Report to Convocation
September 22, 2011

Professional Regulation Committee

Committee Members
Paul Schabas (Chair)
Julian Porter (Vice-Chair)
Susan Richer (Vice-Chair)
   Robert Burd
   John Campion
   Robert Evans
   Julian Falconer
   Alan Gold
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   William McDowell
   Kenneth Mitchell
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Purpose of Report: Decision and Information

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Professional Regulation Division Quarterly report

Revised Lawyer Annual Report 2011
COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on September 8, 2011. In attendance were Paul Schabas (Chair), Julian Porter (Vice-Chair), Susan Richer (Vice-Chair), Robert Burd, Robert Evans, Carol Hartman, Janet Leiper, William McDowell, Malcolm Mercer, Kenneth Mitchell, and James Scarfone. Staff attending were, Naomi Bussin, Malcolm Heins, Terry Knott, Janice LaForme, Zeynep Onen, Jim Varro, and Sophie Galipeau.
FOR DECISION

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT AND THE PARALEGAL RULES OF CONDUCT RESPECTING LIMITED SCOPE RETAINERS (JOINT MEETING OF THE PROFESSIONAL REGULATION, ACCESS TO JUSTICE AND PARALEGAL STANDING COMMITTEES)

Motion
2. That Convocation approve the amendments to the Rules of Professional Conduct and the Paralegal Rules of Conduct at Appendix 3 to provide guidance to lawyers and paralegals who provide legal services under a limited scope retainer.

Introduction
3. As reported to Convocation in June 2010, the Professional Regulation Committee’s working group on unbundling, which also included members of the Paralegal Standing Committee and the Access to Justice Committee\(^1\), was formed to consider issues related to limited scope retainers, also called “unbundling” of legal services.

4. The concept of limited scope retainer means taking a legal matter apart into discrete tasks and having a lawyer or paralegal perform some of those tasks, that is, provide legal services for part, but not all, of a client’s legal matter by agreement with the client. For other parts of the legal matter, the client is self-represented.

5. While some Ontario lawyers and paralegals are already providing legal services on a limited scope basis, nothing in the current Rules of Professional Conduct or the Paralegal Rules of Conduct expressly addresses limited scope retainers. Procedurally, there are no

\(^1\) Working group members were Raj Anand, Robert Burd, Paul Dray, Michelle Haigh and Susan McGrath. Linda Rothstein, Glen Haine and Carl Fleck also served as chairs of the working group.
specific rules for the situations in which such services may be provided in a litigation setting.

The Consultation Process on Proposed Amendments to the Rules of Conduct

6. During the spring of 2010, the Working Group drafted proposed amendments to the *Rules of Professional Conduct* and to the *Paralegal Rules of Conduct* to provide guidance on limited scope retainers. In developing the proposals, the guiding principle was that any amendment would not create new standards of professional conduct but confirm existing standards with awareness around how they apply in the context of a limited scope retainer.

7. In September 2010, Convocation reviewed the draft proposals and approved a call for input to obtain comments from stakeholders. The material for the call for input is at **Appendix 1**. It includes background information on limited scope retainers, developments in other jurisdictions and drafts of the proposed rule changes for comment.

8. The call for input was published in October 2010 in the *Ontario Reports* and on the Law Society’s website, and was also included in Law Society e-mails to lawyers and paralegals. The Chair of the Working Group also wrote letters to eight legal organizations requesting their comments on the proposals. The deadline for responses was November 30, 2010 but some responses continued to arrive until late April 2011.

9. The call for input resulted in a very worthwhile range of comments. In total, 22 responses were received from lawyers and legal organizations. The list of those who responded is found at **Appendix 2**.²

10. Much of the feedback received was general comment about limited scope retainers. The vast majority of respondents saw value in having ethical rules and guidance on the provision of legal services under a limited scope retainer to ensure that lawyers and paralegals provide competent services and communicate effectively with clients in that context.

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² The actual responses are included in a separate document that is available to Convocation on request.
Revision of the Proposals Following the Call for Input

11. After reviewing the responses, the Committees agreed that some revisions to the proposals were warranted. The main changes recommended by the Committees, discussed in the next section of the report, are as follows:
   a. New language to describe and clarify the concept of ‘limited scope retainer’ in the definition of the Rules.
   b. Clearer language to emphasize the level of competence required in the context of a limited scope retainer.
   c. The creation of exceptions to the rule requiring written confirmation of the services under a limited scope retainer.

12. The proposals agreed upon by the Committees appear in the following section with an explanation of the changes. The changes to the version that was included in the call for input material are underlined (‘L’ refers to the lawyer rules and ‘P’ refers to the paralegal rules). The amendments as prepared by the Law Society’s Rules Drafter Don Revell, that Convocation is asked to approve, are at Appendix 3 for the lawyer rules and for the paralegal rules. For reference, the complete text of each rule/commentary affected by the revised proposals is reproduced at Appendix 4.

13. As the paralegal rules do not include commentary, where commentary is amended or added to the lawyer rules, similar language would be added to the Paralegal Guidelines that accompany the paralegal rules.

Recommended Changes to the Proposals

Rule 1.02(L)/1.02(P) - Interpretation

14. In the call for input material, it was proposed that the definition of ‘legal practitioner’ that exists in the lawyer rules be added to the paralegal rules. It was also proposed that an additional clause be added to include (c) ‘a person who is not a licensee but is permitted by the Law Society to provide legal services in Ontario’. However, as this may mean that licensees would owe professional obligations to a wider group of people than is now
required, the Committees concluded that clause (c) not be included in the lawyer rules and the paralegal rules. This change does not impact the substance of the proposals on limited scope retainers.

15. A number of respondents to the call for input stated that the term “limited legal services” could be more descriptive. One respondent said that the use of the words limited services in the definition might suggest to some clients and lawyers less than full and competent legal service and suggested using the term “limited scope retainer”. The Committees agree with this view and recommend using the term “limited scope retainer”.

16. The Committees also recommend that the term “legal representation” should be removed as it is included in the term “legal services” and is not defined in the rules.

Rule 1.02(L)/1.02(P) – Interpretation

“legal practitioner” means a person
(a) who is a licensee; or
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction, or
(c) who is not a licensee but is permitted by the Law Society to provide legal services in Ontario.

“limited scope retainer” limited legal services or limited legal representation” means the provision of legal services by a lawyer/paralegal for part, but not all, of a client’s legal matter by agreement between the lawyer/paralegal and the client;

Commentary to Rule 2.01(L) – Competence

17. Several respondents mentioned that the legal services under a limited scope retainer should be provided with the same legal knowledge, skill, thoroughness and preparation as if they were undertaken under a full retainer agreed but felt that the proposed addition to the commentary could be clearer about this.
18. The Committees agree with these comments and recommend the following changes to the commentary to more clearly state the level of competence required in that context.

**Rule 2.01 (L) – Competence (addition to commentary)**

When a lawyer may accept or considers whether to provide legal services under a limited scope retainer for limited legal services, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement to provide for such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 2.02(6.1) to (6.3)

**Rule 2.02(L) – Quality of Service/Rule 3.02(P) – Advising Clients**

19. A number of respondents were concerned about the proposed requirement for a written confirmation of the limited scope retainer, on the basis that it would be counterproductive to the goal of access to justice in certain situations. Many stated that such a requirement would be impractical and unsuitable for duty counsel offices or providers of summary advice through community clinics and telephone hotlines. They suggested that the Rules should recognize an exception for non-profit services aimed at increasing access to justice.

20. The Committees agree with those views and recommend that exceptions be created to the written confirmation requirement for summary advice and services provided in specific circumstances.

21. The Committees recommend revisions to paragraph (b) to clarify that the written confirmation of the services does not require an agreement in a form that requires the signature of the client. Furthermore, because in some cases it may not be possible for the licensee to give the written confirmation to the client, the Committee recommends a
change that would allow the licensee the flexibility to give the document to the client when practicable to do so.

22. The Committees also recommend a change in the commentary under Rule 2.02(6) to recognize that the lawyer’s duty to accommodate the needs of a client under a disability is the same in the context of a limited scope retainer as in the context of a full-service retainer.

**Limited Legal Services Under a Limited Scope Retainer**

2.02(6.1)(L)/3.02(8.1)(P) Before providing limited legal services to a client under a limited scope retainer, the lawyer/paralegal shall

(a) advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer/paralegal can provide, and including, where appropriate, whether the services can be provided within the financial means provided by the client, and

(b)(6.2)(L)/(8.2)(P) When providing legal services under a limited scope retainer, a lawyer/paralegal shall confirm the services in writing and provide the client with a copy of the agreement written document when practicable to do so, between the lawyer and the client for the provision of the services.

**Commentary**

Reducing to writing the discussions and agreement with the client about the limited scope retainer legal services assists the lawyer and client in understanding the limitations of the services to be provided and any risks of the retainer. In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client.

A lawyer who is providing limited legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing full services to the client under a full retainer.

A lawyer who is providing limited legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See rule 6.03(7.1)(L)

(6.3) Subrule (6.2) does not apply to a lawyer/paralegal if the legal services are
(a) (L) legal services or summary advice provided as a duty counsel under the *Legal Aid Services Act, 1998*, or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(a) (P) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;

(b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;

(c) summary advice provided through a telephone-based service or telephone hotline;

(d) summary advice provided by the lawyer/paralegal to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) pro bono summary legal services provided in a non-profit or court-annexed program.

**Commentary**

The consultation referred to in subrule (6.3)(d) may include advice on preventative, protective, pro-active or procedural measures relating to the client’s legal matter, after which the client may agree to retain the lawyer.

**Commentary under rule 2.02(6) – Client Under a Disability**

A lawyer who is asked to provide limited legal services under a limited scope retainer to a client under a disability should carefully consider and assess in each case whether it is possible to render those services in a competent manner.

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Rule 6.03(L) – Responsibility to Lawyers and Others/Rule 4.02(P) – Interviewing Witnesses

23. In the call for input, two options were presented for proposed changes to this rule which deals with communications with represented parties. The changes focus on the communications with the person who is represented under a limited scope retainer and how they should be managed.

24. The majority of respondents who commented on this proposal preferred the option under which opposing counsel are allowed to communicate with the party until opposing counsel receives a written notice of the limited scope representation.

25. The Committees agree that opposing counsel should be able to communicate with the party until that counsel is notified of the party’s representation by a lawyer or paralegal
under a limited scope retainer and recommends that the proposal be revised to reflect that option. The Committees also recommend that clause (b) be removed as it is redundant.

26. In the Committees’ view, this proposal would fit better under Rule 7.01 of the paralegal rules and recommends that it be moved under that rule.

**Rule 6.03 (L) – Responsibility to Lawyers and Others/Rule 4.02(P) – Interviewing Witnesses**

(7.1)(L)/4.02 7.01(6.1)(P) Subject to subrule (8)\(^3\), if a person is receiving limited legal services representation from a legal practitioner under a limited scope retainer on a particular matter, a lawyer/paralegal may, without the consent of the legal practitioner, (a) approach, communicate or deal directly with the person on the matter, or (b) attempt to negotiate or compromise the matter directly with the person, unless the lawyer/paralegal receives written notice of the limited nature of the legal services representation being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

**Commentary**
Where notice as described in subrule (7.1) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing providing the person under a limited scope retainer with the limited legal representation, but only to the extent of the limited representation matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer legal representation.

**Proposals Awaiting Possible Development of Procedural Rules**

27. Some proposals included in the call for input material related to procedural matters before a tribunal. These proposals are not being recommended for adoption by Convocation at this stage, as they must await possible development of procedural rules addressing the issue of limited scope retainers. The Professional Regulation Committee will update Convocation in the event such procedural rules are amended.

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\(^3\) This subrule deals with second opinions.
“UNBUNDLING” OF LEGAL SERVICES

Introduction

Unbundling of legal services refers to the provision of limited legal services or limited legal representation. This means that a lawyer or paralegal provides legal services for part, but not all, of a client’s legal matter by agreement between the lawyer or paralegal and the client, and that the client is otherwise self-represented. Some common services involve lawyers or paralegals
1. providing confidential drafting assistance,
2. making limited appearances in court as part of the limited scope retainer,
3. providing legal information and advice under a limited scope retainer, and
4. providing legal services at a court-annexed program, or at a non-profit legal service program.4

The Law Society acknowledges that unbundling in the litigation context is occurring in Ontario. The issue for the Law Society is the lack of on-point guidance in rules of conduct. The Law Society’s Professional Regulation Committee formed a working group that includes representatives from the Paralegal Standing Committee and the Access to Justice Committee to determine what might be done by way of ethical guidance for lawyers and paralegals when they provide limited legal representation.

As a result of the working group’s review, this document includes proposals for amendments to the lawyers’ and paralegals’ professional conduct rules, with explanatory text and some background information on the development of ethical guidance elsewhere on unbundled legal services. For reference, Appendices 1 and 2 include the text only of the proposed rule/commentary/guideline amendments for lawyers and paralegals, respectively (changes are underlined).

The Law Society also notes that, procedurally, there are no specific rules for the situations in which unbundled services may be provided in a litigation setting. This is the subject of a separate review by the working group and is not part of this call for input.

Some Background on Developments in Other Jurisdictions

United States

4 The Law Society’s examination of this issue has led to amendments to the conflicts rules applicable to lawyers participating in PBLO programs for brief services in the Small Claims and Superior Courts.
The thinking around and use of unbundling and limited retainers is far more developed in the United States than in Canada. This is no doubt in response to the huge growth in the numbers of self-represented litigants in US courts.\(^5\)

Much has been published in the US, and the American Bar Association has devoted several web pages to an extensive list of reports, rules, opinions and cases from many states related to provision of short term or limited legal services. Some states have rules of conduct that address limited retainers.

Early on, the US literature isolated some key issues around the unbundling of legal services, in the litigation setting. A report\(^6\) from 2000 summed up the issues as follows:

> The primary criticisms of unbundling fall into three broad classifications – concern that courts and judges might be misled, concern that clients might be misled, and concern that clients might make mistakes.

A recent publication (November 2009) provides a comprehensive overview of what has occurred in the US on the rule-making front since 2000. The paper, *An Analysis Of Rules That Enable Lawyers To Serve Pro Se Litigants A White Paper*, by the ABA Standing Committee on the Delivery of Legal Services discusses the developments in a number of states where rules have been adopted for this purpose. Some have made amendments to both conduct and procedural (court) rules to co-ordinate and harmonize the ethical and procedural responsibilities on the part of counsel, and to provide clearer advice on how these services are to be offered.

**Canadian Bar Association**

Several years ago, the Canadian Bar Association (CBA) looked at the issue of unbundling and devoted a chapter to it in its August 2000 report, “The Future of the Legal Profession: The Challenge of Change.” The CBA suggests that unbundling was already, at that time, beginning to appear in the area of family law. The report identifies some of the practical and ethical concerns related to unbundling.

The major concern identified by the CBA is that lawyers will be acting for clients based on inadequate information, which may lead to worse results for the client and complaints or negligence claims against the lawyer. Ultimately, the CBA concluded that the basis for a lawyer's liability or failure in any ethical duty in these circumstances is unclear, and that “most

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\(^5\) One US paper, noted later in this report, says that *pro se* representation in family law courts “is no longer a matter of growth, but rather a status at a saturated level.”

\(^6\) “Unbundled Legal Services”, Forrest Mosten and Lee Borden (as presented at the Academy of Family Mediators 2000). This report was also found on the Law Society of Alberta's website.
ethical duties which talk about a lawyer’s obligation to advise clients presuppose that the lawyer has been retained to handle the whole matter."

The report also commented on rules in the CBA’s *Code of Professional Conduct*, which includes rules similar to those of the Law Society on the subject of competence. The CBA said that such rules could be interpreted to mean that the lawyer is obligated to offer well-informed advice, but could also be interpreted to mean that the lawyer and client can agree that the lawyer’s role is limited and the advice based on incomplete information.

The report concludes by saying that if the concerns can be adequately addressed, unbundling could become a useful approach in the future.

**Law Society of British Columbia**

More recently, the Law Society of British Columbia undertook a study of this issue and in 2008 published a comprehensive report with a series of recommendations on various aspects of the delivery of unbundled services. The study considered the following issues:

1. the impact on the solicitor-client relationship;
2. the duties of a lawyer in these circumstances;
3. the form of disclosure a lawyer makes to a client, to the courts and to the party or lawyer on the other side;
4. the idea of a written retainer agreement;
5. the duties of the client;
6. the impact on liability and insurance; and
7. possible rule revisions.

The report’s executive summary says that the development is linked to rise of greater self-representation by litigants:

> For some litigants self-representation is a conscious choice. For many, it is a necessity. There are a number of factors that contribute to the rise in the number of self-represented litigants, and the range of causes for the rise in self-representation suggest that there is not a simple solution to the phenomenon.

> For those who choose to self-represent, they might be able to afford a lawyer for full service representation, or they might only be able to afford one at a cost that

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7 "The lawyer should clearly indicate the facts, circumstances and assumptions upon which the lawyer’s opinion is based, particularly where the circumstances do not justify an exhaustive investigation with resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than merely make comments with many qualifications."

8 Report Of The Unbundling Of Legal Services Task Force - Limited Retainers: Professionalism And Practice, April 4, 2008
is beyond what they are willing to pay in pursuing or defending a claim. For these individuals, limited scope legal services present a mid-way option between full service representation and no representation..

...[P]art of the rise in self-representation reflects a cultural shift that is taking place in the information age. The Internet and related technologies are transforming the way information is collected, disseminated, and used. Legal information is now easily available to those with access to the Internet. ...Many of these litigants will not see the value in hiring a lawyer to collect and process information they might easily collect themselves. Some will feel they need little or no help from a lawyer when it comes time to advance their case in court. Limited scope legal services provide an opportunity for lawyers to assist this growing demographic in synthesizing information and refining legal arguments. In short, the regulation of limited scope legal services demonstrates the adaptation of the legal profession to an evolving marketplace.

The report also recognized the reality that lawyers performing solicitor’s work have been providing limited scope services for years. While much of the literature on unbundling focuses on litigation services, the report opines that a review of this subject need not be narrowly focused, and that proposals for changes should apply to all applicable areas of practice.

The report’s recommendations were extensive, and included the following:
1. Rules that govern professional conduct and procedure before the courts should be amended as required to facilitate the proper, ethical provision of limited scope legal services.
2. Amendments to the ethical rules for guidance for limited scope legal services should not create a lesser standard of professional responsibility than is otherwise expected of a lawyer.
3. If the lawyer does not feel the professional services contemplated by the limited retainer can be performed in a competent and ethical manner, the lawyer should decline the retainer.
4. The lawyer should ensure the client understands the limited scope of the retainer, the limits and risks associated with such services, and should confirm this understanding, where reasonably possible, in writing.
   a. Example: counsel may enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.
5. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.
6. Unless otherwise required by law or a court, the discretion to divulge the identity of the lawyer who provided drafting assistance should lie with the client.

7. A lawyer may communicate directly with a client who has retained another lawyer to provide limited scope legal services, except if all three of the following factors exist:
   a. The lawyer has been notified of the limited scope lawyer’s involvement;
   b. The communication concerns an issue within the scope of the limited scope lawyer’s involvement; and
   c. The limited scope lawyer or his or her client has asked the lawyer to communicate with the limited scope lawyer about the issue in question.

8. Save as described in the rules for court-annexed and non-profit legal clinic programs (the equivalent of our Law Society’s new conflicts rules for PBLO brief services retainers), the regular rules governing conflicts of interest and duty of loyalty should apply to limited scope legal service retainers.

**Canadian Law Societies’ Rules of Conduct on Unbundling**

The Law Societies of Alberta and British Columbia (prior to its 2008 report) and the Nova Scotia Barristers’ Society have addressed unbundling of legal services either indirectly or expressly in their codes of professional conduct.

**British Columbia**

British Columbia’s Rule 10 in Chapter 10 (Withdrawal) of its Professional Conduct Handbook reads:

**Limited retainer**

10. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

After the 2008 report was adopted, the underlined text was added to the Rules:

**Annotations**

**Rule 10 - Limited retainer**

There is no necessary conflict between Rule 10 and the Criminal CaseFlow Management Rules, which seem to require the presence of counsel at certain procedural stages of criminal proceedings. It is proper for counsel to enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Of course, counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.

*EC November 30, 2000 item 9*
It is not inconsistent with Rule 10 for a lawyer to provide anonymous drafting assistance to a client.

*Recommendation 8 of Report of Unbundling of Legal Services Task Force p. 22: approved by Benchers April 2008*

Failing to provide information to an unrepresented party about the limitations of the retainer does not amount to professional misconduct.

*DCD 00-16*

**Alberta**

In Chapter 9 of Alberta’s Code of Professional Conduct, dealing with the lawyer as advisor, Rule 2 states that

Except where the client directs otherwise, a lawyer must ascertain all of the facts and law relevant to the lawyer’s advice.

Commentary under this rule discusses a lawyer’s obligation to be economical and to balance this obligation with the obligation to ascertain all of the facts and law necessary to provide meaningful advice. It suggests a lawyer should consult with the client regarding the scope of investigations and provide an estimate of costs. The Commentary also states:

Occasionally, a client will specifically request that a lawyer provide an opinion or advice based only on limited facts or assumptions or without the benefit of legal research. While it may be proper in some cases to agree, the lawyer must ensure that the client understands the limitations of such advice. Not infrequently, a legal opinion based on limited facts or assumptions will be so restricted and qualified as to be practically worthless. Similarly, advice given without research in an area in which a lawyer lacks knowledge or experience is likely to be unreliable.

**Nova Scotia**

The Nova Scotia Barristers’ Society’s Code of Professional Conduct provides commentary that deals expressly with this concept. The Nova Scotia commentary (in the numbered "Application of the Rule" and "Notes") under Rule 3 (Quality of Service) addresses "Limited Retainers". Application 3.12 states as follows:

A lawyer may accept a limited retainer, but in doing so, the lawyer must be honest and candid with the client about the nature, extent, and scope of the work which the lawyer can provide within the means provided by the client. In such circumstances where a lawyer can only provide limited service, the lawyer should ensure that the client fully understands the limitations of the service to be
provided and the risks of the retainer. Discussions with the client concerning limited service should be confirmed in writing. Where a lawyer is providing limited service, the lawyer should be careful to avoid placing him or herself in a position where it appears that the lawyer is providing full service to the client.

The relevant Notes refer to and quote from the CBA report and the Alberta Rules, and say:

A lawyer must therefore carefully assess in each case in which a client desires abbreviated or partial services whether, under the circumstances, it is possible to render those services in a competent manner. As long as the client is genuinely fully informed about the nature of the arrangement and understands clearly what is given up, it should be possible to provide such services effectively and ethically...

Proposed Amendments to the Law Society of Upper Canada’s Rules to Address Unbundling

The issues that require attention and, consequently, enhancements to the rules generally relate to the following:

1. **Defining the scope of representation:** There is a need for an understanding between the lawyer/paralegal and client about what the lawyer will do by way of providing limited legal services;

2. **Clarifying communications between counsel and parties:** The issue is how the rules around communications with represented parties should be applied, given that the lawyer/paralegal providing limited legal services will not be counsel of record or may not consider himself or herself retained for the purposes of the rule;

3. **The lawyer’s or paralegal’s role in document preparation, including disclosure of such assistance:** This relates to notice to the court of “ghostwriting” of pleadings, or whether the court must be advised that the client has counsel for a particular part of the case.

In examining these issues, the guiding principle must be that any amendments to the ethical rules for unbundled legal services should not create a lesser standard of professional conduct than is otherwise expected of a lawyer or paralegal. As such, any amendments would not create new standards but confirm existing standards with awareness around how they apply in the unbundled context.

The following are proposals for amendments to the lawyers’ and paralegals’ rules upon which comment is requested. The reference is provided for the lawyers’ rules (L) and the paralegals’ rules (P). As the Paralegal Rules do not include commentary, where commentary is amended or added to the lawyers’ rules, similar language is added to the Paralegal Guidelines that accompany the paralegals’ rules.
Some of the proposals relate to procedural matters before a tribunal. These proposals are included for comment but would not be considered for adoption at present. They may be considered at a future date in the event that amendments to procedural rules on the provision of limited legal services are considered appropriate.

**Rule 1.03(L)/1.02(P) - Interpretation**

A definition of “limited legal services” or “limited legal representation” should be added to the rules, which would be used in applicable rules that follow. The definition would read:

“limited legal services” or “limited legal representation” means the provision of legal services by a lawyer/paralegal for part, but not all, of a client’s legal matter by agreement between the lawyer/paralegal and the client;

The paralegals’ rules also require a new definition, found in the lawyers’ rules, for “legal practitioner,” as this term is used in some of the rules discussed later in this paper. It would read as follows:

“legal practitioner” means a person
(a) who is a licensee; or
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction; or
(c) who is not a licensee but is permitted by the Law Society to provide legal services in Ontario.

A housekeeping amendment is needed to this definition in the lawyers’ rules to include paragraph (c) above.

