



The Institute  
of Law Clerks  
of Ontario

# LAW CLERKS' REVIEW

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## EDUCATION AWARDS

On Saturday, February 1, 2014, ILCO's Education Committee held its annual Education Awards ceremony at the luxurious, 5-star hotel, The Ritz-Carlton in Toronto.

The ceremony recognizes students that are members of ILCO that (i) have achieved the highest mark in each of the Associate and Fellowship courses, and (ii) have achieved an honours standing (80%) or higher on each of the four provincial examinations (Litigation, Corporate, Real Estate and Estates).

The ceremony was attended by a dedicated group of students, their families and ILCO college instructors who shared personal insights about what these awards meant to them.

Leila Rafi, a partner in the Business Law Group at the law firm, McCarthy Tétrault LLP, was the keynote speaker and entertained the attendees with true-life stories of law clerks at her firm who "saved the day".



Back Row, Left to Right: Jon Fullard (Education Committee Coordinator), Richard Desrocher (ILCO Instructor), Colleen Borderick (ILCO Instructor), Margaret Tsetsakos (Co-Chair, Education Committee), Suzanne VanSligtenhorst (Co-Chair, Education Committee), Patricia McRitchie (Honours Certificate Recipient)

Front Row, Left to Right: Kerry Jackson (David Boakes Award), Elton Dervishi (Victor Award), Shelia Hill (Tory LLP Fellowship Award), Jackie Foster (Balfour Award and James Bristow Award)

Following the awards presentation, attendees were treated to a delicious lunch generously sponsored by Cartel Inc., a legal recruiter.

On behalf of ILCO, we congratulate the 2012-2013 award recipients and wish them much success in their future endeavours.

**Suzanne VanSligtenhorst and Margaret Tsetsakos,  
Co-Chairs Education**

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## PRESIDENT'S MESSAGE

It is an honour to be re-elected as President of ILCO. One of my objectives for 2014 is to work with our Board of Directors to continue to provide you, the members of ILCO, with excellent educational programs addressing the topics of importance to you and offer you opportunities to further develop your personal network of esteemed colleagues. In order for law clerks to continue making significant contributions to our companies, the onus is on us to ensure our knowledge and skills are as current as possible. ILCO strives to provide you the networking and educational sessions to assist you in this regard. In order for you to make this a successful year, I encourage you to attend the many education programs and networking opportunities offered by ILCO.

Why not become a Certified Expert in your practice area? Our Certification Committee has been working very hard

to finalize details of this new offering. Stay tuned for future announcements regarding this initiative.

The 24th Annual ILCO Conference is just around the corner! With another great lineup of speakers and topics of interest for all, the Conference Committee looks forward to welcoming you to Deerhurst Resort from May 28th – 31st, 2014. Conference details are available on our website. New this year is the ability to travel to conference via Luxury Coach. To reserve your spot please email [ilco-conference@ilco.on.ca](mailto:ilco-conference@ilco.on.ca).

Lastly, I would like to thank the 2013 Board of Directors for their hard work and dedication, and look forward to another very successful year.

## ILCO's 24th ANNUAL CONFERENCE - May 28-31, 2014

ILCO's 24th annual conference is being held at the Deerhurst Resort in Huntsville, Ontario from Wednesday May 28 to Saturday May 31, 2014. We have 3 engaging keynote speakers to inspire and motivate you and 28 general session workshops in the various areas of law. Our annual golf tournament kicks off the start of the conference, and golfers will enjoy being on one of Canada's top ranked courses - Deerhurst Highlands Golf Course.

The ILCO annual conference is one of many educational and networking events organized for law clerks in Ontario that attracts attendance from all parts of Canada. Please visit our website at [www.ilco.on.ca](http://www.ilco.on.ca) for full details and registration forms.

Hope to see you there!

**Rose Kottis and Maddie Lepore**  
Co-chairs, Conference Committee

## ILCO CERTIFICATION WILL BE HERE SOON – ARE YOU READY?

If you would like to be recognized as an expert in the area of law you are currently in and you have been a law clerk in that area for 10 years or more please consider becoming an ILCO Certified Expert.

Becoming an ILCO Certified Expert recognizes our ILCO members, who meet the experience and knowledge requirements, as leaders in their chosen field of law.

