



The Institute  
of Law Clerks  
of Ontario

# LAW CLERKS' REVIEW



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## President's Message

With the holidays and New Year just around the corner, I reflect on another very productive year for ILCO.

Because of your continued membership and support, we have been able to and will continue to offer exciting and informative conferences, seminars and workshops designed to keep you updated in all practice areas. ILCO remains the top association for Law Clerks in Canada. I am pleased to report that in 2013 our membership reached over 1900 members!!

You asked and we listened! With the addition of new continuing legal education seminars and Fellowship courses, the popularity of ILCO courses and seminars has surpassed all expectations. ILCO is excited to announce two new Fellowship Courses - Business Law and Commercial Real Estate. The courses are being offered in early 2014. Don't forget to take advantage of these first-time offerings.

ILCO continues to engage its members through social media platforms. Traffic on ILCO's Facebook, Twitter, and LinkedIn pages has grown significantly.

As always, our success is largely based on the support of our members and volunteers. Through the efforts of our volunteers, who have given countless hours of energy and time,

we have been able to build a strong organization that in turn provides top rate educational programs and networking opportunities to our members. It is our intention to continue to grow and make ILCO better every year. I would like to take this opportunity to offer my sincere gratitude to each director and committee member for their countless hours of dedication to ILCO throughout 2013.

In addition to membership, as a not-for-profit organization we also rely on sponsors and the generosity of the legal community to support our events and programs. We would like to thank our sponsors and supporters, as only with their support have we been able to exceed our goals. We look forward to their continued support in 2014.

Last, but certainly not least, I would like to thank the ILCO office staff for their outstanding efforts during this past year.

I hope that this holiday season will allow you to spend lots of quality time with your loving families and friends, and a much-deserved rest.

Rose Kottis  
President



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# SEASON'S GREETINGS

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& festive holiday season!  
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Manager  
World Exchange Plaza  
45 O'Connor St., Suite 1150  
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Fax. 613.237.9145  
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## SAVE THE DATE

Plans for ILCO's 24th annual conference are well underway! Mark your calendar with next year's conference dates and location - May 28 to May 31, 2014 at Deerhurst Resort in Huntsville, ON

## ILCO GOING GREEN

ILCO is committed to being as environmentally friendly as it can be. To support its commitment, the ILCO Board has decided to move away from ordering annual pocket calendars for its members. We trust ILCO members appreciate this change and the positive impact it will have on the environment. Stay tuned for other "green" efforts, including an e-newsletter!

## VOLUNTEER

ILCO is looking for volunteers to participate in its committees and contribute to its newsletter. Below is an article from a recent volunteer that may inspire you to contribute and become involved in ILCO.

*"The interior joy we feel when we have done a good deed is the nourishment the soul requires. – Albert Schweitzer  
"Tell me and I forget, teach me and I may remember, involve me and I learn" – Benjamin Franklin*

### HOW I BECAME PART OF ILCO'S CONTINUING LEGAL EDUCATION COMMITTEE

While working for a legal service company, I was given a membership to ILCO. After reading some of the emails and the newsletter I decided that I wanted to become more involved in this organization. I sent a few emails and was invited to attend a meeting of the Continuing Legal Education Committee. I enjoyed my meeting and was invited to become a part of the team.

At first I went to the meetings and offered up some thoughts on future programs. I listened a lot wanting to get the feeling of how things work and where I could be useful. Soon enough, I become useful at our 2012 Real Estate program when I was asked to chair this program. I was very nervous and unsure of how I would be perceived by the law clerks, mostly because I work in corporate

by Russell Connelly  
ILCO CLE Committee Member  
Law Clerk, Brauti Thorning Zibarras LLP

law and thought that someone would ask me a real estate question. That didn't happen and the day went by smoothly with the assistance of the ILCO office staff and the speakers.

As the time went by I have chaired many programs and feel much more comfortable doing them. I meet people working in areas of law I have no exposure to. You learn to utilize tools like law firm's websites, LinkedIn and people I know to find speakers for programs.

I find that being more involved with ILCO is also a great way to meet my fellow clerks. If you are a member of ILCO and curious as to how you can get involved...ASK! You won't regret it.



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ILCO continues to run the four core courses – Corporate, Litigation, Real Estate and Estates – at various colleges throughout Ontario in addition to online learning and self-study. Students are currently enrolled in Real Estate and Litigation evening classes, with the provincial exam scheduled for January 28, 2014 and March 11, 2014, respectively.

### Fellowship Courses

The Education Committee is thrilled to announce that it is offering TWO fellowship courses commencing January 2014. Business Law fellowship course starts on Wednesday January 15, 2014 and Commercial Real Estate fellowship course starts on Thursday January 16, 2014. There will be 13 weekly lectures, a review class and a final examination. The successful completion of each course will give an ILCO member one (1) Fellowship credit.

