



The County & District
Law Presidents' Association

L'Association Des Bâtonniers
De Comtés et Districts

Janet M. Whitehead, Chair

Cheryl Siran, Vice Chair

Plenary Summary – May 8 -10, 2013

Overview

“Now as I indicated, we've got a jam-packed agenda for you over the next day and a half and as you can see, we've got time devoted to real estate issues, libraries, our advocacy initiative, Legal Aid, as well as other presentations from the Law Society and LawPro on professional activities that impact on our members.” – Janet Whitehead

On the evening of May 8, 2013, Presidents and delegates of local Law Associations from across Ontario began to arrive in Toronto for our spring Plenary to discuss matters affecting the practising bar and to receive updates on some of the County and District Law Presidents' Association's priority initiatives. The agenda was designed to allow for community justice partners, panelists and presenters to address a broad range of profession leadership and for delegates to become a part of the conversation on key issues.

The agenda also gave focus to some of the measurable improvements and successes that we have shared over the past six months as a result of our commitment to advocacy, our member Associations, and our continued drive to become recognized in Ontario as one of the premier justice stakeholders.

Over the course of Plenary, delegates participated in sessions lead by representatives from the Law Society, government, justice partners and your Executive on topics ranging from County Law Libraries to alternative business structures.

The Executive and delegates also benefitted from the participation of a number of sponsors who supported our Plenary through financial donations to the event. We want to once more acknowledge the contributions of LawPRO, who sponsored our hospitality events, and booth sponsors Canadian Process Servers and Teranet.

In order to capture the details and discussions that took place, CDLPA had all sessions recorded and transcribed so that the work that took place during Plenary could be shared with the membership of your local Law Association. We encourage you to review the below summary, which also includes links to remarks, slides and Question & Answer sessions. Through you and your Association, we amplify further the consensus voice of the practising bar.



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Robert Lapper, CEO Law Society of Upper Canada

“I’m hearing from many quarters the concerns that County Library Collections and Supports are at considerable risk. That’s not going to be the case. That’s not the presumption we start with here.” - Robert Lapper, CEO

Robert Lapper led the opening Plenary session by providing delegates with an update on some of the initiatives undertaken by the Law Society. Six months previous Robert’s remarks at our fall session emphasized the financial pressures the organization was confronting. At that time Convocation had just passed a budget that reflected an operating deficit of approximately \$8 million that though manageable in the current fiscal year by funding through reserves was not sustainable in the long term. Robert provided delegates with an update on some of the steps and progress of the Law Society since this announcement and the steps taken to mitigate the challenges of their budget.

First and foremost, his remarks emphasized that the focus of the Law Society was on avoiding a large fee increase for lawyers. As a part of the Law Society’s strategy to achieve this, delegates were advised that a full-scale review of the organization commissioned through PricewaterhouseCoopers (PwC) had been completed. The internal review by PwC went beyond the customary review and report by divisions and assessed the Law Society’s use of resources and provision of services across the organization. Resulting from the PwC report, the Law Society is currently in the process of examining how some of their recommendations can be incorporated.

Robert also sought to assure delegates that the operational review was strictly an internal exercise. It did not extend to other facets of the Law Society such as, and specifically noted, LibraryCo. A necessary part of the Law Society process going forward will be an expenditure review, looking at all program areas and funding commitments, but this is discrete from the work of PwC. With respect to LibraryCo., Robert acknowledged some of the confusion resulting from the different review processes and described a much different approach to moving forward to address improvements to the County Library system. In accepting that the distribution of legal information is changing, the Law Society is committing to a process of engagement with stakeholders and a dialogue with the profession to better inform direction or decisions. As a part of this, while a process is established that sees CDLPA and the Toronto Lawyers Association as shareholders working with other justice partners, the Law Society is recommending to Convocation that they approve stable funding for LibraryCo. while we work together to improve and modernize the County Library System.

His presentation also covered topics such as complaints, Access to Justice initiatives, paralegal regulation, alternative business structures, the Law Practice Program, the new Member Assistance Program and the greying of the bar. A copy of his remarks can be found [here](#) and the



slide deck [here](#).

