

## MINUTES OF CONVOCATION

Thursday, 6<sup>th</sup> 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, Pawlitzka, 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 The Treasurer also advised that the three motions submitted to the Secretary for the meeting have been withdrawn.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

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*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

Confirmed in Convocation this 24<sup>th</sup> day of September, 2020.

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Teresa Donnelly,  
Treasurer

**LAW SOCIETY OF ONTARIO**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON AUGUST 6, 2020

MOVED BY: Dianne Corbiere

SECONDED BY: Barbara Murchie

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

DRAFT

MINUTES OF CONVOCATION

Friday, 26<sup>th</sup> June, 2020

9:30 a.m.

Via Videoconference

PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Banack, Brown, Burd, Charette, Chiumminto, Conway, Cooper, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Lau, Lean, LeSage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Mercer, Merali, Minor, Murchie, Murray, 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.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

Treasurer Mercer 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 he acknowledges that Convocation meets on the traditional territory of the Mississaugas of New Credit First Nation. He also acknowledges the Haudenosaunee. He advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. He 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 advised Convocation that on June 24, 2020, he presided at the ceremony to confer the degree of Doctor of Laws, honoris causa, on Philip M. Epstein, Q.C., approved by Convocation on February 27, 2020.

At the Treasurer's invitation, bencher Sidney Troister read the citation that was read at the ceremony.

## ELECTION OF TREASURER

The Secretary announced the results of the first ballot:

Teresa Donnelly	31
Philip Horgan	22

The Secretary declared Ms. Donnelly elected as Treasurer.

Former Treasurer Mercer congratulated the new Treasurer and addressed Convocation.

Treasurer Donnelly thanked Mr. Mercer for his service as Treasurer.

Treasurer Donnelly invited Mr. Horgan to address Convocation.

Mr. Horgan congratulated the new Treasurer and addressed Convocation.

It was moved by Mr. Horgan, seconded by Mr. Lyon that the vote in the Treasurer's election be made unanimous.

Carried Unanimously

Treasurer Donnelly addressed Convocation.

## TREASURER'S REMARKS

The Treasurer commented on the extraordinary experiences in the last four months as a result of the COVID-19 pandemic, and how the Law Society has adapted and innovated in this time.

The Treasurer also noted the current issues surrounding the Indigenous and racialized communities, and the important part the Law Society plays in fighting racism.

The Treasurer advised that the Law Society must continue to adapt and innovate in regulating as part of fulfilling its duties in the service of justice.

The Treasurer referred to the Access to Justice Committee Report in the Convocation Materials and noted the launch today of the consultation on the licensing model for family legal service providers.

The Treasurer also referred to the information report from the Tribunal Committee at Tab 5 of the agenda.

The Treasurer advised that she will consider committee appointments in the next four weeks and will likely call a Special Convocation this summer to approve appointments.

## MOTION – CONSENT AGENDA – Tab 1

The Treasurer advised that a new motion has been added to the Consent Agenda at Tab 1.3 for the election of benchers, and that supplementary information has been provided in the motion at Tab 1.2 respecting appointments to the Law Society Tribunal, via e-mail.

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

Mr. Nicholas Wright requested that the motion for Law Society Tribunal appointments at Tab 1.2 be removed from the consent agenda.

The remaining items on the Consent Agenda were approved.

Mr. Parry and Mr. Prill abstained

#### Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of May 28, 2020 were confirmed.

#### Tab 1.3 - ELECTION OF BENCHER

WHEREAS Teresa Donnelly who was elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer; and

WHEREAS upon being elected Treasurer, Teresa Donnelly ceased to hold office as an elected bencher in accordance with subsection 25(2) of the *Law Society Act*, thereby creating a vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

THAT under the authority contained in By-Law 3, Michael B. LeSage, having satisfied the requirements contained in subsections 43(1) and 45 of the By-Law, and having consented to the election in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

Carried

#### Tab 1.2 – TRIBUNAL APPOINTMENTS

##### HEARING DIVISION

It was moved by Ms. Lewis, seconded by Mr. Esquega:

THAT the following be reappointed to the Hearing Division of the Law Society Tribunal for a term from September 26, 2020 to September 30, 2022:

Thomas G. Conway  
Jacqueline Harper  
Jay Sengupta  
Anne E. Spafford

## HEARING AND APPEAL DIVISIONS

THAT Malcolm M. Mercer be appointed to the Hearing and Appeal Divisions of the Law Society Tribunal for a term expiring June 24, 2022.

Mr. Pollock, seconded by Dr. Alford, moved that the motion be amended to appoint Michael LeSage to the Law Society Tribunal.