For more information on these fellowship course or to register, please contact ILCO's Education Coordinator, Jonathan Fullard at [jon\\_fullard@ilco.on.ca](mailto:jon_fullard@ilco.on.ca) or (416) 214-6252.

### Other Course Offerings

ILCO has approved a Family & Divorce Law Certificate Achievement Course being offered by Lorne J. Fine, Barrister & Solicitor, of Fine & Associates Professional Corporation - Family & Divorce Lawyers. The course starts Tuesday, January 14th, 2014 for a total of twelve (12) sessions and runs from 6pm - 9pm. The course will be held at ILCO's Education Centre. 20 Adelaide Street East, Suite 502, Toronto, Ontario. If you wish to enroll in this course or are in need of any additional information please contact Lorne Fine at 416-650-1300 or see [www.torontodivorcelaw.com](http://www.torontodivorcelaw.com).

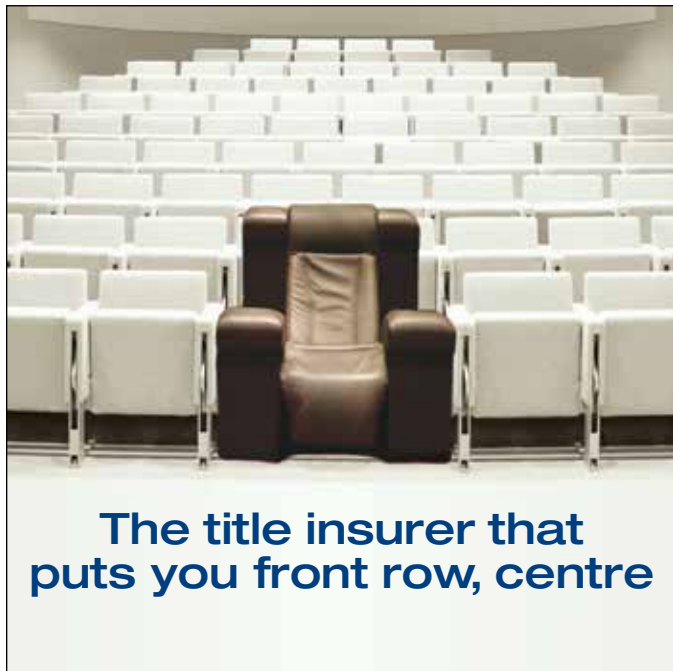
### Events

Members of ILCO's Education Committee took part in Centennial College's Continuing Education Learning Partner Event and Round Table on Thursday November 7, 2013. This event provided Centennial College students with the opportunity to connect with business and industry leaders who provided career information and guidance.

This also provide an opportunity for the Education Committee to showcase ILCO!

Education Coordinator, Jonathan Fullard represented ILCO together with Education Committee co-chairs, Suzanne VanSlightenhorst and Margaret Tsetsakos.

As you can see, there is plenty of opportunity for education at ILCO! ILCO's Education Committee looks forward to continuing to offer quality education to students in the coming year!



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Analysis of email communications and Internet (browsing) history plays a dominant part in many litigations involving digital evidence. However, there is also a trend where less evidence could be located from these traditional sources (i.e. email or internet activities). There is no indication that people are committing fewer crimes or wrongdoing on computers - so what could be the explanation of the declining volume of evidence from these traditional sources? There is a definite shift where savvy computer users are aware that their employer could easily monitor their activities on both email and Internet. Many are using alternative methods to communicate without being "caught". For example, we are observing an increase in personal or malicious communications that used to largely occur through traditional channels such as email shifting to social media platforms such as Facebook and Twitter. Given this shift, both the legal and IT industry need to adapt quickly to ensure that evidence is not overlooked due to ignorance. Rather than catching up to this trend, perhaps it would be helpful to make predictions on how fraud and crime can be conducted through the use of "new" technology. Recently some "think-tank" type organizations and researchers are starting to look into ways on how emerging technologies can be used to facilitate fraud or commit crimes.

## **Fraud in Biotechnology:**

Over the past few decades, we have seen big advancements made in biotechnology. Medical devices such as the insulin pump are widely used. An insulin pump is essentially a device attached to a diabetic patient that administers insulin automatically based on some predetermined parameters. Such a device is an alternative to the traditional way of multiple daily injections of insulin by syringe, thus providing better quality of life and freedom to the patients.

Given the advancement of the Internet and wireless technology, a lot of these medical devices are now monitored by medical professionals remotely. The advantage is obvious: patients are no longer required to make regular visits to a hospital to be checked by doctors. Rather, doctors can monitor these devices via the Internet. For example, an insulin pump could be sending out its readings through cellular data (the same network used by our regular smart phones) to the patient's doctor who can make adjustments to the dosage of insulin upon examining the readings from the device remotely. Such a convenience!