**Rule 2.01 - Competence**

While the competence rule itself would not appear to require amendment, additional commentary should be added to address competence in the delivery of limited legal services. The following is a proposed addition:
A lawyer may accept a retainer for limited legal services, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 2.02(X) [possible new rule on quality of service in limited legal services retainers]

Rule 2.02(L) – Quality of Service/Rule 3.02(P) – Advising Clients
It would appear appropriate to add a new rule and commentary to set out the lawyer’s or paralegal’s obligation to provide candid advice about the limited retainer and to commit to writing the agreement between the lawyer/paralegal and client for the limited legal services. This would assist clients in understanding the nature of a limited retainer, and remind them of the limits on the service to which they agreed. The following is the proposal:

Limited Legal Services

2.02/3.02(X) Before providing limited legal services to a client, the lawyer/paralegal shall

(a) advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer/paralegal can provide, including, where appropriate, within the means provided by the client, and

(b) confirm in writing and provide the client with a copy of the agreement between the lawyer and the client for the provision of the services.

Commentary
Reducing to writing the discussions and agreement with the client about limited legal services assist the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

A lawyer who is providing limited legal services should be careful to avoid acting such that it appears that the lawyer is providing full services to the client.
A lawyer who is providing limited legal services should consider how communications from opposing counsel in a matter should be managed. See rule 6.03(X) [possible new rule on communicating with represented party in the context of a limited retainer].

It also appears appropriate to add to the commentary under rule 2.02(6) – Client Under a Disability a statement to the following effect:

A lawyer who is asked to provide limited legal services to a client under a disability should carefully consider and assess in each case whether, under the circumstances, it is possible to render those services in a competent manner.

**Rule 2.09(L)/Rule 3.08(P) – Withdrawal from Representation**

The proposed amendment to rule 2.09 provides that the lawyer or paralegal is deemed to have withdrawn once the services provided within the limited retainer are complete.\(^9\) The amendment would read as follows:

**Limited Legal Representation**

2.09/3.08(X) A lawyer/paralegal providing limited legal representation for a client is deemed to have withdrawn from representation when the lawyer has completed the matter that was the subject of the representation.

It would also be appropriate to add commentary to reflect procedural aspects associated with withdrawal. The language may depend on what standard is adopted in any future amendments that may be made to the civil rules. The proposal is as follows:

Upon completion of the matter, the lawyer should confirm in writing to the client that the representation is complete. Appropriate notice of this fact should also be provided to the court and, where necessary, to opposing counsel.

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\(^9\) If developments lead to amendments to civil rules of procedure, this rule and a new rule of procedure on withdrawal could be harmonized.
Rule 4.01(L) – The Lawyer as Advocate/Rule 4.01(P) – The Paralegal as Advocate

The proposed amendment to rule 4.01 addresses required disclosure when a lawyer or paralegal appears as advocate for a client in a limited retainer. The proposed rule reads:

Limited Legal Representation

4.01(X) A lawyer/paralegal acting for a client in a retainer for limited legal representation shall disclose to the tribunal and opposing counsel the scope of the representation for the client.

Rule 6.03 (L) – Responsibility to Lawyers and Others/Rule 4.02(P) – Interviewing Witnesses

A key issue in the unbundled context relates to communications with opposing counsel when a party is only represented for part of a legal matter. The general rule requires the consent of the party’s lawyer or paralegal for direct communication by an opposing counsel with that party. In a limited retainer, it would appear appropriate to vary that standard, depending on the nature and stage of the communication.

The current rule is written for instruction to the lawyer or paralegal who wishes to communicate with the party who is represented. In a limited retainer situation, it may be that the rule should be directed to the lawyer or paralegal providing the limited services. As such, two options are provided for comment.

The first option permits an opposing counsel to communicate with the party unless written notice of the party’s representation by a lawyer or paralegal is provided to the counsel. At that point, communications must be made through the party’s lawyer or paralegal or to the party with his or her lawyer’s or paralegal’s consent. The following is the proposal:

6.03/4.02(X) Subject to subrule (8)\(^{10}\), if a person is receiving limited legal representation from a legal practitioner on a particular matter, a lawyer/paralegal may, without the consent of the legal practitioner,

(a) approach or communicate or deal with the person on the matter, or

(b) attempt to negotiate or compromise the matter directly with the person,

unless the lawyer/paralegal receives written notice of the limited legal representation.

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\(^{10}\) This subrule deals with second opinions.
Commentary

Where notice as described in subrule (X) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited legal representation.

The second option is to direct the rule to the lawyer or paralegal providing the limited services. The proposal is as follows:

6.03/4.02(X) Subject to subrule (8), a lawyer/paralegal acting in a matter for a person in a retainer for limited legal representation shall, based on instructions from the person, notify in writing as soon as reasonably practical the opposing legal practitioner in the matter that he or she is to communicate, negotiate or otherwise deal with the lawyer/paralegal on the matter to the extent of the representation as disclosed in the notice.

The legal practitioner may communicate with the person on matters outside of the limited legal representation.
APPENDIX 1
(to consultation document)

RULES OF PROFESSIONAL CONDUCT

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

“legal practitioner” means a person
(a) who is a licensee; or
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other
than Ontario, and who is authorized to practise law as a barrister and solicitor in that
other jurisdiction; or
(c) who is not a licensee but is permitted by the Law Society to provide legal services in
Ontario.

“limited legal services” or “limited legal representation” means the provision of legal services by
a lawyer for part, but not all, of a client’s legal matter by agreement between the lawyer and the
client;

...

2.01 COMPETENCE

Definitions

2.01 (1) In this rule
“competent lawyer” means a lawyer who has and applies relevant skills, attributes, and values in
a manner appropriate to each matter undertaken on behalf of a client including

(a) knowing general legal principles and procedures and the substantive law and
procedure for the areas of law in which the lawyer practises,
[Amended – June 2007]
(b) investigating facts, identifying issues, ascertaining client objectives, considering
possible options, and developing and advising the client on appropriate courses of action,
(c) implementing, as each matter requires, the chosen course of action through the
application of appropriate skills, including,

(i) legal research,
(ii) analysis,
(iii) application of the law to the relevant facts,
(iv) writing and drafting,
(v) negotiation,
(vi) alternative dispute resolution,
(vii) advocacy, and
(viii) problem-solving ability,

(d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client,

(e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner,

(f) applying intellectual capacity, judgment, and deliberation to all functions,

(g) complying in letter and in spirit with the Rules of Professional Conduct,

(h) recognizing limitations in one’s ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served,

(i) managing one’s practice effectively,

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills, and

(k) adapting to changing professional requirements, standards, techniques, and practices.

Commentary

As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client’s behalf.

A lawyer who is incompetent does the client a disservice, brings discredit to the profession, and may bring the administration of justice into disrepute. In addition to damaging the lawyer’s own reputation and practice, incompetence may also injure the lawyer’s partners and associates.

A lawyer should not undertake a matter without honestly feeling competent to handle it or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is to be distinguished from the standard of care that a tribunal would invoke for purposes of determining negligence.
A lawyer must be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task. If consulted in such circumstances, the lawyer should either decline to act or obtain the client’s instructions to retain, consult, or collaborate with a lawyer who is competent for that task. The lawyer may also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, in such a situation, the lawyer should not hesitate to seek the client’s instructions to consult experts.

A lawyer should clearly specify the facts, circumstances, and assumptions upon which an opinion is based. Unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the lawyer should so state in the opinion.

A lawyer may accept a retainer for limited legal services, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also subrule 2.02(X) [possible new rule on quality of service in limited legal services retainers].

A lawyer should be wary of bold and confident assurances to the client, especially when the lawyer’s employment may depend upon advising in a particular way.

In addition to opinions on legal questions, the lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, policy, or social implications involved in the question or the course the client should choose. In many instances the lawyer’s experience will be such that the lawyer’s views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, where and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

In a multi-discipline practice, a lawyer must be particularly alert to ensure that the client understands that he or she is receiving legal advice from a lawyer supplemented by the services of a non-licensee. If other advice or service is sought from non-licensee members of the firm, it must be sought and provided independently of and outside the scope of the retainer for the provision of legal services and will be subject to the constraints outlined in the relevant by-laws and regulations governing multi-discipline practices. In particular, the lawyer should ensure that such advice or service of non-licensees is provided from a location separate from the premises of the multi-discipline practice.

Whenever it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.
The requirement of conscientious, diligent, and efficient service means that a lawyer should make every effort to provide service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[Amended - June 2009]

2.02 QUALITY OF SERVICE

... 

**Limited Legal Services**

2.02(X) Before providing limited legal services to a client, the lawyer shall

(a) advise the client honestly and candidly about the nature, extent and scope of such services that the lawyer can provide, including, if applicable, within the means provided by the client, and

(b) confirm in writing and provide the client with a copy of the agreement between the lawyer and the client for provision of the services.

**Commentary**

Reducing to writing the discussions and agreement with the client about limited legal services assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. A lawyer who is providing limited legal services should be careful to avoid acting such that it appears that the lawyer is providing full service to the client.

A lawyer who is providing limited legal services should consider how communications from opposing counsel in a matter should be managed. See subrule 6.03(X) [possible new rule on communicating with a represented party in the context of a limited retainer]

... 

**Client Under a Disability**

(6) When a client’s ability to make decisions is impaired because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal lawyer and client relationship.
Commentary

A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client’s ability to make decisions, however, depends on such factors as his or her age, intelligence, experience, and mental and physical health, and on the advice, guidance, and support of others. Further, a client’s ability to make decisions may change, for better or worse, over time. When a client is or comes to be under a disability that impairs his or her ability to make decisions, the impairment may be minor or it might prevent the client from having the legal capacity to give instructions or to enter into binding legal relationships. Recognizing these factors, the purpose of this rule is to direct a lawyer with a client under a disability to maintain, as far as reasonably possible, a normal lawyer and client relationship.

A lawyer with a client under a disability should appreciate that if the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the lawyer may need to take steps to have a lawfully authorized representative appointed, for example, a litigation guardian, or to obtain the assistance of the Office of the Public Guardian and Trustee or the Office of the Children’s Lawyer to protect the interests of the client. In any event, the lawyer has an ethical obligation to ensure that the client’s interests are not abandoned.

A lawyer who is asked to provide limited legal services to a client under a disability should carefully consider and assess in each case whether, under the circumstances, it is possible to render those services in a competent manner.

...

2.09 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

2.09 (1) A lawyer shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

...

Limited Legal Representation

(X) A lawyer providing limited legal representation for a client is deemed to have withdrawn from representation when the lawyer has completed the matter that was the subject of the representation.

Commentary
Upon completion of the matter, the lawyer should confirm in writing to the client that the representation is complete. Appropriate notice of this fact should also be provided to the court and, where necessary, to opposing counsel.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

4.01 THE LAWYER AS ADVOCATE

Advocacy

4.01 (1) When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Limited Legal Representation

(X) A lawyer acting for a client in a retainer for limited legal representation shall disclose to the tribunal and opposing counsel the scope of the representation for the client.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

6.03 (1) A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.
2 options

Option 1:

Communications with a represented person

(7) Subject to subrules (X) and (8), if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner,
(a) approach or communicate or deal with the person on the matter, or
(b) attempt to negotiate or compromise the matter directly with the person.

Limited Legal Representation

(X) Subject to subrule (8), if a person is receiving limited legal representation from a legal practitioner on a particular matter, a lawyer may, without the consent of the legal practitioner,
(c) approach, communicate or deal with the person on the matter, or
(d) attempt to negotiate or compromise the matter directly with the person,

unless the lawyer receives written notice of the limited legal representation.

Second Opinions

(8) A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a legal practitioner with respect to that matter.

Commentary

Subrule (7) applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a legal practitioner concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This subrule does not prevent parties to a matter from communicating directly with each other.

The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other legal practitioner by closing his or her eyes to the obvious.
Where notice as described in subrule (X) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited legal representation.

Subrule (8) deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first legal practitioner involved. The lawyer should advise the client accordingly, and if necessary consult the first legal practitioner unless the client instructs otherwise.

[Amended - June 2009]

Option 2:

Communications with a represented person

(7) Subject to subrules (X) and (8), if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner,
   (a) approach or communicate or deal with the person on the matter, or
   (b) attempt to negotiate or compromise the matter directly with the person.

[Amended – June 2009]

Limited Legal Representation

(X) Subject to subrule (8), a lawyer acting in a matter for a person in a retainer for limited legal representation shall, based on instructions from the person, notify in writing as soon as reasonably practicable the opposing legal practitioner in the matter that he or she is to communicate, negotiate or otherwise deal with the lawyer on the matter to the extent of the representation as disclosed in the notice.

Commentary

The legal practitioner may communicate with the person on matters outside of the limited legal representation.
PARALEGAL RULES OF CONDUCT
AND PARALEGAL GUIDELINES

‘LIMITED’ LEGAL SERVICES
AMENDMENTS TO PARALEGAL RULES OF CONDUCT
Amendments are shown underlined
Other provisions are shown for purposes of context

Rule 1 – Citation and Interpretation

1.02 Interpretation

Definitions

“legal practitioner” means a person
(a) who is a licensee;
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other
than Ontario, and who is authorized to practise law as a barrister and solicitor in that
other jurisdiction; or
(c) who is not a licensee but who is permitted by the Law Society to provide legal services in
Ontario.

“limited legal services” or “limited legal representation” means the provision of legal services by
a paralegal for part, but not all, of a client’s legal matter by agreement between the paralegal and
the client;

3.02 Advising Clients

General

3.02 (1) A paralegal shall be honest and candid when advising clients.

(2) A paralegal shall not undertake or provide advice with respect to a matter that is outside his
or her permissible scope of practice.

Limited Legal Services

(16) Before providing limited legal services to a client, the paralegal shall
(a) advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide, including, where appropriate, within the means provided by the client, and

(b) confirm in writing and provide the client with a copy of the agreement between the paralegal and the client for the provision of the services.

3.08 Withdrawal from Representation

Withdrawal from Representation

3.08 (1) A paralegal shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

...

Limited Legal Representation

(13) A paralegal providing limited legal representation for a client is deemed to have withdrawn from representation when the paralegal has completed the matter that was the subject of the representation.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]

4.01 The Paralegal as Advocate

Duty to Clients, Tribunals and Others

4.01 (1) When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect.

(x) A paralegal acting for a client in a retainer for limited legal representation shall disclose to the tribunal and the opposing legal practitioner the scope of his or her representation of the client.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]
4.02 Interviewing Witnesses

Interviewing Witnesses

4.02 (1) Subject to subrules (2) and (3), a paralegal may seek information from any potential witness, whether under subpoena or not, but shall disclose the paralegal's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

(2) A paralegal shall not approach or deal with a person who is represented by another licensee, except through or with the consent of that licensee.

7.01 Courtesy and Good Faith

(6) A paralegal shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by another licensee, except with the consent of that licensee.

(7) If a person is receiving limited legal representation from a lawyer or paralegal on a particular matter, a paralegal may, without the consent of the lawyer or paralegal,

(a) approach or communicate or deal with the person on the matter, or

(b) attempt to negotiate or compromise the matter directly with the person,

unless the paralegal receives written notice of the limited legal representation

OR

(7) A paralegal acting in a matter for a person in a retainer for limited legal representation shall, based on instructions from the person, notify in writing as soon as reasonably practical the opposing legal practitioner in the matter that he or she is to communicate, negotiate or otherwise deal with the paralegal on the matter to the extent of the representation as disclosed in the notice.
'LIMITED' LEGAL SERVICES
AMENDMENTS TO PARALEGAL GUIDELINES
Amendments are shown underlined
Other provisions are shown for purposes of context

GUIDELINE 6: COMPETENCE

General

1. A licensed paralegal is held out to be knowledgeable, skilled and capable in his or her permissible area of practice. A client hires a legal service provider because the client does not have the knowledge and skill to deal with the legal system on his or her own. When a client hires a paralegal, the client expects that the paralegal is competent and has the ability to properly deal with the client's case.

Limited Legal Services

1.1 A paralegal may accept a retainer for limited legal services, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a paralegal from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The paralegal should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services.

Cross reference Rule 3.02x – new rule

The Required Standard of Competence
Rule Reference: Rule 3.01(1), Rule 3.01(4)

Knowledge
Rule Reference: Rule 3.01(4), (a) & (b)

2. The competent paralegal will ensure that only after all necessary information has been gathered, reviewed and considered does he or she advise the client as to the course(s) of action that will most likely meet the client's goals, taking care to ensure that the client is made aware of all foreseeable risks and/or costs associated with the course(s) of action.

2.1 Unless the client instructs otherwise, the paralegal should investigate the matter in sufficient detail to be able to express an opinion, even where the paralegal has been retained to provide limited legal services. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the paralegal should so state in the opinion.

Client Service and Communication
Rule Reference: Rule 3.01(4)(d), (e), (f) & (g)
3. Client service is an important part of competence. Most of the complaints received by the Law Society relate to client service, such as not communicating with a client, delay, not following client instructions and not doing what the paralegal or lawyer was retained to do.

4. Rule 3.01(4) contains important requirements for paralegal-client communication and service. In addition to those requirements, a paralegal can provide more effective client service by
   - keeping the client informed regarding his or her matter, through all stages of the matter and concerning all aspects of the matter,
   - managing client expectations by clearly establishing with the client what the paralegal will do or accomplish and at what cost, and
   - being clear about what the client expects, both at the beginning of the retainer and throughout the retainer.

4.1 Where a paralegal is retained to limited legal services to a client, it is very important to clearly identify the scope of the retainer, such as identifying the services that the paralegal will and will not be providing to the client. It is advisable that the limits of the paralegal’s retainer are clearly stated in a written retainer agreement.
GUIDELINE 7: ADVISING CLIENTS

General
Rule Reference: 3.02(1) & (2)

1. A paralegal must honestly and candidly advise the client regarding the law and the client's options, possible outcomes and risks of his or her matter, so that the client is able to make informed decisions and give the paralegal appropriate instructions regarding the case. Fulfillment of this professional responsibility may require a difficult but necessary conversation with a client and/or delivery of bad news. It can be helpful for advice that is not well-received by the client to be given or confirmed by the paralegal in writing.

When advising a client, a paralegal
  o should explain to and obtain agreement from the client about what legal services the paralegal will provide and at what cost. Subject to any specific instructions or agreement, the client does not direct every step taken in a matter. Many decisions made in carrying out the delivery of legal services are the responsibility of the paralegal, not the client, as they require the exercise of professional judgment. However, the paralegal and the client should agree on the specific client goals to be met as a result of the retainer. This conversation is particularly important in the circumstances of a retainer to provide limited legal services.
  o should explain to the client under what circumstances he or she may not be able to follow the client's instructions (for example, where the instructions would cause the paralegal to violate the Rules).
  o should ensure that clients understand that the paralegal is not a lawyer and should take steps to correct any misapprehension on the part of a client, or prospective client.

Client Under a Disability
Rule Reference: Rule 3.02(7), (8), Rule 2.03

8. A paralegal must be particularly sensitive to the individual needs of a client under a disability. The paralegal should maintain a good professional relationship with the client, even if the client's ability to make decisions is impaired because of minority, mental disability or some other reason. The paralegal should also be aware of his or her duty to accommodate a client with a disability.

8.1 A paralegal who is asked to provide limited legal services to a client under a disability should carefully consider and assess in each case whether under the circumstances, it is possible to render those services in a competent manner
GUIDELINE 11: WITHDRAWAL FROM REPRESENTATION

General
Rule Reference: Rule 3.08

... 

Written Confirmation

16. If a paralegal's services are terminated while the client's matter is ongoing and the client requests that the matter be transferred to a new paralegal or lawyer, the paralegal should confirm, in writing, the termination of the retainer. The paralegal should also obtain a direction, signed by the client, for release of the client's file to a successor paralegal or lawyer. A direction is a written document instructing the paralegal to release the file to the successor paralegal or lawyer. If the file will be collected by the client personally, the paralegal should obtain a written acknowledgement signed by the client, confirming that the client has received the file.

Limited Legal Representation

17. Upon completion of a limited retainer, the paralegal should confirm in writing to the client that the representation is complete. Appropriate notice of this fact should also be provided to the court and, where necessary, to the opposing legal practitioner.

[Note: This proposal is included for comment but would not be considered for adoption at present. It may be considered at a future date in the event that amendments to procedural rules on appearances for the provision of limited legal services are considered appropriate.]
GUIDELINE 14: RETAINERS

General

1. In the context of providing legal services, the word *retainer* may mean any or all of the following:
   - the client's act of hiring the paralegal to provide legal services (i.e., a *retainer*),
   - the contract that outlines the legal services the paralegal will provide to the client and the fees and disbursements and HST to be paid by the client (i.e., a *retainer agreement*), or
   - monies paid by the client to the paralegal in advance to secure his or her services in the near future and against which future fees will be charged (i.e., a *money retainer*).

The Retainer Agreement
Rule Reference: Rule 5.01(1)

2. Once the paralegal has been hired by a client for a particular matter, it is advisable that the paralegal discuss with the client two essential terms of the paralegal's retainer by the client: the scope of the legal services to be provided and the anticipated cost of those services. The paralegal should ensure that the client clearly understands what legal services the paralegal is undertaking to provide. It is helpful for both the paralegal and client to confirm this understanding in writing by
   - a written retainer agreement signed by the client,
   - an engagement letter from the paralegal, or
   - a confirming memo to the client (sent by mail, e-mail or fax).

2.1 A written retainer agreement is particularly helpful in the circumstances of a retainer to provide limited legal services.

3. This written confirmation should set out the scope of legal services to be provided and describe how fees, disbursements and HST will be charged (see Guideline 13: Fees).
GUIDELINE 17: DUTY TO PARALEGALS, LAWYERS AND OTHERS

General
Rule Reference: Rule 2.01(3)  Rule 7.01

1. Discourteous and uncivil behaviour between paralegals or between a paralegal and a lawyer will lessen the public’s respect for the administration of justice and may harm the clients' interests. Any ill feeling that may exist between parties, particularly during adversarial proceedings, should never be allowed to influence paralegals or lawyers in their conduct and demeanour toward each other or the parties. Hostility or conflict between representatives may impair their ability to focus on their respective clients' interests and to have matters resolved without undue delay or cost.

Prohibited Conduct
Rule Reference: Rule 7.01

2. The presence of personal animosity between paralegals or between a paralegal and a lawyer involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. To that end, Rule 7.01 outlines various types of conduct that are specifically prohibited.

3. One of the prohibitions in Rule 7.01(1) refers to sharp practice. Sharp practice occurs when a paralegal obtains, or tries to obtain, an advantage for the paralegal or client(s), by using dishonourable means. This would include, for example, lying to another paralegal or a lawyer, trying to trick another paralegal or a lawyer into doing something or making an oral promise to another paralegal or lawyer with the intention of reneging on the promise later. As another example, if an opposing paralegal were under a mistaken belief about the date of an upcoming trial, a paralegal would be obligated to tell the opposing representative about the error, rather than ignoring the matter in the hope the opposing representative would not appear at the trial.

Limited Legal Services

3.1 Where notice as described in subrule (7) has been provided to a lawyer for an opposing party, the paralegal is required to communicate with the legal practitioner who is providing the person with the limited legal representation, but only to the extent of the limited representation as identified by the legal practitioner. The paralegal may communicate with the person on matters outside of the limited legal representation.

OR

The legal practitioner may communicate with the person on matters outside of the limited legal representation.
Responses to the Call for Input

Organizations

1. The Advocates’ Society
2. Association of Community Legal Clinics of Ontario (ACLCO)
3. Criminal Lawyers’ Association (CLA)
4. Equity and Aboriginal Issues Committee (EAIC)
5. Family Lawyers Association
6. LawPRO
7. Legal Aid Ontario (LAO)
8. Ontario Bar Association (OBA)
9. Pro Bono Law Ontario
10. Toronto Lawyers Association (TLA) – Nestor E. Kostyniuk

Individuals

11. Christopher Arnold, Resolution Specialist, Collaborative Family Law – Ottawa
12. David Baker, Bakerlaw Accessible Justice – Toronto
14. Raj M. Bharati – New Market
15. Raoul Boulakia – Toronto
16. Stephen Ginsberg, Executive Director, CAW Legal Services Plan
17. Pauline Green – Toronto
19. Veena Pohani – Toronto
20. Heather J. Ross – Goderich
21. Michael Wicklum – Perth
22. Richard Yasny – Toronto
Draft Amendments to the Rules of Professional Conduct

Rule 1.02 Definition

“limited scope retainer” means the provision of legal services by a lawyer for part, but not all, of a client’s legal matter by agreement between the lawyer and the client;

Rule 2.01 Competence -

[Addition to Commentary under subrule 2.01 (1)]

When a lawyer considers whether to provide legal services under a limited scope retainer, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement to provide such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also subrules 2.02(6.1) to (6.3).

Rule 2.02 Quality of Service

[Addition to Commentary under subrule 2.02 (6)]

A lawyer who is asked to provide legal services under a limited scope retainer to a client under a disability should carefully consider and assess in each case how, under the circumstances, it is possible to render those services in a competent manner.

Legal Services Under a Limited Scope Retainer

(6.1) Before providing legal services under a limited scope retainer, a lawyer shall advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide, and, where appropriate, whether the services can be provided within the financial means of the client.

(6.2) When providing legal services under a limited scope retainer, a lawyer shall confirm the services in writing and give the client a copy of the written document when practicable to do so.
Commentary

Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client. A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.