The Treasurer ruled the motion out of order.

The main motion carried.

Mr. Chiumminto, Mr. Fagan and Mr. Pollock abstained.

The Treasurer welcomed Mr. LeSage to Convocation.

## AUDIT AND FINANCE COMMITTEE REPORT

Mr. Poliacik presented the Report.

### Re: Lawyer Pool of the Compensation Fund Fund Balance Management Policy

It was moved by Mr. Poliacik, seconded by Mr. Groia, that on the unanimous recommendation of the Audit and Finance Committee, Convocation approve the revised Fund Balance Management Policy for the Lawyer Pool of the Compensation Fund set out in paragraphs A through D in the motion in the Report.

Carried

### For Information:

- Fund Balance Management Policy – General Fund
- LIRN Inc. Financial Statements for the Quarter ended March 31, 2020
- Investment Compliance Reports – March 31, 2020

## PRIORITY PLANNING COMMITTEE REPORT

Ms. Miles presented the Report.

### Re: Recommendations for Strategic Change

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

1. That licensing candidates be permitted to choose between an administrative Call to the Bar or participation in a Call to the Bar ceremony and that the requirement to sign the Rolls of the Court of Appeal and the Superior Court of Ontario be revoked.

Mr. Troister, seconded by Mr. Wellman, moved that the motion be amended to permit a candidate to receive an administrative call and at the option of the candidate, a ceremonial call.

Lost

Mr. Horgan abstained.

The main motion carried.

Mr. Troister abstained.

2. That the Law Society cease publishing the names of administratively suspended licensees in the Ontario Reports.

Carried

Mr. Cooper and Mr. Desgranges abstained.

3. That all licensees be required to use the Portal to complete standard interactions with the Law Society unless the Society has a duty to provide alternative methods of interaction pursuant to its duty to accommodate persons as prescribed in the Ontario *Human Rights Code*.

Carried

4. That amendments in principle to By-Law 7 be approved to remove the requirement for the Law Society to approve the names of licensee professional corporations.

Carried

5. That amendments in principle to By-Law 7 be approved to remove requirements that licensees:

- notify the Law Society before entering into affiliations;
- apply for approval before entering into multi-discipline partnerships; and
- file annual reports in respect of an affiliation or a multi-discipline partnership.

Carried

6. That amendments in principle to By-Law 14 be approved to remove the reciprocity requirement for the issuance of a Foreign Legal Consultant permit.

Carried

7. That amendments in principle to By-Law 4 be approved to permit Quebec lawyers to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces.

Carried

8. That the Professional Conduct and Practice in Ontario Course be discontinued.

Carried

## PROPOSED CHANGES TO THE BENCHER ELECTION PROCESS

Mr. Charette, seconded by Mr. Fagan, moved that the release of the consultation on proposed bencher election reforms be deferred.

Carried

### For Information:

- Update on Proposed Bencher Election Reforms

IN PUBLIC

REPORTS FOR INFORMATION ONLY

ACCESS TO JUSTICE COMMITTEE REPORT

- In Camera Matter

TRIBUNAL COMMITTEE REPORT

- Law Society Tribunal Quarterly Statistics January to March 31, 2020

CONVOCATION ROSE AT 1:20 P.M

# LAW SOCIETY OF ONTARIO

## MOTION TO BE MOVED AT THE SPECIAL CONVOCATION ON AUGUST 6, 2020

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 (see Explanatory Note below).

### Explanatory Note

Benchers Michael Lesage and Atrisha Lewis have applied to be Tribunal members. Under the Tribunal model passed by Convocation in 2012, benchers are eligible to be appointed to an initial term by virtue of their position. Before appointment or reappointment, all adjudicators sign an application in which they make various commitments and must complete extensive training before sitting on a panel. All benchers' appointments expire in May 2021, the two-year mark since the last bencher election and as such, halfway through the bencher term.

