints on mortgage fraud.

A full accounting of the complaints can be found in the Law Society Annual Report at this [link](#).

Law Society Annual Report

This year, the Law Society did not print an annual report, but did provide a robust and comprehensive report, which includes spoken reports by the CEO and Treasurer. You are encouraged to view the report at [this link](#) and to provide feedback to the Law Society.

Law Society Tribunal

First reported at the November, 2013 Plenary, the Law Society has separated the Law Society Tribunal from the rest of the operation so that it is an arms-length and independent institution. It officially started operations March 4, 2014 once amendments to the Law Society Act made its way through the Ontario Legislature.

Since then, the Tribunal has launched a [new web-site](#) and logo that highlights its status as an independent institution. It has also introduced a new scheduling system to streamline the hearing process and reduce costs. A peer review system has been established for all written decisions and to improve quality. And finally, the Chair, David A. Wright, has instituted a [Chair's Practice Roundtable](#) for those who frequently appear as counsel before the tribunal to discuss practice and procedure issues.

While it is early days, the numbers so far show that the number of appeals of decisions are down significantly, a trend the Law Society hope to see continued.

Law Society 2015 Budget Planning Process

Last year, the Law Society moved to a new budgeting process utilizing a rolling three year forecast which gave stakeholders a better view into the future plans and challenges facing the approximately \$70 million annual budget.

Mr. Lapper reminded delegates that there are always competing needs and challenges and always more things that the Law Society can do – the trick is to develop a consensus around the priorities and ensure there are adequate resources in place for those priorities and to deal with unexpected contingencies. The planning process currently underway is a rigorous one and all members are urged to provide their input through the Law Society or the Benchers.

A particular challenge facing the Law Society budget is the lower contribution of the Law Foundation of Ontario. They are facing lower revenue as a result of lower interest rates and return on their invested funds, and therefore projects that they fund are being cut. This challenge is coupled with the rising costs of litigation and the outside counsel the Law Society has been forced to retain.

Adding to this expense in 2014 and 2015 will be the TWU decision judicial review.

Overall, Mr. Lapper identified his main goal with respect to the budget is to maintain stability over the short and medium-term horizon.

[Solo and Small Firm Conference](#)

Rob made a pitch for the Solo and Small Firm conference held in Toronto June 12th and 13th. It is the crown-jewel of the Law Society's CPD programs and this year's theme was on technology in practice. The entire program was web-cast and available for CPD credit at this [link](#).

Comments on Toronto Star & CBC investigation into Law Society Discipline

Mr. Lapper also commented on the recent Toronto Star and CBC investigations which alleged that the Law Society was not forthcoming to police with information on lawyers that they were investigating or had been disciplined, and that this led to many lawyers being able to escape prosecution from the criminal courts. Mr. Lapper reiterated that Law Society policies and procedures are in line with both the legislation and with the practice of other law societies across Canada. The leadership of the Law Society have pointed out publicly and directly to the Toronto Star that the investigative reporters have mischaracterized the facts provided to the reporter in writing. The Law Society's [open-letter](#) to the Toronto Star is available on the Law Society web-site. Mr. Lapper also pointed out that all the lawyers identified in the story have been disciplined by the Law Society – some facing quite severe penalties, including disbarment.

Treasurer Election

Mr. Lapper concluded his remarks by noting the June 25th Treasurer election and the fact that three excellent candidates were standing in that election Chris Bredt, Janet Minor and Raj Anand are all standing and any of these candidates will make a fine Treasurer and leader of the Law Society.

Since our Plenary, Bencher Janet Minor was elected as Treasurer. She was in attendance throughout our entire Plenary and we have already forged a solid working

relationship with her – a relationship we will continue to foster.

We thank Mr. Lapper for his candid comments and enthusiastic participation in our Plenary. He was able to clear his schedule to attend most of the Plenary and he was able to hear our comments, concerns and ideas directly.

[THE FUTURE OF LEGAL EDUCATION](#)

CDLPA was pleased to host a session on the future of legal education in Ontario featuring former Ontario Attorney General and now Executive Director of the Ryerson Law Practice Program, Chris Bentley and the Dean of the Lakehead University Faculty of Law, Lee Stuesser. Both men have been good friends of CDLPA over the years and we welcomed them both to our plenary.

Chris Bentley gave an overview of the Law Practice Program (LPP) and reiterated that the program was “not school”, but is being designed as a rigorous and thorough training to prepare new calls for the challenges of practising law into the future. Candidates will operate in a simulated law firm, have the benefit of a mentor accessible to them and participate in real-life and on-line scenarios designed to challenge the candidate in every aspect of the preparation for the practice of law.