A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See rule 6.03(7.1).

(6.3) Subrule (6.2) does not apply to a lawyer if the legal services are

(a) legal services or summary advice provided as a duty counsel under the Legal Aid Services Act, 1998 or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(b) summary advice provided in community legal clinics, student clinics or under the Legal Aid Services Act, 1998;

(c) summary advice provided through a telephone-based service or telephone hotline;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) pro bono summary legal services provided in a non-profit or court-annexed program.
Commentary

The consultation referred to in subrule (6.3) (d) may include advice on preventive, protective, pro-active or procedural measures relating to the client’s legal matter, after which the client may agree to retain the lawyer.

6.03 Responsibility to lawyers and others:

(7.1) Subject to subrule (8), if a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a lawyer may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the lawyer receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

Additional Commentary

Where notice as described in subrule (7.1) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing the person under a limited scope retainer, but only to the extent of the matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer.
Draft Amendments to the Paralegal Rules of Conduct

Rule 1.02 Definitions:

“legal practitioner” means a person

(a) who is a licensee,

(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practice law as a barrister and solicitor in that other jurisdiction.

“limited scope retainer” means the provision of legal services by a paralegal for part, but not all, of a client’s legal matter by agreement between the paralegal and the client;

Rule 3.02 Advising Clients

Legal Services Under a Limited Scope Retainer

(8.1) Before providing legal services under a limited scope retainer, a paralegal shall advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide, and, where appropriate, whether the services can be provided within the financial means of the client.

(8.2) When providing legal services under a limited scope retainer, a paralegal shall confirm the services in writing and give the client a copy of the written document when practicable to do so.

(8.3) Subrule (8.2) does not apply to a paralegal if the legal services are

(a) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;

(b) summary advice provided in community legal clinics, student clinics or under the Legal Aid Services Act, 1998;

(c) summary advice provided through a telephone-based service or telephone hotline;
(d) summary advice provided by the paralegal to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

**Rule 7.01 Courtesy and Good Faith**

(6.1) If a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a paralegal may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the paralegal receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.
RULES OF PROFESSIONAL CONDUCT

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,
...
"legal practitioner" means a person
(a) who is a licensee; or
(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other
    than Ontario, and who is authorized to practise law as a barrister and solicitor in that
    other jurisdiction;

"limited scope retainer" means the provision of legal services by a lawyer for part, but not all, of
a client’s legal matter by agreement between the lawyer and the client;

...

2.01 COMPETENCE

Definitions

2.01 (1) In this rule
"competent lawyer" means a lawyer who has and applies relevant skills, attributes, and values in
a manner appropriate to each matter undertaken on behalf of a client including
(a) knowing general legal principles and procedures and the substantive law and
    procedure for the areas of law in which the lawyer practises,
    [Amended – June 2007]
(b) investigating facts, identifying issues, ascertaining client objectives, considering
    possible options, and developing and advising the client on appropriate courses of action,
(c) implementing, as each matter requires, the chosen course of action through the
    application of appropriate skills, including,
    (i) legal research,
    (ii) analysis,
    (iii) application of the law to the relevant facts,
    (iv) writing and drafting,
    (v) negotiation,
    (vi) alternative dispute resolution,
(vii) advocacy, and
(viii) problem-solving ability,

(d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client,

(e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner,

(f) applying intellectual capacity, judgment, and deliberation to all functions,

(g) complying in letter and in spirit with the Rules of Professional Conduct,

(h) recognizing limitations in one’s ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served,

(i) managing one’s practice effectively,

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills, and

(k) adapting to changing professional requirements, standards, techniques, and practices.

Commentary

As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client’s behalf.

A lawyer who is incompetent does the client a disservice, brings discredit to the profession, and may bring the administration of justice into disrepute. In addition to damaging the lawyer’s own reputation and practice, incompetence may also injure the lawyer’s partners and associates.

A lawyer should not undertake a matter without honestly feeling competent to handle it or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is to be distinguished from the standard of care that a tribunal would invoke for purposes of determining negligence.
A lawyer must be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task. If consulted in such circumstances, the lawyer should either decline to act or obtain the client’s instructions to retain, consult, or collaborate with a lawyer who is competent for that task. The lawyer may also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, in such a situation, the lawyer should not hesitate to seek the client’s instructions to consult experts.

A lawyer should clearly specify the facts, circumstances, and assumptions upon which an opinion is based. Unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the lawyer should so state in the opinion.

When a lawyer considers whether to provide legal services under a limited scope retainer, he or she must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement to provide such services does not exempt a lawyer from the duty to provide competent representation. As in any retainer, the lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also subrule 2.02(6.1) to (6.3)

A lawyer should be wary of bold and confident assurances to the client, especially when the lawyer’s employment may depend upon advising in a particular way.

In addition to opinions on legal questions, the lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, policy, or social implications involved in the question or the course the client should choose. In many instances the lawyer’s experience will be such that the lawyer’s views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, where and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.
In a multi-discipline practice, a lawyer must be particularly alert to ensure that the client understands that he or she is receiving legal advice from a lawyer supplemented by the services of a non-licensee. If other advice or service is sought from non-licensee members of the firm, it must be sought and provided independently of and outside the scope of the retainer for the provision of legal services and will be subject to the constraints outlined in the relevant by-laws and regulations governing multi-discipline practices. In particular, the lawyer should ensure that such advice or service of non-licensees is provided from a location separate from the premises of the multi-discipline practice.

Whenever it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

The requirement of conscientious, diligent, and efficient service means that a lawyer should make every effort to provide service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

2.02 QUALITY OF SERVICE

... 

Client Under a Disability

(6) When a client’s ability to make decisions is impaired because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal lawyer and client relationship.
Commentary

A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions, however, depends on such factors as his or her age, intelligence, experience, and mental and physical health, and on the advice, guidance, and support of others. Further, a client's ability to make decisions may change, for better or worse, over time. When a client is or comes to be under a disability that impairs his or her ability to make decisions, the impairment may be minor or it might prevent the client from having the legal capacity to give instructions or to enter into binding legal relationships. Recognizing these factors, the purpose of this rule is to direct a lawyer with a client under a disability to maintain, as far as reasonably possible, a normal lawyer and client relationship.

A lawyer with a client under a disability should appreciate that if the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the lawyer may need to take steps to have a lawfully authorized representative appointed, for example, a litigation guardian, or to obtain the assistance of the Office of the Public Guardian and Trustee or the Office of the Children's Lawyer to protect the interests of the client. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned.

A lawyer who is asked to provide legal services under a limited scope retainer to a client under a disability should carefully consider and assess in each case how, under the circumstances, it is possible to render those services in a competent manner.

Limited Legal Services

2.02 (6.1) Before providing legal services under a limited scope retainer, the lawyer shall advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide, and, where appropriate, whether the services can be provided within the financial means of the client, and

(6.2) When providing legal services under a limited scope retainer, a lawyer shall confirm in writing the services and give the client a copy of the written document when practicable to do so.
Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer. In certain circumstances, such as when the client is in custody, it may not be possible to give him or her a copy of the document. In this type of situation, the lawyer should keep a record of the limited scope retainer in the client file and, when practicable, provide a copy of the document to the client.

A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.

A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed. See subrule 6.03(7.1)

(6.3) Subrule (6.2) does not apply to a lawyer if the legal services are

(a) ______ legal services or summary advice provided as a duty counsel under the Legal Aid Services Act, 1998 or through any other duty counsel or other advisory program operated by a not-for-profit organization;

(b) ______ summary advice provided in community legal clinics, student clinics or under the Legal Aid Services Act, 1998;

(c) ______ summary advice provided through a telephone-based service or telephone hotline;

(d) ______ summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) ______ pro bono summary legal services provided in a non-profit or court-annexed program.
Commentary
The consultation referred to in subrule (6.3)(d) may include advice on preventative, protective, pro-active or procedural measures relating to the client’s legal matter, after which the client may agree to retain the lawyer.

...

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

6.03 (1) A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

...

Communications with a represented person

(7) Subject to subrules (7.1) and (8), if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner,
(a) approach or communicate or deal with the person on the matter, or
(b) attempt to negotiate or compromise the matter directly with the person.

[Amended – June 2009]

Limited Legal Representation

(7.1) Subject to subrule (8), if a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a lawyer may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the lawyer receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

Second Opinions

(8) A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a legal practitioner with respect to that matter.

[Amended - June 2009]
Commentary

Subrule (7) applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a legal practitioner concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This subrule does not prevent parties to a matter from communicating directly with each other.

The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other legal practitioner by closing his or her eyes to the obvious.

Where notice as described in subrule (7.1) has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing the person under a limited scope retainer, but only to the extent of the matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer.

Subrule (8) deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first legal practitioner involved. The lawyer should advise the client accordingly, and if necessary consult the first legal practitioner unless the client instructs otherwise.

[Amended - June 2009]
PARALEGAL RULES OF CONDUCT
AND PARALEGAL GUIDELINES

Rule 1 – Citation and Interpretation

1.02 Interpretation

Definitions

“legal practitioner” means a person

(a) who is a licensee;

(b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction; or

“limited scope retainer” means the provision of legal services by a paralegal for part, but not all, of a client’s legal matter by agreement between the paralegal and the client

3.02 Advising Clients

General

3.02 (1) A paralegal shall be honest and candid when advising clients.

(2) A paralegal shall not undertake or provide advice with respect to a matter that is outside his or her permissible scope of practice.

... Limited Scope Retainers

(8.1) Before providing legal services under a limited scope retainer, the paralegal shall advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide and, where appropriate, whether the services can be provided within the financial means of the client, and

(8.2) When providing legal services under a limited scope retainer, a paralegal shall confirm in writing the services and give the client a copy of the written document when practicable to do so.
(8.3) Subrule (8.2) does not apply to a paralegal if the legal services are

(a) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;

(b) summary advice provided in community legal clinics, student clinics or under the Legal Aid Services Act, 1998;

(c) summary advice provided through a telephone-based service or telephone hotline;

(d) summary advice provided by the lawyer to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or

(e) pro bono summary legal services provided in a non-profit or court-annexed program.

7.01 Courtesy and Good Faith

(6) A paralegal shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by another licensee, except with the consent of that licensee.

(6.1) If a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a paralegal may, without the consent of the legal practitioner, approach, communicate or deal with the person on the matter, unless the paralegal receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.
GUIDELINES FOR LAW OFFICE SEARCHES

Motion
28. That Convocation approve the Guidelines for Law Office Searches that appear at Appendix 5.

Introduction and Background


30. The Federation’s Protocol was prepared following the September 2002 decision of the Supreme Court of Canada in R. v. Lavallee, in which the Court struck down s. 488.1 of the Criminal Code as unconstitutional. That section dealt with the procedure police officers were to follow in the execution of a search warrant on a lawyer’s office. In Lavallee, the Court recognized solicitor-client privilege as a principle of fundamental justice and a civil right of supreme importance, and set out the features that law office searches are required to have to ensure solicitor-client privilege is safeguarded.

31. The Federation’s Protocol was intended for a lawyer’s use when faced with a law office search. The Protocol is based on the principles articulated in R. v. Lavallee and the practical direction provided in the 2003 decision of the Ontario Superior Court of Justice in R. v. Rosenfeld.


5 R. v. Law Office of Simon Rosenfeld, (2003), 108 C.R.R. (2d) 165 involved the search of the office of an accused lawyer. The Law Society intervened in the case. The Court made an order in respect of the process that follows the seizure to notify potential clients regarding the issue of privilege. This involves the appointment by the Court of a referee who will review the seized documents and, in conjunction with the affidavit to be produced by the respondent lawyer, identify the clients who are to receive notice of a hearing to establish the process for determining the issue of solicitor-client privilege respecting the documents.
The Consultation Process

32. For the consultation, a draft document titled Guidelines for Law Office Searches was prepared. The proposed Guidelines incorporated much of the content of the Federation’s Protocol in a more accessible document for lawyers and law enforcement personnel.

33. In the spring of 2008, prior to the completion of the draft Guidelines, Law Society staff discussed the Federation’s Protocol with representatives of the Ministry of the Attorney General and received their comments.

34. A revised draft of the Guidelines for the purpose of the more formal consultation was completed by the summer of 2008.

35. The first phase of consultation occurred in the late summer and fall of 2008. Of the 41 legal and law enforcement organizations invited to review and offer comment on the Guidelines, 20 participated and provided comment and feedback, either in writing or through meetings at the Law Society.6

36. The majority of participants saw value in having law office search guidelines. However, it became apparent from comments during the consultation that there was a need to revise and improve the Guidelines as a useful document. The consultation was interrupted at this point to make revisions.

37. The revisions were completed in April 2010. As directed by the Committee, on May 10, 2010, the redrafted Guidelines were circulated to the 20 legal and law enforcement organizations which had participated in the first phase of consultation with an invitation to provide comment.

38. As part of this second phase of consultation, the redrafted Guidelines were sent, with an invitation to provide comment, to the Ministry of the Attorney General, the Department

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6 The legal and law enforcement organizations invited to participate and those that participated appear at Appendix 7.
of Justice, the Public Prosecutions Services Canada, the Ontario Crown Attorneys’ Association, the Federal/Provincial/Territorial Heads of Prosecution and the Federation of Law Societies. These legal organizations were not part of the first phase of consultation. This second phase of consultation took place in the late spring and summer of 2010.

39. Eighteen legal and law enforcement organizations of those invited to participate in the second phase of consultation provided written comment and feedback to the Law Society.\(^7\)

40. The majority of the legal and law enforcement organizations that participated in the consultation process recognized the value in having law office search guidelines available to assist lawyers.\(^8\)

41. The valuable comments received during the consultations were reviewed by the Committee, and assisted in preparing the final version of the Guidelines. The Committee thanks all those who participated in this process.

**Overview of the Guidelines**

42. The Guidelines begin with a summary setting out the various steps, in a checklist format, that a lawyer should take when facing a search warrant for a law office search. The substance of the Guidelines follows this summary and in some detail addresses electronic and paper searches. The document ends with an appendix setting out the guidelines expressed by Justice Arbour in *R. v. Lavallee.*

43. The Guidelines cover the matters that require attention when a law office is the subject of a search warrant, including:

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\(^7\) The legal and law enforcement organizations invited to participate in the second phase of consultation and those that participated appear at Appendix 8.

\(^8\) The comment and feedback about the redrafted Guidelines from the legal and law enforcement organizations that participated in the second phase of consultation are included in a separate document that is available to Convocation on request based on permission of the respondents.
a. Determining the validity of the warrant on its face;
b. Asserting solicitor-client privilege;
c. Assessing the potential for a conflict of interest and determining if a referee is required;
d. Determining whether a computer forensic examiner is required; and
e. Post-search procedures.

44. An online version of the Guidelines will be available on the Law Society’s website once approved.
LAW SOCIETY OF UPPER CANADA
GUIDELINES FOR LAW OFFICE SEARCHES

SUMMARY OF THE GUIDELINES

WHEN THE POLICE ARRIVE AT A LAW OFFICE

Inspect the search warrant
- Ensure that the law office is identified as the place to be searched,
- Ensure that the date the Police have attended at the law office is the date authorized,
- Ensure that the documents sought are identified,
- Ensure that the offence under investigation is identified,
- Ensure that the requisite judicial officer has signed and dated it,
- If there are deficiencies on the face of the warrant, point them out to the Police and assert that the Police should obtain a proper warrant, and

Do not obstruct the Police, even if you believe the search warrant or its manner of execution to be invalid.

Assert Privilege over all documents to be seized under the search warrant.

Is a Referee required?
Where the Lawyer may be a target of the investigation, if the Lawyer is in a conflict of interest and where there is no Lawyer present, this should be raised with the Police and either the Police or the Lawyer should make an application to the Court for the appointment of a Referee.

Is an Independent Forensic Computer Examiner required?
If the documents sought are on a computer or other electronic device/media, the assistance of a Court appointed Independent Forensic Computer Examiner may be required.

Do I need a Lawyer?
You are the only one who can answer that question. However, you can contact a Lawyer and you may find it helpful to speak with a Lawyer.

Lawyers should contact the Law Society at 416-947-3300 and ask to speak to Senior Counsel to the Director of Professional Regulation for assistance when faced with a law office search.
Next steps to be taken by the Referee or the non-conflicted Lawyer

- Keep notes of participants, contacts, happenings and timing,
- Identify and assert privilege with respect to all documents,
- Offer to, or if requested by the Police, locate the documents and, where practicable, make and keep copies of them,
- Comply with the terms of the search warrant and give only what is demanded by the warrant,
- Retain copies of all documents, to the extent that it is possible, time permitting,
- Offer to, or if requested by the Police, seal the documents in packages marked for identification and initialed by you and the Police, taking care to ensure that the Police do not see the documents or any client names,
- Ensure that the sealed packages are delivered to the custody of the Court or an independent third party as designated by the Court in accordance with the Court order, and
- Make reasonable efforts to contact the Clients whose documents are subject to seizure to advise what is happening and advise that they may wish to obtain independent legal advice.

The Search Warrant has been executed – next steps

If necessary, initiate or respond to applications before the Court that may include applications for,

- An order to unseal and access the sealed packages,
- The appointment of a Referee or an Independent Forensic Computer Examiner,
- The determination of objections to the search warrant or its manner of execution,
- The determination of issues of solicitor-client privilege,
- Further searches such as a comprehensive electronic search of an electronic device/media or a forensic image, and
- Direction with respect to the notification of the Clients of the search for and seizure of solicitor-client privileged documents.

This summary has been drafted for ease of reference. It should be read in conjunction with the attached Guidelines for Law Office Searches.
SOLICITOR-CLIENT PRIVILEGE

[1] Solicitor-client privilege is a principle of fundamental justice embodied in section 7 of the Charter of Rights and Freedoms and is of supreme importance in Canadian law. Solicitor-client privilege, properly understood, is a positive feature of law enforcement, not an impediment to it. Consequently, solicitor-client privileged information is out of reach for the State, and investigative necessity does not move it within the reach of the State.

[2] Solicitor-client privilege has been held by the Supreme Court of Canada as all but absolute in recognition of the high public interest in maintaining the confidentiality of the solicitor-client relationship.

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1 Lavallee, Raczek & Heintz v Canada (Attorney General), [2002] 3 S.C.R. 209, paragraph 16, per Justice Arbour, speaking for the Court, (it is a “fundamental civil and legal right” and a “principle of fundamental justice under s. 7 of the Charter”.)

2 Lavallee, paragraph 36, (“... In other words, the privilege, properly understood, is a positive feature of law enforcement, not an impediment to it.”)

3 Lavallee, paragraph 24, (“...all information protected by solicitor-client privilege is out of reach of the state.”)

4 Lavallee, paragraph 36, (“...Sometime, however, the traditional balancing of interests in a s. 8 analysis is inappropriate... Where the interest at stake is solicitor-client privilege – a principle of fundamental justice and civil right of supreme importance in Canadian law – the usual balancing exercise referred to above is not particularly helpful. This is so because the privilege favours not only the privacy interests of a potential accused, but also the interests of a fair, just and efficient law enforcement process.”)

5 The Court may determine that solicitor-client privilege should yield or does not exist in cases where the Court finds the existence of “criminal purpose.” The Court may determine that solicitor-client privilege should yield in cases where the Court determines that “innocence is at stake” or that “public safety is at stake.”

6 Ontario (Public Safety and Security) v Criminal Lawyers’ Association, [2010] 1 S.C.R. 815, paragraph 53, per McLachlin C.J. and Abella J. (“The purpose of this exemption is clearly to protect solicitor-client privilege, which has been held to be all but absolute in recognition of the high public interest in maintaining the confidentiality of the solicitor-client relationship.”) See also Lavallee, paragraph 36, (“...Indeed, solicitor-client privilege must remain as close to absolute as possible if it is to retain relevance. Accordingly, this Court is compelled in my view to adopt stringent norms to ensure its protection.”) and paragraph 49, (“...When allowing a law office to be searched, the issuing justice must be rigorously demanding so to afford maximum protection of solicitor-client confidentiality.”)
[3] The Client holds the privilege and the Lawyer is the trustee of that privilege. Lawyers are bound in law to protect their Clients’ privileged information and are duty bound to act solely in the interests of their Clients in a manner consistent with a Lawyer’s professional obligation as an Officer of the Court.\(^7\)

[4] Solicitor-client privileged documents cannot be disclosed by the Lawyer; only the Client may give informed consent to the disclosure of his or her privileged information.\(^8\)

[5] Just as solicitor-client privilege has evolved to its present constitutional status, so too has its scope evolved. Solicitor-client privilege attaches to documents and communications made in confidence for the purpose of seeking or providing legal advice. Client names may be privileged, Lawyers’ accounts are presumed to be privileged\(^10\) and factual information may also be privileged\(^11\).

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\(^7\) *Lavallee*, at paragraph 24, *per* Arbour J., speaking for the Court, ("It is critical to emphasize here that all information protected by solicitor-client privilege is out of reach of the state. .... It is the privilege of the client and the lawyer acts as gatekeeper, ethically bound to protect the privileged information that belongs to his or her client.")

\(^8\) It is important to note that prejudice to the Client is presumed if solicitor-client privileged documents or information comes into possession of the State. See *Celanese Canada Inc. v. Murray Demolition Corp.*, [2006] 2 S.C.R. 189, at paragraph 3, *per* Binnie J. See also *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 and *R. v. Bruce Power Inc.*, 2009 ONCA 573.

\(^9\) *Lavallee*, at paragraph 28, *per* Arbour J., ("The name of the client may very well be protected by solicitor-client privilege, although this is not always the case.")

\(^10\) *Maranda v. Richer*, [2003] 3 S.C.R. 193, at paragraph 33, *per* LeBel J., speaking for the Court, ("In law, when authorization is sought for a search of a lawyer’s office, the fact consisting of the amount of the fees must be regarded, in itself, as information that is, as a general rule, protected by solicitor-client privilege.")

\(^11\) *Maranda*, at paragraph 31, *per* LeBel J., (quoting with approval the statement in Sopinka, Lederman and Bryant, *The Law of Evidence in Canada*, 2nd ed. (Toronto: Butterworths, 1999), "The distinction between ‘fact’ and ‘communication’ is often a difficult one and the courts should be wary of drawing the line too fine lest the privilege be seriously emasculated."). See also *Wyoming Machinery Company v. Roch*, 2008 ABCA 433, *per* Côté J.A., speaking for the Court in paragraph 19 ("Nor can one short-circuit the whole discussion of privilege by saying that it only applies to communications, and so does not apply to a solicitor’s bookkeeping or money flows, on the theory that (a) they are information, not communications, or (b) they are acts, not communications.")
The Court alone controls the search, seizure and post-execution process and determines issues of privilege

[6] The Court alone is competent to adjudicate and determine the issue of privilege. The Court controls the entire search and seizure process and post-execution procedures that include the process of unsealing documents seized from a law office and the process of reviewing and determining if solicitor-client privilege attaches to seized documents.¹²

[7] Where there is a concern or dispute about the search warrant, its manner of execution or whether a Referee or Independent Forensic Computer Examiner is required, an application should be made to the Court for the Court to review and determine the issue or issues.

PURPOSE AND SCOPE

[8] Section 488.1 of the Criminal Code set out specific procedures for the search of a law office. This provision was struck down as unconstitutional by the Supreme Court of Canada in Lavallee, Rackel & Heintz v. Canada (Attorney General), [2002] 3 S.C.R. 209. As a result, the common law applies to a law office search and where the protection of solicitor client privilege is at issue.¹³

[9] In Lavallee, the Supreme Court of Canada articulated ten principles that govern the legality of searches of law offices. Those principles are reproduced as an Appendix to these Guidelines. Arbour J., speaking for the Court, also said in the same paragraph that the principles "...are not intended to select any particular procedural method of meeting these standards”.

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¹² Attorney General v. Law Society, 2010 ONSC 2150 per Hennessy J. of the Superior Court of Justice at paragraph 27 ("...the court retains control over the entire process of the unsealing of material seized from a law office or subject to solicitor-client privilege”. "...at the stage where the material must be reviewed to determine whether it contains solicitor-client privilege, the court controls this process.")

¹³ Descôteaux v. Mierzwiniski, [1982] 1 S.C.R. 860, at page 875, per Lamer J., (“When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising the authority should be determined with a view not to interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.”)
These Guidelines are intended to set out best practices to inform lawyers in the event of a search of and seizure from a law office.

[10] Law enforcement officers have the responsibility to maintain the integrity of their investigations and to exercise their own independent judgment about the manner of execution of their duties in relation to searches of law offices, subject to any applicable legislation, the Charter, applicable policing standards, and to direction of the Court issuing the warrant and the Court overseeing the post-execution procedures.

[11] After the warrant has been executed on the law office, the Crown will be a party to the proceedings and the Court will determine the issue of privilege. The Court has the sole authority to determine whether a Referee, an Independent Forensic Computer Examiner or any other person is required to be appointed to assist the Court and the precise role and duties of any such appointee; duties which may include who is required to notify potentially affected Clients and what the Clients should be told.

[12] Because solicitor-client privilege has supreme importance in Canadian law as embodied in section 7 of the Charter, Crown Counsel, as representatives of the Crown, understand the need to protect solicitor-client privilege and have an important role in the protection of solicitor-client privilege.