Real Estate Liaison & Practice Issues Committee

“And we are now seeing the insurers coming up with different tactics or methods of proceeding, which may not be living up to the clients’ expectation. And when it doesn’t live up to the clients’ expectation, that means it goes back to the lawyer. . .” – Ray LeClair

Sally Burks, Chair of the Real Estate Liaison and Practice Issues Committee for CDLPA, led a panel discussion that included Ray LeClair, Vice President of TitlePlus & Co-Chair of the Working Group on Lawyers & Real Estate, and John Buechler, Regional Representative for the Southwest & Member of the Real Estate Liaison and Practice Issues Committee. Sally directed delegates to the Plenary materials to find highlights from the Working Group on priority initiatives such as the Mentorship Program, progress by the Condominium Documents Subcommittee and as well some information on line-of-credit mortgages.

Following her opening, Sally introduced Ray who provided delegates with an overview of Title Insurance in Ontario that included its evolution and implementation through the experience of other jurisdictions in North America. Ray’s presentation also described some of the trends in title insurance as part of a review of its history and regulation. Importantly, though Ontario when considered against other provinces is comparatively new in implementing title insurance, it is emerging as a leader in this field.

Ray’s presentation included a number of practical guidelines that members of the profession need to consider as relate to title insurance. He emphasized the importance of schedules, where diligence and attention to detail ensures that the policy you are responsible for applies to your client. He described distinctions in endorsements between rural, residential and condominium environments. He discussed issues associated with coverage, exclusions and the challenges of establishing what a client knew when they decided to buy a property and what they did not.

Ultimately TitlePlus, through collaboration with the Law Society, is working to ensure indemnity against claims for lawyers. They are taking measured steps to achieve this goal – most notably through the adoption of a release and indemnity agreement to be signed by title insurers. Details and the practical experience from the field can be found in transcripts of the presentation [here](#) or in the attached presentation.

LibraryCo. Presentation/Library Committee Update

“On the other hand, the treasurer has made it clear that the Law Society wants to hear more from interested parties about LibraryCo. And as the treasurer said to me, we are going to take the time to do it. It won’t be something that’s going to be rushed.” – Alan Silverstein

Cheryl Siran and Frances Wood, CDLPA representatives on the LibraryCo. Board, were joined by Chair Alan Silverstein and Board General Manager Martha Foote to provide delegates with an



update on recent activities of LibraryCo. and to provide additional context to comments made earlier by Rob Lapper on the County Library system.

Alan began his remarks with an affirmation of the position Rob had presented earlier in the day, seeking to assure Plenary attendees that LibraryCo. was neither a part of the organizational review nor had any decisions been made regarding the Law Society's approach to library services. Rather, similar to what was presented that morning, that the Law Society is seeking to establish an open and transparent process through which the delivery of information services can be reviewed by LibraryCo. Further, this process is to include the perspective of shareholders and stakeholders.

Alan provided additional comment on what an assessment of Legal Research and Information Support Services might look like, including the expected participation of CDLPA and the TLA as shareholders alongside other stakeholders representing profession based interests in the process. Most importantly, Alan advised that the LibraryCo. Board has been authorized to begin preparing a budget for 2014. Details on their budget activities are expected in the near term.

Following Alan's presentation, Frances discussed matters regarding the Law Foundation of Ontario (LFO) funding application and its impact on the Quicklaw Provision and the Toolkit. At the time of her presentation, a decision from the LFO had not been received. As soon as one is received, information will be distributed appropriately. Martha described some of the process items associated with the Toolkit, and provided an update on contract discussions.

A complete transcript of the LibraryCo. presentation, including the Q & A session can be found [here](#).

In Camera Discussion – Libraries/Practice Centres

A portion of Plenary was dedicated to a broad discussion on the modernization of the County Library system toward the emerging concept of Practice Centres. The notion of the Practice Centre is one that has been highlighted through *In The Trenches* and in correspondence with both the Law Society and the Attorney General. Though the discussion was In Camera, it remains the stated position of CDLPA that we will not accept uncertainty with respect to Libraries and we are actively developing a strategy to improve the function and services offered in our local Libraries.

In our meetings with MPPs, Benchers and Law Associations we are beginning to advance the concept of transforming the traditional library to a Practice Centre. The Practice Centre concept builds on the actual use of space in most our courthouses, which now sees the library being used as:

- *A business centre* - where lawyers using the courthouse have access to technical and practical support such as computers, fax machines, copiers, etc.



- *A conference centre* - where segments of the Bar meet to discuss legal issues.
- *A community centre* - which fosters communication, professionalism and collegiality among lawyers.
- *A learning centre* - where lawyers access/receive continuing legal education, and
- *A resource centre* - with access to the traditional features of a law library - the books and the research support.

