

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 29, 2015

MOVED BY: Christopher Bredt

SECONDED BY: Teresa Donnelly

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

DRAFT

MINUTES OF CONVOCATION

Thursday, 24<sup>th</sup> September, 2015  
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong (by telephone), Banack (by telephone), Beach, Bickford, Boyd, Braithwaite, Bredt, Callaghan, Chrétien (by telephone), Clément, Conway, Cooper, Corbiere, Corsetti, Criger, Donnelly (by telephone), Earnshaw, Epstein, Evans (by telephone), Falconer, Finkelstein (by telephone), Furlong, Galati, Go (by telephone), Goldblatt, Gottlieb, Groia, Haigh, Hartman (by telephone), Horvat, Krishna, Lawrie, Leiper, Lerner, Lippa, MacLean, McDowell, McGrath, Merali, Mercer, Millar, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza, Potter (by telephone), Richardson (by telephone), Richer, Rosenthal, Ross, Ruby (by telephone), Schabas, Spence, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg, Swaye (by telephone), Troister, Udell, Vespry, Wardle and Wright.

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by public webcast.

The Treasurer thanked Elder Cat Criger for performing the smudging ceremony to open Convocation this morning.

The Treasurer informed benchers of the event focussing on the Truth and Reconciliation Commission of Canada report on September 10, 2015.

The Treasurer welcomed The Honourable James Spence, former Treasurer, back to Convocation.

The Treasurer welcomed Gisèle Chrétien, a newly appointed lay bencher, to Convocation. Ms. Hartman also extended a welcome.

The Treasurer welcomed to Convocation former Treasurer Thomas Conway in his capacity as Federation of Law Societies of Canada President.

The Treasurer welcomed Ian Hull, Chair of the Law Society Foundation, for his address today to Convocation about the Lawyers Feed the Hungry Program.

The Treasurer welcomed LAWPRO guests Kathleen Waters and Duncan Gosnell.

The Treasurer announced the appointment of Lesley Cameron as new Acting Executive Director, Professional Regulation Division.

The Treasurer, on behalf of Convocation, expressed deepest condolences to the family of The Honourable Marc Rosenberg who passed away on August 27, 2015.

The Treasurer reminded benchers of the call to the bar September 25, 2015 at which The Honourable Russell G. Juriansz will receive an honorary LL.D.

The Treasurer informed Convocation of her attendance at the swearing in of former Treasurer, The Honourable E. Susan Elliott in Ottawa, as a judge of the Federal Court.

The Treasurer informed Convocation of the Law Society of Upper Canada's booth at the Canadian National Exhibition, as part of the Law Society's access to justice and outreach initiative.

The Treasurer informed Convocation of a number of events and activities she attended, and upcoming public events for the information of benchers.

The Treasurer reminded benchers of the opening of the courts today, and noted special guests for lunch including members of the judiciary, the Lieutenant Governor and Attorney General.

The Treasurer announced that Jerry Udell and Sidney Troister have been appointed by her to the Real Estate Issues Working Group.

#### MOTION – CONSENT AGENDA

It was moved by Ms. Corsetti, seconded by Mr. Anand, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

#### DRAFT MINUTES OF CONVOCATION – Tab 1.1

##### Re: Tab 1.1.1:

The draft minutes of Convocation of June 25, 2015 were confirmed.

Re: Tab 1.1.2:

The draft minutes of Convocation of September 10, 2015 were confirmed.

MOTIONS – Tab 1.2

Re: Tab 1.2.1

THAT Convocation approve the following appointments:

THAT the following be appointed to the Alternative Business Structures Working Group:

Susan McGrath (Co-Chair)  
Malcolm Mercer (Co-Chair)  
Marion Boyd  
Janis Criger  
Carol Hartman  
Jacqueline Horvat  
Brian Lawrie  
Jeffrey Lem  
Jan Richardson  
Joanne St. Lewis

THAT Jack Braithwaite be reappointed as the Law Society's representative on the Canadian National Exhibition Association for a term of one year commencing October 22, 2015.

THAT Gisèle Chrétien be appointed to the LibraryCo Inc. Board of Directors to replace E. Susan Elliot who has resigned.

THAT Joanne St. Lewis be removed from the Mentoring and Advisory Services Proposal Task Force at her own request.

THAT Michael Lerner and Andrew Spurgeon be appointed to the Real Estate Issues Working Group.

