

MINUTES OF CONVOCATION

Thursday, 24th September, 2020
9:00 a.m.
Via Videoconference

PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Banack, Braithwaite, Brown, Burd, Charette, Chiummiento, Conway, Cooper, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Lalji, Lau, Lean, LeSage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Mercer, Merali, Minor, Murchie, Painchaud, Parry, Pawlitzka, Pineda, Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker, Wellman, Wilkes, Wilkinson, B. Wright and N. Wright.

.....

Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by videoconference.

The Treasurer recognized that Convocation would normally be meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She also acknowledges the Haudenosaunee. She advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. She recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer noted that Daniel Pinnington, President and Chief Executive Officer of LawPRO and other LawPRO representatives will be joining the meeting for presentation of the LawPRO Report.

The Treasurer expressed condolences to the family of the Right Honourable John Napier Wyndham Turner, P.C., C.C., Q.C., a member of the Law Society, who passed away on September 19, 2020.

The Treasurer also noted the passing of Ruth Bader Ginsburg, the second woman appointed to the U.S. Supreme Court, who was a transformative force for advancing civil rights in the United States and globally.

The Treasurer noted her outreach initiatives since the last Convocation, including offering greetings on the launch of the Ryerson University and University of Ottawa LPP programs and welcoming first year students at the Bora Laskin Faculty of Law at Lakehead University.

The Treasurer congratulated Ryerson University Faculty of Law, on opening its doors to the first cohort of students.

The Treasurer advised that she was honoured to participate in the opening of the courts ceremony on September 22, 2020, and to offer remarks on behalf of the Law Society.

The Treasurer informed Convocation of her outreach initiatives with law firms and her meetings with the Attorney General and the Chief Justice, and with the Honourable David Lametti, Minister of Justice and Attorney General of Canada.

The Treasurer reminded benchers of the Family Legal Services Provider (FLSP) consultation that is open until November 30, 2020.

The Treasurer reminded benchers that the deadline for nominations for the Law Society's Human Rights Award has been extended to November 30, 2020.

The Treasurer noted upcoming events:
Francophone event "French and the Law" Symposium on September 25, 2020
Access to Justice Week – October 26 to 30, 2020

The Treasurer congratulated Robert Burd on his election as chair of the Paralegal Standing Committee for the 2020 – 2021 term by acclamation.

The Treasurer congratulated Atrisha Lewis who was named one of Canada's Top 25 Most Influential Lawyers in the "Young Influencers" category, and on the birth of her daughter on August 3, 2020.

The Treasurer drew benchers' attention to information reports in the Tribunal Committee Report on practice directions and Tribunal second quarter 2020 statistics at Tab 3 of the Convocation Materials.

The Treasurer acknowledged the numerous responses received from licensees on the fee exemption issues and the proposed motion to decrease the 2021 Law Society fees, and thanked licensees for their feedback and comments, which have been provided to all benchers.

The Treasurer referred benchers to the information reports in the Audit & Finance Committee Report at Tab 8 of the Convocation Materials.

MOTION – CONSENT AGENDA – Tab 1

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

Carried

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of August 6, 2020 were confirmed.

Tab 1.2 - MOTIONS

Re: Tab 1.2.1 – Tribunal Appointment

THAT Jonathan Rosenthal be removed from the Hearing Division of the Law Society Tribunal at his own request, as a result of his appointment to the Proceedings Authorization Committee on August 6, 2020.

Carried

Re: Tab 1.2.2 – Committee Appointments

THAT Michael LeSage be appointed to the Access to Justice Committee and be removed from the Professional Regulation Committee, given his appointment to the Tribunal Committee.

THAT Nicholas Wright be removed from the Mental Health Working Group at his own request.

Carried

PRIORITY PLANNING COMMITTEE REPORT

Ms. Horvat presented the Report.

Re: Amendments to By-Law 3 Respecting an Online Treasurer Election Process

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that on the recommendation of the Priority Planning Committee, Convocation make amendments to By-Law 3 as set out in the motion at Tab 2.1 to implement an online election process for the Treasurer's Election.

Carried

Dr. Alford, Mr. Chiumminto, Mr. Desgranges, Mr. Klippenstein, Ms. Lean, Mr. Parry, Mr. Prill and Ms. Shi abstained.

TRIBUNAL COMMITTEE REPORT

Ms. Shin Doi presented the Report.

Re: Amendments to the Rules of Practice and Procedure

It was moved by Ms. Shin Doi, seconded by Dr. Alford, that Convocation approve the proposed English and French amendments to the Law Society Tribunal Rules of Practice and Procedure, effective October 1, 2020, set out at Tab 3.1.1 (English) and Tab 3.1.2 (French).

Carried

Mr. Horgan abstained.

For Information:

- Practice Directions
- Law Society Tribunal Quarterly Statistics April 1 to June 30, 2020

FINANCIAL UPDATE

Mr. Groia provided a financial update with reference to the Audit & Finance Committee Report at Tab 8 of the Convocation Materials.

NOTICE OF MOTION

It was moved by Mr. Pollock, seconded by Ms. Lippa, that:

WHEREAS with the onset of COVID-19, the Ontario court system was necessarily forced to pause many of its operations;

AND WHEREAS with much of the Court system effectively closed, it became impossible for many members to provide legal services;

AND WHEREAS the pandemic has had a devastating financial impact upon the revenues of virtually all members in private practice;

AND WHEREAS it is of critical importance to the access to justice and the public interest of all Ontarians that members of the Law Society are able to remain financially viable through this pandemic;

THAT for 2021, Convocation shall reduce the annual licensing fees for all members of the Law Society by no less than 25% of the amounts at which their annual licensing fees were set for 2020.

Not Put

Mr. Groia moved, seconded by Ms. Lomazzo, that the Pollock/Lippa motion be tabled.

Carried

ROLL-CALL VOTE

Adourian	Against	Lippa	Against
Alford	Against	Lockhart	For
Braithwaite	For	Lomazzo	For
Brown	Against	Lyon	Against
Burd	For	Marshall	Against
Charette	Against	Merali	For
Chiummiento	Against	Murchie	For
Cooper	For	Painchaud	For
Corbiere	For	Parry	Against
Corsetti	For	Pineda	Against
Desgranges	Against	Poliacik	Against
Epstein	For	Pollock	Against
Esquega	For	Prill	Against
Fagan	Against	Rosenthal	For
Falconer	For	Sellers	For
Goldstein	Against	Sheff	For
Graham	Against	Shi	Against
Groia	For	Shin Doi	For
Horgan	Against	Shortreed	For
Horvat	For	Spurgeon	For
Klippenstein	Against	Troister	For
Lalji	For	Walker	For
Lau	Against	Wellman	For
Lean	Against	Wilkes	Against
LeSage	Against	Wilkinson	For
Lewis	For	Wright	Against

Vote: 27 For; 25 Against

LawPRO REPORT

Mr. Spurgeon presented the Report.

Re: 2021 Insurance Program

It was moved by Mr. Spurgeon, seconded by Ms. Sellers, that Convocation approve the program of insurance offered by LawPRO for 2021 as set out in the report at Tab 5 of the Convocation Materials.

Carried

REPORT OF THE CHIEF EXECUTIVE OFFICER

Ms. Miles presented the Report.

Re: Law Society of Ontario Pandemic Update

Ms. Miles presented the Report for information.

IN PUBLIC

REPORT FOR INFORMATION ONLY

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society of Ontario Financial Statements for the Six Months ended June 30, 2020
- LIRN Inc. Financial Statements for the Six Months ended June 30, 2020
- Investment Compliance Reports

CONVOCATION ROSE AT 12:49 P.M

Confirmed in Convocation this 22nd day of October, 2020.

Teresa Donnelly,
Treasurer

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 24, 2020

MOVED BY: Andrew Spurgeon

SECONDED BY: Julia Shin Doi

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

DRAFT

MINUTES OF CONVOCATION

Thursday, 6th August, 2020
9:00 a.m.
Via Videoconference

PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Banack, Braithwaite, Brown, Burd, Charette, Chiumminto, Cooper, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Krishna, Lalji, Lau, Lean, LeSage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Mercer, Merali, Minor, Murchie, Murray, Painchaud, Parry, Pawlitza, Pineda, Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker, Wellman, Wilkes, Wilkinson, B. Wright and N. Wright.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by videoconference.

The Treasurer recognized that Convocation would normally be meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer advised that she acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She also acknowledges the Haudenosaunee. She advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. She recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer noted the passage of Bill 190 and the reforms to the *Notaries Act* and the *Commissioners for Taking Affidavits Act*, effective August 1, 2020, respecting paralegals and also remote commissioning.

The Treasurer reminded benchers that the 2020 Annual General Meeting is being held virtually at 5:15 pm on August 10, 2020. The Treasurer also advised that the three motions submitted to the Secretary for the meeting have been withdrawn.

The Treasurer noted the call by the Law Society for applicants for a number of external appointments made by the Law Society, and that applications can be made online through the Law Society's website.

The Treasurer advised that in light of David Wright's decision to move to a new role in the fall of this year, a recruitment process has begun and a committee created by the Treasurer to assist with the selection and appointment of a new Law Society Tribunal Chair.

The Treasurer referred to the consultation on the Family Legal Services Provider licensing model, and the deadline for comments on November 30, 2020.

The Treasurer informed benchers of her recent outreach initiatives since her election in June.

The Treasurer advised that she would be delivering greetings at the virtual gala for the Women's Law Association of Ontario this evening.

The Treasurer reminded benchers that the deadline for nominations for the Human Rights Award is September 30, 2020.

The Treasurer informed Convocation that from May 1 to July 31, 1594 lawyers and 120 paralegals have been licensed and congratulated them and welcomed them to the Law Society. The Treasurer also thanked the Professional Development & Competence Division staff under Priya Bhatia's leadership for the successful launch of the online examination platform.

The Treasurer congratulated Dr. Ryan Alford on the recent publication of his book "Seven Absolute Rights – Recovering the Historical Foundations of Canada's Rule of Law".

The Treasurer congratulated Gerard Charette for recently completing a Master of Arts in Theology.

MOTION – CONSENT AGENDA – Tab 1

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

Carried

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of June 26, 2020 were confirmed.

Tab 1.2 - MOTIONS

Re: Tab 1.2.1 – Tribunal Appointments

THAT Teresa Donnelly be removed from the Hearing and Appeal Divisions of the Law Society Tribunal at her own request, as a result of her election as Treasurer on June 26, 2020.

THAT Michael LeSage and Atrisha Lewis be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 28, 2021.

Carried

IN PUBLIC

MOTION – COMMITTEE AND OTHER APPOINTMENTS

It was moved by Mr. Poliacik, seconded by Mr. Esquega:

THAT the list of appointments and task force Terms of Reference, as indicated, under **Schedule A** be approved.

THAT Geneviève Painchaud be appointed to the Law Commission of Ontario Board of Governors for a term of three years effective October 15, 2020.

THAT Etienne Esquega be appointed to the Law Foundation of Ontario Board of Trustees, to replace Isfahan Merali at her request.

THAT Convocation approve Clare Sellers for election to the LawPRO Board of Directors, so that the Law Society nominees are Robert Adourian, Clare Sellers, Julia Shin Doi and Andrew Spurgeon.

THAT Geoff Pollock be appointed to the Ontario Justice Education Network Board of Directors for a three-year term.

SCHEDULE A
COMMITTEE, TASK FORCE, WORKING GROUP AND OTHER APPOINTMENTS

Not included in the list of appointments in Schedule A are appointments or reappointments not currently required because the appointments have not yet expired or no changes are being made to certain groups.

COMMITTEES

Access to Justice

Cathy Corsetti (Co-Chair)
Doug Wellman (Co-Chair)
Murray Klippenstein (Vice-Chair)
Robert Burd
Jean-Jacques Desgranges
Sam Goldstein
Shelina Lalji
Benson Lau
Marian Lippa
Michelle Lomazzo
Cecil Lyon
Barbara Murchie
Brian Prill
Jonathan Rosenthal

Audit & Finance

Joseph Groia (Chair)
Lubomir Poliacik (Vice-Chair)
Ryan Alford
Seymour Epstein
Gary Graham
Philip Horgan
Vern Krishna
Shelina Lalji
Michelle Lomazzo
Cecil Lyon
Clare Sellers
Sidney Troister
Tanya Walker

Compensation

Teresa Donnelly (Chair)
Robert Burd
Joseph Groia
Gerald Sheff
Jacqueline Horvat

Compensation Fund

Lubomir Poliacik (Chair)
Shelina Lalji (Vice-Chair)
Jack Braithwaite
Geneviève Painchaud
Clare Sellers

Equity and Indigenous Affairs

Dianne Corbiere (Chair)
Atrisha Lewis (Vice-Chair)
Jorge Pineda (Vice-Chair)
Robert Burd
Etienne Esquega
John Fagan
Julian Falconer
Murray Klippenstein
Nancy Lockhart
Megan Shortreed
Alexander Wilkes

Law Society Awards/LL.D. Advisory

Teresa Donnelly (Chair)
Gerard Charette
Dianne Corbiere
Cheryl Lean
Marian Lippa
Isfahan Merali
Geneviève Painchaud
Julia Shin Doi

Paralegal Awards

(External appointees not included)
Teresa Donnelly (Chair)
Joseph Chiumminto (Vice-Chair)
Robert Burd
Cathy Corsetti
Seymour Epstein
Shelina Lalji
Marian Lippa
Michelle Lomazzo

Paralegal Standing

Robert Burd (Chair)
Joseph Chiummiento (Vice-Chair)
Cathy Corsetti
Seymour Epstein
Sam Goldstein
Shelina Lalji
Marian Lippa
Michelle Lomazzo
Geneviève Painchaud
Geoff Pollock
Chi-Kun Shi
Doug Wellman
Claire Wilkinson

Priority Planning

Government and Public Affairs

Litigation

Teresa Donnelly (Chair)
Jacqueline Horvat (Vice-Chair)
Robert Burd
Joseph Chiummiento
Dianne Corbiere
Cathy Corsetti
Joseph Groia
Philip Horgan
Nancy Lockhart
Barbara Murchie
Lubomir Poliacik
Megan Shortreed
Andrew Spurgeon
Sidney Troister

Proceedings Authorization

Jacqueline Horvat (Chair)
Robert Adourian
Cathy Corsetti
Jonathan Rosenthal
Gerald Sheff
Claire Wilkinson

Professional Development and Competence

Barbara Murchie (Chair)
Philip Horgan (Vice-Chair)
Claire Wilkinson (Vice-Chair)
Ryan Alford
Jack Braithwaite
Jared Brown
Murray Klippenstein
Marian Lippa
Cecil Lyon
Trevor Parry
Sidney Troister
Doug Wellman
Alexander Wilkes

Professional Regulation

Megan Shortreed (Chair)
Jacqueline Horvat (Vice-Chair)
Michelle Lomazzo (Vice-Chair)
Robert Adourian
Gerard Charette
Etienne Esquega
Julian Falconer
Michael LeSage
Jorge Pineda
Jonathan Rosenthal
Clare Sellers
Andrew Spurgeon
Nicholas Wright

Tribunal

Julia Shin Doi (Chair)
Marian Lippa (Vice-Chair)
Ryan Alford (Vice-Chair)
Jared Brown
Jean-Jacques Desgranges
Paul Cooper
John Fagan
Michael LeSage
Isfahan Merali
C. Scott Marshall
Barbara Murchie
Chi-Kun Shi
Geneviève Painchaud
Tanya Walker
David Wright (*Ex Officio*)

Committee of Benchers under By-Laws 4, 7, 10 and 14

Gerard Charette
Cathy Corsetti
Seymour Epstein
C. Scott Marshall
Julia Shin Doi

Committee of Benchers under By-Law 11

Cathy Corsetti
C. Scott Marshall
Julia Shin Doi

TASK FORCES

Competence Task Force

Sidney Troister (Chair)
C. Scott Marshall (Vice-Chair)
Ryan Alford
Joseph Chiumminto
Dianne Corbiere
Cathy Corsetti
Cheryl Lean
Atrisha Lewis
Barbara Murchie
Geneviève Painchaud
Jorge Pineda
Megan Shortreed
Andrew Spurgeon
Claire Wilkinson
Alexander Wilkes

Competence Task Force - Terms of Reference

Mandate and Objective:

The Competence Task Force will examine the Law Society's regulatory approaches to ensuring and improving lawyer and paralegal post-licensure competence. It will examine the principles and rationales for regulating post-licensure competence and will study potential approaches in order to identify the most appropriate regulatory tools available.

The Task Force's objective is to recommend an effective, proportionate, and balanced regulatory framework addressing career long licensee competence, in a manner that protects the public interest and is responsive to the public's legal needs.

The Task Force will:

- identify the key components of professional competence in a dynamic and evolving environment for legal professionals;
- consider the Law Society's legislative mandate for regulating post-licensure competence, and identify the principles and rationales on which the Law Society should proceed;
- study approaches to post-licensure competence used in other jurisdictions and by other professional regulators;
- articulate a regulatory framework for post-licensure competence that:
 - prioritizes proactively identifying and mitigating risks and reducing demonstrated harms;
 - enables the achievement of competence benchmarks in a manner that is not duplicative, onerous or fails to address certain risks;
- consider whether, and if so how, the regulatory framework should include improving post-licensure competence as well as ensuring minimum competence
- assess the effectiveness of the post-licensure competence programs and procedures currently operated or supported by the Law Society, including assessing:
 - the validity of the program's policy objectives,
 - the effectiveness of the program in meeting its objectives,

- the efficiency of the program in delivering its outcomes,
- the efficiency, including cost-effectiveness, of the program's structure for its purpose,
- the proportionality of the program's operations and regulatory obligations in relation to its purpose and objectives, and
- whether the Law Society is or continues to be the appropriate body to support the program;
- determine which programs and procedures, based on the assessment, should continue, be modified or restructured, or be ended;
- identify and evaluate alternative post-licensure competence programs and procedures that would better achieve the regulatory framework articulated;
- identify any policy issues arising from these determinations that may require review by a standing or other committee;
- consider any budgetary implications arising from these determinations that may require referral to the Audit & Finance Committee;
- update Convocation from time to time on the Task Force's work; and
- submit a final report, including recommendations, to Convocation.

Parameters:

In undertaking this work the Task Force is expected to be open to re-evaluating the Law Society's approaches to post-licensure competence, in light of continuous changes in the legal landscape, in the profiles and practices of the legal professions, in the legal needs of the public, and in regulatory best practices.

The Task Force's work will involve evaluating current Law Society programs and procedures, as well as identifying and considering alternative options for regulating post-licensure competence, such as specialized licensing for certain types of practice and self-reported competence evaluations and learning plans.

Current Law Society programs and procedures include:

- continuing professional development programming and the annual CPD requirement;
- quality assurance programs, such as practice management reviews and spot audits;
- practice supports and resources, such as the Practice Management Helpline and the Coach and Advisor Network;
- the Certified Specialist program; and
- the Great Library and the Legal Information and Resource Network.

Methodology:

The Task Force will study potential regulatory approaches and tools using environmental scans and ongoing subject monitoring, data collection and assessment, review of leading reports, and engagement with subject matter experts. The Task Force will also consult widely as engages in its work and as it develops any recommendations.

Timetable:

The Task Force will commence its work under these terms of reference in the fall of 2020 and will meet regularly thereafter. The Task Force will report to Convocation from time to time on the Task Force's work, as appropriate, and will submit a status report to Convocation by September 2021. That report should include a plan and timetable for completing the Task Force's work by no later than June 2022.

Technology Task Force

Jacqueline Horvat (Chair)
 Jack Braithwaite (Vice-Chair)
 Gary Graham (Vice-Chair)
 Paul Cooper
 Seymour Epstein
 Cheryl Lean
 Michelle Lomazzo
 Brian Prill
 Clare Sellers
 Andrew Spurgeon
 Harvey Strosberg
 Nicholas Wright

WORKING/OTHER GROUPS

Human Rights Monitoring Group (Equity)

Julian Falconer (Co-Chair)
Tanya Walker (Co-Chair)
Paul Cooper
Atrisha Lewis
Marian Lippa
Isfahan Merali
Lubomir Poliacik
Doug Wellman

Mental Health Working Group (PRC)

Gerard Charette (Co-Chair)
Etienne Esquega (Co-Chair)
Jean-Jacques Desgranges
John Fagan
Sam Goldstein
Shelina Lalji
Benson Lau
Geoff Pollock
Brian Prill
Chi-Kun Shi
Andrew Spurgeon
Claire Wilkinson
Nicholas Wright

OTHER APPOINTMENTS

Summary Disposition

Atrisha Lewis
Chi-Kun Shi

Mr. Fagan moved, seconded by Mr. Desgranges, that the motion be amended to remove the Competence Task Force and its Terms of Reference.

Lost

Mr. Horgan, Mr. Klippenstein and Mr. Poliacik abstained.

The main motion carried.

Dr. Alford, Mr. Charette, Mr. Desgranges, Mr. Fagan, Ms. Lean, Mr. Lyon, Mr. Parry, Mr. Pollock and Ms. Shi abstained.

PRIORITY PLANNING COMMITTEE REPORT

Ms. Horvat presented the Report.

Re: Amendments to By-Law 3 Respecting Inter-Jurisdictional Mobility

It was moved by Ms. Horvat, seconded by Ms. Shortreed, that Convocation on the recommendation of the Priority Planning Committee make amendments to By-Law 3 to revoke

the mandate of the Inter-Jurisdictional Mobility Committee (IJMC) and add the function of the IJMC to the mandate of the Professional Development & Competence Committee as set out in the motion at Tab 3.1.1.

Carried

Re: Recommendations for Strategic Change

Ms. Miles presented the Report.

It was moved by Ms. Horvat, seconded by Ms. Shortreed, that on the recommendation of the Priority Planning Committee, Convocation adopt the following motions:

1. That amendments in principle to By-Law 8 be approved to require licensees to submit their reporting of trust account information electronically through the Law Society Portal, namely trust account opening and closing information throughout the year as applicable, and the detailed trust account information currently reported through the Annual Report, by March 31; and that the Law Society automate the reporting of trust account information by licensees.

Carried

2. That amendments in principle to By-Laws 5, 6.1 and 8 be approved to:
 - a. provide for a single standardized due date of March 31 for paying the Annual Fee, completing and reporting the Continuing Professional Development (“CPD”) requirements, and completing the Annual Report, beginning in 2021;
 - b. eliminate all late fees for non-compliance with the requirements in 2.a, above; and
 - c. reduce the default periods for the requirements in 2.a, above, to 30 days for 2021 and 2022 and to 15 days for 2023, so that the Law Society may promptly begin the suspension process of a licensee who fails to comply with the requirements by the due date.

Carried

Mr. Charette and Mr. Cooper abstained.

3. That amendments in principle to By-Law 5 be approved to remove the exemption from the requirement to pay the Annual Fee for licensees who are over 65 years of age and who do not practise law or provide legal services, beginning in 2021 and for subsequent years.

Carried

Mr. Adourian, Mr. Fagan, Mr. Groia, Ms. Lean, Ms. Lippa, Mr. Lyon, Mr. Parry and Mr. Pollock abstained.

4. That amendments in principle to By-Law 5 be approved to remove the exemption from the requirement to pay the Annual Fee for licensees who have practised law in Ontario for a period of 50 years, beginning in 2021 and for subsequent years.

Mr. Burd moved, seconded by Mr. Groia, that the motion be amended by adding the following at the end of the motion: “but that licensees who currently have achieved this status and who are currently exempt be grandparented and continue to be exempt.”

Mr. LeSage moved that fees be exempted for new licensees with less than five years of practice who are earning less than \$50,000 per year.

The Treasurer ruled the motion out of order as unrelated to the motion currently before Convocation.

The motion to amend was lost.

Mr. Braithwaite abstained.

The main motion carried.

Ms. Lean abstained.

5. That the Law Society exercise its authority in subsection 48(1) of the *Law Society Act* to revoke a licensee's licence if the licence has been administratively suspended for more than 12 months, beginning in 2021.

Carried

NOTICE OF MOTION

The Treasurer introduced the subject of the motion and referred to the Benchers Code of Conduct Working Group she created, as reflected in Tab 2 of the Convocation Materials, noting the intention to address a number of issues related to the Code.

Ms. Sellers, with the agreement of Ms. Lockhart, withdrew the motion, on the understanding that the issues raised in the motion are to be referred to the working group.

IN PUBLIC

REPORTS FOR INFORMATION ONLY

MOTION – COMMITTEE AND OTHER APPOINTMENTS:

- Schedule B – Other Appointments

CONVOCATION ROSE AT 12:13 P.M

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE SPECIAL CONVOCATION ON SEPTEMBER 24, 2020

THAT Jonathan Rosenthal be removed from the Hearing Division of the Law Society Tribunal at his own request, as a result of his appointment to the Proceedings Authorization Committee on August 6, 2020.

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE SPECIAL CONVOCATION ON SEPTEMBER 24, 2020

THAT Michael LeSage be appointed to the Access to Justice Committee and be removed from the Professional Regulation Committee, given his appointment to the Tribunal Committee.

THAT Nicholas Wright be removed from the Mental Health Working Group at his own request.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 2

Priority Planning Committee

Amendments to By-Law 3 Respecting an Online Treasurer Election Process

September 24, 2020

Committee Members:

Teresa Donnelly (Chair)
Jacqueline Horvat (Vice-Chair)
Robert Burd
Joseph Chiumminto
Dianne Corbiere
Cathy Corsetti
Joseph Groia
Philip Horgan
Nancy Lockhart
Barbara Murchie
Lubomir Poliacik
Megan Shortreed
Andrew Spurgeon
Sidney Troister

Authored By:

James Varro, Director, Office of the CEO and Corporate Secretary

jvarro@lso.ca

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Motion

That on the recommendation of the Priority Planning Committee, Convocation make amendments to By-Law 3 as set out in the motion at Tab 2.1 to implement an online election process for the Treasurer Election.

A. Executive Summary

At the May 28, 2020 Convocation, amendments to By-Law 3 were made to implement online voting for the 2020 Treasurer election. This was at the recommendation of the Committee and was necessary given the ongoing meeting restrictions as a result of the COVID-19 pandemic and the need for the Law Society to provide an alternative method to the paper-based in-person voting process for the election in 2020.

The online system was successfully utilized for the 2020 election. This resulted in a significant reduction in staff time and incurred minimal cost. The amendments already made to the By-Law to provide for an electronic (online) process in 2020 will facilitate the further amendments to the By-Law to institute the process for all future elections. As such, the recommendation is that, consistent with a focus by the Treasurer and the Chief Executive Officer on efficiency and modernization, online voting be permanently adopted for the Treasurer election.

The proposed amendments to By-Law 3 are set out in the track-changes version of the By-Law at **Tab 2.2** and **Tab 2.3** (English and French).

Background

A. Current Election Process

The current Treasurer election process under By-Law 3 includes the following:

- Paper ballots used in both an advance poll and poll(s) on election day (June Convocation);
- An advance poll that offers in-person voting with a paper ballot at the office of the secretary, running for approximately two weeks prior to election day;
- The option to use an advance poll paper mail-in ballot that must be received by the secretary by 5 pm on day prior to election day to be valid;
- Election day paper ballots for in-person voting at June Convocation for those who do not vote in the advance poll;
- If more than two candidates, if necessary, additional paper ballots and in-person voting at June Convocation until a candidate who receives more than 50% of votes cast is declared elected; and
- A requirement for the secretary to count the votes in the presence of the current Treasurer, or his or her designate if the Treasurer is a candidate.

B. The Proposed Changes for Online Voting

The changes that were implemented for the 2020 Treasurer election to provide for online voting are recommended by the Committee to be adopted for future Treasurer elections, beginning in 2021.

While the basic process in By-Law 3 to elect a Treasurer remains the same¹, an online voting process changes some procedures in the By-Law. An online process

- requires that the secretary establish and publish election procedures,
- eliminates the advance poll and the election day poll(s) as separate polls,
- because of the above, eliminates a second ballot on election day for those who have not voted in the advance poll to determine a successful candidate when a three-candidate ballot does not result in an election on the first ballot,
- eliminates the poll in which all benchers vote to determine who remains on the ballot if there is a tie for last place on a three-candidate ballot, and
- eliminates the secretary counting the votes in the presence of the Treasurer.

Details of the process are discussed below.

The Proposed Online Election Process

A. Key Components

The following, which replicate the procedures adopted for the 2020 Treasurer election, is proposed for future Treasurer elections where there are two or more candidates.

1. Voting procedures to be established and published by the secretary

¹ The process provides for the following:

- Election of the Treasurer at Convocation in June
- A secret ballot
- Eligible voters are benchers entitled to vote in Convocation
- A voters' list is kept by the secretary showing who has and has not voted in the voting period; the list is available to candidates and voting benchers
- A bencher is elected Treasurer if they receive more than 50% of the votes cast
- In the event of a tie vote, the current Treasurer randomly selects a candidate and casts a vote for that candidate

Similar to the process in By-Law 3 for the Law Society's benchers election, the proposal will require the secretary, who manages the Treasurer election, to establish and publish electronic (internet) voting procedures for the election. This will entail a description of how the online voting system will work and how votes may be cast. This requirement means that the detailed procedures do not need to be set out in the By-Law.

2. One voting period (no advance poll and as such, no election day voting for benchers who have not voted in an advance poll)

The voting period for the 2020 Treasurer Election would run from 9 a.m. on the second Wednesday in June (the day under the By-Law that the advance poll would be required to open) to 9 a.m. on election day, which is June Convocation. The online voting system would open on the Wednesday at the specified time and shut down precisely at 9 a.m. on election day (June Convocation).

3. One ballot for all purposes for the election of Treasurer

The By-Law provides that if a candidate receives more than 50% of the votes cast on a ballot, they are declared elected as Treasurer. The online voting system utilizes one ballot for the election, whether there are two candidates or whether there are more than two candidates, and a specific counting methodology to determine the successful candidate.

Counting the Votes

If there are two candidates, benchers would be required to select one candidate of their choice, as currently required under the By-Law for a two-candidate ballot, and mark the online ballot with that choice. When the online voting period ends, the results will be provided to the secretary who will then announce them.

In the event of a tie vote, as provided in the By-Law, the Treasurer will randomly choose the name of one candidate and cast another vote for that candidate, who will then be declared elected.

Where there are more than two candidates in the election, a ranked ballot is required in keeping with the current By-Law provisions. In this circumstance, the online system is programmed to count the votes in accordance with the ranking process and allocation of votes described in the By-Law until a candidate receives more than 50% of the votes cast or until there is a tie vote. For example, on a three-candidate ballot, benchers would be required to rank their first choice 1, their second choice 2 and so on. When the voting

period ends, the online voting system will provide the result of the ranked ballot to the secretary who will then announce the result.²

B. By-Law 3 Amendments

As shown in the track-changes versions of By-Law 3, the amendments

- provide that the electronic (internet) voting procedures are established and published by the secretary,
 - remove references to paper ballots, an advance poll and election day polls, in-person voting, voting by mail and the ballot box,
-

² If there was a three candidate ranked ballot, for example, the possibilities are the following:

- If one candidate receives more than 50% of the first-choice votes cast, the secretary will declare that candidate elected.
- If no one candidate receives more than 50% of the first-choice votes cast,
 - the voting system will remove the candidate with the least first-choice votes (this is currently the process under By-law 3),
 - the voting system will assign to the remaining candidates the second-choice votes associated with the removed candidate (as is currently done with a ranked ballot under the By-Law), which are treated as first-choice votes for the respective candidates that remain
 - if one candidate receives more than 50% of the first-choice and added second-choice (now treated as first-choice) votes cast, the secretary will declare that candidate elected
 - if there is a tie vote, the process described in this report to break a tie will be applied
- In the unusual circumstance where no one candidate receives more than 50% of the first-choice votes cast *and* there is a tie for the least number of first-choice votes on the ballot,
 - the voting system will determine who of the two last-place candidates received the highest number of second-choice votes, and that candidate will remain on the ballot, and the other will be removed
 - if a tie persists, the system will go to the third-choice votes to determine who remains and who will be removed (the system provides a process if a tie persists after these counts, working through the second and third choice, etc. votes on the ballot; if a tie persists, the candidate to remain will be chosen by random draw)
 - the voting system will then assign to the remaining two candidates the second-choice votes associated with the removed candidate (as is currently done with a ranked ballot under the By-Law), as above
 - as above, if one candidate receives more than 50% of the first-first choice and added second-choice (now treated as first-choice) votes cast, the secretary will declare that candidate elected
 - if there is a tie vote, the process described above will be applied to break the tie

- modify language to reflect an online voting process,
- remove references to the secretary counting the votes in the presence of the Treasurer,
and
- set out the counting sequence for a ranked ballot in the online system

Management is satisfied that the proposed online process with the required changes provides an election scheme that meets the objective of a fair process for a Treasurer's election under By-Law 3 and preserves its integrity.

LAW SOCIETY OF ONTARIO
BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

BY-LAW 3
[BENCHERS, CONVOCATION AND COMMITTEES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 24, 2020

MOVED BY

SECONDED BY

THAT By-Law 3 [Bencher, Convocation and Committees], in force immediately before this motion is moved, be amended as follows:

1. Sections 57 to 69 inclusive of the English version of the By-law are revoked and the following substituted:

Reduction in number of candidates: notice

57. If, after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the poll shall be discarded;
- (e) the time for the beginning of the new poll; and
- (f) the day on which there shall be an election of Treasurer.

Notice of candidates to benchers

58. After the close of nominations of candidates, the secretary shall, as soon as practicable,

notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

Election by acclamation

59. (1) If after the close of nominations of candidates, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

Same

(2) Despite any provision to the contrary in this Part, if, after the close of nominations of candidates under subsection 55 (5), there are two or more candidates, but on the day on which there shall be an election of Treasurer, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

Poll

60. (1) If after the close of nominations of candidates, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

Anonymity of voting bencher and secrecy of vote

(2) The procedures for conducting a poll shall be such that the anonymity of a voting bencher and the secrecy of the bencher's vote are preserved.

Electronic procedures

60.1 If a poll is required to elect a Treasurer, the secretary shall,

- (a) as soon as practicable after the close of nominations, establish the electronic procedures by which benchers entitled to vote in the election of Treasurer may vote; and
- (b) prior to the opening of the poll, publish for benchers entitled to vote in the election of Treasurer the electronic procedures established in respect of the election of Treasurer.

Treasurer is candidate in election

61. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this Part.

Right to vote

62. (1) Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

List of voters

(2) If a poll is required to elect a Treasurer, after the close of nominations of candidates, the secretary shall prepare a list of benchers entitled to vote in an election of Treasurer.

List to show who has voted

(3) Beginning at the opening of the poll and ending at the closing of the poll, the secretary shall mark on the list prepared under subsection (2) whenever a bencher casts a ballot so that, at any time, the list will show the benchers who have cast ballots and the benchers who have not yet cast ballots in the election of Treasurer, and the secretary shall make this list available for inspection to candidates in the election of Treasurer and benchers entitled to vote in the election of Treasurer.

Conducting poll

63. (1) A poll shall be conducted,

- (a) beginning at 9 a.m. on the second Wednesday in June and ending at 9 a.m. on election day; or
- (b) if after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 55 (5) and ending at 9 a.m. on election day under subsection 54 (2).

Method of voting

(2) A bencher shall cast their vote at the poll in accordance with the electronic procedures established by the secretary.

Marking a ballot

(3) A bencher voting at the poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are not more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballots to be discarded

(6) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, the secretary shall cause to be discarded the ballots received at the poll conducted after the close of nominations under subsection 55 (3) or (4).

64. [Revoked].

65. [Revoked].

Counting votes

66. (1) Beginning immediately after the closing of the poll on election day, the secretary shall cause the votes cast for each candidate to be counted.

Same

(2) If at the poll votes were cast for candidates by rank of preference, the secretary shall cause the votes cast for each candidate to be counted with the assumption that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

Report of results: two candidates

67. (1) If on any ballot there are not more than two candidates, immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report the results to Convocation and shall declare to be elected as

Treasurer the candidate who received the largest number of votes.

Counting votes when three or more candidates and no majority

67.1. (1) If on any ballot there are three or more candidates and, after causing the votes to be counted, no candidate receives more than 50 percent of all votes cast for all candidates, the secretary shall cause the votes to be counted as follows:

1. The candidate receiving the fewest number of first-choice votes shall be removed as a candidate in the election.
2. For each ballot on which the candidate removed as a candidate in the election is the first-choice, the candidate who is the second-choice candidate and who has not been removed as a candidate in the election shall be counted as the first-choice candidate for that ballot, the third-choice candidate who has not been removed as a candidate in the election shall be counted as the second-choice candidate for that ballot, and so on until all candidates ranked on the ballot have been counted.
3. If a candidate receives more than 50 per cent of the votes cast for all candidates, the secretary shall report the results to Convocation and shall declare that candidate to be elected as Treasurer.
4. If two or more candidates receive an equal number of votes and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall select one of the candidates in accordance with subsection 68 (1).
5. If neither paragraph 3 nor 4 applies, the secretary shall cause the counting of votes to continue in accordance with paragraphs 1 and 2, subject to subsections (2), (3) and (4), until a candidate is elected as Treasurer under one of those paragraphs.

Resolution of a tie

(2) If two or more candidates each receive the fewest and the same number of first-choice votes, the secretary shall cause all second-choice votes cast for those candidates on all ballots to be counted and the candidate with the fewest number of second-choice votes shall be removed as a candidate in the election.

Same

(3) If no candidate can be removed as a candidate in the election under subsection (2), the secretary shall cause the process for counting under that subsection to continue based on the next-choice votes cast on all ballots, in order of preference, until one candidate is determined to have received the fewest number of such next-choice votes being counted, at which time that candidate shall be removed as a candidate in the election.

Same

(4) If no candidate can be removed as a candidate in the election under subsection (2) or (3) and,

1. the fewest number of first-choice votes for a candidate in subsection (2) does not include votes counted for that candidate under paragraph 67.1 (1) 2, the secretary shall cause a random selection of one of the candidates and the candidate selected shall be removed as a candidate from the election; or
2. the fewest number of first-choice votes for a candidate in subsection (2) includes votes counted for that candidate under paragraph 67.1 (1) 2, the candidate with the fewest number of first-choice votes before such inclusion shall be removed as a candidate in the election.

Casting tie-breaking vote

68. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall randomly select one of the candidates and cast an additional vote for that candidate.

69. [Revoked].

2. The heading before section 54 of the French version of the By-law is revoked and “ÉLECTION DU TRÉSORIER OU DE LA TRÉSORIÈRE” substituted.

3. Sections 57 – 69 inclusive of the French version of the By-law are revoked and the following substituted:

Réduction du nombre de candidatures : avis

57. S’il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe 55 (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l’être, pour quelque raison que ce soit, avant le jour de l’élection du trésorier ou de la trésorière prévue au paragraphe 54 (1), le ou la secrétaire envoie aux conseillers et aux conseillères habilités à voter à cette élection, au plus tard cinq jours ouvrables après celui où il ne reste qu’une candidature, un avis énonçant ce qui suit :

- a) la date de son envoi ;
- b) le fait que la période de mise en candidature est rouverte ;

- c) la nouvelle date de clôture des mises en candidature ;
- d) le fait que les bulletins de vote reçus seront rejetés ;
- e) la date du début du vote ;
- f) la date de l'élection du trésorier ou de la trésorière.

Annnonce des candidatures

58. Après la date de clôture des mises en candidature, le ou la secrétaire avise, le plus tôt possible après cette date, les conseillers et conseillères habilités à voter à l'élection du trésorier ou de la trésorière du nom des candidats et candidates en lice, ainsi que de celui des conseillers et conseillères qui les ont mis en candidature.

Élection sans concurrent

59. (1) S'il n'y a qu'une seule candidature après la clôture des mises en candidature, le ou la secrétaire déclare le candidat ou la candidate en question élu à la charge de trésorier.

Idem

(2) Malgré toute disposition contraire à la présente partie, si, après la clôture des mises en candidature conformément au paragraphe 55 (5), au moins deux candidats ou candidates sont en lice, mais que le jour de l'élection du trésorier ou de la trésorière, il n'y en a qu'un ou une, le ou la secrétaire déclare le candidat ou la candidate en question élu à la charge de trésorier.

Scrutin

60. (1) Si, après la clôture des mises en candidature, au moins deux candidats ou candidates sont en lice, un scrutin a lieu afin d'élire le trésorier ou la trésorière.

Anonymat des conseillers votants et secret du vote

(2) La procédure de scrutin protège l'anonymat des conseillers votants et le secret de leur vote.

Procédure électronique

60.1 Si un scrutin est nécessaire pour élire un trésorier ou une trésorière, le ou la secrétaire :

- a) établit, dès que possible après la date de clôture des mises en candidature, la procédure électronique que devront suivre les conseillers et conseillères habilités à

voter pour l'élection du trésorier ou de la trésorière ;

- b) publie, avant l'ouverture du scrutin, la procédure électronique que devront suivre les conseillers et conseillères habilités à voter pour l'élection du trésorier ou de la trésorière.

Candidature du trésorier ou de la trésorière

61. Le trésorier ou la trésorière qui se porte candidat à l'élection nomme l'un des conseillers qui assument la présidence d'un comité permanent du Conseil et qui ne se portent pas candidats à l'élection et la charge d'exercer les attributions de la charge de trésorier conformément à la présente partie.

Droit de vote

62. (1) Les conseillères et conseillers habilités à voter au Conseil sont habilités à voter lors de l'élection du trésorier ou de la trésorière.

Liste des électeurs et électrices

(2) Si un scrutin est nécessaire pour élire un trésorier ou une trésorière, après la clôture des mises en candidature, le ou la secrétaire prépare une liste de conseillers et de conseillères habilités à voter à l'élection du trésorier ou de la trésorière.

Liste des personnes qui ont voté

(3) À partir de l'ouverture du scrutin et jusqu'à sa clôture, le ou la secrétaire inscrit sur la liste préparée en vertu du paragraphe (2) le nom de chaque conseiller ou conseillère qui dépose un bulletin de vote, de sorte qu'à tout moment, la liste indique les conseillers et conseillères qui ont voté et ceux et celles qui n'ont pas encore voté pour l'élection du trésorier ou de la trésorière, et le ou la secrétaire met cette liste à la disposition des candidats au poste de trésorier ou de trésorière et des conseillers et conseillères qui sont habilités à voter pour l'élection du trésorier ou de la trésorière.

Déroulement du scrutin

63. (1) Le vote :
- a) débute à 9 heures le deuxième mercredi de juin et se termine à 9 heures le jour de l'élection ;
 - b) débute à 9 heures le troisième jour ouvrable suivant la date de clôture des mises en candidature prévue au paragraphe 55 (5) et qui se termine à 9 heures le jour de l'élection prévue au paragraphe 54 (2), s'il y a au moins deux candidatures après la

date de clôture des mises en candidature prévue au paragraphe 54 (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l'être, pour quelque raison que ce soit, avant le jour de l'élection du trésorier ou de la trésorière prévue au paragraphe 54 (1).

Méthode de vote

(2) Les conseillers et conseillères doivent voter lors du scrutin en suivant la procédure électronique établie par le ou la secrétaire.

Comment remplir un bulletin de vote

(3) Les conseillers et les conseillères qui votent remplissent le bulletin de vote selon les directives des paragraphes (4) ou (5).

Deux candidats en lice

(4) Si un maximum de deux personnes est en lice, les conseillers et conseillères votent pour l'un des candidats en sélectionnant le nom du candidat ou de la candidate de leur choix.

Plus de deux candidats

(5) Si au moins trois personnes sont en lice, les conseillers ou conseillères indiquent leur choix par ordre de préférence à l'aide d'un chiffre indiqué à côté du nom de chaque candidat ou candidate.

Rejet des bulletins

(6) S'il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe 55 (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l'être, pour quelque raison que ce soit, avant le jour de l'élection du trésorier ou de la trésorière prévue au paragraphe 54 (1), le ou la secrétaire fait rejeter les bulletins de vote après cette date.

64. [Abrogé].

65. [Abrogé].

Dépouillement

66. (1) Immédiatement après la clôture du scrutin le jour de l'élection, le ou la secrétaire entreprend le décompte des voix de chaque candidat(e).

Idem

(2) Si, lors du scrutin, les candidats et candidates ont été classés par ordre de préférence, le ou la secrétaire, lors du décompte des voix exprimées lors du scrutin, fera en sorte que le vote du conseiller ou de la conseillère soit compté en présumant qu'il ou elle a choisi la candidate ou le candidat classé au premier rang sur son bulletin de vote.

Annnonce des résultats : deux candidats

67. (1) Si deux noms seulement apparaissent sur les bulletins de vote, le ou la secrétaire, immédiatement après avoir procédé au décompte de voix par candidat, annonce les résultats du scrutin au Conseil et déclare trésorier ou trésorière la personne qui a reçu le nombre le plus élevé de voix.

Annnonce des résultats : au moins trois candidats

(2) Si au moins trois noms apparaissent sur les bulletins de vote et que le ou la secrétaire, après avoir procédé au décompte de voix, détermine qu'au moins un candidat ou une candidate a reçu plus de 50 pour cent des voix, il annonce les résultats du scrutin au Conseil et déclare trésorier ou trésorière la personne qui a reçu le nombre le plus élevé de voix.

Dépouillement des votes lorsqu'il y a au moins trois candidats et aucun(e) candidat(e) majoritaire

67.1 (1) Si, lors d'un scrutin, il y a trois candidats ou plus et que, après dépouillement des votes, aucun(e) candidat(e) n'a recueilli plus de 50 % des voix exprimées pour l'ensemble des candidats, le ou la secrétaire fait procéder au dépouillement comme suit :

1. Le ou la candidat(e) ayant reçu le moins de votes de premier choix est éliminé(e) en tant que candidat(e) à l'élection.
2. Pour chaque bulletin de vote sur lequel le ou la candidat(e) éliminé(e) est le premier choix, le ou la candidat(e) qui est le deuxième choix et qui n'a pas été éliminé(e) est compté(e) comme le ou la candidat(e) de premier choix pour ce bulletin ; le ou la candidat(e) de troisième choix qui n'a pas été éliminé(e) est compté(e) comme le ou la candidat(e) de deuxième choix pour ce bulletin, et ainsi de suite jusqu'à ce que tous les candidats classés sur le bulletin aient été comptés.
3. Si un(e) candidat(e) reçoit plus de 50 % des votes exprimés pour l'ensemble des candidats, le ou la secrétaire communique les résultats au Conseil et déclare ce ou cette candidat(e) élu(e) trésorier ou trésorière.
4. Si deux candidats ou plus reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un d'eux d'être élu trésorier ou trésorière, le trésorier ou la trésorière choisit l'un des candidats, comme le prévoit le

paragraphe 68 (1).

5. Dans les cas où ni l'alinéa 3 ni l'alinéa 4 ne s'appliquent, le secrétaire fait en sorte que le décompte des voix se poursuive conformément aux alinéas 1 et 2, sous réserve des paragraphes (2), (3) et (4), jusqu'à ce qu'un(e) candidat(e) soit élu(e) trésorier ou trésorière en vertu de l'un de ces alinéas.

En cas d'égalité

(2) Si au moins deux candidats reçoivent chacun le moins de voix de premier choix et le même nombre de voix de second choix, le ou la secrétaire fait compter toutes les voix de second choix exprimées pour ces candidats sur tous les bulletins de vote et le ou la candidat(e) ayant obtenu le moins de voix de second choix est éliminé(e) comme candidat(e) à l'élection.

Idem

(3) Si aucun(e) candidat(e) ne peut être éliminé(e) en tant que candidat(e) à l'élection en vertu du paragraphe (2), le ou la secrétaire fait en sorte que le processus de dépouillement en vertu de ce paragraphe se poursuive sur la base des voix de prochain choix exprimées sur tous les bulletins, par ordre de préférence, jusqu'à ce que l'on détermine le ou la candidat(e) qui a reçu le moins grand nombre de ces voix de prochain choix comptées. À ce stade, ce ou cette candidat(e) est éliminé(e) en tant que candidat(e) à l'élection.

Idem

(4) Si aucun(e) candidat(e) ne peut être éliminé(e) de la liste des candidats à l'élection en vertu des paragraphes (2) ou (3), le ou la secrétaire procède de l'une des façons suivantes, selon le cas :

1. Si le nombre le moins élevé de votes de premier choix pour un(e) candidat(e) en vertu du paragraphe (2) ne comprend pas les votes comptés pour ce ou cette candidat(e) en vertu de l'alinéa 67.1 (1) 2, le ou la secrétaire fait procéder à une sélection aléatoire de l'un des candidats et le ou la candidat(e) sélectionné(e) est éliminé(e) comme candidat(e) à l'élection.
2. Si le nombre le moins élevé de votes de premier choix pour un(e) candidat(e) en vertu du paragraphe (2) comprend les votes comptés pour ce ou cette candidat(e) en vertu de l'alinéa 67.1 (1) 2, le ou la candidat(e) ayant obtenu le nombre le moins élevé de votes de premier choix avant cette inclusion est éliminé(e) comme candidat(e) à l'élection.

Voix prépondérante

68. (1) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un ou à l'une d'eux d'être déclaré élu à la charge de trésorier, le trésorier ou la trésorière a voix prépondérante.

69. [Abrogé].

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BENCHERS, CONVOCATION AND COMMITTEES

PART I

BENCHERS

...

PART IV

TREASURER

ELECTION OF TREASURER

Time of election

54. (1) Subject to subsection (2), there shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

Same

(2) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection (1), all of the candidates, but one, cease, for any reason, to be candidates, there shall be an election of Treasurer on the later of the day on which the regular meeting of Convocation is held in June and the day that is ten business days after the day of the close of nominations of candidates under subsection 55 (5).

First matter of business

(3) If there is an election of Treasurer on the day on which the regular meeting of Convocation is held in June, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.

Nomination of candidates

55. (1) A candidate for election as Treasurer shall be nominated by not more than two benchers who are entitled to vote in Convocation.

Nomination in writing

(2) The nomination of a candidate shall be in writing, signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate and submitted to the secretary prior to the close of nominations of candidates.

Time for close of nominations

(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

Exception

(4) In a year in which there is an election of benchers, the close of nominations of candidates shall be 5 p.m. on the Friday immediately after the day on which the regular meeting of Convocation is held in May.

Nominations reopened

(5) If after the close of nominations of candidates under subsection (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates,

- (a) the period for nominations of candidates shall be reopened; and
- (b) the new close of nominations of candidates shall be 5 p.m. on the day that is ten business days after the day on which the secretary sends the notice under section 57.

Invalid nomination

(6) A nomination that is made by more than two benchers who are entitled to vote in Convocation, that is not made in writing, that is not signed by the candidate, that is not signed by the two benchers nominating the candidate or that is not submitted to the secretary prior to the close of nominations of candidates is invalid and the candidate who is the subject of the nomination shall not be a candidate in the election of Treasurer.

Withdrawal of candidates

56. A candidate may withdraw from an election of Treasurer at any time before the day of the election of Treasurer by giving the secretary written notice of his or her withdrawal.

Reduction in number of candidates: notice

57. ~~(4)~~—If, after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the ~~advance~~ poll shall be discarded;

- (e) the time for the beginning of the new ~~advance~~ poll; and
- (f) the day on which there shall be an election of Treasurer.