But what if the readings and data of the insulin pump are "hijacked" by hackers over the Internet, which could be as easy as someone trying to steal our online banking information that we use today? Aside for the obvious concern for privacy over patient medical records, what if the hacker could also gain access to the system and make adjustment to the insulin pumps or pacemaker? Could assassination be performed via the Internet? Could a ransom be demanded with a threat to kill someone through the malicious control of these medical devices?

Apparently the threat of medical devices being "hacked" is real enough that the wireless function of the defibrillator implanted in the chest of the former Vice President of United States Dick Cheney was deactivated during his term in the office.

## **Fraud in Geo-location Technology:**

Global Positioning System, better known as GPS, is no longer considered a breakthrough technology. This system can be seen in use in our everyday lives. From our smartphone to our car, we rely on this technology to better our daily lives. Aside from personal use, our commerce and industries also rely heavily on GPS to ensure goods are delivered efficiently and accurately. Emergency vehicles rely on it to respond to emergencies. Industries rely on it for asset management (for example, ability to track an armoured truck for delivery of money). As illustrated, application of GPS is quite expansive.

However, some of the design limitations of GPS are often overlooked.

For example, GPS signal is inherently weak - that is why automotive GPS will often lose signal connection in an underground parking garage or going through a tunnel). Therefore, it is plausible that GPS signal could be "hacked" or tampered with. People with malicious intent could command and steer a delivery truck to off-load its cargo at a false location by tampering with the GPS signal. It is also plausible for an armoured truck to be hijacked by robbers with a hacked signal being sent to the monitoring station, deceptively appearing as though the armoured truck is still en route to the bank, for example. So while the robbery is taking place, the monitoring station would be none the wiser.

In June of this year, a group of mechanical engineering students were able to alter the course of a yacht from Monaco as part of a proof-of-concept study.

## **Robots and Drones**

Robots and drones are no longer restricted to the domain of military, where they are used extensively for surveillance or attack missions. With the miniaturization of electronics, many of these drones are now sold on the shelves in many hobby stores or websites. For a few hundred dollars, one could buy a drone equipped with a video camera, homing feature (automatically returns "home"), carries fair size payload, etc.

Amazon had just announced that it is exploring the possibility of utilizing drones to deliver goods to their customers.

Many hobbyists would equip these drones with some small camcorder, such as a GoPro, to film scenes or sports event from a distance. However, what happens when these drones fall into the hands of malicious intent?

Robbers could utilize a drone to survey a property from the sky before entering the premise. Since the drones can provide live video feed, the would-be robbers could see whether someone is in the house. Is the back entrance accessible? Is the backyard monitored by some security system? Is there a dog roaming in the backyard?

Drones could also be utilized to deliver goods and packages. Amazon had just announced their plan to utilize drones to deliver goods to their customer is the near future. What if the criminal utilizes drones to deliver contraband material, like illegal drugs? A buyer could make payment online. (Bitcoins? That is a topic better discussed in some other time). Once payment is received, the drug dealer could deliver the drugs by a drone at some prearranged location. The benefit of such delivery system is obvious. If law enforcement moves in during the drug deal, all they could "arrest" is the buyer and the drone, which is remotely controlled by someone from a good distance away.

Sounds far fetched? News report had been reporting that drones were already used to smuggle contraband into prisons. These cases were happening both in United States and Canada. In fact, prison guard union is now asking the government to increase security to deal with this phenomenon. Ground-to-air weapons installed around the perimeter of the prison?

When dealing with litigation or investigations, it is no longer sufficient to focus only on traditional technologies, such as email or Internet browsing history. One must also be cognizant about up and coming technologies and address them actively.

**Kevin Lo** is the managing director of the electronic discovery practice (EDP) of Froese Forensic Partners and focuses his practice on electronic discovery and digital forensics. He presents regularly on the topic of digital investigation & eDiscovery at various conferences. Follow him online at Twitter [kevin\\_lo](#) or at LinkedIn.

# THE PROFESSION OF COURT REPORTING IN THE PROVINCE OF ONTARIO

These comments are being made as a result of an editorial placed in the October 2013 Law Clerks' Review with respect to the profession of court reporting within the provincial court system. The Executive Team of the Court Reporters' Association of Ontario has prepared responses contrasting those comments as set out in that editorial in order to offer a broader understanding of the pending changes, as well as an historical perspective, and as a guide to the future of court reporting as the profession changes across all spectrums in the Province of Ontario.

As a brief introduction, the Court Reporters' Association of Ontario is a not-for-profit professional association offering privileges of membership and certification to practicing open mic court reporters in the Province of Ontario. All areas of practices would include, but are not be limited to: court reporting in the municipal courts, all levels of provincial courts, as well as independent contractors providing court reporting services in the private sector. As an update, it is worth noting, there is no longer any such terminology as, 'monitor', in the courtroom staffing model in the province of Ontario nor has that terminology been used for many years now. So, for correctness, there will be no further reference to the word, 'monitor'.