THAT Robert Burd be appointed to the Task Force on Compliance-Based Entity Regulation.

Carried

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REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND  
COMPETENCE – Tab 1.3

THAT the Report of the Executive Director of Professional Development and  
Competence listing the names of the call to the bar candidates be adopted.

Carried

LAWYERS FEED THE HUNGRY PROGRAM

Mr. Lerner introduced Ian Hull, Chair of the Law Society Foundation Board of Trustees.

Mr. Hull addressed Convocation on the Lawyers Feed the Hungry Program.

The Treasurer thanked Mr. Hull for his dedication to this initiative.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Proposed Amendments to the *Rules of Professional Conduct* on Language Rights

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation approve the  
amendments to the *Rules of Professional Conduct* as set out in Tab 2.1.1.

An amendment was accepted to move the comma in the second line of rule 3.2–2B to  
after the word “choice”.

The motion as amended carried.

Re: New Process for Administrative Surrender of Licence

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation approve in  
principle a new process which would permit a licensee to surrender their licence in the face of a  
Law Society investigation or discipline proceeding.

Carried

Re: 2015 Lawyer Annual Report

Mr. Mercer presented the report for information.

Re: Professional Regulation Division Quarterly Report

Mr. Mercer presented the report for information.

Re: Alternative Business Structures Working Group Report

Mr. Mercer presented the report for information.

*For Information:*

- 2015 Lawyer Annual Report
- Professional Regulation Division Quarterly Report
- Report of the Alternative Business Structures Working Group

AUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: Law Society of Upper Canada Financial Statements for the Six Months Ended June 30, 2015

Mr. Bredt presented the report for information.

LAWPRO REPORT

Ms. McGrath presented the Report.

It was moved by Ms. McGrath, seconded by Ms. Murchie, that Convocation approve the program of insurance offered by LAWPRO for 2016 as set out in the Report at Tab 4.

Carried

PARALEGAL STANDING COMMITTEE REPORT

Ms. McGrath presented the Report.

Re: Amendments to *Paralegal Rules of Conduct*: Transferring Paralegals

It was moved by Ms. McGrath, seconded by Ms. Corsetti, that Convocation approve the amendments to the Paralegal Rules regarding Transferring Paralegals shown at Tab 3.2.1, to be consistent with the rule changes for lawyers approved by Convocation in June 2015.

Carried

*For Information:*

- Amendments to the Paralegal *Guidelines* - Limited Scope Retainers
- 2015 Paralegal Annual Report
- Other Committee Work

REPORT FROM THE FEDERATION OF LAW SOCIETIES OF CANADA

Thomas Conway, President of the Federation of Law Societies of Canada, addressed Convocation with a report on the Federation.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Leiper presented the Report.

Re: Report of the Activities of the Discrimination and Harassment Counsel January 1 – June 30, 2015

Ms. Leiper presented the report for information.



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*REPORTS FOR INFORMATION ONLY*

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society of Upper Canada Financial Statements for the Six Months ended June 30, 2015
- LibraryCo Inc. Financial Statements for the Six Months ended June 30, 2015
- LAWPRO Financial Statements for the Six Months ended June 30, 2015
- In Camera Item
- Performance of Investment Manager
- Investment Compliance Reports
- Other Committee Work

TRIBUNAL COMMITTEE REPORT

- Tribunal 2015 First and Second Quarter Statistics

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

- Discrimination and Harassment Counsel Semi-Annual Report
- Appointments to the Equity Advisory Group
- Public Education Equality and Rule of Law Series Calendar 2015 – 2016

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE

CONVOCATION ROSE AT 12:35 P.M.

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## THE LAW SOCIETY OF UPPER CANADA

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THAT Gavin MacKenzie be appointed as Vice-Chair of the Task Force on Compliance-Based Entity Regulation.

THAT Malcolm Mercer be appointed to the Real Estates Issues Working Group.

THAT Peter Wardle be appointed to the Professional Development and Competence Committee.