**For those interested, the following are some of the qualifications and ongoing requirements your ILCO Certification Committee is currently working on to become a Certified Expert:**

- Submit an application for certification together with resume and statements of reference;
- be a member in good standing with ILCO with an Ordinary, Associate, Fellow, or Extra-Provincial membership;
- be in current Qualifying employment in the same field of law for a period not less than ten (10) consecutive years prior to the date of seeking such admission as a Certified Expert;
- completed an Ethics course with proof of completion, through an ILCO approved institution (ILCO, LSUC, OBA, in house/ other); and
- complete, in each calendar year after certification has been obtained, the required number of approved professional continuing legal education ("CLE") hours together with one ethics course every two (2) Institute membership years. The

current required number of CLE hours is five (5) hours in each ILCO membership year.

### Why apply?

- Demonstrates employment dedication;
- Enhances career opportunities;
- Recognizes growth, professional development and competence;
- Increases recognition by peers, employers, recruiters and clients;
- Confirms expertise in a specific area of law; and
- Sets you apart as a leader in your field of law.

### Application Fees

The one time application fee, due with the application package, is \$150.00 plus HST.

There are no other yearly fees in addition to your normal membership fees.

\*\*\*\*\*

Further criteria and application requirements will be presented at our ILCO Conference this May.

**Lisa Matchim (Chair), Amanda Gailling-Striukas,  
Bernadett Germuska, Carol Hutchison and Lesley Wagner**  
ILCO Certification Committee



## ASSOCIATE AWARDS

### REAL ESTATE **Balfour Award** Excellence in real estate

In 1971, David Boakes (founding member of ILCO) expressed a wish to donate an award for excellence in Real Estate. In honour of David's father Balfour Boakes, this award is presented to an ILCO member who attains the highest mark on the real estate provincial exam.

2013 Recipient: **Jackie Foster** (Sheridan College)



Balfour Award  
James Bristow Award  
Jackie Foster

### LITIGATION **James Bristow Award** Excellence in litigation

ILCO has been donating an award for Excellence in Litigation since 1995 to recognize the hard work and dedication of James V. Bristow to ILCO. This award is presented to an ILCO member who attains the highest mark on the litigation provincial exam.

2013 Recipient: **Jackie Foster** (Sheridan College)

### ESTATES **David Boakes Award** Excellence in estates

Since 1995, ILCO has donated an award for excellence in Estates in commemoration of David Boakes (founding member of ILCO). This award is presented to an ILCO member who attains the highest mark on the estates provincial exam.

2013 Recipient: **Kerry Jackson** (George Brown College)



David Boakes Award  
Kerry Jackson

### CORPORATE **Victor Award** Excellence in corporate

In 1971, James Bristow, founding member of ILCO, expressed an interest to donate an award for excellence in Corporate law in honour of his father Victor Bristow. The award is presented to an ILCO member who attains the highest mark on the corporate provincial exam.

2013 Recipient: **Elton Dervishi** (Self Study)



Victor Award  
Elton Dervishi

## FELLOWSHIP AWARDS

### Tory LLP Fellowship Award Excellence in real estate

Torys has been donating this award since 1995. The award is presented to a member of ILCO who attains the highest mark in a Fellowship course.

2013 Recipient: **Sheila Hill** (ILCO)



Tory LLP Fellowship Award  
Sheila Hill

## HONOURS CERTIFICATES

ILCO has been presenting honour certificates to students that have taken the 4 provincial exams since 2002. These certificates are presented to the student members that achieve an honours standing (80%) or higher on each of the four (4) provincial examinations (Real Estate, Litigation, Estates and Corporate).

2013 Recipient: **Patricia McRitchie**



Honours Certificate  
Patricia McRitchie

## Balfour Award for Excellence in Real Estate Law James Bristow Award for Excellent in Litigation Law

by Jackie Foster (Sheridan College),  
2013 Award Recipient

I was asked to talk about my experiences in the Law Clerk program and what receiving these awards has meant to me. I am more than thrilled, I would say honoured and proud to receive this recognition. I think the most important thing I learned during this experience was how much I love learning and it's never too late to learn new things, even a new career. It wasn't easy. The work load, time invested, dedication and effort required to achieve success in the Law Clerk program was a challenge. However I found that once I was in the thick of it, I really looked forward to going to class, even the endless reading at home. I was fortunate to have the support of my husband who kept me fed on those days leading up to the exams where my head was in the books all day. As a previous realtor I had some knowledge going into the Real Estate Law course which was a great help. Litigation was like a foreign language to me. There were times of frustration and fear of failure when I just didn't get it but receiving this recognition goes a long way towards reinforcing that it was worth it. I am extremely proud to have

received honours in all four classes of the program. Thank you to The Institute of Law Clerks of Ontario for this honour and a special thank you to my litigation instructor Colleen Broderick and my real estate law instructor Valerie Cain. They both went above and beyond in their dedication to the students and their patience with my endless questions.