Courtrooms across the province as well as all municipal courtrooms are now equipped with state of the art open mic digital recording technology and compatible software provided by High Criterion, a company based in the province of Ontario. Through the process of researching technology and software, the Ministry sourced this Canadian provider to create the new system to be implemented province-wide. In response to this shift in technology, court reporters providing services within the private sector are also now transitioning over from analog to digital recording equipment and often are deciding to purchase the same open mic digital recording equipment and software as the Province has implemented in order to offer compatible services to their clients.

In courtrooms across the province, open mic court reporters continue to take the in-court record on a computer keyboard producing extensive and comprehensive notes, creating timestamps for precise playbacks and accurate word searches within the computer-generated software. The notes produced are visible on a computer screen and are easily manipulated throughout the .dcr file to locate timestamps and locations within the notes by way of using a mouse or combinations of key commands or word searches. The digital record is spread across eight channels that can be isolated so sound is separated without distortion, over-talking is non-existent, losing or dropping volume does not occur ensuring clear, precise, accurate recordings are produced. Open mic court reporters are experienced professionals who are required at the end of every day to swear a verbal oath (mandatory Form 1) to certify the accuracy of the digital record.

It should be noted, at this point, that fiscal realities prohibit voice recognition technology in the judicial courtrooms of the province at this time, as it is a technology that is not market or consumer-driven in the court justice system, and is perhaps better suited in the private landscape and civil litigation community where there is less budgetary constraints. Speed and pace, volume of speakers standing before the court, numbers of matters being addressed in a courtroom on any given day, are very common occurrences, and open mic court reporters are certainly capable, well experienced and articulate enough to keep an accurate written record, and at the same ensure that the digital record meets the professional standard required for the Form 1 certification. To suggest otherwise, is not at all accurate nor fair.

For further context and background to explain why staffing changes are being made in the court judicial system, it is important to note that apart from the upgrade in technologies implemented across all provincial courtrooms, hearings have also been ongoing over the past ten years with respect to a policy grievance entitled Hunt et al at the Grievance Settlement Board. In one pivotal decision over this span of time, the arbitrator declared that

MAG court reporters were not independent contractors in their role providing certified transcripts, but were, in fact, full time employees covered under the Collective Agreement.

In order for MAG to comply to this declaration made by the arbitrator, two roles had to be created in order for transcript production to remain outside the control of the state and still be produced by independent contractors or transcriptionists.

The Ministry will be implementing a transcript production model utilizing an independent administrative body (IAB). The IAB will oversee a publicly accessible registry of authorized court transcriptionists. Parties ordering transcripts will select the transcriptionist of their choice from this list. The CRAO believes the ordering party's first choice will be the court reporter of record.

MAG court reporters will automatically be grandfathered onto the IAB list (if they choose to do so). Court reporters will also be offered three additional options under the new model: (1) remain as a court reporter employed by the Ministry to take the in-court record only; (2) be grandfathered onto the IAB list and become an independent qualified court transcriptionist authorized to produce court transcripts; or, (3) remain as both a court reporter employed by the Ministry to take the in-court record, and as an independent qualified court transcriptionist authorized to produce court transcripts.

This new court staffing model creates a competitive marketplace and recognizes the production of certified transcripts as a valuable service. The demands of the marketplace will dictate how court certified transcripts are produced over a long continuing trial, perhaps with multiple providers, because timeliness will become paramount. That does not necessarily mean that the final product will be compromised. It must be clearly understood that certified transcripts produced from digital recordings by open mic court reporters are never interpretative, they are verbatim. Digital technology allows that every spoken word be captured and placed within a certified transcript without errors in syntax or context. It is also important to note that the computer software within the digital recording technology allows for extensive note taking and timestamps which make playbacks flawless and word searches effortless.

Additionally, an important feature under the new staffing model is that the IAB will be responsible for providing guidance, membership support, transcript standards set by regulation, legislation, policy and practices. The IAB will also respond to disputes arising between parties with respect to quality control and other issues, to ensure the marketplace is being well served, and, so checks and balances will be in place in order for improvements to be made if deficiencies arise.

The marketplace will determine the type of services required for the best value to the consumer. The page rate for certified court transcripts will continue to be regulated by legislation so competition will not be based on sliding rates. To gain a competitive edge within the limitations of a regulated page rate will depend on factors such as: experience, time management skills, proven customer service satisfaction, delivery methods, promotion and marketing, C.C.R. accreditation through CRAO membership would be an important benefit for the consumer to consider, to name a few.