THAT the following benchers be appointed to the committee of benchers described in s. 40(7) of By-Law 4 [Licensing]\*:

Peter Beach  
Jack Braithwaite  
Jacqueline Horvat  
Michael Lerner

THAT the following benchers be appointed to the committee of benchers described in s. 40(17.2) of By-Law 4 [Licensing]\*:

Cathy Corsetti  
Janis Criger  
Seymour Epstein  
Barbara Murchie

THAT Peter Wardle be appointed as the bencher described in s. 38 of By-Law 11 [Regulation of Conduct, Capacity and Professional Competence].\*

THAT the following benchers be appointed as the panel of benchers described in s. 42(1) of By-Law 11 [Regulation of Conduct, Capacity and Professional Competence]\*:

Michelle Haigh  
Carol Hartman  
Jan Richardson

#### \*Explanatory Notes:

The committee of benchers appointed under s. 40(7) of By-Law 4 deals with applications arising from the Society's refusal to grant to a person prior permission to practise law in the context of the interprovincial practise of law.

The committee of benchers appointed under s. 40(17.1) of By-Law 4 deals with applications from a person whose prior permission to practise law has been withdrawn for public interest reasons for a determination of whether the permission was properly withdrawn.

The bencher appointed under s. 38 of By-Law 11 is authorized, on application of the Law Society, to make an order that a licensee who was subject to an audit under s. 49.2 of the *Law Society Act* pay the cost or part of the cost of that audit.

The panel of benchers appointed under s. 42(1) of By-Law 11 hears appeals from the decision of the bencher appointed under s. 38.



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To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Executive Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, October 29<sup>th</sup> 2015

ALL OF WHICH is respectfully submitted

DATED this 29<sup>th</sup> day of October, 2015

**CANDIDATES FOR CALL TO THE BAR**  
**October 29<sup>th</sup> 2015**

**Transfer from another province (Mobility)**

Charles Desmeules  
Érik Ferguson Labelle Eastaugh  
Brian Hyunhoo Koh  
Alastair Donald Lachlan Mackinnon  
Anushua Nag  
Alanna Dawn Robinson  
Karen Ruth Segal  
Teresa Maria Tomchak

**L3**

Angely Mary Pacis

**Licensing Process**

John Michael Agozzino  
Marie-Claire Choueiri  
Noah Benjamin Stewart-Ornstein



**TAB 1.4**



## **Report to Convocation October 29, 2015**

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### **Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones**

#### **Committee Members**

**Julian Falconer, Co-Chair**

**Janet Leiper, Co-Chair**

**Dianne Corbiere, Vice-Chair**

**Sandra Nishikawa, Vice-Chair**

Raj Anand

Fred Bickford

Suzanne Clément

Teresa Donnelly

Robert Evans

Avvy Go

Howard Goldblatt

Marian Lippa

Isfahan Merali

Barbara Murchie

Gina Papageorgiou

Susan Richer

Raj Sharda

**Purpose of Report: Decision**

**Prepared by the Equity Initiatives Department  
(Josée Bouchard – 416-947-3984)**

## TABLE OF CONTENTS

*Amendments to Guidelines for Lawyers Acting in Aboriginal Residential School Cases* ..... **TAB 1.4.1**

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on October 13, 2015. Committee members bencher Julian Falconer, Chair, bencher Dianne Corbiere, Vice-Chair, bencher Sandra Y. Nishikawa, Vice-Chair and chair of the meeting, and benchers Fred Bickford, Robert Evans, Avvy Go, Howard Goldblatt, Barbara Murchie, Gina Papageorgiou and Susan Richer attended. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, also participated. Staff members Josée Bouchard, Ekua Quansah, Marisha Roman and Grant Wedge also attended.

FOR DECISION

**AMENDMENTS TO GUIDELINES FOR LAWYERS ACTING IN  
ABORIGINAL RESIDENTIAL SCHOOL CASES**

**Request to Convocation**

2. That Convocation approve the amendments proposed to the *Guidelines for Lawyers Acting in Aboriginal Residential School Cases* (the “Guidelines”) presented at [TABS 1.4.1.1 \(tracked\)](#) and [1.4.1.2 \(untracked\)](#).

**Rationale**

3. On October 13, 2015, the Equity and Aboriginal Issues Committee approved amendments to the Guidelines to reflect changes to the *Rules of Professional Conduct* and other minor editorial changes. The amended Guidelines are presented at Tabs 1.4.1.1 and 1.4.1.2.
4. It is anticipated that a more substantial review of the Guidelines, to take into account emerging developments in this area, will be conducted once an Aboriginal advisory group has been created.