From Left to Right: Jesse Foster, Jackie Foster, Margaret Tsetsakos (Co-Chair, Education Committee) and Suzanne VanSligtenhorst (Co-Chair, Education Committee)

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## Victor Award for Excellence in Corporate Law

by Elton Dervishi (Self Study),  
2013 Award Recipient



My journey to become a law clerk began in 2000 when I attended the post-diploma program, Legal and Corporate Administration at Seneca College. The school sent me for a one month work placement at the corporate services department at Miller Thomson LLP. During the placement, I had the opportunity to learn from the law clerks that were working at the firm and what I learned from them, is that being a law clerk, is a challenging, but a rewarding career. Thankfully, at the end of the placement, I was offered a corporate law clerk position at the firm on a contract basis. During that year, I learned so much and created a solid foundation for my career. After my contract came to an end, very quickly I found another position as a corporate law clerk in the in-house legal department of a Canadian corporation. Here I am today, having worked as

a law clerk for 13 years mainly in corporate and securities and loving my job.

I have been a member of ILCO for over 10 years and decided to take the associate level exams in order to upgrade my membership to the associate level. Corporate law was the first exam that I wrote and I am very pleased with the result. Although I had worked as a corporate law clerk for several years, I had to study really hard for the exam.

I would like to thank ILCO for the award of excellence in corporate law and my family for the support. At the ILCO Awards luncheon I met with experienced colleagues who shared their work experiences with me. Over the years, I have known many law clerks working in different areas of law who love their jobs.

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## David Boakes Award for Excellence in Estates Law

by Kerry Jackson (George Brown College),  
2013 Award Recipient

It's funny how life rarely turns out the way we expect. If someone had told a younger me that at 38, I would be returning to school and studying harder than I ever did in college, I would no doubt have laughed.

It is my boss who first suggested I take the ILCO law clerk courses — and I must admit, I'm happy I took his advice. He has been a great inspiration and mentor to me on this educational journey. I took both courses concurrently which, while working full-time, part-time and teaching dance, was not

an easy feat. The ILCO courses are packed with content and require a significant amount of dedication in order to be successful.

I am thankful for the love and support of my family and friends who have helped motivate me when life appeared, at times, overwhelming.

I am very proud of the knowledge I have acquired throughout the last year and even more proud to be the recipient of the David Boakes Award for Excellence. I look forward to continuing my studies with ILCO's fellowship courses.



## Tory LLP Fellowship Award

by Sheila Hill (ILCO),  
2013 Award Recipient



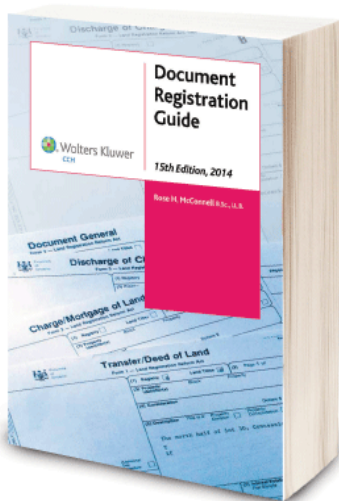
I first started working in a law office when I was fresh out of school as a temporary job until I could decide what career I wanted to pursue.

Thirty years later I 'suddenly' realized that as I seemed to enjoy the work I should get a more formal education as a law clerk despite the fact that I had been out of school for such a long time. Taking the associate level law clerk courses at George Brown College was one of the more rewarding experiences of my life and gave me more confidence and a much broader appreciation of how all areas of law interact. More recently, as one of my current hats is preparing Estate

Accounts, and knowing that there is always more to learn despite one's age or experience, I enrolled in the Fellowship course in Estate Accounting. I would like to thank our instructor, James Sweetlove, for not only his teaching skills and knowledge, but also for making estate accounts so interesting. I'm sure he is just as surprised as I am that I am being honoured with this award.

Knowledge is its own reward and I am very grateful to ILCO for all their education courses, seminars and for the recognition they provide to their members. Thank you so much.

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The legal market is changing. As technological developments affect everything that legal professionals do, business models are becoming more competitive. According to Ottawa-based Edge International's Jordan Furlong, the Canadian legal market is moving rapidly from the closed market enjoyed prior to 2008 toward a fully-fledged, open and multidimensional market.