~~Election of Treasurer in June 2020: notice under subsection 57 (1)~~

~~(2) — For an election of Treasurer in June 2020, "at the advance poll" in clause 57 (1) (d) shall be read as "at the poll" and "the new advance poll" in clause 57 (1) (e) shall be read as "the new poll".~~

Notice of candidates to benchers

58. ~~(1)~~ — After the close of nominations of candidates, the secretary shall, as soon as practicable, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

Election by acclamation

59. (1) If after the close of nominations of candidates, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

Same

(2) Despite any provision to the contrary in this Part, if, after the close of nominations of candidates under subsection 55 (5), there are two or more candidates, but on the day on which there shall be an election of Treasurer, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

Poll

60. (1) If after the close of nominations of candidates, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

~~Secret ballot~~ Anonymity of voting bencher and secrecy of vote

(2) The procedures for conducting a poll shall be such that the anonymity of a voting bencher and the secrecy of the bencher's vote are preserved. ~~A poll to elect a Treasurer shall be conducted by secret ballot.~~

~~Election of Treasurer in June 2020: e~~ Electronic procedures

60.1 If, ~~in June 2020~~, a poll is required to elect a Treasurer, the secretary shall,

- (a) as soon as practicable after the close of nominations, establish the electronic

procedures by which benchers entitled to vote in the election of Treasurer may vote; and

- (b) prior to the opening of the poll, publish for benchers entitled to vote in the election of Treasurer the electronic procedures established in respect of the election of Treasurer.

Treasurer is candidate in election

61. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this Part.

Right to vote

62. (1) Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

List of voters

(2) If a poll is required to elect a Treasurer, after the close of nominations of candidates, the secretary shall prepare a list of benchers entitled to vote in an election of Treasurer.

List to show who has voted ~~at advance poll~~

~~(3) _____ Beginning at the opening of an advance poll and ending at the close of an advance poll, the secretary shall mark on the list prepared under subsection (2) whenever a bencher casts a ballot at the advance poll so that, at any time, the list will show the benchers who have cast ballots at the advance poll and the benchers who have not yet cast ballots in the election of Treasurer.~~

List to show who has voted on election day

~~_____ (4) On election day, for every ballot required in order to elect a Treasurer, the secretary shall mark on the list prepared under subsection (2), marked as required under subsection (3), whenever a bencher casts a ballot on election day so that, at any time, the list will show the benchers who have cast ballots and the benchers who have not yet cast ballots in the election of Treasurer.~~

Availability of lists

~~_____ (5) The secretary shall make the list described in subsection (3) and the list described in subsection (4) available for inspection to candidates in an election of Treasurer~~

~~and benchers entitled to vote in the election of Treasurer.~~

~~Election of Treasurer in June 2020: list to show who has voted~~

~~(6) For an election of Treasurer in June 2020,~~

~~(a) subsections (3), (4) and (5) shall not apply; and~~

~~(b) Beginning at the opening of the poll and ending at the closing of the poll, the secretary shall mark on the list prepared under subsection (2) whenever a bencher casts a ballot so that, at any time, the list will show the benchers who have cast ballots and the benchers who have not yet cast ballots in the election of Treasurer, and the secretary shall make this list available for inspection to candidates in the election of Treasurer and benchers entitled to vote in the election of Treasurer.~~

~~Advance Conducting poll~~

63. (1) ~~An advance~~ poll shall be conducted,
- (a) beginning at 9 a.m. on the second Wednesday in June and ending at ~~59 p~~a.m. on ~~the day preceding~~ election day; or
 - (b) if after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 55 (5) and ending at ~~59 p~~a.m. on ~~the day preceding~~ election day under subsection 54 (2).

~~Methods of voting at advance poll~~

- (2) ~~A bencher may vote at the advance poll by,~~
 - (a) ~~attending at the office of the secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3); or~~
 - (b) ~~requesting a voting package from the secretary and returning the voting package to the secretary by regular lettermail or otherwise.~~

~~Election of Treasurer in June 2020: methods of voting at poll~~

~~(2.1) For an election of Treasurer in June 2020,~~

- ~~(a) — subsections 63 (2), (6), (7) and (8) and sections 64 and 65 shall not apply;~~
- ~~(b) — the phrase "an advance poll" in subsection 63 (1) shall be read as "a poll";~~
- ~~(c) — the phrase "5 p.m. on the day preceding election day" in clauses 63 (1) (a) and (b) shall be read as "9 a.m. on election day";~~
- ~~(d) — the phrase "the advance poll" in subsections 63 (3) and (9) shall be read as "the poll"; and~~

~~(e) — a~~A bencher shall cast their vote at the poll in accordance with the electronic procedures established by the secretary.

Marking a ballot

(3) A bencher voting at the ~~advance~~ poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are not more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

~~(6) — If a bencher is voting at the advance poll under clause (2) (a), after the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.~~

Same

~~(7) — If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 64 (3) and (4), the secretary shall remove the ballot envelope from the return envelope, remove the ballot from the ballot envelope and put the ballot into the ballot box.~~

Ballots not to be opened

~~(8) — Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.~~

Ballots to be discarded

~~(69)~~ If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, the secretary shall cause to be discarded the ballots received at the ~~advance~~ poll conducted after the close of nominations under subsection 55 (3) or (4).

Special procedures: voting by mail

~~64. ___-(1) — If a bencher requests a voting package from the secretary under clause 63(2)(b), the secretary shall send to the bencher a voting package that includes a ballot, a ballot envelope and a return envelope and shall specify the address to which the voting package must be returned. [Revoked].~~

Same

~~(2) — If a bencher is voting at the advance poll under clause 63(2)(b), the bencher shall,~~

~~(a) — in accordance with subsection 63(3), mark the ballot received from the secretary;~~

~~(b) — after complying with clause (a), place the marked ballot inside the ballot envelope and seal the ballot envelope;~~

~~(c) — after complying with clause (b), place the sealed ballot envelope inside the return envelope and seal the return envelope;~~

~~(d) — after complying with clause (c), sign the return envelope; and~~

~~(e) — after complying with clause (d), send to the secretary, by regular lettermail or otherwise, the voting package, that includes the ballot, the ballot envelope and the return envelope, so that it is received by the secretary not later than 5 p.m. on the day preceding election day.~~

Receipt of return envelopes

~~— (3) — When the secretary receives a voting package at the specified address, the secretary shall check to see if the return envelope bears the signature of a bencher to whom a voting package was sent.~~

Discarding ballots

- ~~—— (4) —— The secretary shall discard a voting package that the secretary receives,~~
- ~~(a) —— at an address other than the specified address;~~
 - ~~(b) —— that does not bear the signature of a bencher to whom a voting package was sent;
and~~
 - ~~(c) —— after 5 p.m. on the day preceding election day.~~

~~Procedure for voting on election day: first ballot~~

65. ~~(1) —— On election day, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a first ballot listing the names of all candidates for election as Treasurer. [Revoked].~~

~~Second ballot~~

~~—— (2) —— On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election of Treasurer at the time of that ballot.~~

~~Application of subs. (2) to second and further ballots~~

~~—— (3) —— Subsection (2) applies to the second ballot and, with necessary modifications, any further ballots in an election of Treasurer.~~

~~Marking ballot~~

~~—— (4) —— Each bencher shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.~~

~~Ballot box~~

~~—— (5) —— After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.~~

~~Counting votes~~

66. ~~(1) —— On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined to vote on a ballot, the secretary shall, in the absence of all persons but in~~

~~the presence of the Treasurer, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.~~

~~Counting votes cast at advance poll~~

~~(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the secretary shall assume that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.~~

~~Application~~

~~(3) This section applies to the count of votes on the first ballot in an election of Treasurer and, with necessary modifications, to the count of votes on the second ballot and any further ballots in an election of Treasurer.~~

~~Election of Treasurer in June 2020: counting votes~~

~~66.1 (1) For an election of Treasurer in June 2020, section 66 shall not apply and subsections 66.1 (2) and (3) shall apply instead.~~

~~Same~~

~~(2) Beginning immediately after the closing of the poll on election day, the secretary shall cause the votes cast for each candidate to be counted.~~

~~Same~~

(23) If at the poll votes were cast for candidates by rank of preference, the secretary shall cause the votes cast for each candidate to be counted with the assumption that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

Report of results: two candidates

67. (1) If on any ballot there are not more than two candidates, immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

Same

~~——(3)—— If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.~~

Further ballot required

~~——(4)—— If a further ballot is required under subsection (3), the secretary shall report to Convocation the candidate on the previous ballot who received the least number of votes and that candidate shall be removed as a candidate in the election.~~

Election of Treasurer in June 2020: Counting votes when three or more candidates and no majority

~~67.1. (1) For an election of Treasurer in June 2020, subsections 67 (3) and (4) and section 69 shall not apply and subsections 67.1 (2), (3), (4) and (5) shall apply instead.~~

Same

~~(2)——~~ If on any ballot there are three or more candidates and, after causing the votes to be counted, no candidate receives more than 50 percent of all votes cast for all candidates, the secretary shall cause the votes to be counted as follows:

1. The candidate receiving the fewest number of first-choice votes shall be removed as a candidate in the election.
2. For each ballot on which the candidate removed as a candidate in the election is the first-choice, the candidate who is the second-choice candidate and who has not been removed as a candidate in the election shall be counted as the first-choice candidate for that ballot, the third-choice candidate who has not been removed as a candidate in the election shall be counted as the second-choice candidate for that ballot, and so on until all candidates ranked on the ballot have been counted.
3. If a candidate receives more than 50 per cent of the votes cast for all candidates, the secretary shall report the results to Convocation and shall declare that candidate to be elected as Treasurer.

4. If two or more candidates receive an equal number of votes and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall select one of the candidates in accordance with subsection 68 (1).
5. If neither paragraph 3 nor 4 applies, the secretary shall cause the counting of votes to continue in accordance with paragraphs 1 and 2, subject to subsections (32), (43) and (54), until a candidate is elected as Treasurer under one of those paragraphs.

Resolution of a tie

(32) If two or more candidates each receive the fewest and the same number of first-choice votes, the secretary shall cause all second-choice votes cast for those candidates on all ballots to be counted and the candidate with the fewest number of second-choice votes shall be removed as a candidate in the election.

Same

(43) If no candidate can be removed as a candidate in the election under subsection (32), the secretary shall cause the process for counting under that subsection to continue based on the next-choice votes cast on all ballots, in order of preference, until one candidate is determined to have received the fewest number of such next-choice votes being counted, at which time that candidate shall be removed as a candidate in the election.

Same

(54) If no candidate can be removed as a candidate in the election under subsection (32) or (43) and,

1. the fewest number of first-choice votes for a candidate in subsection (32) does not include votes counted for that candidate under paragraph 67.1 (21) 2, the secretary shall cause a random selection of one of the candidates and the candidate selected shall be removed as a candidate from the election; or
2. the fewest number of first-choice votes for a candidate in subsection (32) includes votes counted for that candidate under paragraph 67.1 (21) 2, the candidate with the fewest number of first-choice votes before such inclusion shall be removed as a candidate in the election.

Casting tie-breaking vote

68. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the

Treasurer shall randomly select one of the candidates and cast an additional vote for that candidate.

Equal number of votes

~~69. (1) — If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election of Treasurer, a poll shall be conducted to select the candidates to remain in the election. [Revoked].~~

Secret ballot

~~(2) — A poll conducted under subsection (1) shall be conducted by secret ballot.~~

Right to vote

~~(3) — Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).~~

Ballot

~~(4) — Each bencher entitled to vote in a poll conducted under subsection (1) shall receive a ballot listing the names of the candidates who received the equal number of votes.~~

Marking ballot

~~(5) — A bencher shall vote for the candidate or candidates, but not for all the candidates, whom he or she wishes to remain in the election of Treasurer and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen.~~

Ballot box

~~(6) — After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.~~

Counting votes

~~(7) — After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined to vote on a ballot, the secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.~~

Report of results

~~————(8)———— Immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation.~~

Same

~~————(9)———— The candidate who receives the least number of votes in the poll conducted under subsection (1) shall be removed as a candidate in the election of Treasurer.~~

Further polls

~~————(10)———— If two or more candidates in a poll conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted under subsection (1), for the candidates with the same number of votes, until only one candidate from all the candidates included in the initial poll conducted under subsection (1) is removed as a candidate in the election of Treasurer.~~

TERM OF OFFICE

Taking office

70. (1) In an election of Treasurer under section 54,
- (a) a bencher elected as Treasurer by acclamation shall take office at the regular meeting of Convocation in June following his or her election; and
 - (b) a bencher elected as Treasurer by poll shall take office immediately after his or her election.

Term of office

(2) Subject to any provision in any by-law providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office.

HONORARIUM

Treasurer's entitlement to honorarium

71. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

VACANCY IN OFFICE

Vacancy

72. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 54.

ACTING TREASURER

Acting Treasurer

73. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 72, the chair of the Audit and Finance Committee, or if he or she for any reason is unable to act, the chair of the Professional Development and Competence Committee, shall perform the duties and exercise the powers of the Treasurer until,

- (a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or
- (b) a Treasurer is elected under section 72 or 54.

PART V

CONVOCATION

INTERPRETATION

Definitions

74. (1) In this Part,

“main motion” means a motion which is the subject of an amendment contained in a motion to amend;

“question of privilege” means a question about any right enjoyed at Convocation by the benchers present at Convocation collectively or by any bencher present at Convocation individually conferred by this Part or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being followed at any time at

RÈGLEMENT ADMINISTRATIF N° 3

LES CONSEILLERS, LE CONSEIL ET LES COMITÉS

PARTIE I

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PARTIE IV TRÉSORIER

ÉLECTION DU TRÉSORIER OU DE LA TRÉSORIÈRE

Date de l'élection

54. (1) Sous réserve du paragraphe (2), l'élection du trésorier ou de la trésorière a lieu annuellement le jour de la réunion ordinaire du Conseil qui se tient en juin.

Idem

(2) S'il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe 55 (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l'être, pour quelque raison que ce soit, avant le jour de l'élection du trésorier ou de la trésorière prévue au paragraphe (1), cette élection a lieu le dernier en date du jour de la réunion ordinaire du Conseil qui se tient en juin et de celui qui tombe dix jours ouvrables après la date de clôture des mises en candidature sous réserve du paragraphe 55 (5).

Premier article à l'ordre des travaux

(3) Si elle a lieu le jour de la réunion ordinaire du Conseil qui se tient en juin, l'élection du trésorier ou de la trésorière constitue le premier article à l'ordre des travaux de cette réunion.

Mise en candidature

55. (1) Toute candidature à la charge de trésorier est proposée par deux conseillères ou conseillers habilités à voter au Conseil.

Mise en candidature par écrit

(2) La mise en candidature se fait par écrit et porte la signature du candidat ou de la candidate, indiquant son consentement à la mise en candidature, et celle des deux conseillères ou

conseillers qui proposent la candidature et la soumettent au secrétaire ou à la secrétaire avant la clôture des mises en candidature.

Date de clôture des mises en candidature

(3) Sous réserve du paragraphe (4), la date de clôture des mises en candidature tombe le deuxième jeudi de mai à 17 heures.

Exception

(4) L'année où se tient l'élection des conseillers et des conseillères, la date de clôture des mises en candidature tombe à 17 heures le vendredi qui suit immédiatement le jour de la réunion ordinaire du Conseil de mai.

Réouverture de la période de mise en candidature

(5) S'il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l'être, pour quelque raison que ce soit, avant le jour de l'élection du trésorier ou de la trésorière prévue au paragraphe 54 (1) :

- a) d'une part, la période de mise en candidature est rouverte ;
- b) d'autre part, la nouvelle date de clôture des mises en candidatures tombe le dixième jour ouvrable qui suit le jour où le ou la secrétaire envoie l'avis prévu à l'article 57, à 17 heures.

Mise en candidature non valide

(6) Une mise en candidature qui est faite par au moins deux conseillers ou conseillères habilités à voter au Conseil, qui n'est pas faite par écrit, qui n'est pas signée par le candidat ou la candidate, qui n'est pas signée par les deux conseillers ou conseillères proposant la candidature ou qui n'est pas déposée à la secrétaire ou au secrétaire avant la clôture des mises en candidature est invalide et le candidat ou la candidate mis en candidature ne pourra pas se présenter comme trésorier.

Retrait d'une candidature

56. Les candidats et les candidates peuvent, avant le jour de l'élection du trésorier ou de la trésorière, retirer leur candidature en remettant un avis écrit au ou à la secrétaire.

Réduction du nombre de candidatures : avis

57. ~~(4)~~ — S'il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe 55 (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l'être, pour quelque raison que ce soit, avant le jour de l'élection du

trésorier ou de la trésorière prévue au paragraphe 54 (1), le ou la secrétaire envoie aux conseillers et aux conseillères habilités à voter à cette élection, au plus tard cinq jours ouvrables après celui où il ne reste qu'une candidature, un avis énonçant ce qui suit :

- a) la date de son envoi ;
- b) le fait que la période de mise en candidature est rouverte ;
- c) la nouvelle date de clôture des mises en candidature ;
- d) le fait que les bulletins de vote ~~par anticipation~~ reçus seront rejetés ;
- e) la date du début du vote ~~par anticipation~~ ;
- f) la date de l'élection du trésorier ou de la trésorière.

~~Élection du trésorier ou de la trésorière en juin 2020 : avis en vertu du par. 57 (1)~~

~~(2) — Aux fins de l'élection du trésorier ou de la trésorière en juin 2020, le texte « de vote par anticipation » de l'alinéa 57 (1) d) sera remplacé par « de vote » et le texte « nouveau vote par anticipation » de l'alinéa 57 (1) e) sera remplacé par « nouveau scrutin ».~~

Annonce des candidatures

58. ~~(1)~~ — Après la date de clôture des mises en candidature, le ou la secrétaire avise, le plus tôt possible après cette date, les conseillers et conseillères habilités à voter à l'élection du trésorier ou de la trésorière du nom des candidats et candidates en lice, ainsi que de celui des conseillers et conseillères qui les ont mis en candidature.

Élection sans concurrent

59. (1) S'il n'y a qu'une seule candidature après la clôture des mises en candidature, le ou la secrétaire déclare le candidat ou la candidate en question élu à la charge de trésorier.

Idem

(2) Malgré toute disposition contraire à la présente partie, si, après la clôture des mises en candidature conformément au paragraphe 55 (5), au moins deux candidats ou candidates sont en lice, mais que le jour de l'élection du trésorier ou de la trésorière, il n'y en a qu'un ou une, le ou la secrétaire déclare le candidat ou la candidate en question élu à la charge de trésorier.

Scrutin

60. (1) Si, après la clôture des mises en candidature, au moins deux candidats ou candidates sont en lice, un scrutin a lieu afin d'élire le trésorier ou la trésorière.

Anonymat des conseillers votants et secret du vote~~Scrutin secret~~

(2) La procédure de scrutin protège l'anonymat des conseillers votants et le secret de leur vote~~La trésorière ou le trésorier est élu au scrutin secret.~~

Élection du trésorier ou de la trésorière en juin 2020 : p~~P~~rocédure électronique

60.1 Si ~~en juin 2020,~~ un scrutin est nécessaire pour élire un trésorier ou une trésorière, le ou la secrétaire :

- a) établit, dès que possible après la date de clôture des mises en candidature, la procédure électronique que devront suivre les conseillers et conseillères habilités à voter pour l'élection du trésorier ou de la trésorière ;
- b) publie, avant l'ouverture du scrutin, la procédure électronique que devront suivre les conseillers et conseillères habilités à voter pour l'élection du trésorier ou de la trésorière.

Candidature du trésorier ~~ou de la trésorière~~

61. Le trésorier ou la trésorière qui se porte candidat à l'élection nomme l'un des conseillers qui assument la présidence d'un comité permanent du Conseil et qui ne se portent pas candidats à l'élection et la charge d'exercer les attributions de la charge de trésorier conformément à la présente partie.

Droit de vote

62. (1) Les conseillères et conseillers habilités à voter au Conseil sont habilités à voter lors de l'élection du trésorier ou de la trésorière.

Liste des électeurs et électrices

(2) Si un scrutin est nécessaire pour élire un trésorier ou une trésorière, après la clôture des mises en candidature, le ou la secrétaire prépare une liste de conseillers et de conseillères habilités à voter à l'élection du trésorier ou de la trésorière.

Liste des personnes qui ont voté ~~par anticipation~~

(3) ~~À l'ouverture et à la fin du scrutin anticipé, le ou la secrétaire indique sur la liste préparée conformément au paragraphe (2) quand un conseiller ou une conseillère a voté par anticipation pour que, en tout temps, la liste montre qui a voté par anticipation et qui n'a pas encore voté dans l'élection du trésorier ou de la trésorière.~~

~~Liste des personnes qui ont voté le jour de l'élection~~

~~— (4) — Le jour de l'élection, pour chaque bulletin de vote requis pour élire un trésorier ou une trésorière, le ou la secrétaire indiquera sur la liste préparée conformément au paragraphe (2), portant les indications requises au paragraphe (3), quand un conseiller ou une conseillère vote le jour de l'élection pour que, en tout temps, la liste montre les conseillers et conseillères qui ont voté à l'élection du trésorier ou de la trésorière et ceux et celles qui ne l'ont pas encore fait.~~

Disponibilité des listes

~~— (5) — La ou le secrétaire met les listes décrites aux paragraphes (3) et (4) à la disposition des candidats et candidates et des conseillers et conseillères habilités à voter à l'élection du trésorier ou de la trésorière.~~

Élection du trésorier ou de la trésorière en juin 2020 : liste des personnes ayant voté

~~(6) — Pour l'élection du trésorier ou de la trésorière en juin 2020 :-~~

~~a) — les paragraphes (3), (4) et (5) ne s'appliquent pas ;~~

~~b) — À partir de l'ouverture du scrutin et jusqu'à sa clôture, le ou la secrétaire inscrit sur la liste préparée en vertu du paragraphe (2) le nom de chaque conseiller ou conseillère qui dépose un bulletin de vote, de sorte qu'à tout moment, la liste indique les conseillers et conseillères qui ont voté et ceux et celles qui n'ont pas encore voté pour l'élection du trésorier ou de la trésorière, et le ou la secrétaire met cette liste à la disposition des candidats au poste de trésorier ou de trésorière et des conseillers et conseillères qui sont habilités à voter pour l'élection du trésorier ou de la trésorière.~~

Déroulement du scrutin ~~Vote par anticipation~~

63. (1) ~~A lieu u~~Le vote ~~_par anticipation_:~~

a) ~~qui~~ débute à 9 heures le deuxième mercredi de juin et ~~qui~~ se termine à 17 9 heures ~~la veille du~~ le jour de l'élection ;

b) ~~qui~~ débute à 9 heures le troisième jour ouvrable suivant la date de clôture des mises en candidature prévue au paragraphe 55 (5) et qui se termine à 17 9 heures ~~la veille du~~ le jour de l'élection prévue au paragraphe ~~34~~ 54 (2), s'il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe 54 (~~13~~) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l'être, pour quelque raison que ce soit, avant le jour de l'élection du trésorier ou de la trésorière prévue au paragraphe 54 (~~21~~).

Méthodes de vote ~~par anticipation~~

(2) ~~Les conseillers et conseillères peuvent voter par anticipation de l'une ou l'autre des façons suivantes :-~~

a) ~~en se présentant au bureau du ou de la secrétaire du lundi au vendredi, entre 9 h et 17 h, pour recevoir et remplir un bulletin de vote conformément au paragraphe (3);~~

b) ~~en demandant au ou à la secrétaire une trousse électorale et en la lui retournant par courrier régulier ou par tout autre moyen.~~

Élection du trésorier ou de la trésorière en juin 2020 : méthodes de vote lors du scrutin

~~(2.1) Pour l'élection du trésorier ou de la trésorière en juin 2020 :-~~

a) ~~les paragraphes 63 (2), (6), (7) et (8) ainsi que les articles 64 et 65 ne s'appliquent pas;~~

b) ~~le texte « un vote par anticipation » au paragraphe 63 (1) est remplacé par « un scrutin »;~~

c) ~~le texte « à 17 heures la veille du jour de l'élection » aux dispositions 63 (1) a) et b) est remplacé par « à 9 h le jour de l'élection »;~~

d) ~~le texte « qui votent par anticipation » au paragraphe 63 (3) est remplacé par « qui votent au scrutin » et le texte « les bulletins de vote par anticipation » au paragraphe 63 (9) est remplacé par « les bulletins de vote déposés »;~~

e) ~~Les~~ Les conseillers et conseillères doivent voter lors du scrutin en suivant la procédure électronique établie par le ou la secrétaire.

Comment remplir un bulletin de vote

(3) Les conseillers et les conseillères qui votent ~~par anticipation~~ remplissent le bulletin de vote selon les directives des paragraphes (4) ou (5).

Deux candidats en lice

(4) Si un maximum de deux personnes est en lice, les conseillers et conseillères votent pour l'un des candidats en sélectionnant le nom du candidat ou de la candidate de leur choix.

Plus de deux candidats

(5) Si au moins trois personnes sont en lice, les conseillers ou conseillères indiquent leur choix par ordre de préférence à l'aide d'un chiffre indiqué à côté du nom de chaque candidat ou candidate.

Boîte de scrutin

~~(6) Les conseillers et les conseillères qui votent par anticipation en vertu de l'alinéa a) plient leurs bulletins de vote, une fois remplis, de façon à ce que les noms des candidats et candidates ne soient pas visibles et, en présence du ou de la secrétaire, déposent les bulletins dans la boîte de scrutin.~~

Idem

~~(7) — Si le conseiller ou la conseillère vote par anticipation en vertu de l’alinéa (2) b), le ou la secrétaire, après s’être conformé aux paragraphes 64 (3) et (4), retire l’enveloppe de l’enveloppe réponse, retire le bulletin de vote de l’enveloppe et le dépose dans la boîte de scrutin.~~

Bulletins de vote ouverts lors de l’élection

~~(8) — Il est interdit d’ouvrir les bulletins de vote par anticipation avant le dépouillement du scrutin le jour de l’élection.~~

Rejet des bulletins

(69) S’il y a au moins deux candidatures après la date de clôture des mises en candidature prévue au paragraphe 55 (3) ou (4) et que tous les candidats ou toutes les candidates, sauf un ou une, cessent de l’être, pour quelque raison que ce soit, avant le jour de l’élection du trésorier ou de la trésorière prévue au paragraphe 54 (1), le ou la secrétaire fait rejeter les bulletins de vote ~~par anticipation~~ après cette date.

64. [Abrogé].

Procédures extraordinaires : vote par courrier

~~64. (1) — Le ou la secrétaire envoie aux conseillers et conseillères qui lui en font la demande, conformément à l’alinéa 63 (2) b), une trousse électorale qui inclut un bulletin de vote, une enveloppe électorale et une enveloppe réponse ; cette dernière précise l’adresse de l’expéditeur de la trousse électorale.~~

Idem

~~(2) — Les conseillères et les conseillers qui décident de voter par anticipation en vertu de l’alinéa 63 (2) b):~~

- ~~a) — remplissent, conformément au paragraphe 63 (3), le bulletin de vote qui leur a été acheminé par le ou la secrétaire ;~~
- ~~b) — après s’être conformés à l’alinéa a), déposent le bulletin dument rempli dans l’enveloppe électorale et scellent cette dernière ;~~
- ~~c) — après s’être conformés à l’alinéa b), déposent l’enveloppe électorale dans l’enveloppe réponse et scellent cette dernière ;~~
- ~~d) — après s’être conformés à l’alinéa c), signent l’enveloppe réponse ;~~
- ~~e) — après s’être conformés à l’alinéa d), font parvenir au ou à la secrétaire, par courrier~~

régulier ou par tout autre moyen, la trousse électorale qui contient le bulletin de vote, l'enveloppe électorale et l'enveloppe réponse ; le tout doit parvenir au ou à la secrétaire au plus tard la veille du jour de l'élection à 17 heures.

Réception des enveloppes réponses

~~— (3) —~~ À la réception de la trousse électorale à l'adresse indiquée, le ou la secrétaire vérifie si l'enveloppe réponse porte la signature du conseiller ou de la conseillère à qui la trousse avait été acheminée.

Rejet de bulletins de vote

~~— (4) —~~ La ou le secrétaire rejette la trousse électorale qu'il reçoit :

- ~~a) —~~ à une adresse autre que celle indiquée ;
- ~~b) —~~ qui ne porte pas la signature du conseiller ou de la conseillère à qui la trousse électorale avait été acheminée ;
- ~~c) —~~ reçue après 17 heures la veille du jour de l'élection.

Procédure de vote le jour de l'élection : premier tour de scrutin

65. ~~(1) —~~ Le jour de l'élection, au premier tour de scrutin, tous les conseillers et conseillères habilités à voter lors de l'élection du trésorier ou de la trésorière et n'ayant pas voté par anticipation reçoivent un bulletin où apparaissent les noms des candidats et candidates à la charge de trésorier en lice. [Abrogé].

Deuxième tour de scrutin

~~(2) —~~ Le jour de l'élection, si la trésorière ou le trésorier n'est pas élu à la suite du décompte des voix exprimées lors du vote par anticipation et du premier tour de scrutin, les conseillères et conseillers habilités à voter lors de l'élection et qui n'ont pas voté par anticipation participent alors au deuxième tour de scrutin et reçoivent un bulletin où apparaissent les noms des candidates et candidats à la charge de trésorier encore en lice.

Application du par. (2) aux tours de scrutin subséquents

~~(3) —~~ Lors de l'élection du trésorier ou de la trésorière, le paragraphe (2) s'applique, avec les adaptations nécessaires, au deuxième tour de scrutin et aux tours de scrutin subséquents.

Comment remplir le bulletin

~~(4) —~~ Les conseillères et les conseillers ne votent que pour un seul candidat ou une seule

~~candidate par bulletin de vote en sélectionnant le nom du candidat ou de la candidate de leur choix.~~

Boîte de scrutin

~~— (5) — Après avoir rempli leurs bulletins de vote, les conseillers et les conseillères les plient de façon à ce que les noms des candidates et des candidats ne soient pas visibles et, en présence du ou de la secrétaire, les déposent dans la boîte de scrutin.~~

Dépouillement

66. (1) ~~Le jour de l'élection, après que toutes les conseillères et tous les conseillers habilités à voter à l'élection du trésorier ou de la trésorière ont voté ou refusé de voter, le ou la secrétaire, en l'absence de toutes les personnes sauf du trésorier ou de la trésorière, ouvre la boîte de scrutin, en retire tous les bulletins, les ouvre et procède au décompte des voix exprimées par candidat.~~

Dépouillement : vote par anticipation

~~— (2) — Si, lors du vote par anticipation, les candidats et candidates ont été classés par ordre de préférence, le ou la secrétaire, lors du décompte des voix exprimées lors du vote par anticipation, conclut que le choix du conseiller ou de la conseillère s'est porté sur la candidate ou le candidat classé premier sur le bulletin de vote.~~

Application

~~— (3) — Le présent paragraphe s'applique au décompte des voix exprimées au premier tour de scrutin de l'élection du trésorier ou de la trésorière et, avec les adaptations nécessaires, au décompte des voix exprimées au second tour de scrutin et aux tours de scrutin subséquents jusqu'à l'élection.~~

Élection du trésorier ou de la trésorière en juin 2020 : dépouillement des votes

66.1 (1) ~~Aux fins de l'élection du trésorier ou de la trésorière en juin 2020, l'article 66 ne s'applique pas et ce sont plutôt les paragraphes 66.1 (2) et (3) qui s'appliquent.~~

Idem

~~— (2) — Immédiatement après la clôture du scrutin le jour de l'élection, le ou la secrétaire entreprend le décompte des voix de chaque candidat(e).~~

Idem

(32) Si, lors du scrutin, les candidats et candidates ont été classés par ordre de préférence, le ou la secrétaire, lors du décompte des voix exprimées lors du scrutin, fera en sorte que le vote du conseiller ou de la conseillère soit compté en présumant qu'il ou elle a choisi la candidate ou le candidat classé au premier rang sur son bulletin de vote.

Annonce des résultats : deux candidats

67. (1) Si deux noms seulement apparaissent sur les bulletins de vote, le ou la secrétaire, immédiatement après avoir procédé au décompte de voix par candidat, annonce les résultats du scrutin au Conseil et déclare trésorier ou trésorière la personne qui a reçu le nombre le plus élevé de voix.

Annonce des résultats : au moins trois candidats

(2) Si au moins trois noms apparaissent sur les bulletins de vote et que le ou la secrétaire, après avoir procédé au décompte de voix, détermine qu'au moins un candidat ou une candidate a reçu plus de 50 pour cent des voix, il annonce les résultats du scrutin au Conseil et déclare trésorier ou trésorière la personne qui a reçu le nombre le plus élevé de voix.

Idem

~~——(3)—— Si au moins trois noms apparaissent sur les bulletins de vote et que le ou la secrétaire, après avoir procédé au décompte de voix, détermine qu'aucun des candidats n'a reçu plus de 50 pour cent des voix, il en informe le Conseil et annonce la tenue d'un tour de scrutin supplémentaire afin d'élire le trésorier ou la trésorière.~~

Tour de scrutin supplémentaire

~~——(4)—— S'il est nécessaire de procéder à un autre tour de scrutin conformément au paragraphe (3), le ou la secrétaire annonce au Conseil le nom du candidat ou de la candidate qui a reçu le moins de voix et son nom est retiré du processus électoral.~~

Élection du trésorier ou de la trésorière en juin 2020 : dDépouillement des votes lorsqu'il y a au moins trois candidats et aucun(e) candidat(e) majoritaire

~~67.1 (1) Aux fins de l'élection du trésorier ou de la trésorière en juin 2020, les paragraphes 67 (3) et (4) et l'article 69 ne s'appliquent pas, et ce sont plutôt les paragraphes 67.1 (2), (3), (4) et (5) qui s'appliquent.~~

Idem

~~(2)——~~ Si, lors d'un scrutin, il y a trois candidats ou plus et que, après dépouillement des votes, aucun(e) candidat(e) n'a recueilli plus de 50 % des voix exprimées pour l'ensemble des candidats, le ou la secrétaire fait procéder au dépouillement comme suit :

1. Le ou la candidat(e) ayant reçu le moins de votes de premier choix est éliminé(e) en tant que candidat(e) à l'élection.
2. Pour chaque bulletin de vote sur lequel le ou la candidat(e) éliminé(e) est le premier choix, le ou la candidat(e) qui est le deuxième choix et qui n'a pas été

éliminé(e) est compté(e) comme le ou la candidat(e) de premier choix pour ce bulletin ; le ou la candidat(e) de troisième choix qui n'a pas été éliminé(e) est compté(e) comme le ou la candidat(e) de deuxième choix pour ce bulletin, et ainsi de suite jusqu'à ce que tous les candidats classés sur le bulletin aient été comptés.

3. Si un(e) candidat(e) reçoit plus de 50 % des votes exprimés pour l'ensemble des candidats, le ou la secrétaire communique les résultats au Conseil et déclare ce ou cette candidat(e) élu(e) trésorier ou trésorière.
4. Si deux candidats ou plus reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un d'eux d'être élu trésorier ou trésorière, le trésorier ou la trésorière choisit l'un des candidats, comme le prévoit le paragraphe 68 (1).
5. Dans les cas où ni l'alinéa 3 ni l'alinéa 4 ne s'appliquent, le secrétaire fait en sorte que le décompte des voix se poursuive conformément aux alinéas 1 et 2, sous réserve des paragraphes (32), (43) et (54), jusqu'à ce qu'un(e) candidat(e) soit élu(e) trésorier ou trésorière en vertu de l'un de ces alinéas.

En cas d'égalité

(23) Si au moins deux candidats reçoivent chacun le moins de voix de premier choix et le même nombre de voix de second choix, le ou la secrétaire fait compter toutes les voix de second choix exprimées pour ces candidats sur tous les bulletins de vote et le ou la candidat(e) ayant obtenu le moins de voix de second choix est éliminé(e) comme candidat(e) à l'élection.

Idem

(34) Si aucun(e) candidat(e) ne peut être éliminé(e) en tant que candidat(e) à l'élection en vertu du paragraphe (23), le ou la secrétaire fait en sorte que le processus de dépouillement en vertu de ce paragraphe se poursuive sur la base des voix de prochain choix exprimées sur tous les bulletins, par ordre de préférence, jusqu'à ce que l'on détermine le ou la candidat(e) qui a reçu le moins grand nombre de ces voix de prochain choix comptées. À ce stade, ce ou cette candidat(e) est éliminé(e) en tant que candidat(e) à l'élection.

Idem

(54) Si aucun(e) candidat(e) ne peut être éliminé(e) de la liste des candidats à l'élection en vertu des paragraphes (32) ou (43), le ou la secrétaire procède de l'une des façons suivantes, selon le cas :

1. Si le nombre le moins élevé de votes de premier choix pour un(e) candidat(e) en vertu du paragraphe (32) ne comprend pas les votes

comptés pour ce ou cette candidat(e) en vertu de l'alinéa 67.1 (21) 2, le ou la secrétaire fait procéder à une sélection aléatoire de l'un des candidats et le ou la candidat(e) sélectionné(e) est éliminé(e) comme candidat(e) à l'élection.

2. Si le nombre le moins élevé de votes de premier choix pour un(e) candidat(e) en vertu du paragraphe (32) comprend les votes comptés pour ce ou cette candidat(e) en vertu de l'alinéa 67.1 (21) 2, le ou la candidat(e) ayant obtenu le nombre le moins élevé de votes de premier choix avant cette inclusion est éliminé(e) comme candidat(e) à l'élection.

Voix prépondérante

68. (1) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un ou à l'une d'eux d'être déclaré élu à la charge de trésorier, le trésorier ou la trésorière a voix prépondérante.

Nombre égal de voix

~~69.—(1)— Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un d'eux de rester en lice dans l'élection du trésorier ou de la trésorière, un sondage a lieu afin de choisir les candidats et les candidates qui resteront en lice. [Abrogé].~~

Scrutin secret

~~—(2)— Le sondage tenu en application du paragraphe (1) a lieu par scrutin secret.~~

Droit de vote

~~—(3)— Les conseillères et les conseillers habilités à voter à l'élection du trésorier ou de la trésorière ont le droit de participer au sondage prévu au paragraphe (1).~~

Bulletin

~~—(4)— Les conseillères et les conseillers habilités à participer au sondage prévu au paragraphe (1) reçoivent un bulletin où apparaissent les noms des candidats ou des candidates qui ont reçu un nombre égal de voix.~~

Comment remplir le bulletin

~~—(5)— Les conseillers et les conseillères votent pour le ou les candidats ou la ou les candidates qu'ils souhaitent conserver pour l'élection du trésorier ou de la trésorière, mais non pour la totalité de ceux-ci ou de celles-ci, en sélectionnant le nom de chaque candidat ou de chaque candidate de leur choix.~~

Boite de scrutin

~~— (6) — Après avoir rempli leurs bulletins de vote, les conseillers et les conseillères les plient de façon que les noms des candidates et des candidats ne soient pas visibles et, en présence du ou de la secrétaire, les déposent dans la boîte de scrutin.~~

Dépouillement

~~— (7) — Après que toutes les conseillères et tous les conseillers habilités à participer au sondage prévu au paragraphe (1) ont voté ou refusé de voter, le ou la secrétaire, en l'absence de toutes les personnes sauf du trésorier ou de la trésorière, ouvre la boîte de scrutin, en retire tous les bulletins, les ouvre et procède au décompte des voix exprimées par candidat.~~

Annonce des résultats

~~— (8) — Immédiatement après avoir procédé au décompte des voix par candidat, le ou la secrétaire annonce les résultats du sondage au conseil.~~

Idem

~~— (9) — Le candidat ou la candidate qui reçoit le nombre le moins élevé de voix dans le sondage prévu au paragraphe (1) est éliminé de la liste des candidats et candidates à l'élection du trésorier ou de la trésorière.~~

Sondages supplémentaires

~~— (10) — Si au moins deux candidats ou candidates figurant dans le sondage prévu au paragraphe (1) reçoivent le moins élevé et le même nombre de voix, d'autres sondages prévus à ce paragraphe sont tenus pour ces candidats et candidates jusqu'à ce qu'une candidate ou un candidat visé par le premier sondage soit éliminé de la liste des candidats et candidates à l'élection du trésorier ou de la trésorière.~~

MANDAT

Entrée en fonction

70. (1) Lors de l'élection du trésorier ou de la trésorière conformément à l'article 54 :
- a) la conseillère ou le conseiller élu sans concurrent à la charge de trésorier entre en fonction lors de la réunion ordinaire du Conseil qui se tient en juin après l'élection ;
 - b) la conseillère ou le conseiller élu à la charge de trésorier par voie de scrutin entre en fonction immédiatement après son élection.

Durée du mandat

(2) Sous réserve des règlements administratifs traitant de la destitution de la personne assumant la charge de trésorier, cette personne conserve son poste jusqu'à l'entrée en fonction de son successeur.

HONORAIRES

Droit du trésorier à recevoir des honoraires

71. La trésorière ou le trésorier est habilité à recevoir des honoraires du Barreau dont le montant est fixé par le Conseil.

VACANCE DE LA CHARGE DE TRÉSORIER

Vacance

72. En cas de démission, de destitution ou, pour quelque raison que ce soit, d'empêchement du trésorier ou de la trésorière au cours de son mandat, le Conseil élit, dès la première occasion, une conseillère ou un conseiller élu pour combler la vacance jusqu'à l'élection du prochain trésorier ou de la prochaine trésorière, conformément à l'article 54.

TRÉSORIER INTÉRIMAIRE

Trésorier intérimaire

73. Si, pour quelque raison que ce soit, la trésorière ou le trésorier est temporairement incapable de remplir les attributions de sa charge ou en cas de vacance conformément à l'article 72, la personne assumant la présidence du Comité d'audit et de finance ou, en cas d'empêchement de sa part, la personne assumant la présidence du Comité du perfectionnement professionnel remplit les attributions de la charge de trésorier jusqu'à ce que se présente l'une des situations suivantes :

- a) la trésorière ou le trésorier est en mesure de remplir les attributions de sa charge ;
- b) une trésorière ou un trésorier est élu conformément à l'article 72 ou 54.

PARTIE V

LE CONSEIL

INTERPRÉTATION

Définitions

74. (1) Les définitions qui suivent s'appliquent à la présente partie.

« Motion de fond » motion qui constitue une proposition autonome pouvant servir à exprimer une décision des conseillères et des conseillers présents à la réunion du conseil quant à une question d'importance pour le barreau.

« motion principale » Motion qui fait l'objet d'un amendement figurant dans une motion portant amendement.

« question de privilège » question concernant tout droit dont les conseillères et les conseillers présents à la réunion du conseil jouissent collectivement ou personnellement et qui leur est conféré par la présente partie ou par la pratique, les précédents, l'usage ou la coutume.

« question de procédure » question concernant la procédure à observer lors des réunions du conseil.

Tab 3

Tribunal Committee

For Decision and Information

September 24, 2020

Committee Members:

Julia Shin Doi (Chair)
Ryan Alford (Vice-Chair)
Marian Lippa (Vice-Chair)
David A. Wright (*ex officio*)
Jared Brown
Paul Cooper
Jean-Jacques Desgranges
John Fagan
Michael LeSage
C. Scott Marshall
Isfahan Merali
Barbara Murchie
Geneviève Painchaud
Chi-Kun Shi
Tanya Walker

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For Decision

Tab 3.1 Amendments to the Rules of Practice and Procedure

For Information

Tab 3.2 Practice Directions

Tab 3.3 Q2 2020 Tribunal Statistics



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Amendments to the Rules of Practice and Procedure

Motion

That Convocation approve the proposed English and French amendments to the Law Society Tribunal Rules of Practice and Procedure, effective October 1, 2020, set out at TAB 3.1.1 (English) and TAB 3.1.2 (French).

Executive Summary

The Rules have been in effect since January 1, 2020 and in that time several errors that need to be corrected have been identified and some language has been clarified or simplified, especially in light of the increased reliance on electronic hearings. The amendments to the Rules were discussed at the September 10, 2020 Tribunal Committee meeting. The Committee unanimously agreed that the amendments to the Rules will be presented to Convocation in September.

Rule Amendments

A. Committee Process

The Committee met on September 10, 2020. Committee members Julia Shin Doi (Chair), Ryan Alford (Vice-Chair), David A. Wright (*ex officio*), Jared Brown, Paul Cooper, Jean-Jaques Desgranges, John Fagan, Michael LeSage, C. Scott Marshall, Isfahan Merali, Barbare Murchie, Geneviève Painchaud, Chi-Kun Shi and Tanya Walker attended. Bencher Alexander Wilkes, also attended, as did staff member Lisa Mallia.

B. Summary of changes

At **TAB 3.1.1** is a redlined version of the Rules in English and at **TAB 3.1.2** is a redlined version of the Rules in French.

Rule 7.5 – Change “schedule” to “hold” – “schedule” suggests that it is scheduled in advance of the PMC occurring which is not always the case when a PMC is held in writing on the panel’s own initiative. A similar change is made to Rule 7.14 to reflect that a panel can conduct a case conference in writing on its own initiative.

Rules 7.6 and 7.15 – Remove the phrase “except one that relates to the exclusion of the public from all or part of the hearing on the merits” as this is no longer necessary in light of the amendments to O. Reg. 167/07 that took effect on January 1, 2020.. Those amendments removed the former requirement that the panel dealing with the merits deal with issues of exclusion of the public.

Rule 9 – There are a number of edits to Rule 9 that reflect that many hearings are happening electronically. Currently the rule refers to the fact that an appearance takes place “orally and in

person.” This is redundant and can be confusing. To be clearer, the approach has been to set out three types of appearances: in person, electronic and written.

Rule 9.9 – The proposed change simplifies the language and adds reference to electronic hearings.

Rule 10.4 – Change “conduct” to “attendance” – attendance is the correct word in this context.

Rule 12.4 – Language has been added to reflect that some interlocutory hearings happen on more than ten days’ notice and ensure that in those cases, materials are filed earlier.

Rule 13.7 – The language is simplified to recognize that the Rule applies to all appearances (not just “oral” or “electronic”).

Rule 18.6 has been added to require a Motion for Fresh Evidence to be served and filed when the appeal is perfected to avoid last minute motions for fresh evidence.

French Rules – In addition to reflecting the changes summarized above, the language of the French Rules has been updated to fix typographical errors and make other minor corrections.



Law Society Tribunal
Tribunal du Barreau

LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

Effective January 1, 2020, Amended September 24, 2020

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RULE 1: PURPOSES AND INTERPRETATION

Purposes

- 1.1 The purposes of these rules are to:
- (a) establish fair processes that consider the interests of the public, the legal professions, individual licensees and licence applicants;
 - (b) promote timely determination of proceedings in accordance with the public interest;
 - (c) ensure that the Tribunal's processes are clear and understandable;
 - (d) allow for flexibility to adapt processes to the needs of particular cases and types of cases, including those involving disadvantaged and vulnerable persons;
 - (e) promote early identification of issues in dispute and facilitate agreement and resolution;
 - (f) ensure that processes and proceedings are transparent to the public and to licensees and licence applicants; and
 - (g) allow licensees and licence applicants to participate effectively in the process, whether or not they have a representative.

Interpretive Principles

- 1.2 These rules shall be interpreted and applied in accordance with their purposes.
- 1.3 Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.
- 1.4 The Tribunal may exercise its powers at the request of a party or on its own initiative.
- 1.5 The Tribunal may decide not to strictly apply these rules unless to do so would be inconsistent with legislation, regulations or a mandatory rule.

RULE 2: APPLICATION AND DEFINITIONS

Name

- 2.1 These rules are referred to as the Law Society Tribunal *Rules of Practice and Procedure*.

Application

- 2.2 These rules apply to all proceedings before the Hearing and Appeal Divisions of the Law Society Tribunal, starting January 1, 2020.

Definitions

2.3 In these rules, unless the context requires otherwise:

“Act” means the *Law Society Act*, RSO 1990, c. L. 8 (“*Loi*”);

“administrative suspension order appeal” means an appeal from an order under section 46, 47, 47.1, 48, or 49 of the Act (“*appel d’une ordonnance de suspension administrative*”);

“appeal” includes, where appropriate, a cross-appeal (“*appel*”);

“appearance” means a hearing, motion, case conference, pre-hearing conference or proceeding management conference (“*comparution*”);

“appellant” means a person who starts an appeal, including, where appropriate, a person who starts a cross-appeal (“*appellant*”);

“assigned hearing panel” means the Tribunal member or members assigned to a merits hearing or motion by the Chair (“*formation d’audience*”);

“authenticity” includes: (a) the fact that a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been; (b) a document that is said to be a copy is a true copy of the original; and (c) where the document is a copy of a letter or electronic communication, the original was sent as it purports to have been sent and received by the person to whom it is addressed (“*authenticité*”);

“Chair” means the Chair of the Law Society Tribunal, or a Vice-Chair of the Hearing or Appeal Division acting in the Chair’s absence (“*Président*”);

“document” includes electronic records (“*document*”);

“endorsement” means a record of an action taken by the Tribunal, made by a member of the Tribunal or Tribunal staff (“*inscription*”);

“file” means to provide a document to the Tribunal in accordance with Rules 5.4 to 5.11 (“*deposer*”);

“holiday” means any Saturday, Sunday, statutory holiday or other day on which the Tribunal is closed (“*jour férié*”);

“intervenor” means a person or organization granted leave to participate in a proceeding or a part of a proceeding under Rule 4 (“*intervenant*”);

“Law Society” means the Law Society of Ontario (“*Barreau*”);

“leave” means permission granted by a panel (“*autorisation*”);

“licensee” means a lawyer or paralegal who is a party to a proceeding (“*titulaire de permis*”);

“licence applicant” means the applicant for a licence in a licensing proceeding (“*demandeur de permis*”);

“non-disclosure order” means an order that the transcript or a part of the transcript of a public appearance be not public, and that anyone who was present may not disclose what occurred (“*ordonnance de non-divulgation*”);

“not public order” means an order that an appearance or document, or a part of the appearance or document, be not public (“*ordonnance de non-publicité*”);

“originating process” means a Notice of Application, Notice of Referral for Hearing, Notice of Appeal, Notice of Administrative Suspension Order Appeal, Notice of Cross-Appeal, Notice of Motion – Interlocutory Suspension or Restriction or Notice of Motion – Vary or Cancel Interlocutory Suspension or Restriction (“*acte introductif d’instance*”);

“panel” means the member or members of the Tribunal assigned to an appearance by the Chair (“*formation*”);

“panelist” means a member of a panel (“*membre de la formation*”);

“previously admitted evidence” means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside Ontario, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted (“*prevue déjà admise*”)

“publication ban” means an order that no one may publish information about what occurred at a public appearance or the contents of public documents (“*interdiction de publication*”);

“representative” means a person representing a party in the proceeding (“*représentant*”);

“serve” means to provide documents to the other party or parties in accordance with Rule 3.1 or Rule 5.1 (“*signifier*”);

“summary hearing” means a proceeding in which the Law Society requests that the matter be assigned to a single member panel under para. 1 of s. 2(1) of O. Reg. 167/07 (“*audience sommaire*”);

“Tribunal” means the Law Society Tribunal, and includes a panel (“*Tribunal*”);

“Tribunal member” means a member of the Hearing Division or Appeal Division (“*membre du Tribunal*”).

Same meaning as in the Act

- 2.4 If a word or phrase is defined in the Act, it has the same meaning in these rules unless the rules specify otherwise.