Mr. Bentley had two requests of CDLPA and the associated Presidents. First, that we encourage members to consider offering up work placement positions. The



LPP is starting to match work placements with employers in June and will be continuing throughout the summer and Fall until the work placements begin in early winter. The work placements are for four months.

His second request was for Mentors from among the practising bar. These are modestly compensated positions for practising lawyers who have at least 5 years' experience and they will support the work of a virtual four-person law firm. The Mentor will advise on practice

issues, provide advice and feedback on the various tasks and assess the work that the candidates undertake.

Every week there will be a virtual team meeting at which professionalism and ethics will form part of the discussion. Every Mentor will be supported by practice area experts who assist if the question is in an area that the Mentor does not practice. It is expected that every mentor will be required to spend approximately 60 – 70 hours of time over four months. These are important positions and a great opportunity for experienced members of the Bar to nurture the next generation of lawyers to enter the profession.

Mr. Bentley finished by making a plea for the Presidents to keep an open mind about the LPP. Yes, it is a departure from the traditional articling program all lawyers are used to; and yes, the program will have its flaws and hiccups along the way, but the intent of the program is to better prepare lawyers to enter practice – especially into sole or small practice – and this is something CDLPA has long supported.

Mr. Bentley and his team are willing to travel to meet any association or gathering of lawyers to promote the program and if you are interested in having him or one of his staff come to your meeting, he can be reached at 416-979-5000 x. 3024 or by email: lpp@ryerson.ca.

The French language equivalent program is being delivered through the University of Ottawa and they can be reached at: LPP director, Anne Levesque, by email (anne.levesque@uottawa.ca) or by phone at 613-562-5800 ext. 1973

Lee Stuesser – Dean, Law Faculty at Lakehead University

CDLPA was one of the earliest supporters of a law school at Lakehead University, particularly a law school that prepared its graduates to practice law in Canada’s rural and remote communities, where there exists a shortage of lawyers to represent the population. As such, we were pleased to welcome Dean Lee Stuesser of Lakehead University to brief us on the progress of his program – now wrapping up its first year – and the innovations that are taking place in the design



and delivery of a practical law-school curriculum – known as the IPC or [Integrated Practice Curriculum](#).

Dean Stuesser noted (tongue in cheek) that the old adage of law school was that in first year they endeavoured to scare the students to death; in second year they worked you to death; third year they bored you to death!



The beautiful Lakehead University Law School campus

Dean Stuesser assured Plenary that Lakehead law school was not following this formula. The primary take-away from the Dean’s presentation was that the entire program was designed to give students a practical and “real-life” grounding in the practice of law and that every course had components of hands-on, experiential learning coupled with the more traditional theoretical methods. In fact, one of the courses is titled “Fundamentals of Small Firm Practice” in recognition of the fact that the majority of graduates are destined for sole and small practice.

A key differentiator of the Lakehead program is that once students graduate after three years, their practical education focus will allow them to skip articling or the LPP and go straight into the licensing process. This is a radical change for legal education in Canada and there remains some skepticism about it, but Dean Stuesser feels confident that the students will be “practice ready”.

Dean Stuesser also noted that the [students](#) came from across Ontario – from the most remote communities to the largest cities – and that while it is too soon to predict where the students will practice, many have already indicated that they intend to practice in their home communities. He also noted that the class size will never grow above 60 students, so when the full complement of

students in all three years are in place, there will be 180 students in the building – but never more than that. Dean Stuesser urged the Presidents to encourage their members to take in Lakehead students for summer job placements and to support the program in any way possible.

He also spent time in his remarks encouraging CDLPA and the Presidents to consider the question of law school tuition and how rising costs are having an impact on access to justice across the country.

CDLPA thanks both Dean Stuesser and Mr. Bentley for their remarks and for briefing us on these important initiatives. We look forward to having both back to future Plenary's for a report on progress.

REAL ESTATE ISSUES COMMITTEE REPORT

Merredith MacLennan, Chair of the CDLPA Real Estate Committee and Mike Ras, Director of Public Affairs for CDLPA gave a brief summary of the progress that has been made since the November plenary.



Merredith MacLennan, Chair of the CDLPA Real Estate Committee

Merredith started off by commenting on the profound changes to the practice of real estate law in Ontario in the last number of years and how these changes have fundamentally altered both the economics of real estate bar and the professional practice. As Merredith stated: *"There are young lawyers entering this complex*

practice area with the impression that it's fill-in-the-blank law, that anybody can do it and if don't do a good job, title insurance is there to backstop you. They believe it's simple law ... well, I'm here to tell you, it's never simple." And it is this complexity – and how the profession can best deal with it – that is at the heart of the work of the real estate committee.