## LAW SOCIETY OF ONTARIO

### MOTION TO BE MOVED AT THE SPECIAL CONVOCATION ON AUGUST 6, 2020

MOVED BY: Lubomir Poliacik

SECONDED BY: Etienne Esquega

THAT the attached 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

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*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 Chiumminto (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<sup>1</sup>**

**Government and Public Affairs**

**Litigation**

**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

**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<sup>2</sup>**

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

**Committee of Benchers under By-Law 11<sup>3</sup>**

Cathy Corsetti  
C. Scott Marshall  
Julia Shin Doi

## TASK FORCES

### **Competence Task Force<sup>4</sup>**

**Sidney Troister (Chair)**

**C. Scott Marshall (Vice-Chair)**

Ryan Alford

Joseph Chiummiento

Dianne Corbiere

Cathy Corsetti

Cheryl Lean

Atrisha Lewis

Barbara Murchie

Geneviève Painchaud

Jorge Pineda

Megan Shortreed

Andrew Spurgeon

Claire Wilkinson

Alexander Wilkes

### **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

## FOR INFORMATION

### SCHEDULE B OTHER APPOINTMENTS

#### **Alliance for Sustainable Legal Aid (ASLA)**

Benson Lau  
Jonathan Rosenthal

#### **Bencher Code of Conduct Working Group (Priority Planning Committee)<sup>5</sup>**

##### **Harvey Strosberg (Chair)**

Jared Brown  
Dianne Corbiere  
Joseph Groia  
Philip Horgan  
Nancy Lockhart  
Michelle Lomazzo  
Clare Sellers

#### **Real Estate Liaison Group (Law Society Representatives)**

##### **Robert Adourian (Chair)**

Geneviève Painchaud  
Geoff Pollock  
Sidney Troister

#### **Treasurer's Appointments Advisory Group (Treasurer's appointees)**

Teresa Donnelly  
Dianne Corbiere  
Nancy Lockhart  
Michelle Lomazzo  
Lubomir Poliacik

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<sup>1</sup> These three committees continue as separate entities but have common memberships.

#### <sup>2</sup> **By-Law 4 (Licensing) (2 committee functions)**

Section 40 of this By-Law addresses circumstances relating to the inter-provincial practice of law when a person requires the prior permission of the Law Society to practise law. If the Law Society refuses to permit a person to practise law in Ontario and that person required such prior permission under the provisions of the By-Law, the person may apply to a committee of benchers for the purpose of hearing that person's application. The application must be considered by at least three benchers.

The By-Law provides that permission to practise law in Ontario may be withdrawn by the Law Society if it determines that continued permission to practise law in Ontario would be contrary to the public interest. If that happens, the person may apply to a committee of benchers appointed for the purpose by Convocation

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for a determination of whether the permission was properly withdrawn. The application must be considered by at least three benchers.

### **By-Law 7 (Business Entities)**

This committee of at least three benchers deals with applications for a review of a Law Society decision rejecting the proposed name of a professional corporation, appeals from Law Society decisions refusing to issue a certificate of authorization to a professional corporation, appeals from a refusal to renew a professional corporation's certificate of authorization, appeals from a refusal to permit a licensee to enter into a multi-disciplinary partnership and appeals from a Law Society order dissolving a multi-discipline partnership.

### **By-Law 10 (Unclaimed Trust Funds)**

This committee of at least three benchers considers applications for a reconsideration of a Law Society decision to deny a claim to have unclaimed trust funds paid out by the Law Society.

### **By-Law 14 (Foreign Legal Consultants)**

This committee hears appeals for a reconsideration of a Law Society decision rejecting an application for the granting of a permit to a Foreign Legal Consultant to give legal advice respecting the law of a foreign jurisdiction. The application must be considered by at least three benchers.

### **<sup>3</sup> By-Law 11 (Regulation of Conduct, Capacity and Professional Competence)**

Section 38 provides that on application of the Law Society, a bencher appointed by Convocation for the purpose may make an order that a licensee who was subject to an audit under s. 49.2 of the *Law Society Act* pay the costs or part of the cost of that audit. A licensee may appeal the bencher's decision to a panel of three benchers appointed by Convocation for the purpose.

### **<sup>4</sup> 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,

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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.

### **<sup>5</sup>Bencher Code of Conduct Working Group - Terms of Reference**

#### Mandate and Objective:

The Bencher Code of Conduct Working Group of the Priority Planning Committee will review the Bencher Code of Conduct ("the Code") and, as appropriate, propose changes to the Code and by-law amendments following its review.

The review is to focus on:

- Best practices relating to the duties and obligations that apply to benchers as directors and policy decision-makers
- Gaps, ambiguities and/or deficiencies in the Code, including those that may be apparent based on its application to date, that merit reworking or change to achieve the intended goal of guidance and instruction for the ethical conduct of benchers as directors and policy-decision makers including:
  - any duties or obligations that should be removed or revised
  - any duties or obligations that should be added
  - how the process under the Code may be initiated and by whom
  - with respect to the actions that may be taken under the Code other than referring a matter to Convocation:
    - should the Treasurer be the sole decision-maker with respect to such actions or should the process be changed
    - in what circumstances should such an action be taken other than referral to Convocation
  - the process by which Convocation ought to determine non-compliance with the Code
  - remedies for non-compliance with the Code including whether specific remedies should be set out in the Code and, if so, the nature of those remedies;
- a proposed draft by-law amendment for consideration by Convocation

#### Methodology:

The Working Group will have access to Law Society resources through the Office the CEO, the Office of General Counsel and Policy, and may engage external legal or other expertise as required to assist in its work.