Calculating time

- 2.5 In calculating time under these rules, or under a direction or order made under these rules:
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;
 - (b) where a period of less than seven days is prescribed, holidays shall not be counted;
 - (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
 - (d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

RULE 3: STARTING AND WITHDRAWING PROCEEDINGS

Service

- 3.1 (1) A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-17) and information sheet (Forms 18-25).
- (2) A party must serve an originating process and information sheet by:
- (a) hand delivery to the person being served;
 - (b) regular mail, registered mail or courier; or
 - (c) any other method agreed to by the person being served or directed by the Tribunal.
- (3) The Law Society must file originating processes and information sheets electronically.

Amending an originating process

- 3.2 (1) A party may amend an originating process by serving and filing an amended version that clearly indicates the nature of the changes:

(a) in a proceeding in the Hearing Division, no later than 10 days before the hearing on the merits; and

(b) in a proceeding in the Appeal Division, at any time before the appeal is perfected.

(2) A party may amend an originating process after the deadline with consent of the other party or with leave.

Withdrawing a proceeding or motion

3.3 (1) A party may, at any time, withdraw a proceeding or motion by serving and filing a Notice of Withdrawal (Form 26).

(2) A party that brought a proceeding or motion and does not attend an appearance or meet a deadline set by the Tribunal may be deemed to have withdrawn the proceeding or motion.

(3) A responding party may request costs after a proceeding or motion is withdrawn or deemed withdrawn.

RULE 4: ADDITIONAL PARTICIPANTS

Adding parties

4.1 The Tribunal may make an order adding a person as a party where the person is entitled under the Act or otherwise by law to be a party to the proceeding.

Intervenors

4.2 (1) The Tribunal may make an order permitting a person to participate in the proceeding or a part of the proceeding as an intervenor if this would be in the interests of justice.

(2) The Tribunal shall determine the extent of an intervenor's participation and may make other directions about that participation.

Friend of the Tribunal

4.3 The Tribunal may invite a person to participate in the proceeding or part of the proceeding to assist the Tribunal. A person who participates under this rule is not a party and no costs order may be made against that person.

RULE 5: SERVICE, FILING, COMMUNICATING WITH THE TRIBUNAL AND FORM OF DOCUMENTS

How to serve

5.1 A document other than an originating process may be served by:

- (a) hand delivery;
- (b) regular mail, registered mail or courier;
- (c) e-mail, if less than 20 MB ;
- (d) fax, if the document is 20 pages or less; or
- (e) any other method agreed to by the person being served or directed by the Tribunal.

Effective date of service

5.2 Service is deemed to be effective:

- (a) if the document is faxed, e-mailed, hand delivered or delivered by courier before 5 p.m. on a business day, on that day;
- (b) if the document is faxed, e-mailed, hand delivered or delivered by courier on a holiday or after 5 p.m. on a business day, on the next business day;
- (c) if the document is mailed, on the fifth business day after mailing.

Service using contact information in the Law Society's records

5.3 Service on a licensee using contact information provided to the Law Society under By-Law 8, ss. 3 and 4 is considered effective unless otherwise ordered by the Tribunal.

Confirmation of service

5.4 When a document is filed with the Tribunal, service must be confirmed by:

- (a) a Confirmation of Service form (Form 27);
- (b) an affidavit of the person who served it;
- (c) an e-mail showing that the document was sent to the other person's e-mail address; or
- (d) written acceptance of service by the person served.

Communication with the Tribunal

- 5.5 (1) All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding.
- (2) All communication with a panel other than during an appearance shall be sent in writing to the Tribunal Office, and may be sent electronically.

Respectful communication

5.6 (1) All documents filed, and all written and oral communications with the Tribunal must be relevant to the proceeding and respectful to all participants in the proceeding and to the Tribunal.

(2) Failure to comply with this rule is a relevant factor in making a costs award.

Acceptance of documents by the Tribunal

5.7 Acceptance of documents by the Tribunal does not mean that they are timely, properly served or otherwise comply with these rules or the order or direction under which they were filed. The Tribunal may reject documents after they are filed.

Filing requirements: electronic and hard copies

5.8 (1) The following documents must be filed in electronic copy:

- (a) pre-hearing conference memoranda;
- (b) any document less than 10 pages, unless filed at an appearance.

(2) The following documents, if 10 pages or more, must be filed in both electronic and hard copy:

- (a) agreed statements of facts (not including exhibits);
- (b) affidavits (not including exhibits);
- (c) requests to admit;
- (d) draft orders;
- (e) facta;
- (f) written submissions; and
- (g) notices of motion.

(3) All other documents must be filed in hard copy.

Filing electronic documents

5.9 Electronic copies of documents may be filed in Word and/or pdf format, by e-mail (if less than 20 MB), on a USB drive or by such other method as the Tribunal may permit. The document file name must include the Tribunal file number, the name of the document and the party filing.

Filing hard copy documents

5.10 When filing in hard copy the party must file:

- (a) two copies of the document if the appearance is before a single-member panel;
- (b) four copies of the document if the appearance is before a three-member panel; or
- (c) six copies of the document if the appearance is before a five-member panel;

together with an electronic copy or an additional untabbed and unbound hard copy.

Layout

5.11 Documents prepared for Tribunal proceedings must be on white 8.5 by 11 inch paper, using 12-point font, double-spaced, except for quotations which may be single-spaced, with a margin of at least 1 ½ inches on the left-hand side.

Facta

5.12 A factum must include at least the following sections:

- (a) overview;
- (b) issues;
- (c) facts, argument and law;
- (d) the order requested;
- (e) schedule A, containing a list of authorities referred to; and
- (f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

5.13 Without leave, a factum shall be no more than 30 pages.

Books of authorities

5.14 (1) Parties must mark those passages in their book of authorities to which they intend to refer in oral argument.

(2) Parties should not include authorities contained in the Tribunal Book of Authorities or in a book of authorities already filed by another party.

Covers

5.15 The front and back covers of bound documents must be:

- (a) green if filed by the Law Society;

- (b) white if filed by a licensee or licence applicant;
- (c) buff if filed by any other party; or
- (d) red if the document is subject to a not public order, non-disclosure order or publication ban, unless the document was filed before the order was made.

RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION

First appearance

- 6.1 (1) The date of the first appearance, in Hearing Division proceedings, is set out on the information sheet.
- (2) For a summary hearing, interlocutory suspension or restriction motion, or motion to vary or cancel an interlocutory suspension or restriction, the first appearance is the scheduled hearing date. The applicant must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.
- (3) For all other Hearing Division proceedings, the first appearance is a proceeding management conference. Available proceeding management conference dates are posted on the Tribunal website.
- (4) An appeal hearing is scheduled by the Tribunal Office once the appeal has been perfected.

Who may schedule or adjourn

- 6.2 An appearance may be scheduled or adjourned by:
- (a) a pre-hearing conference or proceeding management conference;
 - (b) the assigned hearing panel or its chair; or
 - (c) the Tribunal Office, if the scheduling or adjournment is on consent.

Adjournments

- 6.3 Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances, as set out in the Tribunal's Practice Direction on Adjournments. Parties must be ready to proceed on the dates scheduled.
- 6.4 The Tribunal may order that there be terms to an adjournment.

Accommodation

- 6.5 Participants in proceedings are entitled to accommodation of their needs under the *Human Rights Code*, RSO 1990, c. H. 19, to the point of undue hardship. A participant in a proceeding must notify the Tribunal as soon as possible of any accommodation requests.

Accommodation for Witnesses

- 6.6 Where it would be fair and in the interests of justice, the Tribunal may:
- (a) permit a support person to sit near a witness while the witness testifies;
 - (b) order that a witness testify in a manner that would allow the witness not to see the licensee, licence applicant or any other person;
 - (c) order that a licensee or licence applicant not personally conduct the cross-examination of a witness, and shall appoint counsel for the purpose of conducting the cross-examination without cost to the licensee or licence applicant; and
 - (d) make other orders accommodating or protecting witnesses.

Failure to attend or participate

- 6.7 Where notice of an appearance has been given to a party and the party does not attend or does not participate, the panel may proceed in the absence of the party or without the party's participation. The party will not be entitled to any further notice in the proceeding.

RULE 7: CASE MANAGEMENT

Principles

- 7.1 The Tribunal applies active case management throughout the course of proceedings, so that, among other things:
- (a) proceedings move forward in a fair and timely way, in the public interest;
 - (b) scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;
 - (c) issues are identified early so the parties have the opportunity to fully prepare; and
 - (d) adjournments are granted only due to unforeseeable and exceptional circumstances.

Case management directions

7.2 Case management directions may be made at the request of a party or on the Tribunal's own initiative at:

- (a) a proceeding management conference;
- (b) a pre-hearing conference;
- (c) a hearing or case conference, by the assigned hearing panel; or
- (d) a case conference, by the chair of the assigned hearing panel, prior to or between hearing days.

Format

7.3 A proceeding management conference, pre-hearing conference or case conference may be held in person, by telephone, by videoconference, in writing or any combination of these formats.

Endorsement

7.4 A panelist shall prepare an endorsement after each proceeding management conference, pre-hearing conference or case conference, recording any directions made and appearances scheduled.

Proceeding management conference

7.5 The Tribunal may ~~schedule~~ hold a proceeding management conference on its own initiative or at the request of any party.

Directions at proceeding management conference

7.6 A proceeding management conference panel may:

- (a) schedule or adjourn an appearance;
- (b) set timelines and deadlines for steps in the proceeding;
- (c) hear and decide a procedural motion;
- (d) make a not public order, non-disclosure order or publication ban, ~~except one that relates to the exclusion of the public from all or part of the hearing on the merits;~~ and
- (e) make any other procedural directions, including directions about process at the hearing.

Pre-hearing conference

7.7 The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

Issues discussed at pre-hearing conference

7.8 A pre-hearing conference panel may discuss with the parties,

- (a) the identification, limitation or simplification of the issues in the proceeding;
- (b) the identification and limitation of evidence and witnesses;
- (c) the possibility of settlement of any or all of the issues in the proceeding;
- (d) the possibility of the parties entering into an agreed statement of facts; and
- (e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

When a pre-hearing conference is scheduled

7.9 A pre-hearing conference shall be promptly scheduled in every proceeding other than a summary hearing, interlocutory suspension or restriction motion, motion to vary or cancel an interlocutory suspension or restriction, or appeal unless the matter is ready for hearing. The Tribunal may, at the request of a party, or on its own initiative, schedule a pre-hearing conference in any proceeding, at any time.

Confidential and without prejudice

7.10 A pre-hearing conference is confidential and without prejudice. No one may disclose what occurred at a pre-hearing conference or what is contained in a pre-hearing conference memorandum, unless otherwise ordered or required by law. The panel may summarize in the endorsement the results of the discussions and the directions made.

Directions at pre-hearing conference

7.11 (1) A pre-hearing conference panel may:

- (a) schedule or adjourn an appearance;
- (b) set timelines and deadlines for steps in the proceeding; and
- (c) make any other procedural directions to move the matter forward toward hearing in a fair and timely manner, including directions about process at the hearing.

(2) Procedural directions may be made by a pre-hearing conference panel whether or not the parties consent.

Pre-hearing conference memoranda

7.12 (1) Each party must prepare a pre-hearing conference memorandum containing a statement of the facts the party relies upon and its position on the issues in the proceeding.

(2) Each party's memorandum must be sent by e-mail to the other parties and to the Tribunal Office. The Law Society's memorandum must be sent at least seven days prior to the first pre-hearing conference. The licensee or licence applicant's memorandum must be sent at least two days prior to the first pre-hearing conference.

(3) The Tribunal may waive the requirement to file a memorandum, if the preparation of the memorandum would not be practical or of assistance in the circumstances.

Limitation on assignment of pre-hearing conference Tribunal member

7.13 (1) Except with agreement of the parties, a Tribunal member who conducted a pre-hearing conference in an application shall not be assigned to a motion or merits hearing or to any appeal of that proceeding, nor shall a member of the panel assigned to a hearing preside at a pre-hearing conference. The parties must confirm their agreement by filing a consent (Form 31).

(2) This rule does not preclude a Tribunal member who conducted a pre-hearing conference from conducting a proceeding management conference.

Case conference

7.14 The Tribunal may hold a case conference ~~may be scheduled~~ on the assigned hearing panel's own initiative, as directed at a proceeding management conference, or at the request of any party.

Directions at case conference

7.15 At a case conference, the assigned hearing panel or its chair may:

- (a) schedule or adjourn an appearance;
- (b) set timelines and deadlines for steps in the proceeding;
- (c) make a not public order, non-disclosure order or publication ban, ~~except that the panel chair alone may not make an order that relates to the exclusion of the public from all or part of the hearing on the merits~~; and
- (d) make any other procedural directions.

RULE 8: MOTIONS

Motions

- 8.1 (1) A motion must be made by notice of motion (Form 28) unless the nature of the motion or the circumstances make a notice of motion unnecessary.
- (2) If a motion date has not been confirmed by the Tribunal at the time the notice of motion is served and filed, the notice of motion must indicate that the motion will be heard on a date to be set by the Tribunal.
- (3) The Tribunal may direct that the parties attend a proceeding management conference before setting a motion date.
- (4) A motion may not be brought prior to the start of the proceeding to which it relates.

Motion materials

- 8.2 (1) This rule applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.
- (2) At least 10 days before the hearing of the motion, the moving party must serve and file a motion record that includes the notice of motion, together with a factum and a book of authorities.
- (3) A responding party to the motion must serve and file a factum, together with a motion record and book of authorities, if any, at least three days before the hearing of the motion.
- (4) A motion record must have consecutively numbered pages and contain;
- (a) a table of contents that lists each document contained in the motion record and describes each by its nature and date, including exhibits, which shall be described by their nature, date and exhibit number or letter;
 - (b) the notice of motion, if not already included in another party's motion record; and
 - (c) all affidavits and other material upon which the party intends to rely.
- (5) Where cross-examination on an affidavit in a motion record occurs, it will take place before the panel at the motion hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter. The party calling the witness must ensure the attendance of the witness for cross-examination.

Motions on consent or unopposed motions

- 8.3 When a motion is on consent or unopposed:

- (a) facts and books of authorities are not required unless ordered by the Tribunal;
and
- (b) the moving party must file a draft of the order sought and any consents.

RULE 9: APPEARANCES

Form of appearance

9.1 Unless otherwise provided, an appearance shall take place ~~orally and~~ in person.

Attending an in-person appearance electronically

9.2 (1) Subject to Rule 9.2(2), a party or the party's representative may attend an ~~oral in-~~
person appearance by telephone or electronically on request.

(2) A witness giving oral evidence and a representative or self-represented party examining a witness must attend an in-person ~~oral~~ appearance in person, unless the other party consents or the Tribunal gives leave.

Written or electronic appearance

9.3 (1) The Tribunal may direct, at the request of a party or on its own initiative, that an appearance or part of an appearance take place in writing or electronically.

(2) A request that an appearance take place in writing or electronically may be heard in writing.

(3) The panel assigned to a written appearance may convert the appearance to an ~~oral~~
electronic or in-person appearance and the panel assigned to an electronic appearance may convert the appearance to an in-person appearance.

Language

~~9.39.4~~ (1) A proceeding shall be conducted in English, French, or both English and French, at the choice of the licensee or licence applicant.

(2) A licensee or licence applicant who asks that the language of the proceeding be changed from the language in which it was started must make the request within 30 days of service of the originating process.

(3) Documents provided in a language other than English or French must be accompanied by a translation of the document into the language of the proceeding by a qualified translator as well as a certificate by the translator setting out that the translation is a true and accurate translation to the best of the translator's skill and ability.

(4) A party intending to call a witness whose testimony will require interpretation must notify the Tribunal as early as possible, no later than seven days before the hearing at which the witness will be examined.

Location

9.49.5 (1) Subject to Rules 9.5(2) and (3), an in-person hearing shall be held at the Law Society Tribunal in Toronto.

(2) Where all parties consent to a hearing being held outside Toronto and within the Province of Ontario, the hearing shall be held in that place.

(3) The Tribunal may order that a hearing be held in another place.

Hearing proceedings together or consecutively

9.59.6 (1) The Tribunal may order that two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other, if:

- (a) the proceedings have a question of fact, law or mixed fact and law in common;
- (b) the proceedings involve the same parties;
- (c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or
- (d) for any other reason an order ought to be made under this rule.

(2) Where an order is made under Rule 9.6 (1), the Tribunal shall determine the effects of hearing the merits of the proceedings together or one immediately after the other, and may give directions about those effects.

Consent to hearing before one member of the Tribunal

9.69.7 The parties to a conduct proceeding may consent to the application being heard by one member of the Tribunal under O. Reg. 167/07, s. 2(1) by filing a consent (Form 31) with the Tribunal.

Transcripts

9.79.8 (1) A person wishing to have a copy of the transcript of a public appearance must order it, at their own expense, from the reporting service that recorded the appearance.

(2) The first party to obtain a transcript of an appearance is responsible for the cost of the Tribunal's electronic and hard copies, which will be provided to the Tribunal directly by the reporting service.

~~Video, photographs~~Images and recording

9.9 No one, other than a court reporting service, may, without leave:

(a) take photographs or make a video or audio recording in the Tribunal premises or the hearing room; or

(b) take a screen shot or make a video or audio recording of an electronic appearance without leave.

RULE 10: DISCLOSURE AND PRODUCTION

Law Society's obligation to disclose

10.1 The Law Society must disclose to the licensee or licence applicant, within a reasonable period of time following the filing of the application, all potentially relevant documents in its possession, except for those it is not disclosing due to privilege. Privileged documents must be identified to the other party.

Production from the Law Society

10.2 A licensee or licence applicant bringing a motion for further production from the Law Society must include in the motion record prior correspondence to the Law Society's representative requesting the documents and the Law Society representative's response.

Interlocutory suspension or restriction motions

10.3 Rules 10.1 and 10.2 do not apply to interlocutory suspension or restriction motions, but this rule does not preclude a panel from making disclosure orders in such cases.

Production from third parties

10.4 Where a party seeks production of documents from a third party, the party seeking the documents must obtain a motion date, and serve on the third party a summons to witness requiring the third party to attend on the motion date, ~~conduct-attendance~~ money and a Notice of Motion. The Notice of Motion must set out the relevance of the documents requested from the third party.

Witness statements and document books

10.5 (1) Each party must provide to every other party:

(a) a document book containing all anticipated documentary evidence;

(b) a list of witnesses that the party intends to call; and

(c) an affidavit, signed witness statement or summary of the anticipated oral evidence of each witness, as well as the witness's contact information or the contact information of a person through whom the witness may be contacted.

(2) The Law Society must comply with this rule no later than 14 days before a summary hearing and no later than 20 days before any other merits hearing. A licensee or licence

applicant must comply with this rule no later than seven days before a summary hearing and no later than 10 days before any other merits hearing.

Expert reports

- 10.6 (1) Each party must provide to every other party, no later than 60 days before a hearing, a copy of the affidavit or written report of every expert witness the party intends to call.
- (2) An affidavit or report of an expert must include an Acknowledgement of Expert's Duty (Form 33).

Consequences of failure to disclose

- 10.7 Evidence not disclosed or produced as required by this rule may not be relied upon without leave of the Tribunal.

RULE 11: EVIDENCE

Agreed facts

- 11.1 A panel may receive and rely on any facts agreed to by the parties without further proof or evidence.

Affidavit evidence

- 11.2 (1) The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.
- (2) Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before a court reporter.
- (3) The party calling the witness must ensure the attendance of the witness for cross-examination.

Deemed admissions

- 11.3 (1) A party may request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. The request must be in Form 29 and served on the other party. The request to admit must include a copy of any document mentioned in it unless the other party already has the document. A request must be served no later than:
- (a) 30 days before the hearing if the request contains 75 paragraphs or less;
 - (b) 50 days before the hearing if the request contains 76-200 paragraphs;
 - (c) 70 days before the hearing if the request contains more than 200 paragraphs.

- (2) The party on whom the request is served must serve a response no later than;
- (a) 20 days after the date of service if the request contains 75 paragraphs or less;
 - (b) 40 days after the date of service if the request contains 76-200 paragraphs;
 - (c) 60 days after the date of service if the request contains more than 200 paragraphs.
- (3) The response must be in Form 30 and must, in relation to each fact and document mentioned in the request:
- (a) admit the truth of the fact or the authenticity of the document;
 - (b) specifically deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or
 - (c) refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.
- (4) If a party fails to respond to a request to admit or fails to respond in a manner that complies with this rule, that party will be deemed to admit, for the purposes of the proceeding only, the truth of the facts or the authenticity of the documents mentioned in the request to admit.
- (5) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.
- (6) If a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved, the Tribunal shall take the denial or refusal into account in exercising its discretion respecting costs.
- (7) The Tribunal may relieve a party from a deemed admission.

Filing materials before the hearing

- 11.4 A party may file an agreed statement of facts, request to admit that has been deemed admitted, affidavit or document book for the panel to review to prepare for the hearing. Filing such documents does not preclude another party from objecting to their admissibility at the hearing. Parties may request that documents be not public pending the hearing.

Summons

- 11.5 (1) The Tribunal may, by summons, require any person to give evidence on oath or affirmation at a hearing and/or produce in evidence at a hearing specified documents and things.
- (2) A summons shall be in Form 32, and may be signed by the Registrar or a Tribunal member.
- (3) On request of a party, unless a panel has directed otherwise, the Tribunal Office may provide a blank summons to a party.
- (4) The party that obtains a summons must serve the summons on the witness, and pay attendance money as set out in Tariff A under the *Rules of Civil Procedure*.

Exclusion of witnesses

- 11.6 (1) Subject to Rule 11.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.
- (2) A party or a person instructing a party's representative shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.
- (3) Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

Admission of evidence

- 11.7 (1) The rules of evidence applicable in civil proceedings apply in Tribunal proceedings, except where these rules provide otherwise.
- (2) Sections 15(4) and 16 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 apply to the admission of evidence in Tribunal proceedings.
- (3) Sections 15(1) and (2) of the *Statutory Powers Procedure Act* apply to the admission of evidence in interlocutory suspension or restriction motions.
- (4) Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

Previously Admitted Evidence

- 11.8 Previously admitted evidence may be admitted on consent, or if

- (a) the party against whose interest the evidence is sought to be admitted was a party to the other proceeding,
- (b) the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and
- (c) an issue in the other proceeding is substantially similar to an issue in the current proceeding.

Limits on examination or cross-examination

11.9 (1) A panel shall not permit cross-examination that is repetitive, abusive or otherwise inappropriate.

(2) A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

Information obtained by the Discrimination and Harassment Counsel

11.10 Despite any other rule, information obtained by the Discrimination and Harassment Counsel as a result of the performance of her duties under clause 19 (1) (a) of By-Law 11 must not be used and is inadmissible in a hearing.

RULE 12: INTERLOCUTORY SUSPENSION OR RESTRICTION MOTIONS

Authority

12.1 (1) On the motion of the Law Society, the Tribunal may make an interlocutory order suspending a licence or restricting the manner in which a licensee may practise law or provide legal services.

(2) On the motion of a licensee or the Law Society, the Tribunal may vary or cancel an interlocutory order made under this rule.

Motions rule applies

12.2 Rule 8 applies to interlocutory suspension or restriction motions, except where it differs from this rule.

When authorization required

12.3 If the motion relates to a proceeding where the Hearing Division has not started a hearing on the merits, the Law Society shall obtain the authorization of the Proceedings Authorization Committee to bring an interlocutory suspension or restriction motion.

Service and materials

12.4 (1) In an interlocutory suspension or restriction motion, the Law Society must serve and file its Notice of Motion, Information Sheet, motion record, factum and book of authorities at least three days before the hearing of the motion unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than 10 days prior to the hearing, or unless the Tribunal orders otherwise.

(2) The Tribunal may order that service is not necessary if:

- (a) it is not practical; or
- (b) the delay it could cause may lead to serious consequences.

(3) The licensee must serve and file a motion record, factum and book of authorities, if any, not later than 2 p.m. on the day before the hearing of the motion, unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than three days prior to the hearing.

Interim interlocutory suspension or restriction

12.5 Unless ordered otherwise, an interim interlocutory suspension or restriction order remains in effect until the interlocutory suspension or restriction motion is determined.

Duration of interlocutory suspension or restriction

12.6 Unless ordered otherwise, an interlocutory suspension or restriction order remains in effect until a final order is made in the conduct proceeding to which the motion relates, or the Tribunal varies or cancels the order.

Grounds to vary or cancel

12.7 An interlocutory suspension or restriction order may be varied or cancelled on the basis of fresh evidence or a material change in circumstances.

Motion to vary or cancel

12.8 A party starts a request to vary or cancel an interlocutory suspension or restriction order by serving and filing a Motion – Vary or Cancel Interlocutory Suspension or Restriction (Form 8 or 9) and information sheet (Form 21 or 22).

RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY

Record of proceeding

13.1 The record of proceeding consists of:

- (a) all materials filed with the Tribunal, unless the Tribunal refuses them for failure to comply with these rules, an order or direction;

- (b) all exhibits, including any marked “for identification”;
- (c) all other documents and correspondence from a party or other participant, reviewed by a panel, except for the purpose of a pre-hearing conference;
- (d) all notices of hearing;
- (e) all endorsements;
- (f) all orders made by the Tribunal;
- (g) all reasons issued by the Tribunal; and
- (h) all transcripts filed with the Tribunal.

Open tribunal

- 13.2 (1) The contents of the record of proceeding and all appearances except pre-hearing conferences are public, unless the Tribunal or a court orders otherwise.
- (2) Anyone may attend a public appearance unless the Tribunal orders otherwise.

Departing from openness

- 13.3 (1) The Tribunal may make a not public order, non-disclosure order or publication ban only if:
- (a) an order is necessary to prevent a serious risk to the administration of justice because reasonable alternative measures will not do so; and
 - (b) the benefits of the order outweigh the effects on the right to free expression and the transparency of the administration of justice.
- (2) If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

Capacity proceedings

- 13.4 In applying Rule 13.3 to a request for a not public order, non-disclosure order or publication ban in a capacity proceeding, a panel shall consider:
- (a) that a central issue in capacity proceedings is the licensee’s health;
 - (b) the nature and impact on the public of any of the licensee’s actions that led to the proceeding;
 - (c) any stigma related to the nature of the licensee’s health issues;

- (d) the possible impact of disclosure on the licensee's or others' health; and
- (e) any other relevant factor.

Children and sexual misconduct complainants

13.5 A not public order, non-disclosure order or publication ban shall be made to ensure that the identities of children and persons who allege sexual assault or misconduct are not made public, except where an adult who alleges sexual assault or misconduct requests otherwise.

Privilege

13.6 Unless the holder of the privilege has given consent, the Tribunal shall order that privileged or possibly privileged documents, and evidence about privileged or possibly privileged documents and communications be not public.

Effect of not public order

13.7 (1) When an ~~oral~~ appearance is not public, no one may attend except for the licensee or licence applicant, the parties' representatives, witnesses and anyone else permitted by the panel.

(2) When an ~~oral~~ appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(3) When a document is not public, it must not be provided to anyone other than the parties, their representatives, or a witness testifying about the document.

(4) No one may disclose what occurred during a not public appearance to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of the proceeding may disclose its contents to anyone other than the parties or their representatives.

Effect of non-disclosure order

13.8 (1) When there is a non-disclosure order, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(2) No one may disclose what occurred during an appearance subject to a non-disclosure order to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of attending the appearance may disclose its contents to anyone other than the parties or their representatives.

Effect of publication ban

- 13.9 (1) When a publication ban has been made, the hearing and Tribunal file remain open to the public.
- (2) No one may publish in any document or broadcast or transmit in any way information or documents subject to a publication ban.
- (3) The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

Effect of order

- 13.10 No order under this part prevents Tribunal staff or panelists from accessing materials in the Tribunal's file or attending an appearance.

RULE 14: ORDERS AND REASONS

Orders

- 14.1 Unless otherwise provided, an order or direction is effective from the date it is made, whether orally on the record, in an endorsement, in reasons or in a formal order, and whether or not an endorsement or formal order has been issued.

Power to make orders

- 14.2 A single member of the Tribunal assigned to a summary hearing shall not make an order revoking a licensee's licence or permitting a licensee to surrender a licence.

Addressing capacity issues in conduct applications

- 14.3 With the consent of the parties, a panel assigned to a conduct application under s. 34 of the Act may deal with matters that would otherwise have to be the subject of a capacity application under s. 38 of the Act, and may make any order referred to in s. 40 of the Act.

Formal order

- 14.4 (1) Any party may prepare a draft of a formal order.
- (2) A formal order shall be in Form 34-38 as appropriate.
- (3) A party that has prepared a draft of a formal order may submit it to the Tribunal, before or after a panel makes its decision.
- (4) The draft order will be treated as a submission and the panel may amend the order.
- (5) Where a formal order is not prepared by any party, it will be prepared by the Tribunal Office.

(6) Any member of a panel may sign the formal order or reasons.

Reasons

14.5 A panel must give reasons for its final order in any capacity proceeding or appeal. For any other proceeding, the panel is required to give reasons only if a party, within 30 days of the order, has requested them.

Correction of errors

14.6 The Registrar, the Registrar's designate or a panelist on the panel that made the endorsement, order or reasons may correct typographical errors, errors of calculation or similar minor errors.

RULE 15: COSTS

Power to award costs

15.1 (1) Costs may only be awarded against the Law Society,

- (a) in a licensing, conduct, capacity, competence or non-compliance proceeding, where the proceeding was unwarranted, or where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; or
- (b) in a proceeding not mentioned in clause (a), where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

(2) Costs may be awarded against the licensee or licence applicant,

- (a) where a determination adverse to the licensee or licence applicant was made; or
- (b) where the licensee or licence applicant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

(3) Costs may be awarded against an intervenor or third party where the intervenor or third party caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Tariff

15.2 When a panel awards costs, it shall consider, but is not bound by, the tariff of fees for services (Appendix A).

Security for costs

15.3 (1) Security for costs may be sought by the Law Society in: a licensing proceeding, if the applicant was previously a licensee of the Law Society in Ontario; a restoration proceeding; a reinstatement proceeding; or a terms dispute proceeding.

(2) On the motion of the Law Society, an order may be made for security for costs as is just where it appears that,

- (a) the applicant has an order against him or her for costs in the same or another proceeding under the Act that remains unpaid in whole or in part;
- (b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or
- (c) in the case of a licensing or restoration proceeding, there is good reason to believe that the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

(3) Unless the Tribunal orders otherwise, the applicant against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding.

(4) Where the applicant defaults in giving the security required by an order for security for costs, on the motion of the Society, an order may be made dismissing the proceeding.

RULE 16: REPRIMANDS

Administration of reprimands

16.1 (1) A reprimand shall be administered either orally at a hearing open to the public or in writing.

(2) A written reprimand is part of the record of the proceeding.

(3) A reprimand may be administered by any panelist on the panel that ordered the reprimand.

Appeals and reprimands

16.2 The administration of a reprimand does not affect the right to appeal the order or the arguments that can be raised on appeal.

RULE 17: APPEALS

Orders that may be appealed

- 17.1 (1) Sections 49.32 and 49.33 of the Act set out when an appeal of a final order may be started.
- (2) There is no appeal of an interim or interlocutory order of the Hearing Division, except of an order that finally disposes of an interlocutory suspension or restriction motion, which can be appealed by either party.

Deadline for appeal

- 17.2 (1) To start an appeal, the appellant must file a notice of appeal (Form 14 or 15) and information sheet (Form 24 or 25) within 30 days of the date of the final order in the Hearing Division proceeding appealed from. After that, an appeal may be started only with the written consent of the respondent to the appeal or with leave.
- (2) The motion record for a motion to extend the time to appeal must include a draft notice of appeal.
- (3) No later than 10 days after filing the notice of appeal, the appellant must serve and file written confirmation from the court reporting service that all transcripts of the proceeding under appeal not already filed in the Hearing Division, have been ordered.
- (4) If otherwise entitled to appeal, the respondent may cross-appeal by serving and filing a notice of cross-appeal (Form 17) no later than 15 days after being served with the notice of appeal. No information sheet is required with a notice of cross-appeal.

Perfecting the appeal

- 17.3 The appellant must perfect the appeal within 60 days of filing the notice of appeal or 60 days from the panel giving its reasons for the final order, whichever comes last. An appeal is perfected by serving and filing the appellant's appeal book, factum, book of authorities and any transcripts not filed in the Hearing Division proceeding.

Dismissal for delay and deemed withdrawal

- 17.4 (1) If an appeal is not perfected by the deadline, the respondent may bring a motion to dismiss the appeal for delay.
- (2) If the appeal has not been perfected five months from the date the notice of appeal was filed, the Registrar shall advise the parties that the appeal will be deemed withdrawn if not perfected within six months after the notice of appeal was filed.
- (3) If an appellant to cross-appeal wishes to pursue the cross-appeal even if the appeal is deemed withdrawn, the respondent must notify the Tribunal within two weeks of receiving the Registrar's notice under Rule 17.4 (2).

(4) If the appeal has not been perfected within six months of the date the notice of appeal was filed, the Registrar shall deem the appeal withdrawn. If the appellant to cross-appeal has advised of a desire to pursue a cross-appeal, a proceeding management conference shall be scheduled to set a timeline for the hearing of the cross-appeal.

(5) The Tribunal may reinstate an appeal or cross-appeal that was deemed withdrawn.

Deadline for respondent's materials if no cross-appeal filed

17.5 If the respondent has not filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 14 days before the appeal hearing.

Deadline for respondent's materials if cross-appeal filed

17.6 If the respondent has filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 30 days after the appeal was perfected. The respondent must file a factum and appeal book that cover both the appeal and cross appeal.

Respondent to cross-appeal materials

17.7 If the respondent has filed a cross-appeal, the appellant must file a factum as respondent by cross-appeal and may file a supplementary appeal book and book of authorities no later than 14 days prior to the appeal hearing.

Compendia

17.8 No later than five days before the hearing of the appeal, each party must file a compendium containing the documents it intends to refer to in oral argument.

RULE 18: FRESH EVIDENCE ON APPEAL

Motion to introduce fresh evidence

18.1 Except where the respondent consents, an appellant who wishes to introduce evidence at the hearing of the appeal that was not before the Hearing Division must, by notice of motion, make a motion to the Appeal Division to do so.

Proposed evidence in sealed envelope

18.2 The appellant who makes a fresh evidence motion must file, together with the motion record, sufficient copies of the evidence as required by Rule 5.6, each copy in a separate sealed envelope, which shall not be public pending a decision on the motion.

Hearing of fresh evidence motion

18.3 A motion under this rule will be heard at the beginning of the appeal hearing.

Hearing of appeal in any event

18.4 The parties must be prepared to proceed with the hearing of the appeal on the date scheduled regardless of the disposition of a motion under this rule.

Where respondent consents

18.5 Where the respondent consents to the introduction of fresh evidence, the evidence may be included and referred to in the parties' materials, so long as the evidence is clearly identified as fresh evidence that was not before the Hearing Division.

Timing of Fresh Evidence Motion

18.6 A fresh evidence motion shall be served and filed at the same time as the appeal is perfected, unless the fresh evidence is discovered after that time.

RULE 19: APPEAL MATERIALS

Appeal books

19.1 (1) The appellant's appeal book must contain, in consecutively numbered pages with numbered tabs:

- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
- (b) a copy of the notice of appeal and any notice of cross-appeal, as amended;
- (c) a copy of the order or orders appealed from;
- (d) a copy of all endorsements and reasons of the Hearing Division in the proceeding;
- (e) a copy of the originating process that initiated the proceeding before the Hearing Division;
- (f) a copy of any exhibits that are referred to in the appellant's factum;
- (g) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the appellant's factum;
- (h) a copy of any directions given at a proceeding management conference in the appeal;
- (i) a copy of any endorsements, orders and reasons of the Appeal Division made in the appeal; and

- (j) where any of the materials are subject to a non-publication order, a copy of the non-publication order.
- (2) The respondent's appeal book must contain, in consecutively numbered pages with numbered tabs:
- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
 - (b) a copy of any exhibits referred to in the respondent's factum that are not included in the appellant's appeal book; and
 - (c) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the respondent's factum that are not included in the appellant's appeal book.
- (3) Any documents subject to a not public order, non-disclosure order or publication ban must be included in a separate appeal book volume.

Appeal facta

- 19.2 (1) In an appeal factum, references to the transcript of the proceeding before the Hearing Division must be by date, page number and line, while references to exhibits must be by tab and page number in the appropriate appeal book.

RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS

Starting administrative suspension order appeal

- 20.1 (1) An appellant may start an administrative suspension order appeal by serving on the Law Society and filing with the Tribunal a Notice of Administrative Suspension Order Appeal (Form 16) and an information sheet (Form 25) no later than 30 days from the date the administrative suspension order was deemed to have been received by the appellant.
- (2) An administrative suspension order appeal may be started beyond this time limit with consent of the Law Society or leave of the Tribunal.

Administrative suspension order appeals on consent

- 20.2 Where an administrative suspension order appeal is on consent, the appeal shall be heard in writing. The written consent of the parties and a draft order must be filed with the Tribunal at the time the notice of administrative suspension order appeal is filed or as soon after that as possible. No other material needs to be filed unless directed by the Tribunal.

Filing of affidavits and hearing

20.3 (1) The Law Society must file an affidavit or affidavits that set out the factual basis for making the administrative suspension order no later than 30 days after the filing of the Notice of Administrative Suspension Order Appeal.

(2) The appellant must file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Administrative Suspension Order Appeal.

(3) Cross-examination on the affidavits and any reply evidence will take place orally at the appeal hearing, unless otherwise ordered.

(4) No facts need be filed prior to the hearing, unless otherwise ordered.

Pre-hearing conference

20.4 The Tribunal Office shall schedule a pre-hearing conference in every administrative suspension order appeal after filing of the affidavits.

APPENDIX A – Tariff of Fees for Services

Experience	Rate
Lawyer (20 years and over)	Up to \$350 per hour
Lawyer (12 to 20 years)	Up to \$325 per hour
Lawyer (11 to 12 years)	Up to \$315 per hour
Lawyer (10 to 11 years)	Up to \$300 per hour
Lawyer (9 to 10 years)	Up to \$285 per hour
Lawyer (8 to 9 years)	Up to \$270 per hour
Lawyer (7 to 8 years)	Up to \$255 per hour
Lawyer (6 to 7 years)	Up to \$240 per hour
Lawyer (5 to 6 years)	Up to \$225 per hour
Lawyer (4 to 5 years)	Up to \$215 per hour
Lawyer (3 to 4 years)	Up to \$205 per hour
Lawyer (2 to 3 years)	Up to \$195 per hour
Lawyer (1 to 2 years)	Up to \$180 per hour
Lawyer (less than 1 year)	Up to \$165 per hour
Lawyer on staff with the Law Society of Ontario, other than Discipline Counsel	Up to \$190 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (10 years and more of paralegal experience)	Up to \$150 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (5 to 10 years of paralegal experience)	Up to \$120 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (1 to 5 years of paralegal experience)	Up to \$90 per hour
Student	Up to \$90 per hour

Experience	Rate
Law Clerk	Up to \$90 per hour
Forensic auditor on staff with the Law Society of Ontario	Up to \$190 per hour
Investigator or Complaints Resolution Officer on staff with the Law Society of Ontario	Up to \$90 per hour



Law Society Tribunal
Tribunal du Barreau

TRIBUNAL DU BARREAU RÈGLES DE PRATIQUE ET DE PROCÉDURE

En vigueur le 1^{er} janvier 2020, [modifiées le 24 septembre 2020](#)

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RÈGLE 1 : OBJET ET INTERPRÉTATION

Objet

1.1 Voici l'objet des présentes règles :

- a) Établir des processus équitables qui tiennent compte de l'intérêt du public, des professions juridiques, des titulaires et des demandeurs de permis individuels ;
- b) Favoriser la résolution des instances en temps opportun, dans l'intérêt public ;
- c) Veiller à ce que les procédures du Tribunal soient claires et compréhensibles ;
- d) Permettre d'adapter avec flexibilité les procédures aux cas et types de cas particuliers, y compris ceux qui impliquent des personnes désavantagées et vulnérables ;
- e) Encourager l'identification précoce des questions en litige et faciliter l'entente et la résolution ;
- f) Assurer des procédures et des instances transparentes pour le public et pour les titulaires et les demandeurs de permis ;
- g) Permettre aux titulaires et aux demandeurs de permis de participer activement aux processus, avec ou sans représentant.

Principes d'interprétation

- 1.2 Les présentes règles sont interprétées et appliquées conformément à leur objet.
- 1.3 Les ordonnances et les directives rendues en application des présentes règles sont proportionnelles à l'importance et à la complexité des questions en litige.
- 1.4 Le Tribunal peut exercer ses pouvoirs à la demande d'une partie ou de sa propre initiative.
- 1.5 Le Tribunal peut décider de ne pas appliquer strictement les présentes règles à moins que cela ne soit incompatible avec la loi, les règlements ou une règle obligatoire.

RÈGLE 2 : CHAMP D'APPLICATION ET DÉFINITIONS

Nom

- 2.1 Les présentes règles sont appelées les *Règles de pratique et de procédure* du Tribunal du Barreau.

Champ d'application

2.2 Les présentes règles s'appliquent à toutes les instances devant la Section de première instance et la Section d'appel du Tribunal du Barreau, à compter du 1^{er} avril 2019.

Définitions

2.3 Sauf si le contexte exige une interprétation différente, les définitions qui suivent s'appliquent aux présentes règles :

« Loi » La *Loi sur le Barreau*, L.R.O. 1990, chap. L.8 ; (« *Act* »)

« acte introductif d'instance » S'entend d'un avis de requête, d'un avis de renvoi à l'audience, d'un avis d'appel, d'un avis d'appel d'ordonnance de suspension administrative, d'un avis d'appel incident, d'un avis de motion — suspension ou restriction interlocutoire ou avis de motion – modification ou annulation d'une ordonnance de suspension ou restriction interlocutoire ; (« *originating process* »)

« appel » Comprend, s'il y a lieu, un appel incident ; (« *appeal* »)

« appel d'une ordonnance de suspension administrative » S'entend d'un appel d'une ordonnance rendue en application des articles 46, 47, 47.1, 48 ou 49 de la Loi ; (« *administrative suspension order appeal* »)

« appelant » Personne qui introduit un appel, y compris, s'il y a lieu, une personne qui introduit un appel incident ; (« *appellant* »)

« audience sommaire » S'entend d'une instance dans laquelle le Barreau demande que l'affaire soit instruite par un seul membre en vertu de l'alinéa 1 du paragraphe 2 (1) du Règl. de l'Ont. 167/07 ; (« *summary hearing* »)

« authenticité » Comprend : a) le fait qu'un document réputé original soit imprimé, rédigé ou autrement produit et signé tel qu'il est allégué ; b) un document réputé être une copie conforme à l'original ; c) si le document est une copie d'une lettre ou d'une communication électronique, l'original a été envoyé tel qu'il est allégué et reçu par la personne à qui il était destiné ; (« *authenticity* »)

« autorisation » S'entend de la permission accordée par une formation ; (« *leave* »)

« Barreau » Le Barreau de l'Ontario ; (« *Law Society* »)

« comparution » S'entend d'une audience, motion, conférence relative à la cause, conférence préparatoire à l'audience ou conférence de gestion de l'instance ; (« *appearance* »)

« congé » S'entend de tout samedi, dimanche, jour férié ou autre jour durant lequel le Tribunal est fermé ; (« *holiday* »)

« demandeur de permis » S'entend d'une personne qui demande un permis lors d'une instance visant la délivrance de permis ; (« *licence applicant* »)

« déposer » Fournir un document au Tribunal conformément aux règles 5.4 à 5.11 ; (« *file* »)

« document » Comprend les documents électroniques ; (« *document* »)

« formation » S'entend du membre ou des membres du Tribunal affectés à une comparution par le président ; (« *panel* »)

« formation d'audience » S'entend du membre ou des membres du Tribunal affectés à une audience sur le fond ou à une motion par le président ; (« *assigned hearing panel* »)

« inscription » S'entend d'une confirmation écrite d'une action du Tribunal, faite par un membre du Tribunal ou par un membre du personnel du Tribunal ; (« *endorsement* »)

« interdiction de publication » S'entend d'une ordonnance selon laquelle nul ne peut publier de renseignements sur ce qui s'est dit lors d'une comparution publique ou sur le contenu de documents publics ; (« *publication ban* »)

« intervenant » S'entend d'une personne ou d'une organisation autorisée à participer à une instance ou à une partie d'une instance en vertu de la règle 4 ; (« *intervenor* »)

« membre de la formation » S'entend d'un membre d'une formation ; (« *panelist* »)

« membre du Tribunal » S'entend d'un membre de la Section de première instance ou de la Section d'appel ; (« *Tribunal member* »)

« ordonnance de non-divulgence » S'entend d'une ordonnance interdisant la divulgation de la transcription ou d'une partie de la transcription d'une comparution publique, et interdisant à quiconque qui y était présent de divulguer ce qui s'y est dit ; (« *non-disclosure order* »)

« ordonnance interdisant l'accès au public » S'entend d'une ordonnance interdisant l'accès au public à une comparution ou à un document, ou à une partie d'une comparution ou d'un document ; (« *not public order* »)

« président » Désigne le président du Tribunal du Barreau ou un vice-président de la Section de première instance ou de la Section d'appel agissant en l'absence du président ; (« *Chair* »)

« preuve déjà admise » S'entend de la preuve qui a été admise dans le cadre d'une autre instance devant un tribunal judiciaire ou administratif, qu'il soit situé ou non en Ontario, lors d'une audience tenue avant celle dans laquelle son admission est maintenant demandée ; (« *Previously admitted evidence* »)

« représentant » S'entend d'une personne qui représente une partie à une instance ;
(« *representative* »)

« signifier » Fournir des documents à l'autre partie ou aux autres parties conformément à la règle 3.1 ou à la règle 5.1 ; (« *serve* »)

« titulaire de permis » S'entend d'un(e) avocat(e) ou parajuriste qui est partie à une instance ; (« *licensee* »)

« Tribunal » S'entend du Tribunal du Barreau incluant une formation. (« *Tribunal* »)

S'entend au sens de la Loi

2.4 Les termes qui figurent dans les présentes règles et qui sont définis dans la Loi s'entendent au sens de la Loi, sauf indication contraire dans les présentes règles.

Calcul des délais

2.5 Le calcul des délais fixés par les présentes règles, ou par une directive ou une ordonnance rendue en vertu de celles-ci, obéit aux règles suivantes :

- a) si le délai est exprimé en nombre de jours séparant deux évènements, il se calcule en excluant le jour où a lieu le premier évènement, mais en incluant le jour où a lieu le second ;
- b) si le délai fixé est inférieur à sept jours, les congés ne sont pas comptés ;
- c) si le délai pour accomplir un acte expire un congé, l'acte peut être accompli le jour suivant qui n'est pas un congé ;
- d) tout document qui est réputé reçu un congé et toute signification qui est réputée faite un congé est réputé l'être le jour suivant qui n'est pas un congé.

RÈGLE 3 : INTRODUCTION ET RETRAIT D'UNE INSTANCE

Signification

- 3.1 (1) Une partie introduit une instance en signifiant et en déposant l'acte introductif d'instance (formulaire 1 à 17) et la fiche d'information appropriée (formulaire 18 à 25).
- (2) Une partie doit signifier l'acte introductif d'instance et la fiche d'information par l'un ou l'autre des modes suivants :
- a) en main propre à la personne qui reçoit la signification ;
 - b) par la poste, courrier recommandé ou par messagerie ;

- c) par tout autre mode accepté par la personne qui reçoit la signification ou permis par une directive du Tribunal.

(3) Le Barreau doit déposer les actes introductifs d'instance et les fiches d'information par voie électronique.

Modifier un acte introductif d'instance

3.2 (1) Une partie peut modifier un acte introductif d'instance en signifiant et en déposant une version modifiée qui indique clairement la nature des changements :

- a) auprès de la Section de première instance, au plus tard 10 jours avant l'audience sur le fond ;
- b) auprès de la Section d'appel, avant la mise en état de l'appel.

(2) Une partie peut modifier un acte introductif d'instance après le délai fixé avec le consentement de l'autre partie ou avec l'autorisation du Tribunal.

Retrait d'une instance ou d'une motion

3.3 (1) Une partie peut, en tout temps, retirer une instance ou une motion en signifiant et en déposant un avis de retrait (formulaire 26).

(2) Une partie qui a introduit une instance ou une motion et qui ne se présente pas à une comparution ou ne respecte pas le délai fixé par le Tribunal peut être réputée avoir retiré l'instance ou la motion.

(3) Une partie intimée peut demander des dépens après qu'une instance ou qu'une motion est retirée ou réputée retirée.

RÈGLE 4 : PARTICIPANTS ADDITIONNELS

Jonction de parties

4.1 Le Tribunal peut rendre une ordonnance pour joindre une personne comme partie à une instance si la Loi ou, par ailleurs, le droit, lui permet d'être partie à l'instance.

Intervenants

4.2 (1) Le Tribunal peut rendre une ordonnance permettant à une personne d'intervenir dans tout ou partie d'une instance si cette intervention est dans l'intérêt de la justice.

(2) Le Tribunal fixe l'étendue de l'intervention et peut donner d'autres directives sur cette intervention.

Intervenants désintéressés

- 4.3 Le Tribunal peut inviter une personne à participer à tout ou à une partie de l'instance à titre d'intervenant désintéressé pour aider le Tribunal. L'intervenant désintéressé ne constitue pas une partie et aucune ordonnance de dépens ne peut être rendue à son encontre.

RÈGLE 5 : SIGNIFICATION, DÉPÔT, COMMUNICATION AVEC LE TRIBUNAL ET FORMAT DES DOCUMENTS

Mode de signification

- 5.1 Un document autre que l'acte introductif d'instance peut être signifié selon l'un ou l'autre des modes suivants :
- a) en main propre ;
 - b) par la poste, par courrier recommandé ou par messagerie ;
 - c) par courriel, si le document est inférieur à 20 Mo ;
 - d) par télécopieur, si le document comprend au maximum 20 pages ;
 - e) par tout autre mode accepté par la personne qui reçoit la signification ou permis par une directive du Tribunal.

Date de validité de la signification

- 5.2 La signification est réputée valide :
- a) le jour même, si le document est transmis par télécopieur, par courriel, remis en main propre ou livré par service de messagerie avant 17 h un jour ouvrable ;
 - b) le jour ouvrable suivant, si le document est transmis par télécopieur, par courriel, remis en main propre ou livré par service de messagerie un congé, ou après 17 h un jour ouvrable ;
 - c) le cinquième jour ouvrable après l'envoi, si le document est transmis par la poste.

Signification utilisant les coordonnées dans les registres du Barreau

- 5.3 La signification à un titulaire de permis au moyen des coordonnées fournies au Barreau en vertu du Règlement administratif n° 8, art. 3 et 4, est réputée valide à moins d'une ordonnance contraire du Tribunal.

Confirmation de la signification

5.4 Quand un document est déposé auprès du Tribunal, la signification doit être confirmée par l'un des moyens suivants :

- a) une confirmation de la signification (formulaire 27) ;
- b) un affidavit de la personne qui l'a signifié ;
- c) un courriel démontrant que le document a été envoyé à l'adresse courriel de l'autre personne ;
- d) l'acceptation par écrit de la personne qui reçoit la signification.