TAB 1.4.1.1

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**GUIDELINES FOR LAWYERS ACTING IN  
ABORIGINAL RESIDENTIAL SCHOOL CASES**

**Preamble**

These Guidelines are provided as a tool primarily to assist ~~lawyers members of the Law Society of Upper Canada (“the Law Society”)~~ who act for claimants in cases involving Indian residential schools (“the residential schools”), including claims which may be commenced or are already proceeding through legal processes established by the May 8, 2006 Indian Residential Schools Settlement Agreement (“IRSSA”). While the word “Indian” is the title used by government and in laws or other official documents to refer to the Aboriginal people of Canada, the term “Aboriginal” will be used in the context of these Guidelines.

The Guidelines were prepared in the context of the Aboriginal community’s unique experience and history with the residential schools across Canada. The Guidelines reflect a response to calls from the Assembly of First Nations, ~~Rotio~~ <sup>tates</sup> Aboriginal Advisory Group, the Law Commission of Canada, and the Canadian Bar Association for law societies to implement safeguards for Aboriginal claimants engaged in legal processes. These Guidelines are in keeping with the spirit and letter of the *Rules of Professional Conduct* (“the Rules”). In particular, Rule ~~2.1-1 Commentary paragraph [4.1] 4.03(1)(b)~~ recognizes that lawyers have a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights law in force in Ontario.

While these Guidelines address issues relating specifically to claimants in legal matters involving the residential schools, the principles in the Guidelines may apply to lawyers acting in cases involving other claims of institutional abuse or other vulnerable clients. The Guidelines also provide guidance of a general nature, which lawyers acting on behalf of individual defendants, churches or government will find useful in their representations.

The Guidelines, advisory in nature, are meant to be educational and should be read in conjunction with the Rules. A lawyer will not be subject to discipline by the Law Society for a breach of the Guidelines, but may be subject to discipline for a breach of the standards of professional conduct found in the Rules, some of which are referenced in these Guidelines. The Guidelines have been created to identify appropriate practices in the area of residential school litigation with a view to ensuring the competence and professional conduct of ~~lawyers –the Ontario Bar~~ in providing legal services and non-discriminatory access to legal services in Ontario for claimants in these actions.

In these Guidelines, words such as “respect” and “healing” are used throughout. These words have significant meaning in an Aboriginal world-view. For the purposes of these Guidelines, “respect” reflects either an acceptance of the importance of the issue referred to, or polite, honourable, kind and careful consideration of the person referred to. “Healing” refers to the claimant’s emotional, psychological, physical and spiritual journey towards health and wellness in his or her life, and in his or her relationships with family and community.

Background information on the residential school experience and a list of resources for lawyers acting for claimants may be obtained through the Law Society's website ([www.lsuc.on.ca](http://www.lsuc.on.ca)) or through the Law Society's [Equity Initiatives-area](#) or [Resource Centre-Practice-Advisory-areas](#).

#### General

1. Given the specific knowledge required to responsibly serve the legal needs of Aboriginal Peoples or represent other parties to these claims, the special nature of residential school cases, and the various legal processes that exist in those cases, including legal processes established by the IRSSA, lawyers should ensure they are competent to act prior to accepting clients in these matters. Rule ~~2.01(1)~~ 3.1-1 provides a definition of a "competent lawyer". Rule ~~3.1-1(h)~~ 2.01(1)(h) states that being a competent lawyer includes "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." Competence also involves "performing all functions conscientiously, diligently, and in a timely and cost-effective manner" (Rule ~~3.1-1(e)~~ 2.01(1)(e)). Lawyers should avoid unnecessary delay and encourage clients to pursue expeditious resolution of these claims, with particular care to avoid delays in cases involving ill or aging claimants.
2. Recognizing that this type of litigation creates additional demands for lawyers and their staff, lawyers should be aware of the possible need for training for law office personnel to effectively manage the practice and maintain competent legal service to clients. Lawyers acting in residential school cases are encouraged to ensure that employee assistance programs and counselling are available for law office lawyers and staff.
3. Lawyers should recognize and respect that claimants may be seriously damaged from their experiences, which may include cultural damages resulting from being cut off from their own society, culture and traditions and removed from their parents. These experiences may be aggravated by claimants having to relive their childhood abuse, and healing may be a necessary component of any real settlement for claimants. Accordingly, lawyers should take into account that any redress provided to claimants may include a broader range beyond the monetary. Lawyers should endeavour to understand and respect claimants' cultural roots, customs and traditions.