[13] Crown Counsel has a duty to ensure that the justice system operates fairly to all: individuals accused of violating the law, complainants, victims, witnesses and the public. The fair conclusion of an investigation may be dependent on the determination of issues of solicitor-client privilege with respect to the seized documents. Consequently, Crown Counsel has a role in the protection of the integrity of the investigation that may include bringing issues of solicitor-client privilege to the attention of the Court for its adjudication and determination in a fair and timely manner.
[14] The Police provide law enforcement services in Ontario in a manner that recognizes the fundamental rights of all people as guaranteed by the Charter\textsuperscript{14} and also have an important role in protecting solicitor-client privilege. Crown Counsel may be approached by the Police for legal advice with respect to obtaining a search warrant on a law office which should include advice about how to protect solicitor-client privilege. Such advice could be beneficial because the search warrant and any ancillary orders issued by the Court govern the search.

[15] These Guidelines deal with search warrants. Law enforcement and other regulatory authorities have other investigative tools at their disposal. For example, the Canada Revenue Agency has the power to demand or require that certain information be provided. Production orders can be issued pursuant to section 487.012 of the Criminal Code. Demands and requirements can arrive by letter. Many of the guidelines and principles pertaining to search warrants are relevant to these other investigatory tools.

[16] A Lawyer whose law office is or has been the target of a law office search may find it helpful to contact and speak with another Lawyer.

[17] **Lawyers should contact the Law Society at 416-947-3300 and ask to speak to Senior Counsel to the Director of Professional Regulation for assistance when faced with a law office search**

**DEFINITIONS**

[18] "Client" includes a current or former Client of a lawyer whose law office is the target of a search warrant and also includes a current or former Client of the law firm. The Client is the holder of solicitor-client privilege.

[19] “Comprehensive Electronic Search” means a search of an electronic device/media for one or more of the following; active data, operating system artifact data and archival data. Active

\textsuperscript{14} Section 1(2) of the Police Services Act, R.S.O 1990, Chapter P.15
data are the current files that are visible in directories and available to the operating system, applications and the user. Operating system artifact data are the deleted files (including memory “dumps”) that can be retrieved. Archival data are the data that have been transferred or backed up to peripheral media such as CDs, DVDs, floppy disks, zip disks, network servers or the internet.

[20] A comprehensive search is a search of data in all of the aforementioned areas of the electronic device/media, and may include, but is not limited to, active files, deleted files, slack space, unallocated space, RAM dump, recycle bin, history files, temporary internet directory, unallocated clusters, “swap” files, temporary files, printer spool files, metadata, shadow data, network servers or the internet.

[21] “Conflict of Interest” is an interest that could adversely affect the Lawyer’s judgment on behalf of or loyalty to the Client.\textsuperscript{15}

[22] “Crown” is any public authority that has a prosecutorial and/or investigative power or authority.

[22] “Document” means any medium on which is recorded or marked anything that is capable of being read or understood by a person or a computer system or other electronic device/media.

[23] "Electronic Devices/Media” means any computers, lap tops, servers, servers used in cloud computing and the like and peripheral media on which data can be found. It may include, but is not limited to, photocopy machines, fax machines, Blackberry’s, Palm Pilots, Smartphones, memory sticks, cell phones, mobile phones, GPS devices, iPhones, iPods, USB, CDs, DVDs, zip disks, floppy disks, backup tapes and the forensic image of an electronic device/media.

\textsuperscript{15} See R. 2.04(1) of the Rules of Professional Conduct.
[25] "Forensic Image" is a forensically sound duplicate of the data of a hard drive or other electronic storage media which is created by a method that does not alter data on the drive being duplicated and which can be authenticated / verified as a true copy through the process of Verification. This duplicate contains a copy of every bit, byte and sector of the source drive, including unallocated space and slack space precisely as the data appears on the source drive relative to the other data on the drive.

[26] "Independent Computer Forensic Examiner" is independent from the Crown, the Police and the conflicted Lawyer. The Independent Computer Forensic Examiner is appointed by the Court as its agent to assist and work with the Referee or the non-conflicted Lawyer to ensure that the search warrant and post-execution procedures are executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions\footnote{R. v. Tarrabain, O'Bryne & Company, 2006 ABQB 8, paragraph 22.}.

[27] "Independent Third Party" is a person or an organization that is independent of the Crown, Police and the Conflicted Lawyer.

[28] "Law Office" means any place, receptacle or building where privileged materials may reasonably be expected to be located and may include, although not limited to, a personal residence, or a storage facility used to maintain privileged documents.

[29] "Police" means any public authority that has an investigative and / or enforcement power or authority.

[30] "Referee" means a licensed Lawyer who is independent from the Crown, the Police and the conflicted Lawyer. The Referee is appointed by the Court as its agent when it issues a search warrant to ensure that the search warrant and post-execution procedures are executed in a fashion
that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions.17

[31] “Search Warrant” means a Judge or Justice’s written authorization, based on information received under oath that authorizes a law enforcement officer to search a building, receptacle or place, and seize specific documents or items, or specified categories of documents or items.

[32] “Verification” means the process of comparing a Forensic Image to the data contained on the source electronic device/media, through the use of digital fingerprints, such as MD5 Hash values (a 128 bit value generated by a widely accepted algorithm,) to verify the completeness of the Forensic Image.

**STEPS TO TAKE WHEN PRESENTED WITH A SEARCH WARRANT**

**Determine the validity of the search warrant on its face**

[33] When presented with a search warrant by the Police, the Lawyer should inspect the search warrant to ascertain it is a valid search warrant and ensure that,

- The law office is identified as the place to be searched,
- The date that the Police attend at the law office is the date authorized,
- The documents sought are identified or described,
- The offence under investigation is identified, and
- The search warrant was issued by or endorsed by an Ontario Court or the Federal Court of Canada.

[34] Deficiencies in the search warrant should be pointed out to the Police by the Lawyer and the Lawyer should suggest to the Police that a proper warrant be obtained. If the Police decline to seek a further search warrant, the Lawyer should not obstruct the Police in its execution of the warrant but should note the objection.

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17 *Tarrabain*, at paragraph 22
Court review of concerns about the search warrant

[35] Where there is a concern or dispute about the search warrant, its manner of execution or whether a Referee or Independent Forensic Computer Examiner is required, the issue or issues should be pointed out to the Police and referred to the Court for review. If the Police decline to refer the issue or issues to the Court for review or decline to discontinue the search, the Lawyer should not obstruct the Police in its execution of the warrant but should note the objection. Subsequently the Lawyer should refer the matter to the Court for review.

Assert solicitor-client privilege

[36] The Lawyer must clearly and unequivocally tell the Police that solicitor-client privilege is being asserted with respect to the documents sought pursuant to the warrant and that as a consequence the Police should not be permitted to see these documents. The Lawyer should not obstruct the Police but note the objection if the search warrant or its manner of execution is believed to be invalid or inappropriate.

[37] Lawyers have a positive duty to protect solicitor-client privilege. When the Police arrive with a search warrant or any other statutory demand, the Lawyer should assume that solicitor-client privilege attaches to the documents and assert privilege on behalf of the Client.

[38] It is the Court’s responsibility to decide if solicitor-client privilege attaches to a document; it is not the responsibility of the Lawyer or the Police.

Assess the potential for conflict of interest; determine if a Referee is required

[39] When presented with a search warrant by the Police, the Lawyer should consider whether he or she could be or is a target of the investigation.

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18 Lavallee, paragraph 24, per Arbour J., speaking for the Court, ("It is critical to emphasize here that all information protected by solicitor-client privilege is out of reach of the state. ... It is the privilege of the client and the lawyer acts as gatekeeper, ethically bound to protect the privileged information that belongs to his or her client.").

19 Lavallee, paragraph 49, principle 4. ("Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer’s possession.")
Often the Police and the issuing Court will have considered the need for a Referee and a Referee may have been appointed as a condition attached to the search warrant or in an assistance order. In that case, the Referee acts to protect solicitor-client privilege.

A Referee is required if:
- The Lawyer has a conflict of interest in relation to the Client.
- The Lawyer may be or is a target of the investigation, in which case the Lawyer has a conflict of interest in relation to the Client.
- The Lawyer is unable or unavailable to act and no other Lawyer in the law firm is available to act to safeguard solicitor-client privilege.\(^{20}\)

If an Independent Computer Forensic Examiner has been appointed by the Court and the Lawyer,
- Has a conflict of interest in relation to the Client,
- May be or is a target of the investigation, or
- Is unable or unavailable to act and no other Lawyer in the law firm is available to act to safeguard solicitor-client privilege,

a Referee may be required to be appointed by the Court depending upon the mandate given to the Independent Computer Forensic Examiner by the Court.

**A Referee is required but has not been appointed**

Often the Police and the Court will have appreciated the need for the appointment of a Referee and the Court will have appointed a Referee as a condition attached to the search warrant or in an assistance order.

If a Referee is needed but has not been appointed, the Lawyer should tell the Police that a Referee needs to be appointed by the Court and the Lawyer should ask the Police to return to the

\(^{20}\) See, for example, *Tarrabain, O’Bryne & Company, 2006 ABQB 14*
Court to seek the appointment of a Referee before proceeding with or continuing with the execution of the search warrant.

[45] If the Police decline to seek the appointment of a Referee or decline to discontinue their search, the Lawyer should not obstruct the Police in their execution of the warrant and cannot stop the search but should note the objection.

[46] In the meantime, the Lawyer continues to have a duty to safeguard solicitor-client privilege and should contact the Law Society for assistance.

The role of the Referee

[47] The Referee is a licensed Lawyer who is independent from the Crown, the Police and the conflicted Lawyer. The Referee is appointed by the Court to ensure that the search warrant and post-execution procedures are executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions. The search warrant or assistance order should set out the duties of the Referee. The Referee reports to and takes direction from the Court.

[48] The Referee takes all necessary steps to protect solicitor-client privilege and to ensure that the directions given and orders made by the Court with respect to the search and post search procedures are complied with. The Referee is responsible for notifying the Clients (the owners of solicitor-client privileged documents) with respect to the law office search.

[49] If an Independent Computer Forensic Examiner is appointed by the Court, the Referee, consistent with the order of the Court, advises the Independent Computer Forensic Examiner as required and makes all necessary applications to the Court to report to and to seek directions from the Court on behalf of the Independent Computer Forensic Examiner.

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21 Tarrabain, at paragraph 22; See, for example, R. v. Law Office of Simon Rosenfeld, [2003] O.J. No.834 (S.C.J.), per Nordheimer J. in paragraph 15 (where the Court appointed “a referee to examine the documents and to notify all clients who can be identified for the process that will be followed respecting the documents so that those clients can, if they wish, participate in the process for the purpose of protecting their solicitor and Client privilege over the documents.”)
Assisting the Police with searching, seizing and sealing documents

[50] The Referee or the non-conflicted Lawyer should offer to, and if requested by the Police, assist the Police by locating the documents sought in the search warrant, including locating electronic documents and electronic devices/media, placing them in packages, sealing the packages, initialing and arranging for the Police to initial the packages. Providing such assistance to the Police protects solicitor-client privilege.

Bringing the sealed documents to the Court or to an independent third party designated by the Court

[51] In accordance with the Court order the Police, the Referee or the non-conflicted Lawyer should deliver the sealed package of seized documents (including electronic devices/media) to the custody of the Court or to the party designated by the Court in a manner that protects solicitor-client privilege.

[52] If the search warrant fails to order custody of the seized sealed packages to the Court or to an independent third party, an application should be made to the Court for an order placing them in the custody of the Court or of an independent third party designated by the Court.

[53] The sealed packages should be kept in the custody of the Court or the Court designated independent third party until the Court directs that the documents (including electronic devices/media) be returned to the Client or to the Lawyer from whose office they were removed or directs that they be given to the Police or the Crown.

Assistance from the conflicted Lawyer

[54] If the Lawyer, whose documents are the subject matters of the search, is a target of the investigation or otherwise conflicted, he or she may be directed by the Court to assist the Referee or the Independent Computer Forensic Examiner.  

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22 Law Office of Simon Rosenfeld, at paragraph 17
SEARCH WARRANTS AND ELECTRONIC DEVICES/MEDIA

Search for and seizure of easily identifiable documents from a Law Office

[55] Subject to any terms and conditions of the search warrant, if potentially solicitor-client privileged documents stored on an electronic device/media are easily identifiable\(^{23}\), after asserting solicitor-client privilege with respect to the documents, the Referee or the non-conflicted Lawyer should offer to, or if requested by the Police, assist the Police by locating the documents in the electronic device/media, printing or saving an electronic copy of the documents to an electronic device/media provided by the Police and packaging the hardcopy or electronic copy of the seized documents, sealing the packages and ensuring that the sealed packages are delivered to the custody of the Court or to an independent third party designated by the Court, in accordance with the Court order.

Search for and seizure of an Electronic Device/Media from a Law Office

[56] The search warrant may authorize the search for and seizure of one or more electronic devices/media from a law office. The Referee or the non-conflicted Lawyer should assert solicitor-client privilege with respect to all electronic devices/media subject to the search warrant that may contain solicitor-client privileged documents.

[57] The Referee or the non-conflicted Lawyer should offer to, or if requested by the Police, assist the Police by locating the electronic device/media sought in the search warrant, placing the electronic device/media in packages\(^{24}\), sealing the packages, initialing the packages and ensuring that the sealed packages are delivered to the custody of the Court or an independent third party as designated by the Court and in accordance with the Court order.

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\(^{23}\) "Easily identifiable documents" refers to documents that are stored on an electronic device/media that are simple to locate, to retrieve, to identify, to download and to print as a hardcopy without the need for particular computer skill. Often these documents are stored in the active files of an electronic device/media.

\(^{24}\) Care should be taken to ensure that packaging appropriate for electronic devices/media is used to package seized electronic devices/media.
Creation of a Forensic Image of an Electronic Device/Media at a Law Office

[58] A search warrant may authorize the creation of one or more forensic images of an electronic device/media without the removal of the electronic device/media from the law office.

[59] If the search warrant authorizes the Police to create one or more forensic image of an electronic device/media at the law office, the Referee or the non-conflicted Lawyer should assert solicitor-client privilege with respect to all electronic devices/media that may contain solicitor-client privileged documents and should assert solicitor-client privilege with respect to all forensic images created.

[60] The Referee or the non-conflicted Lawyer should ask the Police if the electronic device or the application to be used by the Police to create the forensic images will result in a further forensic image of the electronic device being stored on a Police electronic device/media.

[61] If the Police advise that the electronic device or the application to be used to create the forensic images will result in a forensic image being stored on a Police electronic device/media the Referee or the non-conflicted Lawyer should ask the Police to decline to conduct or to discontinue the imaging process until an electronic device or an application can be utilized that would not result in a forensic image being stored on a Police electronic device/media.

[62] The Referee or the non-conflicted Lawyer may need to tell the Police that an Independent Computer Forensic Examiner needs to be appointed by the Court and to ask the Police to return to the Court to seek such an appointment before proceeding with or continuing with the imaging process of the electronic device/media.

[63] During the creation of the forensic images the Referee or the non-conflicted Lawyer should take steps to prevent any of the screens, the documents or the data stored on the electronic device/media being visible to the Police.
The process of the verification of a forensic image could reveal solicitor-client privileged documents to the Police. If the Police wish to verify the forensic image of an electronic device/media an Independent Computer Forensic Examiner needs to be appointed by the Court. If an Independent Computer Forensic Examiner has not been appointed the Referee or the non-conflicted Lawyer may need to tell the Police that an Independent Computer Forensic Examiner needs to be appointed by the Court and to ask the Police to return to the Court to seek such an appointment before proceeding with the process of verification of the forensic image.

The Referee or the non-conflicted Lawyer should offer to, or if requested by the Police, assist the Police by placing all forensic images in packages, sealing the packages, initialing the packages, and ensuring that the sealed packages are delivered to the custody of the Court or an independent third party as designated by the Court in accordance with the Court order.

If the Referee or the non-conflicted Lawyer ask the Police and the Police decline to conduct or discontinue the imaging process that would result in a forensic image being stored on a Police electronic device/media, or decline to conduct the verification of the forensic image or decline to return to Court to seek the appointment of an Independent Computer Forensic Examiner the Referee or the non-conflicted Lawyer should not obstruct the Police in their execution of the warrant but should note the objection. Subsequently the Referee or non-conflicted Lawyer should make an application to the Court for the Court to review and determine the issue or issues.

Custody of seized Electronic Devices/Media and Forensic Images

The seized electronic devices/media and all forensic images should be packaged, sealed, initialed, brought and kept in the custody of the Court or an independent third party designated by the Court.

An Independent Computer Forensic Examiner is required but has not been appointed

If an Independent Forensic Computer Examiner is required but has not been appointed, the Referee or the non-conflicted Lawyer should ask the Police to return to Court to seek the
appointment of an Independent Computer Forensic Examiner before continuing with the search. If the Police decline to do so, the Referee or the non-conflicted Lawyer should not obstruct the Police in the execution of the warrant but should note the objection and should make an application to the Court to review and determine the issue.

Need for a Referee to assist the Independent Computer Forensic Examiner

[69] Whenever an Independent Computer Forensic Examiner is appointed and the Lawyer,
  o Has a conflict of interest in relation to the Client,
  o May be or is a target of the investigation, or
  o Is unable or unavailable to act and no other Lawyer in the law firm is available to act to safeguard solicitor-client privilege

the Court should be asked to appoint a Referee in order to maintain the independence of the forensic examination process subject to Court direction.

The role of the Independent Forensic Computer Examiner

[70] The Independent Computer Forensic Examiner is independent from the Crown, the Police and the conflicted Lawyer and is appointed by the Court. The Independent Computer Forensic Examiner assists and works with the Referee or the non-conflicted Lawyer to ensure that the search warrant is executed in a fashion that will protect solicitor-client privilege and to ensure that the mandate given by the Court is carried out according to its protective conditions\textsuperscript{25}.

[71] As ordered and directed to by the Court, the role and duties of the Independent Computer Forensic Examiner could include,
  o Creating the forensic images of, or otherwise preserving an electronic device/media subject to a search warrant,
  o Verifying the forensic image of an electronic device/media,
  o Conducting the search, including any comprehensive electronic search, of and seizure from the electronic device/media or the forensic images, and

\textsuperscript{25} Tarrabain, at paragraph 22
With the assistance of the Referee or the non-conflicted Lawyer reporting to and taking directions from the Court.

THE WARRANT HAS BEEN EXECUTED – NEXT STEPS
Comprehensive electronic searches, applications to unseal and other proceedings

Comprehensive electronic search of the forensic image
[72] After the search warrant has been executed at the law office the Court may order that a comprehensive electronic search of a forensic image of an electronic device/media take place. The Court should be asked to appoint an Independent Computer Forensic Examiner to conduct all comprehensive electronic searches of and seizures from any forensic image or any electronic devices/media that may contain solicitor-client privileged documents.

Initiate and respond to applications; participate in hearings before the Court
[73] The Crown, the Referee or the non-conflicted Lawyer may initiate and respond to applications to the Court for adjudication, direction, orders or to report to the Court in relation to:
  o Concerns about the search warrant including its manner of execution,
  o The appointment of a Referee or an Independent Computer Forensic Examiner,
  o The custody of the sealed packages to the Court or an independent third party,
  o Issues about Client notification,
  o Issues of solicitor-client privilege,
  o Unsealing the sealed packages of seized documents or seized electronic device/media,
  o Access to seized documents, forensic images or electronic device/media,
  o The examination or search of; seized documents, a forensic image or an electronic device/media,
  o The return of seized documents, forensic images or electronic devices/media,
  o Searches, post search and seizure processes, including timelines with respect to and management of the process, and
  o Concerns about non-compliance with its orders.
Notify Clients about the execution of the search warrant

[74] The Referee or the non-conflicted Lawyer, subject to any Court order, is responsible for notifying the Clients who have been affected by the execution of the search warrant or whose documents have been seized pursuant to the search warrant.

[75] The Referee or the non-conflicted Lawyer, subject to any Court order, should advise the Clients of:
   - The seizure of any of their documents,
   - The risk to their privilege interests by the investigative or prosecutorial authorities,
   - The existence of a conflict of interest if one has arisen,
   - The right to seek and obtain legal advice and legal representation,
   - How solicitor-client privilege may be asserted,
   - How to require a hearing to determine any issue of privilege by the Court, and
   - Any other information to assist them in protecting their interests as a result of the search for and seizure of their documents.

Difficulty in notifying Clients

[76] The Referee or the non-conflicted Lawyer should seek direction from the Court about who is to be notified and the manner of notification in cases where it is not readily apparent who the Clients are that require notification or how notification can take place. The Referee or the non-conflicted Lawyer may also seek direction from the Court as to the information that is to be conveyed as part of the notification process.

Clients cannot be notified

[77] Ultimately, if efforts to contact the Clients fail, the Referee or the non-conflicted Lawyer should take steps that will afford continued protection of the Client’s solicitor-client privilege, including responding to the Crown’s application to gain access to the seized material, or bringing a motion to have the privilege issues adjudicated by the Court.
Fees and disbursements

[78] The Court will determine who is to bear the fees and disbursements of the Referee and any Independent Forensic Computer Examiner appointed by the Court. It is the Law Society of Upper Canada’s position that such fees and disbursements should be borne by the Attorney General or the investigating agency.26

26 Law Office of Simon Rosenfeld, per Nordheimer J. in paragraphs 18 and 20 ("It seems evident to me that the proper party upon whom to place the burden of the costs of this process is the party who has caused the need for the process in the first place, that is, the Crown. It is the Crown who has instituted the charges and it is the Crown who sought and obtained the search warrant for the documents." ... "The administration of justice is a matter of public interest and the costs of the administration of justice is a matter of public expense. The Crown represents the public in the enforcement of the criminal law and it is the Crown who should, therefore, bear the costs of ensuring the protection of this fundamental principle.") See also R. v. Harrington, 2006 ABQB 378, per Veit J. at paragraphs 25 - 28
APPENDIX

General Principles governing the legality of searches of law offices as articulated by Arbour J. in Lavallee, Rackel & Heintz v. Canada (Attorney General), [2002] 3 S.C.R. 209

1. No search warrant can be issued with regards to documents that are known to be protected by solicitor-client privilege.

2. Before searching a law office, the investigative authorities must satisfy the issuing justice that there exists no other reasonable alternative to the search.

3. When allowing a law office to be searched, the issuing justice must be rigorously demanding so to afford maximum protection of solicitor-client confidentiality.

4. Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession.

5. Every effort must be made to contact the lawyer and the client at the time of the execution of the search warrant. Where the lawyer or the client cannot be contacted, a representative of the Bar should be allowed to oversee the sealing and seizure of documents.

6. The investigative officer executing the warrant should report to the justice of the peace the efforts made to contact all potential privilege holders, who should then be given a reasonable opportunity to assert a claim of privilege and, if that claim is contested, to have the issue judicially decided.

7. If notification of potential privilege holders is not possible, the lawyer who had custody of the documents seized, or another lawyer appointed either by the Law Society or by the court, should examine the documents to determine whether a claim of privilege should be asserted, and should be given a reasonable opportunity to do so.

8. The Attorney General may make submissions on the issue of privilege, but should not be permitted to inspect the documents beforehand. The prosecuting authority can only inspect the documents if and when it is determined by a judge that the documents are not privileged.

9. Where sealed documents are found not to be privileged, they may be used in the normal course of the investigation.

10. Where documents are found to be privileged, they are to be returned immediately to the holder of the privilege or to a person designated by the court.
Protocol on Law Office Searches

A Proposed Draft Protocol to address searches and seizures of documents from law offices

As at October 15, 2004

Scope

This protocol applies to all searches and seizures and statutory demands for the production of documents or materials of, at or from a law office, whether by way of search warrant or production order or letter of demand or notice of requirement to produce from the Canadian Revenue Agency, or other agency.

This protocol applies to cases where:

1. the lawyer whose office will be searched is a target of the investigation or
2. the documents are not precisely named in the Warrant to Search or
3. the lawyer is not present at the time the Warrant to Search is executed to produce the documents.

For the purpose of this Protocol,

"document" means any paper, parchment or other material on which is recorded or marked anything that is capable of being read or understood by a person, computer system or other device, and includes a credit card, but does not include trade marks or articles of commerce or inscriptions on stone or metal or other like materials;

"law office" means any place where privileged materials may reasonably be expected to be located;
"referee" means a lawyer, independent of the Crown and the lawyer whose law office is the target of the search, who has been appointed by the Court or, in Quebec, by the Barreau du Québec or the Chambre des notaires du Québec as directed by the judge authorizing the Warrant, to perform the obligations listed in this protocol.

Preamble

1. Since the decision in Lavallee, Rackel & Heintz v. Canada (Attorney General) (2002) 216 D.L.R. (4th) 257 (S.C.C.)⁵, there has been no section of the Criminal Code governing the activities of persons executing warrants to search a law office and what happens to documents that are seized under the authority of the warrant to search. The Lavallee decision points out that client names' may be privileged and the Maranda v. Richer 2003 SCC 67 decision says that lawyers' statements of account and payment details may be privileged.