Communication avec le Tribunal

5.5 (1) Toutes les parties doivent recevoir une copie de toute correspondance envoyée au Tribunal sur la substance de l'instance.

(2) Toutes les communications avec une formation, autres que durant une comparution, sont envoyées par écrit au greffe du Tribunal, et peuvent être envoyées par voie électronique.

Communications respectueuses

5.6 (1) Tous les documents déposés et toutes les communications écrites et verbales avec le Tribunal doivent être pertinents à l'instance et respectueux à l'égard de tous les participants à l'instance et du Tribunal.

(2) Tout manquement à cette règle constitue un facteur pertinent dans l'adjudication des dépens.

Acceptation de documents par le Tribunal

5.7 L'acceptation de documents par le Tribunal ne suppose pas qu'ils ont été signifiés à temps et de façon appropriée ou qu'ils sont par ailleurs conformes aux présentes règles ou à l'ordonnance ou à la directive en vertu desquelles ils ont été déposés. Le Tribunal peut rejeter les documents après leur dépôt.

Exigences du dépôt : copies électroniques et copies papier

5.8 (1) Les documents suivants doivent être déposés en format électronique :

- a) mémoires de conférence préparatoire à l'audience ;
- b) les documents de moins de 10 pages, sauf ceux déposés lors d'une comparution.

(2) Les documents suivants qui comprennent 10 pages ou plus doivent être déposés à la fois en format électronique et papier :

- a) exposés conjoints des faits (à l'exclusion des pièces) ;
- b) affidavits (à l'exclusion des pièces) ;
- c) demandes d'aveux ;
- d) projets d'ordonnance ;
- e) mémoires ;
- f) observations écrites ;
- g) avis de motion.

(3) Tous les autres documents doivent être déposés en copie papier.

Dépôt des documents électroniques

5.9 Les copies électroniques de documents peuvent être déposées en format Word ou PDF, par courriel (si moins de 20 Mo), sur une clé USB ou par tout autre mode permis par le Tribunal. Les noms de fichier doivent préciser le numéro de dossier du Tribunal, le nom du document et la partie qui le dépose.

Dépôt des documents en copie papier

5.10 La partie qui dépose des documents en copie papier doit fournir :

- a) deux exemplaires si la comparution se déroule devant une formation composée d'un seul membre ;
- b) quatre exemplaires si la comparution se déroule devant une formation composée de trois membres ;
- c) six exemplaires si la comparution se déroule devant une formation composée de cinq membres.

ainsi que, dans tous les cas, une copie électronique ou une copie papier additionnelle sans onglets ni reliure.

Présentation

5.11 Les documents préparés pour une instance du Tribunal doivent être imprimés sur du papier blanc de 8 ½ pouces sur 11 pouces, dans une taille de caractères de 12 points, à double interligne, sauf les citations qui peuvent être à simple interligne, avec une marge de 1 ½ pouce à gauche.

Mémoires

5.12 Un mémoire doit comprendre au moins les sections suivantes :

- a) aperçu ;
- b) questions en litige ;
- c) faits, arguments et droit ;
- d) ordonnance recherchée ;
- e) annexe A, contenant une liste des textes à l'appui ;
- f) annexe B, contenant le texte de toutes les dispositions pertinentes des lois, des règlements, des règlements administratifs et des règles des codes de déontologie.

5.13 Sauf autorisation, un mémoire ne doit pas dépasser 30 pages.

Recueil des textes à l'appui

5.14 (1) Les parties doivent souligner les passages dans leur recueil des textes à l'appui qu'ils entendent invoquer au cours de leur plaidoirie.

(2) Les parties ne devraient pas inclure les textes contenus dans le Recueil de sources juridiques du Tribunal ou dans un recueil des textes à l'appui déjà déposé par une autre partie à l'instance.

Couvertures

5.15 Les couvertures avant et arrière d'un document relié doivent être :

- a) vertes si le document est déposé par le Barreau ;
- b) blanches si le document est déposé par un titulaire de permis ou un demandeur de permis ;
- c) chamois si le document est déposé par une autre partie ;
- d) rouges si le document est assujéti à une ordonnance interdisant l'accès au public, à une ordonnance de non-divulgence ou à une interdiction de publication, à moins que le document ait été déposé avant que l'ordonnance ne soit rendue.

RÈGLE 6 : FIXATION DES DATES, AJOURNEMENTS ET MESURES D'ADAPTATION

Première comparution

6.1 (1) La date de première comparution dans une instance devant la Section de première instance est indiquée sur la fiche d'information.

(2) Lorsqu'il s'agit d'une audience sommaire, d'une motion pour suspension ou restriction interlocutoire, ou d'une motion en modification ou annulation d'une ordonnance de suspension ou restriction interlocutoire, la date de première comparution est la date prévue de l'audience. Le requérant doit confirmer la disponibilité d'une date d'audience proposée auprès du greffe du Tribunal avant d'indiquer cette date sur la fiche d'information.

(3) Pour toutes les autres instances devant la Section de première instance, la première comparution est la conférence de gestion de l'instance. Les dates disponibles pour la conférence de gestion de l'instance sont affichées sur le site Web du Tribunal.

(4) Le greffe du Tribunal inscrit au calendrier l'audition de l'appel après la mise en état de l'appel.

Qui peut fixer la date d'une comparution ou ajourner une comparution

6.2 Une comparution peut être inscrite au calendrier ou ajournée :

- a) lors d'une conférence préparatoire à l'audience ou d'une conférence de gestion de l'instance ;
- b) par la formation d'audience ou par le président de cette formation ;
- c) par le greffe du Tribunal, si l'inscription de la comparution au calendrier ou l'ajournement de celle-ci est sur consentement.

Ajournements

6.3 Les ajournements ne sont pas accordés automatiquement, même si les parties y consentent. Lorsqu'une date de comparution devant la formation d'audience est inscrite au calendrier, cette date est définitive et un ajournement n'est accordé qu'en cas de circonstances exceptionnelles, tel qu'indiqué dans la Directive sur la pratique relative aux demandes d'ajournement. Les parties doivent être prêtes à plaider à la date fixée.

6.4 Le Tribunal peut ordonner qu'un ajournement soit sujet à des conditions.

Mesures d'adaptation

6.5 En vertu du *Code des droits de la personne*, L.R.O. 1990, chap. H.19, les participants à une instance ont droit à des mesures d'adaptation, à moins que cela n'entraîne un

préjudice injustifié. Un participant à une instance doit informer le Tribunal dès que possible de toute mesure d'adaptation requise.

Accommodement des témoins

6.6 Lorsque cela serait équitable et dans l'intérêt de la justice, le Tribunal peut :

- a) permettre à une personne de soutien de s'asseoir près d'un témoin pendant qu'il témoigne ;
- b) ordonner qu'un témoin témoigne d'une manière qui lui permette de ne pas voir le titulaire de permis, le demandeur de permis ou toute autre personne ;
- c) ordonner qu'un titulaire de permis ou un demandeur de permis ne procède pas personnellement au contrainterrogatoire d'un témoin, et nomme un avocat pour procéder au contrainterrogatoire sans frais pour le titulaire de permis ou le demandeur de permis ;
- d) rendre tout autre ordonnance pour accommoder ou protéger les témoins.

Défaut d'assister ou de participer

6.7 Si un avis de comparution est donné à une partie et qu'elle n'y assiste ou n'y participe pas, la formation peut procéder sans elle ou sans sa participation. La partie n'aura pas droit à d'autres avis dans le cadre de l'instance.

RÈGLE 7 : GESTION DE L'INSTANCE

Principes

7.1 Le Tribunal pratique une gestion active à toutes les étapes de l'instance, de sorte que, entre autres choses :

- a) l'instance progresse de façon équitable et avec célérité dans l'intérêt public ;
- b) le temps d'audience prévu soit utilisé de façon efficace et efficiente, pour que la formation d'audience entende et tranche les questions en litige ;
- c) les problèmes soient identifiés tôt pour que les parties aient le temps de bien se préparer ;
- d) des ajournements soient accordés uniquement s'il s'agit de circonstances imprévues et exceptionnelles.

Directives de gestion de l'instance

7.2 À la demande d'une des parties ou de sa propre initiative, le Tribunal peut donner des directives de gestion de l'instance :

- a) lors d'une conférence de gestion de l'instance ;
- b) lors d'une conférence préparatoire à l'audience ;
- c) lors d'une audience ou d'une conférence relative à la cause, par la formation d'audience ;
- d) lors d'une conférence relative à la cause, par le président de la formation d'audience, avant ou entre les jours d'audience.

Format

7.3 Une conférence de gestion de l'instance, une conférence préparatoire à l'audience ou une conférence relative à la cause peut se tenir en personne, par téléphone, par vidéoconférence, par écrit, ou par une combinaison de ces moyens.

Inscription

7.4 Un membre de la formation prépare une inscription après chaque conférence de gestion de l'instance, conférence préparatoire à l'audience ou conférence relative à la cause, et y consigne les directives données et les comparutions inscrites au calendrier.

Conférence de gestion de l'instance

7.5 Le Tribunal peut, de sa propre initiative ou à la demande d'une des parties, inscrire tenir une conférence de gestion de l'instance ~~au calendrier~~.

Directives lors d'une conférence de gestion de l'instance

7.6 Lors d'une conférence de gestion de l'instance, la formation peut :

- a) fixer une date de comparution ou l'ajourner ;
- b) établir des délais ou des dates limites pour différentes étapes de l'instance ;
- c) entendre et trancher une motion de procédure ;
- d) rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication, ~~à l'exception d'une ordonnance visant l'exclusion du public de tout ou partie de l'audience sur le fond ;~~ ;
- e) donner toute autre directive de procédure, y compris des directives relatives au processus à suivre lors de l'audience.

Conférence préparatoire à l'audience

7.7 La conférence préparatoire à l'audience a pour objet de faciliter une résolution équitable de l'instance, de la façon la plus expéditive possible.

Questions abordées lors d'une conférence préparatoire à l'audience

7.8 Lors d'une conférence préparatoire à l'audience, la formation peut aborder les questions suivantes avec les parties :

- a) la définition, la restriction ou la simplification des questions en litige ;
- b) la définition et la restriction des éléments de preuve et des témoins ;
- c) la possibilité de s'entendre sur tout ou partie des questions en litige dans l'instance ;
- d) la possibilité pour les parties de s'entendre sur un exposé conjoint des faits ;
- e) les étapes procédurales appropriées pour parvenir à la tenue d'une audience de façon juste et expéditive.

Obligation de fixer une conférence préparatoire à l'audience

7.9 Une conférence préparatoire à l'audience doit être fixée promptement pour toute instance, sauf s'il s'agit d'une audience sommaire, d'une motion pour suspension ou restriction interlocutoire, d'une motion de modification ou annulation d'une ordonnance de suspension ou restriction interlocutoire, ou d'un appel, à moins que la cause ne soit prête pour l'audience. Sur motion d'une partie ou de sa propre initiative, le Tribunal peut fixer une conférence préparatoire à l'audience dans toute instance et à tout moment.

Confidentielle et sous toutes réserves

7.10 La conférence préparatoire à l'audience est confidentielle et sous toutes réserves. Il est interdit de divulguer ce qui s'est passé lors de la conférence préparatoire à l'audience ou le contenu d'un mémoire de conférence préparatoire à l'audience, sauf ordonnance contraire ou obligation statutaire. La formation peut résumer dans l'inscription le résultat des discussions et les directives données.

Directives lors d'une conférence préparatoire à l'audience

7.11 (1) La formation qui dirige une conférence préparatoire à l'audience peut faire ce qui suit :

- a) fixer une date de comparution ou l'ajourner ;
- b) fixer des délais ou des dates limites pour différentes étapes de l'instance ;

- c) donner toute autre directive sur la procédure visant à arriver à une audience de façon juste et expéditive, notamment des directives sur le processus à suivre lors de l'audience.

(2) La formation qui dirige une conférence préparatoire à l'audience peut donner des directives sur la procédure, avec ou sans le consentement des parties.

Mémoire de conférence préparatoire à l'audience

7.12 (1) Chaque partie prépare un mémoire de conférence préparatoire à l'audience contenant un exposé des faits sur lesquels la partie se fonde ainsi que sa position sur les questions en litige.

(2) Le mémoire de chaque partie est envoyé par courriel aux autres parties et au greffe du Tribunal. Le mémoire du Barreau doit être envoyé au moins sept jours avant la première conférence préparatoire à l'audience. Le mémoire du titulaire de permis ou du demandeur de permis doit être envoyé au moins deux jours avant la première conférence préparatoire à l'audience.

(3) Le Tribunal peut dispenser de l'obligation de déposer un mémoire de conférence préparatoire à l'audience s'il est jugé que la préparation du mémoire ne serait pas pratique ou utile dans les circonstances.

Restriction relative à l'affectation d'un membre du Tribunal de la conférence préparatoire à l'audience

7.13 (1) Sauf avec le consentement des parties à l'instance, un membre du Tribunal qui a dirigé une conférence préparatoire à l'audience ne sera pas affecté à l'audience sur le fond, à une motion, ni à un appel de l'instance, et un membre de la formation d'audience ne sera pas affecté à une conférence de gestion de l'instance. Les parties doivent confirmer leur consentement en déposant un formulaire de consentement (formulaire 31).

(2) La présente règle n'empêche pas un membre du Tribunal qui a présidé la conférence préparatoire à l'audience de présider une conférence de gestion de l'instance.

Conférence relative à la cause

7.14 ~~La formation d'audience~~ Le Tribunal peut ~~fixer~~ tenir une conférence relative à la cause de sa propre initiative, selon les directives données lors d'une conférence de gestion de l'instance, ou à la demande d'une des parties.

Directives lors d'une conférence relative à la cause

7.15 Lors d'une conférence relative à la cause, la formation d'audience ou le président de la formation peut :

- a) fixer une date de comparution ou l'ajourner ;

- b) fixer des délais ou des dates limites pour différentes étapes de l'instance ;
- c) rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgence ou une interdiction de publication, ~~en tenant compte du fait que le président de la formation ne peut pas rendre seul une ordonnance visant l'exclusion du public de tout ou partie de l'audience sur le fond ;~~
- d) donner toute autre directive sur la procédure.

RÈGLE 8 : MOTIONS

Motions

- 8.1 (1) Les motions sont présentées par voie d'avis de motion (formulaire 28) sauf si l'avis n'est pas nécessaire en raison de circonstances ou de la nature de la motion.
- (2) Si le Tribunal n'a pas confirmé une date de motion au moment de la signification et du dépôt de l'avis de motion, l'avis doit indiquer que la motion sera entendue à une date qui sera fixée par le Tribunal.
- (3) Le Tribunal peut exiger que les parties comparaissent à une conférence de gestion de l'instance avant de fixer une date pour l'audition de la motion.
- (4) Aucune motion ne peut être présentée avant le début de l'instance à laquelle elle a trait.

Dossier de motion

- 8.2 (1) La présente règle s'applique si une motion est présentée par voie d'avis de motion, sauf en cas de directives contraires spécifiques du Tribunal.
- (2) Au moins dix jours avant l'audition de la motion, l'auteur de la motion signifie et dépose un dossier de motion qui comprend l'avis de motion, accompagné d'un mémoire et un recueil des textes à l'appui.
- (3) Au moins trois jours avant l'audition de la motion, la partie intimée signifie et dépose un mémoire, accompagné d'un dossier de motion et d'un recueil des textes à l'appui, le cas échéant.
- (4) Le dossier de motion comprend, dans des pages numérotées consécutivement ;
- a) une table des matières décrivant chaque document, en indiquant la nature et la date du document, et chaque pièce, en indiquant la nature et la date de la pièce ainsi que son numéro ou sa lettre ;
 - b) l'avis de motion, s'il n'est pas déjà compris dans le dossier de motion d'une autre partie ;

c) tous les affidavits et autres documents sur lesquels la partie entend s'appuyer.

(5) En cas de contrainterrogatoire sur affidavit dans un dossier de motion, celui-ci se déroulera devant la formation d'audience de la motion, à moins que les parties acceptent ou que le Tribunal ordonne qu'il se déroule devant un auditeur officiel. La partie qui convoque le témoin doit s'assurer de la présence du témoin au contrainterrogatoire.

Motion sur consentement ou motion non contestée

8.3 Dans le cas d'une motion sur consentement ou non contestée :

- a) les mémoires et les recueils des textes à l'appui ne sont pas requis à moins que le Tribunal ne l'ordonne ;
- b) l'auteur de la motion doit déposer un projet de l'ordonnance demandée et tout consentement.

RÈGLE 9 : COMPARUTIONS

Méthode de comparution

9.1 Sauf disposition contraire, les comparutions se font ~~oralement et~~ en personne.

Assister à une comparution en personne par voie électronique

9.2 (1) Sous réserve du paragraphe (2), une partie ou son représentant peut, sur demande, assister à une comparution ~~orale~~ en personne par téléphone ou par voie électronique.

(2) Le témoin qui fournit une preuve orale et le représentant ou la partie non représentée qui interroge le témoin lors d'une comparution en personne doivent comparaître en personne, à moins que l'autre partie y consente à ce qu'il assiste par voie électronique ou que le Tribunal l'y autorise.

Comparution sur pièces ou par voie électronique

9.3 (1) Le Tribunal peut exiger, à la demande d'une partie ou de sa propre initiative, qu'une comparution, en tout ou en partie, soit tenue sur pièces ou par voie électronique.

(2) Une demande de comparution sur pièces ou par voie électronique peut être déterminée par écrit.

(3) La formation qui préside une comparution sur pièces peut convertir la comparution en comparution ~~orale~~ par voie électronique ou en personne, et la formation qui préside une comparution par voie électronique peut convertir la comparution en comparution en personne.

Langue

- 9.4 (1) Une instance est instruite en anglais, en français, ou dans les deux langues, au choix du titulaire de permis ou du demandeur de permis.
- (2) Un titulaire de permis ou un demandeur de permis qui demande un changement de langue en cours d'instance doit déposer sa demande dans les 30 jours qui suivent la signification de l'acte introductif d'instance.
- (3) Les documents déposés dans une langue autre que l'anglais ou le français doivent être accompagnés d'une traduction dans la langue de l'instance réalisée par un traducteur compétent, ainsi que d'un certificat du traducteur indiquant qu'il s'agit d'une traduction certifiée conforme et exacte au mieux de ses connaissances.
- (4) Une partie qui entend convoquer un témoin nécessitant une interprétation, en avise le Tribunal le plus tôt possible, et ce au moins sept jours avant l'audience à laquelle l'interrogatoire du témoin est prévue.

Lieu

- 9.5 (1) Sous réserve des paragraphes (2) et (3), une audience en personne se tient au Tribunal du Barreau à Toronto.
- (2) Si toutes les parties consentent à ce qu'une audience se tienne à l'extérieur de Toronto, mais dans la Province de l'Ontario, l'audience se tient à l'endroit convenu.
- (3) Le Tribunal peut ordonner qu'une audience se tienne dans un autre endroit.

Réunion ou instruction consécutive d'instances

- 9.6 (1) Le Tribunal peut ordonner qu'au moins deux instances soient, en tout ou en partie, instruites en même temps ou immédiatement l'une après l'autre si, selon le cas :
- a) elles ont en commun une question de droit ou de fait ou les deux ;
 - b) elles mettent en cause les mêmes parties ;
 - c) elles naissent de la même opération ou du même évènement ou de la même série d'opérations ou d'évènements ;
 - d) il est pour toute autre raison approprié de rendre une ordonnance en application de la présente règle.
- (2) Si une ordonnance est rendue en vertu du paragraphe (1), le Tribunal détermine l'effet de procéder à l'instruction simultanée ou consécutive des instances sur le fond et peut donner des directives à l'égard de cet effet.

Consentement à l'instruction de l'instance par un seul membre du Tribunal

9.7 Les parties à une instance portant sur la conduite peuvent consentir à ce que la requête soit entendue par un seul membre du Tribunal en vertu du paragraphe 2 (1) du Règl. de l'Ont. 167/07 en déposant leur consentement (formulaire 31) auprès du Tribunal.

Transcriptions

9.8 (1) La personne qui désire obtenir la transcription d'une comparution publique doit la commander, à ses frais, auprès du service de sténographie qui a enregistré l'audience.

(2) La première partie qui obtient la transcription d'une comparution publique est responsable du coût des copies électroniques et papier destinées au Tribunal, lesquelles seront déposées directement auprès du Tribunal par le service de sténographie.

~~Vidéos, photographies~~Images et enregistrements

9.9 Nul ne peut, outre le service de sténographie judiciaire, sans autorisation,
a) prendre des photos, ~~enregistrer des vidéos~~ ou faire des enregistrements vidéos ou
audios sur les lieux du Tribunal ou pendant l'audience ~~sans y être autorisé ;~~
a)b) faire une capture d'écran ou faire des enregistrements vidéos ou audios d'une
comparution par vidéoconférence.

RÈGLE 10 : DIVULGATION ET PRODUCTION

Obligation du Barreau de divulguer

10.1 Le Barreau doit divulguer au titulaire de permis ou au demandeur de permis, dans un délai raisonnable après le dépôt de la requête, tous les documents en sa possession potentiellement pertinents et qui ne sont pas protégés par un quelconque privilège. Les documents protégés par un privilège doivent être indiqués à l'autre partie.

Production par le Barreau

10.2 Le titulaire de permis ou le demandeur de permis qui présente une motion de production supplémentaire de la part du Barreau doit inclure dans son dossier de motion la correspondance antérieure avec le représentant du Barreau dans laquelle il demande ces documents, et la réponse du représentant du Barreau.

Motions pour suspension ou restriction interlocutoire

10.3 Les règles 10.1 et 10.2 ne s'appliquent pas aux motions pour suspension ou restriction interlocutoire, ce qui n'empêche pas une formation de rendre des ordonnances de divulgation dans le cadre de telles instances.

Production par des tierces parties

10.4 Si une partie demande la production de documents à une tierce partie, la partie qui fait la demande doit obtenir une date de motion et signifier à la tierce partie une assignation à comparaître exigeant que la tierce partie se présente à la date de la motion, ~~les frais de déplacement~~ l'indemnité de présence et un avis de motion. L'avis de motion doit indiquer la pertinence des documents dont la production est demandée à la tierce partie.

Déclarations des témoins et recueils de documents

10.5 (1) Chaque partie doit remettre aux autres parties :

- a) un recueil de documents contenant tous les éléments de preuve documentaire que la partie prévoit de présenter à l'audience;
- b) une liste des témoins que la partie entend convoquer ;
- c) un affidavit, une déclaration de témoin signée ou un résumé des éléments de preuve orale prévus pour chaque témoin, ainsi que les coordonnées du témoin ou les coordonnées d'une personne par l'intermédiaire de laquelle il est possible de contacter ce dernier.

(2) Le Barreau doit se conformer à la présente règle au moins 14 jours avant une audience sommaire et au moins 20 jours avant toute autre audience sur le fond. Un titulaire de permis ou un demandeur de permis doit se conformer à la présente règle au moins sept jours avant une audience sommaire et au moins 10 jours avant toute autre audience sur le fond.

Rapports d'experts

10.6 (1) Chaque partie doit fournir aux autres parties, au plus tard 60 jours avant une audience, une copie de l'affidavit ou du rapport écrit de chaque témoin expert que la partie entend convoquer.

(2) Un affidavit ou un rapport d'expert doit comprendre une reconnaissance du devoir de l'expert (formulaire 33).

Conséquences du défaut de divulguer

10.7 Les éléments de preuve qui ne sont pas divulgués ou produits comme l'exige la présente règle sont inadmissibles, sauf avec l'autorisation du Tribunal.

RÈGLE 11 : PREUVE

Accord sur les faits

11.1 La formation peut recevoir les faits sur lesquels les parties se sont mises d'accord sans autre preuve, et s'appuyer sur eux.

Preuve par affidavit

11.2 (1) L'interrogatoire principal d'un témoin peut être mené au moyen d'un affidavit, sauf ordonnance contraire du Tribunal.

(2) Tout contrinterrogatoire sur affidavit se déroule devant la formation d'audience, à moins que les parties acceptent, ou que le Tribunal ordonne, qu'il se déroule devant un auditeur officiel.

(3) La partie qui convoque le témoin doit s'assurer de la présence du témoin au contrinterrogatoire.

Aveux réputés

11.3 (1) Une partie peut demander à une autre partie de reconnaître, aux fins de l'instance uniquement, la véracité d'un fait ou l'authenticité d'un document. La demande doit être rédigée selon le formulaire 29 et signifiée à l'autre partie. La demande d'aveux doit comprendre une copie de tout document mentionné dans la demande à moins que l'autre partie ne l'ait déjà en sa possession. Une demande d'aveux doit être signifiée au plus tard_:

- a) 30 jours avant l'audience si elle contient au plus 75 paragraphes ;
- b) 50 jours avant l'audience si elle contient 76 à 200 paragraphes ;
- c) 70 jours avant l'audience si elle contient plus de 200 paragraphes.

(2) La partie à qui la demande d'aveux est signifiée doit signifier une réponse au plus tard ;

- a) 20 jours après la date de signification si la demande contient au plus 75 paragraphes ;
- b) 40 jours après la date de signification si la demande contient 76 à 200 paragraphes ;
- c) 60 jours après la date de signification si la demande contient plus de 200 paragraphes.

(3) La réponse doit être rédigée selon le formulaire 30 et doit, par rapport à chaque fait et document mentionné dans la demande, selon le cas :

- a) reconnaître la véracité du fait ou l'authenticité du document ;
- b) nier expressément la véracité du fait ou l'authenticité du document et donner les motifs de la dénégation ;

- c) refuser de reconnaître la véracité du fait ou l'authenticité du document et donner les motifs du refus.

(4) Si une partie fait défaut de répondre à une demande d'aveux ou de répondre d'une manière conforme à la présente règle, cette partie sera réputée reconnaître, aux fins de l'instance uniquement, la véracité des faits ou l'authenticité des documents mentionnés dans la demande d'aveux.

(5) Si une partie à qui une demande d'aveux a été signifiée ne se présente pas ou ne participe pas à l'audience sur le fond de l'instance, que la partie ait signifié une réponse ou non, la partie sera réputée reconnaître, aux fins de l'instance uniquement, la véracité des faits ou l'authenticité des documents mentionnés dans la demande d'aveux.

(6) Si une partie nie ou refuse de reconnaître la véracité d'un fait ou l'authenticité d'un document après avoir reçu une demande d'aveux, et si par la suite la véracité du fait ou du document est établie, le Tribunal prend la dénégation ou le refus en considération dans l'exercice de son pouvoir discrétionnaire d'adjudication des dépens.

(7) Le Tribunal peut rendre une ordonnance pour rétracter les aveux réputés d'une partie.

Dépôt de documents avant l'audience

11.4 Une partie peut déposer un exposé conjoint des faits, une demande d'aveux réputée reconnue, un affidavit ou un recueil de documents aux fins d'examen par la formation avant l'audience. Le dépôt de ces documents n'empêche pas une autre partie de s'opposer à leur admissibilité à l'audience. Les parties peuvent demander que les documents ne soient pas rendus publics jusqu'à l'audience.

Assignation

11.5 (1) Le Tribunal peut assigner une personne à comparaître pour témoigner sous serment ou par affirmation solennelle à une audience ou pour produire en preuve des documents ou des objets précisés.

(2) L'assignation est rédigée selon le formulaire 32, et peut être signée par le greffier ou un membre du Tribunal.

(3) Sur demande d'une partie, à moins qu'une formation n'instruise autrement, le greffe du Tribunal peut lui délivrer une assignation en blanc.

(4) La partie qui obtient une assignation doit la signifier au témoin, et verser l'indemnité de présence au témoin conformément au tarif A des *Règles de procédure civile*.

Exclusion de témoins

11.6 (1) Sous réserve du paragraphe (2), le Tribunal peut exiger l'exclusion d'un témoin de l'audience jusqu'à ce qu'il soit appelé à témoigner.

(2) Une partie ou une personne qui instruit le représentant d'une partie ne peut être exclue, mais une ordonnance peut être rendue pour que cette personne soit appelée à témoigner avant les autres témoins de la partie.

(3) Sauf ordonnance contraire du Tribunal, nul ne peut communiquer à un témoin exclu le contenu des témoignages entendus pendant son absence avant que ce témoin ait lui-même témoigné.

Admission en -preuve

11.7 (1) Les règles de preuve applicables aux instances civiles s'appliquent aux instances du Tribunal, sauf si ces règles n'en disposent autrement.

(2) Les paragraphes 15 (4) et 16 de la Loi sur l'exercice des compétences légales, L.R.O. 1990, chapitre S. 22 s'appliquent à l'admission de la preuve dans les instances du Tribunal.

(3) Les paragraphes 15 (1) et (2) de la Loi sur l'exercice des compétences légales s'appliquent à l'admission de la preuve dans les motions pour suspension ou restriction interlocutoire.

(4) Toute preuve qui doit être présentée ou toute exigence qui doit être satisfaite avant qu'un registre bancaire ou commercial ne soit reçu ou admis en preuve en vertu de toute règle de common law ou d'un texte législatif peut être présentée ou satisfaite par le témoignage oral ou par affidavit d'une personne donné au mieux de sa connaissance et de sa croyance.

Preuve déjà admise

11.8 La preuve déjà admise peut être admise si les parties à l'instance y consentent, ou si toutes les conditions suivantes sont réunies- :

- a) la partie contre qui l'admission de la preuve est recherchée était ou est une partie à l'autre instance ;
- b) la partie contre qui l'admission de la preuve est recherchée a donné le témoignage en question ou a eu la possibilité de contrinterroger le témoin à l'autre instance ;
- c) une question en litige dans l'autre instance est sensiblement semblable à une question en litige dans l'instance en cours

Limites de l'interrogatoire ou du contrinterrogatoire

11.9

~~(1) La formation peut imposer des limites raisonnables à la poursuite de l'interrogatoire ou du contrinterrogatoire d'un témoin si elle est convaincue que l'interrogatoire ou le contrinterrogatoire a déjà fait toute la lumière sur tout ce qui touche aux questions en litige dans le cadre de l'instance. Une formation ne permet pas un contrinterrogatoire répétitif, abusif ou autrement inapproprié.~~

(2) Une formation peut imposer des limites raisonnables à la poursuite de l'interrogatoire ou du contrinterrogatoire d'un témoin si elle est convaincue que l'interrogatoire ou le contrinterrogatoire a déjà fait toute la lumière sur tout ce qui touche aux questions en litige dans le cadre de l'instance.

Information obtenue par le conseiller ou la conseillère juridique en matière de discrimination et de harcèlement

11.10 Nonobstant toute autre règle, les renseignements obtenus par le conseiller ou la conseillère juridique en matière de discrimination et de harcèlement dans l'exercice de ses fonctions en application de l'alinéa 19 (1) a) du Règlement administratif n° 11 ne doivent pas être utilisés au cours d'une audience, et y sont inadmissibles.

RÈGLE 12 : MOTIONS POUR SUSPENSION OU RESTRICTION INTERLOCUTOIRE

Pouvoir

12.1 (1) Sur motion du Barreau, le Tribunal peut rendre une ordonnance interlocutoire ayant pour effet de suspendre un permis, d'imposer des conditions ou de restreindre la manière dont un titulaire de permis peut pratiquer le droit ou fournir des services juridiques.

(2) Sur motion d'un titulaire de permis ou du Barreau, le Tribunal peut modifier ou annuler une ordonnance interlocutoire prise en application de la présente règle.

Application de la règle sur les motions

12.2 La règle 8 s'applique, sauf si elle diffère de la présente règle, aux motions pour suspension ou restriction interlocutoire.

Autorisation nécessaire

12.3 Si la motion se rapporte à une instance où la Section de première instance n'a pas commencé l'audience sur le fond, le Barreau doit obtenir l'autorisation du Comité d'autorisation des instances pour présenter une motion pour suspension ou restriction interlocutoire.

Signification et documents

12.4 (1) Dans une motion pour suspension ou restriction interlocutoire, le Barreau doit signifier et déposer un avis de motion, une fiche d'information, un dossier de motion, un mémoire et un recueil des textes à l'appui au moins trois jours avant l'audience sur la motion, sauf si la motion est entendue sur préavis d'au moins 10 jours, dans quel cas ceux-ci doivent être déposés au moins 10 jours avant l'audience, ou sauf ordonnance contraire du Tribunal.

(2) Le Tribunal peut ordonner que la signification n'est pas nécessaire dans un ou l'autre des cas suivants :

- a) si elle n'est pas pratique ;
- b) si le délai qu'elle entraînerait risque d'avoir des conséquences graves.

(3) Le titulaire de permis doit signifier et déposer un dossier de motion, un mémoire et un recueil des textes à l'appui, le cas échéant, au plus tard à 14 h la veille de l'audience sur la motion, à moins que la motion soit entendue sur préavis de 10 jours ou plus, dans quel cas le titulaire de permis doit les déposer au moins trois jours avant l'audience.

Suspension ou restriction interlocutoire intérimaire

12.5 Sauf ordonnance contraire, une ordonnance de suspension ou restriction interlocutoire intérimaire demeure en vigueur jusqu'à ce que la motion pour suspension ou restriction interlocutoire soit tranchée.

Durée de la suspension ou restriction interlocutoire

12.6 Sauf ordonnance contraire, une ordonnance de suspension ou restriction interlocutoire demeure en vigueur jusqu'à ce qu'une ordonnance définitive soit rendue dans l'instance sur la conduite à laquelle se rapporte la motion, ou que le Tribunal modifie ou annule l'ordonnance.

Raisons pour modifier ou annuler

12.7 Une ordonnance de suspension ou restriction interlocutoire peut être modifiée ou annulée pour tenir compte d'une nouvelle preuve ou d'un changement de circonstances important.

Motion en modification ou en annulation

12.8 Pour faire une demande de modification ou d'annulation d'une ordonnance de suspension ou restriction interlocutoire, une partie doit signifier et déposer une motion en modification ou en annulation de suspension ou restriction interlocutoire (formulaire 8 ou 9) et une fiche d'information (formulaire 21 ou 22).

RÈGLE 13 : DOSSIER DE L'INSTANCE ET TRANSPARENCE

Dossier de l'instance

13.1 Le dossier de l'instance comprend ce qui suit :

- a) tous les documents déposés auprès du Tribunal, à moins que celui-ci ne les refuse en ce qu'ils ne sont pas conformes aux présentes règles, à une ordonnance ou à une directive ;
- b) toutes les pièces, y compris celles qui sont cotées à des fins d'identification ;
- c) tous les autres documents et correspondances d'une partie ou d'un autre participant examinés par une formation, sauf ceux déposés aux fins d'une conférence préparatoire à l'audience ;
- d) tous les avis d'audience ;
- e) toutes les inscriptions ;
- f) toutes les ordonnances rendues par le Tribunal ;
- g) tous les motifs rendus par le Tribunal ;
- h) toutes les transcriptions déposées auprès du Tribunal.

Publicité des débats

13.2 (1) Le contenu du dossier de l'instance et toutes les comparutions, à l'exception des conférences préparatoires à l'audience, sont publics, sauf ordonnance contraire du Tribunal ou d'un tribunal judiciairejudiciaire.

(2) Toute personne peut assister à une comparution publique sauf ordonnance contraire du Tribunal ou d'un tribunal judiciairejudiciaire.

Dérogation au principe de publicité

13.3 (1) Le Tribunal peut rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgaration ou une interdiction de publication seulement dans les cas suivants :

- a) l'ordonnance est nécessaire pour écarter un risque sérieux pour la bonne administration de la justice, vu l'absence d'autres mesures raisonnables pouvant écarter ce risque ;

- b) les effets bénéfiques de l'ordonnance sont plus importants que ses effets préjudiciables sur le droit à la libre expression et sur la transparence de l'administration de la justice.

(2) Si une ordonnance interdisant l'accès au public, une ordonnance de non-divulgence ou une interdiction de publication est nécessaire, le Tribunal rend l'ordonnance qui affecte le moins le principe de publicité tout en atteignant ~~l'objectif recherché~~ son objectif.

Instances sur la capacité

- 13.4 Lorsqu'elle applique la règle 13.3 à une demande d'ordonnance interdisant l'accès au public, une ordonnance de non-divulgence ou une interdiction de publication dans une instance relative à la capacité, la formation tient compte de ce qui suit :
- a) le fait qu'une question centrale de l'instance sur la capacité est la santé du titulaire de permis ;
 - b) la nature et les répercussions sur le public de toute action du titulaire de permis ayant mené à l'instance ;
 - c) toute stigmatisation liée à la nature des problèmes de santé du titulaire de permis ;
 - d) les répercussions possibles de la divulgation sur la santé du titulaire de permis ou d'autrui ;
 - e) tout autre facteur pertinent.

Enfants et plaignants victimes d'inconduite sexuelle

- 13.5 Une ordonnance interdisant l'accès au public, une ordonnance de non-divulgence ou une interdiction de publication est rendue pour éviter que l'identité des enfants et des personnes qui allèguent une agression ou une inconduite sexuelle ne soit rendue publique, sauf demande contraire d'un adulte qui allègue une agression ou une inconduite sexuelle.

Privilège

- 13.6 À moins d'avoir le consentement du détenteur du privilège, le Tribunal ordonne que les documents privilégiés ou potentiellement privilégiés de même que la preuve concernant les documents et les communications privilégiés ou potentiellement privilégiés ne soient pas rendus publics.

Effets d'une ordonnance interdisant l'accès au public

- 13.7 (1) Lorsqu'une comparution ~~orale~~ n'est pas publique, nul ne peut y assister sauf le titulaire de permis ou le demandeur de permis, les représentants des parties, les témoins et quiconque y étant admis par la formation.

(2) Lorsqu'une comparution ~~orale~~ n'est pas publique, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut recevoir ou voir la transcription, mais les témoins peuvent voir la transcription de leur propre témoignage.

(3) Quand un document n'est pas public, il ne doit pas être remis à une personne autre que les parties, leurs représentants ou une personne qui témoigne au sujet du dit document.

(4) Nul ne peut divulguer ce qui s'est passé pendant une comparution non publique sauf aux parties ou à leurs représentants. Nulle personne qui a pris connaissance d'un document non public dans le cadre d'une instance ne peut divulguer son contenu à des personnes autres que les parties ou leurs représentants.

Effets d'une ordonnance de non-divulgation

13.8 (1) Lorsqu'une ordonnance de non-divulgation a été rendue, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut recevoir ou voir la transcription, mais les témoins peuvent voir la transcription de leur propre témoignage.

(2) Nul ne peut divulguer ce qui s'est passé pendant une comparution faisant l'objet d'une ordonnance de non-divulgation sauf aux parties ou à leurs représentants. Nulle personne qui a pris connaissance d'un document non public dans le cadre d'une comparution ne peut divulguer son contenu à des personnes autres que les parties ou leurs représentants.

Effets d'une interdiction de publication

13.9 (1) En cas d'interdiction de publication, l'audience et le dossier du Tribunal demeurent ouverts au public.

(2) Nul ne peut publier un document ou diffuser ou transmettre de quelque façon que ce soit des renseignements ou des documents qui font l'objet d'une interdiction de publication.

(3) Le Tribunal et le service de sténographie judiciaire qui transcrit l'instance incluent un avis écrit de toute interdiction de publication sur les documents et les transcriptions visés.

Effets d'une ordonnance

13.10 Aucune ordonnance visée par la présente règle n'empêche le personnel du Tribunal ou les membres d'une formation d'avoir accès aux documents qui se trouvent dans les dossiers du Tribunal ou d'assister à une comparution.

RÈGLE 14 : ORDONNANCES ET MOTIFS

Ordonnances

14.1 Sauf disposition contraire, une ordonnance ou une directive prend effet à compter de la date à laquelle elle est rendue, que ce soit oralement, dans une inscription, dans des motifs ou dans une ordonnance officielle, et qu'une inscription ou une ordonnance officielle ait été rendue ou non.

Pouvoir de rendre des ordonnances

14.2 Il est interdit à une formation composée d'un seul membre du Tribunal affecté à une audience sommaire de rendre une ordonnance révoquant le permis d'un titulaire de permis ou permettant à un titulaire de permis de rendre un permis.

Aborder les questions de capacité dans les requêtes relatives à la conduite

14.3 Avec le consentement des parties, une formation de trois membres affectée à une requête relative à la conduite en vertu de l'art. 34 de la Loi peut traiter de questions qui devraient autrement faire l'objet d'une requête en incapacité prévue à l'article 38 de la Loi, et peut rendre toute ordonnance visée à l'article 40 de la Loi.

Ordonnance officielle

- 14.4 (1) Une des parties peut préparer le projet d'ordonnance officielle.
- (2) Une ordonnance officielle est rédigée selon les formulaires 34-38 appropriés.
- (3) La partie qui a préparé le projet d'ordonnance officielle peut le soumettre au Tribunal, avant ou après que la formation ait pris une décision.
- (4) Le projet d'ordonnance est traité comme une observation et la formation peut modifier l'ordonnance.
- (5) Si l'une des parties ne prépare pas une ordonnance officielle, le greffe du Tribunal s'en chargera.
- (6) N'importe quel membre d'une formation peut signer l'ordonnance officielle ou les motifs.

Motifs

14.5 La formation doit rendre des motifs pour toute ordonnance définitive rendue dans une instance relative à la capacité ou dans un appel. Pour toute autre instance, la formation est tenue de rendre des motifs seulement si une partie en fait la demande dans un délai de 30 jours après la prise de l'ordonnance.

Correction d'erreurs

- 14.6 Le greffier, une personne désignée par le greffier ou un membre de la formation qui a rédigé l'inscription, l'ordonnance ou les motifs, peuvent corriger une erreur typographique, une erreur de calcul ou une erreur mineure semblable.

RÈGLE 15 : DÉPENS

Pouvoir d'adjudication des dépens

- 15.1 (1) Le Barreau ne peut être condamné aux dépens que dans l'un ou l'autre des cas suivants :
- a) dans une instance portant sur la délivrance d'un permis, la conduite, la capacité, la compétence professionnelle ou l'inobservation, si l'instance était injustifiée ou si le Barreau a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute ;
 - b) dans une instance non visée à l'alinéa a), si le Barreau a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.
- (2) Le titulaire de permis ou le demandeur de permis peut être condamné aux dépens dans l'un ou l'autre des cas suivants :
- a) si la décision rendue lui est défavorable ;
 - b) s'il a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.
- (3) Un intervenant ou un tiers peut être condamné aux dépens s'il a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

Tarif

- 15.2 Lorsqu'une formation adjuge des dépens, elle tient compte du tarif des honoraires relatifs aux services, sans toutefois être liée par celui-ci (annexe A).

Cautionnement pour dépens

- 15.3 (1) Le Barreau peut demander un cautionnement pour dépens dans une instance portant sur la délivrance d'un permis, si le requérant a déjà été titulaire d'un permis du Barreau en Ontario ; dans une instance portant sur la remise en vigueur ; dans une instance portant sur le rétablissement ; dans une instance portant sur un différend concernant des conditions.

(2) Sur motion du Barreau, la formation peut rendre une ordonnance de cautionnement pour dépens équitables s'il est établi que :

- a) le requérant fait l'objet d'une ordonnance de condamnation aux dépens dans la même instance ou dans une autre instance en application de la Loi et que ceux-ci n'ont pas encore été acquittés, en totalité ou en partie ;
- b) dans le cas d'une instance portant sur le rétablissement ou un différend concernant des conditions, il existe de bonnes raisons de croire que l'instance est injustifiée et que le requérant n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné ;
- c) dans le cas d'une instance portant sur la délivrance ou la remise en vigueur d'un permis, il existe de bonnes raisons de croire que le requérant n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné.

(3) Sauf ordonnance contraire du Tribunal, le requérant contre qui est rendue une ordonnance de cautionnement pour dépens ne peut prendre aucune mesure dans l'instance tant que le cautionnement n'a pas été versé.

(4) Si le requérant ne verse pas le cautionnement imposé par l'ordonnance de cautionnement pour dépens, la formation peut, sur motion du Barreau, ordonner le rejet de l'instance.

RÈGLE 16 : RÉPRIMANDES

Administration des réprimandes

16.1 (1) Une réprimande est administrée soit oralement lors d'une audience ouverte au public, soit par écrit.

(2) Une réprimande écrite fait partie intégrante du dossier de l'instance.

(3) Une réprimande peut être administrée par n'importe quel membre de la formation qui l'a ordonnée.

Appels et réprimandes

16.2 L'administration d'une réprimande n'affecte pas le droit d'interjeter appel de l'ordonnance ni n'affecte les arguments qui peuvent être soulevés en appel.

RÈGLE 17 : APPELS

Ordonnances susceptibles d'appel

17.1 (1) Les articles 49.32 et 49.33 de la Loi régissent le recours en appel d'une ordonnance définitive.

(2) Une ordonnance intérimaire ou interlocutoire de la Section de première instance est sans appel, sauf si l'ordonnance tranche de façon définitive une motion de suspension interlocutoire, auxquels cas elle peut être portée en appel par une des parties.

Délai pour l'introduction de l'appel

17.2 (1) Pour introduire un appel, l'appelant doit déposer un avis d'appel (formulaire 14 ou 15) et une fiche d'information (formulaire 24 ou 25) dans les 30 jours après la date de l'ordonnance définitive de la Section de première instance rendue dans le cadre l'instance faisant l'objet de l'appel. Après ce délai, un appel peut être introduit seulement avec le consentement écrit de l'intimé ou avec autorisation du Tribunal.

(2) Le dossier de motion pour prolonger le délai de recours en appel doit comprendre un projet d'avis d'appel.

(3) Au plus tard 10 jours après avoir déposé l'avis d'appel, l'appelant doit signifier et déposer une confirmation écrite du service de sténographie judiciaire indiquant que toutes les transcriptions de l'instance interjetée en appel qui n'ont pas déjà été déposées auprès de la Section de première instance, ont été commandées.

(4) S'il a le droit d'appeler, l'intimé peut introduire un appel incident en signifiant et en déposant un avis d'appel incident (formulaire 17) au plus tard 15 jours après avoir reçu signification de l'avis d'appel. Aucune fiche d'information n'est requise pour un avis d'appel incident.

Mise en état de l'appel

17.3 L'appelant doit mettre l'appel en état dans les 60 jours suivant le dépôt de l'avis d'appel ou dans les 60 jours suivant la date à laquelle la formation a rendu ses motifs de l'ordonnance définitive, selon la dernière de ces dates. Un appel est mis en état en signifiant et en déposant son recueil d'appel, son mémoire, son recueil des textes à l'appui et toutes transcriptions non déposées dans le cadre de l'instance devant la Section de première instance.

Rejet pour cause de retard et retrait réputé

17.4 (1) Si un appel n'est pas mis en état dans le délai imparti, l'intimé peut présenter une motion de rejet de l'appel pour cause de retard.

(2) Si l'appel n'a pas été mis en état dans un délai de cinq mois à partir de la date de dépôt de l'avis d'appel, le greffier informe les parties que l'appel sera réputé retiré s'il n'est pas mis en état dans les six mois après le dépôt de l'avis d'appel.

(3) Si l'appelant d'un appel incident désire poursuivre l'appel incident même si l'appel est réputé retiré, l'intimé doit informer le Tribunal dans les deux semaines après avoir reçu l'avis du greffier selon le paragraphe 2 de la présente règle.

(4) Si l'appel n'a pas été mis en état dans les six mois après la date du dépôt de l'avis d'appel, le greffier déclare l'appel comme retiré. Si l'appelant d'un appel incident avait indiqué vouloir poursuivre l'appel incident, une conférence de gestion de l'instance est fixée pour établir les délais pour l'audition de l'appel incident.

(5) Le Tribunal peut rétablir un appel ou un appel incident qui a été réputé retiré.

Date de dépôt de la documentation de l'intimé s'il n'y a pas d'appel incident

17.5 Si l'intimé n'a pas déposé d'appel incident, il doit signifier et déposer son recueil d'appel, son mémoire et son recueil des textes à l'appui au plus tard 14 jours avant l'audition de l'appel.

Date de dépôt de la documentation de l'intimé s'il y a appel incident

17.6 Si l'intimé a déposé un appel incident, il doit signifier et déposer son recueil d'appel, son mémoire et son recueil des textes à l'appui au plus tard 30 jours après la mise en état de l'appel. L'intimé doit déposer un mémoire et un recueil d'appel qui portent à la fois sur l'appel et l'appel incident.

Documentation de l'intimé à l'appel incident

17.7 Si l'intimé a introduit un appel incident, l'appelant doit déposer un mémoire en tant qu'intimé de l'appel incident et peut déposer un recueil d'appel supplémentaire et un recueil des textes à l'appui supplémentaire au plus tard 14 jours avant l'audition de l'appel.

Recueil condensé

17.8 Au plus tard cinq jours avant l'audition de l'appel, chaque partie doit déposer un recueil condensé qui contient les documents qui seront invoqués dans sa plaidoirie.

RÈGLE 18 : NOUVELLE PREUVE EN APPEL

Motion pour présenter de nouvelles preuves

18.1 Sauf si l'intimé y consent, l'appelant qui désire présenter à l'audition de l'appel une preuve qui n'a pas été entendue par la Section de première instance doit, au moyen d'un avis de motion, présenter une motion à la Section d'appel pour ce faire.

Preuves proposées dans une enveloppe scellée

18.2 L'appelant qui présente une motion sur la nouvelle preuve doit déposer, avec le dossier de motion, suffisamment de copies des nouvelles preuves, comme le prescrit la règle 5.6, et ce dans des enveloppes scellées distinctes qui ne seront pas rendues publiques jusqu'à ce que la décision sur la motion soit tranchée.

Audition de la motion sur la nouvelle preuve

18.3 Une motion déposée en vertu de la présente règle sera entendue au début de l'audition de l'appel.

Audition de l'appel quelle que soit l'issue

18.4 Les parties doivent être prêtes à procéder à l'audition de l'appel à la date fixée, quelle que soit la décision rendue sur la motion en vertu de la présente règle.

Consentement de l'intimé

18.5 Si l'intimé consent à la présentation d'une nouvelle preuve, la preuve peut être incluse dans les documents des parties et invoquée dans ceux-ci, tant qu'il est clairement indiqué qu'il s'agit d'une nouvelle preuve qui n'a pas été entendue par la Section de première instance.

Moment de la motion pour présenter de nouvelles preuves

18.6 Une motion pour présenter de nouvelles preuves est signifiée et déposée au même moment où l'appel est mis en état, à moins que les autres éléments de preuve ne soient découverts par la suite.

RÈGLE 19 : DOCUMENTATION D'APPEL

Recueil d'appel

- 19.1 (1) Le ~~Recueil~~recueil d'appel de l'appelant doit contenir, dans des pages consécutivement numérotées avec des onglets numérotés :
- a) une table des matières énumérant chaque document inclus dans le recueil d'appel et décrivant chaque document en indiquant sa nature et sa date ;
 - b) une copie de l'avis d'appel et de tout avis d'appel incident, tel que modifié ;
 - c) une copie de l'ordonnance ou des ordonnances faisant l'objet du recours en appel ;
 - d) une copie de toutes les inscriptions et de tous les motifs de la Section de première instance rendus dans la cadre de l'instance ;
 - e) une copie de l'acte introductif d'instance déposé auprès de la Section de première instance ;
 - f) une copie de toutes pièces auxquelles il est fait référence dans le mémoire de l'appelant ;

- g) une copie de tout document déposé auprès de la Section de première instance qui est pertinent à l'appel et auquel il est fait référence dans le mémoire de l'appelant ;
- h) une copie de toute directive donnée lors d'une conférence de gestion de l'instance dans l'appel ;
- i) une copie de toute inscription faite ou de toute ordonnance et de tout motif rendu par la Section d'appel dans l'appel ;
- j) si des documents font l'objet d'une ordonnance interdisant l'accès au public, une copie de cette ordonnance.