Merredith reported on the progress of CDLPAs work on the two resolutions passed in November, 2013 (referenced at this [link](#)) and was pleased to report two main items of progress. First, that the Ontario Bar

Association has come together with CDLPA to form a working committee on real estate issues. Don Thompson of Toronto and Bob Tchegus of Kingston representing the OBA are joining Merredith MacLennan (Ottawa) and Gord MacKenzie of Angus as CDLPAs' representatives.



Gord MacKenzie, Vice Chair of the CDLPA Real Estate Committee

The second note of progress is the formation of a Real Estate Liaison Group within the Law Society, chaired by Bencher Ross Earnshaw. From the Law Society, he is joined by Bencher Alan Silverstein and staff Sheena Weir, Director of Public Affairs and Catarina Galati, Senior

Competence Counsel at the Law Society. This group met May 7th and received a presentation from LawPRO to look at the numbers of complaints and claims associated with the real estate bar, and the full picture behind those numbers. The next meeting is scheduled for August 10th and the CDLPA/OBA team will be working in advance of this meeting to formulate its questions and positions so the Law Society can best respond in a constructive manner. So far, the Liaison and Working group are off to good and productive starts and both groups anticipate an acceleration of activity in the remainder of 2014.



Ross Earnshaw, Bencher of the Law Society of Upper Canada

Merredith is presently recruiting input from across the practising bar and has asked that each local association nominate a point of contact (if not the President) so that information on the work of the Committee can be distributed to the practising bar quickly and effectively and so that input can be received as well. She is also striking a smaller advisory committee of practising lawyers from across Ontario and the membership of this ad hoc committee will be formalized later this summer.

Ross Earnshaw, the Chair of the Liaison Group, also addressed CDLPA on what he wishes to see arise from the Liaison Group and to assure the Presidents that the Law Society is committed to this work and to seeing concrete action taken.

Mike Ras also spoke in this session about CDLPAs proposal to encourage more solicitors to stand for Benchers election in 2015. As has been noted in a recent Law Times article, there are only four solicitors presently elected to Convocation (though there are some who practice as barristers and solicitors) and that this means there are actually more paralegals represented at Convocation than solicitors. With many issues and initiatives coming down the pipeline that will have a direct bearing on solicitors' practices, such as debates around alternative business structures, CDLPA feels it is important that there be more solicitors represented at Convocation.

To that end, Mike outlined two actions that will be undertaken in the coming number of months. First, CDLPA will actively work to encourage and recruit more solicitors to stand for election in 2015. This recruitment effort will take place over the remainder of the summer and Fall. Second, CDLPA will help to pool resources and assist in the management of campaigns of those solicitors who stand for election and whom CDLPA feels will be good Benchers, representing the best interests of the practising lawyer in Ontario. The precise nature of this help is still to be determined, but consideration is being given to a managed voter data-base which will help candidates identify and target their support; e-mail communication assistance; campaign flyer/brochure production; web-site management and other tools that would help a solicitor if they decided to stand for election. The primary goal of these efforts will be to raise overall voter participation rates (presently standing at 37% voter turnout), especially among solicitors, so that more solicitors are elected by a larger pool of concerned voter/members.

CDLPA will also – in consultation with the Presidents, develop a set of criteria for its support and refine the campaign plan in the coming months. Mike received a great deal of feedback from the members at the reception following the formal plenary meetings and will be going back out to the membership later this summer with further information on this initiative.

If you or anyone you know is interested in standing for election, please contact Mike at mike.ras@cdlpa.org.

PRACTICE RESOURCE CENTRES

The future of the county law library system in Ontario remains a top-priority for the advocacy efforts of CDLPA. As such, we were pleased to present a high-powered panel to give a status-update on where law libraries are standing today. Colin Lachance, President of CanLII, Frances Wood, Chair of LibraryCo and Martha Foote, Board General Manager of LibraryCo joined CDLPA executive members Janet Whitehead and Eldon Horner in this important panel discussion. Janet was there as the CDLPA representative on the Library Information and Support Services Working Group and Eldon was representing his role as the Chair of the CDLPA "Library" Committee (though we are working hard to expunge the notion that these centres are 'just' libraries – hence the name change to "Practice Resource Centre Committee").

LibraryCo

Martha Foote provided the first report and highlighted the disappointing usage statistics of the Desktop Toolkit, which she first reported on at the November, 2013 CDLPA Plenary. She noted that usage was generally flat or declining and that the numbers in almost all measures of usage are in decline. Further, a full 15% of all searches are being done by just ten lawyers in Ontario.



Martha encouraged county law associations to continue marketing the desktop service and recommended that the information first circulated in November be re-circulated. That information is provided at this [link](#).