2. It is desirable in the public interest for the Federation of Law Societies ("Federation") and the Federal Department of Justice to agree on a protocol relating to searches and seizures of lawyers' files which will put in place sufficient protection for solicitor-client privilege.

3. In R. v. Law Office of Simon Rosenfeld [2003] O.J. No. 834 (Ont. Sup. Ct. Justice)⁶, Nordheimer J. stated that it was the Court's responsibility to protect solicitor-client privilege and not that of the Law Society and that the Crown should bear any costs associated with searches and seizures. He concluded that the way to protect the privilege was to appoint a referee to review the seized documents.

Procedure

4. Where a Warrant to Search authorizes the search of a law office, the following procedure shall be observed:

a. In each Province and Territory, the local law society and the Federal and Provincial or Territorial Attorneys General will jointly develop a roster of lawyers who have agreed to act as referees in that jurisdiction. If agreement on the roster in a jurisdiction cannot be reached, the law society shall, at the request of

---


the Court, propose the names of at least three appropriate individuals for the court's consideration.

b. Before executing a Warrant to Search a law office, the prosecuting authority shall apply to the superior court for the appointment of an independent referee to
i. search for and seize the documents as required by the Warrant,
ii. maintain the continuity and the confidentiality of the documents,
iii. examine the documents in accordance with the procedures established in the Protocol.

c. Before attending at the law office named in the Warrant to Search, the Peace Officer in charge of executing the Warrant shall advise the local law society of the existence of the Warrant to Search a law office and the time and date of the search, in order that the (local law society) may designate a representative to be available to attend at the search on its behalf, if it sees fit to do so.

d. The Peace Officer in charge of executing the Warrant to Search shall make every effort to contact the lawyer whose law office is named in the Warrant to Search at the time of the execution of the warrant, and shall advise the lawyer that he or she may immediately contact the local law society for guidance regarding the lawyer’s obligations resulting from the execution of the Warrant to Search.

e. No acts authorized by the Warrant to Search shall take place until procedures 4(a) through 4(d) are followed and until the referee has had an opportunity to attend the law office, save and except that the Peace Officer in charge of executing the warrant may, with reasonable notice to a representative of the (local law society) of the intention to do so, enter the law office only in order to permit the Peace Officer to secure the premises of the search to prevent the removal of any articles from those premises.

f. All documents seized pursuant to the Warrant to Search shall be placed by the referee in packages, sealed, initialed, and marked for identification.

g. Upon completion of the execution of the Warrant to Search, the Peace Officer executing the Warrant and the referee shall deliver the seized documents into the custody of the Court.

h. Every effort must be made to contact all clients of the lawyer whose solicitor-client privilege may be affected by the Warrant to Search at the time of the execution of the Warrant. Where such notification cannot be made, the referee will recommend to the court the proper process for notifying all clients whose solicitor-client privilege may be affected by the Warrant to Search, which may
include a recommendation that advertisements be placed in the relevant media if the referee is of the view that such a step is necessary.

i. The referee shall notify all clients who can be identified of the process that will be followed respecting the documents so that those clients may participate in that process for the purpose of protecting their privilege over the documents.

j. The referee shall report to a judge of the superior court the efforts made to contact all potential privilege holders, who will then be given a reasonable opportunity to assert a claim of privilege over the seized documents and, if that claim is contested, to have the issue decided by a judge of the court in an expeditious manner.

k. If notification of potential privilege holders is not possible, the referee shall examine the seized documents to determine whether a claim of privilege should be asserted, and will be given a reasonable opportunity to do so.

l. All fees and disbursements of the referee shall be borne by the Attorney General.

m. The Attorney General may make submissions to a judge of the court on the issue of privilege, but shall not be permitted to inspect the seized documents.

n. Where the sealed documents are determined by the Court not to be privileged, they shall be released to the peace officer(s) and used in the normal course of the investigation, subject to any direction by the court.

o. Where the seized documents are determined by the Court to be privileged, they shall be returned to a person designated by the Court.
PHASE ONE CONSULTATION

Phase One Participants
1. Advocates' Society
2. County and District Law Presidents' Association
3. Criminal Lawyers Association
4. Di Luca, Joe
5. Durham Regional Police Service
6. Halton Regional Police Service
7. LawPRO
8. Law Society of Alberta
9. Law Society of British Columbia
10. London Police Service
11. Metropolitan Toronto Police Service
12. Niagara Regional Police Service
13. Ontario Bar Association
14. Ontario Provincial Police
15. Peel Regional Police Service
16. Royal Canadian Mounted Police
17. Toronto Lawyers Association
18. Treaty Three Tribal Police Service
19. Windsor Police Service
20. York Regional Police Service

Organizations Invited but did not Participate
1. Akwesane Mohawk Police
2. Anishinabek Police Service
3. Barrie Police Service
4. First Nations Chiefs of Police Association
5. Greater Sudbury Police Service
6. Hamilton Police Service
7. Kingston Police Force
8. Lac Seul Police Service
9. Mnjikaning Police Service
10. Nishnawbe-Aski Police Service
11. Ontario Association of Chiefs of Police
12. Ottawa Police Service
13. Sarnia Police Service
15. Six Nations Police Service
16. Thunder Bay Police Service
17. United Chiefs & Council of Manitoulin Anishnaabe Police Service
18. Walpole Island Police Service
19. Waterloo Regional Police Service
20. Wikwemikong Tribal Police Service
21. Tyendinaga Mohawk Police
PHASE TWO CONSULTATION

Phase Two Participants
1. Advocates' Society
2. County and District Law Presidents' Association
3. Criminal Lawyers Association
4. Department of Justice
5. Federal/Provincial/ Territorial Heads of Prosecution*
6. Halton Regional Police Service
7. LawPRO
8. London Police Service
9. Ministry of the Attorney General
10. New Brunswick Office of Public Prosecutions
11. Niagara Regional Police Service
12. Ontario Bar Association
13. Public Prosecution Service of Canada*
14. Royal Canadian Mounted Police – Headquarters - Ottawa
15. Royal Canadian Mounted Police – The Province of Ontario
16. Toronto Lawyers Association
17. Treaty Three Tribal Police Service
18. Windsor Police Service

Organizations Invited but did not Participate
1. Durham Regional Police Service **
2. Federation of Law Societies
3. Law Society of Alberta **
4. Law Society of British Columbia **
5. Metropolitan Toronto Police Service **
6. Ontario Crown Attorneys’ Association
7. Ontario Provincial Police **
8. Peel Regional Police Service **
9. York Regional Police Service **

* Mr. Brian Saunders prepared a joint response in his capacity as Director of Public Prosecution Services of Canada and as permanent Co-Chair of the Federal/Provincial/Territorial Heads of Prosecution

**These organizations participated in the first phase of the consultation process
FOR INFORMATION

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

45. The Professional Regulation Division’s Quarterly Report (second quarter 2011), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division’s activities and responsibilities, including file management and monitoring, for the period of April to June 2011.
The Professional Regulation Division

Quarterly Report
April – June 2011
The Quarterly Report

The Quarterly Report provides a summary of the Professional Regulation Division's activities and achievements during the past quarter, April 1 – June 30, 2011. The purpose of the Quarterly Report is to provide information on the production and work of the Division during the quarter, to explain the factors that may have influenced the Division's performance, and to provide a description of exceptional or unusual projects or events in the period.

The Professional Regulation Division

Professional Regulation is responsible for the resolution, investigation and prosecution of complaints against licensees of the Law Society of Upper Canada, within the jurisdiction provided under the Law Society Act. In addition the Professional Regulation provides trusteeship services for the practices of licensees who are incapacitated by legal or health reasons. Professional Regulation also includes the Compensation Fund which compensates clients for losses suffered as a result of the wrongful acts of licensees.

See the Appendices for a case flow chart describing the complaints process.
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<td>Graph 3.3B: Investigations - Complaints Closed and Transferred Out</td>
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<td>Graph 3.3C: Investigations - Department Inventory</td>
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<td>Graph 3.3D: Investigations - Median Age of All Complaints</td>
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<tr>
<td>Graph 3.6B: Discipline - Department Inventory</td>
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The Law Society of Upper Canada
The Professional Regulation Division
Quarterly Report (April 1 – June 30, 2011)

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SECTION 1

REPORT HIGHLIGHTS
Highlights of Quarterly Performance

The Division
During the second quarter of 2011, Professional Regulation received approximately the same number of new complaints as in the first quarter of the year with some variation respecting proportions of paralegal and lawyer complaints. (Graph 2A) The overall complaints inventory declined approximately 6% due to an increase in case closures. (Graph 2C)

Intake
Typically a large number of cases concerning student good character are referred to Professional Regulation during the first half of the year. These are reviewed in the Intake department and either closed or forwarded for investigation. In the second quarter of 2011, Intake results show that the department closed 44% more cases and transferred 14% more cases for investigation when compared with the previous quarter. This is due in large part to the increased activity attributable to the good character cases. Intake reduced its inventory by 34%, from 513 cases at the end of Q1 2011 to 339 cases at the end of Q2 2011

Complaints Resolution
During the second quarter, Complaints Resolution received 12% more cases than in the previous quarter. It closed approximately the same number of cases as were received in the quarter. The department inventory continues to decline incrementally in each quarter, and it is maintaining its aging targets, with an actual median case age of 142 (target is 150-170: See Graph 3.2D). 84% of the department’s inventory (excluding reactivated cases) is less than 8 months old and within aging targets. All cases over one year old are tracked and given priority. 4% of the caseload is currently older than 12 months. Age is measured from the time a case arrives at the Law Society.

Investigations
Investigations received 22% more cases in the second quarter than in Q1 2011 due in large part to the cyclical influx of admission cases with good character issues. As many of these cases do not close in the same quarter, the department received more cases than it closed in the period. The department’s inventory remained stable however as a number of cases were placed in abeyance pending discipline prosecutions of related cases. The median age of the department’s inventory continued to decline and was 220 days at the end of the quarter. The target median case age is 240 days. The department also continued to monitor its case aging profile to ensure that individual case closures are timely. Since Q2 2010, the proportion of the department’s inventory (excluding reactivated and mortgage fraud cases) that is younger than 10 months old has increased by 6% (from 53% to 59%) and the proportion older than 18 months has decreased from 18% to 9%.

Discipline
The Discipline department intake of new cases continued at the same rate as in the previous quarter. The department’s inventory continued to increase as more cases were received than completed the hearing process. During the second quarter, 29 hearings and 8 appeals were completed. Thirty-three (33) Notices of Application and 4 Notices of Referral for Hearing were
issued in the quarter, 6 appeals were filed with the Appeal Panel, 2 judicial reviews were filed with the Divisional Court and 2 motions for leave to appeal were filed with the Ontario Court of Appeal.
SECTION 2

DIVISIONAL PERFORMANCE DURING THE QUARTER
The number of new complaints received in the second quarter of 2011 remained stable when compared to the number received in Q1 2011 as well as Q2 2010 and Q2 2009.

**Detailed Analysis of Complaints Received in the Division**

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>1038</td>
<td>912</td>
<td>971</td>
<td>1082</td>
<td>1028</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>168</td>
<td>162</td>
<td>128</td>
<td>156</td>
<td>195</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>86</td>
<td>59</td>
<td>78</td>
<td>44</td>
<td>54</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>1292</td>
<td>1133</td>
<td>1177</td>
<td>1282</td>
<td>1277</td>
</tr>
</tbody>
</table>

* includes Lawyers and Lawyer Applicants  
** includes Paralegal Licensees and Paralegal Applicants  
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.

1 Includes all complaints received in PRD from Complaints Services
The number of cases closed in the division in Q2 2011 increased by 12% from the case closures in the first quarter of 2011.

**Detailed Analysis of Complaints Closed in the Division**

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>1096</td>
<td>1037</td>
<td>1102</td>
<td>1073</td>
<td>1220</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>146</td>
<td>144</td>
<td>121</td>
<td>162</td>
<td>196</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>75</td>
<td>65</td>
<td>83</td>
<td>89</td>
<td>64</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>1317</td>
<td>1246</td>
<td>1306</td>
<td>1324</td>
<td>1480</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants  
** Includes Paralegal Licensees and Paralegal Applicants  
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.

---

2 This graph includes all complaints closed in Intake, Complaints Resolution, Investigations and Discipline.
Graph 2C: Total Inventory

Given the increase in case closures in the second quarter, the Division's inventory at the end of Q2 2011 decreased by 6% from the inventory at the end of Q1 2011. The chart below shows that the inventory of complaints against all three groups (lawyers, paralegals and UAP cases) decreased during the second quarter.

Detailed Analysis of Division Inventory

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>2851</td>
<td>2799</td>
<td>2675</td>
<td>2751</td>
<td>2592</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>383</td>
<td>410</td>
<td>422</td>
<td>417</td>
<td>393</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>149</td>
<td>154</td>
<td>160</td>
<td>121</td>
<td>114</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3383</td>
<td>3363</td>
<td>3257</td>
<td>3289</td>
<td>3099</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants  
** Includes Paralegal Licensees and Paralegal Applicants  
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.

3 This graph does not include active complaints in the Monitoring & Enforcement Department.
SECTION 3

DEPARTMENTAL PERFORMANCE DURING THE QUARTER
3.1 – Intake

Graph 3.1A:  Intake - Input

The Intake department processes all new regulatory complaints. In Q2 2011, in addition to the 1277 new cases, Intake re-opened 38 complaints which met the threshold for reopening a closed matter.

4 includes new complaints received and re-opened complaints
In Q2 2011, the Intake department closed 44% more cases than in Q1 2011 and transferred 14% more cases than in Q1 2011. These increases are due to the receipt and review of the good character/licensing cases that were received in the first quarter of 2011.

**Detailed Analysis of Complaints Closed and Transferred From Intake**

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
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<tr>
<td><strong>Complaints against Lawyers</strong>*</td>
<td></td>
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<tr>
<td>Closed</td>
<td>374</td>
<td>373</td>
<td>368</td>
<td>346</td>
<td>480</td>
</tr>
<tr>
<td>Transferred</td>
<td>652</td>
<td>649</td>
<td>662</td>
<td>657</td>
<td>730</td>
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<tr>
<td>**Complaints against Paralegals **</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closed</td>
<td>68</td>
<td>53</td>
<td>29</td>
<td>39</td>
<td>90</td>
</tr>
<tr>
<td>Transferred</td>
<td>109</td>
<td>123</td>
<td>108</td>
<td>100</td>
<td>129</td>
</tr>
<tr>
<td><strong>UAP Complaints</strong>***</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closed</td>
<td>31</td>
<td>35</td>
<td>44</td>
<td>26</td>
<td>21</td>
</tr>
<tr>
<td>Transferred</td>
<td>59</td>
<td>45</td>
<td>48</td>
<td>30</td>
<td>39</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closed</td>
<td>473</td>
<td>461</td>
<td>441</td>
<td>411</td>
<td>591</td>
</tr>
<tr>
<td>Transferred</td>
<td>820</td>
<td>817</td>
<td>818</td>
<td>787</td>
<td>898</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants  
** Includes Paralegal Licensees and Paralegal Applicants  
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.
3.1 – Intake

Graph 3.1C: Intake - Department Inventory

Intake’s inventory at the end of Q2 2011 significantly decreased from the inventory at the end of the previous quarter (by 34%). Once again, the decrease was due mainly to the processing of good character/licensing cases (lawyer and paralegal) which are usually received in the department in the first half of the year.

Detailed Analysis of Intake Inventory

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>476</td>
<td>378</td>
<td>342</td>
<td>446</td>
<td>294</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>46</td>
<td>39</td>
<td>35</td>
<td>52</td>
<td>33</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>34</td>
<td>25</td>
<td>20</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>TOTAL</td>
<td>556</td>
<td>442</td>
<td>397</td>
<td>513</td>
<td>339</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants
** Includes Paralegal Licensees and Paralegal Applicants
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.
Graph 3.1D: Intake - Median Age of Complaints

The value in each bar represents the Median Age at the end of the period.
3.2 – Complaints Resolution

Graph 3.2A: Complaints Resolution – Input

The 12% increase in new cases received in the Complaints Resolution Department in Q2 2011 when compared to Q1 2011 is entirely due to new complaints received against lawyers.

Detailed Analysis of New and Re-opened Complaints in Complaints Resolution

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>430</td>
<td>458</td>
<td>416</td>
<td>411</td>
<td>468</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>40</td>
<td>53</td>
<td>43</td>
<td>36</td>
<td>34</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>470</td>
<td>513</td>
<td>460</td>
<td>448</td>
<td>502</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants
** Includes Paralegal Licensees and Paralegal Applicants
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.

---

5 Includes new complaints received into the department as well as complaints re-opened during the Quarter.
3.2 – Complaints Resolution

Graph 3.2B: Complaints Resolution - Complaints Closed and Transferred Out

The number of cases closed or transferred by the department has remained stable in the past three quarters.

Detailed Analysis of Complaints Closed and Transferred From Complaints Resolution

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closed</td>
<td>501</td>
<td>421</td>
<td>463</td>
<td>482</td>
<td>463</td>
</tr>
<tr>
<td>Transferred</td>
<td>6</td>
<td>11</td>
<td>29</td>
<td>18</td>
<td>19</td>
</tr>
<tr>
<td>Complaints against Paralegals **</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closed</td>
<td>29</td>
<td>42</td>
<td>40</td>
<td>45</td>
<td>48</td>
</tr>
<tr>
<td>Transferred</td>
<td>2</td>
<td>5</td>
<td>4</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closed</td>
<td>6</td>
<td>2</td>
<td>8</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Transferred</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>536</td>
<td>485</td>
<td>511</td>
<td>528</td>
<td>512</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants
** Includes Paralegal Licensees and Paralegal Applicants
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.
3.2 – Complaints Resolution

Graph 3.2C: Complaints Resolution – Department Inventory

With the exception of one quarter (Q3 2010), the department has consistently completed more cases than it received in each quarter since Q3 2009. As a result, the department’s inventory has steadily decreased from 1399 cases at the end of Q3 2009 to 958 cases at the end of Q2 2011. This represents a 32% decrease in the department’s inventory.

Detailed Analysis of Complaint Resolution’s Inventory

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>1029</td>
<td>1068</td>
<td>966</td>
<td>895</td>
<td>891</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>93</td>
<td>99</td>
<td>96</td>
<td>84</td>
<td>67</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>10</td>
<td>8</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1132</td>
<td>1175</td>
<td>1063</td>
<td>980</td>
<td>958</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants
** Includes Paralegal Licensees and Paralegal Applicants
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.
3.2 – Complaints Resolution

Graph 3.2D: Complaints Resolution - Median Age of Complaints

The department's median age decreased to 142 days at the end of Q2 2011, which is below the department's target range of between 150-170 days. This decrease is mainly due to the increased number of cases closures, which focused on the older cases in the inventory.
3.2 – Complaints Resolution

Graph 3.2E: Complaints Resolution – Aging of Complaints

The above graph sets out the spectrum of aging in the department's inventory (excluding reactivated cases) as at the end of each of the 5 quarters displayed. Complaint Resolution's inventory at the end of Q2 2011 was 958 cases. Excluding reactivated cases, the department's inventory was 879 cases. The distribution of those cases was:

- Less than 8 months: 741 cases involving 644 subjects
- 8 to 12 months: 102 cases involving 94 subjects
- More than 12 months: 36 cases involving 32 subjects

The goal is to reduce the proportion of cases in the older time frames and increase the proportion of cases in the youngest time frame. However, it is recognized that there will always be cases that are older than 12 months in Complaints Resolution for the following reasons:

- newer complaints against the lawyer/paralegal are received. In order to move forward together, the older cases await the completion of younger cases;
- delays on the part of licensees in providing representations and in responding to the investigators' requests. In a number of instances, the Summary Hearing process is required;
- delays on the part of complainants in responding to licensee's representations and to investigators' requests for additional information; and
- new issues raised by the complainant during the course of the investigation for which new instructions to investigate are required and for which subsequent representations are required from the lawyer or paralegal.
3.3 – Investigations

Graph 3.3A: Investigations – Input

In Q2 2011, the department received 22% more cases than in Q1 2011. Increases were noted in complaints against all three groups, lawyers, paralegals and non-licensees with allegations of UAP.

Detailed Analysis of New and Re-opened Complaints Received in Investigations

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>230</td>
<td>219</td>
<td>252</td>
<td>242</td>
<td>277</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>74</td>
<td>75</td>
<td>67</td>
<td>67</td>
<td>96</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>60</td>
<td>45</td>
<td>50</td>
<td>30</td>
<td>39</td>
</tr>
<tr>
<td>TOTAL</td>
<td>364</td>
<td>339</td>
<td>369</td>
<td>339</td>
<td>412</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants  
** Includes Paralegal Licensees and Paralegal Applicants  
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.

---

6 Includes new complaints received in Investigations and re-opened complaints
The department closed/transfered approximately the same number of cases in the second quarter of 2011 as it did in the first quarter.

**Detailed Analysis of Complaints Closed and Transferred Out of Investigations**

<table>
<thead>
<tr>
<th>Complaints against Lawyers*</th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closed</td>
<td>180</td>
<td>177</td>
<td>174</td>
<td>191</td>
<td>201</td>
</tr>
<tr>
<td>Transferred</td>
<td>56</td>
<td>55</td>
<td>32</td>
<td>84</td>
<td>65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Complaints against Paralegals **</th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closed</td>
<td>25</td>
<td>21</td>
<td>44</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Transferred</td>
<td>18</td>
<td>6</td>
<td>24</td>
<td>9</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>UAP Complaints***</th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closed</td>
<td>37</td>
<td>28</td>
<td>23</td>
<td>47</td>
<td>36</td>
</tr>
<tr>
<td>Transferred</td>
<td>15</td>
<td>1</td>
<td>10</td>
<td>2</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL</th>
<th>Closed</th>
<th>Transferred</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>242</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td>241</td>
<td>288</td>
</tr>
<tr>
<td></td>
<td>95</td>
<td>85</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants  
** Includes Paralegal Licensees and Paralegal Applicants  
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.
3.3 – Investigations

Graph 3.3C: Investigations – Department Inventory

The department’s inventory has remained fairly stable in the past four quarters. While the department received more cases than it completed in Q2 2011, its inventory did not increase due to the number of cases placed in abeyance during the quarter. These cases involved licensees who recently became the subject of conduct proceedings and, as a result, the newer investigations were placed into abeyance pending the outcome of the conduct proceedings.

Detailed Analysis of Investigations Inventory

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints against Lawyers*</td>
<td>878</td>
<td>885</td>
<td>921</td>
<td>896</td>
<td>885</td>
</tr>
<tr>
<td>Complaints against Paralegals**</td>
<td>141</td>
<td>187</td>
<td>186</td>
<td>194</td>
<td>207</td>
</tr>
<tr>
<td>UAP Complaints***</td>
<td>77</td>
<td>92</td>
<td>110</td>
<td>88</td>
<td>82</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>1096</td>
<td>1164</td>
<td>1217</td>
<td>1178</td>
<td>1174</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants
** Includes Paralegal Licensees and Paralegal Applicants
*** Note that the UAP complaints received against Paralegal Licensees, Paralegal Applicants and Lawyer Applicants will be included in the figures for Lawyers and Paralegals. For a complete analysis of UAP complaints, see section 3.4.
3.3 – Investigations

Graph 3.3D: Investigations – Median Age of All Complaints

The department's median age continued to decrease in Q2 2011, reaching 220 days at the end of the quarter.
3.3 – Investigations

Graph 3.3D: Investigations – Aging of Complaints

The above graph sets out the spectrum of aging in the department’s inventory (excluding reactivated and mortgage fraud cases) as at the end of each of the 5 quarters displayed. The inventory of investigations at the end of Q2 2011 was 1174 cases. Excluding reactivated and mortgage fraud cases, the department’s inventory was 945 cases. The distribution of those cases was:
- Less than 10 months: 648 cases involving 491 subjects
- 10 to 18 months: 204 cases involving 166 subjects
- More than 18 months: 93 cases involving 68 subjects

While the department strives to reduce the proportion of cases in the older time frame and to increase the proportion of cases in the youngest time frame, it is recognized that there will always be cases that are older than 18 months in Investigations for the following reasons:
- the investigator has to wait for evidence from a third party source (i.e. not the complainant or the licensee/subject), for example psychiatric evaluation, review by outside counsel, court transcripts, etc;
- newer complaints against the licensee/subject are received. In order to move forward together to the Proceedings Authorization Committee, the older cases await the completion of younger cases;
- a need to coordinate investigations between different licensees/subject where the issues arise out of the same set of circumstances (e.g. a complainant complains about 2 lawyers in relation to the same matter);
- multiple cases involve one lawyer. These investigations are complex and time consuming,
- in addition to allegations of misconduct, capacity issues have been raised in ongoing investigations, increasing the time required to complete the investigation.
3.4 – Unauthorized Practice (UAP)

Chart 3.4A: Unauthorized Practice Complaints in Intake

<table>
<thead>
<tr>
<th>Quarter</th>
<th>New</th>
<th>Closed/Transferred</th>
<th>Active at end of Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Closed</td>
<td>Transfer to CR</td>
</tr>
<tr>
<td>Q1 2008</td>
<td>86</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Q2 2008</td>
<td>102</td>
<td>17</td>
<td>24</td>
</tr>
<tr>
<td>Q3 2008</td>
<td>70</td>
<td>41</td>
<td>4</td>
</tr>
<tr>
<td>Q4 2008</td>
<td>79</td>
<td>48</td>
<td>6</td>
</tr>
<tr>
<td>Totals – 2008</td>
<td>337</td>
<td>122</td>
<td>50</td>
</tr>
<tr>
<td>Q1 2009</td>
<td>115</td>
<td>53</td>
<td>19</td>
</tr>
<tr>
<td>Q2 2009</td>
<td>118</td>
<td>48</td>
<td>24</td>
</tr>
<tr>
<td>Q3 2009</td>
<td>99</td>
<td>26</td>
<td>41</td>
</tr>
<tr>
<td>Q4 2009</td>
<td>113</td>
<td>38</td>
<td>2</td>
</tr>
<tr>
<td>Totals – 2009</td>
<td>445</td>
<td>165</td>
<td>86</td>
</tr>
<tr>
<td>Q1 2010</td>
<td>94</td>
<td>42</td>
<td>0</td>
</tr>
<tr>
<td>Q2 2010</td>
<td>89</td>
<td>32</td>
<td>0</td>
</tr>
<tr>
<td>Q3 2010</td>
<td>67</td>
<td>32</td>
<td>1</td>
</tr>
<tr>
<td>Q4 2010</td>
<td>80</td>
<td>45</td>
<td>0</td>
</tr>
<tr>
<td>Totals – 2010 (+ POL)</td>
<td>330* (398)</td>
<td>151</td>
<td>1</td>
</tr>
<tr>
<td>Q1 2011 (+ POL)</td>
<td>61 (74)</td>
<td>24</td>
<td>0</td>
</tr>
<tr>
<td>Q2 2011 (+ POL)</td>
<td>61 (84)</td>
<td>20</td>
<td>1</td>
</tr>
<tr>
<td>Totals – 2011 (+POL)</td>
<td>122 (158)</td>
<td>44</td>
<td>1</td>
</tr>
</tbody>
</table>

* In response to the number of UAP complaints being received in the division, a new allegation of “Practising Outside the Scope of Licence” ("POL") was added to the division's case management system in Q1 2010. This allows for improved identification of the nature of these complaints. In the first 2 quarters of 2011, complaints alleging practicing outside the scope of licence were received in 36 cases. Prior to Q1 2010, these would have been included in the UAP figures. As noted, including these cases with the UAP cases increases the new complaints received in 2010 to 398 and in the first half of 2011 to 158.