Technology is driving changes in relationships between in-house staff and outside firms, and the range of tools available means more tasks can be handled internally.

How has this affected the paralegal profession, and what are the risks and opportunities for the paralegal practice?

Lawyers continue to serve a critical function in society, and while there's a need for their services there will be a need for strong paralegals/law clerks. Here are some of the trends that currently affect paralegal practice.

## **Trend #1: Impact of technology**

The impact of technology on the legal workplace has resulted in better efficiencies and productivity. This hasn't been an entirely good thing for paralegals/law clerks, because in some instances it has caused the reduction of paralegal jobs and resources.

Corporate clients are now able to buy technology and keep much of their basic legal work in-house. However, the same technology offers small firms, in-house legal departments and independent practitioners the tools they need to compete with larger firms. This also creates job opportunities for experienced paralegals.

Paralegals must keep up with the new trends in technology to bring increased efficiency to their work. Increase your value to your employer by staying abreast of technology, understanding how it impacts your paralegal practice and how it benefits the firm or company you work for. By doing so, you increase your importance as a valuable commodity.

## **Trend #2: The rise of boutique law firms**

The current demand for specialized law services has caused a rise in boutique law firms. Lawyers are moving away from large firms, either to practice on their own or with one or two lawyers from the same practice area. This opens up a world of opportunity for paralegals with specialist knowledge to move with them and pursue expertise in a niche area.

## **Trend #3: Increased workload and responsibility**

With the demand for lower legal costs and alternative fee arrangements, more work is being pushed down the food chain to the paralegal in an effort to maximize profits. With this comes increased responsibility for paralegals to take on tasks that would have previously been done by lawyers. As a result, top-performing paralegals now enjoy a bigger role in client work and greater responsibility for the outcome.

Michael Schrage, a research fellow at MIT Sloan School's Center for Digital Business, discusses trends in the industry with respect to the value/productivity of retaining and recruiting the top employees rather than investing time and money in mediocre employees. In a post on the Harvard Business School blog, he writes: "There's arguably never been a worse time to be a mediocre, average or typical employee. For most firms today, mediocrity is a cost to be managed and a burden to be borne..."

Don't be the mediocre employee. Ensure that you develop the expertise, professional and substantive skills to be one of the top paralegals in your firm or company and enjoy the new role evolving in the industry.

## **Trend #4: Specialization in niche areas**

Paralegals are increasingly specializing in niche areas of law, such as medical malpractice, family law, not-for-profit law, commercial real estate or mergers and acquisitions. We've also seen the beginnings of specialization in functions such as e-discovery and litigation support. This combats the competition rampant across the general practice sphere, and helps paralegals build a reputation for themselves.

Technology provides the necessary tools and knowledge to enable paralegals with the appropriate background to target niche work.

## **Trend #5: Varied pricing structures**

A decline in overall legal expenditure coupled with innovative delivery of services has increased the demand for alternative fee arrangements. The traditional pricing models used by most law firms to date are being replaced by RFPs, fixed fees and project fees that enable clients to budget more effectively. Under pressure to lower costs and improve efficiencies, law firms are adopting blended rates that support the delegation of more work to paralegals.

They are finding it increasingly vital to utilize the newest technology and paralegal expertise as tools to ensure that they remain profitable within the alternative fee structure demanded by their clients. Paralegals should take an active role in identifying routine repetitive work that can be billed in an alternative fee structure or fixed fees.

## **Trend #6: Professional development pressures**

With all these opportunities available to paralegals, continuing professional development is essential to improve alignment with lawyers and their work. The more knowledgeable a paralegal is in a particular niche, the better his or her chances of being included as a member of the team handling a specialized legal project. Skills such as leadership, organization, negotiation, analysis, project management, time management and practice management complement the technology and specialty knowledge that paralegals bring to their employer.

## **Trend #7: Social networking**

No review of current trends would be complete without a mention of social media and its impact on the legal industry. With most networking now taking place online, paralegals have an unprecedented opportunity to build up their professional connections through sites such as LinkedIn, Twitter, Google+ and YouTube. As the second-biggest search engine, YouTube enables paralegals to easily create and upload video clips showcasing information, comments and expertise to help establish their expert reputation. Join professional groups on networking sites to keep informed of the latest trends in your area of practice, stay abreast of the newest technological advances and assert your expertise.