#### Guidance for Claimants' Counsel

4. Lawyers should recognize and respect the unique nature of residential school cases and appreciate claimants' need for "healing" in the legal process. Lawyers should recognize and respect the special nature of claimants' cases and should assist in facilitating their client's healing process through, where possible:
  - a) identifying and providing referrals to appropriate community resources, including counselling resources, to assist the client;
  - b) referring their client to treatment programs, if appropriate;
  - c) for lawyers acting for a client pursuing a claim within the processes established by the IRSSA, referring their client to the mental health and emotional services available through the IRSSA, if appropriate; and,
  - d) recognizing and respecting the need for the client to develop a personal support network.

Lawyers should review these options with the client at the beginning of and throughout the retainer.

5. Lawyers should recognize and respect that residential school cases place unique demands on the lawyer and other law office staff by virtue of the complicated legal issues, the emotional nature of such cases, the additional amount of time and resources required for each case, the special needs of claimants, the potential need for crisis intervention and management, and the lawyer's role in facilitating the claimant's healing process. Lawyers should recognize and respect that these demands may place a practical limit on the number of cases which they can competently and responsibly take on at any one time. Lawyers must also remember that they must act consistent with their responsibilities to their clients.
6. Lawyers should ensure that new claimants are aware of the IRSSA, including the legal processes established by the IRSSA, the deadlines established by the IRSSA for new claims, and the claimants' available legal options in light of the IRSSA. Although most claims being pursued by ~~Ontario~~ lawyers are or will proceed through legal processes established by the IRSSA, if lawyers pursue claims through a class action, lawyers should ensure that the claimants understand the impact of participating in the class on other legal rights which may be available to the them, including the impact on potential claims available through legal procedures established by the IRSSA, the nature of a class action, and the need for a representative group of claimants from whom the lawyer will take instructions. The lawyer should also implement appropriate information distribution systems for the benefit of all claimants.
7. Lawyers should appreciate the need for the utmost sensitivity in dealings with claimants. Lawyers should ensure that the methods they employ in making legal services available to claimants are culturally appropriate and comply with Rule ~~4.1-1, 3-01~~, in particular Rule ~~4.1-2(c) 3-01(2)(e)~~ which prohibits unconscionable or exploitive means in offering legal services to vulnerable persons or persons who have suffered a traumatic experience and have not yet had a chance to recover. Lawyers should make reasonable efforts to ensure that initial communications offering legal services to claimants are welcomed and respectful. Care should be taken to ensure that these communications will not result in further trauma to the claimant. Subject to protecting and advising the client with respect to solicitor and client privilege, lawyers may wish to consider having community support people available at the initial meeting with the client and should recognize that claimants may require support people to be present throughout various stages of the legal retainer.
8. Lawyers should ensure that advertising aimed at soliciting claimants is in good taste, is not false or misleading, and complies with Rule ~~3.04- 4.2-1~~.
9. Lawyers acting on behalf of claimants must comply with ~~Rule 2.08-Section 3.6~~ and ensure that all fees and disbursements are clearly communicated to the claimant in a way that is understandable. Lawyers acting for claimants within the Independent Assessment Process established by the IRSSA should additionally communicate the IRSSA provisions related to the claimant's legal fees and disbursements in a manner that is clear and understandable. Given the unique nature of residential school cases and needs of claimants, lawyers should make reasonable efforts to ensure that there is clear and understandable communication regarding the lawyer and client relationship, the legal process including settlement and alternative dispute resolution processes, responsibilities of lawyer and client, and fees and disbursements.

Accordingly, lawyers should, whenever possible, meet in person with the claimant before establishing a lawyer and client relationship or accepting retainers from residential school claimants.

10. Lawyers may enter into an arrangement with a claimant for a contingency fee provided the arrangement is in accordance with [Rule 2.08](#), [Rule 3.6-2](#).

11. Lawyers acting for claimants should ensure that they are accessible to claimants for whom they are acting and that clear lines of communication exist with the claimants. Lawyers should recognize and respect the special communication needs that some claimants may have including language barriers, cultural barriers, and limited access to telephone service. [Rule 3.2-2A](#) requires that a lawyer advise a client of their language rights, including the right to use the official language of the client's choice, and a language recognized in provincial or territorial legislation as a language in which a matter may be pursued, including, where applicable, aboriginal languages.