As noted in the chart above, in the first half of 2011, the number of new unauthorized practice cases received in Professional Regulation continued to decrease from the number received in the first half of 2010 (183 in the first half of 2010; 122 in the first half of 2011). This represents a decrease of 33%. 

Page 27
3.4 – Unauthorized Practice (UAP)

Chart 3.4B: Unauthorized Practice investigations (in Complaints Resolution and Investigations)

<table>
<thead>
<tr>
<th></th>
<th>New CR</th>
<th>New Inv</th>
<th>Closed CR</th>
<th>Closed Inv</th>
<th>Inventory CR</th>
<th>Inventory Inv</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1 2008</td>
<td>17</td>
<td>51</td>
<td>23</td>
<td>10</td>
<td>27</td>
<td>81</td>
</tr>
<tr>
<td>Q2 2008</td>
<td>25</td>
<td>54</td>
<td>11</td>
<td>30</td>
<td>41</td>
<td>105</td>
</tr>
<tr>
<td>Q3 2008</td>
<td>4</td>
<td>34</td>
<td>24</td>
<td>49</td>
<td>21</td>
<td>90</td>
</tr>
<tr>
<td>Q4 2008</td>
<td>6</td>
<td>32</td>
<td>6</td>
<td>37</td>
<td>21</td>
<td>85</td>
</tr>
<tr>
<td>Totals: 2008</td>
<td>52</td>
<td>171</td>
<td>64</td>
<td>126</td>
<td>106</td>
<td></td>
</tr>
<tr>
<td>Q1 2009</td>
<td>5</td>
<td>18</td>
<td>4</td>
<td>26</td>
<td>22</td>
<td>77</td>
</tr>
<tr>
<td>Q2 2009</td>
<td>24</td>
<td>69</td>
<td>6</td>
<td>20</td>
<td>41</td>
<td>120</td>
</tr>
<tr>
<td>Q3 2009</td>
<td>41</td>
<td>47</td>
<td>16</td>
<td>50</td>
<td>64</td>
<td>104</td>
</tr>
<tr>
<td>Q4 2009</td>
<td>7</td>
<td>53</td>
<td>22</td>
<td>42</td>
<td>69</td>
<td>99</td>
</tr>
<tr>
<td>Totals: 2009</td>
<td>77</td>
<td>187</td>
<td>48</td>
<td>138</td>
<td>168</td>
<td></td>
</tr>
<tr>
<td>Q1 2010</td>
<td>0</td>
<td>76</td>
<td>12</td>
<td>73</td>
<td>17</td>
<td>79</td>
</tr>
<tr>
<td>Q2 2010</td>
<td>0</td>
<td>70</td>
<td>6</td>
<td>54</td>
<td>10</td>
<td>90</td>
</tr>
<tr>
<td>Q3 2010</td>
<td>1</td>
<td>50</td>
<td>2</td>
<td>31</td>
<td>8</td>
<td>108</td>
</tr>
<tr>
<td>Q4 2010</td>
<td>0</td>
<td>54</td>
<td>8</td>
<td>32</td>
<td>0</td>
<td>124</td>
</tr>
<tr>
<td>Totals: 2010</td>
<td>1</td>
<td>249</td>
<td>28</td>
<td>190</td>
<td>124</td>
<td></td>
</tr>
<tr>
<td>Q1 2011</td>
<td>0</td>
<td>41</td>
<td>0</td>
<td>61</td>
<td>0</td>
<td>104</td>
</tr>
<tr>
<td>Q2 2011</td>
<td>1</td>
<td>54</td>
<td>0</td>
<td>56</td>
<td>1</td>
<td>102</td>
</tr>
<tr>
<td>Totals: 2011</td>
<td>0</td>
<td>95</td>
<td>0</td>
<td>117</td>
<td>103</td>
<td></td>
</tr>
</tbody>
</table>

As noted in the above chart, during Q2 2011, Complaints Resolution and Investigations closed a total of 56 cases, reducing the inventory of unauthorized practice investigations at the end of the quarter to 103 cases.

UAP Enforcement Actions

In Q2 2011, PAC provided authorization to seek an order pursuant to s. 26.3 of the Law Society Act ("Act") in four (4) matters. Currently, there is 1 open unauthorized practice prosecution, 1 appeal of a conviction for UAP and and 6 open UAP matters in which permanent injunctions are being sought.

---

7 "Closed" refers to completed investigations and therefore consists of both those investigations that were closed by the Law Society and those that were referred for prosecution/injunctive relief.
3.5 – Complaints Resolution Commissioner

Graph 3.5A – Reviews Requested and Files Reviewed (by Quarters)

The number of requests for reviews by the Complaints Resolution Commissioner appears to have stabilized.

Graph 3.5B – Status of Files Reviewed in each Quarter

While the files may be reviewed in one quarter, the final decision by the Commissioner may not be rendered in the same quarter. As noted in the chart above, while 54 files were reviewed by the Commissioner in Q2 2011, decisions were rendered in 47 cases by the end of the quarter. Seven (7) decisions were outstanding as at June 30, 2011.
3.5 – Complaints Resolution Commissioner

Graph 3.5C – Decisions Rendered, by Quarter

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Decisions Rendered (# of decisions where review in previous quarter(s))</th>
<th>Files to Remain Closed</th>
<th>Files Referred Back to PRD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total 2009</td>
<td>194</td>
<td>174 (90%)</td>
<td>20 (10%)</td>
</tr>
<tr>
<td>Q1 2010</td>
<td>48 (3)</td>
<td>39</td>
<td>9</td>
</tr>
<tr>
<td>Q2 2010</td>
<td>25</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td>Q3 2010</td>
<td>46 (15)</td>
<td>37</td>
<td>8</td>
</tr>
<tr>
<td>Q4 2010</td>
<td>75 (20)</td>
<td>62</td>
<td>13</td>
</tr>
<tr>
<td>Total 2010</td>
<td>193</td>
<td>160 (83%)</td>
<td>33 (17%)</td>
</tr>
<tr>
<td>Q1 2011</td>
<td>84 (12)</td>
<td>78 (93%)</td>
<td>6 (7%)</td>
</tr>
<tr>
<td>Q2 2011</td>
<td>60 (14)</td>
<td>58 (96%)</td>
<td>2 (4%)</td>
</tr>
</tbody>
</table>

The Commissioner rendered 60 decisions in Q2 2011, 14 of which were related to files reviewed in Q1 2011. The Commissioner referred back 4% of those files to Professional Regulation with various recommendations.

Active Inventory

As at June 30, 2011, the inventory in the Office of the Complaints Resolution Commissioner was 152 cases:
  - Request received; awaiting preparation of CRC materials 53 files
  - Ready for Scheduling 25 files
  - Review Meeting Scheduled 67 files
  - Review Completed; awaiting decision by Commissioner 7 files
Graph 3.6A: Discipline - Input

"Input" refers to complaints that were transferred into Discipline from various other departments during the quarter for preparation for the Proceedings Authorization Committee. As noted in the chart below, the majority of cases involve lawyers. Of the 10 paralegals with new cases received in Discipline in Q2 2011, 8 were paralegal licensee conduct matters (involving 10 cases). One of the remaining 2 paralegal cases related to an ongoing paralegal applicant good character matter which was already in the department while the other related to a new paralegal applicant good character case.

Detailed Analysis of New Cases Received in Discipline

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers*</td>
<td>67</td>
<td>63</td>
<td>64</td>
<td>98</td>
<td>83</td>
</tr>
<tr>
<td></td>
<td>Lawyers*</td>
<td>41</td>
<td>36</td>
<td>41</td>
<td>38***</td>
</tr>
<tr>
<td>Paralegals**</td>
<td>Cases</td>
<td>21</td>
<td>9</td>
<td>25</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Paralegals**</td>
<td>10</td>
<td>5</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>Cases</td>
<td>88</td>
<td>72</td>
<td>89</td>
<td>107</td>
</tr>
<tr>
<td></td>
<td>Lawyers/Paralegals</td>
<td>51</td>
<td>41</td>
<td>51</td>
<td>40</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants  
** Includes Paralegal Licensees and Paralegal Applicants  
*** The number of new Lawyers and Paralegals cited represents the number coming into the department each quarter. However, there may, in fact, already be cases involving the licensee/applicant in the department.

8 Includes new complaints/cases received in Discipline and the lawyers/applicants to which the new complaints relate.
In Q2 2011, the number of paralegal cases in Discipline's inventory, consisting of 14 paralegal licensee matters and 12 paralegal applicant good character cases (predominantly grandparent/transitional), did not change from the number at the end of Q1 2011. Since the beginning of the year, the number of cases concerning lawyers in the Discipline department process has increased by approximately 8% (from 153 at the beginning of Q1 2011 to 165 at the end of Q2 2011).

**Detailed Analysis of Discipline's Inventory**

<table>
<thead>
<tr>
<th></th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases</td>
<td>443</td>
<td>450</td>
<td>418</td>
<td>473</td>
<td>487</td>
</tr>
<tr>
<td>Lawyers*</td>
<td>160</td>
<td>161</td>
<td>153</td>
<td>157</td>
<td>165</td>
</tr>
<tr>
<td>Paralegals**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases</td>
<td>103</td>
<td>85</td>
<td>102</td>
<td>83</td>
<td>82</td>
</tr>
<tr>
<td>Paralegals**</td>
<td>38</td>
<td>32</td>
<td>27</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases</td>
<td>546</td>
<td>535</td>
<td>520</td>
<td>556</td>
<td>569</td>
</tr>
<tr>
<td>Lawyers/</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paralegals</td>
<td>198</td>
<td>193</td>
<td>180</td>
<td>183</td>
<td>191</td>
</tr>
</tbody>
</table>

* Includes Lawyers and Lawyer Applicants
** Includes Paralegal Licensees and Paralegal Applicants

9 Consists primarily of complaints and lawyers/applicants that are in scheduling and are with the Hearing Panel or on appeal.
Graph 3.6C: Discipline - Notices Issued

- Matters Initiated by Notice of Application*: Also included in this category are interlocutory suspension/restriction motions.
- Matters Initiated by Notice of Referral for Hearing**: (including readmission matters), reinstatement and restoration matters.

The above graph shows the number of notices issued by the Discipline department in the past 10 quarters. The numbers in each bar indicate the number of notices issued and, in brackets, the number of cases relating to those notices. One notice may relate to more than one case. For example, in Q2 2011, 33 Notices of Application were issued (relating to 75 cases) and 4 Notices of Referral for Hearing were issued (relating to 4 cases).

With respect to the 33 Notices of Application/Notices of Motion for Interim Suspension Order which were issued in Q2 2011:
- 16 were issued less than 1 month after PAC authorization;
- 14 were issued between 1 and 2 months after PAC authorization; and
- 3 were issued over 2 months after PAC authorization.

With respect to the 3 licensing matters for which Notices of Referral for Hearing were issued in Q2 2011, 2 were issued less than 1 month after PAC authorization and one was issued between 1 and 2 months after PAC authorization. The fourth matter for which a Notice of Referral for Hearing was issued did not require PAC authorization as it related to a reinstatement matter.

* Matters which are initiated by Notice of Application include conduct, capacity, non-compliance and competency matters.
** Matters which are initiated by Notice of Referral for Hearing (formerly Notice of Hearing) include licensing (including readmission matters), reinstatement and restoration matters.

10 Notices of Application are issued with respect to conduct, competency, capacity and non-compliance matters and require authorization by the Proceedings Authorization Committee (PAC).
3.6 – Discipline

Graph 3.6D: Discipline – Completed Matters (Hearings)

<table>
<thead>
<tr>
<th>Conduct Hearings</th>
<th>Q1 2010</th>
<th>Q2 2010</th>
<th>Q3 2010</th>
<th>Q4 2010</th>
<th>Q1 2011</th>
<th>Q2 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers</td>
<td>21</td>
<td>16</td>
<td>10</td>
<td>38</td>
<td>26</td>
<td>19</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Interlocutory Suspension Hearings/Orders</td>
<td>Lawyers</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Capacity Hearings</td>
<td>Lawyers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Competency Hearings</td>
<td>Lawyers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Non-Compliance Hearings</td>
<td>Lawyers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Reinstatement Hearings</td>
<td>Lawyers</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restoration</td>
<td>Lawyers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Licensed Paralegals</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Licensing Hearings (including Readmission)</td>
<td>Lawyer Applicants</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Paralegal Applicants</td>
<td>12</td>
<td>8</td>
<td>10</td>
<td>3</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL NUMBER OF HEARINGS</td>
<td>Lawyer matters</td>
<td>27</td>
<td>23</td>
<td>13</td>
<td>42</td>
<td>31</td>
</tr>
<tr>
<td>Paralegal matters</td>
<td>12</td>
<td>10</td>
<td>10</td>
<td>4</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>39</td>
<td>33</td>
<td>23</td>
<td>46</td>
<td>37</td>
<td>29</td>
</tr>
</tbody>
</table>

| 141 | 66 |
3.6 – Discipline

Graph 3.6E - Discipline – Appeals

The following chart sets out the number of appeals filed with the Appeal Panel, the Divisional Court or the Court of Appeal in the calendar years 2008, 2009, 2010 and in the Q1 and Q2 of 2011.

<table>
<thead>
<tr>
<th>Quarter/Year</th>
<th>Appeal Panel</th>
<th>Divisional Court</th>
<th>Court of Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>14</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>19</td>
<td>1</td>
<td>3 motions for leave; 2 appeals</td>
</tr>
<tr>
<td>2010</td>
<td>27</td>
<td>2 appeals; 3 judicial reviews</td>
<td>4 motions for leave</td>
</tr>
<tr>
<td>2011 Q1+ Q2</td>
<td>13</td>
<td>1 appeal; 2 judicial reviews</td>
<td>2 motions for leave</td>
</tr>
</tbody>
</table>

With respect to appeals before the Appeal Panel, in Q2 2011,
- 3 appeals were deemed abandoned; and
- decisions on the merits of 8 appeals before the Appeal Panel were rendered:
  - 6 appeals were dismissed;
  - 2 appeals were allowed (1 was allowed in part).

In 4 of the appeals, the issue of costs remains outstanding.

As of June 30, 2011, there are 14 appeals pending before the Appeal Panel and 2 appeals in which the Appeal Panel has reserved on judgment. There is one appeal before the Appeal Panel that has been suspended. There are also 4 matters pending in Divisional Court. There are 3 matters pending in the Court of Appeal.
SECTION 4

APPENDICES
The Professional Regulation Complaint Process

- **Complaint received in Client Service Centre – Complaints Services**
  - Transfer to Professional Regulation
  - Intake Department: Reviews & substantiates complaints & obtains instructions to investigate where required.
  - Close case

- **Complaints Resolution Department**
  - Investigates complaints raising allegations of less serious breaches of the Rules of Professional Conduct
  - Close case

- **Investigations Department**
  - Investigates complaints raising allegations of more serious breaches of the Rules of Professional Conduct
  - Close case

- **PAC**
  - Reviews Authorization Memo & determines appropriate next step.
  - Proceed to Hearing: Discipline issues Notice and a hearing is held before Hearing Panel
  - Close case with or without a Letter of Advice, Invitation to Attend or Regulatory Meeting

- **Discipline Department**
  - Reviews case, prepares Authorization Memorandum for review by PAC & prosecutes case if PAC authorization obtained

- **Monitoring & Enforcement**
  - Monitors Interlocutory and final Orders from the Hearing or Appeal Panels
2011 LAWYER ANNUAL REPORT

47. The Lawyer Annual Report for the filing year 2011 appears at Appendix 10 for the information of Convocation. The Lawyer Annual Report is the form provided by the Law Society under authority of By-Law 8, as follows:

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to file annual report

5. (1) Every licensee shall file a report with the Society, by March 31 of each year, in respect of,
(a) the licensee’s professional business during the preceding year; and

(b) the licensee’s other activities during the preceding year related to the licensee’s practice of law or provision of legal services.

Form, format and manner of filing

(2) The report required under subsection (1) shall be in a form provided, and in an electronic format specified, by the Society and shall be filed electronically as permitted by the Society.

48. The following table shows changes made to the 2011 Lawyer Annual Report.

<table>
<thead>
<tr>
<th>QUESTION/ISSUE</th>
<th>CHANGES FOR 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preamble</td>
<td>Sentence added: Responses to Section G (Financial Reporting) will be shared with the Law Foundation of Ontario</td>
</tr>
<tr>
<td>Section A, link for e-filing</td>
<td>Link removed and Portal link added.</td>
</tr>
<tr>
<td>Section A, question on Succession Planning</td>
<td>Question removed</td>
</tr>
</tbody>
</table>

129
<table>
<thead>
<tr>
<th>Section E, Professional Development</th>
<th>This section is renamed Self-Study</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section E, Continuing Development</td>
<td>Removed as lawyers will be reporting CPD through the Portal</td>
</tr>
</tbody>
</table>

49. Two new reports for the filing year 2011 are also included. The 2011 Class L2 Licence Annual Report is found at Appendix 11 and the 2011 Class 3 Licence Canadian Legal Advisor Annual Report appears at Appendix 12.
PLEASE FILE THIS REPORT ONLINE AT: https://portal.lsuc.on.ca/wps/portal

See the enclosed Guide to the 2011 Lawyer Annual Report for assistance in completing this report. A French version of this report is also available (aussi disponible en français). For further assistance in the completion of Sections F and G, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca. Your responses to sections A to D will be shared with the Lawyers' Professional Indemnity Company (LawPRO), which may rely upon this information for the purposes of your professional indemnity insurance. Your responses to Section G will be shared with The Law Foundation of Ontario.

THIS REPORT IS BASED ON THE CALENDAR YEAR ENDING DECEMBER 31, 2011 AND IS DUE BY MARCH 31, 2012. FAILURE TO COMPLETE AND FILE THIS REPORT WITHIN 120 DAYS OF THE DUE DATE WILL RESULT IN A SUMMARY ORDER SUSPENDING YOUR LICENCE UNTIL SUCH TIME AS THIS REPORT IS COMPLETED AND FILED.

IDENTIFICATION

To be reviewed by all lawyers. See page 4 of the enclosed "Guide" for assistance in the completion of this section.

THIS REPORT relates to the following lawyer:

[Lawyer Name]
[Firm Name]
[Street Address]
[City, Province]
[Postal Code]

[Law Society Number]
[E-mail address]

NOTES ABOUT THIS SECTION:
The identification information to the left reflects your current mailing information from the Law Society's records. If any of this information, including your e-mail address, is incorrect or missing, changes of information should now be made through the LSUC Portal at https://portal.lsuc.on.ca/wps/portal. Alternatively, you may notify the Law Society's Resource Centre at (416) 947-3315 or Toll-Free (outside local calling area) at 1-800-668-7380 ext. 3315.

DO NOT MAKE ANY CHANGES ON THIS PAGE

Privacy Option

On occasion, the Law Society may provide lawyers' names, business addresses and e-mail addresses to professional legal associations, organizations and institutions (e.g. Ontario Bar Association, Ontario law schools) without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services.

You have the option of instructing the Law Society not to provide your name, business address and/or e-mail address to any professional association, organization or institution.

Fill in the oval if you do not wish the Law Society to provide your name, business address and/or e-mail address to any professional association, organization or institution:  

1 **Client Identification – All lawyers must answer questions 1a) and 1b)**  

a) In 2011, when you were retained to provide professional services to clients, did you obtain or were you exempt from the requirement to obtain identification information for every (each) client and any third party, in accordance with By-Law 7.1, Part III?  
   
   If “No” to a), provide an explanation below with particulars.  

b) In 2011, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, did you obtain or were you exempt from the requirement to obtain information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with By-Law 7.1, Part III?  
   
   If “No” to b), provide an explanation below with particulars.  

2 **Pro Bono Services**  
a) Did you provide pro bono services in 2011?  
   
   If “Yes” to a), complete b) and c).  

b) How many hours did you devote to pro bono work in 2011?  

 c) Did you provide pro bono services for Pro Bono Law Ontario (PBLO) sponsored programs?  

3 **Benchers Election Privacy Option (non-mandatory response)**  
During the benchers election, many candidates want to communicate with voters by e-mail.  
Fill in the oval if you give the Law Society permission to allow the use of your e-mail address for benchers election campaigning purposes:  

4 **Provision of Legal Services in French (non-mandatory response)**  

a). Can you communicate with your clients and provide legal advice to them in the French language?  

b). Can you communicate with your clients, provide legal advice to them, and represent them in the French language?  

5 **Other Languages (non-mandatory response)**  

- ○ ASL or LSQ (Sign Language)  
- ○ Arabic  
- ○ Bulgarian  
- ○ Cantonese  
- ○ Croatian  
- ○ Czech  
- ○ Danish  
- ○ Dutch  
- ○ English  
- ○ Estonian  
- ○ Farsi  
- ○ Finnish  
- ○ French  
- ○ German  
- ○ Greek  
- ○ Gujarati  
- ○ Hebrew  
- ○ Hindi  
- ○ Hungarian  
- ○ Italian  
- ○ Japanese  
- ○ Korean  
- ○ Latvian  
- ○ Lithuanian  
- ○ Macedonian  
- ○ Mandarin  
- ○ Norwegian  
- ○ Polish  
- ○ Portuguese  
- ○ Punjabi  
- ○ Romanian  
- ○ Russian  
- ○ Serbian  
- ○ Slovak  
- ○ Slovene  
- ○ Spanish  
- ○ Swedish  
- ○ Ukrainian  
- ○ Urdu  
- ○ Yiddish  

Other – Please Specify
## YEAR END STATUS
To be completed by all lawyers.
See page 4 of the enclosed "Guide" for assistance in the completion of this section.

### NOTES ABOUT THIS SECTION:
1. Choose only one status (your status on December 31, 2011) regardless of changes in employment during the 2011 calendar year.
2. Details on changes to your employment status that occurred during 2011 should be made through the LSUC Portal at https://portal.lsc.on.ca/wps/portal.

<table>
<thead>
<tr>
<th>December 31, 2011 Status (Select only ONE)</th>
<th>Mandatory Sections</th>
<th>Complete if Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>A sole practitioner, practising alone in Ontario</td>
<td>D, E, F, G, H</td>
<td></td>
</tr>
<tr>
<td>A sole practitioner, practising in Ontario with one or more lawyers as employees</td>
<td>D, E, F, G, H</td>
<td></td>
</tr>
<tr>
<td>A sole practitioner, practising in Ontario with one or more lawyers in shared facilities</td>
<td>D, E, F, G, H</td>
<td></td>
</tr>
<tr>
<td>A partner in a law partnership in Ontario</td>
<td>D, E, F, G, H</td>
<td></td>
</tr>
<tr>
<td>An employee/associate in a law firm in Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Corporate Counsel Insured by LawPRO</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Corporate Counsel Not Insured by LawPRO</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Employed by Legal Aid Ontario or a community legal clinic</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Employed in government in Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Employed in education in Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Employed other, in Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>A lawyer practising law outside of Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Employed other, outside of Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Emeritus lawyer providing pro bono legal services through Pro Bono Law Ontario</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Not working or on parental leave or unemployed</td>
<td>E, F, H</td>
<td>C, D, G</td>
</tr>
<tr>
<td>Suspended</td>
<td>E, F, H</td>
<td>C, D, G</td>
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<tr>
<td>In a situation not covered above (specify your status in the area below)</td>
<td></td>
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</tr>
</tbody>
</table>

## ALLOCATION OF PRACTICE
To be completed by all lawyers practising law but not in private practice in 2011.
See page 5 of the enclosed "Guide" for assistance in the completion of this section.