#### Timetable:

The Working Group will commence its work under these terms of reference in the fall of 2020, and will meet regularly thereafter. The Working Group is to report to the Committee with a preliminary report on its progress to the Committee's October 7, 2020 meeting, and is to provide a final report with recommendations to the Committee by its January 13, 2021 meeting.



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 3**

## **Priority Planning Committee**

### **For Decision**

August 6, 2020

#### **Committee Members:**

Teresa Donnelly (Chair)  
Robert Burd  
Joseph Chiumminto  
Dianne Corbiere  
Cathy Corsetti  
Seymour Epstein  
Philip Horgan  
Jacqueline Horvat  
Isfahan Merali  
Lubomir Poliacik  
Megan Shortreed  
Andrew Spurgeon  
Sidney Troister

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## For Decision

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**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 3.1**

## **Priority Planning Committee Report**

### **Amendments to By-Law 3 Respecting Inter-Jurisdictional Mobility**

August 6, 2020

Authored By:

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

[jvarro@lso.ca](mailto:jvarro@lso.ca)



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## Motion

**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 the motion at Tab 3.1.1.**

### A. Executive Summary

The IJMC was created in 2001 in response to activity through the Federation of Law Societies of Canada on the national mobility of the legal profession in Canada. While active since its creation for several years (2001 – 2006) and again during the period in which an amended National Mobility Agreement was finalized (2010 – 2014), the IJMC has not met nor reported to Convocation since 2014. Rather than having a separate standing committee for mobility issues given their current infrequency, the Priority Planning Committee believes that a reasonable approach is to end the IJMC, revoke its mandate and amend the mandate of the Professional Development & Competence Committee to include the IJMC's function to the extent that any mobility issues may from time to time arise.

## Background

### A. Timing of Consideration of Issue

Consistent with a focus on efficiency and modernization, changes to the mandates of the two committees identified above are recommended. This change was prompted by the Treasurer's review of committees in the context of upcoming committee appointments. Upon learning that the IJMC had not met for a number of years, the Treasurer requested that a report be prepared to include an assessment of whether the IJMC should continue to exist as a standing committee of Convocation or whether the By-Law that establishes the standing committees should be amended with the mandate of the IJMC being incorporated elsewhere.

### B. Creation of the IJMC

At about the time the Federation of Law Society of Canada's Task Force on Mobility was established in 2001, Convocation approved the establishment of a committee on Inter-Jurisdictional Mobility. The Committee's mandate was approved by Convocation in July 2001 and



set out at that time in By-law 9. The mandate, which is now found in s.124 of By-Law 3, is as follows:

The mandate of the Inter-Jurisdictional Mobility Committee is to develop for Convocation's approval policy options on all matters relating to the inter-jurisdictional mobility of licensees.

The decision to establish the Federation's Task Force grew out of the ongoing policy work that had been undertaken across the country to provide greater flexibility to lawyers who, in the interests of serving their clients, wish to provide legal services outside the province in which they are called to the bar. For the Law Society of Ontario, the IJMC was tasked with considering the numerous policy issues that arose from consideration of both permanent and temporary mobility of lawyers arising from the Federation's work and implementation in Ontario of the National Mobility Agreement of 2002 and related mobility agreements for the northern territories. This work continued steadily for several years up to 2006. The IJMC's work in this period also included the review and implementation of the foreign legal consultants (FLC) regime in Ontario.

The next series of reports to Convocation occurred between 2010 and 2014, largely focussing on the matters relating to Quebec mobility, amendments to the Territorial Mobility Agreement and work that culminated in the new National Mobility Agreement 2013, which included full mobility between Quebec and the rest of Canada.

The last report of the IJMC to Convocation was in February 2014, when Convocation approved an amended Territorial Mobility Agreement 2013. The last committee-level work appears to have been in 2016, to consider by-law changes related to full implementation of the National Mobility Agreement 2013 once there was approval at the government level in Quebec. This issue remains outstanding and further work on and resolution of the issue at the Law Society will relate to what may occur in Quebec.