As the court system is not a profit making enterprise, the technology required to support the record that produces certified transcripts cannot be an expensive one. The reality is that legal aid pays for most certified transcripts produced in criminal court proceedings arising from continuing trials, preliminary inquiries, and for court of appeal matters. Legal aid has a vested interest in keeping costs down, so, it is no surprise that cost measures have had to be taken in order to reduce the financial burden on the system, and real time stenographic reporters are now assigned to courts upon request only, and have been given the opportunity to become open mic court reporters and trained on the new digital recording system.

By the same token, if the consumer can afford providing real

time court reporters in lieu of staff court reporters, then it would be their choice to do so if all parties agree to the associated costs. However, the CRAO does take exception to the points set out about the benefits of hiring your own court reporter as being exclusive to real time technology. In comparison, the in-court services provided by experienced and capable Ministry open mic court reporters meet that same benefit checklist as set out below.

- Parties could request the same open mic reporter from discovery to trial if they choose to do so
- Parties don't have to negotiate fees for services in advance. The regulated page rate is \$3.20 per page for transcripts and parties do not have to pay additional hourly rates for in-court services.
- Parties are not prohibited from setting timetables for transcript delivery in advance if they want to arrange for that with their in-court service provider
- Court transcripts are formatted differently from transcripts produced in civil litigation, but there is nothing that bars a staff court reporter adapting software to serve a client's needs upon request and proper instruction
- Parties who have worked in the criminal court system who have found staff court reporters to be both capable and professional might be offended by the reference to, 'hit and miss', as being very dismissive and demeaning in the manner and context it was written.
- It goes without saying that without proper and adequate training a private court reporter would not be allowed to operate the Ministry approved recording system, or to use it as back up to their real time equipment. They would not be able to leave the courthouse with the court record.

Recent directives and legislated changes through consultation with stakeholders in order to modernize the court system overall have affected court reporting, however, these judicially sanctioned changes are separate and apart from the pending staffing model that will be implemented sometime in the new year and are not therefore addressed in the foregoing commentary.

Some closing comments for anyone who is reading this, it should be drawn to your attention that the standard of quality and verbatim accuracy of certified transcripts resulting from court proceedings is a very high burden to meet. Court reporters practicing in this area of specialized expertise who come from the courtrooms of this province are now forming strategies and developing service plans in order to meet market demands within their own communities to keep the business that exists

grassroots. They know their clientele, they know their courtrooms, they know how to do their jobs. The burden of producing accurate, high quality certified transcripts in the most expedient way is no different for an open mic court reporter than any other different method of taking the record. It is the final product that matters not the method of the work. The difference remains only due to economies of scale and fiscal realities that exist in the court setting, as opposed to the private sector niche market that where the client base has different needs and monetary resources to pay higher costs.

At the baseline starting point, it must be realized that the court system is geared to serving the average citizen who finds themselves in a court proceeding oftentimes without counsel and without the assistance of legal aid, so a person in those circumstances simply cannot afford to pay the cost for the services they require. Justice should be served fair and equal to all who comes before it, not a better justice system because you pay a higher price for it. So, although the standard of the final product must be set high, it must be equal for all people, and that is what is most important. Under this new staffing model all the talent and expertise that presently exists in the judicial system as it works now, will be available to provide transcript services to ordering parties to choose from at a reasonable cost without additional financial burden.

Accurate and reliable certified transcripts are produced and delivered to clients by open mic court reporters throughout the province on a daily basis, and for those exceptions where certified transcripts do not meet the professional standard, there will be measuring guidelines and a quality control process in place to ensure client satisfaction under the new staffing model facilitated through the independent administrative body.

**Joanne Hardie, C.C.R.**

President, Court Reporters' Association of Ontario  
www.crao.ca



The Court Reporters' Association of Ontario is a not-for-profit organization which was established and formed its mandate to develop a high standard of professionalism in court reporting in 1967. Since then, the CRAO has continued to build upon the foundation of those fundamental beliefs by modernizing its role in order to take on the challenges of ever evolving changes in practices and technological advancements in the profession of court reporting in the Province of Ontario.

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A professional is an expert and a master in a specific field. So what is a legal professional? It's someone who has specialized knowledge in a practice area, excellent literary skills, a quality work product, professional ethics, behaviour and work activities, and who displays morale and motivation during their work. Does this describe you? Become an expert, create confidence in your work and get the work you want, while learning the dos and don'ts of working as a legal professional.

To be viewed as an expert you need specialized knowledge in your practice area and in-depth understanding of a specific niche within that area. It may be in areas such as e-discovery, environmental regulations, nationwide licensing and registration of corporate entities, corporate due diligence, trial preparation, exhibit management, project management or title searches.