### NOTES ABOUT THIS SECTION:
1. Complete Section C only if you engaged in the practice of law* in respect of Ontario law (whether Provincial or Federal) during the course of your employment or engagement. Complete Section C only in respect of such services. Complete regardless of where you were resident.
2. *Employer* includes a corporation or other entity employing you, as well as affiliated, controlled, and subsidiary companies of that corporation or other entity.
3. *Affiliated*, *controlled* and *subsidiary* companies are as defined in the Securities Act, R.S.O. 1990, c.S.5.

### What approximate percentage of the time spent practising law was devoted to:
- The practice of law for outside third parties on your employer’s behalf (e.g. employer’s clients, customers etc.)
- The practice of law for outside third parties not on your employer’s behalf
- The practice of law directly for your employer

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<th>_ _ _ _</th>
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<tbody>
<tr>
<td>Total 100%</td>
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</table>

## AREAS OF PRACTICE
To be completed by all lawyers resident in Ontario in 2011, who engaged in the practice of law, whether in private practice or otherwise at the time. Other lawyers, including those resident and practising in Canada, but outside of Ontario throughout 2011, and those resident and practising outside of Canada throughout 2011, should omit this section and proceed to Section E. See page 5 of the enclosed "Guide" for assistance in the completion of this section.

### NOTES ABOUT THIS SECTION:
1. Questions in this section relate only to your law practice while resident in Ontario in 2011. *Resident* as used in this section, has the same meaning given it for the purposes of the Income Tax Act (Canada).
2. Where exact information is not available to respond to the questions under this heading, provide your **best approximation**.
3. In estimating the approximate percentage of time in each question, your response should include: a) time spent by non-lawyer staff on your behalf, and b) your docketed and undocketed time, combined.
4. If you were engaged in the practice of law* other than in private practice, unless otherwise noted, your responses should be based upon the whole of your practice, whether for your employer or for others.
5. Do not include ADR or litigation activities in the categories of Corporate Commercial Law and Real Estate Law for the first two questions in this section. ADR and litigation activities should be reflected under "ADR" and "Civil Litigation" respectively for these noted categories.
6. In the category of "ADR/Mediation Services" for the first two questions in this section, indicate the percentage of time spent as a mediator or other role as an intermediary.

<table>
<thead>
<tr>
<th>1</th>
<th>Canadian Law Practice - Ontario</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Did you practise law relating to Ontario Law in 2011?</td>
<td>Yes ☐ No ☐</td>
</tr>
<tr>
<td>b) Describe that portion of your law practice most directly relating to Ontario, by indicating the approximate percentage of time devoted by you while resident in Ontario in 2011 to each area of law listed below.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Aboriginal Law</th>
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</thead>
<tbody>
<tr>
<td>ADR/Mediation Services (see Notes 5 &amp; 6 on this page)</td>
<td></td>
</tr>
<tr>
<td>Administrative Law</td>
<td></td>
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<tr>
<td>Bankruptcy &amp; Insolvency Law</td>
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<tr>
<td>Civil Litigation - Plaintiff</td>
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<tr>
<td>Civil Litigation - Defendant</td>
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<tr>
<td>Construction Law</td>
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<tr>
<td>Corporate/Commercial Law (see Note 5 on this page)</td>
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<tr>
<td>Criminal/Quasi Criminal Law</td>
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<tr>
<td>Employment/Labour Law</td>
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<tr>
<td>Environmental Law</td>
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<tr>
<td>Family/Matrimonial Law</td>
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<tr>
<td>Immigration Law</td>
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<tr>
<td>Intellectual Property Law</td>
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<tr>
<td>Real Estate Law (see Note 5 on this page)</td>
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<tr>
<td>Securities Law</td>
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<tr>
<td>Tax Law</td>
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<tr>
<td>Wills, Estates, Trusts Law</td>
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<tr>
<td>Workplace Safety &amp; Insurance Law</td>
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<tr>
<td>Other</td>
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</tbody>
</table>

Total 100%

<table>
<thead>
<tr>
<th>2</th>
<th>Canadian Law Practice - Other than Ontario</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Did you practise law relating to Canadian jurisdictions other than Ontario in 2011?</td>
<td>Yes ☐ No ☐</td>
</tr>
<tr>
<td>b) Describe that portion of your law practice most directly relating to Canadian jurisdictions other than Ontario, by indicating the approximate percentage of time devoted by you while resident in Ontario in 2011 to each area of law listed below.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Aboriginal Law</th>
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<tbody>
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<td>Administrative Law</td>
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<tr>
<td>Bankruptcy &amp; Insolvency Law</td>
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<tr>
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<tr>
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<tr>
<td>Real Estate Law (see Note 5 on this page)</td>
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<tr>
<td>Wills, Estates, Trusts Law</td>
<td></td>
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<tr>
<td>Workplace Safety &amp; Insurance Law</td>
<td></td>
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<tr>
<td>Other</td>
<td></td>
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</tbody>
</table>

Total 100%

<table>
<thead>
<tr>
<th>3</th>
<th>Canadian Law Practice - Other than Ontario</th>
</tr>
</thead>
<tbody>
<tr>
<td>What percentage of your total Canadian law practice relates most directly to Canadian jurisdictions other than Ontario?</td>
<td></td>
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</tbody>
</table>

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<thead>
<tr>
<th>4</th>
<th>Details of Real Estate Practice (if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
<td>Of the time you devoted to your overall real estate practice in 2011, what approximate percentage of the time related to:</td>
</tr>
<tr>
<td>Purchases and mortgages</td>
<td></td>
</tr>
<tr>
<td>Sales</td>
<td></td>
</tr>
<tr>
<td>Development/land use</td>
<td></td>
</tr>
<tr>
<td>Residential landlord/tenant</td>
<td></td>
</tr>
<tr>
<td>Commercial leasing</td>
<td></td>
</tr>
<tr>
<td>Mortgage remedies work</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
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</tbody>
</table>

Total 100%

| b) | Of the time you devoted to your overall residential real estate practice in 2011 (including urban and non-urban, combined), what approximate percentage of the time related to: |
| Non-Condominiums |  |
| Residential single unit dwellings |  |
| Residential multiple unit dwellings of 4 units or less |  |
| Residential multiple unit dwellings of more than 4 units |  |
| Condominiums |  |
| Residential |  |

Total 100%

| c) | Of the time you devoted to conveyancing-related work, including mortgage work in 2011, what approximate percentage of the time related to: |
| Residential urban (i.e. within town/city limits) |  |
| Residential non-urban |  |
| Commercial |  |
| Industrial |  |
| Other |  |

Total 100%
E  SELF-STUDY  
To be completed by all lawyers regardless of status.
See page 6 of the enclosed "Guide" for assistance in the completion of this section.

NOTE ABOUT THIS SECTION:
1. The annual minimum expectation is 50 hours of self-study.

1  Self-Study
a) Did you undertake any self-study during 2011?
   If "Yes" to a), answer b) to d).
   If "No" to a), you may provide an explanation in the area at the end of this section.
   Yes ☐ No ☐

b) Approximate total number of self-study hours spent on file specific reading or research:
   __________________________

c) Approximate total number of self-study hours spent on general reading or research:
   __________________________

d) Indicate below the tools used, overall, for all types of self-study. Fill in all that apply.
   ☐ Printed Material   ☐ Internet   ☐ Video   ☐ CD ROM   ☐ Audio   ☐ DVD   ☐ Other

If required, use the area below to provide further information on your self-study (Section E)

F  INDIVIDUAL LAWYER QUESTIONS  
To be completed by all lawyers regardless of status.
Questions 1 through 6 inclusive must be answered.
See page 6 of the enclosed "Guide" for assistance in the completion of this section.

NOTES ABOUT THIS SECTION:
1. For further assistance in the completion of this section, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca.
2. * Refer to the enclosed "Guide" for definitions.

1  Cash Transactions – All lawyers must report on large cash transactions regardless of jurisdiction of practice.
    a) Did you receive* in an aggregate amount equivalent to $7,500 CDN or more in respect of any one client file during the 2011 calendar year?
       Yes ☐ No ☐

       If "Yes" to a):
       b) Was the cash solely for legal fees and/or client disbursements*?
          Yes ☐ No ☐

          If "No" to b), provide full particulars below with respect to compliance with By-Law 9, Part III (Cash Transactions).

2  Trust Funds/Property – 2a), 2b) and 2c) must be answered.
    a) In 2011, did you receive* trust funds* and/or trust property* on behalf of your firm in connection with the practice of law in Ontario?
       Yes ☐ No ☐

    b) In 2011, did you disburse* (payout), or did you have signing authority to disburse trust funds* or trust property* on behalf of your firm in connection with the practice of law in Ontario?
       Yes ☐ No ☐

    c) In 2011, did you hold* trust funds* or trust property* on behalf of your firm in connection with the practice of law in Ontario?
       Yes ☐ No ☐
### Estates and Power(s) of Attorney - 3a), 3b) and 3c) must be answered.

<p>| | | |</p>
<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>a)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| i) | In 2011, did you act as a sole estate trustee* in Ontario?  
   If “Yes” to i), answer ii), iii) & iv) |   |   |
|   | Yes | No |
| ii) | Were you sole estate trustee* only for related* persons in Ontario? |   |   |
|   | Yes | No |
| iii) | In 2011, the total number of estates in which you were sole estate trustee* was: |   | N/A |
|   | Yes | No |
| iv) | As sole estate trustee* for any estate, did you receive, hold*, or disburse estate funds or estate property?  
If “Yes” to iv), answer v), vi) & vii) |   |   |
|   | Yes | No |
| v) | The total dollar value as at December 31, 2011 of all separate* bank accounts and investments* for the estates referred to in iv) was: |   | N/A |
|   | Yes | No |
| vi) | Were books and records maintained in accordance with By-Law 9? |   |   |
|   | Yes | No |
| vii) | Was the total dollar value indicated in vi) recorded in the firm's accounting records?  
If “No” to vii), provide a written explanation at the bottom of page 7. |   |   |
|   | Yes | No |
| b) |   |   |
| i) | In 2011, did you exercise a power of attorney* for property in Ontario?  
If “Yes” to i), answer ii), iii) & iv) |   |   |
|   | Yes | No |
| ii) | Did you exercise the power(s) of attorney* for property only for related* persons in Ontario? |   |   |
|   | Yes | No |
| iii) | In 2011, the total number of persons for whom you exercised a power of attorney* was: |   | N/A |
|   | Yes | No |
| iv) | In exercising the power(s) of attorney* for any person, did you receive, hold*, or disburse the donors' funds or property?  
If “Yes” to iv), answer v), vi) & vii) |   |   |
|   | Yes | No |
| v) | The total dollar value as at December 31, 2011 of all separate* bank accounts and investments* for the powers of attorney* referred to in iv) was: |   | N/A |
|   | Yes | No |
| vi) | Were books and records maintained in accordance with By-Law 9? |   |   |
|   | Yes | No |
| vii) | Was the total dollar value indicated in vi) recorded in the firm's accounting records?  
If “No” to vii), provide a written explanation at the bottom of page 7. |   |   |
|   | Yes | No |
| c) |   |   |
| i) | In 2011, did you control* estate assets as a solicitor, and not as an estate trustee, in Ontario?  
(Only the lawyer responsible for the estate should answer “Yes”)  
If “Yes” to i), answer ii) & iii) |   |   |
|   | Yes | No |
| ii) | In 2011, the total number of estate files open at any time during the year in which you were a solicitor with control* over estate assets, but not an estate trustee was: |   | N/A |
|   | Yes | No |
| iii) | As a solicitor, did you receive, hold*, or disburse estate funds or estate property?  
If “Yes” to iii), answer iv), v) & vi) |   |   |
|   | Yes | No |
| iv) | The total dollar value as at December 31, 2011 of all separate* bank accounts and investments* for the estate files referred to in iii) was: |   | N/A |
|   | Yes | No |
| v) | Were books and records maintained in accordance with By-Law 9? |   |   |
|   | Yes | No |
| vi) | Was the total dollar value indicated in iv) recorded in the firm's accounting records?  
If “No” to vi), provide a written explanation at the bottom of page 7. |   |   |
|   | Yes | No |
Borrowing from Clients - 4a) and 4b) must be answered.

a) Note: If your borrowing was/is from a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, answer “No” to i) and “N/A” to ii).
See subrule 2.04(4), Commentary, and subrule 2.04(5) of the Rules of Professional Conduct.

i) At any time in 2011, were you personally indebted to a client or person who at the time of borrowing was or had been your client or a client of a firm in which you were then practising law?

ii) Was the client or person a related person as defined in the Income Tax Act (Canada)?

If “Yes” to i) or ii), provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.

b) At any time in 2011, was your spouse or a corporation, syndicate or partnership in which either you or your spouse has, or both of you have, directly or indirectly, a substantial interest, indebted to a client or person who at the time of borrowing was or had been your client or a client of a firm in which you were then practising law?

If “Yes” to b), provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal representation.

---

Mortgage Transactions:
In 2011, did you either directly or indirectly through a related person* or corporation*, hold* mortgages or other charges on real property in trust for clients or other persons?

---

Private Mortgages - 6a) and 6b) must be answered.
See page ? of the enclosed “Guide” for Private Mortgage reporting information.

a) In 2011, did you act for a lender, lending money through a mortgage broker?

b) i) In 2011, did you act for, or receive money from, a lender who was lending money secured by a charge, or charges, on real property, except for transactions listed in By-Law 9 s. 24(2)?

(Note: For the exception in s.24 (2)(a)(i), funds loaned through RRSP’s and RSP’s belong to the plan holder, not the financial institution).

If “Yes” to i):

ii) In 2011, approximately how many private mortgage* loans were advanced?

iii) In 2011, the approximate total dollar value of private mortgage* loans advanced was:

required, use the area below to provide further information on your Individual Lawyer Questions (Section F).
Financial Reporting

To be completed by:
- All sole practitioners, partners/employees/associates of law firms;
- Lawyers employed by Legal Aid Ontario responsible for general (non-trust) accounts or trust accounts;
- All other lawyers who held or continued to hold client monies or property from a former legal practice in Ontario as at December 31, 2011.

See page 7 of the enclosed "Guide" for assistance in the completion of this section.

Notes about this section:
1. For further assistance in the completion of this section, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca.
2. * Refer to the enclosed "Guide" for definitions.

1. Trust and General (Non-Trust) Accounts - 1a) and 1b) must be answered.
   a) As at December 31, 2011, did you or your firm operate a trust* account in Ontario? [Yes ☐ No ☐]
   b) As at December 31, 2011, did either you or your firm operate a general* (non-trust) account in Ontario? [Yes ☐ No ☐]

If "Yes" to a), proceed to question 2;

OR

If "No" to a) and "Yes" to b) proceed to question 4 (page 9), and then proceed to Section H (page 12);

OR

If "No" to both a) and b) proceed to Section H (page 12).

2. As at December 31, 2011, were you a sole practitioner, or were you the lawyer responsible for filing the trust account information on behalf of your firm in Ontario? [Yes ☐ No ☐]

   If "Yes" to 2, proceed to questions 4 through 10 (pages 9 to 11).

   If "No" to 2, complete the "Designated Financial Filing Option" (question 3) below.

Note: If you are reporting financial information on behalf of other lawyers and/or paralegals in your firm, you must also submit a Financial Filing Declaration. The declaration is enclosed with your Lawyer Annual Report package. Your report is not considered complete without the submission of the Financial Filing Declaration.

3. Designated Financial Filing Option
   This option is available to you if you are not responsible for filing trust account information.

   Indicate on lines a) and b) below, who will be reporting the firm financial information on your behalf. Then proceed to Section H (page 12).

   PRINT DESIGNATED FINANCIAL FILING PARTNER'S NAME & LAW SOCIETY NUMBER

   a) [Given Name] [Surname]

   b) [Law Society Number]
      (e.g. 12345A or P12345)

   ➔ The filing partner you have named is responsible to file the Financial Filing Declaration to report the firm financial information on your behalf. Your filing will not be considered complete without the submission of the Financial Filing Declaration by the person you have named.
Were financial records for all your firm’s trust* accounts (mixed*, separate*, estates, power(s) of attorney* and other interest generating investments*) and/or general* (non-trust) bank accounts maintained throughout 2011, on a current basis, in accordance with all applicable sections in By-Law 9 (enclosed)?

If “No” to 4), indicate below which areas were deficient and provide an explanation for each.

If “Yes” to 4), leave the following chart blank.

<table>
<thead>
<tr>
<th>By-Law 9: Financial Transactions and Records</th>
<th>By-Law 9 Sections 16, 19 &amp; 20 (Maintain)</th>
<th>By-Law 9 Section 22 (Current)</th>
<th>Explanation for Deficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Trust Receipts Journal</td>
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<tr>
<td>2. Trust Disbursements Journal</td>
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<td>3. Clients’ Trust Ledger</td>
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<td>4. Trust Transfer Journal</td>
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<tr>
<td>5. General Receipts Journal</td>
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<tr>
<td>6. General Disbursements Journal</td>
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<tr>
<td>7. Fees Book or Chronological Billing File</td>
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<tr>
<td>8. Trust Bank Comparison</td>
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<tr>
<td>9. Valuable Property Record</td>
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<tr>
<td>10. Source documents including deposit slips, bank statements and cashed cheques</td>
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<tr>
<td>11. Electronic Trust Transfer Requisitions and Confirmations</td>
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<tr>
<td>12. Teranet Authorizations and Confirmations</td>
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<tr>
<td>13. Duplicate Cash Receipts Book for all cash received</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Records for mortgages held in trust</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation.
Comparison of Trust Bank Reconciliations and Trust Listing of Client Liabilities as at December 31, 2011

Name and address of financial institution(s) where trust account(s) is (are) held and account number(s):

<table>
<thead>
<tr>
<th>FINANCIAL INSTITUTION NAME</th>
<th>ADDRESS</th>
<th>TRANSIT/ACCOUNT NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Reconciliation
Refer to the sample reconciliation found on Page 9 and 10 of the enclosed "Guide".

<table>
<thead>
<tr>
<th>December 31, 2011 Balances</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) The total dollar value of mixed* trust bank accounts</td>
</tr>
<tr>
<td>b) The total dollar value of separate* interest bearing trust accounts or income generating trust accounts/investments*</td>
</tr>
<tr>
<td>c) The total dollar value of separate* estate and/or power of attorney* accounts and investments* Include the total dollar value indicated in questions F 3 a) v), F 3 b) vi) and/or F 3 c) iv) (if any)</td>
</tr>
<tr>
<td>d) TOTAL of a) to c)</td>
</tr>
<tr>
<td>e) Total outstanding deposits (if any)</td>
</tr>
<tr>
<td>f) Total bank/posting errors (if any)</td>
</tr>
<tr>
<td>g) Total outstanding cheques (if any)</td>
</tr>
<tr>
<td>h) Reconciled Bank Balance</td>
</tr>
<tr>
<td>i) Total Client Trust Liabilities (Client Trust Listing)</td>
</tr>
<tr>
<td>j) Difference between Reconciled Bank Balance and Total Client Trust Liabilities</td>
</tr>
</tbody>
</table>

If there is no difference enter "0.00".
If there is a difference between the Reconciled Bank Balance (h) and the Total Client Trust Liabilities (i), provide a written explanation below.

6 Answer all questions as at December 31, 2011:

a) i) What is the total number of mixed* trust bank accounts referred to in 5a)?
ii) Of the total mixed* trust bank account balance recorded in 5a), what is the estimated value of estate assets? $________

b) What is the total number of separate* interest bearing trust accounts or income generating trust accounts/investments* referred to in 5b)?

b) What is the total number of separate* estate and/or power of attorney* accounts and investments* referred to in 5c)?

2011 Lawyer Annual Report Page 10
### Overdrawn Accounts

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>During 2011, did your records, at any month end, disclose overdrawn clients' trust ledger account(s)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If “Yes” to a:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Were the account(s) corrected by December 31, 2011?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>If “No” to b:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of overdrawn clients' trust ledger account(s) as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total number of overdrawn clients' trust ledger account(s) as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Outstanding Deposits

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>During 2011, did your records, at any month end, disclose outstanding trust account deposits, not deposited the following business day?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>If “Yes” to a:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were the account(s) corrected by December 31, 2011?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>If “No” to b:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of outstanding trust account deposits as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total number of outstanding trust account deposits as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Unchanged Client Trust Ledger Account Balances

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Were there client trust ledger account balances that were unchanged*(i.e., had no activity) for the entire year?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>If “Yes” to a:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of these account balances as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total number of client trust ledger accounts that remained unchanged* for the entire year as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were any of the unchanged* client trust ledger account balances for the registration of mortgage discharges?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>If “Yes” to d:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total number of unchanged* client trust ledger accounts held for the registration of mortgage discharges was:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Unclaimed Client Trust Ledger Account Balances

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of the amounts identified in question 9, were any unclaimed* for two years or more?</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>(Refer to section 59.6 of the Law Society Act)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If “Yes” to a:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of the unclaimed* client trust ledger account balances was:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total number of unclaimed* client trust ledger accounts was:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If required, use the area below to provide further information on your Financial Reporting (Section G).

Proceed to Section H on page 12 for your Certification and Signature.
Remember to file your Form 1: Report to The Law Foundation of Ontario which is enclosed in your Annual Report Package.
CERTIFICATION AND SIGNATURE

To be completed by all lawyers.

I am the lawyer filing this 2011 Lawyer Annual Report. I have reviewed the matters reported, and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading reporting to The Law Society of Upper Canada.

Lawyer's Signature __________________________ Date ________________

THIS COMPLETED REPORT AND ANY REQUIRED ENCLOSURES ARE DUE BY MARCH 31, 2012.

Ensure the following before filing your report:

☐ All relevant sections are complete.
☐ Pages 1-12 are included.
☐ Your full name and Law Society number appear on all enclosures.
☐ Submit your Annual Report by one of the following options:

Fax to:
416-947-3408
By-Law Administration Services
The Law Society of Upper Canada

Email to:
bylawadmin@lsuc.on.ca
By-Law Administration Services
The Law Society of Upper Canada

*12345A*

Mail to:
By-Law Administration Services
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

Assistance with the completion of this report and definitions can be found in the enclosed Guide to the 2011 Lawyer Annual Report.

Status and address changes can be made online using the LSUC Portal at https://portal.lsuc.on.ca or direct your inquiries to lawsociety@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Law Society Resource Centre.

For further assistance in the completion of Sections A, B, E, and H direct your inquiries to bylawadmin@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the By-Law Administration Services department.

For further assistance in the completion of Sections C and D, contact LawPRO at (416) 598-5899 or 1-800-410-1013.

For further assistance in the completion of Sections F and G, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca. Lawyers may also call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Practice Management Helpline.
the enclosed Guide to the 2011 Class L2 Licence Annual Report for assistance in completing this report. A French version of this report is also available (aussi disponible en français).

This report is based on the calendar year ending December 31, 2011 and is due by March 31, 2012. Failure to complete and file this report within 120 days of the due date will result in a summary order suspending your licence until such time as this report is completed and filed.

Identification
To be reviewed by all lawyers.
See page 3 of the enclosed “Guide” for assistance in the completion of this section.

This report relates to the following lawyer:

<table>
<thead>
<tr>
<th>Lawyer Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm Name</td>
</tr>
<tr>
<td>Street Address</td>
</tr>
<tr>
<td>City, Province</td>
</tr>
<tr>
<td>Postal Code</td>
</tr>
</tbody>
</table>

Law Society Number
E-mail address

Notes about this section:
The identification information on the left reflects your current mailing information from the Law Society's records. If any of this information, including your e-mail address, is incorrect or missing, changes of information should be made through the LSUC Portal at https://portal.lsuc.on.ca/wps/portal. Alternatively, you may notify the Law Society’s Resource Centre at (416) 947-3315 or Toll-Free (outside local calling area) at 1-800-668-7380 ext: 3315.

Do not make any changes on this page.

Privacy Option
In occasion, the Law Society may provide lawyers’ names, business addresses and e-mail addresses to professional legal associations, organizations and institutions without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services. If you have the option of instructing the Law Society not to provide your name, business address and/or e-mail address to any professional association, organization or institution.

Fill in the oval if you do not wish the Law Society to provide your name, business address and/or e-mail address to any professional association, organization or institution: O
1 Client Identification – All lawyers must answer questions 1a) and 1b)

a) In 2011, when you were retained to provide professional services to clients, did you obtain or were you exempt from the requirement to obtain identification information for every (each) client and any third party, in accordance with By-Law 7.1, Part III?