Paralegals work in a changing industry. By incorporating the newest technology, knowing the trends in the legal market, establishing your niche or expertise and networking through social media, paralegals can enhance their value to employers and establish themselves as valuable commodities in the legal industry.

ILCO wishes to thank Catherine D'Aversa, President of Legal Resource Consulting for permitting ILCO to reprint the article originally published in *The Lawyers Weekly*, June 21, 2013 edition.



## HUMBER COLLEGE LEGAL NETWORKING BREAKFAST

Representatives from ILCO's Education Committee attended Humber College's annual Legal Networking Breakfast on Wednesday February 26, 2014 hosted by the Humber Business School and the Humber Career Centre. This event provided an opportunity for us to meet with law clerk and legal assistant students who are enrolled in the final semester of the Law Clerk and Law Firm Profile programs and to promote ILCO.



*Ouran Li, Education Committee Member and Suzanne VanSligtenhorst, Director and co-chair, ILCO's Education Committee*



## OBA CONFERENCE 2014

Directors and staff attended the 2014 OBA Conference this year on February 6th and 7th at the Westin Convention Centre. Each year, the directors and staff of ILCO attend the OBA conference to raise the profile of law clerks. We speak to the lawyers attending to promote ILCO and explain the benefits of law clerks becoming members.

*Lisa Matchim (Vice President, Chair Certification), Rose Kottis (President)*



## LONDON LAW CLERKS SOCIAL

On Friday, March 21, 2014 ILCO held its 2nd Annual Winter Social in London, Ontario. ILCO members throughout the London/Waterloo area were invited for a night of great food, drinks and networking at the London Hilton. ILCO was also pleased to have a number of students from Fanshawe College's Law Clerk program attend. It was a great event that saw a number of individuals working in the field and those interested in pursuing a career as a Law Clerk mix and mingle.

*Margaret Tsatsakos (Co-Chair Education), Jon Fullard (Education Committee Coordinator), Suzanne VanSligtenhorst (Co-Chair Education), Rose Kottis (President)*



# ILCO's 6th ANNUAL WINTER SOCIAL 2014

The Institute of Law Clerks of Ontario's 6th Annual Winter Social took place at The Omni King Edward Hotel in downtown Toronto on March 27, 2014. Members gathered in the Sovereign Ballroom for an evening of mingling with old friends, making new friends and connections within our tight knit industry and to enjoy some fabulous nibbles (including a mashed potato martini) in a warm atmosphere.

Special thanks to our sponsors for their continued and appreciated support of this event - ESC, Do Process and Stewart Title Guarantee

Company - and to the staff at The Omni King Edward Hotel for ensuring the event ran smoothly and for providing a memorable night for our members.

As well, congratulations to our winner of the Afternoon Tea For Two gift certificate generously donated by the Omni King Edward Hotel - Lori L. from Rogers Partners LLP.

**Maddalena Lepore and Christopher Poirier**  
Co-Chairs, Public Relations



## DO PROCESS SOFTWARE

Do Process has been a proud supporter of ILCO for many years and always welcome the opportunity to participate in their events. We have been fortunate enough to attend the ILCO Winter Social for four consecutive years. It was a wonderful evening that allowed everyone a chance to mix and mingle with colleagues, as well as friends old and new.

In 2014, Do Process is celebrating its 25th year and the cornerstone of our success has always been our long history of working closely with our customers, using their feedback to shape our products, services, and support. From humbles beginnings, serving the legal real estate community with The Conveyancer, we have expanded our suite of products to include software that meets the needs of legal professionals practicing corporate law,

estate law, and wills and powers of attorney. Looking toward the future, you can expect Do Process to continue working hand-in-hand with customers as we build the Next Generation Platform – a fully integrated practice management suite to help them meet the future demands of their clients. The Winter Social is one of many events within our community that allow us to spend time with customers, partners and friends, to say it's all thanks to you! We sincerely look forward to what the future holds and seeing you all at the next ILCO event!

For more information about us and our services, please visit [www.doprocess.com](http://www.doprocess.com)



## ESC CORPORATE SERVICES LTD.

As is always the case, ESC was delighted to sponsor another successful ILCO Winter Social for the 6th consecutive year alongside our friends and colleagues; Do Process, Stewart Title and of course, ILCO. This year's event was held a tad later in the Season on March 27th, 2014 at The Omni King Edward Hotel and was attended by more than 100 law clerks. The venue choice was fit for royalty, which I might add our friends and ILCO members are... It set a nice mood to mingle, make new acquaintances and reconnect with familiar faces. The food was plentiful and delicious, especially that mashed potato concoction in the martini glass, cocktails and wine were served and some rather decadent dessert choices capped off the evening. We are hoping a wonderful time was had by all those who attended. Thank you and as always we look forward to seeing you again.