We believe the Law Foundation funding for the Desktop, which is keeping this program alive, is in jeopardy in future years and are actively monitoring this situation but we believe the desktop may soon see its last days.

CanLII

Colin Lachance, President of CanLII gave a “state of the union” presentation on the work that CanLII is doing across Canada to improve legal information resources. His power-point presentation can be accessed [here](#).



Highlights of his presentation:

- The cost of CanLII works out to \$36.14 per year, per licensed lawyer in Ontario.
- This cost is the equivalent to two searches on a commercial legal search site.
- There are approximately 1.2 million documents housed on the site, with 2,000 additions each week.
- One third of all professional legal research in Canada is done on CanLII – and this is a conservative estimate.
- The site logged more than 9 million unique visitors last year and it was estimated that 40% of these visits were professionals, with the remainder being members of the public doing their own legal research.
- In 2012, the Board of CanLII set out new strategic priorities (the report can be accessed [here](#)). These priorities included:
 1. Secure permanent role as foremost source of free law in Canada
 2. Continually enrich content to meet needs of public and professional users
 3. Deliver easy to use professional grade tools and a compelling site experience
 4. Continuously promote and defend free access to law

Colin concluded his remarks by noting that “in the era of ‘disruptive innovation’...” CanLII is “an incumbent who is at risk of being disrupted and a new entrant that is capable of disruption” and that he intends for CanLII to continue to be at forefront of innovation and improving

access to legal information for the profession and the public.

LISS Report – Janet Whitehead

Janet Whitehead provided an update on the work of the LISS committee and started by noting what LISS was not.



It is not a committee that is looking at ways for the library system to save money. The LISS is looking at the entire system – including the contribution of the Great Library, CanLII and other legal resources – and how the entire system can work better in service of the legal profession.

She also noted that the Committee is in the final throes of putting together its recommendations to the Treasurer and therefore couldn’t share the conclusions of the LISS in any great detail before the Treasurer received the report. She did assure the Presidents that the input of CDLPA with respect to the Practice Resource Centre concept and the input of lawyers and staff from across Ontario who filled in the electronic surveys put out by the LISS was very influential in the final outcomes of the report. The fact that over 1,000 lawyers completed the survey was itself a telling sign that lawyers feel the courthouse law library system is important to them.

Janet told Presidents to look forward to the report of LISS and also noted that once the report is released, the work will not be nearly complete. The next year is expected to be very busy on this file as the various stakeholders work their way through the conclusions and recommendations.

Frankie Wood, Chair of LibraryCo

Frankie Wood gave a report of the LibraryCo board and spoke about the new strategic plan of the Board is now focused on more than legal information and now includes post-licensing competence, which includes mentoring, CPD, promoting collegiality and generally being a better resource for the local bar, in line with the notion of “practice resource centres”.



She concluded her remarks with two take-away challenges to the Presidents:

- First, LibraryCo needs to be assured there is buy-in from all associations to include mentoring, CPD and all the other services being discussed in the mission of LibraryCo. The strategic and operating plans of the local associations and the libraries need to reflect LibraryCo’s aspirations.
- Second, LibraryCo needs to know that the basic resources are in place in the local libraries. In a recent survey some of libraries reported that as little as 15% of the core resource lists is available in that library. This speaks to a resource availability disparity that is weakening the system as a whole and needs to be addressed.

CDLPA thanks the entire panel – and in particular the hard work of the LISS committee – for their dedication to finding solutions to this complex problem that is a top-priority for CDLPA and the Presidents.

FRENCH LANGUAGE SERVICES PRESENTATION

Edward Paquette, CDLPAs representative on the French Language Services Committee, and Josée Bouchard the Equity Advisor at the Law Society of Upper Canada, gave a report of the French Language Services Steering Committee which was working with the mandate to ensure every Ontarian had the right to be represented in our judicial system in the official language of their choice.

Edward’s report noted that there are pilot projects coming to Ottawa, Cornwall, Pembroke, Kingston, and Perth. These pilots are meant to identify the flaws that remain in the system and to find solutions to problems that arise. The committee is also advising the Attorney General on legislative amendments. The goal is to allow a French speaking person to attend a court anywhere in Ontario and have their matter heard without delay.

Ms. Bouchard spoke further about the obligation that exists in the rules of professional conduct to provide French language service. She also spoke about the impact of recent court decisions to clarify the right to have a trial for any individual who speaks French, and not just for those who may have been known in the past as “Franco-Ontarians”. She noted that 7% of the legal profession in Ontario is Francophone, 13% are capable of

providing service in French. This represents a general francophone population of 4.3%, so there should be enough lawyers to represent the population. Ms. Bouchard referred to the Law Society’s French-language guides, which are available on their web-site [here](#). She wrapped up with an appeal that all the local associations help communicate the French language service obligation to their own members through their own web-sites or newsletters. CDLPA will continue to promote this matter through its communication in the months to come.