   Yes ☐ No ☐ N/A ☐

   If “No” to a), provide an explanation below with particulars.

b) In 2011, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, did you obtain or were you exempt from the requirement to obtain information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with By-Law 7.1, Part III?

   Yes ☐ No ☐ N/A ☐

   If “No” to b), provide an explanation below with particulars.

2 NOT APPLICABLE TO A CLASS L2 LICENCE.

3 Bencher Election Privacy Option (non-mandatory response)

During the bencher election, many candidates want to communicate with voters by e-mail. Fill in the oval if you give the Law Society permission to allow the use of your e-mail address for bencher election campaigning purposes: ☐

4 Provision of Legal Services in French (non-mandatory response)

a) Can you communicate with your clients and provide legal advice to them in the French language?

   Yes ☐ No ☐

b) Can you communicate with your clients, provide legal advice to them, and represent them in the French language?

   Yes ☐ No ☐

5 Other Languages (non-mandatory response)

☐ ASL or LSQ (Sign Language) ☐ Arabic ☐ Bulgarian ☐ Cantonese ☐ Croatian ☐ Czech ☐ Danish ☐ Dutch ☐ English ☐ Estonian ☐ Farsi ☐ Finnish ☐ French ☐ German ☐ Greek ☐ Gujarati ☐ Hebrew ☐ Hindi ☐ Hungarian ☐ Italian ☐ Japanese ☐ Korean ☐ Latvian ☐ Lithuanian ☐ Macedonian ☐ Mandarin ☐ Norwegian ☐ Polish ☐ Portuguese ☐ Punjabi ☐ Romanian ☐ Russian ☐ Serbian ☐ Slovak ☐ Slovene ☐ Spanish ☐ Swedish ☐ Ukrainian ☐ Urdu ☐ Yiddish

Other – Please Specify

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## YEAR END STATUS

To be completed by all lawyers. See page 4 of the enclosed “Guide” for assistance in the completion of this section.

### NOTES ABOUT THIS SECTION:
- Choose only one status (your status on December 31, 2011) regardless of changes in employment during the 2011 calendar year.
- Details on changes to your employment status that occurred during 2011 should be made through the LSUC Portal at https://portal.lsuc.ca/wps/portal.

### December 31, 2011 Status (Select only ONE)

<table>
<thead>
<tr>
<th>Status</th>
<th>Mandatory Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barrister &amp; solicitor in the employ of the Attorney General for Ontario</td>
<td>D, E, H</td>
</tr>
<tr>
<td>Appointed as a Crown Attorney under the Crown Attorneys Act</td>
<td>D, E</td>
</tr>
<tr>
<td>Appointed as an Assistant Crown Attorney under the Crown Attorneys Act</td>
<td>D, E</td>
</tr>
<tr>
<td>Lawyer practising law outside of Ontario</td>
<td>D, E</td>
</tr>
<tr>
<td>Employed other, outside of Ontario</td>
<td>D, E</td>
</tr>
<tr>
<td>Not working or on parental leave or unemployed</td>
<td>D, E</td>
</tr>
<tr>
<td>Spent</td>
<td>D, E</td>
</tr>
<tr>
<td>Situation not covered above (specify your status in the area below)</td>
<td>D, E</td>
</tr>
</tbody>
</table>

### SECTION C - NOT APPLICABLE TO A CLASS L2 LICENCE.

### AREAS OF PRACTICE

To be completed by all lawyers in Ontario. See page 4 of the enclosed “Guide” for assistance in the completion of this section.

### NOTE ABOUT THIS SECTION:
Where exact information is not available provide your best approximation.

Indicate the approximate percentage of time you devoted in 2011 to each area of practice as a barrister and solicitor in Ontario.

A barrister & solicitor in the employ of the Attorney General for Ontario
- Appointed as a Crown Attorney under the Crown Attorneys Act
- Appointed as an Assistant Crown Attorney under the Crown Attorneys Act

Total 100%

### E - SELF-STUDY

To be completed by all lawyers. See page 4 of the enclosed “Guide” for assistance in the completion of this section.

### NOTE ABOUT THIS SECTION:
- The annual minimum expectation is 50 hours of law related self-study.

#### Self-Study

Did you undertake any self-study professional development during 2011?
- If "Yes" to a), answer b) to d).
- If "No" to a), you may provide an explanation in the area at the end of this section.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Approximate total number of self-study hours spent on specific reading or research:

Approximate total number of self-study hours spent on general reading or research:

Indicate below the tools used, overall, for all types of self-study. Fill in all that apply.

- Printed Material
- Internet
- Video
- CD ROM
- Audio
- DVD
- Other

required, use the area below to provide further information on your self-study (Section E).
I am the lawyer filing this 2011 Class L2 Licence Annual Report. I have reviewed the matters reported, and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading reporting to The Law Society of Upper Canada.

**Lawyer's Signature**

**Date**

**THIS COMPLETED REPORT IS DUE BY MARCH 31, 2012.**

Ensure the following before filing your report:

- [ ] All relevant sections are complete.
- [ ] Pages 1-4 are included.
- [ ] Submit your Annual Report by one of the following options:

**Fax to:**
416-947-3408
By-Law Administration Services
The Law Society of Upper Canada

**Email to:**
bylawadmin@lsuc.on.ca
By-Law Administration Services
The Law Society of Upper Canada

**Mail to:**
By-Law Administration Services
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

*12345A*

Assistance with the completion of this report and definitions can be found in the enclosed Guide to the 2011 Class L2 Licence Annual Report.

Status and address changes can be made online using the LSUC Portal at https://portal.lsuc.on.ca or direct your inquiries to lawsociety@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Law Society Resource Centre.

For further assistance in the completion of this report direct your inquiries to bylawadmin@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the By-Law Administration Services department.

Barreau
The Law Society of Upper Canada

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2011 CLASS L3 LICENCE CANADIAN LEGAL ADVISOR ANNUAL REPORT

DUE MARCH 31, 2012

The enclosed Guide to the 2011 Class L3 Licence Canadian Legal Advisor Annual Report for assistance in completing this report. A French version of this report is also available (aussi disponible en français). For further assistance in the completion of Sections F and G, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsoc.on.ca. Your responses to section G will be shared with The Law Foundation of Ontario.

This REPORT IS BASED ON THE CALENDAR YEAR ENDING DECEMBER 31, 2011 AND IS DUE BY MARCH 31, 2012. FAILURE TO COMPLETE AND FILE THIS REPORT WITHIN 120 DAYS OF THE DUE DATE WILL RESULT IN A SUMMARY ORDER SUSPENDING YOUR LICENCE UNTIL SUCH TIME AS THIS REPORT IS COMPLETED AND FILED.

IDENTIFICATION

To be reviewed by all Lawyers in Ontario.
See page 3 of the enclosed “Guide” for assistance in the completion of this section.

This REPORT relates to the following lawyer:

| Lawyer Name |
| Firm Name |
| Street Address |
| City, Province |
| Postal Code |

[Law Society Number]

[E-mail address]

MARKING INSTRUCTIONS

Make dark marks that fill the oval completely. Use correction fluid to make changes.

CORRECT

INCORRECT

NOTES ABOUT THIS SECTION:
The identification information to the left reflects your current mailing information from the Law Society's records. If any of this information, including your e-mail address, is incorrect or missing, changes of information should be made through the LSUC Portal at https://portal.lsoc.on.ca/wps/portal. Alternatively, you may notify the Law Society's Resource Centre at (416) 947-3315 or Toll-Free (outside local calling area) at 1-800-868-7380 ext. 3315.

DO NOT MAKE ANY CHANGES ON THIS PAGE

Privacy Option:
Occasionally, the Law Society may provide lawyers' names, business addresses and e-mail addresses to professional legal associations, organizations or institutions without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services.
You have the option of instructing the Law Society not to provide your name, business address and/or e-mail address to any professional association, organization or institution.
In the oval if you do not wish the Law Society to provide your name, business address and/or e-mail address to any professional association, organization or institution: ☐
1 Client Identification – All lawyers must answer questions 1a) and 1b)

a) In 2011, when you were retained to provide professional services to clients, did you obtain or were you exempt from the requirement to obtain identification information for every (each) client and any third party, in accordance with By-Law 7.1, Part III? Yes ☐ No ☐ N/A ☐

If “No” to a), provide an explanation below with particulars.

b) In 2011, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, did you obtain or were you exempt from the requirement to obtain information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with By-Law 7.1, Part III? Yes ☐ No ☐ N/A ☐

If “No” to b), provide an explanation below with particulars.

2 Pro Bono Services

a) Did you provide pro bono services in Ontario in 2011? Yes ☐ No ☐

If “Yes” to a), complete b) and c).

b) How many hours did you devote to pro bono work in Ontario in 2011? __________

Yes ☐ No ☐ N/A ☐

c) Did you provide pro bono services for Pro Bono Law Ontario (PBLO) sponsored programs? Yes ☐ No ☐ N/A ☐

3 Bencher Election Privacy Option (non-mandatory response)

During the bencher election, many candidates want to communicate with voters by e-mail. Fill in the oval if you give the Law Society permission to allow the use of your e-mail address for bencher election campaigning purposes: ☐

4 Provision of Legal Services in French and English (non-mandatory response)

a) Can you communicate with your clients and provide legal advice to them in both the French and English languages? Yes ☐ No ☐

b) Can you communicate with your clients, provide legal advice to them, and represent them in both the French and English languages? Yes ☐ No ☐

5 Other Languages (non-mandatory response)

- ASL or LSQ (Sign Language)
- Arabic
- Bulgarian
- Cantonese
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Farsi
- Finnish
- French
- German
- Greek
- Gujarati
- Hebrew
- Hindi
- Hungarian
- Italian
- Japanese
- Korean
- Latvian
- Lithuanian
- Macedonian
- Mandarin
- Norwegian
- Polish
- Portuguese
- Punjabi
- Romanian
- Russian
- Serbian
- Slovak
- Slovene
- Spanish
- Swedish
- Ukrainian
- Urdu
- Yiddish

Other – Please Specify: ____________________________

1/2
YEAR END STATUS

To be completed by all lawyers in Ontario.
See page 4 of the enclosed “Guide” for assistance in the completion of this section.

NOTES ABOUT THIS SECTION:
1. Choose your status as a Canadian Legal Advisor in Ontario as at December 31, 2011.
2. Details on changes to your employment status that occurred during 2011 should be made through the LSUC Portal at https://portal.lsuc.on.ca/wps/portal.
3. Refer to the enclosed “Guide” for definitions.

December 31, 2011 Status (Select only ONE)

<table>
<thead>
<tr>
<th>Mandatory Sections</th>
<th>Complete if Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canadian Legal Advisor Practising* in Ontario</td>
<td>☒ D, E, F, G, H</td>
</tr>
<tr>
<td>Canadian Legal Advisor Prohibited* from practising in Ontario (Pursuant to s.4.1 of By-Law 4)</td>
<td>☒ E, F, H</td>
</tr>
<tr>
<td>Canadian Legal Advisor Suspended* in Ontario</td>
<td>☒ E, F, H</td>
</tr>
<tr>
<td>In a situation not covered above (specify your status in the area below)</td>
<td>☒ E, F, H</td>
</tr>
</tbody>
</table>

SECTION C - NOT APPLICABLE TO CLASS L3 LICENCES.

AREAS OF PRACTICE

To be completed by all lawyers in Ontario, who engaged in the practice of law, whether in private practice or otherwise.
See page 4 of the enclosed “Guide” for assistance in the completion of this section.

NOTE ABOUT THIS SECTION: Where exact information is not available provide your best approximation.

Indicate the percentages of time devoted by you as a Lawyer in Ontario to each area of practice:

The Laws of Canada

The Laws of Quebec

Public International Law

Total 100%

SELF-STUDY

To be completed by all lawyers in Ontario regardless of status.
See page 4 of the enclosed “Guide” for assistance in the completion of this section.

NOTE ABOUT THIS SECTION:

The annual minimum expectation is 50 hours of law related self-study. Canadian Legal Advisors can complete self-study in Ontario or Quebec.

Self-Study

Did you undertake any self-study during 2011?
If “Yes” to a), answer b) to d) below.
If “No” to a), you may provide an explanation in the area at the end of this section.

Yes ☒ No ☒

Approximate total number of self-study hours spent on file specific reading or research:

Approximate total number of self-study hours spent on general reading or research:

Indicate below the tools used, overall, for all types of self-study. Fill in all that apply.

Printed Material ☒ Internet ☒ Video ☒ CD ROM ☒ Audio ☒ DVD ☒ Other

If required, use the area below to provide further information on your self-study (Section E).
**INDIVIDUAL LAWYER QUESTIONS**

To be completed by all lawyers in Ontario regardless of status.
Questions 1 through 4 inclusive must be answered.
See page 4 of the enclosed "Guide" for assistance in the completion of this section.

**NOTES ABOUT THIS SECTION:**
1. For further assistance in the completion of this section, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca.
2. *Refer to the enclosed "Guide" for definitions.

### 1 Cash Transactions – All lawyers must report on large cash transactions regardless of jurisdiction of practice.

<table>
<thead>
<tr>
<th>a) Did you receive* cash in an aggregate amount equivalent to $7,500 CDN or more in respect of any one client file during the 2011 calendar year?</th>
</tr>
</thead>
<tbody>
<tr>
<td>If “Yes” to a):</td>
</tr>
<tr>
<td>b) Was the cash solely for legal fees and/or client disbursements*?</td>
</tr>
<tr>
<td>If “No” to b), provide full particulars below with respect to compliance with By-Law 9, Part III (Cash Transactions).</td>
</tr>
</tbody>
</table>

### 2 Trust Funds/Property: 2a), 2b) and 2c) must be answered.

<table>
<thead>
<tr>
<th>a) In 2011, did you receive* trust funds* and/or trust property* on behalf of your firm in connection with the practice of law in Ontario?</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) In 2011, did you disburse* (payout), or did you have signing authority to disburse trust funds* or trust property* on behalf of your firm in connection with the practice of law in Ontario?</td>
</tr>
<tr>
<td>c) In 2011, did you hold* trust funds* or trust property* on behalf of your firm in connection with the practice of law in Ontario?</td>
</tr>
</tbody>
</table>

### 3 Estates and Power(s) of Attorney: 3a), 3b) and 3c) must be answered.

<table>
<thead>
<tr>
<th>a) i) In 2011, did you act as a sole estate trustee* in Ontario?</th>
</tr>
</thead>
<tbody>
<tr>
<td>If “Yes” to i), answer ii),</td>
</tr>
<tr>
<td>ii) Were you sole estate trustee* only for related* persons in Ontario?</td>
</tr>
<tr>
<td>b) i) In 2011, did you exercise a power of attorney* for property in Ontario?</td>
</tr>
<tr>
<td>If “Yes” to i), answer ii),</td>
</tr>
<tr>
<td>ii) Did you exercise the power(s) of attorney* for property only for related* persons in Ontario?</td>
</tr>
<tr>
<td>c) i) In 2011, did you control* estate assets as a solicitor / legal counsel, and not as an estate trustee, in Ontario?</td>
</tr>
</tbody>
</table>

### 4 Borrowing from Clients resident in Ontario: 4a) and 4b) must be answered.

<table>
<thead>
<tr>
<th>a) Note: If your borrowing was / is from a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, answer “No” to i) and “N/A” to ii). See subrule 2.04(4), Commentary, and subrule 2.04(5) of the Rules of Professional Conduct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) At any time in 2011, were you personally indebted to a client or person resident in Ontario who at the time of borrowing was or had been your client or a client of a firm in which you were then practising law?</td>
</tr>
<tr>
<td>ii) Was the client or person a related person as defined in the Income Tax Act (Canada)?</td>
</tr>
<tr>
<td>If “Yes” to i) or ii), provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.</td>
</tr>
<tr>
<td>b) At any time in 2011, was your spouse or a corporation, syndicate or partnership in which either you or your spouse has, or both of you have, directly or indirectly, a substantial interest, indebted to a client or person resident in Ontario who at the time of borrowing was or had been your client or a client of a firm in which you were then practising law?</td>
</tr>
<tr>
<td>If “Yes” to b), provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal representation.</td>
</tr>
</tbody>
</table>
Answer the following questions as they relate to clients resident in Ontario.
To be completed by:
- All sole practitioners, partners/employees/associates of law firms;
- Lawyers employed by Legal Aid Ontario responsible for general (non-trust) accounts or trust accounts;
- All other lawyers who held or continued to hold client monies or property from a former legal practice in Ontario as at December 31, 2011.
See page 5 of the enclosed “Guide” for assistance in the completion of this section.

NOTES ABOUT THIS SECTION:
- For further assistance in the completion of this section, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca.
- Refer to the enclosed “Guide” for definitions.

<table>
<thead>
<tr>
<th>Trust and General (Non-Trust) Accounts - 1a) and 'b) must be answered.</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) As at December 31, 2011, did either you or your firm operate a trust* account for clients resident in Ontario?</td>
</tr>
<tr>
<td>As at December 31, 2011, did either you or your firm operate a general* (non-trust) account for clients resident in Ontario?</td>
</tr>
</tbody>
</table>

If “Yes” to a), proceed to question 2;
OR
If “No” to a) and “Yes” to b) proceed to question 4 (page 6), and then proceed to Section H (page 9);
OR
If “No” to both a) and b) proceed to Section H (page 9).

As at December 31, 2011, were you a sole practitioner, or were you the lawyer responsible for filing the trust account information on behalf of your firm in Ontario? | Yes ☐ No ☐ |

If “Yes” to 2, proceed to questions 4 through 10 (pages 6 to 8);
If “No” to 2, complete the “Designated Financial Filing Option” (question 3) below.

NOTE: If you are reporting financial information on behalf of other lawyers and/or licensed paralegals in your firm, you must also submit a Financial Filing Declaration. The declaration is enclosed with your Canadian Legal Advisor Annual Report package. Your report is not considered complete without the submission of the Financial Filing Declaration.

Designated Financial Filing Option
This option is available to you if you are not responsible for filing trust account information.

Indicate on lines a) and b) below, who will be reporting the firm financial information on your behalf. Then proceed to Section H (page 9).

PRINT DESIGNATED FINANCIAL FILING PARTNER’S NAME & LAW SOCIETY NUMBER

a) ____________________________ ____________________________
   Given Name Surname

b) ____________________________
   Law Society Number
   (e.g. 12345A or P12345)

⇒ The filing partner you have named is responsible to file the Financial Filing Declaration to report the firm financial information on your behalf. Your filing will not be considered complete without the submission of the Financial Filing Declaration by the person you have named.
For your clients resident in Ontario, were financial records for all your firm’s trust* accounts (mixed*, separate*, estates, power(s) of attorney* and other interest generating investments*) and/or general* (non-trust) bank accounts maintained throughout 2011, on a current basis, in accordance with all applicable sections in By-Law 9 (enclosed)?

If “No” to 4), indicate below which areas were deficient and provide an explanation for each.

If “Yes” to 4), leave the following chart blank.

---

**COMPLETE THIS CHART ONLY IF YOU ANSWERED “NO” ABOVE. COMPLETE ONLY THOSE AREAS WHERE YOU WERE DEFICIENT.**

<table>
<thead>
<tr>
<th>By-Law 9: Financial Transactions and Records</th>
<th>By-Law 9 Sections 18 &amp; 19 (Maintain)</th>
<th>By-Law 9 Section 22 (Current)</th>
<th>Explanation for Deficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Trust Receipts Journal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Trust Disbursements Journal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(2)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Clients’ Trust Ledger</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(3)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Trust Transfer Journal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(4)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. General Receipts Journal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(5)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. General Disbursements Journal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(6)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Fees Book or Chronological Billing File</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(7)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Trust Bank Comparison◆</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(8)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Valuable Property Record</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(9)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Source documents including deposit slips, bank statements and cashed cheques</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(10)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Electronic Trust Transfer Requisitions and Confirmations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(11) and section 12 (Form 9A)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. NOT APPLICABLE TO CLASS B LICENCEES.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Duplicate Cash Receipts Book for all cash received</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 19</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. NOT APPLICABLE TO CLASS C LICENCEES.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

◆ Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation.
Provide the name and address of financial institution(s) where trust account(s) is (are) held and account number(s) for clients resident in Ontario:

<table>
<thead>
<tr>
<th>FINANCIAL INSTITUTION NAME:</th>
<th>ADDRESS:</th>
<th>TRANSIT/ACCOUNT NUMBER:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Reconciliation
Refer to the sample reconciliation found on page 6 and 7 of the enclosed "Guide".

<table>
<thead>
<tr>
<th>December 31, 2011 Balances</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) The total dollar value of mixed* trust bank accounts</td>
</tr>
<tr>
<td>b) The total dollar value of separate* interest bearing trust accounts or income generating trust accounts/investments*</td>
</tr>
<tr>
<td>c) The total dollar value of separate* estate and/or power of attorney* accounts and investments*</td>
</tr>
<tr>
<td>d) TOTAL of a) to c)</td>
</tr>
<tr>
<td>e) Total outstanding deposits (if any)</td>
</tr>
<tr>
<td>f) Total bank/posting errors (if any)</td>
</tr>
<tr>
<td>g) Total outstanding cheques (if any)</td>
</tr>
<tr>
<td>h) Reconciled Bank Balance</td>
</tr>
<tr>
<td>i) Total Client Trust Liabilities (Client Trust Listing)</td>
</tr>
<tr>
<td>j) Difference between Reconciled Bank Balance and Total Client Trust Liabilities</td>
</tr>
</tbody>
</table>

If there is no difference enter "0.00".
If there is a difference between the Reconciled Bank Balance (h) and the Total Client Trust Liabilities (i), provide a written explanation below.
### Overdrawn Accounts

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>During 2011, did your records, at any month end, disclose overdrawn clients' trust ledger account(s) for clients resident in Ontario? If &quot;Yes&quot; to a):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were the account(s) corrected by December 31, 2011? If &quot;No&quot; to b):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of overdrawn clients' trust ledger account(s) as at December 31, 2011 was:</td>
<td>$ _ _ _ _ _ _ _ _ _ _</td>
<td></td>
</tr>
<tr>
<td>The total number of overdrawn clients' trust ledger account(s) as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Outstanding Deposits

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>During 2011, did your records, at any month end, disclose outstanding trust account deposits, not deposited the following business day for clients resident in Ontario?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were the account(s) corrected by December 31, 2011? If &quot;No&quot; to b):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of outstanding trust account deposits as at December 31, 2011 was:</td>
<td>$ _ _ _ _ _ _ _ _ _ _</td>
<td></td>
</tr>
<tr>
<td>The total number of outstanding trust account deposits as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Unchanged Client Trust Ledger Account Balances

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Were there client trust ledger account balances that were unchanged* (i.e., had no activity) for the entire year for clients resident in Ontario? If &quot;Yes&quot; to a):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of these account balances as at December 31, 2011 was:</td>
<td>$ _ _ _ _ _ _ _ _ _ _</td>
<td></td>
</tr>
<tr>
<td>The total number of client trust ledger accounts that remained unchanged* for the entire year as at December 31, 2011 was:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Unclaimed Client Trust Ledger Account Balances

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of the amounts identified in question 9, were any unclaimed* for two years or more for clients resident in Ontario? (Refer to section 59.6 of the Law Society Act) If &quot;Yes&quot; to a):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total dollar value of the unclaimed* client trust ledger account balances was:</td>
<td>$ _ _ _ _ _ _ _ _ _ _</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The total number of unclaimed* client trust ledger accounts was:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If required, use the area below to provide further information on your Financial Reporting (Section G).

---

Proceed to Section H on page 9 for your Certification and Signature.
Remember to file your Form 1: Report to The Law Foundation of Ontario which is enclosed in your Annual Report Package.
CERTIFICATION AND SIGNATURE

To be completed by all lawyers.

I am the Lawyer filing this 2011 Class L3 Licence Canadian Legal Advisor Annual Report. I have reviewed the matters reported, and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading report to The Law Society of Upper Canada.

Lawyer's Signature

Date

THIS COMPLETED REPORT AND ANY REQUIRED ENCLOSURES ARE DUE BY MARCH 31, 2012.

Ensure the following before filing your report:

☐ All relevant sections are complete.

☐ Pages 1-9 are included.

☐ Your full name and Law Society number appear on all enclosures.

☐ Submit your Annual Report by one of the following options:

Fax to:
416-947-3408
By-Law Administration Services
The Law Society of Upper Canada

Email to:
bylawadmin@lsuc.on.ca
By-Law Administration Services
The Law Society of Upper Canada

Mail to:
By-Law Administration Services
The Law Society of Upper Canada
Csgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

*12345A*

For assistance with the completion of this report and definitions can be found in the enclosed Guide to the 2011 Class L3 Licence Canadian Legal Advisor Annual Report.

For address changes can be made online using the LSUC Portal at https://portal.lsuc.on.ca or direct your inquiries to lawsoociety@lsuc.on.ca, or 1 (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Law Society Resource Centre.

For further assistance in the completion of Sections A, B, D, E and H direct your inquiries to bylawadmin@lsuc.on.ca, or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the By-Law Administration Services department.

For further assistance in the completion of Sections F and G, refer to The Lawyer Bookkeeping Guide available on our Resource Centre website at www.lsuc.on.ca. Lawyers may also call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Practice Management Helpline.