[12](#). Lawyers may be required to consider the services of interpreters, as necessary. Lawyers' written communications to claimants should be in an understandable and accessible format and lawyers should make reasonable efforts to follow up to ensure client comprehension. Lawyers should also communicate at all stages of the matter in a timely and effective manner ~~that is appropriate to the age and abilities of the client~~, in accordance with [Rule 3.1-1\(d\)](#), ~~2.01(1)(d)~~. This also involves being clear with the client about what the legal system can and cannot deliver, and, depending on the circumstances, involving the client in determining the approach to gathering information relevant to the claim. Lawyers should also be prepared to deal with a claimant's progressive disclosure of issues related to the claim, given the emotional restraints that many claimants may experience.

[13](#). Sensitivity to the emotional, spiritual and intellectual needs of claimants is necessary in the provision of legal services to claimants. Lawyers acting for claimants should recognize and respect that many claimants have had control taken from their lives and were victims of child and sexual abuse and therefore, as clients, should be routinely informed about and consulted as much as possible on the direction of their case. Lawyers should ensure that they obtain instructions from claimants at every stage of the legal process. Lawyers should also recognize and respect that for claimants, interaction with lawyers and the legal process can be extremely stressful and difficult.

[14](#)

Lawyers should recognize and respect that claimants are often at risk of suicide and/or violence toward themselves and others, and should seek appropriate instruction and training for all law office staff to deal with such occurrences. Lawyers should be aware of available and appropriate resources and supports in order to make referrals when crisis intervention is warranted.

*Passed by Convocation on October 23, 2003; amended February 23, 2012.*



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The Guidelines were prepared in the context of the Aboriginal community’s unique experience and history with the residential schools across Canada. The Guidelines reflect a response to calls from the Assembly of First Nations, Rotiio>taties Aboriginal Advisory Group, the Law Commission of Canada, and the Canadian Bar Association for law societies to implement safeguards for Aboriginal claimants engaged in legal processes. These Guidelines are in keeping with the spirit and letter of the *Rules of Professional Conduct* (“the Rules”). In particular, Rule 2.1-1 Commentary paragraph [4.1] recognizes that lawyers have a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights law in force in Ontario.

While these Guidelines address issues relating specifically to claimants in legal matters involving the residential schools, the principles in the Guidelines may apply to lawyers acting in cases involving other claims of institutional abuse or other vulnerable clients. The Guidelines also provide guidance of a general nature, which lawyers acting on behalf of individual defendants, churches or government will find useful in their representations.

The Guidelines, advisory in nature, are meant to be educational and should be read in conjunction with the Rules. A lawyer will not be subject to discipline by the Law Society for a breach of the Guidelines, but may be subject to discipline for a breach of the standards of professional conduct found in the Rules, some of which are referenced in these Guidelines. The Guidelines have been created to identify appropriate practices in the area of residential school litigation with a view to ensuring the competence and professional conduct of lawyers in providing legal services and non-discriminatory access to legal services in Ontario for claimants in these actions.

In these Guidelines, words such as “respect” and “healing” are used throughout. These words have significant meaning in an Aboriginal world-view. For the purposes of these Guidelines, “respect” reflects either an acceptance of the importance of the issue referred to, or polite, honourable, kind and careful consideration of the person referred to. “Healing” refers to the claimant’s emotional, psychological, physical and spiritual journey towards health and wellness in his or her life, and in his or her relationships with family and community.

Background information on the residential school experience and a list of resources for lawyers acting for claimants may be obtained through the Law Society’s website ([www.lsuc.on.ca](http://www.lsuc.on.ca)) or through the Law Society’s equity area or Resource Centre.

## General

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5. Lawyers should recognize and respect that residential school cases place unique demands on the lawyer and other law office staff by virtue of the complicated legal issues, the emotional

nature of such cases, the additional amount of time and resources required for each case, the special needs of claimants, the potential need for crisis intervention and management, and the lawyer's role in facilitating the claimant's healing process. Lawyers should recognize and respect that these demands may place a practical limit on the number of cases which they can competently and responsibly take on at any one time. Lawyers must also remember that they must act consistent with their responsibilities to their clients.