To become the "go to" law clerk/paralegal, you must demonstrate specialized knowledge and deliver work product of the highest quality. Your work product includes preparation of legal documents, legal writing and presentations. Lawyers and clients rely on your delivery, so ensure that it is accurate, timely and comprehensive and that it contemplates the legislation, legal procedures, policies and regulations of the practice area.

You are the master of your domain. It is a cliché, but true. As a legal professional, you create confidence in your skill, knowledge, work and performance with these strategies.

### **Get it right the first time**

Ensure that the information and recommendations are complete and accurate. Before delivering the finished product, review the instructions, applicable statutes, regulations and checklists. Use comparison tools to confirm facts, figures, names and dates. Check spelling and grammar and correct any mistakes. When you reproduce lengthy information, ask a colleague to read it with you to ensure accuracy of the reproduction.

### **Be accountable**

Always ask for the due date of the work to ensure that you are able to deliver by that time; negotiate a deadline prior to taking on the work. Part of being a professional paralegal is taking accountability for delivery, so when you receive new work, contemplate your current workload before negotiating the timeline. If the lawyer is not satisfied with that timeline, communicate the work conflict and offer to assign another paralegal. This will prove your accountability in your practice.

### **Confirm instructions**

Paralegals receive instructions in person, by telephone, and in writing. Read the instructions, contemplate the scope of the work, the legislation, regulations, and processes to ensure that they are clear and complete. Review the material to determine whether you have the information necessary to complete the work. Send a memo or e-mail confirming instructions, request additional information if necessary, clarify processes, procedures and timing. These strategies will ensure that you and the lawyer are on the same page and create confidence in your work.

### **Be available and responsive**

The paralegal who responds in a timely manner and makes themselves available for projects, phone calls and meetings creates confidence in their abilities and performance. Part of

being a professional is making a commitment to the practice, the team, the law firm or corporation. This doesn't mean being available 24/7, but making yourself available to see the project through to completion and taking responsibility for the work assigned. A paralegal who is committed will create confidence in others.

### **Be proactive and stand out**

I was asked to attend a meeting wherein the client and lawyers were discussing the legal requirements required for national registration of a new division launching a new product. Before the meeting, I researched the client and the new product, which took about 15 minutes. At the meeting the next day, I was an active participant with the knowledge I had acquired. Both client and lawyers were impressed and I received the work retained. The client also requested me on future work, and the lawyers had new confidence in my ability to bring increased value to their practice.

### **Dress as a legal professional**

Should a legal professional wear a business suit? Do you appear ready and able to meet the challenges of a legal professional? Does your appearance create confidence in others? Here are some dos and don'ts:

- Do appear fresh and rested to take on challenging work.
- Do wear clothes suitable for business meetings, court attendance, and as a representative of your employer.
- Don't wear gym clothing, running shoes, nightclub attire to work.
- Don't wear ripped or faded jeans, flip-flops or tank tops on casual days.

### **Written and verbal communication**

Legal work is about precise communication, both written and verbal. A simple error or omission can change the interpretation and impact the rights of the client. In all communication, avoid using slang words, "text" language and abbreviations. Ensure your communication is organized, accurate and easily understood, and save your personal communication style for friends and family.

### **Defining your role**

In spite of increased work responsibilities, paralegals need to define their role in the legal team and ensure they are viewed as adding value to the work. Seek out work, talk to the lawyers in your practice area about what they are working on and new work coming in. Communicate the value you can bring to that work. Demonstrate the skill and knowledge you can contribute. Share projects and tasks you have worked on previously and let them know what value you brought to that work. When working directly with clients, communicate to them the scope of your responsibility and knowledge.

**Catherine D'Aversa** is president of Legal Resource Consulting and works with law firms and law departments to increase revenue and profitability of law clerk/paralegal resources while reducing costs. She can be reached at 416-988-3989 or 905-764-3989 and [catherinedaversa@gmail.com](mailto:catherinedaversa@gmail.com).

ILCO wishes to thank Catherine D'Aversa for permitting ILCO to reprint the article that was originally published in The Canadian Lawyers Weekly, May 17, 2013 issue.



This year, ILCO's CLE Committee decided to shake things up. You may have noticed some different programs that have been offered to its members. Most recently we held a Members Only session on Social Media and in the new year we are considering programs on corporate securities and career development.

To get to this point we asked our members specifically what they want to hear about. The first time we used this approach was for our corporate law program in September 2013. Prior to this program, we sent a request to members asking what they would like to hear about at the corporate

program. The results directly helped us plan and made it the amazing success that it was.

With the new year upon us, we want to continue this method of planning. Feel free to let us know what you would like to hear about. While this method has worked it cannot continue without our members input. We would not be here without our members so let us work better for you by letting your voice be heard. Please contact [cle@ilco.on.ca](mailto:cle@ilco.on.ca).