PARALEGAL UPDATE

Cathy Corsetti, a Law Society Benchler, licensed paralegal and Chair of the Law Society Paralegal Standing



Committee presented to the CDLPA Plenary on the work of the Paralegal Standing Committee and sought to allay some of the fear that many CDLPA member associations have about increased scope of practice and the incursion of paralegals into areas of law practice that have normally been the exclusive purview of lawyers.

Ms. Corsetti’s presentation noted her committee had been focused on:

- The passage of Bill 111, which made the governance structure for paralegals within the Law Society simpler and more straightforward. Legislation also made amendments to Section 1 of the Solicitors Act which previously failed to account for paralegal licensees. Other changes amended the Commissioners for taking Affidavits Act to allow paralegals to become commissioners as of July 2013 which increases the availability of commissioners in Ontario.
- Bringing previously unlicensed paralegals who were exempted from the original licensing requirements into the fold. When paralegals were first licensed, some paralegals were exempted from the licensing requirement. Trade union paralegals, for example, were exempted,

but all agree that it would be better for the profession if they were included. The Law Society has undertaken an integration process and so far 420 have applied, with 207 of those accepted so far.

- Re-branding of the “Lawyer Referral Service to the “Law Society Referral Service” to now allow the Law Society to refer individuals to licensed paralegals, should the case warrant it.
- The Awarding of the “Distinguished Paralegal Award”, most recently given to Paula Stamp.
- The extension of the Member Assistance Plan to all licensed paralegals.
- Participation in all the major conversations and debates of matters at Convocation, including the ubiquitous and ongoing conversation around alternative business structures.

On the question of paralegal access to the county law library system, Ms. Corsetti noted that many counties have welcomed paralegals, while some continue to enforce rules that restrict access. On the question of library fees that paralegals might pay, that question is one being considered by the LISS.

Ms. Corsetti further explained the multitude of changes taking place to strengthen the education requirements for paralegals and to improve the education being provided to paralegals in the colleges and vocational institutions across Ontario. Improving these education requirements is a critical prerequisite for any conversation that might see an expanded scope of practice for paralegals in Ontario.

And with respect to the questions of scope of practice, the Paralegal Committee – and all of Convocation – are taking a cautious and incremental approach. Before any discussion of increased scope can take place, enhancements need to be made to the education and competency standards. Ms. Corsetti also noted and reiterated that before any scope change takes place there will be an extensive stakeholder consultation.

It is clear to CDLPA, however, that the question of increased scope of practice is inevitable and that this scope will cross over into the practice area of many of our members. We remain vigilant on this matter and continue to look for ways to promote the positive benefits of a lawyer’s involvement in many transactions and interactions in the legal system.

TREASURER’S REPORT

Eldon Horner, Treasurer of CDLPA, gave a report on the financial position of the Association. His report noted that in 2013 a significant change was made in how CDLPA



reported its financial statements and that all of the in-flows and out-flows of cash from the Law Society, which were not previously reported, were now to be reported. The Law Society covers travel and accommodation expenses for the Presidents to attend Plenary and these were not previously captured in our statements because they were simply in-and-out monies. The new financial statements more accurately reflect the spending of the Association.

Eldon noted that the 2013 financial statements, audited by KPMG, have come in nearly exactly where CDLPA budgeted them to be. Notably, the financial statement identified an operating deficit of approximately \$45,000 which reflects the increased costs associated with having a full-time Director of Public Affairs, who was hired in 2013. This deficit is drawing down on reserves. Though these reserves remain healthy, there are efforts to replace this revenue with increased focus on sponsorships and revenue generating initiatives such as the China Trip. Michael Ras, Director of Public Affairs, and the entire CDLPA executive are charged with the goal of finding new revenue sources.

Eldon also noted that the levy charged to local associations by CDLPA has not increased in many years and that at some point in the future there may be a need to have a conversation about increasing this levy, but that this conversation will only take place if there is a compelling need or an advocacy fight of great importance to the practising bar requiring more resources.

Eldon wrapped up his report with an acknowledgement of thanks to the Toronto Lawyers Association who unilaterally increased their contribution to CDLPA from \$25,000 to \$35,000 in recognition of the great partnership that exists between CDLPA and the TLA and the ongoing value that the TLA sees in our shared advocacy work.

[LEGAL AID ONTARIO](#)

This session was done a bit differently in order to focus a conversation and to attempt to elicit some answers to the pressing questions of the Bar. CDLPA's Legal Aid representative, Ken Hall, incoming Chair Cheryl Siran and Director of Public Affairs, Michael Ras asked a series of questions of David McKillop, Vice President of Policy and Research at Legal Aid Ontario.