The content of the presentations by Rob Lapper and Alan Silverstein, alongside the comments and input from our delegates will better inform our strategy as we go forward.

Jagmeet Singh, Member of Provincial Parliament (NDP) & Justice Critic

“I know one of the key, one of the fundamental important aspects of a courthouse functioning well is that lawyers should be able to come in and out of a courthouse. That’s very, very important.” – Jagmeet Singh

Jagmeet was invited to present to Plenary on the topic of *Bill 51 – Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2013*. This legislation, currently before the Ontario Legislature for debate, was introduced in a previous session as *Bill 34* under the same name. It was *Bill 34* that inspired a call to action by CDLPA and other community justice partners to seek an amendment to the legislation, as provisions of it allowed for the potential violation of client – solicitor privilege. Though an amendment was endorsed that preserved privilege, the Bill did not pass as a result of prorogation of the Legislature. With the re-introduction of the Bill, the profession has the opportunity once more to work together to improve its content.

Jagmeet, a lawyer himself, is seeking support to further improve the legislation to address what he believes are fundamental civil liberties issues not addressed in prior amendments. As well he is attempting to strengthen the protection of lawyers from search provisions contained in *Bill 51* and acknowledging the importance of expedient access to courthouses for members of the profession. He is pursuing a model similar to one adopted in Manitoba with respect to court security – where instead of provisions for “*searching*” those seeking access to a court, the process reflects “*screening*”. To achieve this, he is asking for the assistance of our profession in advocating for these changes.

CDLPA will be communicating with our membership on this matter in more detail. Transcripts from Jagmeet’s remarks can be found [here](#).

In Camera Discussion – Advocacy, Outreach and Communications

A portion of the Plenary agenda included an In Camera discussion about our advocacy and outreach initiatives. The presentation featured an update on progress since our Advocacy Initiative was formally launched in November 2012 including an overview of activities and a



summary of successes or milestones we have achieved.

Most significantly, the presentation described the transition away from an initial phase that saw the Chair and Director of Public Affairs take a lead role in template development, meeting participation and the creation of an effective presentation. With the framework largely established and the materials proven effective, the Director of Public Affairs will now begin to work more closely with local Associations and strengthen our community connection with decision-making leadership.

Legal Aid Presentation

“But I also want to talk a little bit about hope in this area, in the field of Access to Justice, and some of the successes that, in fact, I think have happened and some of the ones that I think are brewing.” – Robert Ward

Ken Hall and James Foord of CDLPA’s Legal Aid Committee were joined by Legal Aid Ontario (LAO) representatives Robert Ward, CEO and David McKillop, Vice President of Policy and Research, for a panel presentation on legal aid issues affecting our profession.

Robert aligned his presentation with issues and success associated with Access to Justice and the role that LAO can play in improving elements of this concept. He noted the investment by the Ontario government through its recent budget in LAO, the only justice system participant singled out for an increase, and the positive message it seems to deliver in terms of the organization’s ability to confront the challenges it faces. He referenced a recent Auditor General report that reflected a concern about the eligibility rates for legal aid and how the emphasis on this point by the Auditor may serve to inspire government to act. He shared some of the successes of LAO’s modernization efforts including its Client Service Centre, six Service Centres and how they are contributing to an improving consumer experience. He as well highlighted the effect of LAO’s consistently improving financial circumstances and the flexibility it begins to offer as improvements in service delivery are contemplated. Transcripts from his presentation can be found [here](#).

David refreshed his presentation on Myths and Realities to address some of the rumours and comments that LAO receives on its priorities or programs from members of the profession. The topics covered by David included; tariff rate discrepancies between criminal lawyers and family lawyers, dispelling the myth that LAO is moving toward a Public Defender System, the reality of conditions associated with legal aid certificates, criteria for issuing certificates in criminal and mental health matters, and the role of paralegals within the context of LAO. David’s remarks can be found [here](#), the complete LAO slide deck [here](#) and you can visit the Myths and Realities section of the LAO website [here](#).



James used the opportunity to address delegates to advocate for improvements to LAO, noting as the first point of emphasis that the financial eligibility threshold serves to create the appearance of a legal aid system without having one that's actually functional. He described the circumstances of lawyers from a practical perspective seeking to access fewer certificates for more complex cases while competing against the expanded mandate of duty counsel. He spoke of the positive impact that the Mini Budget for Complex Cases has on the profession, but as well of the need for LAO to partner with lawyers to offer workshops or support in terms of budgeting. Importantly to the profession, he noted it is important to keep working with LAO on continuous improvement for lawyers and the clients they serve. His remarks as well as the complete Q & A from the panel discussion can be found [here](#).