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The preparation of Financial Statements and Financial disclosure is critical in a Family/Divorce Law case. It is important for a party to make full and complete financial disclosure. If a party fails to make full and complete financial disclosure, it is possible that an Order or Agreement may be set aside by a Court in the future.

A Family/Divorce Law Clerk can be essential in assisting a client in preparing his/her Financial Statement and disclosure brief. A lawyer wants to ensure that his/her Financial Statement is prepared properly and there is sufficient financial disclosure to back up the figures in the Financial Statement. It is important to remember the following when completing a Financial Statement for your client:

1. Which Form? If there are property issues involved, you should use the Form 13.1. This is the form used in the Ontario Superior Court of Justice. If there are just support claims and no property issues, use Form 13. This is the form used in the Ontario Court of Justice;
2. Income/Benefits – If the person is an employee, his/her income for support purposes is more easily calculated than someone who is self-employed. You should review the person's T4 and three recent pay stubs. If the person is paid weekly, multiply that figure by 4.33 to obtain the monthly figure. If the person is paid bi-weekly, multiply by twenty six (26) and divide by 12 to get the monthly amount. If a person is self-employed, use his/her Income Tax Return from the previous taxation year (line 150), and include an explanation as to how his/her income was calculated for his/her Financial Statement. It may be necessary to retain an expert (Certified Business Valuator) to determine the client's income for support purposes. You should also obtain details about all of the client's income for all sources, whether or not the amount is taxable (ie. interest, dividends, capital gains etc.). Ensure that the sources of the client's income are also reflected in the asset section of the Financial Statement (ie. if the client earns interest income, make sure that the bank account that generates the interest income is also shown on the Financial Statement). In addition, include a value (or an estimate) of all employment benefits received by the client (ie. company car, health benefits, club membership etc.);
3. Expenses – This is always the most difficult for a client to complete. It can be very tedious. List the client's expenses for a specific period (average over a twelve month period). Try to be as accurate as possible. Organize all receipts. It is best to review the following documents for the last twelve months to attempt to gather an accurate depiction of the person's expenses: bank statements, credit card statements, property tax statement, mortgage statements, utility statements, insurance documents, pay stubs (deductions from income), etc;
4. Assets – The client must be advised to gather all of his/her documentation to substantiate all of his/her assets and liabilities as of the date of marriage and the date of separation.

List all of the property that is owned (not just possessed). All jointly owned property should be listed as a 50% interest. Make sure that any figures in the Financial Statement are consistent with the pleadings. Remember that if the Matrimonial Home was owned both on the date of marriage and the date of separation, there is no date of marriage deduction for the value of the Matrimonial Home;

5. Debts – List all of the debts owed by the client as of the date of marriage, date of separation and present value. If a debt is jointly owed, list 50% of the debt. You should include in the Financial Statement, contingent or future debts (taxes, capital gains, notional costs of disposition). It may be necessary to retain an actuary or CBV to determine the tax liability. If unknown at the time of drafting the Financial Statement put "TBD" and an explanation. You should also consider a discount for some debts (ie. the present value of a future payment, minority discount etc.);
6. Excluded Property – Review with the client if the client received any of the following from any third party during the marriage: inheritances, major gifts from third parties, insurance proceeds, damages for personal injuries. Can the client trace these funds from the date of receipt to the date of separation? You need to obtain documentation to support the tracing. The funds should not be mixed with joint funds from other parties. If the property is excluded, the full value of the property is included in the property section and then deducted in the excluded section;

It is important to remember that the Family Law Rules provide that a Financial Statement must be updated from time to time. If it is older than 30 days, the party must either serve a new Financial Statement or swear an Affidavit that there have been no changes in his/her Financial Statement or set out the changes.

A well drafted Financial Statement, with supporting documentation, will greatly assist in a Family/Divorce file. The lawyer and the client will be very satisfied if the Financial Statement is accurate, neat, and the documentation well organized.

**Lorne Fine, B.A., LL.B. Q. Arbitrator** is an experienced Family/Divorce lawyer. He is the managing partner at Fine & Associates Professional Corporation, a Family/Divorce boutique law firm. He will be teaching the Family/Divorce Law Certificate of Achievement Course endorsed by ILCO. Please see his website [www.Torontodivorcelaw.com](http://www.Torontodivorcelaw.com) for additional information.



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# FAMILY & DIVORCE LAW CERTIFICATE OF ACHIEVEMENT

Tuesday, January 14th, 2014

The Institute of Law Clerks of Ontario has approved a Family & Divorce Law Certificate Achievement Course being offered by Lorne J. Fine, Barrister & Solicitor, of Fine & Associates Professional Corporation - Family & Divorce Lawyers.

**Starts Tuesday, January 14th, 2014  
a total of twelve (12) sessions  
from 6 pm to 9 pm**

The course will be held at  
**the ILCO's office (20 Adelaide Street East, Suite #502, Toronto)**

The course will cover a wide range of Family & Divorce Law topics and will give you the necessary edge in the Family & Divorce Law field.