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## STEWART TITLE GUARANTY COMPANY

Stewart Title was proud to sponsor and attend this year's ILCO Winter Social on March 27th in Toronto. With Ontario law clerks being an integral part of the title insurance business, this event provided a wonderful opportunity to speak directly with ILCO members and other industry representatives and provide information about Stewart Title's products and services.

We would like to thank those at ILCO for allowing Stewart Title to participate at this function and look forward to attending future ILCO events including the 2014 Annual Conference this May.

For more information on Stewart Title, visit [www.stewart.ca](http://www.stewart.ca).





# ILCO's 6th ANNUAL WINTER SOCIAL 2014



## SPORTING LIFE 10K LAW CHALLENGE – MAY 11, 2014

Consider participating or donating to the Sporting Life 10K in support of Camp Oochigeas - a Camp for Children with Cancer. Affectionately known as Camp "Ooch", it offers year-round programs at its residential camp in Rosseau, Muskoka, at the Hospital for Sick Children (Sick Kids), and at Ooch Downtown, a one-of-a-kind recreational facility for children with and affected by childhood cancer, their siblings and their families near College and Bathurst. Notably, Ooch is the only residential camp in Ontario to offer onsite IV chemotherapy treatment and blood transfusions. Through these programs, Ooch lets children with cancer focus on who they are instead of what they have. As a registered charity receiving no government

funding, this is all made possible by the generous support of individual and corporate donors.

Many law firms are raising money as part of the "Law Challenge" – a friendly but competitive fundraising challenge among Toronto's law firms to see who can raise the most money in support of Camp Ooch. Your donation either to your firm's team or directly to Camp Ooch will make a difference!

To participate in the law challenge, go to [www.ooch.org/lawchallenge2014](http://www.ooch.org/lawchallenge2014). To donate, go to [www.ooch.org/sl2014-donation-form](http://www.ooch.org/sl2014-donation-form).



## ILCO NEWSLETTER - ARTICLES WANTED!

If you have written an interesting article or know of an article that would be of interest to law clerks which ILCO can re-print with permission, please contact ILCO at [reception@ilco.on.ca](mailto:reception@ilco.on.ca).

**Christopher Poirier and Anna Traer (Co-chairs) and Melissa Erskine**  
Newsletter Committee

Is document review legal work? It's a question that has implications for lawyers' insurance requirements and one that has taken on increasing relevance given recent changes in the legal marketplace. In one case, the issue has created a rift between Deloitte and a lawyer who recently transferred to the firm as a result of its acquisition of ATD Legal Services PC in January.

Lawyer Shireen Sondhi, who worked as a document review consultant for ATD when Deloitte acquired it, says she had to part ways with the firm over disagreements on whether document review qualifies as legal work.

At ATD, Sondhi says the company considered her job to be legal work and notes she had to purchase LawPRO errors-and-omissions insurance. But Deloitte classifies the job as non-legal work.

Once Deloitte acquired ATD, Sondhi says a contract presented to her stated she would earn \$47 an hour for her work as opposed to the \$50 an hour ATD paid its document review staff.

"When I was working at ATD, we were told that [the job] is legal work and they market us as lawyers and so we were required to maintain our LawPRO insurance," she says.

During the transition to Deloitte, according to Sondhi, she received an e-mail from management saying: "The good news is Deloitte does not require you to have LawPRO insurance, the bad news is that because you're saving money on that, we're going to bring your rate down to \$47."

A few days later, she started working on a project. "The work was the same, so a client hires the law firm — and in this case there was an upcoming litigation — and the law firm outsourced the document review work to Deloitte," says Sondhi.

"We were still reviewing documents for this upcoming litigation and we were reviewing them for relevancy, and privilege to sort of determine what category it fit into if it's relevant and what type of privilege was applied to that document," she adds.

During a conference call with Procom, a third-party employment placement agency that manages contracts for Deloitte, Sondhi says representatives noted they didn't require LawPRO insurance for lawyers performing document-review tasks because they didn't consider it to be legal work.

According to Sondhi, Shelby Austin, the founder of ATD Legal Services who's now a partner with Deloitte, also told consultants the job isn't legal work and that she had simply marketed it that way.