(2) Le recueil d'appel de l'intimé doit contenir, dans des pages consécutivement numérotées avec des onglets numérotés :

- a) une table des matières énumérant chaque document inclus dans le recueil d'appel et décrivant chaque document en indiquant sa nature et sa date ;
- b) une copie des pièces auxquelles il est fait référence dans le mémoire de l'intimé et qui ne sont pas dans le recueil d'appel de l'appelant ;
- c) une copie des autres documents déposés auprès de la Section de première instance qui sont pertinents à l'appel et auxquels il est fait référence dans le mémoire de l'intimé et qui ne sont pas dans le recueil d'appel de l'appelant.

(3) Tout document faisant l'objet d'une ordonnance interdisant l'accès au public, d'une ordonnance de non-divulgation ou d'une interdiction de publication doit être inclus dans un recueil d'appel séparé.

Mémoires d'appel

19.2 Dans un mémoire d'appel, les renvois à la transcription de l'instance devant la Section de première instance doivent indiquer la date, le numéro de page et de ligne, et les renvois aux pièces doivent indiquer l'onglet et le numéro de page du recueil d'appel pertinent.

RÈGLE 20 : APPELS D'ORDONNANCES DE SUSPENSION ADMINISTRATIVE

Introduction d'un appel d'ordonnance de suspension administrative

20.1 (1) L'appelant peut introduire un appel d'ordonnance de suspension administrative en signifiant au Barreau et en déposant auprès du Tribunal un avis d'appel d'ordonnance de suspension administrative (formulaire 16) et une fiche d'information (formulaire 25)

dans les 30 jours suivant la date à laquelle l'ordonnance de suspension administrative est réputée avoir été reçue par l'appelant.

(2) Un appel d'une ordonnance de suspension administrative peut être introduit après ce délai avec le consentement du Barreau ou l'autorisation du Tribunal.

Appels d'ordonnance de suspension administrative sur consentement

20.2 L'appel d'ordonnance de suspension administrative sur consentement est entendu sur pièces. Le consentement écrit des parties et un projet d'ordonnance doivent être déposés auprès du Tribunal au moment du dépôt de l'avis d'appel d'ordonnance de suspension administrative ou dès que possible après le dépôt. Il n'est pas nécessaire de déposer d'autre document sauf si le Tribunal l'exige.

Dépôts d'affidavits et audience

20.3 (1) Le Barreau doit déposer un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'ordonnance de suspension administrative au plus tard 30 jours après le dépôt de l'avis d'appel d'ordonnance de suspension administrative.

(2) L'appelant doit déposer un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'appel au plus tard 45 jours après le dépôt de l'avis d'appel d'ordonnance de suspension administrative.

(3) Les contrinterrogatoires des affiants déposants et toute contrepreuve seront entendus oralement lors de l'audience de l'appel, sauf ordonnance contraire.

(4) Aucun mémoire ne doit être déposé avant l'audience, sauf ordonnance contraire.

Conférence préparatoire à l'audience

20.4 Le greffe du Tribunal fixe une conférence préparatoire à l'audience pour chaque appel d'ordonnance de suspension administrative après le dépôt des affidavits.

ANNEXE A – Tarif des honoraires relatifs aux services

	Tarifs
Avocat(e) (20 ans et plus de pratique)	Jusqu'à concurrence de 350 \$ l'heure
Avocat(e) (12 à 20 ans)	Jusqu'à concurrence de 325 \$ l'heure
Avocat(e) (11 à 12 ans)	Jusqu'à concurrence de 315 \$ l'heure
Avocat(e) (10 à 11 ans)	Jusqu'à concurrence de 300 \$ l'heure
Avocat(e) (9 à 10 ans)	Jusqu'à concurrence de 285 \$ l'heure
Avocat(e) (8 à 9 ans)	Jusqu'à concurrence de 270 \$ l'heure
Avocat(e) (7 à 8 ans)	Jusqu'à concurrence de 255 \$ l'heure
Avocat(e) (6 à 7 ans)	Jusqu'à concurrence de 240 \$ l'heure
Avocat(e) (5 à 6 ans)	Jusqu'à concurrence de 225 \$ l'heure
Avocat(e) (4 à 5 ans)	Jusqu'à concurrence de 215 \$ l'heure
Avocat(e) (3 à 4 ans)	Jusqu'à concurrence de 205 \$ l'heure
Avocat(e) (2 à 3 ans)	Jusqu'à concurrence de 195 \$ l'heure
Avocat(e) (1 à 2 ans)	Jusqu'à concurrence de 180 \$ l'heure
Avocat(e) (moins de 1 an)	Jusqu'à concurrence de 165 \$ l'heure
Avocat(e) employé(e) du Barreau de l'Ontario, autre que les avocats du Service de discipline	Jusqu'à concurrence de 190 \$ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (au moins 10 ans d'expérience de parajuriste)	Jusqu'à concurrence de 150 \$ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (5 à 10 ans d'expérience de parajuriste)	Jusqu'à concurrence de 120 \$ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (1 à 5 ans d'expérience de parajuriste)	Jusqu'à concurrence de 90 \$ l'heure
Étudiant(e)	Jusqu'à concurrence de 90 \$ l'heure

Adjoint(e) juridique	Jusqu'à concurrence de 90 \$ l'heure
Vérificateur(trice) judiciaire employé(e) du Barreau de l'Ontario	Jusqu'à concurrence de 190 \$ l'heure
Enquêteur(euse) ou agent(e) des plaintes et de la résolution employé(e) du Barreau de l'Ontario	Jusqu'à concurrence de 90 \$ l'heure



Practice Directions

A. Introduction

The Tribunal Committee's mandate includes developing, for Convocation's approval, policy options on all matters relating to the operation and administration of the Tribunal, including the development or preparation of practice directions. Practice directions provide guidance about what the Tribunal expects of the parties appearing before it and what the parties can expect of the Tribunal. They supplement the Rules, they do not replace them. Existing practice directions cover the following topics:

- Adjournments
- Tribunal Book of Authorities

The following practice directions have been drafted or redrafted. In addition, there is a brief introduction to practice directions that will be available on the Law Society Tribunal website.

- Introduction to practice directions **TAB 3.2.1**
- Practice Direction – Accommodation **TAB 3.2.2**
- Practice Direction – Adjournments (revised) **TAB 3.2.3**
- Practice Direction – Filing Documents **TAB 3.2.4**
- Practice Direction – Public Access to Hearings and Materials **TAB 3.2.5**
- Practice Direction – Recordings / Transcripts **TAB 3.2.6**
- Practice Direction – Serving Documents **TAB 3.2.7**
- Practice Direction – Witnesses **TAB 3.2.8**

B. Process

The practice directions were discussed at the September 10, 2020 Tribunal Committee meeting. The Committee agreed that, after some modifications discussed at the meeting were made, the practice directions will be provided to: Convocation, all Tribunal adjudicators and the Tribunal Chair's Practice Roundtable for comment. Feedback is requested by October 1, 2020 and will be provided to the Committee at its October meeting.

C. The practice directions

Accommodation

The notable aspects of the new draft practice direction on public access include:

- clearly setting out that all participants should be able to take part in the Tribunal process;
- advising that a person requesting accommodation must advise the Tribunal of the need to accommodate and to participate in the process to enable appropriate accommodation to be implemented;
- giving examples of accommodation and describing the Tribunal's facilities;
- highlighting accommodating vulnerable witnesses; and
- setting out the Tribunal's ability to provide an interpreter from other languages.

Adjournments

The practice direction on adjournments has been re-written. In particular, it now includes specific sections on summary hearings and motions for interlocutory suspension or restriction. The factors for considering adjournment requests from the old rules and the jurisprudence have been incorporated. It has also been updated to match the new format of practice directions.

Filing Documents

The practice direction on filing documents sets out all of the requirements for filing documents at the Tribunal, whether in hard copy or electronically, with what colour covers and how many copies. The parties have to be reminded often of these requirements so having them all conveniently together should help.

Public Access to Hearings and Materials

The notable aspects of the new draft practice direction on public access include:

- reminding the parties and the public that notice of the hearing is provided to the public on our website up to 90 days in advance of the hearing;
- setting out what happens at the hearing when orders restricting access are made – i.e. members of the public, witnesses and others seated in the hearing room must leave if the panel orders a part of the hearing to be heard in the absence of the public;
- explaining how to access the Tribunal’s file and what can be accessed within a file; and
- setting out the test for obtaining a not public order, non-disclosure order or publication ban.

Recordings / Transcripts

The notable aspects of the new draft practice direction on Transcripts and Recordings include:

- emphasizing the importance of the Tribunal’s core value of transparency and the paramountcy of the open court principle;
- reminding parties and the public of the public nature of our proceedings and that all proceedings are recorded except for PHCs and written hearings;
- advising that transcripts can be reviewed but not copied or photographed. This is due to the nature of the copyright held by the reporting service; and
- setting out how individuals should ask for leave to record the proceedings for their own use i.e. as a supplement to note taking.

Serving Documents

The practice direction on serving documents sets out the requirements for serving documents at the Tribunal, including serving an originating process, other documents, how to confirm service and when service is effective. In addition, the practice direction sets out the existing practice that if the panel is satisfied that the licensee was properly served then the hearing can proceed without the licensee being present.

Witnesses

The notable aspects of the new draft practice direction on witnesses include:

- emphasizing the importance of the “truth seeking” function of the Tribunal and the need for all parties to treat each other and all witnesses with respect;

- setting out the practicalities of testifying at the Tribunal in in-person and electronic hearings including the ability to testify by video or teleconference in an in-person hearing and to provide evidence by affidavit;
- outlining accommodation for vulnerable witnesses, especially children and those alleging sexual assault or harassment;
- explaining the circumstances in which cross-examination can be stopped by the panel.



INTRODUCTION TO PRACTICE DIRECTIONS

The Law Society Tribunal's *Rules of Practice and Procedure* (Rules) should be read together with the practice directions. Practice directions are written explanations of how the parties can expect to proceed in a certain area or how a particular issue may be dealt with by the Tribunal. Practice directions support the Rules and provide guidance about what the Tribunal expects of the parties and what the parties can expect of the Tribunal. The practice directions will evolve as administrative law and Tribunal jurisprudence evolve.

Practice directions at the Law Society Tribunal have three main purposes:

1. To elaborate on or give more detail about an issue or process that is contained in the Rules and provide guidance for adjudicators when exercising their procedural discretion.
2. To bring together, in one place, different rules that apply to one topic to make them more accessible.
3. To provide the parties and the public with examples from the jurisprudence to give more certainty to the parties about how a procedural issue is usually dealt with or what considerations the Tribunal may take into account.

As a result, practice directions are intended to supplement the Rules, not to replace them. The Rules are drafted to have broad application. The practice directions help the parties conduct their case before the Tribunal, and help the Tribunal proceed in a clear, flexible and responsive manner.



PRACTICE DIRECTION ON ACCOMMODATION

Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. All participants in a proceeding should be able to take part in the Tribunal process and the Tribunal will provide accommodation under the *Human Rights Code*, RSO 1990, c. H. 19 where required.

Accommodation

Under the *Code*, participants in proceedings are entitled to equal treatment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. They are entitled to accommodation of their needs arising from these grounds, to the point of undue hardship.

A participant in a proceeding must advise the Tribunal as soon as possible of any accommodation requests. (See Rule 6.5) To make a request, send the details by e-mail to tribunal@lso.ca. The participant must take part in the accommodation process so that an appropriate accommodation can be implemented, which will generally include providing documentation to support the request. Accommodation will be provided in a manner that respects dignity and allows the participant to take part in the Tribunal process.

Examples

Examples of accommodations of disability-related needs are more frequent or longer breaks throughout the day, shortened hearing days and allowing a participant to alternate between sitting and standing

The Tribunal's facilities

Most hearings are held at the Tribunal's offices at 375 University Ave, Suite 402 in Toronto. The Tribunal premises, including the hearing rooms, break-out rooms and washrooms, are accessible to wheelchairs and other mobility devices. Assistive listening devices are available.

When a hearing occurs at a location other than the Tribunal's offices, for example, for out-of-Toronto hearings, accessibility is part of the consideration for choosing a location.

Hearings also occur using videoconferencing, notably Zoom. Members of the public and the media can attend electronic hearings by contacting the Tribunal Office. Participants can connect to a Zoom hearing using a computer, mobile device or telephone.

Accommodation for vulnerable witnesses

The panel may permit a support person to sit next to a witness. The support person should not communicate with the witness while they are testifying, should remain on camera in a videoconference hearing, and must not disrupt the process. Under some circumstances, witnesses may testify in a separate room or behind a screen to avoid seeing a particular participant in the hearing. The Tribunal may order



that a licensee or licence applicant not personally conduct cross-examination and appoint counsel to do so and may make other orders accommodating witnesses that would be fair and in the interests of justice. (See Rule 6.6) The most frequent use of these types of orders is in cases involving child witnesses or allegations of sexual misconduct.

Interpretation from other languages

The Tribunal will provide an interpreter where a witness is giving evidence in a language other than the language of the proceeding. The party calling a witness requiring interpretation must notify the Tribunal as early as possible, and no later than seven days prior to the hearing, so that arrangements may be made. (See Rule 9.4)



PRACTICE DIRECTION ON ADJOURNMENT REQUESTS

Introduction

The Tribunal processes, hears and decides cases in a manner that is fair, just, and in the public interest. It strives to conclude applications in a fair and expeditious manner. The adjournment of scheduled hearings can interfere with access to justice and the protection of the public, cause delay, and increase costs to all parties and the Tribunal. This practice direction provides guidance to the parties regarding adjournment requests and supplements Rule 6 of the Rules of Practice and Procedure, which deals with scheduling and adjournments.

This practice direction refers to cases; please note that there may be other or new caselaw that also applies.

Scheduling of hearings

Hearings are scheduled in different ways depending on the type of hearing. Most motion and merits hearings are scheduled in consultation with the parties at a pre-hearing conference, proceeding management conference or by the Tribunal Office.

Summary hearings, motions for interlocutory suspension or restriction, and motions to cancel or vary an interlocutory suspension or restriction are scheduled differently. Motions for interlocutory orders usually involve urgent allegations that there is a need for public protection. Summary hearings are to be held expeditiously. Therefore, the applicant (in most cases the Law Society) sets the date for these hearings when the application or motion is filed, after consulting with the Tribunal Office to ensure the date is available. (See Rule 6.1)

Strict adjournment policy

Parties are expected to prepare for hearing and be ready to proceed on the date(s) set. Adjournments lead to a waste of resources, in particular because time must be spent rescheduling the matter, the dates reserved may not be available for other matters and adjudicators and parties have held the time in their calendars.

Parties should use pre-hearing preparation to avoid the need for adjournments. Scheduled dates are firm, and adjournments will only be granted in exceptional circumstances. Adjournments are not automatic, even if parties consent. (See Rule 6.3) Exceptional circumstances include matters such as the illness of a party, witness or representative. Late retention of counsel, the unavailability of counsel or the parties' wishes to engage in last-minute settlement discussions will generally not be considered exceptional circumstances.

The panel must balance the public interest and the licensee's right to a fair hearing. The timing of the adjournment request will be considered in rendering a decision; the closer the request is to the hearing, the more exceptional the circumstances must be to justify an adjournment. Other factors that may be relevant to whether an adjournment should be granted may include:

- prior requests for adjournment and prior adjournments granted;
- orders or directions made, for example that the hearing dates be peremptory;



- the need for an urgent or expeditious hearing;
- availability of witnesses;
- prejudice and inconvenience to witnesses;
- the efforts made to avoid the adjournment;
- whether a party is seeking to manipulate the system to orchestrate delay;
- the consequences of the hearing;
- the length of the requested adjournment.

See, for example, *Law Society of Upper Canada v. Igbinosun*, [2009 ONCA 484](#) at para. 37 and *Law Society of Upper Canada v. Abrahams*, [2014 ONLSTH 64](#) at paras. 21-25.

The Tribunal may consider whether any adjournment should be on terms as set out in Rule 6.4, including whether a suspension until the hearing is appropriate as a term of the adjournment.

Summary hearings

Since, summary hearings are scheduled without the licensee's input, demonstrated unavailability on the dates scheduled can justify an adjournment of a summary hearing if the unavailability is raised promptly. However, unavailability will not usually justify a long adjournment, or an adjournment request brought at the last minute. The fact that summary hearings are meant to be held expeditiously is a relevant factor in considering whether to grant the adjournment. See *Law Society of Upper Canada v. Igbinosun*, [2013 ONLSAP 28](#) at paras. 24-25.

Motions for interlocutory suspension or restriction and motions to vary interlocutory suspension or restriction orders

Law Society of Upper Canada v. Bogue, [2017 ONLSTH 119](#) sets out the Tribunal's approach to adjournments of interlocutory suspension motions and whether they should be on terms.

Requesting an adjournment

A party seeking an adjournment before the scheduled hearing dates should make a request through the Tribunal Office for the matter to be added to the next regularly scheduled PMC. At the same time, the party seeking the adjournment must advise the Tribunal Office if the adjournment request is on consent, opposed or unopposed. Adjournments are not automatic, even if parties consent.

If there is no regularly scheduled PMC between the date of the request and the hearing, the party requesting the adjournment should write to the Tribunal Office, setting out complete submissions in support of the adjournment and indicating whether the request is on consent, opposed or unopposed. A PMC panelist may deal with the matter through a PMC in writing or direct that a special PMC be scheduled. The availability of a special PMC is not guaranteed. Parties are expected to make use of regularly scheduled PMCs.

If there is a seized panel, an adjournment request will normally be dealt with by that panel or the chair of the panel. An adjournment request where there is a seized panel should be made in writing, setting out complete submissions in support of the adjournment and indicating whether the request is on consent, opposed or unopposed. The panel or its chair may deal with the matter through a case conference in writing or direct that an oral case conference be scheduled.



PRACTICE DIRECTION ON FILING DOCUMENTS

Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal follows the open court principle and proceedings are open and accessible to the public, including all documents filed in a proceeding or received by a panel, unless ordered otherwise.

Filing documents at the Tribunal

Filing Requirements

The following chart sets out the filing requirements:

Document	Electronic Copy Required	Hard Copy Required
Pre-hearing conference memoranda	Yes	
Any document less than 10 pages, unless filed at an appearance	Yes	
Agreed statements of facts, if 10 pages or more	Yes	Yes
Affidavits (not including exhibits), if 10 pages or more	Yes	Yes
Requests to admit, if 10 pages or more	Yes	Yes
Draft orders	Yes	Yes
Facta, if 10 pages or more	Yes	Yes
Written submissions, if 10 pages or more	Yes	Yes
Notices of motion, if 10 pages or more	Yes	Yes
All other documents		Yes*

**either an electronic copy, or an additional untabbed unbound paper copy is also required*

Electronic Copies

Electronic copies may be filed in Word and/or PDF format, by e-mail (if less than 20 MB), on a USB drive or by such other method as the Tribunal may permit.

All documents for a hearing should be combined into one or a small number of files. Each of the documents within a file should be clearly identified with a bookmark that takes the reader to the first page of that document. The file name must include the Tribunal file number, the name of the document and the party filing the document. (See Rule 5.9)



Layout

Documents must be on white paper, 8.5 by 11 inches, using 12-point font, double-spaced, except for quotes which may be single-spaced. There must be a margin of at least 1.5 inches on the left-hand side of the page. (See Rule 5.11)

Size of panel	Number of Copies Required
Single member	2
Three members	4
Five members	6

Who is filing the document:	Colour of front and back covers
Law Society of Ontario	Green
Licensee / Licence Applicant	White
Any other party	Buff
Documents subject to not public order, non-disclosure order or publication ban	Red

If you will be asking a panel to make a not public order, non-disclosure order or publication ban and are filing the document ahead of the hearing, you must include a cover letter requesting the materials to be not public pending a determination by the panel. Do not file the materials with a red cover if there is no order related to the documents.

Other communications with the Tribunal

Any communications with the Tribunal about the substance of the proceeding must be copied to all parties, and thus must be in writing and may be sent electronically. (See Rule 5.5) Any correspondence not copying all parties will be returned or will not be processed.

All documents filed and all communications with the Tribunal must be relevant to the proceeding and respectful to all participants in the proceeding and to the Tribunal. (See Rule 5.6)

Please note that as a result of COVID-19, the Tribunal temporarily stopped enforcing requirements for hard copy documents. Please consult the Tribunal's website or the Tribunal Office for more information and to determine if this exemption is still in effect.



PRACTICE DIRECTION ON PUBLIC ACCESS TO HEARINGS AND TO TRIBUNAL FILES

Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal applies the open court principle and proceedings are presumed to be open and accessible to the public, including the media. Transparency is a core value of the Tribunal and decisions, rules, processes and policies are available to licensees and the public.

This practice direction refers to cases; please note that there may be other or new caselaw that also applies.

Open Tribunal

Tribunal proceedings, except for pre-hearing conferences, are open to the public unless there is an order otherwise. Tribunal files may be reviewed by anyone, except for documents that have been ordered to be not public. (See Rule 13.2)

Attending a hearing

Information about all merits hearings is posted on the [Tribunal's website](#) 90 days before the hearing, or less if the hearing is to be held within 90 days of being scheduled. The Tribunal's Communications Coordinator sends a weekly "proceeding update" by e-mail that includes a list of the next week's scheduled hearings. There is a sign-up box for this e-mail on the Tribunal's homepage.

The Tribunal has prepared a Guide to Attending a Hearing, available on the Tribunal's website at <https://lawsocietytribunal.ca/wp-content/uploads/2019/12/EN-Guide-for-Attending-a-Hearing.pdf>.

Most hearings are held at the Tribunal's offices at 375 University Ave, Suite 402, in Toronto. Some are held at different locations across the province. Hearings also take place using videoconferencing, notably Zoom. Members of the public and the media can attend electronic hearings by contacting the Tribunal Office. Observers can connect to a Zoom hearing using a computer, mobile device or telephone.

Accessing the Tribunal file

The Tribunal keeps a copy of all hearing-related documents that are filed in a proceeding. Any member of the public may ask to review any of the public documents in a Tribunal file. Rule 13.1 of the *Rules of Practice and Procedure* sets out what documents are available to the public. They include:

- materials filed with the Tribunal;
- exhibits;
- other documents and correspondence from a party reviewed by a panel, except for the purpose of a pre-hearing conference;



- notices of hearing, endorsements, orders, and reasons of the Tribunal;
- transcripts filed with the Tribunal.

Information about how to request access to materials from active and closed files is on the Tribunal website: <http://lsotribunal.wpengine.com/accessing-closed-tribunal-files/>.

Not public orders, non-disclosure orders and publication bans

Sometimes the Tribunal departs from openness by making an order that an appearance, or documents that would otherwise form part of the public record, be not public, not disclosed or subject to a publication ban.

When a participant asks that there be a not public order, non-disclosure order or publication ban, the panel must balance the open court principle and transparency with privilege and privacy interests. The balancing test adopted from the Supreme Court of Canada's jurisprudence is reflected in Rule 13.3. *Law Society of Upper Canada v. Xynnis*, [2014 ONLSAP 9](#) explains how this balancing is applied at the Law Society Tribunal. To justify a not public order the order must be necessary to prevent a serious risk to the administration of justice and the benefits of the order must outweigh the effects on transparency. An order cannot be justified merely on the basis of a desire to avoid publicity, embarrassment or exposure of personal information about the licensee or licence applicant.

Privileged, or possibly privileged, documents are automatically not public. (See Rule 13.6) So are children's identities, and the identities of persons who allege sexual assault or misconduct, unless they are an adult and request otherwise. (See Rule 13.5)

Specific considerations are set out in Rule 13.4 regarding departures from openness in capacity proceedings. This recognizes that there may be special privacy considerations when health is the main issue in the proceeding.

Where the hearing or documents are subject to a not public order

When an oral appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may attend or order or review the transcript. Witnesses may view the transcript of their own testimony. (See Rule 13.7(2)) Members of the public will be asked to leave the hearing room for the portion of the hearing that is being held in the absence of the public. Not public documents will not be provided to any members of the public reviewing the file.

Where the hearing or documents are subject to a publication ban

When a publication ban has been made, the hearing and Tribunal file remain open to the public. Members of the public will not be asked to leave the hearing room and anyone can order the transcript. No one may publish or broadcast in any way information or documents subject to the publication ban. (See Rule 13.9(2)) A copy of the order is provided to any members of the public reviewing the file.

Where the hearing is subject to a non-disclosure order

A non-disclosure order is made when it is determined that information should not be public after it was referred to in an open hearing. A non-disclosure order prohibits anyone who was present



from disclosing what was said, and the documents are treated in the same manner as not public documents. (See Rule 13.8)

Recordings and transcripts

Recording

No one, other than the reporting service hired by the Tribunal for that purpose, may take photographs or make a video or audio recording in the Tribunal premises or the hearing room without leave. This includes taking a screenshot or making a video or audio recording of an electronic appearance. (See Rule 9.9) Recordings made by the reporting service are used to prepare the transcripts and as a result are considered internal working documents and are not available to the public pursuant to the terms of the contract between the Tribunal and the reporting service.

Transcripts

All oral appearances are recorded by a reporting service, except pre-hearing conferences. Any person, whether a party to the proceeding or not, may order a copy of the transcript from the reporting service at their own expense. The first party to order a transcript must also pay a fee for the Tribunal's electronic and hard copies. The Tribunal's copies are provided directly to the Tribunal by the reporting service. (See Rule 9.8) Links to the court reporting services used by the Tribunal are on the Tribunal's website: <https://lawsocietytribunal.ca/useful-links/>.

Hearing transcripts, if contained in the Tribunal file, can be viewed by any person reviewing a file. Transcripts cannot be copied or photographed.



PRACTICE DIRECTION ON TRANSCRIPTS AND RECORDINGS

Introduction

The Tribunal's role is to process, hear and decide regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal follows the open court principle and proceedings are presumed to be open and accessible to the public, including the media. Transparency is a core value of the Tribunal and decisions, rules, processes and policies are available to licensees and the public.

Transcripts

All oral appearances are recorded by a reporting service, except pre-hearing conferences. Any person, whether a party to the proceeding or not, may order a copy of the transcript from the reporting service at their own expense. The first party to order a transcript must also pay a fee for the Tribunal's electronic and hard copies. The Tribunal's copies are provided directly to the Tribunal by the reporting service. (See Rule 9.8)

Hearing transcripts, if contained in the Tribunal file, can be viewed by any person reviewing a file. Transcripts cannot be copied or photographed.

When the hearing is subject to a not public or non-disclosure order

When an oral appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may order or review the transcript. Witnesses may view the transcript of their own testimony. (See Rules 13.7(2) and 13.8(1))

When the hearing is subject to a publication ban

When a publication ban has been made, the hearing and Tribunal file remain open to the public. No one may publish or broadcast in any way information or documents subject to the publication ban. (See Rule 13.9(2))

Transcripts on appeal

Rule 17 deals with appeals at the Tribunal. Rule 17.2 sets out the deadline for appeals. Within ten days of filing a notice of appeal, the appellant must serve and file written confirmation from the reporting service that all transcripts of the proceeding under appeal have been ordered. (See Rule 17.2 (3)) Transcripts do not need to be ordered again if they have already been filed with the Tribunal.

Recording

No one, other than the reporting service hired by the Tribunal for that purpose, may take photographs or make a video or audio recording in the Tribunal premises or the hearing room without leave. This includes taking a screenshot or making a video or audio recording of an electronic appearance. (See Rule 9.9) Recordings made by the reporting service are used to prepare the transcripts and as a result are considered internal working documents and are thus



not available to the public pursuant to the terms of the contract between the Tribunal and the reporting service.

How to ask for leave

A party or member of the public who wishes to record the hearing should advise the Tribunal as soon as possible. The person making the request should advise the Tribunal Office's Administrator or the File Management Coordinator (FMC) responsible for the file, on arriving at the Tribunal for the hearing. The Administrator or FMC will advise the panel of the request so that it can be addressed as a preliminary matter.



PRACTICE DIRECTION ON SERVING DOCUMENTS

Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal follows the open court principle and proceedings are open and accessible to the public, including all documents filed in a proceeding or received by a panel, unless ordered otherwise.

This practice direction refers to cases; please note that there may be other or new caselaw that also applies.

Where to serve

When a document is to be served on the Law Society, the party shall deliver it to the Law Society representative the party has been dealing with, if any, or to:

Law Society of Ontario
Professional Regulation Division
393 University Avenue, 11th Floor
Toronto ON M5G 1E6

When the Rules require a party to serve a document on a licensee, the party may use the contact information provided to the Law Society by the licensee under By-Law 8, ss. 3 and 4 unless otherwise ordered by the Tribunal. (See Rule 5.3) By-Law 8 sets out a licensee's requirement to keep contact information up to date.

Starting proceedings

Originating Process

An originating process is the document that begins the proceeding: a notice of application, notice of referral for hearing, notice of appeal, notice of administrative suspension order appeal, notice of cross-appeal, notice of motion – interlocutory suspension or restriction or notice of motion – vary or cancel interlocutory suspension or restriction. These forms, and their corresponding information sheets, are found in the Tribunal's [Forms](#), and fillable versions are available [here](#).

All originating process documents and corresponding information sheets must be served by hand delivery, regular or registered mail or courier. The parties may also agree to another method of service. (See Rule 3.1)

After it has been served, the originating process and information sheet must be filed with the Tribunal along with a [confirmation of service](#) or other proof of service that sets out how it was served on the respondent. (See Rule 5.4)

Serving other documents

Once the proceeding has begun, other documents may have to be served on the other party. These include notices of motion and motion materials, requests to admit, responses to a request to admit and hearing materials.



There are additional options available when serving documents that are not an originating process. In addition to hand delivery, regular mail, registered mail and courier, they can also be sent by e-mail or fax, subject to size limitations. E-mails must be no more than 20 MB and faxes must be 20 pages or less. (See Rule 5.1) The parties can also agree on another method of service.

When is service effective?

Rule 5.2 sets out that service is deemed effective if sent by fax, e-mail, hand delivered or delivered by courier before 5 p.m. on a business day, on that day and if after 5 p.m., on the next business day. If a document is sent by regular mail, then service is deemed to be effective on the fifth business day after mailing.

Confirming service

When a document is filed with the Tribunal, service must be confirmed by:

- (a) a [confirmation of service](#) form (Form 27);
- (b) an affidavit of the person who served it;
- (c) an e-mail showing that the document was sent to the other person's e-mail address (*only where e-mail is an allowed method of service*); or
- (d) written acceptance of service by the person served, including by e-mail.

(See Rule 5.4)

Demonstrating service where the licensee does not attend

It may be that the Law Society served an originating process in accordance with the rules but the licensee does not attend the hearing. The Tribunal's jurisprudence requires the Law Society to provide evidence that it properly served the licensee. The Law Society may file a "service brief" setting out its attempts to contact the licensee and what response, if any, was received.

If the panel is satisfied that the licensee was properly served then the hearing can proceed without the licensee being present. (See Rule 6.7) For example, see *Law Society of Ontario v. Ryu*, [2018 ONLSTH 123](#); *Law Society of Upper Canada v. Shivarattan*, [2010 ONLSHP 102](#). (See Rule 6.7)



PRACTICE DIRECTION ON WITNESSES

Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal's role is to reach a fair and just outcome and its processes are designed to seek the truth. The Tribunal values the evidence and time of all witnesses who testify before it. Witnesses' testimony plays an important role in deciding cases.

Respect

Parties' and representatives' written and oral communications with witnesses, including during examination and cross-examination, must be respectful to them. (See Rule 5.6) Similarly, witnesses must treat all other participants in the proceeding with respect.

Methods of Hearing

Appearances may take place in person, electronically or in writing (See Rule 9). Electronic hearings typically take place by videoconference, using the Zoom platform. At an electronic hearing, all participants, including witnesses, attend electronically using a computer, smartphone or tablet. The Tribunal has a [guide](#) to attending Zoom hearings that may be helpful to witnesses participating in a videoconference hearing.

Methods of Testimony

A witness may testify in person, electronically by video or telephone conference, or by affidavit.

Testifying by Video or Teleconference at an In-person Appearance

A witness can testify by video or teleconference at an in-person appearance if the parties consent or the Tribunal gives leave. (See Rule 9.2) The Tribunal has electronically equipped hearing rooms, and a witness can testify remotely by video conference from any device with a camera and a microphone, including a computer, smartphone or tablet. The Tribunal's equipment allows the witness to see the panel, representative or party asking questions and the other party or representative. If the parties agree or permission has been granted, the Scheduling Coordinator will make the arrangements for the video conference. The parties should advise the Tribunal of the consent or ask for permission as far in advance as possible so the Tribunal can make arrangements.

Affidavits

A witness's evidence-in-chief may be given by affidavit, unless the Tribunal orders otherwise. (See Rule 11.2(1)) Affidavits may also form part of a motion record filed by a party under Rule 8.2. Cross-examination, if any, on a witness's affidavit takes place before the panel at the hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter. (See Rules 8.2(5) and 11.2(2)) Where the witness is vulnerable or cross-examination is likely to be contentious, cross-examination should be before the panel.



Exclusion of Witnesses

On request, the Tribunal will generally make an order that anyone who may be a witness not attend the hearing and that those present not communicate with excluded witnesses about the evidence until they have given their evidence. (See Rule 11.6)

Accommodation

Witnesses are entitled to accommodation of their needs under the *Human Rights Code* and to other accommodations that would be fair and in the interests of justice. (See Rules 6.5 and 6.6) Examples are extra breaks throughout the day for health reasons, alternating between sitting and standing if prolonged sitting is difficult, and interpretation to and from a language other than the language of the proceeding. (See Rule 9.4(4))

If you are a witness who requires accommodation, please contact the Tribunal and/or the party who is calling you as a witness.

The Tribunal may make other orders to accommodate or protect witnesses where it would be fair and in the interests of justice. (See Rule 6.6(d))

Support Person

The Tribunal may permit a support person to sit next to a witness while they testify. (See Rule 6.6(a)) The support person should not communicate with the witness while they are testifying, should remain on camera in a videoconference hearing, and must not disrupt the process.

A support person will be permitted on request unless there would be harm to the hearing process. Support people must be arranged in advance and the need for a support person will not generally be a ground for an adjournment. The Tribunal may decide that a proposed support person is not appropriate, for example if they are a witness or it appears they will not respect the limitations of their role. The Tribunal may direct that a support person be removed if they are not acting as required.

Manner of Testifying and Cross-examination

Children under 18, those alleging sexual assault or harassment and others may have difficulty testifying in the presence of the licensee/licence applicant or another person for appropriate reasons related to factors including age, disability, illness, trauma or emotional state.

To address this, and when it would be fair and in the interests of justice, the Tribunal may permit a witness to testify in a manner that would allow the witness to not see the licensee/licence applicant or other person. (See Rule 6.6(b)) Generally, this will be done by having the witness testify by videoconference from an adjacent hearing room. Other possible methods are a screen or other device that would allow the witness not to see the person. In an electronic hearing, the licensee/licence applicant or other person may be asked to turn off their video camera.

The Tribunal may order that the licensee/licence applicant not personally conduct the cross-examination of witnesses. When it makes such an order the Tribunal will appoint counsel to do so at its cost. (See Rule 6.6(c)) The Tribunal will maintain a list of counsel the licensee/licence applicant can select.



No Adverse Inference

The Tribunal cannot find that testimony is less worthy of belief because a witness has been accommodated.

Cross-examination

Cross-examination plays an important role in the truth-finding process. There are limits, however, and it must not be abused. Cross-examination of a witness cannot be repetitive, abusive or otherwise inappropriate. (See Rule 11.9(1)) The panel must stop cross-examination that includes harassment, misrepresentation, or groundless questions with irrelevant innuendo. The panel may also limit examination or cross-examination where the examination or cross-examination has been sufficient to disclose the matters at issue in the proceeding. (See Rule 11.9(2))

Tribunal Statistics – For Information

A. Executive Summary

Ongoing collection and reporting of Tribunal operational statistics assists the Tribunal to track issues, identify needs and monitor emerging trends in Tribunal proceedings. This enables the Tribunal Committee and Convocation to make policy decisions with a more fulsome understanding of the Tribunal's work.

B. Committee Process

The Committee met on September 10, 2020. Committee members Julia Shin Doi (Chair), Ryan Alford (Vice-Chair), David A. Wright (*ex officio*), Jared Brown, Paul Cooper, Jean-Jaques Desgranges, John Fagan, Michael Lesage, C. Scott Marshall, Isfahan Merali, Barbare Murchie, Geneviève Painchaud, Chi-Kun Shi and Tanya Walker attended. Bencher Alexander Wilkes, also attended, as did staff member Lisa Mallia.

C. Background

The statistics that the Tribunal reports on were decided upon through an extensive process. In 2016, the Tribunal Committee considered what types of data would be useful in public and internal reports. This review was done while considering the goals of the Tribunal model as well as issues raised in the 2016 Tribunal Model Three-Year Review final report. That report highlighted the need for a revised approach to data collection that would focus on adjudicative purposes in order to measure the effectiveness of the Tribunal's processes.

In 2017, the Committee approved a list of statistics to be gathered and reported on quarterly and annually. The Tribunal then designed data collection and technology around this list. The goal of the statistics the Committee chose is to have focused reporting that:

- measures outcomes;
- measures efficiency;
- monitors trends; and
- monitors data around adjudicators, duty counsel/self-represented licensees, French language hearings, and licensee/licensee applicant data.

These goals must be pursued while bearing in mind the public interest nature of the information and the goal of transparency.

The Tribunal provides five statistical reports each year to Convocation: four quarterly reports and one year-end report. The Q2 2020 quarterly report is set out at **TAB 3.3.1**. Note that this is the first report that covers a period of time where COVID-19 affected the Tribunal's operations for the entire quarter.

D. Q2 2020 Quarterly Report

Law Society staff, including those at the Tribunal, began working at home during the last two weeks of the first quarter. All in-person appearances were cancelled at that time and since then,

appearances have taken place by videoconference, teleconference or in writing. Most merits and motion hearings have taken place by videoconference, PMCs have taken place by teleconference, and PHCs have recently changed from teleconference to videoconference at the request of PHC adjudicators.

The volume of cases open at any point in time is generally between 165 and 175, although in Q1 this year there were 185 files open at the end of the quarter and 210 at the end of Q2: see *Caseload* on page 5 of the Q2 report.

A similar number of files were opened in Q2 of 2020 and Q2 of 2019, though fewer files were closed in Q2 of 2020 than 2019: see *Figure 1* on page 3 and *Figure 5* on page 4. Similarly, there was a significant decrease in full days used for hearings in Q2 compared to Q1: See *Figure 10* on page 7. Most longer, more complex hearings were cancelled during the first months of COVID-19.

The Tribunal also measures the length of time taken to complete reasons: see *Figure 15* on page 12. The average number of days to deliver written reasons decreased from 82 in Q1 to 69.5 in this quarter. The number of reasons declined by 21% from Q2 2019 to Q2 2020.

The report also shows that 19 applications by the Law Society were closed in Q2: see *Figure 19* on page 14. Most were granted in full (15), one was withdrawn, one granted in part and two were dismissed. Three motions for interlocutory suspension were closed in Q2 – one was dismissed on consent and two were withdrawn: see *Figure 21* on page 15. Five matters initiated by the licensee / licence applicant were closed in Q2, three were granted in full or in part, one was dismissed and one was withdrawn: see *Figure 23* on page 16.

One appeal brought by a licensee / licence applicant was closed in Q2 and it was dismissed: see *Figure 25* on page 17. No appeals brought by the Law Society were closed in Q2.



Law Society
of Ontario

Barreau
de l'Ontario

TRIBUNAL COMMITTEE REPORT

Law Society Tribunal 2020 Q2 Statistics

Available upon request via the Law Society Tribunal website

<https://lawsocietytribunal.ca/>

LAW SOCIETY OF ONTARIO

**Notice of Motion made pursuant to section 93 of By-Law 3
[Benchers, Convocation and Committees]**

**Notice is hereby given of the following motion to be made at
Convocation on 24 September, 2020**

WHEREAS with the onset of COVID-19, the Ontario court system was necessarily forced to pause many of its operations;

AND WHEREAS with much of the Court system effectively closed, it became impossible for many members to provide legal services;

AND WHEREAS the pandemic has had a devastating financial impact upon the revenues of virtually all members in private practice;

AND WHEREAS it is of critical importance to the access to justice and the public interest of all Ontarians that members of the Law Society are able to remain financially viable through this pandemic;

NOW, THEREFORE, BE IT RESOLVED THAT:

For 2021, Convocation shall reduce the annual licensing fees for all members of the Law Society by no less than 25% of the amounts at which their annual licensing fees were set for 2020.

Dated: 1 September 2020

MOVED BY: Geoffrey Pollock
GEOFFREY POLLOCK

SECONDED BY: Marian Lipka
MARIAN LIPKA

(Motion with original signatures received by the Secretary)



REPORT TO CONVOCATION

SEPTEMBER 2020

TO: The Treasurer and Benchers of the Law Society of Ontario

RE: 2021 Insurance Program: Transmittal of Report to Convocation

The LAWPRO primary errors and omissions policy and program is updated each year to address the current environment and the changing risks faced by the Ontario bar. LAWPRO is successfully adapting to and transitioning through the changing circumstances and challenges of the COVID-19 pandemic.

The financial viability of an independent malpractice insurer, particularly in a hardening market when insurance can be more difficult to obtain at an affordable rate, is paramount to meeting the Law Society's public protection mandate and to helping the profession through a situation like we are currently experiencing. If LAWPRO's financial health is compromised, we run the chance of another insurance crisis, less protection for the public, and no backstop for Ontario lawyers.

Economic downturns typically mean an increase of malpractice claims as clients seek recompense from their lawyers for the losses they have suffered. There are predictions that Ontario may be headed into a deeper and longer downturn than we have seen in many years. LAWPRO expects there will be premium increases in future years as a result of pandemic-related claims costs and capital requirements.

As of the end of August, 2020, year-to-date, LAWPRO has opened 10% fewer new claims from the same period last year but for the same period, claims costs are only down 2%. We expect to see claims counts and costs to rebound through the end of this year and into next as courts reopen and economic activity increases.

With careful management, LAWPRO remains fiscally stable. The company was able to offer premium, levy, and deductible payment deferrals during the height of the pandemic while continuing to meet required financial and regulatory obligations. That being said, capital-on-hand has been pushed below the company's preferred range and much closer to the minimums required by our regulator. These minimums set by the provincial regulator exist to ensure the Company withstands adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration.

As part of its mandate, LAWPRO sets its premiums to reflect the risk and kind of work that lawyers do (i.e., those with greater risks pay higher premiums). Those with a lower risk – 35% of the lawyers we insure – receive discounts from the base premium. The following LAWPRO discounts are available in 2021:

For those who take approved risk management courses

\$50 discount per approved course, subject to a \$100 maximum

For new lawyers

- less than 1 full year in practice: 50 per cent discount
- less than 2 years in practice: 40 per cent discount
- less than 3 years in practice 30 per cent discount
- less than 4 years in practice: 20 per cent discount

For those who limit their practice to criminal¹ and/or immigration law

- 50 per cent discount

For those who work part-time

- 50 per cent discount is available to practitioners restrict their law practice to 20 hours per week up to 750 hours per year and have gross billings of \$90,000 per year or less

For those employed at a Designated Agency²

- 75 per cent discount in recognition of low risk and enhanced access to justice

What is new for 2021?

The 2021 E&O insurance proposal includes adjustments to address the need for broader vicarious liability risks as affordably as possible and to improve administrative processes for efficiency and cost savings.

Innocent Party coverage for all

For the 2021 policy year, Innocent Party coverage will be included in the base coverage and required for all insureds. The base premium will be raised by \$50. The cost of Innocent Party coverage was previously an additional \$125 dollars.

This change will reduce the total premiums paid by more than 70% of Ontario lawyers by \$75. Roughly 30% of Ontario lawyers will see their annual premium increase by \$25 or \$50 because of this change.

This change addresses increasingly fluid practice structures, marketing and office arrangements, as well as possible increases in fraudulent activity as we likely head into a recession.

Consolidated deadlines and discounts

The following changes will increase fairness, simplify deadlines and late charges for insureds, make the renewal process clearer and easier for lawyers, and lower costs through reduced administrative work.

Renewal deadlines will be reduced and the late filing surcharge will be decreased by \$285.

- A single filing deadline of November 9 will be applied to all renewals instead of multiple staged deadlines.

The surcharge will be reduced from \$885 to \$600 with an option to have insureds reduce this to \$350 by filing renewal applications by a late filing deadline. To ensure fairness for all, this surcharge will be strictly enforced.

¹ Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

² A “Designated Agency” can include a Civil Society Organization that has been approved for the general premium discount.

One-Click Renewal

To improve the renewal process for lawyers, LAWPRO has developed a one-click renewal process to increase speed and ease for insureds. If a lawyer has no changes from the previous year, they can quickly file online by clicking one button instead of completing the previous form. This saves insureds time, reduces the likelihood of error, and decreases administrative costs for LAWPRO.

LAWPRO was one of the first malpractice insurance companies to offer online renewal over two decades ago. We encourage insureds to file and pay levies online in the My LAWPRO portal. If an insured will not be practising in real estate or civil litigation, they can save time by requesting an exemption from the transaction levy filing requirements during the renewal process.

Continued financial stability provides security for the profession

A properly funded insurance program provides the foundation for Ontario lawyers to confidently offer services to the public in our increasingly complex society. The full impact of the COVID-19 pandemic on LAWPRO remains to be seen. To meet capital requirements, the LAWPRO Board expects that premium increases will be necessary in future years due to decreasing premium revenue and lower investment income coupled with an expected increase in claims costs. To allow LAWPRO to meet minimum capital requirements set by our regulator in 2021 and future years, some consideration was given to further increasing premiums for the 2021 year, but the Board recognized the financial challenges that many members of the profession currently face.

Conclusions

The circumstances of the profession and the state of the economy remain fluid. LAWPRO Board members and Management continue to monitor and analyze changes to the claims portfolio and capital requirements. Continuous review and clarification make the insurance program as effective as possible while financial acuity, effective claims handling, and responsive customer service have guided the Company since its inception over 25 years ago. The LAWPRO Board of Directors recommends that Convocation accept the proposed changes to the Primary Program of Insurance for 2021 outlined in the attached report.

Original signed by Andrew Spurgeon

Original signed by Daniel Pinnington

Andrew J. Spurgeon
Chair

Daniel E. Pinnington
President & CEO

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")

REPORT TO CONVOCAATION – SEPTEMBER 2020

INTRODUCTION

1. LAWPRO provides the mandatory professional liability insurance coverage for the more than 29,000 Ontario lawyers in private practice. Each September, LAWPRO's Board of Directors reports to Convocation on changes to the insurance program for the following calendar year. The timing of this Report is necessitated by the logistics of renewing all policies effective January 1, and the need to negotiate and place related or corollary reinsurance treaties prior to the renewal date.
2. For 2021, LAWPRO Management has conducted its annual review of the Primary Errors and Omissions Program (the "Primary Program") and offers an insurance program for 2021 with the changes outlined in this Report.
3. Based on LAWPRO's mandate from Convocation, careful consideration of claims trends, affordability, coverage needs and potential risks, the LAWPRO Board of Directors recommends that Convocation accept this Primary Program of Insurance for 2021 so that it can be implemented by January 1, 2021.

BACKGROUND

4. LAWPRO was created in response to the "insurance crisis" of the early 1990s. At that time, it was common practice for lawyers to engage in mortgage brokering when acting on real estate matters. In the aftermath of a real estate crash, many clients sued their lawyers for the financial losses they suffered. Largely as a result, in 1994, the Law Society of Ontario's ("Law Society" or "LSO") insurance program was underfunded by more than \$200 million.
5. The resulting crisis presented the Ontario Bar with one of the most serious challenges in its history: finding \$200 million to cover the claims the Law Society's insurance program faced, and deciding whether to continue to provide Errors and Omissions ("E&O") coverage for Ontario lawyers or to withdraw from the insurance market entirely. Withdrawing completely would have meant that replacement insurance would be unavailable at the previous price

point and may not have been available at all.¹ Either way, the Law Society determined that "Convocation can no longer attempt to deliver a Rolls Royce insurance policy at the cost of a Ford."²

6. To address the crisis, Convocation formed a Task Force which ultimately recommended the creation of a specialised, regulated insurance company with financial accountability. Convocation accepted this recommendation and the mandate given requires that the Law Society's insurance program:

- Operate independently from the Law Society;
- Operate in a commercially-reasonable manner (i.e., revenues must cover expenses);
- Offer premiums that generally reflect risk (i.e., those with greater risk pay higher premiums); and
- Settle claims fairly and quickly, though not on a "no-fault" basis.

7. LAWPRO was created further to this recommendation and, for the last 25 years, it has operated based on the mandate and principles laid out in the 1994 Task Force Report.

8. How is this relevant to today? LAWPRO was created in response to a crisis – in some ways like what we are experiencing right now. The financial viability of an independent malpractice insurer, particularly in a hardening market when insurance can be more difficult to obtain at an affordable rate, is paramount to meeting the Law Society's public protection mandate and to helping the profession through a situation like we are currently experiencing. If LAWPRO's financial health is compromised, we run the chance of another insurance crisis, less protection for the public and no backstop for Ontario lawyers.

2021 PROGRAM FEATURES

9. As a matter of public protection, E&O insurance is required of all lawyers in private practice, including sole practitioners, lawyers practising in association or partnership, paralegals acting in partnership with lawyers, paralegals holding shares in professional corporations with lawyers, and lawyers practising in a law corporation who are providing services in private practices. Lawyers can be exempt from the insurance requirement and

¹ This is the situation the Law Society of England and Wales has struggled to deal with for the last several years. See "[Aon unit in shock professional indemnity insurance exit](#)", Insurance Business UK, 23 Aug 2019.

² *Report to Convocation of the Insurance Task Force and the Insurance Committee*, October 28, 1994 (Amended November 15, 1994), paragraph 51 on page 15.

exemption eligibility criteria is available at lawpro.ca. Exemption scenarios include when lawyers engage in the practice of law only for and on behalf of a corporate or government employer, lawyers who only engage in the practice of law as an employee or volunteer in a clinic that is funded by Legal Aid Ontario and that meets certain criteria, lawyers on a temporary leave of absence, or lawyers otherwise not practising law.

10. The following is a brief summary of the 2021 Primary Program:

Coverage Limits

- \$1 million per claim/\$2 million aggregate limit applicable to claim expenses, indemnity payments and/or cost of repairs together

Innocent Party Coverage

Innocent Party coverage protects members of the public, and lawyers, against the dishonest, fraudulent, criminal, or malicious acts or omissions of present or former partners, associates, employed lawyers and firm employees.