**A Certificate of Achievement for this course will be granted upon successful completion of the course.**

The course will benefit:

- Anyone interested in the field of Family/Divorce Law
- A person going through a divorce
- Someone who is already pursuing a career in Family/Divorce Law
- An individual who is already a legal assistant and/or law clerk and wishes to advance their career in a Family/Divorce Law firm

**Space is limited.**

If you wish to enroll in the course, or for additional information, please call **Lorne Fine** at **416-650-1300** or see **[www.Torontodivorcelaw.com](http://www.Torontodivorcelaw.com)**



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# ANNOUNCEMENTS

## CALENDAR OF EVENTS

DATE	EVENT
Friday, January 3, 2014	Provincial Real Estate Exam Registration Deadline
Tuesday, January 14, 2014	Family & Divorce Law Certificate of Achievement Course
Wednesday, January 15, 2014	Business Law Fellowship Course
Thursday, January 16, 2014	Commercial Real Estate Fellowship Course
Tuesday, January 28, 2014	Provincial Real Estate Exam
Saturday, February 1, 2014	Education Awards
Wednesday, February 5, 2014	Advanced Full Day Litigation Program
Wednesday, February 5, 2014	Annual General Meeting
Friday, February 21, 2014	Litigation Exam Registration Deadline
Tuesday, March 11, 2014	Provincial Litigation Exam

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The Institute of Law Clerks of Ontario gratefully acknowledges the assistance of C.O.R.E. (formally the Morphy Centre) in the assembly and mailing of the Law Clerks' Review.

Remember to join us on our social media pages for further information regarding ILCO events and seminars:

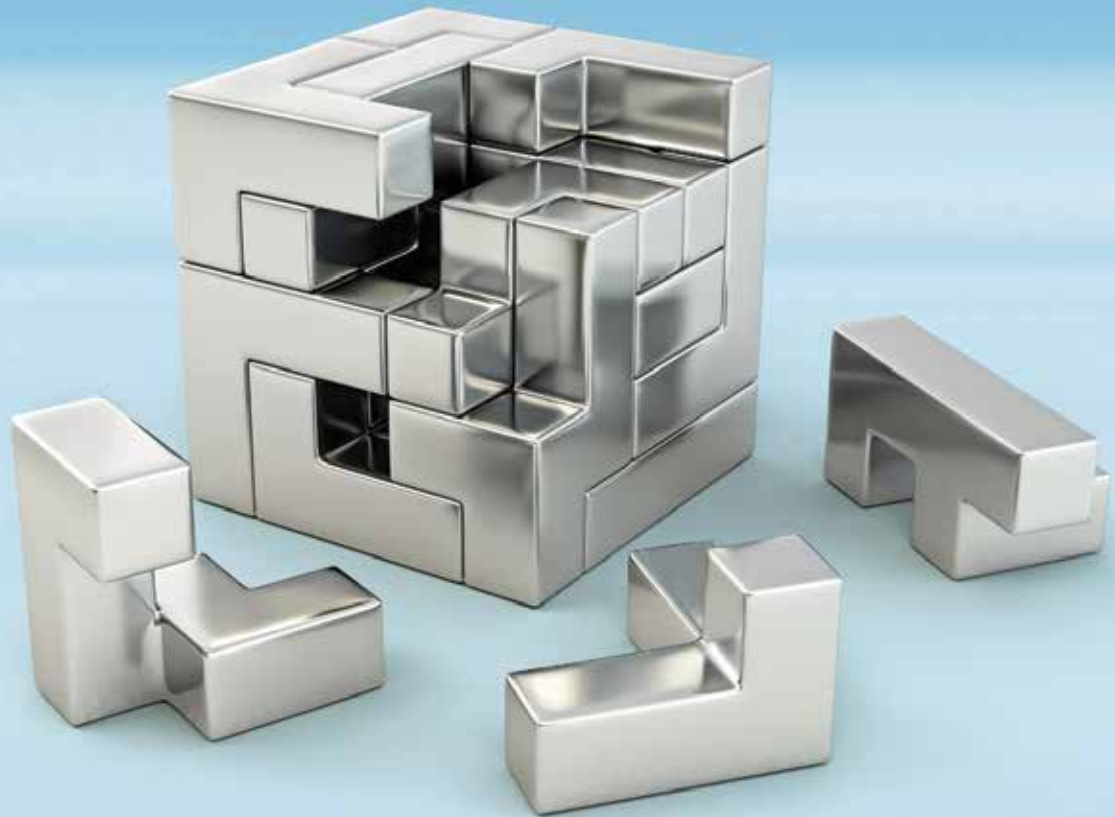
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