"Some of us were concerned about it, so we contacted LawPRO and the [law society]," says Sondhi.

In a few days, there was a post on LawPRO's web site. If a lawyer is simply summarizing volumes of information into "a legally digestible format," it's not legal work, the post says.

"As a lawyer conducting document review services in support of litigation, however, you would be expected to exercise your knowledge, skills, and experience in the law and apply legal principles, so you could expect to be seen

as engaging in the practice of law (even though a non-lawyer might do similar work and not be held to the same standard)."

Duncan Gosnell, executive vice president and secretary of LawPRO, says he can't comment about a specific case but notes it's "very unlikely" that a lawyer doing document review is only summarizing and condensing documents.

Whether a lawyer will be using their "legal knowledge, skill, and judgment" is what sets legal work apart from non-legal tasks, he adds.

For its part, Deloitte maintains its document-review business isn't legal work.

"ATD Legal Services is now part of Deloitte and is no longer in operation. The document review business operated by Deloitte is not a legal practice and the services provided are not legal services," the firm said in a statement to Law Times.

"Our practice uses leading technology and a multi-disciplinary team of professionals that include accountants, former police officers, technology specialists, and lawyers to preserve, collect, identify, review, analyze, and produce documents," the firm added.

"Deloitte's clients for document review and discovery are law firms and in-house counsel, and they practise law and make legal judgments. Deloitte supports them with document reviewers who work under their direction and supervision. The process is carefully managed so that neither Deloitte, nor its employees or contractors, are practising law."

Sondhi says an amended Deloitte contract later took out a clause that deemed the document review work to be non-legal but described it as a "data processing and computer services" function that still doesn't require LawPRO insurance. At that point, Sondhi says she sent an e-mail to the management team expressing the concerns she still had.

"I got this e-mail back from an employee at Procom saying, 'Deloitte is not prepared to change the contract any further. Either you sign the contract or you consider your relationship terminated. Don't come into the office tomorrow morning,'" she says. "So I wrote back and said, 'I'm not comfortable with this. You haven't answered my question, and I will not be signing the contract.'"

When Deloitte acquired ATD Legal Services earlier this year, industry analysts described the move as accounting firms "making serious noise" about tapping into the legal industry.

In fact, Jordan Furlong, principal at Ottawa-based consulting firm Edge International, told Law Times accounting firms' growing range of services to the same client base law firms are targeting should be a wake-up call to the legal industry.

ILCO wishes to thank Law Times for permitting ILCO to reprint the article written by Yamri Taddese, Staff Writer, published in the Law Times March 3, 2014 edition.

# LIFT, CURL, PULL (OUCH!)

## Is an employer liable for its workers' fitness-related injuries?

To promote healthy living, many employers encourage physical fitness by providing on-site fitness facilities, contributing to private gym membership fees, and sponsoring recreational sport leagues.

The question often asked is: *could an employer be liable if a worker is injured while participating in these athletic endeavours?* The answer is, “yes”. Regardless whether the activity takes place on or off an employer’s premises, an employer can be exposed to several types of liability including: Workplace Safety and Insurance Board (“WSIB”) surcharges; disability insurance claims; civil actions; and occupational health and safety orders and/or penalties.

### WORKPLACE SAFETY AND INSURANCE

Under the *Workplace Safety and Insurance Act, 1997* (“WSIA”), an injured worker may be compensated on a “no fault” basis (regardless who is at fault) if the injury occurs “in the course of employment”. In return for this automatic compensation, the worker is precluded from suing the employer in civil courts and collecting short-term or long-term disability benefits.

If the WSIB finds a fitness-related injury to be compensable, the related costs will be applied against the employer’s WSIB experience rating and could result in a costly surcharge.

In determining whether an injury occurred in the course of employment the WSIB considers the place, time and nature of the activity. Generally, an injury will have occurred in the course of employment if: the injury occurs: *at the workplace or a place where a worker might reasonably be expected to engage in work-related activities; during working hours or a reasonable period before or after work; and while performing a work-related duty or an activity reasonably related to employment.* The WSIB will consider the customs and practices of the employer (e.g. whether the employer has supported or sanctioned the activity in the past), as well as: the extent to which the employer controls or supervises the activity; whether the worker is compensated for participating; the extent to which an employer benefits from the activity (e.g. improvements to team morale, decreases in absenteeism); and whether the activity occurred in response to the employer’s instructions or encouragement.