Beginning in 2021, this coverage will be included in the base premium for all insureds in private practice in Ontario. The base premium will increase \$50 as a result of this change. Prior to 2021, the additional premium for this coverage was \$125 per insured lawyer. This means over 20,000 lawyers in Ontario will see a net **\$75 premium decrease.**

- \$250,000 sublimit for innocent party claims per claim/in the aggregate included in base coverage
- Additional coverage can be purchased to increase limits as follows:

Increase coverage to:	Additional annual premium:
\$500,000 per claim/aggregate	\$ 75 per insured lawyer
\$1 million per claim/aggregate	\$ 125 per insured lawyer

Standard base premium

- \$3,000 per insured lawyer

Transaction Premium Levy

- \$65 per real estate transaction and \$100 per civil litigation transaction

Deductible

- Standard deductible is \$5,000 per claim

- LAWPRO offers deductible options from \$0 to \$25,000. Insureds can choose to have the deductible apply to both claim expenses and indemnity payments, or to indemnity payments only. Premiums will increase or decrease depending on the deductible option. Each lawyer practicing in a law partnership or law corporation must elect the same amount and type of deductible as all other lawyers in the firm.

Premium Discounts

For those who take approved risk management courses

- \$50 discount per approved course, subject to a \$100 maximum

For new lawyers

- less than 1 full year in practice: 50% discount
- less than 2 years in practice: 40% discount
- less than 3 years in practice 30% discount
- less than 4 years in practice: 20% discount

For those who limit their practice to criminal³ and/or immigration law

- 50% discount

For those who work part-time

- 50% discount is available to practitioners who in both their current and prior fiscal year, restrict their law practice to 20 hours per week on average for each week worked, up to 750 hours per year (including time for undocketed work), and have gross billings of \$90,000 per year or less

For those employed at a Designated Agency⁴

- 75% discount in recognition of low risk and enhanced access to justice

11. The following table contains examples of premiums which would be charged to members depending on the nature of their practice, along with historical premiums.

³ Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

⁴ A "Designated Agency" can include a Civil Society Organization that has been approved for the general premium discount.

Premium Rating Examples (In Dollars)

	1995 ⁵	2005 ⁶	2015 ⁷	2019 ⁸	2021 ⁹
Base premium	\$5,600	\$2,625	\$3,350	\$2,950	\$3,000
Examples:					
1. Sole Practitioner Practising Real Estate Law - \$10,000 defence & indemnity deductible - early lump sum payment discount - \$250,000 Optional Innocent Party cover	\$6,000 ¹⁰	\$2,528	\$3,549	\$2,854	\$2,825
2. Firm Practitioner Practising Real Estate Law - \$25,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$6,000 ¹¹	\$2,547	\$3,431	\$2,806	\$2,725
3. New Lawyer Practising in Association - first year in practice discount - \$250,000 Mandatory Innocent Party cover - \$10,000 defence & indemnity deductible - early lump sum payment discount	\$3,900 ¹²	\$1,478	\$1,624	\$1,329	\$1,225

⁵ Members are also required to pay a \$25 levy for each civil litigation or real estate transaction not otherwise excluded.

⁶ Members are also required to pay a \$50 levy for each civil litigation or real estate transaction not otherwise excluded.

⁷ \$65 per real estate transaction and \$50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied.

⁸ \$65 per real estate transaction, \$100 per civil litigation transaction, and \$100 Real Estate Practice Coverage Option applied.

⁹ \$250,000 Innocent Party cover now provided free for all insureds.

¹⁰ Subject to a \$6,000 defence and indemnity deductible (adjusted to \$7,500 in the case of an insured with one previous claim, or \$8,500 in the case of two previous claims).

¹¹ Ibid

¹² Ibid

4. Criminal Lawyer (sole practitioner) - Restricted Areas of Practice discount - \$10,000 defence & indemnity deductible - early lump sum payment discount	\$5,600 ¹³	\$1,228	\$1,374	\$1,204	\$1,225
5. Part-time Lawyer (in association) - Part-time Practitioner discount - \$1,000,000 Optional Innocent Party cover - \$10,000 defence & indemnity deductible	\$6,000 ¹⁴ ¹⁵	\$1,877	\$1,923	\$1,504	\$1,400
6. Firm Practitioner with 1 Claim - claims history levy surcharge - \$5,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$8,500 ¹⁶	\$5,375	\$6,100	\$5,575	\$5,500
7. Sole Practitioner with 2 Claims - claims history levy surcharge - \$5,000 defence & indemnity deductible	\$10,600 ¹⁷	\$7,625	\$8,350	\$7,950	\$8,000
8. Designated Agency Lawyer - \$5,000 defence & indemnity deductible - Risk Management Credit (x 2)	\$5,600	\$2,550	\$3,250	\$638	\$650¹⁸

¹³ Ibid

¹⁴ Ibid

¹⁵ Subject to \$250,000 Innocent Party cover only, additional limits not available.

¹⁶ Supra, note 11

¹⁷ Supra, note 11

¹⁸ If a lawyer is employed exclusively by one or more Designated Agencies and any civil litigation transaction is performed in the course of such employment, the Lawyer is not required to pay a civil litigation transaction levy surcharge.

SUMMARY OF KEY CHANGES:

Innocent Party coverage for all

12. A \$250,000 sub-limit for innocent party coverage was previously required for all lawyers working in association or partnership and was available on an optional basis for others. Even though more than 70% of LAWPRO insureds typically purchase Innocent Party coverage in a given year, our data and claims experience indicate that not all insureds who require this coverage actually purchase it. As a result, insureds without the coverage were not protected as they should have been and, in essence, those that paid for the coverage subsidized claims costs for those that did not opt for it.

13. Further to our goal to have premiums reflect, as closely as possible, actual risk and to meet our public protection objectives, innocent party coverage will now be built into all Primary Program policies. This change will address increasingly fluid practice structures, marketing and office arrangements as well as possible increases in fraudulent activity as we likely head into a recession.

For the 2021 policy year, Innocent Party coverage will be required for all insureds and the base premium will be raised by \$50. The cost of Innocent Party coverage was previously an additional \$125 dollars. This change will lower the premium for over 20,000 Ontario lawyers by \$75 and increase it by \$25-\$50 for the remaining lawyers, depending on whether they are paying the full or discounted base premium.

Consolidated Deadlines and Discounts

14. The following administrative changes are meant to increase fairness, simplify deadlines and late charges for insureds, make the renewal process clearer and easier for lawyers, and lower costs through reduced administrative work.

Renewal deadlines will be simplified, and the late filing surcharge will be decreased by \$285.

- A single filing deadline of November 9 will be applied to all renewals instead of multiple staged deadlines.
- There is a premium surcharge for filing renewals after the deadline because our data indicates that lawyers who file late or do not file at all are more than twice as likely to report a claim than those that meet filing deadlines. In 2021, the surcharge will be reduced from \$885 to \$600 with an option to have insureds reduce this to \$350 by filing renewal applications by a late filing deadline. To ensure fairness for all, this surcharge will be strictly enforced.
- The \$25 e-filing discount will be discontinued. This discount was introduced to encourage lawyers to try filing online instead of through the mail. This incentive is no longer needed since filing online is overwhelmingly preferred, less expensive and a more efficient filing option for LAWPRO and its insureds.

Introduction of One-Click Renewal

15. To improve the renewal process for lawyers, LAWPRO has developed a One-Click renewal to increase speed and ease for insureds. If a lawyer has no changes from the previous year, they can quickly renew their coverage on the website by clicking one button instead of completing the previous form. This saves insureds time, reduces the likelihood of error, and decreases administrative costs for LAWPRO.

HELPING TO MANAGE RISK DURING PANDEMIC

16. The disruptions resulting from the COVID-19 pandemic are causing uncertainty for many lawyers as they attempt to run their practices remotely while continuing to provide professional services to their clients. LAWPRO is working to update lawyers on the latest developments, to make them aware of changes to legislation and court

procedures, and to provide resources to make remote practice easier and minimize the risk of malpractice claims.

A number of resources have been prepared by practicePRO, LAWPRO's risk management initiative, to help lawyers transfer work online, manage legal technology, understand new rules, and develop business continuity plans. For example, in April 2020, the most frequently downloaded resources were:

- [Technology Products for Lawyers and Law Firms](#)
- [Video Conferencing Checklist](#)
- [Work from Home Technology Tips](#)
- [Wills and Estates Claims Fact Sheet](#)

All resources developed by the practicePRO program to help lawyers manage during the COVID pandemic are available on the [practicePRO website](#) and they focus on the areas of: effective use of technology, fraud and cyber security, health and wellness, and rule changes for the litigation, real estate and wills and estate bars.

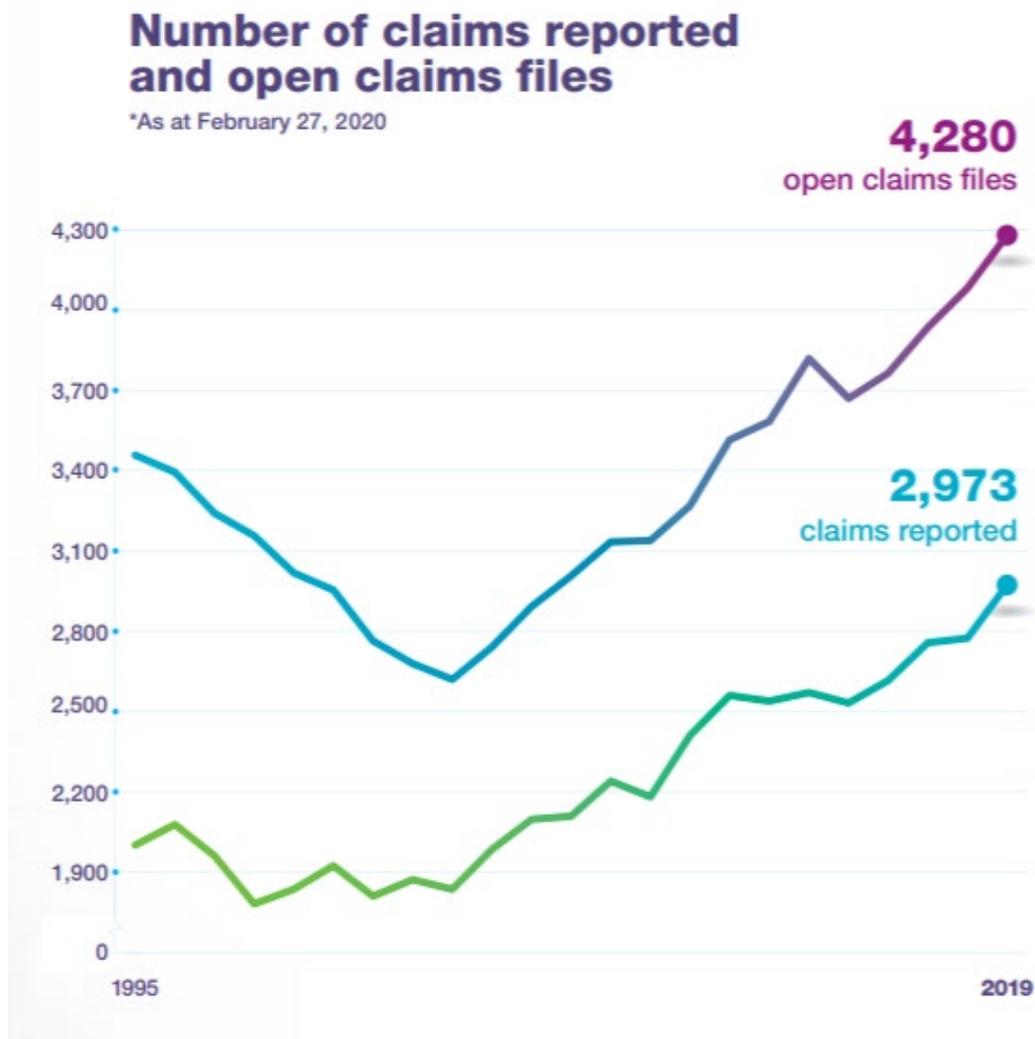
CLAIMS TRENDS

17. Economic downturns typically mean an increase of malpractice claims as clients seek recompense from their lawyers for the losses they have suffered. There are predictions that Ontario may be headed into a deeper and longer downturn than we have seen in many years. LAWPRO expects there will be premium increases in future years as a result of pandemic-related claims costs and capital requirements.

18. LAWPRO's long term experience is that claims come to light on average 2-3 years after the work on a matter was done. In the real estate, family, and wills and estates matters claims can arise decades after a file was closed.¹⁹

¹⁹ "[Don't let claims follow you into retirement](#)", LAWPRO Magazine Vol. 16.3 (February 2017).

19. The 2019 claim figures reflect steadily increasing claims counts²⁰. The number of new claims reported to LAWPRO during 2019 reached 2,973, continuing an upward trend that started in 2006.

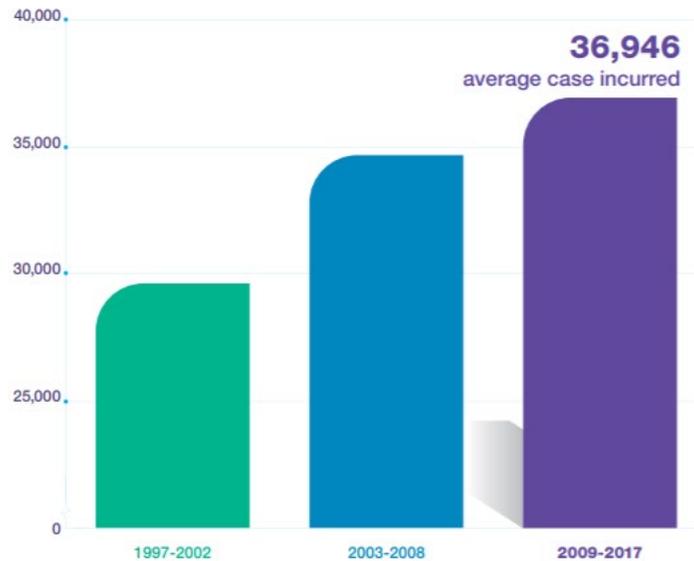


20. In addition to the increasing number of claims, each claim is costing LAWPRO more, on average. The average cost per claim in recent years continues to grow, reaching \$36,946 from \$30,000 we saw at the beginning of the millennium. In a typical year we would expect to see approximately 275 claims costing more than \$100,000, and 5-15 claims that will hit the \$1 million dollar per claim policy limit.

²⁰ The high number of open claims in 1997 reflects the Primary Program's recovery following the insurance crisis of the mid-1990s.

Average cost per claim

at 38 months after start of year in which claim was reported*
*As at February 27, 2020



21. As of the end of August, 2020, year-to-date LAWPRO has opened 1,680 new claims, a count that is down 10% from the same period last year. For the same period, claims costs were \$48.3 million, down 2% relative to last year. We expect to see the claims count and costs rebound through the end of this year and into next year as courts reopen and economic activity increases.

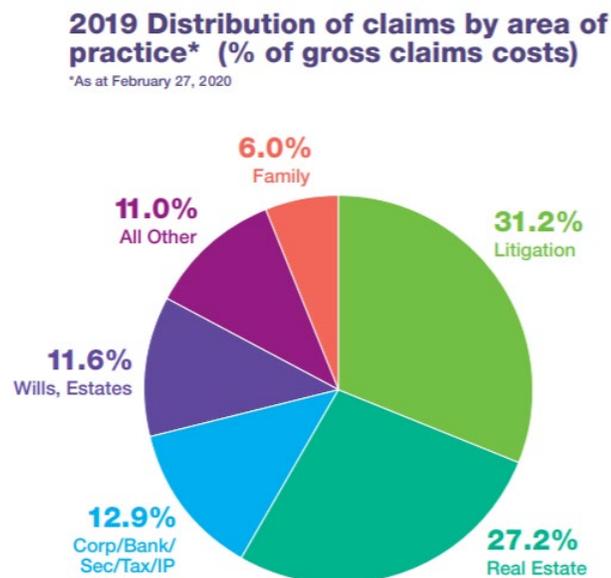
22. We can't know exactly how the changes brought on by COVID-19 will affect claims in the coming years, but there is consensus that we are entering into a recession which we know historically will negatively impact claims. Our current estimate for 2020 claim costs is \$105 million, and for 2021 is approximately \$115 million.

Where are claims happening?

23. LAWPRO has prepared fact sheets to highlight the most common causes of malpractice claims for major areas of practice. They can be viewed at: practicepro.ca/factsheets.

24. LAWPRO's present risk analysis reaffirms the results of previous Reports to Convocation indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represent 55% of the claims reported and 58% of the claims costs under the Primary Program in 2019. In particular,

- a) Real estate claims costs have trended upwards since 2001, with real estate accounting for an average of 27% of costs in those years. Since 2004, claims costs in this area of practice have increased almost 96%;
- b) Since 2011, the exposure relating to the practice of civil litigation has been substantially more than that traditionally seen, with civil litigation accounting for 31% of both the cost and number of claims reported under the Primary Program in 2019.



- c) In 2019, the nature of claims against civil litigators was also reaffirmed, with time management claims (which includes missed limitation periods, administrative dismissals, and procrastination) accounting for almost 42% of litigation claims, whereas lawyer/client communications issues, inadequate investigation,

failures to know or apply the law, clerical errors and conflicts of interest accounted for about 51% of these claims; and

- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were over three times more likely to report a claim during the past year than those with no claims in the prior 10 years.

25. LAWPRO has been watching the civil litigation area of law carefully for the past several years. Despite steps taken by LAWPRO such as articles, presentations, the “Rule 48 Toolkit” and the mandatory increased deductible for certain administrative dismissal claims, the reality is that in recent years the growth in civil litigation claims has outstripped the overall growth in claims. For example, from 2006 through 2012 LAWPRO received an average of 785 civil litigation claims each year, and during 2013 through 2019, the average increased to 925 each year. This growth of 18% exceeded the 9% total growth of claims for all other areas of law over the same time period. In addition, costs of civil litigation claims have remained resiliently high. During 2008 through 2017, the average claims incurred was \$6,000 per full-time equivalent civil litigation practitioner, an amount that exceeds what was collected in premiums (including civil litigation transaction levies) from this demographic.

26. Across the whole claims portfolio, communication errors between lawyer and client continue to be the most common cause of loss, with inadequate investigation, time management, and errors of law following in sequence. A more detailed description of the common claims scenarios for each of these broad error types is available in **Appendix “D”**.

RISK MANAGEMENT INITIATIVES

27. A principal mandate of LAWPRO is to help the legal profession reduce claims by helping them manage the risks associated with practice. As Professor Richard Susskind

said: “*We like to build a fence around the top of a cliff, rather than station an ambulance at the bottom.*” This is accomplished through the practicePRO program; the TitlePLUS title insurance program, and support of the Member Assistance Plan (“MAP”) from Homewood Health. LAWPRO contributes almost one-half the cost of operating the MAP.

- **practicePRO® Program:** LAWPRO’s successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources that help lawyers avoid malpractice claims. All practicePRO resources are made available to all Ontario lawyers and paralegals at no charge. These include articles in *LAWPRO Magazine* and other law-related publications, information on the practicePRO website and AvoidAClaim blog, social media, and live presentations. The practicePRO website features LAWPRO’s claims prevention resources that are particularly valuable to solos and small firms.
- **Helping lawyers avoid fraud:** Thanks to LAWPRO’s efforts, fraud-related claims are down, but lawyers are still being victimized and fraud-related claims continue to be an ongoing and significant concern for LAWPRO. Currently, wire frauds are the most common with a handful of lawyers being victimized in a typical year (i.e., lawyers wiring funds from trust account after being duped with a fake cheque). Insureds can call LAWPRO in the event they are targeted by a suspected fraudster. Working within confidentiality obligations imposed by the *Rules of Professional Conduct*, one of our Fraud Team members will go through the common fraud scenarios to help spot red flags that may indicate the lawyer is being duped and help determine if the matter is legitimate or not. In the event the matter is a fraud and there is a potential claim, we will work with the lawyer to try to prevent the fraud and minimize potential claims costs. By visiting the AvoidAClaim.com blog and typing in names or scenarios, lawyers can see confirmed frauds reported to us. Our Cyber Fraud Fact Sheet and Real Estate Fraud Fact Sheet, available at practicepro.ca/fraud, are a good reminder on key ways to identify possible dangerous situations. It is clear that LAWPRO’s efforts to help insureds avoid frauds have reduced the number of fraud-related claims.

- **The LAWPRO Risk Management Credit:** This premium credit, available since 2001, is a significant LAWPRO risk management initiative. To be eligible for a credit (\$50 each up to a maximum of \$100) on premiums for 2021, lawyers (and paralegal insureds in combined licensee firms) must have participated in LAWPRO-approved CPD programs or Homewood Health e-Learning courses between September 16, 2019 and September 15, 2020. Tens of thousands of lawyers attended the over 300 programs that qualified for the credit during this period. The approval process is handled by LAWPRO (we look for programs that include content on where claims happen, why they happen, and the steps that can be taken to lessen the likelihood of a claim) and is distinct from the Law Society's CPD accreditation process.
- **TitlePLUS® Program:** TitlePLUS insurance is a competitive title insurance product that makes a positive difference in the Ontario real estate market. It expands the title insurance choices offered to consumers and lawyers and has helped broaden coverage while keeping title insurance premiums down. In addition, the TitlePLUS program regularly catches fraud due to automated, proprietary, and secret flags built into its underwriting that contributes to saving money – for consumers and the mandatory insurance program.
- **Member Assistance Program:** Lawyers are exposed to high levels of stress on a daily basis and long term stress can drive people to use, misuse or even become addicted to alcohol or legal/illegal drugs, or to experience challenges to physical or mental health. While it can be difficult to identify the reasons underlying why errors occur and claims develop, stress, addictions, and other untreated wellness issues are often found or suspected to be contributing factors in many LAWPRO claims. To help support lawyers in private practice, LAWPRO contributes approximately one-half the annual cost of the Member Assistance Plan (“MAP”). The MAP provides confidential assistance to Ontario lawyers, paralegals, judges, students at Ontario law schools and accredited paralegal colleges, licensing-process candidates, and their families.

CHANGES TO THE PRIMARY PROGRAM FOR 2021

28. The LAWPRO Board has determined that the general structure of the current Primary Program appears to meet the needs and practice realities of the profession. In developing the details of the 2021 Primary Program, LAWPRO has considered claims trends and costs, including pandemic-related claims; the changing environment in which lawyers practise; the greater vicarious liability exposure lawyers face due to increasingly fluid practice structures, marketing and office arrangements; and comments received from the profession during the previous year, particularly with respect to simplifying the renewal process. For the 2021 Primary Program, LAWPRO has focused on expanding the availability of coverage for claims involving vicarious liability, simplifying the renewal process, and continuing its commitment to pursuing comprehensive data from insureds in order to ensure that lawyers are paying premiums that are appropriate for their level of risk.

Expanding Innocent Party Coverage to All Insureds

29. Professional liability insurance is intended to cover errors, omissions and negligent acts that can unfortunately and unexpectedly arise when carrying out one's profession. If someone steals from a client, or causes intentional harm to that person, this is not normally covered under malpractice insurance (it would be a claim to the Law Society's Compensation Fund). The reality, though, is that lawyers do not practice in a vacuum. If a client's trust account is plundered, the client will sue the thief, the firm at which the lawyer worked, and individual lawyers who worked with the wrongdoer.

30. Innocent party coverage was introduced to protect these other lawyers who may find themselves associated with someone that did dishonest, fraudulent, criminal or malicious things while purporting to serve clients as a lawyer.

31. While required for lawyers in a firm setting, until now, sole practitioners have been able to buy this coverage on an optional basis. In total, about 21,000 of LAWPRO's 29,000 insured lawyers currently carry this coverage, paying \$125 for the base \$250,000

coverage. If lawyers want to increase their limits to \$500,000 or \$1 million, they can do so for an additional \$75 and \$125 respectively.

32. But practice structures have evolved. The traditional firm and partnership models now sit alongside loose associations where lawyers appear under one name for marketing reasons, or work in a “chambers” setting where lawyers pool office resources and staff without sufficient clarification that each lawyer is practising completely independently of each other. There is also the specter that the malfeasance of a former partner will come to light years later. This exposure is often overlooked by sole practitioners who previously worked with others in a firm setting. It may also provide coverage in the event of malfeasance by a staff person.

33. Increasingly, LAWPRO has seen claims and litigation that test the boundaries of what a “sole practitioner” is when using shared resources with others. This leaves lawyers without innocent party coverage personally exposed.

34. To facilitate the availability of this coverage to all lawyers in Ontario, LAWPRO will be providing the current Innocent Party base sublimit (\$250,000) as part of the Primary Program . This will now be included as standard in the coverage for all Ontario lawyers. This will provide better protection to lawyers who had not carried it before, thereby providing better protection for members of the public. The base premium will increase \$50 as a result of this change. Prior to 2021, the additional premium for this coverage was \$125 per insured lawyer. This change will reduce the total premiums paid by more than 70% of Ontario lawyers by \$75. Roughly 30% of Ontario lawyers will see their annual premium increase by \$25-\$50 because of this change.

35. Accordingly, the standard Innocent Party Coverage base sublimit (\$250,000) will be included as part of the Primary Program for all Ontario lawyers.

Late Applications and Failure to File

36. LAWPRO insures more than 29,000 lawyers under a single master policy that is issued to the Law Society. The annual renewal cycle commences in early October when applications become available and each lawyer’s coverage is renewed January 1.

Premium payments are not due at the time of renewal. While the majority of LAWPRO's insureds respect renewal deadlines, each year LAWPRO must follow-up with thousands of lawyers who ignore renewal deadlines. These follow-up efforts are very time consuming and costly.

37. LAWPRO goes to extraordinary and time-consuming efforts to remind and encourage lawyers to file a renewal application on time. This includes reminders on its website, in its magazines, and sending out up to six rounds of correspondence to those who have not yet filed. As the final deadline approaches efforts include several hundred personal phone calls to remind people to file.

38. A very large proportion of the lawyers that miss renewal deadlines do so year after year. Claims data shows that lawyers who do not file a renewal application and have the \$885 surcharge applied to them are more than twice as likely to report claims than lawyers who do file their renewal applications in a timely way.

39. LAWPRO needs the information in renewal application forms to properly risk-rate the program. In addition, LAWPRO has no choice but to issue "default" (or stripped down) policies to lawyers who have not filed renewal applications. Many of these lawyers will then apply to vary the coverage provided to them by the default policy. By not requesting appropriate coverages at renewal, they are at risk of not being covered and the subsequent changes they request create additional administrative burdens and costs for LAWPRO.

40. To reverse the growing trend that has seen lawyers not adhering to renewal deadlines, LAWPRO will impose a "hard" filing deadline. For the 2021 program renewal, that date is November 9. Immediately following the deadline, those lawyers who have not filed their applications will be notified that a \$600 surcharge is being imposed. However, if the lawyer files the renewal application by December 1, that surcharge will be reduced to \$350.

41. Why is LAWPRO reducing the late surcharge from \$885 to \$350 or \$600 when lawyers who do not meet filing deadlines are at much higher risk of claims? To the

greatest extent possible, LAWPRO wants to encourage lawyers to reduce their premiums, provide application information, and exhibit positive practice management skills. An incentive is being given to correct missing the deadline, by reducing the \$600 surcharge to \$350. In this way, LAWPRO will now also be able to better track the claims data for “late filers” who have not met the original deadline but do file soon after.

42. LAWPRO will analyse the data to ensure that these amounts achieve the goal of reflecting the risk of claims and motivating lawyers to file in a timely way. Perhaps the data will support increasing the \$600 surcharge or reducing the \$350 surcharge. But it will take time for this analysis to be done. In the meantime, LAWPRO is confident these measures will advance awareness of the importance of submitting renewal applications in a timely way and will go some way towards having lawyers at higher risk of claims pay a higher premium to reflect that.

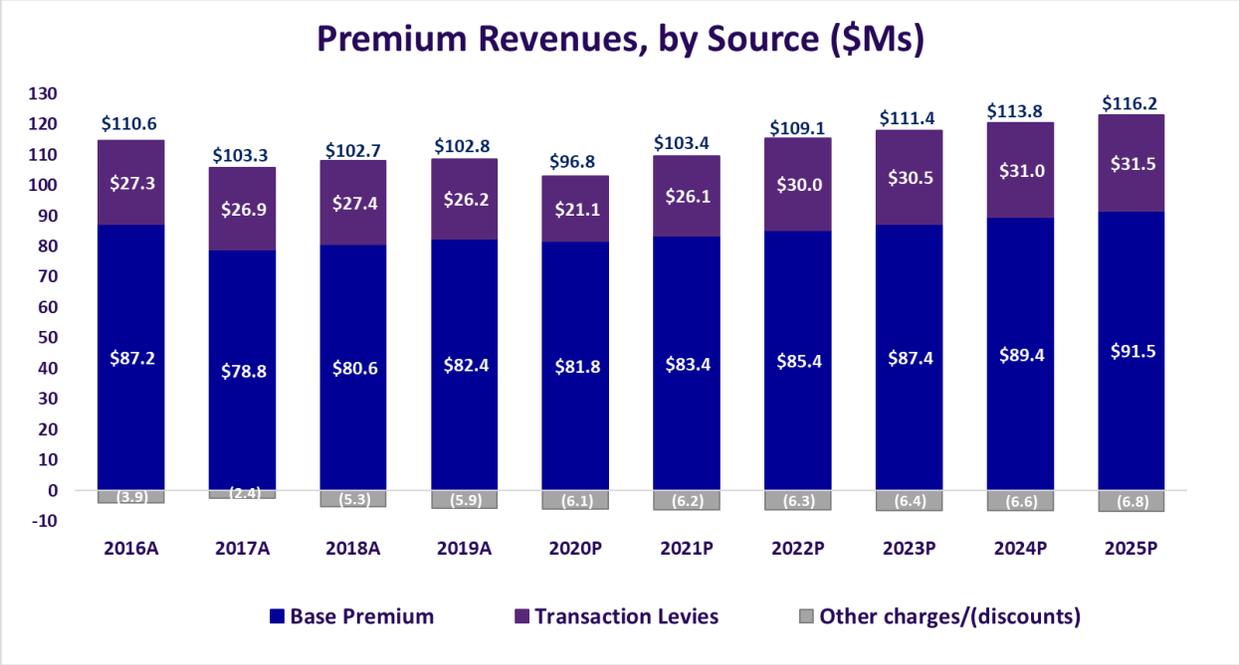
43. Accordingly, the system for surcharging lawyers for failing to file renewal applications in a timely way will be amended. The surcharge will be reduced from \$885 to \$600 with an option to have insureds reduce this to \$350 by filing renewal applications by a late filing deadline. To ensure fairness for all, this surcharge will be strictly enforced.

REVENUES

44. To meet the total expected Primary Program claims costs and operating expenses for 2021, LAWPRO evaluates its likely investment income, and then considers premiums²¹ and levy surcharges.

45. The projected revenues from premiums and levies are as follows:

²¹ “Base premiums” includes base premiums with applied discount or charges, as well as innocent party and REPCO premiums.



Investment Income

46. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claims expenses, thereby reducing the amount of funds that must come from premium sources. In a typical year investment income provides a per policy subsidy for the base premium of a few to several hundred dollars.

47. LAWPRO’s prudent investing philosophy includes a conservative, well-diversified equity portfolio. LAWPRO works to position its portfolio for capital preservation and steady growth. LAWPRO provides further stability to the Primary Program, with the assistance of two professional fund managers, by segregating sufficient money into a separate portfolio (the asset liability matched portfolio or “ALM portfolio”) to pay anticipated future claims costs, and any surplus capital is held in a different portfolio (“Surplus portfolio”). The securities in the ALM portfolio consist of high-quality government and corporate fixed income securities, with the future cash inflows to LAWPRO arranged to coincide with the expected payout patterns of the future claim costs. The Surplus portfolio consists of a prudent mix of fixed income and equity securities.

48. The ALM Portfolio and the fixed income portion of the Surplus portfolio are impacted by interest rate changes, and together represent around 80% of the total investment portfolio. The Bank of Canada's overnight interest rates have been decreasing for some time, with sudden drops in 2020 due to the pandemic. The rate was 1.75% at the start of the year but was lowered by 1.5% to 0.25% during the month of March. As such, the rates of return on fixed income securities have also dropped significantly. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. The rates are expected to remain low into 2023. This prolonged "low for long" environment has placed continued pressure on fixed income yields, while the eventual rise in central bank rates could result in a shock to fixed income security prices.

49. As a result of these risks, LAWPRO has maintained a prudent investing philosophy to protect this portfolio, and has revised the estimated return in 2021 to 1.68%, down from the pre-pandemic estimate of 2.58%. Including unrealized gains and losses from the ALM portfolio, LAWPRO had \$20 million of investment income in 2018, and \$23 million of investment income in 2019. Due to significantly lower investment returns than it has seen in recent years, LAWPRO expects to receive significantly less investment income over the next 2-3 years as a result of the pandemic.

Levy Surcharges

50. As part of its commitment to operating the Primary Program in a commercially-reasonable manner and better ensuring that premiums reflect the general practice risks of insureds (i.e., those that are a higher risk pay a higher premium), LAWPRO utilizes levy surcharges. The use of transaction levies ensures an element of risk rating in the Primary Program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which would likely occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating

when first introduced in 1995. For more information on risk rating, see the discussion beginning at paragraph 64 of this Report.

51. At present, the levy surcharges include a claims history levy surcharge, a \$100 civil litigation transaction levy and a \$65 real estate transaction levy. Revenues from these levy surcharges are applied as premium revenue, to supplement base premium revenue.

52. The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice (i.e., pay an extra \$2,500 per year for the five years following a claims payment), to \$25,000 for a lawyer with five claims paid in the last five years in practice. An additional \$10,000 is levied for each additional claim paid in excess of five.

53. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the revenue from real estate transaction levies declined by approximately 50% between 1999 and 2009 (prior to the increase in the real estate transaction levy for the 2010 Primary Program).

54. With respect to the real estate transaction levy, the increased use of title insurance is considered to be largely responsible for a reduction in the count of these levies since 1999. Lawyers acting for those obtaining an interest or charge in the land, in many instances, are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers. It is estimated that more than 90% of residential real estate transactions in Ontario are title-insured (LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy fillings). In recent years, the number of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

55. The Ontario real estate market has been quite resilient in the last few years, but there are indications that the market will be down and varied in the near term. The Teranet-National Bank House Price Index²² notes a housing market slow down due to COVID-19, which suggests that the real estate market is likely to continue to face pressure in the near to medium term. As of June 2020, real estate transaction levy revenues are below expectations, at 17% under budget, and 5% less than 2019. We estimate the real estate transaction levies will be \$16.1 million in 2020, and \$19.1 million in 2021.

56. It is estimated that the shutdown of the courts will result in civil litigation transaction levies coming in at \$5 million for 2020, 29% under budget. With the reopening of the courts LAWPRO is estimating 2021 civil litigation transaction levies will be \$7 million.

57. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges beyond 2021.

Real Estate Practice Coverage Option (REPCO)

58. In 2006, title fraud had begun to spiral in Ontario. Organized crime was involved in the theft of titles from innocent homeowners in increasing numbers and a Court of Appeal decision in late 2005 affirmed that a fraudulently signed mortgage was valid and enforceable against an innocent homeowner²³. The government took action with a series of fraud-prevention reforms. These included new eligibility criteria for those registering documents through the electronic land registry system. The new criteria included a prescribed form of insurance coverage that would respond in the event of fraud relating to the registration of fraudulent documents.

59. Now, all lawyers who practise real estate law in Ontario must purchase the Primary Program's Real Estate Practice Coverage Option. This coverage provides insurance protection to ensure that members of the public, and Land Titles Assurance Fund, are

²² <https://housepriceindex.ca/2020/07/june2020/>

²³ For more on this, see Bob Aaron's Toronto Star article of December 30, 2006: "[In 2006, title fraud top real estate story](#)".

protected against the registration of fraudulent instruments under the Land Titles Act. The coverage limit is \$250,000 per claim/\$1 million in the aggregate per policy period, applicable to claim expenses, indemnity payments and/or costs of repairs together. The premium is \$100 annually per insured lawyer.

Base Premium

60. The full impact of the COVID-19 pandemic on LAWPRO remains to be seen. To meet capital requirements, the LAWPRO Board expects that premium increases will be necessary in futures years due to decreasing premium revenue and lower investment income coupled with an expected increase in claims costs. To allow LAWPRO to meet minimum capital requirements set by our regulator in 2021 and future years, some consideration was given to raising premiums for the 2021, but the Board recognized the financial challenges that many members of the profession currently face. At this time, the Board is satisfied that the inclusion of innocent party coverage for all insureds and the increased base premium rate of \$50 will meet necessary fiscal requirements and minimize the administrative burden on insureds and LAWPRO. This change increases the base premium to \$3,000 per insured while providing innocent party coverage to all and allows the Primary Program to continue to operate on a self-sustaining basis. This is the first time LAWPRO has raised the premium since 2011, and with the \$50 increase, the premium is \$350 less then it was from 2011-2016. It should be noted that a base premium of \$3,000 per lawyer in 2021 is still significantly lower than premiums charged at some points in the past (e.g., \$5,600 per year just after the insurance crisis).

61. Professional lines insurance in Ontario, such as professional liability, were already facing a hardening insurance market, with premiums increasing and capacity being restricted. COVID-19 has exacerbated this. Ontarians heading into their insurance renewals, whether personal or commercial insurance, are seeing substantial rate increases and many will find it more difficult to obtain insurance at an affordable price.

THE ERRORS & OMISSIONS INSURANCE FUND

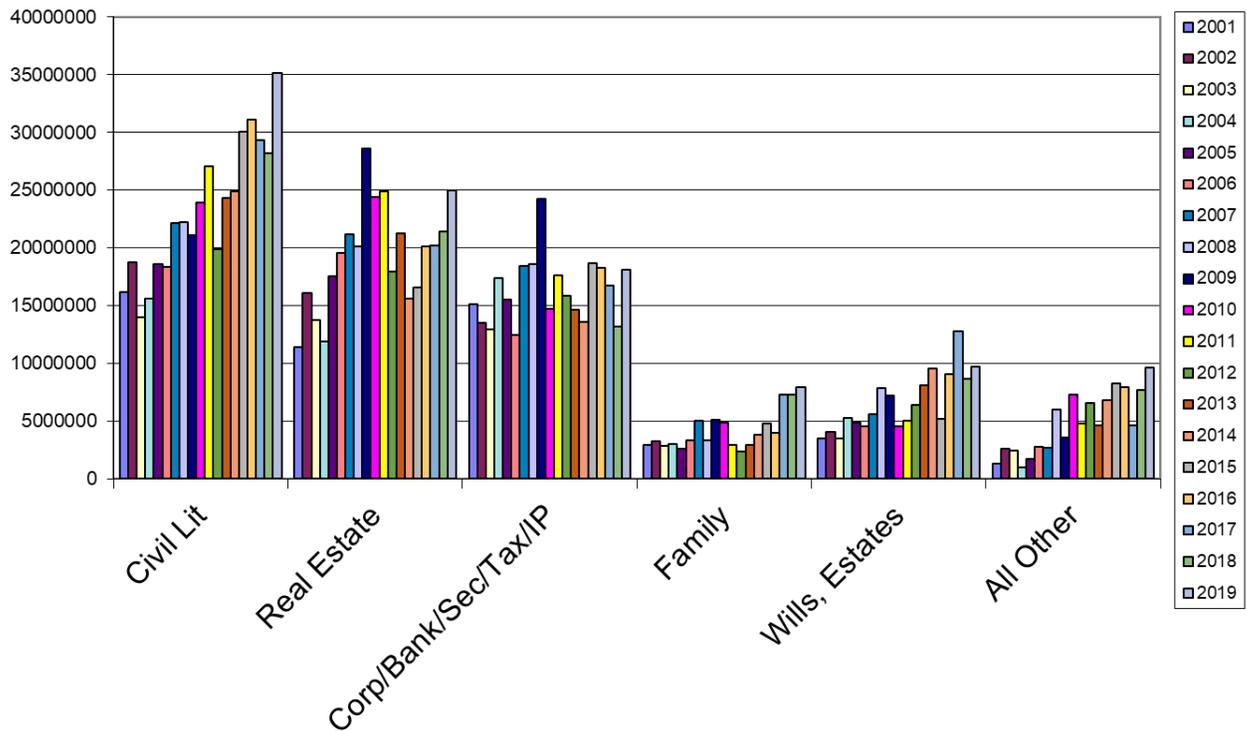
62. LAWPRO provides services to the Law Society with respect to the Errors & Omissions Fund of the Law Society, which is currently in run-off mode. The Errors & Omissions Fund was responsible for the Law Society's insurance program prior to 1990, and for a group deductible of up to \$250,000 per claim prior to 1995.

63. In recent years the Errors & Omissions Fund has been in run-off mode as its resources have been utilized to settle outstanding claims (for policies it had in place between July 1, 1989 and December 31, 1994). As of June 30, 2019, the Errors & Omissions Fund had no outstanding claims liabilities, as all files for 1994 and prior years are closed. With Convocation's approval of the LAWPRO Insurance Program, prior to 2020 the Law Society agreed to restrict \$15 million of its Errors & Omissions Fund balance to backstop the potential of significant deterioration in the loss experience in the Primary Program. The \$15 million backstop was discontinued effective the 2020 Program.

RISK RATING

64. Risk rating, a concept raised throughout this Report, promotes fairness by allocating premium responsibility based on risk and deters claims by apportioning higher costs to riskier practitioners. The following chart shows the distribution of ultimate expected claims costs by detailed area of practice.

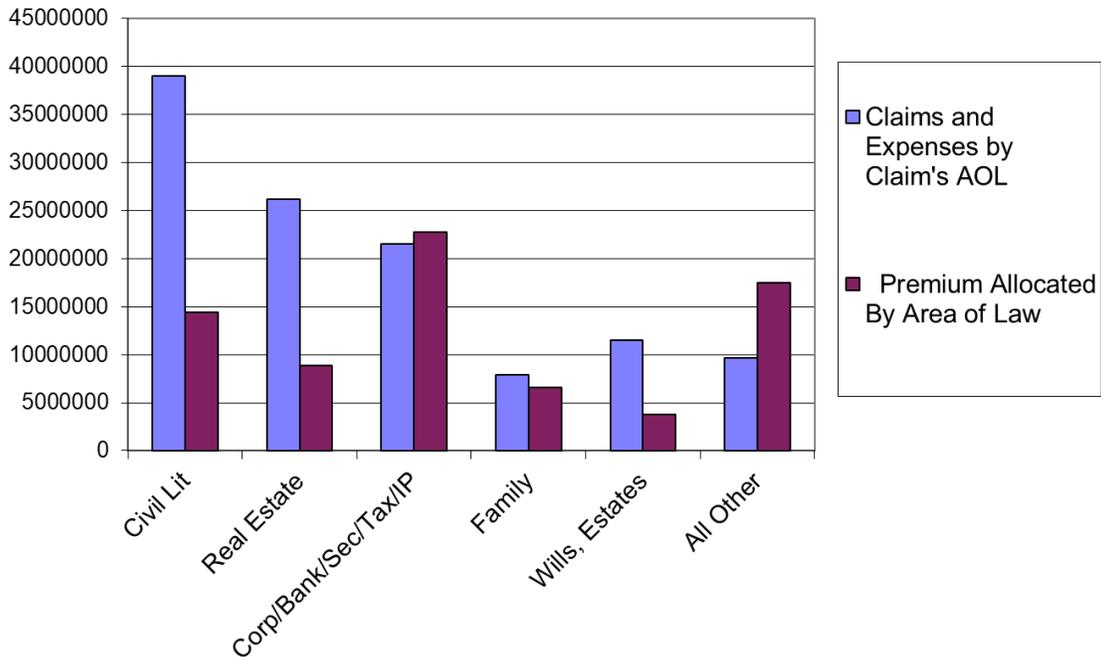
Distribution of Claim Cost and Program Expenses, by Grouped Area of Practice



65. Apparent from this chart are the significant claims costs in certain practice areas and the fact that real estate and litigation continue to be higher risk on a consistent basis over a multi-year period. At the same time, the fact that few lawyers practice exclusively in one area provides a compelling reason to group together common or related areas of practice.

66. To ensure that risk rating is being achieved, the Primary Program’s anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the Primary Program (including that seen under the Primary Program up to December 31, 2019), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums.. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.

Comparison of Projected 2021 Premium by Lawyer's Area of Practice to Claims and Expenses by Claim's Area of Law



67. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the areas of real estate law and civil litigation.

68. The latest Primary Program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2021 base premium would be about \$7,700 per real estate practitioner, and around \$6,000 per civil litigation practitioner.

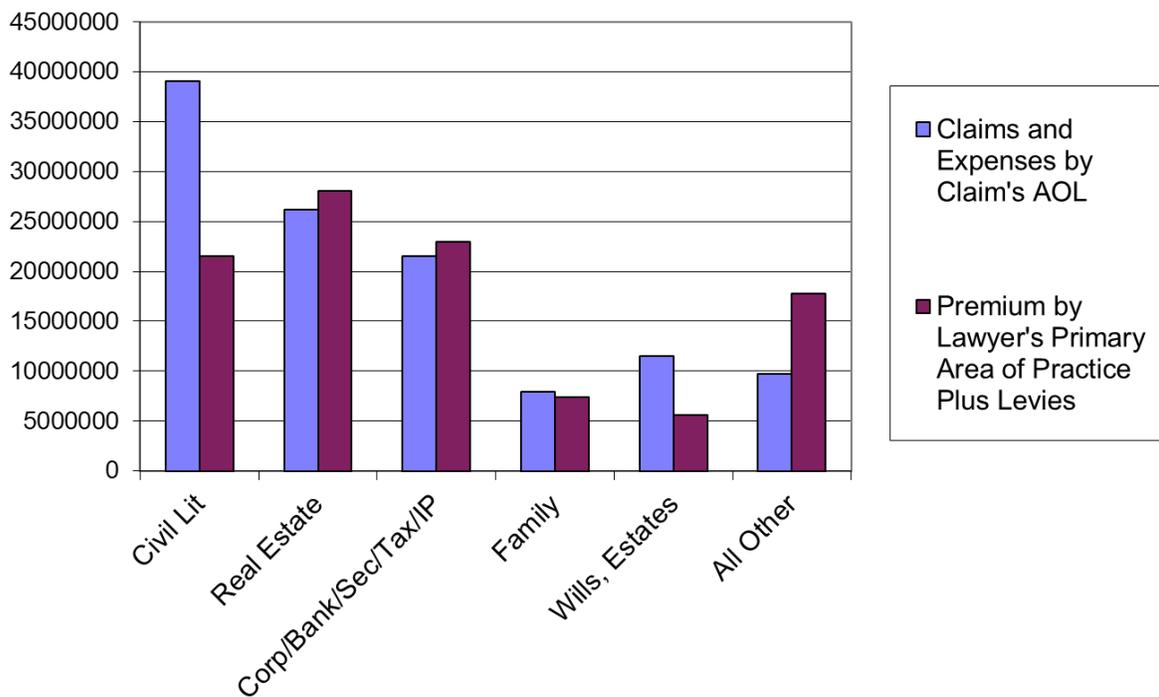
69. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premiums, to avoid any substantial dislocation among the bar in the higher areas of practice which would otherwise occur with risk rating.²⁴ By including the transaction and claims history surcharge levies in most recent years, a shortfall for real estate and civil litigation claims costs is typically overcome. While this trend is still applicable to real estate, the same cannot be said for

²⁴ 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 37-37; and 1996 LAWPRO Report to Convocation, pp.32-36.

civil litigation. After factoring in transaction levies, the premiums relating to this area of law fall short of the related loss costs.

70. The following chart compares the anticipated premiums sorted by the lawyer’s primary area of practice (plus the claims history surcharge, Real Estate Practice Coverage Option (“REPCO”) premium and transaction levies) to the anticipated claims costs and expenses for each area of law.

Comparison of Projected 2021 Premium by Lawyer's Area of Practice + Allocated Levies to Claims and Expenses by Claim's Area of Law



71. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a more acceptable correlation between revenues and claims for the major practice areas. Although we are seeing some moderation in civil litigation claims costs with the recent changes in Rule 48, the relationship between civil litigation costs and premium revenue by lawyers’ primary area of practice will need to be monitored to determine whether any further action should be taken on this category in future years.

72. The graph does indicate some subsidy by area of practice, especially by the practitioners in the “All Other” category. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas, if they were broken down in greater detail.

73. The area of wills and estates has experienced an increase in claim costs over the past decade. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

74. Despite family law claims trending upwards over time, the revenues collected from family law practitioners continue to both cover the associated losses and support the exemption of this work from civil litigation levies.

75. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the Primary Program with the proposed changes will substantially meet its objectives of risk rating. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of insurance under the Primary Program is considered to be generally reflective of the risk. Notably, the Task Force Report acknowledged that “...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk.”²⁵

76. Other aspects reviewed in the analysis included the exposure based on the size of the firm, year of call, geographic location and prior claims history. The overall results of this analysis reaffirm the premium discounts already in place, including the surcharge applied to practitioners with a prior claims history. The results of this analysis are reproduced in select graphs in **Appendices “A”, “B”, and “C”**.

77. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice, as well as the higher risk associated with real estate conveyancing and civil litigation.

²⁵ 1994 Insurance Committee Task Force Report, at page 17.

78. Accordingly, the LAWPRO Board is satisfied with the continued use of transaction and claims history levy revenues as premium, with the result that the cost of insurance under the Primary Program continues to generally reflect the risk.

79. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized at page 7 of this Report.

80. The number of Ontario lawyers that qualify for the various premium discounts is summarized in the following table:

Description of sample discounts	Number of lawyers who claim these sample discounts as of Aug 15, 2020
New Lawyer Discount	6,122 lawyers (21% of all insureds)
Restricted Area of Practice Discount	1,762 lawyers (6% of all insureds)
Part Time Practice Discount	2,277 lawyers (8% of all insureds)
TOTAL	10,161 lawyers (35% of all insureds)

REINSURANCE AND CAPITAL PRESERVATION

81. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

82. In its early years, LAWPRO purchased Primary Program-wide quota share reinsurance²⁶. A stronger financial position and more stable claims experience enabled LAWPRO to cease reinsuring the Primary Program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO’s own capital, the resources of the Errors & Omissions Fund up to a \$15 million cap were effectively relied on starting in 2003. The \$15 million backstop was discontinued effective the 2020 Program.

83. For 2021, LAWPRO will again look to purchase reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005

²⁶ “Quota share” reinsurance is an arrangement where an insurer (like LAWPRO) will cede or give a portion of its premiums and claims risk to another insurer (a “reinsurer”) at a fixed percentage. This allows the insurer to retain such risks and premiums as it is comfortable with, while passing on the rest to the reinsurer(s).

(the “Clash Excess of Loss Reinsurance”²⁷). This protection against aggregated losses extends across both the Primary Program and TitlePLUS initiative, and offers some measure of protection against a series of claims, such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in the title affecting an entire condominium project. In light of a hardening reinsurance market (i.e., a situation where insurance coverage is harder to come by and premiums increase), LAWPRO is braced for rate increases for this type of protection for 2021.

84. Accordingly, 100% of the premiums and losses for the Primary Program will again be retained by LAWPRO in 2021, subject to reinsurance protecting the Primary Program from multiple losses arising out of a common event or nexus.

CAPITAL REQUIREMENTS

85. As LAWPRO has worked through some quite challenging times, its prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO has maintained a solid capital base, as well as a robust asset/liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. Also, LAWPRO has received a consistent “A” (Excellent) rating from A.M. Best Co. each year since 2000, and since 2012 has retained its “stable” outlook based on its commanding market profile and recent improvement in operating and underwriting results. (An “outlook”, which looks more to the future, is different from a “rating”.)

86. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the Minimum Capital Test (“MCT”) in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer’s capital or net assets available to the “capital required”. Through the capital required component of the test, regulators

²⁷ “Excess of loss” reinsurance is an arrangement where a reinsurer will indemnify an insurer for losses that exceed a specified limit. The insurer and reinsurer can negotiate the amount of risk the insurer retains before the reinsurance responds, the upper limit of the reinsurance coverage, and the premium (which is typically calculated based on the insurer’s annual premiums, subject to a minimum premium amount).

prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer's balance sheet.

87. A significant amount of the margin requirement relates to the 25% additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes professional liability coverage). Given the steady historical growth of LAWPRO's net claims liabilities over the last decade or so, even a positive net income result can often be accompanied by a decline in LAWPRO's MCT ratio. The second most impactful factor on the margin requirement is the equity risk on the equity portfolio which attracts a 30% additional capital requirement.

88. The determination of a specific insurer's "ideal" MCT ratio is difficult, as historic industry approaches were primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels, such as the 100% minimum and 150% supervisory levels (meaning the regulator could come in to take over management and operation if an insurer falls below this level). In 2016, LAWPRO completed its first capital assessment pursuant to the Office of the Superintendent of Financial Institutions' *Guideline E-19 Own Risk and Solvency Assessment ("ORSA")* and the Autorité des Marchés Financiers' *Guidance on Capital Adequacy Requirements*, resulting in LAWPRO's internal target ratio being lowered from 180% to 170%. This result has been reaffirmed in all subsequent years.

89. In addition, as part of the above exercise and reconfirmed this year, the Board set LAWPRO's long-term preferred operating range at 210 to 240% based on LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differs significantly from those of other commercial insurers in Canada. An MCT result in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range.

90. LAWPRO's preferred operating range for the MCT is 210-240%. The MCT was 242% as of December 2019, but due to the impact of the pandemic it decreased to 207% at June 30, 2020, as compared to 220% at the same point in 2019. The MCT

preferred range is set to provide an appropriate buffer, to allow the Company to withstand adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration, and still remain above the various regulatory thresholds.

CONCLUSION

91. The LAWPRO Board considers the Primary Program changes outlined above to be appropriate and consistent with LAWPRO's mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Primary Program of Insurance for 2021 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2021 Primary Program can be implemented by January 1, 2021.

92. ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2020

Andrew Spurgeon

Chairperson of the Board

Lawyers' Professional Indemnity Company

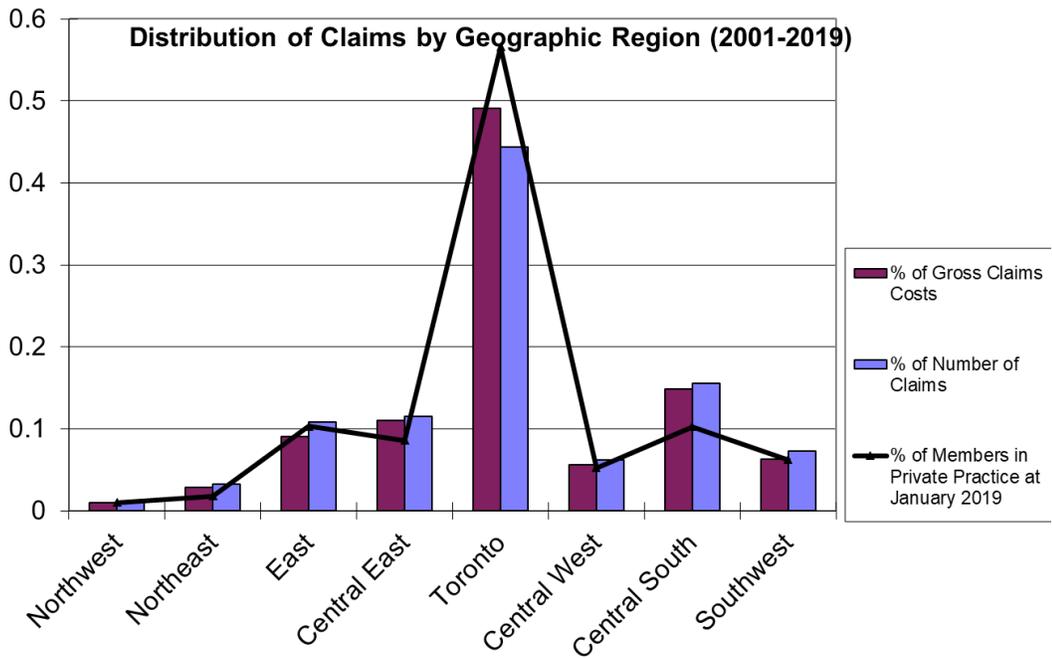
Susan M. Armstrong

Vice-Chairperson of the Board

Lawyers' Professional Indemnity Company

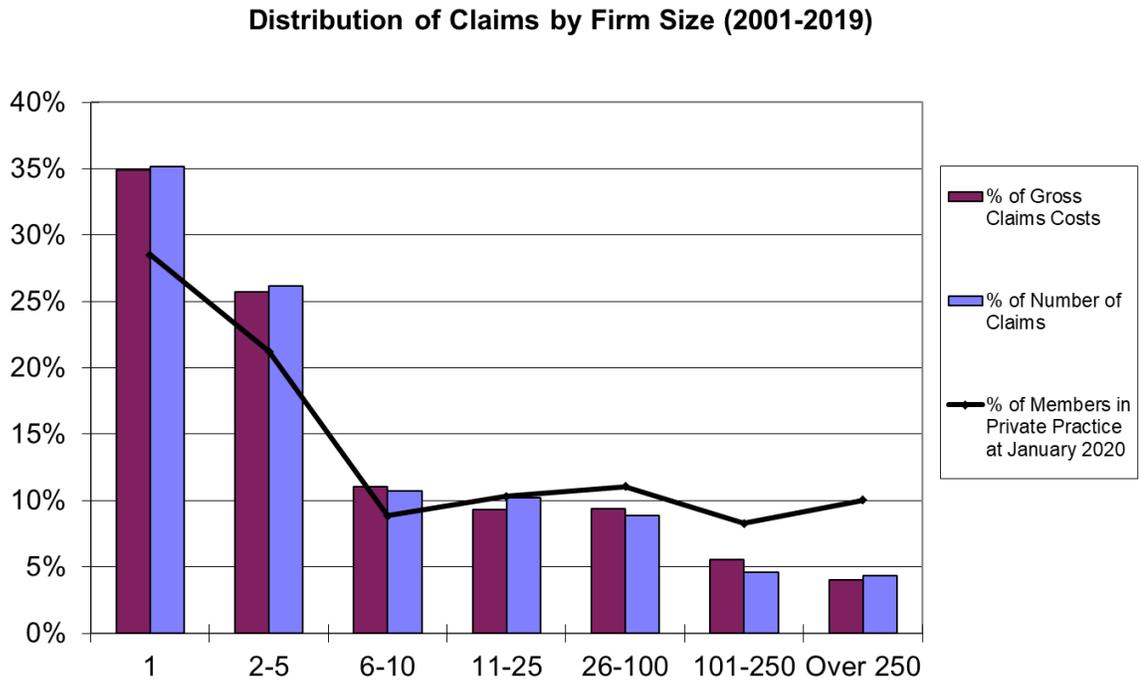
Appendix "A"

Distribution of Claims by Geographic Region

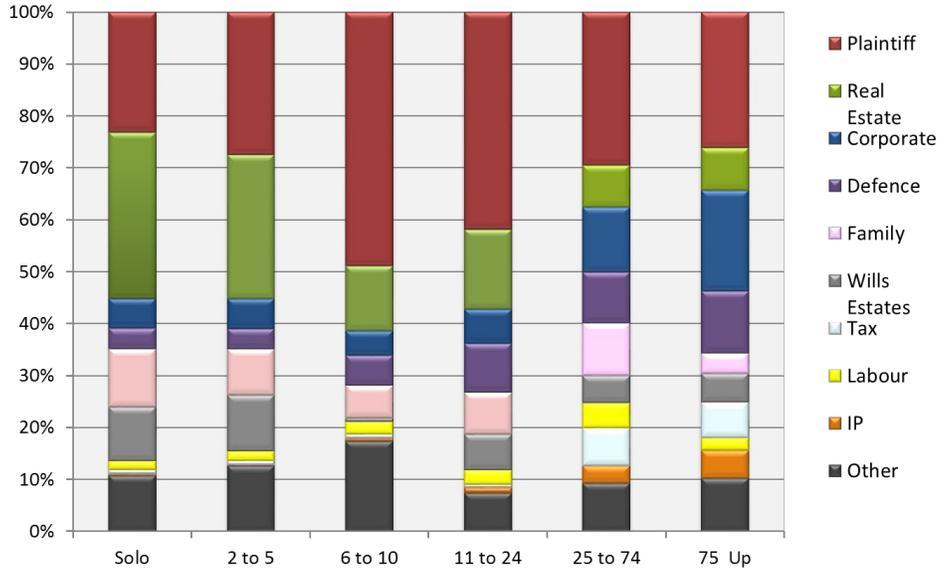


Appendix “B”

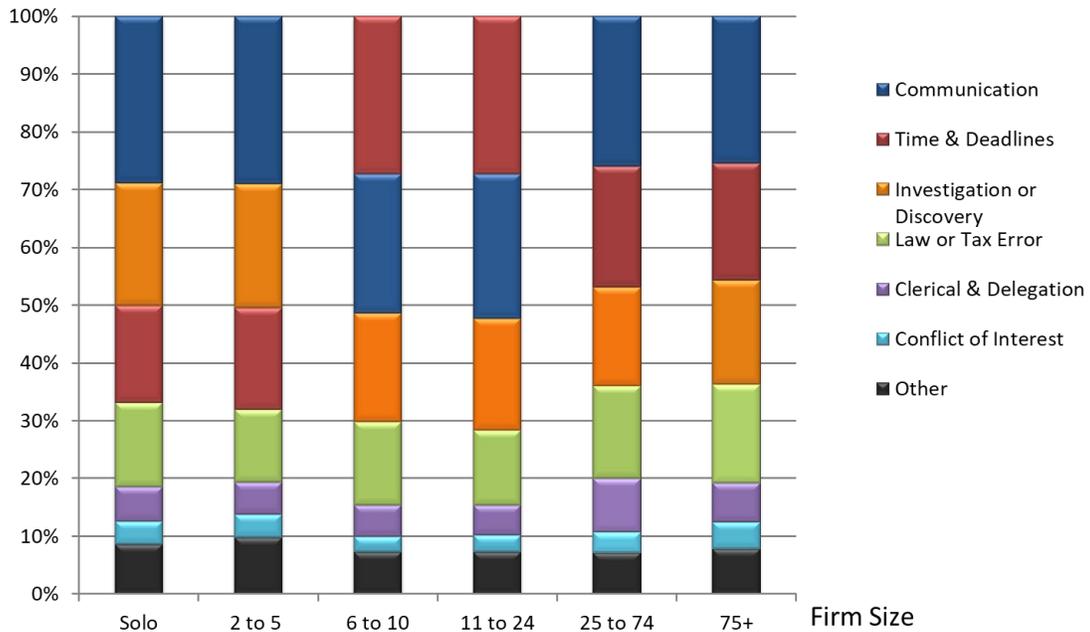
Distribution of Claims by Firm Size



LAWPRO claims count by area of law and firm size (2009-19)

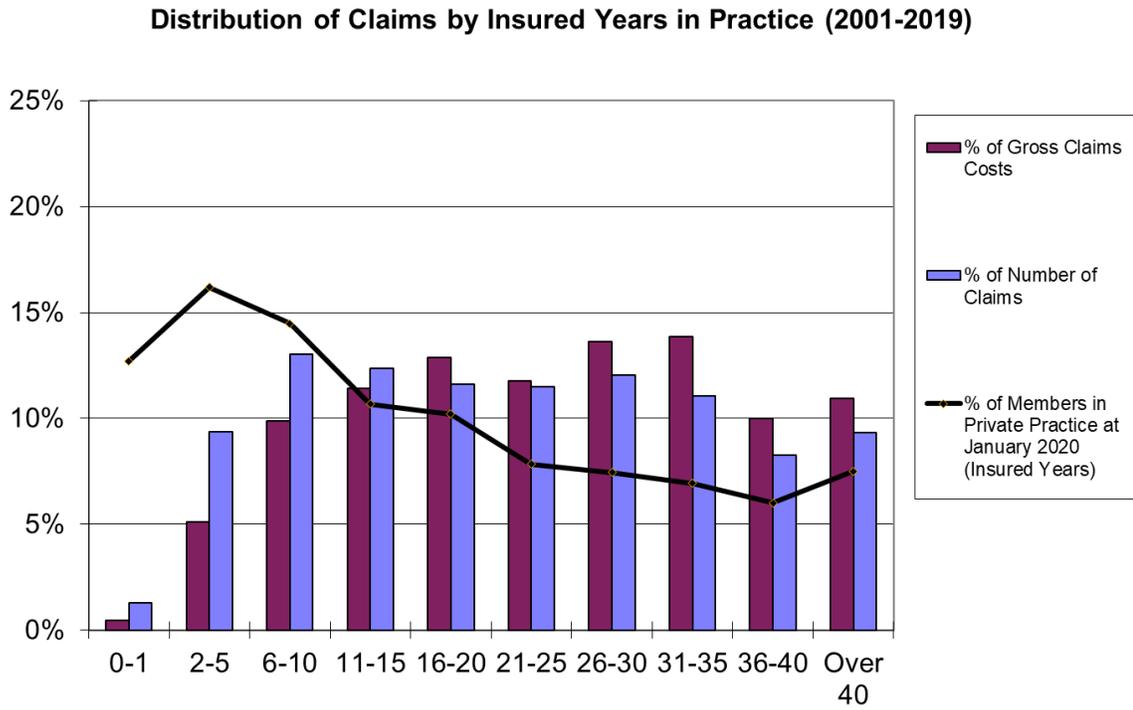


LAWPRO claims count by error type and firm size (2009-19)



Appendix "C"

Distribution of Claims by Years in Practice



Appendix “D”

Detailed Descriptions of Causes of Loss

Communications: Communication-related errors (including poor communication, not keeping clients informed or failing to obtain client consent) are the biggest causes of claims in all areas of law (except litigation, where it is the #2 cause) and in firms of all sizes. While the most numerous claims, they are at the same time the most easily prevented. Lawyers can reduce their exposure to these types of claims by controlling client expectations, actively communicating with the client at all stages of a matter, documenting advice and instructions, and confirming in writing what work was done on a matter at each step along the way.

Time management: These kinds of claims including failing to ascertain a deadline, failing to calendar the deadline, and failing to react to the deadline even when it was known. These lapses often become claims when a limitation period ends up being missed or an action is administratively dismissed due to failing to move the litigation forward appropriately. There are also claims resulting from procrastination when a lawyer lets files that require work languish for extended periods of time. Time management claims are heavily concentrated in the litigation field, as it is so reliant on deadlines. Practice management software and tickler systems can help prevent these claims, as can lawyers building in more time cushions so that they are not adversely affected by unexpected delays.

Inadequate investigation: Modern technology and busy practices may be behind the tendency of lawyers to give quick legal advice without taking extra time to dig deeper or ask appropriate questions on a client’s matter. In recent years, LAWPRO has seen a big increase in these types of claims in real estate, litigation and will/estates areas of law. High-volume real estate practice often means lawyers do not have enough time to ask the clients about their plans for the property, and as a result don’t do the necessary searches or obtain the proper title insurance.

Failure to know/apply the law: These claims result from a lawyer not having sufficient or current knowledge of the relevant law on a matter in which he or she is working. Extensive federal and provincial legislation, as well as voluminous case law, help make this the

second-most-common type of claim in family law. This category also includes failing to know or appreciate the consequences of tax law in corporate/commercial matters. Lawyers can best avoid this type of claim by sticking to the law they know best and not “dabbling” in other areas.

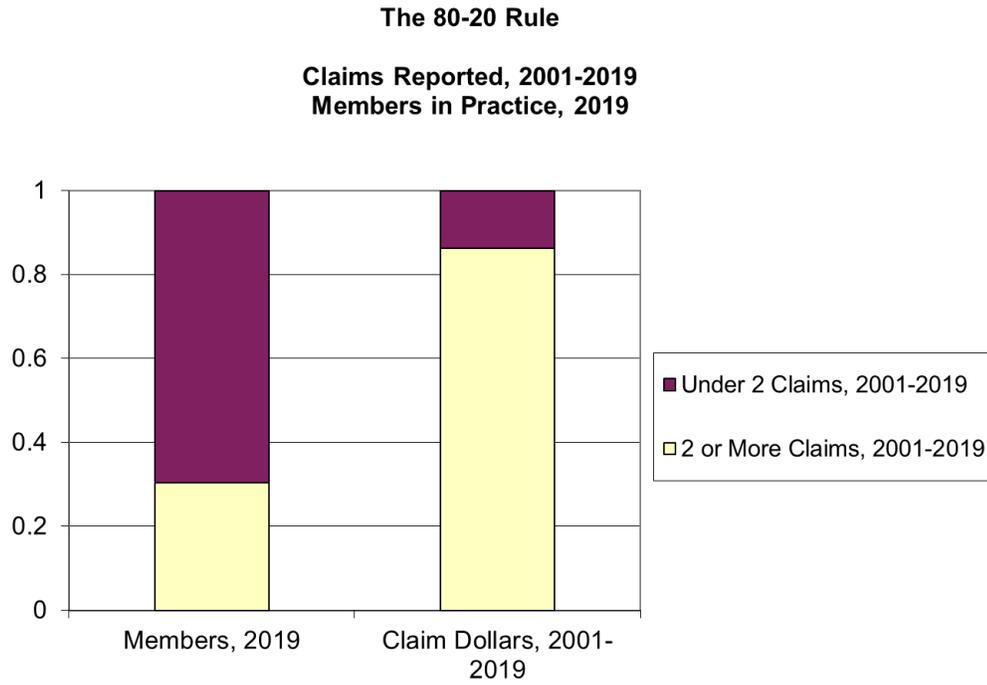
Conflict of interest: There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple clients/entities, real estate and corporate commercial lawyers experience proportionately more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

Clerical errors: These types of errors include things such as simple clerical mistakes, errors in mathematical calculation, work delegated to an employee or outsider that is not checked and failure to file documents. As important as delegation is to the efficient functioning of a law firm, lawyers need to take the time to review the work as they are ultimately responsible for it.

Fraud: Fraud continues to be a significant risk for LAWPRO, one which could cost the Primary Program significant claims dollars if not prevented. Lawyers are reporting attempted frauds to LAWPRO on a daily basis. Fraudsters on occasion still successfully dupe lawyers and law clerks, and it is not just real estate lawyers who are targeted. Litigation, business and family law lawyers are regular targets of bad cheque scams involving debt collections, spousal support payments and business loans. “Phishing” attempts and other cyber hacking methods are targeting lawyer trust accounts. Through our efforts, including publication of Fraud Fact sheets which are available at practicepro.ca/fraud, Ontario lawyers are clearly more aware of frauds, but ever more sophisticated frauds mean lawyers must continue to be vigilant.

Appendix "E"

The 80-20 Rule



Appendix “F”

LAWPRO Mission

LAWPRO Vision, Mission & Values and Corporate Social Responsibility are available for download at: <https://www.lawpro.ca/about/vision-values/>

LSO PANDEMIC UPDATE

CEO Report

SEPTEMBER 24, 2020



Law Society
of Ontario

Barreau
de l'Ontario

Message from CEO

This interim operational report to Convocation provides insight into the breadth of activities, action items, productivity benchmarks, and operational outcomes completed from the declaration of the pandemic emergency state in mid-March until end August.

Highlights of key pandemic strategies, operational changes and responses, and ongoing work are set out for areas across the organization.

This is only a snapshot of the organization's work during this period. Where available, comparative results from 2019 during the same period (mid-March to end August) are provided to understand the impact of COVID-19 on our business processes and people.

The information outlines key developments and “pivots” taken to be responsive to this challenging situation, and the regulatory and program activity that continued to progress the work of the LSO.

The results to date show that our employees are united in their purpose to maintain our corporate legacy of excellence and responsiveness and do so with compassion for those with whom we interact, support and regulate.

Operations Snapshot

Included in this snapshot:

- Operational results for the pandemic period to date
 - Mid-March to end August, 2020 – as compared to the same period in 2019
 - Key indicators for corporate, competence and conduct activities

- Indicia and Measures
 - Ongoing workflow – benchmarking activity and productivity
 - Pandemic workflow / products / projects
 - Examples of managing pandemic challenges and pivoting activities
 - Highlights of achievements addressing pandemic impacts on business continuity while still supporting regular workflow

Corporate Response to Pandemic

**An emergency state is
declared – what next?**

Corporate Pandemic Actions

Organization Actions

- Pandemic Emergency Response – immediate move to work at home and implementation of work at home strategies to sustain workflow
- Pandemic Preparedness and Planning – ongoing supports and protocols for continuation of workflow
- Return to Office Planning – reintegration into physical space, implementation of enhanced health and safety requirements

Corporate Interaction, Outreach and Support Actions

- Justice Sector Partners Check-ins and Planning – provide support, assistance and communications addressing evolving practice issues
- National Law Society CEO Check-ins and Planning – continuity, consistency and information exchange
- Ontario Regulatory Agency CEO Check-ins and Planning – benchmarking, impact discussions and supports

Corporate Pandemic Actions

Operational Sustainability and Change Management

- Recommendations for Strategic Change Development - consideration and implementation focused on modernization and proportionate regulatory impact for licensees and internal processes
- Treasurer Transition – planning, supports, engagement, outreach
- Treasurer and CEO Board Interaction – updates and communications
- CEO Communications to Team – weekly updates, maintaining morale and focus
- Employee lay-offs and terminations necessitated by the closure/inability to support certain business lines
- Executive management and Board member pay/remuneration reduction recognizing pandemic impacts on people and clients.

Corporate Outcomes

Mid-March to end August 2019
Mid-March to end August 2020



Client and People Services



Finance and Facilities



Office of General Counsel



Policy and Equity Initiatives



**External Relations and
Communications**



Remote Operations

Facilitating remote work – Information Technology and Human Resources immediately moved to ensure smooth transitions while still maintaining day-to-day operational oversight.

IT and HR, supported by all other divisions, completed significant work to transition all employees to work at home arrangements beginning March 16, 2020

IT managed the rapid transition to work from home by:

- Managing technological needs, supplying/sending laptops and other IT equipment
- Providing user support
- Monitoring cybersecurity threats
- Maintaining infrastructure support
- Increasing the LSO's VPN and remote working infrastructure capacity
- Training employees on remote access protocols and security measures

HR responded quickly to help employees with their transition to work from home, including:

- Providing best practices and guides for remote working
- Ensuring employees know how to access the Employee Assistance Program and are aware of the services they offer
- Offering support for managers who are learning to manage remote teams
- Creation of policies and FAQs to reflect the current work environment



Return to Office (RTO) Planning

Creation of the RTO Committee with responsibility for health and safety, facilities and internal communications

- Central coordination, leadership and decision making
- Development of COVID-19 and Return to Office pages on the HUB intranet site to provide employees with relevant information
- Creation of interim COVID-19 policies, including an Employee Wellness Policy and an Engineering, Administrative and PPE Protocol Policy
- Providing training resources for donning and doffing PPE
- Development of comprehensive FAQs relating to COVID-19 precautions, policies and planning for return to office
- Providing guidance to each LSO division to plan for the safe return of employees to the office and resumption of their pre-COVID-19 activities, including hazard assessments and space allocation checks
- Development and analysis of RTO Pulse Survey to gauge employee reactions to/comfort with policies, procedures and next steps
- Conducted health and safety compliance review and gap analysis
- Restructured the Health & Safety Committee, including the creation of distinct committees for both LSO buildings
- Creation of a Work Refusal Policy
- Revise Health and Safety Policy.



Human Resources

Pandemic realities have led to the development of new electronic processes in Human Resources. This has included:

- Use of digital files for payroll processing
- Virtual training for Benefit and Pension Enrolment, New Hire Orientation, and other key people processes
- Use of digital signatures for invoices.

Sustainability and Managing Workforce Change due to Pandemic

- Ongoing employee retention with focus on communications
- Transitions for employees moving to work at home, including accommodations and supports
- Engage with employees directly and via intranet to ensure ongoing mental and physical well-being and promote use of Employee Assistance Plan
- Prepare for and support employee lay-off and termination decisions
- Ongoing engagement with all employees impacted by changes and those remaining who are also impacted by workforce decisions

Client Service Centre

Pandemic realities have led to the development of new electronic processes in Client Service Centre. CSC has worked to transform their paper-heavy processes to electronic processes to ensure their internal and external clients are not inconvenienced with the transition to remote working. This has included:

- Implemented ability to produce, approve and sign Certificates of Standing electronically
- Electronic transfer of files between Complaints & Compliance, Professional Regulation and Licensing (instead of daily paper deliveries)
- Acceptance of all documents electronically (complaints-related, applications, Certificates of Standing, transcripts, etc.)
- Preparation of Clearance Requests using digital signatures
- Discontinued the creation of paper files, with all documents being stored electronically.

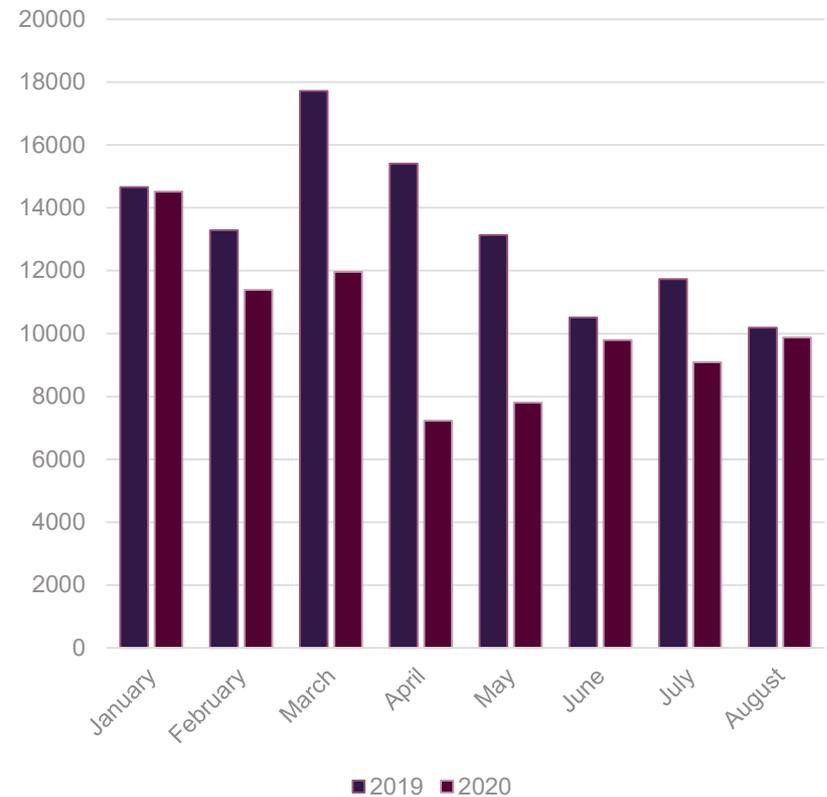
Client Service Centre

Call Centre

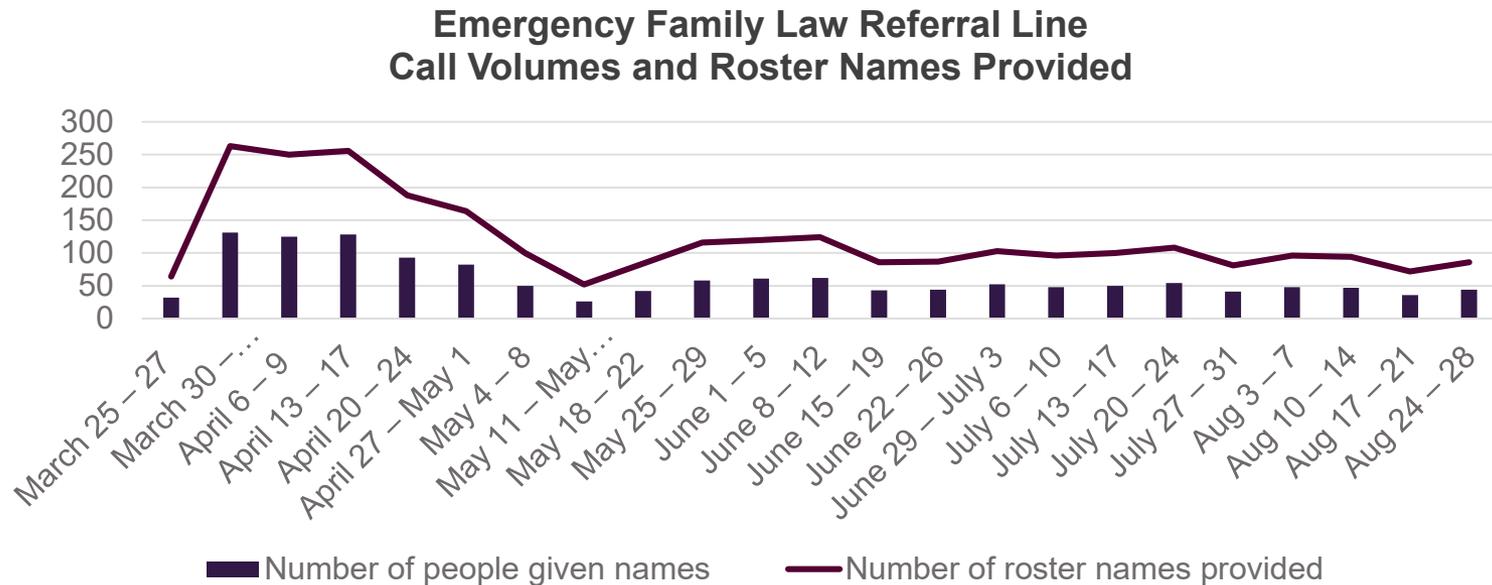
As a result of COVID-19, the Call Centre experienced a decrease in call volumes in March and April, but volumes began to return to regular levels from June to August. Since transitioning to Work at Home, the Call Centre's answer rate remained steady at approximately 98.7%.

There has also been a marked increase in the Call Centre's productivity rate, made apparent by the increase in call-answer time due to a decrease in interruptions in workflow. In 2019, the average time spent 'off the que' per agent was approximately 6.9%. After beginning to work from home, the average has decreased to 3.8%, meaning Call Centre agents are spending more time assisting callers. From mid-March to end August, the Call Centre managed over 49,000 calls from the public and licensees.

Call Centre Call Volumes (2019 vs 2020)



Client Service Centre



During this time, the Call Centre has also been supporting the new Emergency Family Law Referral Line, connecting self-represented litigants with family lawyers who will provide 30 minutes of legal advice specific to determining whether their family court matter is urgent and referrals to other available legal services. Launched on March 25 (9 days following the declaration of emergency), call volumes peaked within the first month but have remained relatively steady since May with an average of 47 calls per week. Over 1400 interactions to date.

Client Service Centre

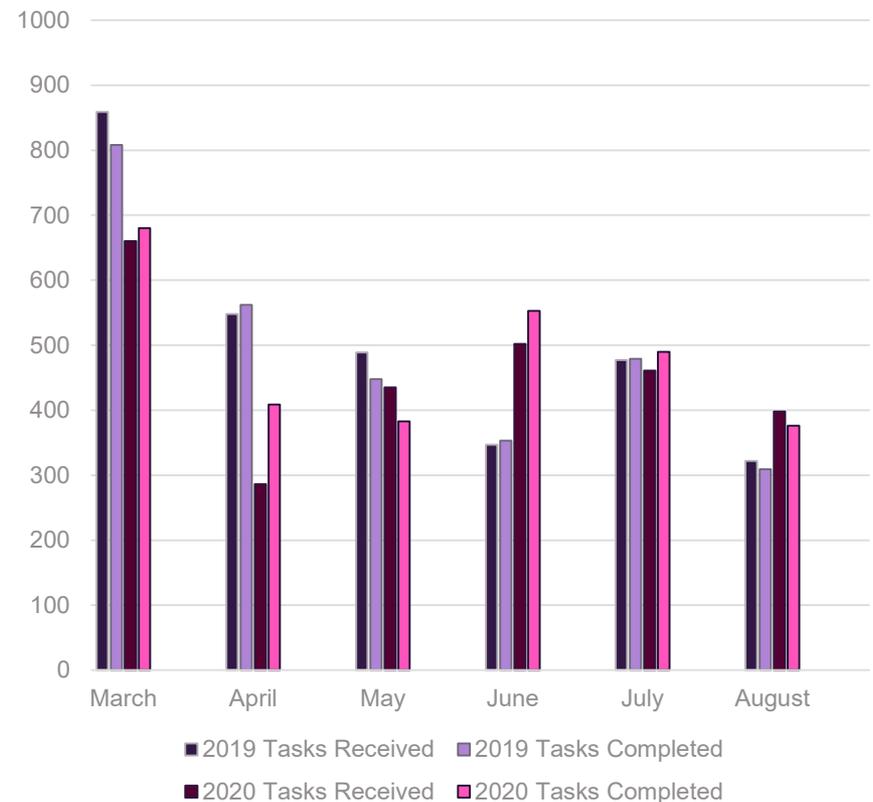
By-Law Administration Services (BAS)

Since moving to work from home, BAS has transitioned most of their processes completely online, thus eliminating the need for submission of paper documents by licensees and for employees to create and maintain paper files.

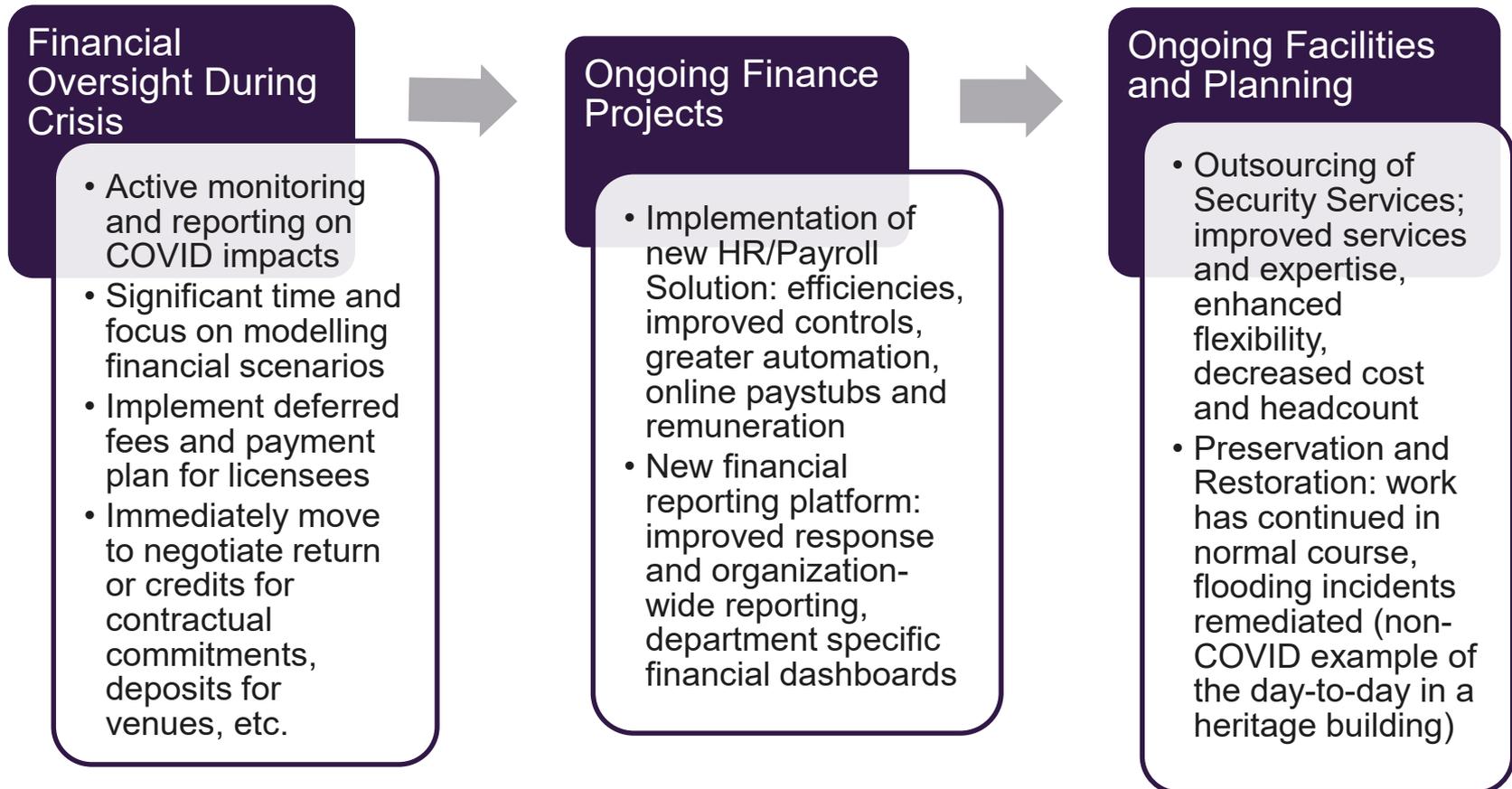
The transition to electronic files has allowed BAS to continue to provide timely service for licensees seeking license surrender, exemption from paying annual fees or the annual report, approval of professional corporations, processing of by-law mandated forms, and responding to licensee inquiries.

While there was a decrease in requests received in March and April, volumes have increased steadily since May and have surpassed 2019 volumes in June through August.

BAS Requests Received and Completed (2019 vs 2020)



Finance and Facilities



Policy and Equity Initiatives

Pandemic Initiatives

- Remote Commissioning/Notarizing: develop and amend licensee guidance resources in collaboration with PD&C; consultation meetings; consultation submissions
- MAG consultation on POA Amendments; submission
- MAG consultation on Estates Law Reform; submission
- Develop COVID-19 FAQs in collaboration with PD&C, OGC and others
- Federal and Provincial support programs: monitoring program developments; outlining programs for communication to licensees; advocacy related to program enhancements to support lawyers and paralegals specifically
- Licensee Check-In Project re: impact of COVID series of meetings
- Research Community of Practice; organize and conduct launch meetings; support subcommittee work
- Participation in LAO consultation re: impact of COVID

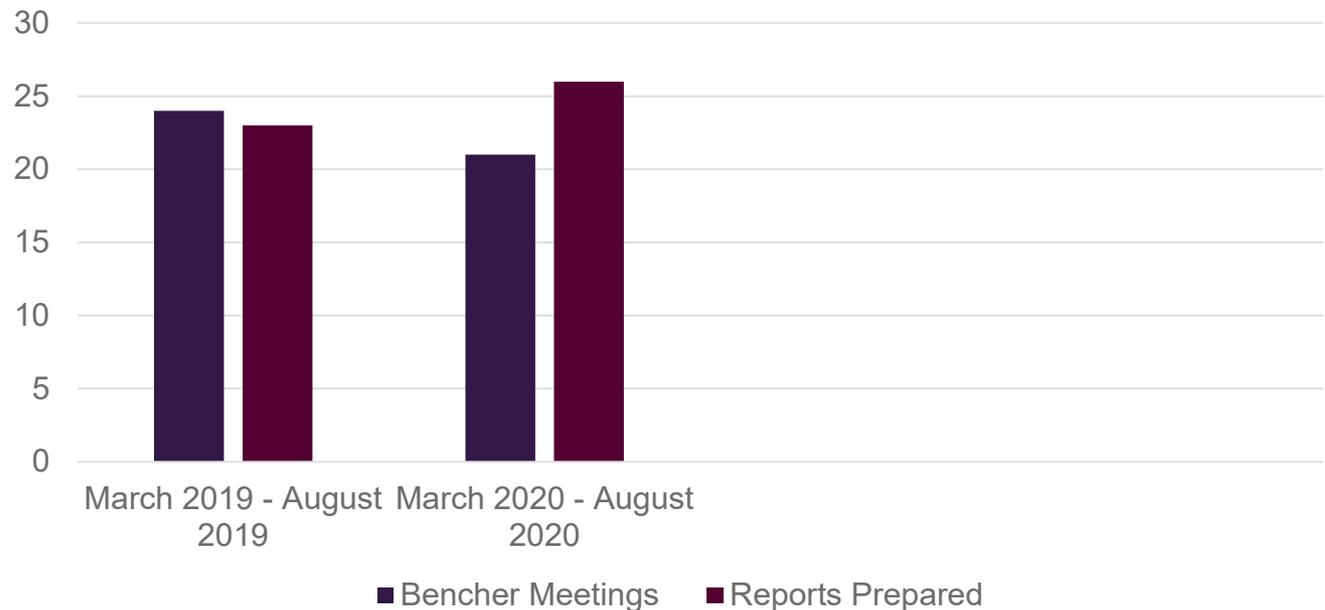
Policy and Equity Initiatives

Ongoing Initiatives

- MAG consultation on Defamation Law Reform submission
- ICCRC Immigration Consultant Licence meetings and reporting
- Review of Equity Initiatives website and updating
- Organization of French Language CPD
- Organization of Law Societies of Canada Equity Network virtual conference
- Attend: AJEFO Board and AGM; French language justice services subgroup
- Ontario Courts Accessibility Advisory Committee participation
- Inclusion Index: analysis; managing ongoing communications; developing work products
- Report on implementation of Indigenous initiatives and supporting work of external Indigenous counsel
- Respond to New Zealand consultation on rule changes related to discrimination and harassment as part of international law society regulatory information exchange

Board and Committee Interactions

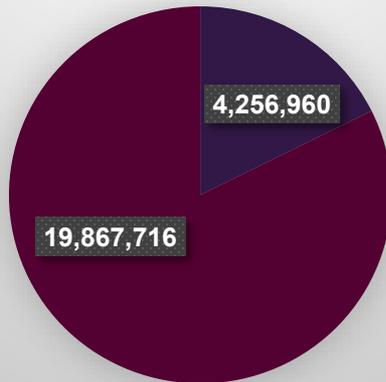
The pandemic required that Board and Management engage in ongoing policy development through virtual interactions. A quick pivot to Zoom technology permitted decision making to continue with the focus on shifting to pandemic-specific policies, proportionate regulation and modernization opportunities.



Communications

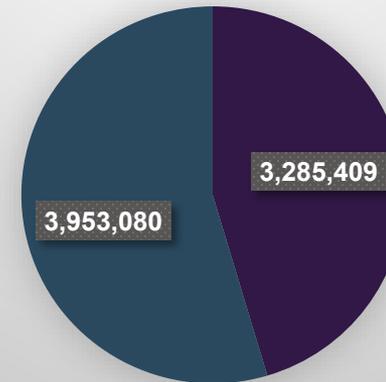
Sitewide pageviews from
March to August 2019 and 2020

■ March 16 to August 31, 2019 ■ March 16 to August 31, 2020



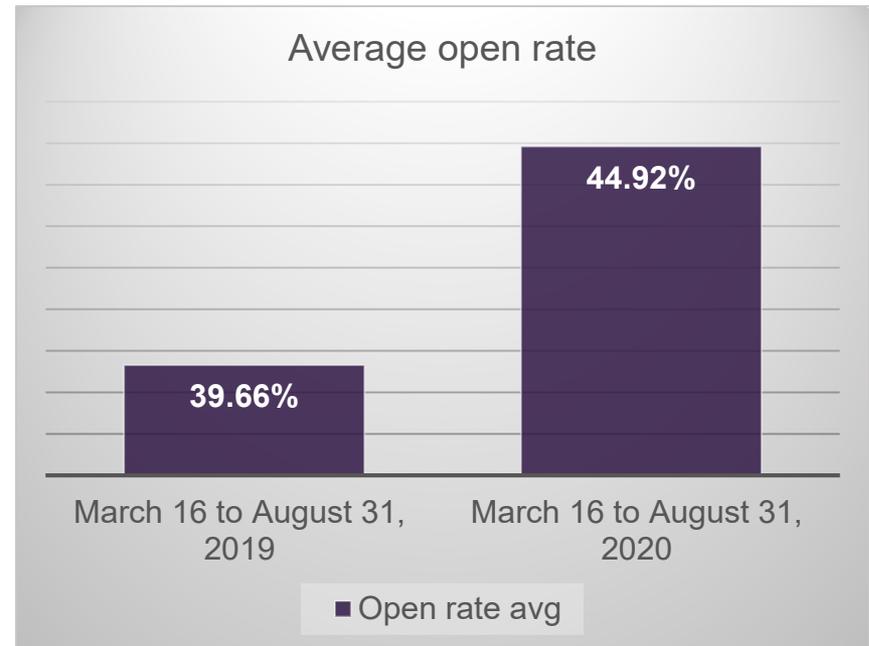
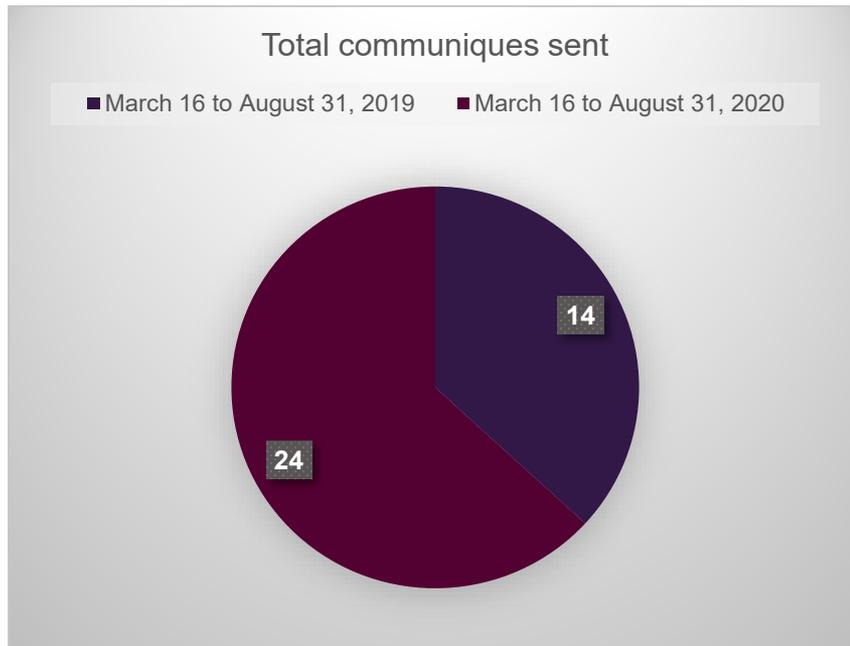
Sitewide unique views from
March to August 2019 and 2020

■ March 16 to August 31, 2019 ■ March 16 to August 31, 2020



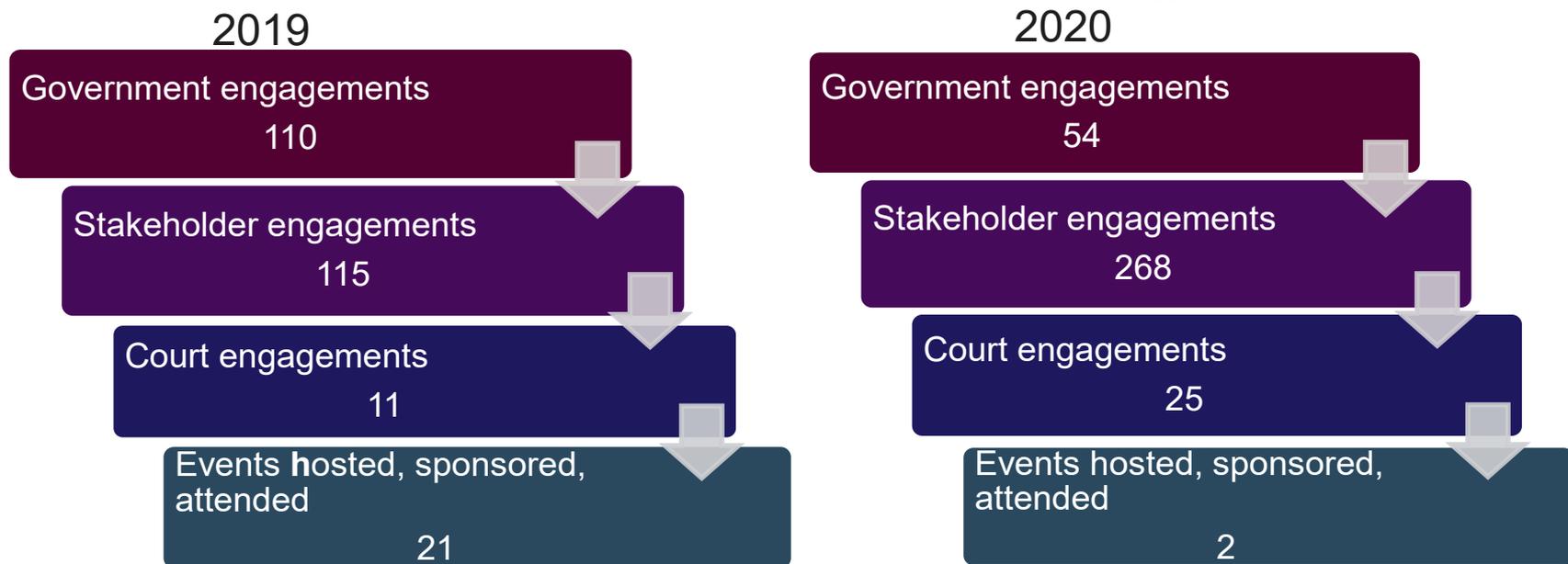
COVID-19 pages have seen over 1M pageviews since March 16, 2020. These pages were designed to offer a significantly improved layout resulting in better navigation for visitors. Content is easy to share and offers direct links to individual FAQs. Website metrics are up dramatically for both sitewide visits and unique page views for the same period in 2020 as a result of the crisis and improvements to the website.

Licensee Updates



From March 16 to July 16, 2020 licensees were sent weekly updates to keep them apprised of important COVID-19 information. *Licensee Updates* are now being sent monthly or on an as-needed basis. Open rates for licensee communicues increased an additional 5% despite sending updates more frequently. Interest in the *Licensee Updates* is strong, particularly during the pandemic timeframe.

External Relations and Engagements



The importance of stakeholder engagements during the 2020 pandemic period is reflected in the significant increase in the number of engagements -- more than double the number when compared to 2019. The increase in court engagements in 2020 over 2019, reflects the importance of coordination throughout the justice sector and legal community during the COVID-19 response. The decrease in government engagements is reflective of a shift in the government's focus from planned or 'regular' business to a COVID-19 response. The significant reduction in events is also a result of the pandemic. Of note, LSO events are scheduled to resume using remote technology or a hybrid approach of in-person panels and remote audience participation leveraging technological solutions.