Member Assistance Program Presentation

“Lawyers struggle a lot. Lawyers struggle with depression and addiction more than as a matter of probability than the average population. So that’s why Lawyer Assistance and a number of assistance programs exist.” – Doron Gold

Doron Gold, Staff Clinician – Member Assistance Program (MAP) Peer Program Liaison, provided delegates with an important update on the transition to the new MAP including a passionate description on the need for support services for our profession and how your MAP addresses these needs. He described the range of counseling services that Homewood Human Solutions can assist with including personal, financial, legal, career or substance challenges a lawyer may face. He detailed how counseling services are offered, through peer-to-peer outreach, face-to-face counseling, telephone support, online resources and Plan Smart Services. He affirmed the primacy of confidentiality throughout his presentation.

Most importantly, Doron asked for all our help in getting the message about the programs available to our membership. He is concerned, as a former lawyer himself that not everyone knows the range of services that exist and he wants to ensure that we share the message that if you are struggling, there is help.

A link to his remarks can be found [here](#), his slide deck [here](#) and the MAP website [here](#).

LawPRO – Types of Claims in Various Practice Areas and How to Avoid Them

“This is the third time in four years that number has been over \$100 million, so there’s no way this is a blip. This is a new reality.” – Kathleen Waters

Kathleen Waters, CEO of the Lawyers Professional Indemnity Company (LawPRO) walked delegates through some of the financial results from 2012, citing the Bar’s ownership through the Law Society of LawPRO as the impetus for doing it effectively and in an understandable way for attendees. Cited as positive notes, shareholder equity in LawPRO was up at the end of the year,



they had a healthy minimum capital test result, received their 13th consecutive A- rating from the A.M. Best Organization and a stable outlook.

Less encouraging is that claims costs are high and for the third time in four years the total cost was over \$100 million. What this suggests is that this threshold is not a ‘blip’ and more likely the new reality. As well, an increase in claims is not directly attributable to an increase in the number of people practising when you standardized the number as “claims per 1,000 lawyers” – which underscores the increase.

For a more thorough look at the numbers, you can review Kathleen’s slide deck [here](#) and the transcripts [here](#).

Law Society Trustee Services – Regional Participation

“So I’m, of course, referring to the need for sole practitioners, in particular, to have a succession plan including a will and a power-of-attorney that addresses what should happen with the practice.” – Zeynep Onen

Zeynep Onen, Director of Professional Regulation at the Law Society, spoke to delegates about an increased emphasis by the Law Society on succession planning and how to address the winding down and/or transitioning of a practice when it becomes necessary. Under provisions of the *Law Society Act*, the Trustee Services Department of the Law Society has the mandate to step in when a practice is abandoned or a practitioner is unable to carry out their duties. Especially so with soles and smalls, having a succession plan in place relieves the pressures of the Law Society to intervene and assume responsibility for a practice.

In order to facilitate succession planning, Trustee Services is seeking to share information with the profession about such – noting that where there is a plan in place there is no need for trusteeship. They are also seeking input with the profession on how to prevent trusteeships and keep local practices in local hands as best and as often as possible.

More information on the initiatives of Trustee Services will be forthcoming from the Law Society in the coming months. Zeynep’s remarks can be found [here](#).

Treasurer’s Report

“I’m happy to report, in general terms, that CDLPA has been for many years, and continues to be through the end of 2012 very fiscally responsible, I think we’ve been good managers, of the money that we receive both from our Associations and from the Law Society.” – Eldon Horner

Eldon Horner, Treasurer of CDLPA, walked delegates through the financial status of the organization. Referencing provided materials including the KPMG Prepared Statements for 2012 and the Statement of Operations and Net Assets for 2011 and 2012, Eldon affirmed the strong financial position of CDLPA. Revenue was up over last year, a result of a commitment



to support the work of CDLPA through sponsorship, as well as an increase in membership dues. Expenses are rising and are expected to continue rising as a result of an increased emphasis on advocacy and outreach. However, despite increases in expenses, Eldon assured participants that there is no intention to increase fees.

A summary of materials is available on request and Eldon's comments can be found [here](#).

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