Those questions are noted here, but we would encourage you to view Mr. McKillop's answers directly on the videotape of the session. Attempting to transcribe them here and doing justice to the detailed responses would be impossible.

Our questions were:

1. The announcement in the Budget of a ten year strategy to raise eligibility is a welcome development. Should that Budget - or some form of it - pass the legislature in the coming months, can you describe for CDLPA the process by which the LAO will involve the bar in the discussion around development and execution of that strategy. As everyone knows, the devil is often in the details and we would like assurance that no decisions will be made on those details without consultation with the bar.
2. What is your contingency plan if this Budget does not pass and the status quo funding levels remain in place, at least in the short-term?

(now an irrelevant question, given the results of the election)

3. With respect to the announced hiring of ten senior staff lawyers, has it been determined how they will be distributed across Ontario? What criteria will be used to determine how they will be placed? How is that hiring process proceeding and when can we expect to see the first of them in place?
4. Is the mandate of the new staff lawyers restricted to Rowbotham and Fischer situations? Can you clarify specifically the mandate of these individuals? How will their mandate differ from current duty counsel?
5. Some of our members have identified circumstances where they believe local criminal duty counsel seem to be expanding their role and – in our view - overstepping their mandate and breaking the spirit, if not the letter, of the MOU between LAO and the bar. Two parts to this question:
 - a. What is the specific mandate and scope of work of a criminal duty counsel employed by LAO? Does that mandate include “certificate-eligible” work and if so, what are the criteria and/or circumstances which would justify doing so?
 - b. In circumstances where our members have identified a concern, some have written LAO but have received unsatisfactory responses. Is there a mechanism in place to formally receive complaints or concerns and a mechanism to investigate these particular cases? So far, it seems ad hoc.
6. Why are there two financial eligibility criteria, one for the issuance of certificates and the higher one for the use of Duty Counsel in remand/plea court? The DCAO is of the mind there should be

one financial eligibility criteria, not two. You either qualify for Legal Aid, or you do not.

7. Can you clarify for CDLPA whether LAO has plans to expand the use of paralegals in the delivery of legal aid services? We understand that this move to use more paralegals is already underway in refugee and immigration law. In what way might paralegals be used in the future? Are these paralegals working under the supervision of lawyers?
8. With respect to the Memorandum of Understanding (MOU), does it not commit the LAO to consult with the private bar before changes are made to any part of the certificate and duty counsel programs? Your CEO, Bob Ward, has made it clear that Legal Aid Ontario is using Duty Counsel to expedite the criminal law process to assist in the Justice on Target (JOT) process, including authorizing Duty Counsel to negotiate guilty pleas. We know that some of these pleas concern cases which would qualify for Certificates. How does this comply with the MOU?

THOMAS CONWAY, TREASURER, LAW SOCIETY OF UPPER CANADA



Treasurer Conway addressed Plenary at dinner on Thursday evening. His remarks were not recorded, but suffice to say they were heartfelt and emotional as the Treasurer gave his last address to CDLPA – as Treasurer at least – and paid tribute to the close and collaborative relationship that

he has enjoyed with us in his time in office.

We have not always seen eye-to-eye on every issue, but Treasurer Conway has always been accessible to CDLPA and has found a welcome audience for his platform in our

midst. Treasurer – you are always welcome at CDLPA’s plenary meetings.

Friday, May 16th

LAWPRO

As has become customary at CDLPA Plenary’s, Kathleen Waters, CEO of LawPRO offered us an update on the latest news from LawPRO. Her remarks focused on four agenda items:



Her remarks focused on four agenda items:

- The 2013 financial results
- The claims environment
- What LawPRO is doing in proactive risk management
- How LawPRO is preparing for the future

Her slides can be accessed by linking [here](#). The highlights of her remarks were:

2013 Financial Result Highlights:

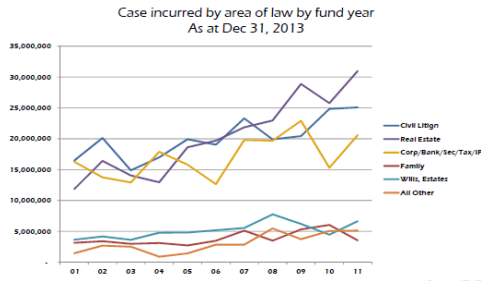
- Growth in net income to \$5.9 million (over a budget of \$3 million and a net-loss of \$2.2 million in the previous year)
- Growth in comprehensive income to \$18.6 million (over a budget of \$4.3 million)
- Improvement to shareholder equity to \$189.9 million
- An MCT ratio (Minimum Capital Test) at December 31st of 233% (for comparison, federally regulated P&C insurers must maintain a minimum ratio of 100% and a supervisory target of 150%)