Office of General Counsel

- At onset of pandemic, immediate slowdown on open litigation files
- Reduction in amount of new litigation being commenced or threatened; returning to usual levels by end of August
- Volume of information requests, production orders, subpoenas and summonses reduced

Pandemic increased activity and action items in the following areas:

Legislative Monitoring

- Scope broadened to include monitoring government activities specific to the pandemic
- Additional analysis and work undertaken to support the provision of information to licensees
- Increased workflow to support LSO in responding to the pandemic as an employer, owner of certain businesses (Osgoode Restaurant) and services provider

Legal Advice

- Specific to activities occurring in response to the pandemic, the office provided increased and issue-specific advice and counsel quickly
- LSO modifications: deferring annual general meeting, shifting election of Treasurer from in person poll to online poll, deferring annual fee payments, shifting audits and reviews from in person to virtual activities
- All modifications required an understanding of legislative contexts in which the practices occurred and changes in those legislative contexts



Office of General Counsel

Employment Law Work

- LSO's response to pandemic included taking certain steps in respect of its workforce, including layoffs, terminations and salary reductions
- To mitigate risks inherent in these actions, the office was called on to provide comprehensive advice quickly
- In addition, with respect to certain actions, for example, layoffs, which are subject to legislative requirements and processes, there were continual legislative developments to be monitored and policies and processes adjusted

Health and Safety of People and Organization

- Participation in activities centered around workplace health and safety and the pandemic
- Included participation in the development of workplace policies specifically related to the pandemic and participation in the Return to Office Committee

Contract Obligations and Implementation

- Short timeline contract review and advice on terminating/renegotiating/amending contracts
- Examples include the contract work involved in moving to online licensing examinations, reviewing lease agreements and space rental agreements.

Competence Outcomes

Mid-March to end August 2019

Mid-March to end August 2020

- **Licensing**
- **Practice Audits**
- **Practice Supports and Resources**
- **Continuing Professional Development**
- **Great Library and Legal Information**

Licensing by the Numbers

COVID-19 Response Action (Key deliverable or alternative workflow)	Mid-March to end August 2019	Mid- March to end August 2020
Number of paralegals licensed	259	235
Number of lawyers licensed	1,777	1,881
Number of lawyers licensed via ceremonial calls	1,714	0
Number of lawyers licensing via administrative calls	63	1,881
Number of candidates who filed clerkship with a start date in this date range	1,638	710
Number of candidates who received an abridgment of articles	100	131
Number of candidates who have enrolled in upcoming LPP/PPD (2020/2021)	14 – PPD 200 – LPP	16 – PPD 317 – LPP
Number of exams written	4, 872	5,362
Number of Examination Accommodations	293	398

Licensing: Pandemic Changes

Since March 16, 2020 the following COVID remediation steps were achieved by the Licensing Process Team related to **licensing process administration** following quick and proactive deliberation and approval by Committee and Convocation

- Implementation of Administrative call to the bar process with rolling call dates and removal of Roll Signing
- Lowering fees for call to bar
- Absorbing shipping costs for licensing materials
- Absorbing cost for monthly payment plan administration fees
- Creating two new monthly payment plans for lawyer candidates that commence later in licensing year
- Delaying payment and transcript deadlines for candidates
- Candidates who defer after deadline only charged late fee - not forfeiting entire exam fee
- E-filing documents and virtual commissioning
- Temporarily discontinuing issuance of candidate ID cards
- E-transfer, wire transfer payments from firms
- Professional Conduct and Practice in Ontario program fee reduction
- Supported Finance with the remediation of deposits and contracts for call to the bar venues and suppliers

Licensing

Licensing Process Administration changes continued:

- Implemented a reduction in Articling Term from 10 months to 8 months
- Implemented Remote Articling placements
- Revised and implemented Professional Conduct and Practice in Ontario program for online delivery
- Revised Articling Recruitment Procedures
- Revised Experiential Training Plan forms and documents to support online administration
- Implemented Abridgement policy for Articling, Integrated Practice Curriculum and Law Practice Program/Programme de pratique du droit.

Licensing

Since March 16, 2020 the following COVID remediation steps were achieved by the Licensing Process Team related to **licensing examination administration** following quick and proactive deliberation and approval by Committee and Convocation:

- Sourced vendors to deliver online live-proctored examinations
- Transformed examination protocols to build multiple versions for online examinations
- Restructured licensing examinations from a 7-hour delivery format to a 4-hour delivery format.
- Built new processes, procedures, rules and protocols for online examination administration (e.g. standard and accommodated examination delivery)
- Implemented online, live proctored examinations
- Implemented communications strategies and responded to stakeholder and media inquiries
- Implemented remote advisory group activities
- Implemented new candidate complaints resolution mechanisms
- Worked with Finance to recover venue expenses resulting from cancellation of in-person examinations.

Licensing

Paralegal Education Delivery

Since March 16, 2020 paralegal education programs moved to remote delivery. In addition to approving remote delivery for all colleges, the LSO has reviewed and approved the following:

- 1 program abeyance (Algonquin College suspended its Spring 2020 semester (May 19, 2020, to August 15, 2020) and intends to resume the program in September 2020)
- 2 reductions to course instructional hours, including field placement hours, though not below minimums required by the Paralegal Education Program Accreditation Policy (Algonquin College and Centennial College)
- 3 reductions to semester length (Algonquin College, Centennial College, Georgian College)
- 3 adjustments to sequencing of courses and course elements (CDI College, CIMT, Sheridan College)
- 8 adjustments to program intake dates (Centennial College, Sheridan College, CIMT College, Fanshawe College, Georgian College, Seneca College (diploma and certificate), St. Clair College)

Paralegal Education Program audit processes were also revised to include and provide:

- 7 COVID-19 guidance notices delivered
- All colleges' Major Change Forms for COVID-19 changes reviewed / approved
- Simulated field placement requirements distributed
- College tip sheet distributed
- Modification of student recruitment procedures and deadlines developed and posted.

Practice Audits

COVID-19 Response Action (Key deliverable or alternative workflow)	Mid-March to end August 2019	Mid-March to end August 2020
Number of spot audits	653	15 (279 Jan – Mar)
Number of practice reviews	213	0 (104 Jan – Mar)
Number of practice audits (paralegal)	104	0 (32 Jan – Mar)
Completion of inventory: Spot Audit	N/A	85
Completion of inventory: Practice Reviews	N/A	93

Practice Audits – including lawyer spot audits, lawyer practice reviews, and paralegal audits – was significantly impacted by the emergency state and inability to engage directly at the places of business of licensees. The team focused on clearing file inventories and then moved quickly to develop plans, criteria and protocols for conducting fully remote audits and reviews.

Practice Audits

Remote Spot Audit Program and Enhancements

- Remote audit program was created using videoconferencing and document sharing technology
- Initial implementation will be a limited scope engagement focused on financial areas that have been identified as higher risk to the public
- This proportionate risk-based approach will help to reduce regulatory burdens on law firms during the COVID crisis
- A limited scope remote audit conducts about 75% of the steps that a full scope audit covers and addresses 4 months of books and records compared to 12 months of books and records
- Depending on the evolving situation the scope of the remote audit program may be expanded (i.e., if the pandemic situation continues at length)
- Enhancements to audit efficiencies while maintaining the program's effectiveness.

Projected number of remote spot audit engagements to commence by end of 2020:

Lawyer spot audits	200 – 250
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Practice Audits

Remote Lawyer Practice Review and Paralegal Audit Programs

- Created a process for conducting remote reviews during the COVID-19 pandemic using existing technology (i.e., Zoom and Sharefile)
- Newly created process provides tools to continue to conduct comprehensive quality assurance reviews and assess licensee competence during the pandemic
- New process continues philosophy of balancing proportionate regulation with a risk-based approach.

Projected number of remote review engagements to commence by end of 2020:

Lawyer practice reviews	90 – 110
Paralegal practice audits	36 – 44

Practice Audits

The Practice Audits team has used the opportunity of pandemic changes to focus on supporting licensees and other departments of the LSO through the development of guidance on critical practice issues and areas of practice risk.

Providing educational guidance/materials to Licensees

- Financial management educational resource materials are being expanded to include additional resources and tips for licensees in higher risk areas
 - Books and Records section
 - Private Mortgages section
 - Estates and POA section

Licensee Annual Report financial high-risk indicators

- Develop a financial indicators assessment protocol
- Specific financial indicators to determine if a full audit is warranted

Data Analysis to identify anomalies

- Continued work on utilizing data analytics software to enhance the effectiveness of risk assessment and execution of the spot audit program



Practice Audits

Guidelines, Resources and Checklists Project

- Substantive practice area guidelines (for example, real estate, family law, wills and estates) and associated checklists for use by Reviewers
- For all Reviewers, these documents provide an updated measurable standard and consistent protocol for the approach to reviewing each substantive area of law

Resource List Project

- Reviewed existing Lawyer and Paralegal Resource Lists to ensure the resources are current, relevant and useful for licensees
- Updated and enhanced lists will be an excellent set of resources for all licensees, not just those taking part in the Practice Review Program

Report Template and Scope of PMR/PA Review

- Conducted assessment of the scope of reviews, processes and report templates based on objectives of proactive, risk-based and proportionate regulation conducted in an efficient and effective manner.

Practice Supports and Resources

COVID-19 Response Action (Key deliverable or alternative workflow)	Mid-March to end August 2019	Mid-Mar to end August 2020
Number of calls to Practice Management Helpline	Total Inquiries – 3,993 Lawyer – 3,274 (82%) Paralegal – 532 (13%) Non-Licensee – 187 (5%)	Total Inquiries – 4,444 Lawyer – 3,625 (82%) Paralegal – 484 (11%) Non-Licensee – 335 (7%)
Number of COVID-related resources developed	N/A	43 COVID-19 FAQs covering 14 practice management topics; 10 banking technology-related FAQs; 1 best practice guide; 1 checklist 24 resources updated with COVID-19 FAQ redirects or additional information 9 resources updated as a result of remote commissioning and notarizing amendments

Practice Supports and Resources

COVID-19 Response Action (Key deliverable or alternative workflow)	Mid-March to end August 2019	Mid-March to end August 2020
Number of Page Views for COVID-related resources	N/A	133,199
Number of Unique Views for COVID-related resources	N/A	30,033
Number of calls about Commissioning and Notarization	58	263
Number of calls about Client ID and Verification	88	119
CAN Engagements in total	258	290
CAN Advisor Engagements	187	237
CAN Coach Engagements	71	53
CPD Accreditation Applications for Programs	418	337
CPD Accreditation for Programs	369	333



Practice Supports and Resources

Practice Supports and Resources introduced the following **new resources** and regularly updated them in response to COVID-19

- Practice Management COVID-19 FAQ
 - Licensee Supports
 - Office Management
 - Practice Interruptions
 - Virtual Meetings
 - Client Identification and Verification
 - Commissioning and Notarization
 - Signing Documents
 - Cybersecurity
 - Litigation
 - Real Estate
 - Wills and Power of Attorney
- Trust Accounting and Bookkeeping COVID-19 FAQ
- Remote Deposit Capture FAQ
- Best Practices for Virtual Commissioning during COVID-19 (later renamed Best Practices for Remote Commissioning)
- Virtual Commissioning Checklist (later renamed Remote Commissioning Checklist).

Continuing Professional Development

COVID-19 Response Action (Key deliverable or alternative workflow)	Mid-March to end August 2019	Mid-March to end August 2020
Number of paid LSO programs offered (Include live and on demand)	281	180
Total number of registrants for paid LSO programs	14,705	5,532
Number of free COVID-related programs offered	N/A	17
Number of registrants for free COVID-related programs	N/A	27,623
Number of free programs offered as part of Summer Event	N/A	143
Number of purchases of Summer Event programs	N/A	16,987

Fast, significant pivot for CPD Program operations. First day of LSO work restrictions on March 16 (entire CPD team working at home, no access to Learning Centre equipment). Yet, first (free COVID) program **offered to membership 11 days later** on March 27.

Some previously scheduled programs moved to Fall (or 2021), but many captured through fully remote and/or recorded means to complete Winter/Spring CPD season by August 21. Creative work-arounds included producing brand new CPD content options through podcast.

Great Library and Legal Information

COVID-19 Response Action (Key deliverable or alternative workflow)	Mid-March to end August 2019	Mid-March to end August 2020
Number of legal research questions answered	11,444	2,399
Number of searches on Great Library mobile app	5, 656	3,371
Number of electronic pages sent to licensees	16,251	22,667
Number of electronic pages sent to law associations	1,072	488
Number of visits of AccessCLE	63,275	56,191

The Great Library team pivoted to provide news gathering and research support for Law Society teams, including monitoring developments on COVID-19 issues at other regulators, and reviewing legal professional sources of practice information to supplement the provisions of supports and resources. The team also activated a Twitter account as a supplemental news channel, which is now followed by 660.

Professional Conduct Outcomes

Mid-March to end August 2019
Mid-March to end August 2020

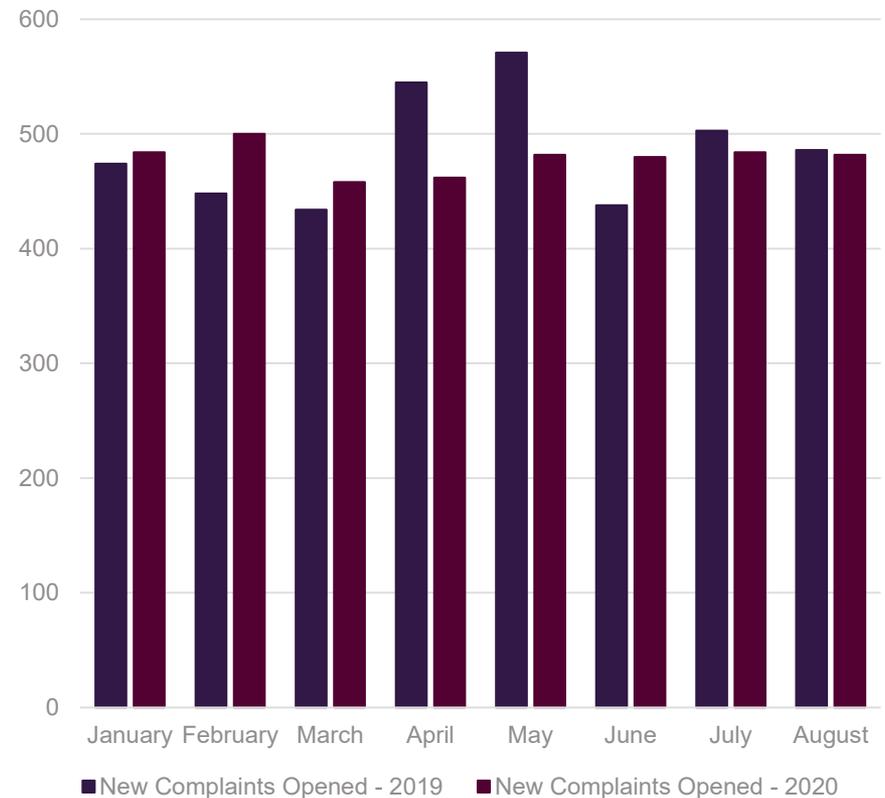
- **Complaints & Compliance**
- **Intake & Resolution**
- **Investigation**
- **Discipline**
- **Compensation Fund**
- **Trustee Services**

Complaints and Compliance

Levels of complaints received have remained steady from March to end August.

Complaints & Compliance modified processes to ensure they did not experience a disruption in service resulting from the transition to working at home. Key process changes include moving to a paperless transfer system with Profession Regulation, processing Licensing Candidates' Good Character files remotely, and accepting most documents electronically.

**New Complaints Files Opened
(2019 vs 2020)**



Intake and Resolution

	Mid-March to end August 2019	Mid-March to end August 2020
New Cases	2,153	1,782
Closed cases	1,342	1,536
Transferred cases	566	363
Total Output	1,908	1,899
Inventory of cases mid-March	1,023	1,072
Inventory of cases August 31	1,269	954

Compared to the same period last year, the volume of complaints received in Professional Regulation Division is down. There was significantly decreased input mid-March to May, but in June, July and August, input has increased and now approximates 2019 volumes. In response, the team increased focus on completion of inventory, closing more cases.

Investigation

	Mid-March to end August 2019	Mid-March to end August 2020
New Cases (new and reactivated)	589	380
Closed cases	352	355
Transferred cases	146	113
Total Output	498	468
Inventory of cases mid-March	1,235	1,505
Inventory of cases August 31	1,322	1,414

In response to the challenges of the pandemic, Investigations created electronic files and procedures where possible. It also created procedures and protocols for a remote working environment, including remote interviews with the ability to record and share documents, using Sharefile for electronic transfers of large files from complainants, and to and from licensees. Investigations is now considering circumstances for resumption of in-person meetings. Remote interviews are often not well suited to cases with voluminous documents or licensees who are not technically capable.

Discipline

	Mid-March to end August 2019	Mid-March to end August 2020
New Cases	152	112
Closed matters	83 (involving 79 licensees/applicants)	76 (involving 75 licensees/applicants)
Originating notices	71 Summary Hearing – 20 (28%) Conduct – 33 (47%) Capacity – 5 (7%) Interlock – 7 (10%) Other – 6 (8%)	78 Summary Hearing – 18 (23%) Conduct – 45 (58%) Capacity – 3 (4%) Interlock – 4 (5%) Other – 8 (10%)
Proceedings completed	56 Summary Hearing – 14 (25%) Conduct – 25 (5%) Capacity – 5 (9%) Interlock – 5 (9%) Other – 7 (12%)	56 Summary Hearing – 29 (52%) Conduct – 12 (21%) Capacity – 1 (2%) Interlock – 5 (9%) Other – 9 (16%)
Inventory pre-PAC and pre-filing matters	Mid-Mar: 55 August 31: 48	Mid-Mar: 52 August 31: 51

Discipline

Since mid-March 2020, Discipline's input reflects the processing of less complex matters, including summary hearing cases.

Discipline was able to effectively process files through the Proceedings Authorization Committee and to file originating notices with the Law Society Tribunal. These files are not noticeably different in profile, including complexity, from those filed with the Tribunal in 2019, suggesting that processing was, in part, files received from Investigation before mid-Mar 2020.

Proceedings completed before the Tribunal since mid-Mar 2020 tend to be less complex matters, including summary hearings, reflecting what the Tribunal was able to process, at least during the early months while it moved to establish virtual protocols.

In response to the challenges of the pandemic, Discipline worked with Investigation to receive electronic files where possible. It is using Sharefile for electronic transfers of disclosure to licensees. It has pivoted to electronic processes to participate in the Tribunal virtual processes.

Compensation Fund

	Mid-March to end August 2019	Mid-March to end August 2020
Inquiries Received	113	121
Claims Received	54	52
Inquiries Completed	22	109
Claims Completed	230	109
Inventory of Claims mid-March	593	303
Inventory of Claims August 31	414	246

Declining inventory of claims reflects the focus that the department put on reducing age of inventory since restructuring in early 2019, work that has continued despite the pandemic circumstances.



Trustee Services

	Mid-March to end August 2019	Mid-March to end August 2020
Active practice wind-up to licensees or their families: new cases	46	108
Court ordered trusteeship cases	6	4
Active practice wind-up assistance to licensees or their families: completed	22	34
Court ordered trusteeship cases completed	1	4
Inventory: Active Practice wind-up assistance to licensees or their families: ongoing administration – mid-March	74	96
Inventory: Active Practice wind-up assistance to licensees or their families: ongoing administration – August 31	76	120
Inventory Court Ordered Trusteeships – mid-March	27	34
Inventory Court Ordered Trusteeships – August 31	31	34
Responses to requests from public/licensees looking for files, wills, and funds relating to active and closed trusteeships or for practice disposition information	1,261	1,282
Unclaimed Trust Funds – applications completed	285	88
Inventory Unclaimed Trust Funds – applications August 31	73	212

Trustee Services

Sharp increase in the active practice assistance requests is likely due in part to the pandemic and associated challenges for practitioners.

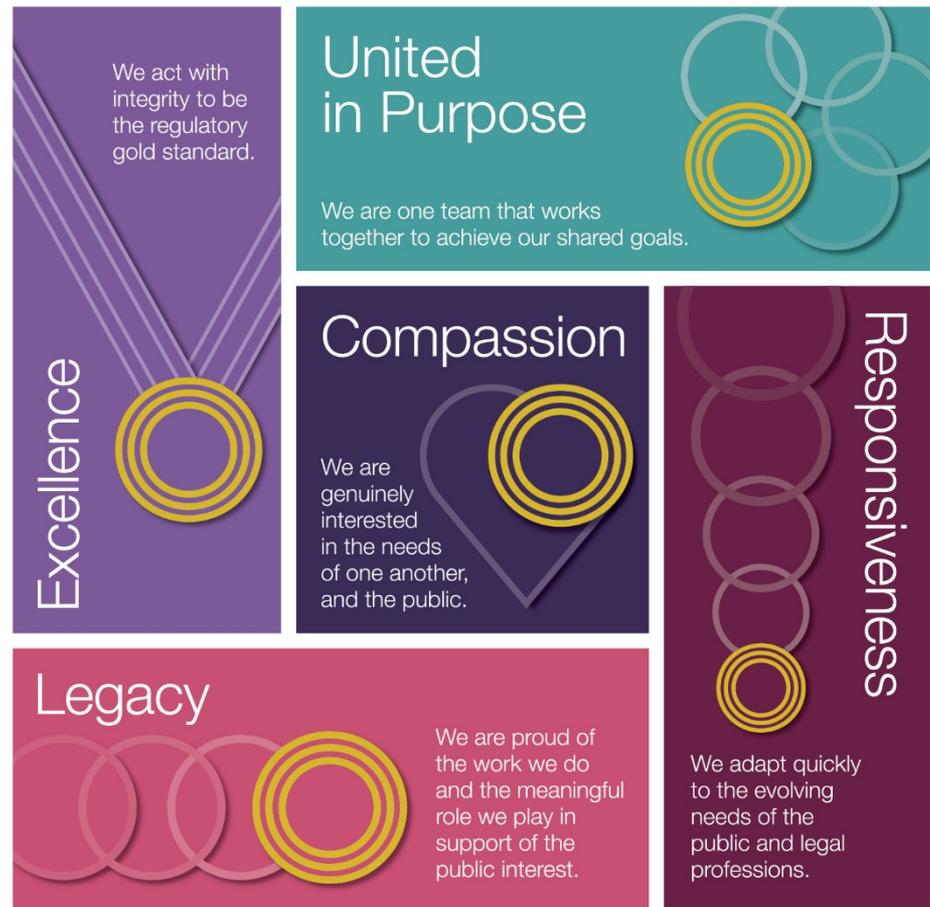
The pandemic has also negatively impacted Trustee Services' ability to provide active practice wind up assistance and to move forward with formal trusteeships. Trustee Services has faced challenges attending offsite locations, including licensees' offices and/or homes and storage facilities to obtain, review, shred and/or bring on site for indexing and storage, client materials. As a result, there is a significant backlog of materials, which continues to grow.

Trustee Services has worked with landlords, storage facilities, successor counsel, and others, to ensure that client interests and property are protected while these practices transition toward closure.

CEO's Office

Supporting our Mandate and Values in a Pandemic

- ❑ Corporate Values continue to guide the team in the completion of their work
- ❑ Engagement and productivity remains high despite the challenges presented by COVID-19 and LSO team lay-offs and terminations
- ❑ Where normal workflow was impeded, teams pivoted to address inventory, design new work processes, and reassign work to create necessary (pandemic) and new resources to evolve internal and external administrative, regulatory and risk practices
- ❑ Team effort has been tremendous – continuing our legacy of commitment to the organization's public interest mandate and support of licensees.





Law Society
of Ontario

Barreau
de l'Ontario

Audit & Finance Committee

Report to Convocation

September 24, 2020

Committee Members:

Joseph Groia (Chair)
Lubomir Poliacik (Vice-Chair)
Ryan Alford
Seymour Epstein
Gary Graham
Philip Horgan
Vern Krishna
Shelina Lalji
Michelle Lomazzo
Cecil Lyon
Clare Sellers
Sidney Troister
Tanya Walker

Authored By:

Finance Department
Brenda Albuquerque-Boutilier, Executive Director & CFO
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LIRN Inc. Financial Statements for the Quarter ended June 30, 2020	8.2
Investment Compliance Reports for the Quarter ended June 30, 2020.....	8.3

FOR INFORMATION

Law Society of Ontario Financial Statements for the Six Months ended June 30, 2020

The Audit & Finance Committee recommends Convocation receive the financial statements of the Law Society for the first six months of 2020 for information.

This is part of the quarterly financial reporting schedule to Convocation. These interim statements convey the performance of the Law Society before the end of the year. Unlike annual statements, interim statements are not audited.

These financial statements present the financial position and operations of the Society and include the General Funds (or operating funds) and a number of special purpose or restricted funds.

- The Compensation Funds are restricted by the Law Society Act
- The Errors and Omissions Insurance Fund (E&O Fund), the Capital Allocation Fund, the Invested in Capital and Intangible Assets Fund, the County Libraries Fund and the “Other Restricted Funds” (Repayable Allowance Fund, Special Projects Fund and Parental Leave Assistance Fund) are restricted by Convocation.

Information on General Funds and restricted funds is provided in [Appendix A](#).

The Financial Statements for the six months ended June 30, 2020 comprise the following statements:

- Balance Sheet
- Statement of Revenues and Expenses and Change in Fund Balances, detailing results of operations for lawyers and paralegals
- Schedule of Restricted Funds
- Supplemental schedules include Schedules of Revenues and Expenses for the Combined General Funds, Lawyer and Paralegal General Funds, the Compensation Funds and the Errors and Omissions Insurance Fund

Supplementary information on financial reporting is provided in [Appendix B](#).

Financial Statement Highlights

The Law Society continues to be in a solid financial position as at June 30, 2020, despite the impacts of the COVID-19 pandemic (COVID-19) on some of its revenue sources. Management has also taken deliberate measures to contain costs as well as there being circumstantial savings related to COVID-19. The more notable changes took effect mid-quarter, with a greater impact expected in the second half of the year. Key highlights include:

- a) The consolidated excess of revenues over expenses was \$3 million for the six months ended June 30, 2020. While this is less than the \$8.3 million for the same period in 2019, the 2020 results are favorable compared to the budgeted excess of expenses over revenues of \$5.0 million for the six months ended June 30, 2020.
- b) Expenses of \$104.3 million in the current year are lower than the \$111.4 million for the same period in 2019 and all major expense categories were under budget.
- c) While expenses have declined, COVID-19 has negatively impacted revenues due to restrictions introduced by the Province related to social gatherings, physical distancing requirements and relief measures introduced by the Law Society to assist licensees and candidates. This is most noted in Professional Development and Competence and Other revenues with
 - notable changes in Continuing Professional Development (CPD) activities,
 - delayed examinations and reduced Call to the Bar fees,
 - the closure of catering operations, and
 - the deferral of administrative fees such as late fees.

At \$1.2 million, CPD revenue is less than half of budget for the period and last year's comparative revenue. As part of measures to assist licensees through the pandemic, the deadline for payment of annual fees and filing of the annual report was deferred from March to August affecting the timing of application of late fees. This has resulted in late payment fees being \$800,000 less than budget and \$915,000 less than prior year actuals.

Statement of Revenues and Expenses and Change in Fund Balances

Lawyer General Fund

The Lawyer General Fund reported an excess of expenses over revenues of \$528,000 for the six months ended June 30, 2020 (2019: excess of revenues over expenses of \$4.4 million). The 2020 annual budget planned for expenditures to exceed revenues in the General Funds. The Lawyer General Fund planned for the use of \$5.1 million in fund balances and the allocation of \$1.2 million from the accumulated surplus investment income in the Errors & Omissions Fund (E&O Fund) to fund operations. With the planned use of fund balances as a source of funding for 2020 expenditures, the decrease in the Lawyer General Fund balance from \$26.1 million to \$25.5 million is less than expected throughout the first half of the year. The fund balance is within the benchmarks of the Law Society's Fund Balance Management Policy.

Paralegal General Fund

The Paralegal General Fund experienced \$263,000 in excess of expenses over revenues for the six month ended June 30, 2020 (2019: excess of revenues over expenses of \$96,000). The Paralegal General Fund budget for 2020 incorporated the use of \$2.4 million of the Paralegal General Fund balance to fund operations. The Paralegal General Fund balance of \$1.6 million as of June 30, 2020 is better than budgeted.

Restricted Funds

The Law Society's restricted funds reported an excess of revenues over expenses of \$3.8 million in the first half of the year which is comparable to the same period last year. The key components are:

- a. Excess of revenues over expenses of \$4.5 million (2019 – excess of revenue over expenses of \$4.5 million) in the Compensation Fund (further explained below);
- b. Excess of expenses over revenues of \$675,000 (2019 – excess of expenses over revenues of \$385,000) in the E&O Fund due primarily to unrealized losses on long-term investments; and
- c. Amortization of \$1.1 million in the Invested in Capital & Intangible Assets Fund.

Compensation Fund

The lawyer pool of the Compensation Fund had a fund balance of \$26.3 million as at June 30, 2020; an increase of \$10 million compared to the \$16.1 million balance as at June 30, 2019. After a period of unusually high claims experience in the years prior to 2017, through the 2018 budget, the Society implemented a three year plan to replenish the lawyer pool of the Compensation Fund by including an annual \$5 million provision above the amount for routine claims to restore the Fund's financial stability. In addition to this deliberate provision intended to restore the fund balance with a budgeted excess of revenues over expenses of \$5 million in 2020, the budget included a provision for claims (unpaid grants) of \$4.8 million for the year. The prorated budget for the provision for claims for the first half of the year was \$2.4 million compared to an actual decrease in the provision of \$600,000. The decrease in the provision was driven by the closure of claims that resulted in payments less than claimed or no payment at all. This was offset by unrealized losses on investments totaling \$1.3 million in the first half of 2020.

The lawyer pool of the Compensation Fund ended the quarter with a fund balance of \$26.3 million which is above the minimum benchmark under the Fund Balance Management Policy approved by Convocation in June of \$19.6 million.

The paralegal pool of the Compensation Fund balance is \$917,000 as at June 30, 2020 compared to \$826,000 at the end of the second quarter in 2019. With a grant claim limit of \$10,000 and based on historical claims experience, the fund balance is well funded to deal with an adverse claim event.

E&O Fund

The fund balance of the E&O decreased to \$53.8 million (2019 - \$54.2 million) after the transfer of \$1.2 million in cumulative excess investment income to the lawyer General Fund in the prior year. As in 2019, the use of \$1.2 million is budgeted to fund operations in 2020, with approximately \$800,000 available for transfer at the end of July. The timing of the transfer is dependent on available funds and if funding is required. This will be assessed later in the year based on the Law Society's financial results and the performance of the financial markets.

A change worth noting: in 2019, the Law Society recognized that a restriction on \$15 million of the fund balance intended as a backstop for claims dating back to 1995 was no longer required as no claims risks remained. As a result, Management requested that LAWPRO discontinue its request of Convocation to maintain the restriction. For 2020, the \$15 million remains in the E&O Fund, but no longer has the restriction placed on it within the Fund.

Annual Fees

Annual fees recognized in the first two quarters of \$47.1 million have decreased by \$2 million from 2019 but are in line with the 2020 budget. The 2020 budget incorporated an annual fee reduction for lawyers and paralegals of \$135 and \$109, respectively, and was partially offset by an increase of 1,400 in the number of full-fee equivalent paying lawyers and an increase of 100 in the number of full-fee equivalent paying paralegals. Annual fee revenue is recognized on a monthly basis.

Insurance Premium and Levies

Insurance premiums and levies are marginally less at \$49.2 million compared to \$49.4 million in 2019. The number of insured lawyers has increased and LAWPRO's base premium and transaction levy rates are unchanged from 2019. Transaction levies earned have decreased from \$12.3 million to \$11.2 million with volumes attributable to COVID-19.

Professional Development and Competence Revenue

Professional development and competence revenues comprise income from the licensing process and CPD. Total year to date revenues of \$9.2 million are below last year's actuals of \$12.4 million and the current year-to-date budget of \$12 million.

Lawyer licensing process revenues of \$6.6 million are marginally below budget and less than the \$7.3 million recorded last year at the end of the second quarter. The total Licensing Process fee including the fees for the initial application and the Barrister and Solicitor Licensing Examinations of \$4,460 remain unchanged from last year. The lower revenue is attributable to the prior year having slightly more applicants than typical in the first part of the year and the staggering of payment deadlines in the current year to coincide with the timing of activities (e.g. examinations) in response to COVID-19. With no notable change in the number of candidates waiting to be licensed and with the adjustment to payment time lines, it is anticipated that licensing process revenue for the year will not be affected materially. The timing of revenue from these fees will be delayed to later in the year. The Call to the Bar component of the licensing fee was reduced in 2020 from \$250 to \$165. As a result of group gathering restrictions, the Law Society held administrative Calls to the Bar beginning in May 2020 and will continue to do so for the rest of the year. This will result in lower revenues to the end of year of approximately \$180,000 from budget.

Paralegal licensing process revenues of \$1.2 million is in line with budget and 2019 actual results.

CPD revenue totals \$1.2 million at the end of June 2020 which is \$2.7 million below the budget of \$3.9 million and lower than last year's actual revenue of \$3.8 million. Due to the restrictions on large group gatherings, CPD had to cancel its larger in-person programs. In addition, recent policy decisions of Convocation to provide free programming for licensees and remove the 6 hour interactive requirement has further contributed to the reduced revenues in the current year. The CPD team is developing plans to mitigate losses from these restrictions and policy decisions for the remainder of the year, including increasing the number of webcasts and rescheduling summits to the fall with a modified delivery model. However, even with these efforts, it is projected that revenues for 2020 will be significantly lower than both budget and prior year actuals.

Change in Fair Value of Investments

The change in fair value of investments shows total unrealized losses of \$3 million compared to gains of \$2.2 million in the same period in 2019, mirroring market conditions due to increased economic uncertainty as a result of COVID-19. While the unrealized losses are significant, it should be noted that this represents an improvement over the end of the first quarter of the year where unrealized losses were \$5.6 million. The change in fair value is not included in budget projections. Investment income of \$1.2 million is comparable to last year and close to budget.

Other Revenues

Other revenues totaling \$3.3 million in the General Funds is less than budget (\$4.9 million) and lower than 2019 actuals of \$5.6 million. The notable components of other income are late fees, ordered costs, Ontario Report revenue, pre-authorized payment plan fees and catering sales. There are two key drivers of this performance. The late fee for non-payment of annual fees and late filings of annual reports are budgeted at \$800,000 and \$355,000 respectively. To assist licensees at the outset of COVID-19, for licensees in default of paying their annual fees and/or filing their annual report, the deadline was extended to August. Some of this shortfall is expected to be recouped when late fees are charged in the second half of the year. In addition, catering and event operations have been closed since March 17, 2020 resulting in revenue being less than budget by \$720,000. This has been offset by employee layoffs and contract terminations as well as reductions in other costs, but is contributing to a decline in revenue against prior year and budget.

Professional Regulation, Tribunals and Compliance Expenses

Professional Regulation, Tribunals and Compliance expenses totaling \$15.6 million are higher in comparison to 2019 (\$14.7 million) due to the filling of previously vacant staff positions, but are less than budget by \$1.7 million due to residual vacancies, particularly in Case Management and Litigation Services. Some vacant positions within these areas were filled in the first half of the year. Expenditures for outside counsel fees are \$518,000 over budget for the first half of the year, offsetting some of the underspending resulting from the vacancies.

Professional Development and Competence Expenses

Total Professional Development and Competence expenses totaling \$13.8 million are notably less than the 2019 amount of \$16 million and are less than budget by \$2.6 million. The underspending is based on a few factors. With reduced CPD revenues due to the cancellation of all in-person events and moving all programming on line, there were savings in venue rentals, audio visual expenses, catering, and material production costs. Similarly, with the cancellation of all in-person licensing exams for the remainder of the year and the move to online examinations, licensing process invigilation and candidate support expenses are significantly less than budget. Savings in venue rental costs for licensing exams has offset the cost of administering online examinations. There is a budget variance of approximately \$350,000 related to publications and other material purchases in the Great Library as it was closed throughout the second quarter of the year, but it is likely to be made up in the remainder of the year.

Corporate Services Expenses

Total Corporate Services expenses of \$13.3 million are slightly lower than the 2019 amount of \$13.7 million and less than budget by \$1.5 million. The key drivers for the difference between budget and actual are reduced spending on recruitment, building maintenance, and consulting fees.

Convocation, Policy and Outreach Expenses

Convocation, Policy and Outreach expenses are \$3 million compared to \$4.8 million for the first half of 2019 and are less than budget by \$2.7 million. The underlying variances from budget relate to benchers remuneration and expenses, the unused contingency, and underspending related to policy, media relations and communications. The latter is attributable to some staffing vacancies, and the impact of COVID-19 on the timing of expenditures related to stakeholder engagement and other program expenses.

Balance Sheet

Cash and Short Term Investments

The total of cash and short-term investments at June 30 is \$73.9 million (2019 - \$87.4 million). Of this amount, \$19.7 million (2019 - \$13.8 million) pertains to the Compensation Fund and \$808,000 (2019 – \$1.4 million) pertains to the E&O Fund and is held in separate accounts. It should be noted that even with the COVID related decisions to defer the annual fee pre-authorized payment withdrawals and the late payment fee, the Law Society has sufficient working capital on hand to discharge its short and medium term obligations.

Accounts Receivable

At the end of June, the accounts receivable balance was \$57.8 million compared to \$45.9 million at the same time last year. The increase is due to measures taken to assist licensees, insureds and candidates to deal with COVID-19. For instance the licensee instalments due under the Pre-Authorized Payment Plan scheduled for April, May, June and July were deferred until August.

Portfolio Investments

Portfolio investments are shown at fair value of \$64.1 million (2019 - \$62.8 million) and reflect unrealized losses of \$3 million in the first half of 2020 related to current economic uncertainty (improved from \$5.6 million in the first quarter). Of the total portfolio investments at the end of June, \$16.8 million pertains to the General Fund, \$28.1 million to the Compensation Fund and \$19.2 million to the E&O Fund. Under the Investment Policy, the benchmark Canadian equity component is 30% and the fixed income component is 70%.

Investment Loan

The investment loan of \$1.4 million (2019 - \$1.2 million) represents the Law Society's contribution to a subordinated syndicated loan with all the other Canadian law societies as part of the funding of CanLII's acquisition of Lexum in 2018. The interest rate is 4.74%. The term of the loan is 5 years. Pursuant to the loan agreement, the Law Society is committed to pay \$280,000 annually for three years, with next year being the last of the remaining annual balance of sale payments.

Deferred Revenue

Deferred revenue is made up of annual fees, licensing process revenues and insurance premiums which are recognized over the full year. The balance at the end of the first half of 2020 is \$95 million (2019 - \$95.5 million). The decrease in the lawyer and paralegal annual fees for 2020, partially offset by the increase in the number of licensees and insureds, has resulted in a lower deferred revenue balance.

Provision for Unpaid Grants/Claims

The provision for unpaid grants represents the estimate for unpaid grants and inquiries against the Compensation Fund, supplemented by the costs for processing these grants. The current balance of \$15.5 million has decreased from \$19.4 million in 2019 as the Fund continues to process claims related to some large defalcations. The paralegal Compensation Fund provision for unpaid grants comprises \$160,000 of the total Compensation Fund provision for unpaid grants.



Law Society
of Ontario

Barreau
de l'Ontario

AUDIT AND FINANCE COMMITTEE REPORT

Law Society of Ontario Financial Statements for the Six Months ended June 30, 2020

This document is available upon request. Please email your request to archref@lso.ca. Thank you.

Appendix A

General Fund & Restricted Fund

General Fund

The General Fund accounts for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers and paralegals. This fund reports unrestricted resources.

The Society's policy is to maintain the General Fund fund balance at no less than two and no more than three months of General Fund budgeted expenses.

If the General Fund fund balance exceeds three months of budgeted General Fund expenses, Convocation shall utilize the excess for one or more of the following:

- Mitigate the General Fund fee for the next fiscal year;
- Transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

If the General Fund fund balance is less than two months of budgeted General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the General Fund fund balance is more than two months of budgeted General Fund expenses and less than three months of budgeted General Fund expenses, Convocation may appropriate funds from the General Fund fund balance for one or more of the following:

- Mitigate the General Fund fee for the next fiscal year;
- Transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

Restricted Funds

Compensation Fund

The Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a licensee, in connection with the licensee's professional

business or in connection with any trust of which the licensee was a trustee. The Compensation Fund is restricted in use by the Law Society Act.

Pursuant to the Law Society Act, the Compensation Fund is supported by licensee annual fees, investment income and recoveries. The Compensation Fund accounts for program delivery, administration and payment of grants and has separate fund balances for lawyer licensees and paralegal licensees.

The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.

If the Lawyer Compensation Fund balance exceeds four one-in-one hundred-year events, Convocation shall utilize some or all of the excess for the following:

Mitigation of the Lawyer Compensation Fund fee for the next fiscal year; or
Annual mitigation of the Lawyer Compensation Fund fee shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.

If the Lawyer Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the Lawyer Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:

Mitigate the Lawyer Compensation Fund levy for the next fiscal year;
Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
Leave the fund balance at its current balance for the upcoming fiscal year.

Errors and Omissions Insurance Fund

The Errors and Omissions Insurance Fund ("E&O Fund") accounts for insurance-related transactions between LAWPRO, the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers, reported as revenues, and remits these amounts to LAWPRO, reported as expenses.

Pursuant to section 61 of the Law Society Act, the Society arranges mandatory professional liability insurance for practising lawyers with LAWPRO, and through the E&O Fund, levies the insured lawyers. Each year, the premium for the insurance program is established through a process whereby LAWPRO provides an offer for review and acceptance by Convocation. The offer provides details on the components of the insurance program, including anticipated base premiums, claims history levies, transaction-based levies and amounts to be drawn from the E&O Fund fund balance.

Capital Allocation Fund

The Capital Allocation Fund is maintained to provide a source of funds for the acquisition and maintenance of the Society's capital and intangible assets which comprise buildings and major equipment including computers and software. Amounts of assets capitalized, according to the Society's capital asset policy, are transferred to the Invested in Capital and Intangible Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund.

Invested in Capital and Intangible Assets Fund

The Invested in Capital and Intangible Assets Fund records transactions related to the Society's capital assets and intangible assets, specifically acquisitions, amortization and disposals.

County Libraries Fund

The County Libraries Fund records transactions related to the Society's support of county law libraries. As approved by Convocation, the fund accumulates funds for county library purposes, which are remitted to LIRN.

Other Restricted Funds

The Repayable Allowance Fund provides loans for tuition and living expenses to candidates in the lawyer licensing process.

The Special Projects Fund is maintained to ensure that financing is available for ongoing special projects approved by Convocation.

The Parental Leave Assistance Fund accounts for the delivery of the Parental Leave Assistance Program ("PLAP") and is funded by lawyers' fees. PLAP provides financial assistance to lawyers in firms of five lawyers or fewer who have a net annual practice

income of less than \$50,000 and who do not have access to any other parental leave financial benefits. Under PLAP, the Society provides a fixed sum of \$750 a week to eligible applicants for up to 12 weeks to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave.

Appendix B

Supplementary Information on Financial Reporting

Basis of Presentation

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations set out in Part III of the Chartered Professional Accountants of Canada Handbook – Accounting.

Portfolio Investments

Portfolio investments are recorded at fair value. The fair value of portfolio investments is determined by reference to transactional net asset values for the fixed income and Canadian equity pooled funds. Transaction costs are expensed as incurred.

The Society manages financial risk associated with portfolio investments in accordance with its investment policy. The primary objective of the investment policy is to preserve and enhance the real capital base. The secondary objective is to generate investment returns to assist the Society in funding its programs. Convocation monitors compliance with the investment policy and regularly reviews the policy.

Revenue Recognition

Annual member fees, insurance premiums and levies are set annually by Convocation and are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Insurance premiums related to the unexpired term of coverage at the balance sheet date are reported as deferred revenue.

Professional development and competence revenues are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Other revenues and realized investment income/losses are recognized when

receivable if the amount can be reasonably estimated. Unrealized investment gains/losses are recognized with changes in the fair value of financial instruments.

Fees, insurance premiums and other revenues receivable are recorded as accounts receivable on the balance sheet, net of any required provision for doubtful amounts

FOR INFORMATION

LIRN Inc. Financial Statements for the Six Months Ended June 30, 2020

The Audit & Finance Committee recommends that Convocation receive the second quarter financial statements for LIRN Inc. for information.

LIRN Inc. (LIRN) is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations (FOLA) and the Toronto Lawyers' Association (TLA). LIRN is a wholly-owned subsidiary of the Law Society. LIRN has two classes of shares: 100 common shares and 100 special shares. The Law Society holds all of the common shares outstanding. Of the special shares outstanding, 25 are held by the TLA and 75 are held by FOLA.

There is a quarterly financial reporting schedule to the shareholder in compliance with the Unanimous Shareholders Agreement. These interim financial statements convey the performance of LIRN before the end of the year. Unlike annual financial statements, interim financial statements are not audited. The financial statements have been approved by LIRN's Board.

LIRN is fully funded by the Law Society through the lawyer's annual fee. The county library component is currently \$182 per lawyer. Grants to the 48 county libraries comprise 87% of LIRN expenditures with the balance being centralized expenses such as access to online research products.

KEY POINT SUMMARY

Overall Results

1. Results for the first half of the year identify an excess of revenues over expenses of \$50,884. This is better than planned, as the 2020 budget envisages \$88,719 being drawn from the fund balance of the General Fund for the year, with \$28,654 allocated to the first half of the year based on timing of anticipated expenses.
2. The positive variance of \$79,538 from budget for the six months is due to small favourable variances in many expense categories, with a more notable underspending related to the centralized purchase of publications. It is too early in the year to attribute some of these variances to timing differences or actual savings, but it is reasonable to expect to see some materialized savings in publications as COVID-19 has impacted the Law Society's production of materials that are shared with the county libraries. The grants to county law libraries are on budget.

Revenues

3. The Law Society grant includes amounts for central administration and quarterly transfers to the 48 county law libraries. The actual grant from the Law Society was \$4 million in the first half, \$19,000 less than 2019 and matched budgeted amounts for the period. Because of a reduction in transition expenses, the grant from the Law Society was budgeted to decrease slightly from 2019.

Expenses

4. Total expenses were \$3.96 million, \$75,000 less than budget for the six months.
5. Under the transition costs line, there were unbudgeted total expenditures of \$37,667 relating to recruiting fees for the Managing Director search. When the 2020 budget was compiled, transition expenses of this nature were envisaged to be funded from the fund balance as \$300,000 was budgeted in 2019 for this purpose and not utilized.
6. Other head-office expenses include the production of the Annual Report, head office courier/postage costs, Directors and Officers (D&O) insurance, bank charges, website maintenance costs, the cost of providing most libraries with a toll free telephone number and governance meeting expenses.

7. Electronic product expenses of \$181,568 are in line with the agreement with LexisNexis and budget.
8. Group benefits and insurance of \$169,086 consist of the Group Benefits for enrolled county law library staff, and library D&O and property insurance.
9. Other centralized expenses of \$9,753 includes continuing education bursaries for county law library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 county law libraries, and the Federation of Ontario Law Associations' (FOLA) meeting expenses for their Library Committee. Underspending in publications contributed the largest variance from budget.
10. County and district law libraries grants of \$3.5 million are in line with budget and increased from 2019 as expected with the 2020 budget providing for a 2% increase.
11. Capital and special needs grants comprise the computer refreshment grants approved by the Board. There is no regular pattern to the expenditures over the year.

Balance Sheet

12. Cash of \$993,000 has increased from the same period in 2019 due to the excess of revenues over expenses in the intervening period. The funds are held in the LIRN bank account where interest rates competitive with other short-term investments have been negotiated by the Law Society.
13. Accounts payable and accrued liabilities of \$42,617 are less than 2019 with the difference attributable to the timing of paying the 2019 insurance invoices and LexisNexis electronic products invoices in July 2019.
14. The fund balance of the General Fund has increased from \$381,856 in June 2019 to \$558,882 at the end of June 2020 based on the excess of revenues over expenses in the intervening period.
15. The Reserve Fund has an unchanged balance of \$500,000.

Balance Sheet
Stated in Dollars
as at June 30, 2020
Unaudited

	2020	2019
Assets		
Current Assets		
1 Cash and short-term investments	993,049	948,698
2 Accounts receivable	24,420	24,879
3 Prepaid expense	84,230	79,012
4 Total Assets	1,101,699	1,052,589
Liabilities, Share Capital and Fund Balances		
Liabilities		
5 Accounts payable and accrued liabilities	42,617	170,533
6 Total Liabilities	42,617	170,533
7 Share Capital and Fund Balances		
8 Share capital	200	200
9 General fund	558,882	381,856
10 Reserve fund	500,000	500,000
11 Total Share Capital and Fund Balances	1,059,082	882,056
12 Total Liabilities, Share Capital and Fund Balances	1,101,699	1,052,589

This Balance Sheet includes the financial resources of the LiRN Inc. entity only.

Statement of Operating Revenues and Expenses

Stated in Dollars

For the six months ending June 30, 2020

Unaudited

	2020 Actual	YTD Budget	Variance	Annual Budget	2019 Actual
REVENUES					
1 Law Society of Ontario grant	4,009,546	4,009,546	-	8,019,094	4,028,968
2 Interest income	4,997	-	4,997	-	7,092
3 Total revenues	4,014,543	4,009,546	4,997	8,019,094	4,036,060
EXPENSES					
Head office / administration					
4 Administration	2,260	20,000	17,740	40,000	-
5 Professional fees	7,261	6,750	(511)	13,500	9,127
6 Transition costs	37,667	-	(37,667)	-	-
7 Other	10,732	26,260	15,528	48,900	6,160
8 Total head office / administration expenses	57,920	53,010	(4,910)	102,400	15,287
Law libraries - centralized purchases					
9 Electronic products and services	181,568	181,620	52	363,250	176,334
10 Group benefits and insurance	169,086	187,000	17,914	374,000	170,799
11 Other	9,753	75,698	65,945	184,900	31,112
12 Total law libraries - centralized purchases	360,407	444,318	83,911	922,150	378,245
13 County and district law libraries - grants	3,530,332	3,530,332	-	7,060,663	3,462,109
14 Capital and special needs grants	15,000	10,540	(4,460)	22,600	7,062
15 Total county and district law libraries expenses	3,545,332	3,540,872	(4,460)	7,083,263	3,469,171
16 Total expenses	3,963,659	4,038,200	74,541	8,107,813	3,862,703
17 Excess of revenues over expenses (expenses over revenues)	50,884	(28,654)	79,538	(88,719)	173,357

This statement includes the revenues and expenses of the LiRN Inc. entity only.

Statement of Changes in Fund Balances
Stated in Dollars
For the six months ending June 30, 2020
Unaudited

	2020			2019
	General Fund	Reserve Fund	Total	Total
1 Balance, beginning of year	507,998	500,000	1,007,998	708,499
Excess of revenues over expenses				
2 (expenses over revenues)	50,884	-	50,884	173,357
3 Balance, end of period	558,882	500,000	1,058,882	881,856

FOR INFORMATION

Investment Compliance Reports for the Quarter ended June 30, 2020

The Committee recommends the Investment Compliance Reports for the quarter ended June 30, 2020 be received by Convocation for information.

Under the Law Society Investment Policy, Law Society management shall report quarterly on compliance with the Policy.

The Law Society, and its investment manager, has complied with the Investment Policy for the quarter ending June 30, 2020.



Law Society
of Ontario

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AUDIT AND FINANCE COMMITTEE REPORT

Law Society of Ontario Compiled Investment Compliance Reports

This document is available upon request. Please email your request to archref@lso.ca. Thank you.