6. Lawyers should ensure that new claimants are aware of the IRSSA, including the legal processes established by the IRSSA, the deadlines established by the IRSSA for new claims, and the claimants' available legal options in light of the IRSSA. Although most claims being pursued by lawyers are or will proceed through legal processes established by the IRSSA, if lawyers pursue claims through a class action, lawyers should ensure that the claimants understand the impact of participating in the class on other legal rights which may be available to the them, including the impact on potential claims available through legal procedures established by the IRSSA, the nature of a class action, and the need for a representative group of claimants from whom the lawyer will take instructions. The lawyer should also implement appropriate information distribution systems for the benefit of all claimants.
7. Lawyers should appreciate the need for the utmost sensitivity in dealings with claimants. Lawyers should ensure that the methods they employ in making legal services available to claimants are culturally appropriate and comply with Rule 4.1-1, , in particular Rule 4.1-2(c) which prohibits unconscionable or exploitive means in offering legal services to vulnerable persons or persons who have suffered a traumatic experience and have not yet had a chance to recover. Lawyers should make reasonable efforts to ensure that initial communications offering legal services to claimants are welcomed and respectful. Care should be taken to ensure that these communications will not result in further trauma to the claimant. Subject to protecting and advising the client with respect to solicitor and client privilege, lawyers may wish to consider having community support people available at the initial meeting with the client and should recognize that claimants may require support people to be present throughout various stages of the legal retainer.
8. Lawyers should ensure that advertising aimed at soliciting claimants is in good taste, is not false or misleading, and complies with Rule 4.2-1.
9. Lawyers acting on behalf of claimants must comply with Section 3.6 and ensure that all fees and disbursements are clearly communicated to the claimant in a way that is understandable. Lawyers acting for claimants within the Independent Assessment Process established by the IRSSA should additionally communicate the IRSSA provisions related to the claimant's legal fees and disbursements in a manner that is clear and understandable. Given the unique nature of residential school cases and needs of claimants, lawyers should make reasonable efforts to ensure that there is clear and understandable communication regarding the lawyer and client relationship, the legal process including settlement and alternative dispute resolution processes, responsibilities of lawyer and client, and fees and disbursements. Accordingly, lawyers should, whenever possible, meet in person with the claimant before establishing a lawyer and client relationship or accepting retainers from residential school claimants.
10. Lawyers may enter into an arrangement with a claimant for a contingency fee provided the arrangement is in accordance with Rule 3.6-2.

11. Lawyers acting for claimants should ensure that they are accessible to claimants for whom they are acting and that clear lines of communication exist with the claimants. Lawyers should recognize and respect the special communication needs that some claimants may have including language barriers, cultural barriers, and limited access to telephone service. Rule 3.2-2A requires that a lawyer advise a client of their language rights, including the right to use the official language of the client's choice, and a language recognized in provincial or territorial legislation as a language in which a matter may be pursued, including, where applicable, aboriginal languages.
12. Lawyers may be required to consider the services of interpreters, as necessary. Lawyers' written communications to claimants should be in an understandable and accessible format and lawyers should make reasonable efforts to follow up to ensure client comprehension. Lawyers should also communicate at all stages of the matter in a timely and effective manner, in accordance with Rule 3.1-1(d). This also involves being clear with the client about what the legal system can and cannot deliver, and, depending on the circumstances, involving the client in determining the approach to gathering information relevant to the claim. Lawyers should also be prepared to deal with a claimant's progressive disclosure of issues related to the claim, given the emotional restraints that many claimants may experience.
13. Sensitivity to the emotional, spiritual and intellectual needs of claimants is necessary in the provision of legal services to claimants. Lawyers acting for claimants should recognize and respect that many claimants have had control taken from their lives and were victims of child and sexual abuse and therefore, as clients, should be routinely informed about and consulted as much as possible on the direction of their case. Lawyers should ensure that they obtain instructions from claimants at every stage of the legal process. Lawyers should also recognize and respect that for claimants, interaction with lawyers and the legal process can be extremely stressful and difficult.
14. Lawyers should recognize and respect that claimants are often at risk of suicide and/or violence toward themselves and others, and should seek appropriate instruction and training for all law office staff to deal with such occurrences. Lawyers should be aware of available and appropriate resources and supports in order to make referrals when crisis intervention is warranted.

*Passed by Convocation on October 23, 2003; amended February 23, 2012.*