The credit for these results go to:

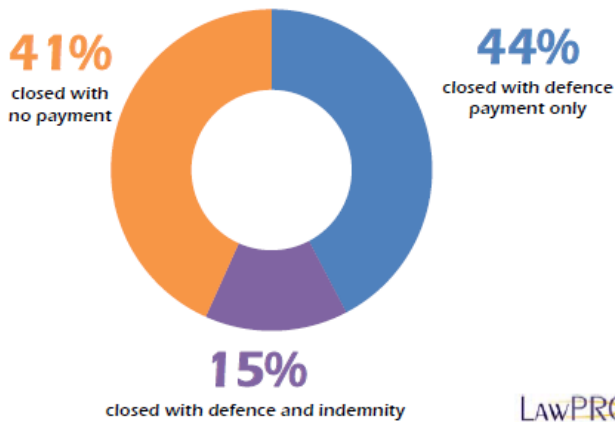
- Lower claims expenses
- Unrealized capital gains
- Management of general expenses

The Claims Environment:

In 2013, LawPRO saw its claims start to moderate, but the highest number of cases in a decade – 3600 – remain open and active. Overall, the cases by practice area remained fairly steady, with real estate remaining the number one area of claim as the following graphic shows.



LawPRO boasted that it has a strong record of resolving claims and that 41% were closed with no payments.



Proactive Risk Management

On the proactive side, LawPRO continues to undertake an aggressive professional development and education initiative, especially in areas such as cybercrime. LawPRO is encouraging the Presidents to continue to make its CPD courses available to their members and reminds everyone that LawPRO staff are available to come out to local associations for a variety of programs.

Certainly, we at CDLPA are happy to continue to promote these CPD programs and to work with both LawPRO and local associations to facilitate these engagements.

A summary of the resources that area available to the practising bar is shown on the poster below. ([Copies of this poster](#) can be made available to hang in your library or be posted to local association web-sites).

How LawPRO is preparing for the Future:

Ms. Waters remains optimistic about the future of LawPRO, but noted some questions are on the horizon. She identified the changes to the way the Minimum Capital Test is calculated by the federal regulator. In the new calculation, some investments – such as equity – will be discounted. In the new model, LawPRO estimates that the new test will reveal an MCT of 190%, which is close to the internal target of 180%. While nothing changes to the LawPRO business, these new regulatory calculation change could have an impact on premiums, the contributed surplus from the Law Society or the investment strategy of LawPRO – or some combination of all of the above.

Other questions being examined by LawPRO revolve around the discussion around Alternative Business Structures and what some of those structures might mean to the claims environment.

For more information on all of these topics, please refer to the LawPRO Magazine June 2014 edition which has since been released. It can be found by linking [here](#).

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LawPRO Insurance, TIERPLUS Home Buying Guide - Canada, @LawPRO, @practicePRO, @TIERPLUSCanada, LawPRO (Lawyer Professional Indemnity Company)

TAKING WILL INSTRUCTIONS

ORGAN DONATION AND OTHER ADDITIONAL INTAKE QUESTIONS TO CONSIDER

As many will be aware, Sam Marr – a past President of the TLA and a long-time friend of CDLPA – spent many years afflicted with a rare liver disease, but his life was saved by an organ donation. Since then, Sam has become a passionate advocate for life-saving organ donation in Ontario and he delivered a heartfelt and impassioned plea for all lawyers to become organ donors and to encourage their wills and estates clients to do the same.

His presentation started with a terrific and informative video (found [here](#)) that gave some startling statistics on the subject.

Many in the room signed up to be an organ donor at www.beadonor.ca and realized that it only takes a few minutes.

Ian Hull, of Hull & Hull LLP – a specialist in estate law - wrapped up the presentation by discussing the strategies that are involved in how to broach the subject of organ donation with clients and the legal implications of those conversations. His presentation can also be viewed in the second half of this [video](#).

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ALTERNATIVE BUSINESS STRUCTURES

The subject of Alternative Business Structures is one that certainly qualifies as a “hot topic” for CDLPA and the practising bar across Ontario. This session, chaired and facilitated by 2nd Vice Chair, Jaye Hooper, featured three of the preeminent experts on the subject of ABS in North America. Malcolm Mercer and Susan McGrath are immersed in the issue as Law Society Benchers and co-



*Jaye Hooper, CDLPA
2nd Vice Chair*

chairs of the ABS Working Group. Paul Paton is the incoming Dean of the University of Alberta Faculty of Law and has spent the past number of years as an academic in the United States studying the forms and impacts of alternative business structures in the U.S.