The following two decisions of the Workplace Safety and Insurance Appeals Tribunal (“WSIAT”), help illustrate how these factors are applied:

In *Decision No 999/94*, at “great financial expense”, the employer established a fitness centre at its workplace and promoted an exercise program. Participation was strictly voluntary and classes were conducted after working hours with little employer supervision. While exercising at the centre, during non-working hours, an assembly line worker slipped and fractured her wrist. The WSIB determined the injury occurred in the course of employment and awarded her benefits.

At appeal and before the WSIAT, the worker alleged she was motivated to join the program after receiving a disciplinary letter for excessive absenteeism. She sought to improve her physical condition and reduce her absences. The WSIAT accepted her argument, finding the worker’s participation had become a “condition of her continued employment”. The WSIAT was also persuaded by the fact the activity was pursued under the advice of the employer, on the employer’s premises, using the employer’s equipment, and was promoted through the employer’s corporate policies.

In *Decision No 1052/09*, a worker suffered a shoulder injury

after falling during a soccer game with a group of co-workers in the employer’s parking lot. Loss of earnings were initially denied by the WSIB’s Appeals Service Division and the worker appealed. Although the injury occurred on the employer’s premises within a “reasonable period after work”, the denial of loss of earnings was upheld on the basis the game was a “[not] a regular, or even an occasional practice” and not sanctioned by the employer.

### DISABILITY INSURANCE AND CIVIL ACTIONS

As noted above, where WSIA benefits are not applicable, either because benefits were denied, or the worker opted out of coverage (an option available in some circumstances), a worker may have further options of applying for disability insurance benefits, and launching a civil action against the employer. If a civil action is commenced, a worker will be required to prove the employer was negligent.

### OCCUPATIONAL HEALTH AND SAFETY

The *Occupational Health and Safety Act* (“OHSA”) requires an employer to take every reasonable precaution to ensure the protection of its workers. This includes ensuring equipment is well maintained, and workers are properly instructed on how to use the equipment and what to do in the event of an accident. Failure to protect workers can result in orders, significant fines and, in rare cases, imprisonment.

To determine whether a fitness-related activity creates liability under the OHSA, the following questions are considered:

- Does the activity take place at the “workplace”?
- Does the activity take place during working hours?
- Are workers expected and not simply encouraged to participate?
- Are workers paid to participate?
- Is the activity under the care and control (directly or indirectly) of the employer?

If the answer to some or all of these questions is “yes”, fitness-related activities may create liability under the OHSA.

### TIPS FOR EMPLOYERS

For some employers the benefits of a healthy workforce outweigh the risks associated with a fitness-related injury. To minimize the potential for liability, consider the following best practices:

- Develop a health and fitness policy specifying that use of facilities or participation in workplace related sporting endeavours is voluntary and for the exclusive benefit and pleasure of workers. Require workers to sign-off on the policy.
- Consistent with the notion of “voluntariness”, a worker should not be compensated (directly or indirectly) for participation in any fitness endeavour associated with the employer.
- Where worker participation is not voluntary, either because of the bona fide requirements of the job or because the worker is “encouraged” by the employer, consider providing a customized fitness plan incorporating professional instruction and supervision. If a worker chooses not to follow the plan, and is injured while pursuing an unauthorized fitness regime, an adjudicator is more likely to find the injury resulted from a personal pursuit outside the course of employment.
- Prior to any fitness-related activity, an employer should ensure it has appropriate liability insurance in place.

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## CALENDAR OF EVENTS

DATE	EVENT
Friday, May 16, 2014	Provincial Estates Exam Registration Deadline
Wednesday, May 28 to Saturday, May 31, 2014	ILCO's 24th Annual Conference
Tuesday, June 3, 2014	Provincial Estates Exam Registration Deadline
Friday, June 6, 2014	Provincial Corporate Exam Registration Deadline
Wednesday, June 11, 2014	Intellectual Property Program (Subject to change)
Friday, June 13, 2014	Provincial Alternate Real Estate Exam Registration Deadline
Friday, June 20, 2014	Provincial Alternate Litigation Exam Registration Deadline
Tuesday, June 24, 2014	Provincial Corporate Exam
Wednesday, June 25, 2014	Family Law Program
Monday, June 30, 2014	All ILCO memberships expire. Renewals must be submitted to ILCO by this date.
Saturday, July 5, 2014	Provincial Alternate Real Estate Exam
Saturday, July 12, 2014	Provincial Alternate Litigation Exam

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