To attempt to summarize this wide-ranging and important discussion in these pages would not do the discussion justice and will leave the reader with more questions than can be answered in these pages. We strongly urge all readers of this Plenary Summary to take a few moments and view the video of the discussion first hand.



Professor Paul Paton

The Law Society expects to launch a formal consultation on this topic in the Fall and you can be assured that CDLPA will be at the forefront of this discussion. Your CDLPA Executive have not adopted any firm position on the subject, having vowed to keep an open mind and are eager for a vigorous discussion ... but


that said, many of our members clearly have many reservations about ABS and we will continue to reflect those concerns in our ongoing dialogue with the Law Society.

And on a final note, we want to thank all three speakers for travelling great distances to join us. Professor Paton

came in from  California, on his *Bencher Malcolm Mercer*

way to Alberta. Malcolm Mercer was in Halifax the day before our session attending his daughter’s graduation, but felt it important to join us. And of course,

Bencher Susan McGrath

 Susan McGrath hails from Northern Ontario and no one needs to remind us of the challenges she faces to travel to the “south”! Their efforts to attend our Plenary and engage in this important discussion are sincerely appreciated.

CHAIR'S AWARD

At every Plenary that elects a new Chair, the outgoing Chair has the privilege of awarding the CDLPA Chair's award to an association that has led the way and exemplified service to the practising bar. This year, Janet – after consultation and unanimous consensus from the Executive – chose the County Carleton Law Association as the recipient of the CDLPA Chair's Award.



This award recognizes the leadership that the CCLA has shown in so many areas, including their efforts to see real estate issues moved to the top of the agenda, their ongoing support for an excellent county library system, their growing membership and their excellent CPD programs. The CCLA is a leader among Ontario's county and district law associations and this award is but a small recognition of that leadership. Congratulations to Executive Director Rick Haga, President Jennifer Birrell and the rest of the CCLA leadership!

ELECTION OF THE CDLPA EXECUTIVE

Most of the CDLPA Executive was elected by acclamation, but this year there were three run-off races for regional representative positions. Elections, overseen by outgoing Past-Chair Mike Johnston, were held in the Central West Region, Northwest Region and Southwest Region. Jane Robertson for the Central West Region, Barbara Morgan of the North West Region and Bill Woodward of the Southwest emerged as the representatives.

Congratulations to Jane, Barb, Bill and the rest of the acclaimed executive – listed below – for their election to the CDLPA Board. This term promises to be a very active one and your Executive will be busier than ever!

Your 2014 CDLPA Executive:

CHERYL SIRAN, Chair

Email: csiran@hsslaw.ca

ELDON HORNER, 1st Vice Chair

Email: ehorner@mmhplaw.com

JAYE HOOPER, 2nd Vice Chair

Email: hooper@williamsmcenery.com

JANET WHITEHEAD, Past Chair

Email: jwhitehead@sarnialaw.com

ALFRED SCHORR, Central East Regional Representative

Email: alfred@schorrlaw.ca

MIKE WINWARD, Central South Regional Representative, Treasurer

Email: winward@mackesysmye.com

JANE ROBERTSON, Central West Regional Representative

Email: owensoundlaw@bellnet.ca

BILL WOODWARD, Southwest Regional Representative

Email: WWoodward@dyerbrownlaw.com

JACKIE MCGAUGHEY-WARD, Northeast Regional Representative

Email: wardj@millermaki.com

BARBARA MORGAN, Northwest Regional Representative

Email: Barbara@morganlaw.ca

KEN HALL, CDLPA Appointment (Legal Aid)

Email: kghall@bellnet.ca

MERREDITH MACLENNAN, CDLPA Appointment (Real Estate)

Email: Merredith.MacLennan@nelligan.ca

MIRIAM YOUNG, Toronto Lawyers Association Representative

Email: miriam.young@ontario.ca

And the winner is ...

This year we asked all plenary participants to fill in a brief survey to give us feedback and offered the carrot of a draw-prize for those that filled in the survey. A record number of 35 attendees filled in the survey and many of you commented that this Plenary was the best one yet. To make it better each time, we rely on the input and feedback from our surveys and welcome that feedback – positive or just constructive – throughout the year.

And the winner this year is **Stacy MacCormac** of the Northumberland Law Association! Congratulations Stacy – you win a \$100 gift certificate at the Keg Restaurant.

We welcome your feedback:

As part of our ongoing effort to improve communication with our members, we have – we hope – improved this report of plenary in both format and content. These improvements will continue to evolve in the future, and we welcome your feedback.

We also 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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