## The Recommendation

### A. Key Issues

The IJMC was established at a time when there was a great deal of policy development required around approval of the 2002 National Mobility Agreement, by-law development and ongoing issues related to implementation across the country. Convocation agreed that it was important that there be a group of benchers with knowledge and familiarity with the issues that were evolving and arising over a fairly short period of time and sometimes requiring immediate decisions.



Around the same time there was also significant activity around FLC policy and related international trade developments that engaged the consideration of a specialized group.

However, while there was a role for a specialized mobility committee, mobility issues overlapped with other committees' work, most often the Professional Regulation and Professional Development & Competence Committees. Mobility issues are, more often than not, licensing-related and therefore within the mandate of the Professional Development & Competence Committee.

At the points of inactivity described above following the early days of mobility, the IJMC was not, in fact, populated by Convocation. In those years, when issues arose that were mobility-related, they most often went to the Professional Development & Competence Committee.

Even before the last policy work in 2016, there were very few, if any issues, for the IJMC.

One issue that remains is the potential passage of By-Law amendments implementing the 2013 agreement on expanded Québec mobility. The Priority Planning Committee believes this could easily be done in the Professional Development & Competence Committee.

As such, as a matter of modernization and efficiency, the Committee recommends that a reasonable approach is to end the IJMC, revoke its mandate and amend the mandate of the Professional Development & Competence Committee to include the IJMC's function.

Amendments to Part VI of By-Law 3 to this effect appear at **Tab 3.1.1**. The amendments:

- remove the name of the IJMC from the list of standing committees in s. 108, paragraph 9
- add the operative language from the IJMC's mandate to the mandate of the Professional Development & Competence Committee in subclause 119(a)(iv); and
- revoke the mandate of the IJMC in s. 124, including the associated heading and marginal note.

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 AUGUST 6, 2020

MOVED BY

SECONDED BY

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

1. **Paragraph 9 of section 108 of the By-Law is revoked.**
2. **Clause 119 (a) of the English version of the By-Law is amended by,**
  - (a) **deleting “; and” at the end of subclause (iii) and substituting a comma; and**
  - (b) **adding the following:**
    - (iv) the inter-jurisdictional mobility of licensees; and
3. **Clause 119 (a) of the French version of the By-Law is amended by,**
  - (a) **striking out “relevant de” before the first colon and substituting “concernant”;**
  - (b) **deleting the period at the end of subclause (iii) and substituting a semi-colon; and**
  - (c) **adding the following:**
    - (iv) la mobilité interjuridictionnelle des titulaires de permis ;
4. **The heading immediately preceding section 124 and section 124 (including its marginal note) of the By-Law are revoked.**



Tab 3.2

## **Priority Planning Committee**

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### **Recommendations for Strategic Change: Report to Convocation**

August 6, 2020

**Committee Members:**

**Teresa Donnelly (Chair)**

Robert Burd  
Joseph Chiumminto  
Dianne Corbiere  
Cathy Corsetti  
Seymour Epstein  
Philip Horgan  
Jacqueline Horvat  
Isfahan Merali  
Lubomir Poliacik  
Megan Shortreed  
Andrew Spurgeon  
Sidney Troister

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# Motion

The Priority Planning Committee recommends that 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.
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.
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.
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.
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.

# Introduction

Convocation is asked to consider certain recommendations for strategic change made by the CEO, Diana Miles. The recommendations, when combined with other proposals made by the CEO are intended to:

- Achieve savings and internal efficiencies;
- Reduce regulatory burdens on licensees;
- Modernize and streamline the Law Society's internal processes, providing flexibility to adapt to new circumstances and challenges.

The CEO's recommendations pertain to Law Society programs as well as regulatory obligations, processes and procedures that directly affect licensees. Some of these recommendations relate to items that were or would have been considered by the Program Review Task Force or the Proportionate Regulation Task Force, both of which were struck by Convocation on August 8, 2019.

The Program Review Task Force has been mandated to examine programs currently operated or supported by the Law Society but not regulatory obligations, processes and procedures that directly affect licensees. The mandate of this task force is complementary to that of the Proportionate Regulation Task Force, which has been mandated to examine the proportionality of regulatory obligations, processes and procedures that directly affect licensees.

The Committee has considered and adopted the CEO's recommendations regarding the five items set out below.

## Strategic Change Items

### 1. Trust Account Information Reporting in Portal

Pursuant to subsection 4(1), paragraph 5 of By-Law 8, licensees who open or close a trust account are required to notify the Law Society using the Report on Opening or Closing a Trust Account form (the "Trust Account Form").<sup>1</sup> Licensees may complete the form online. However, once completed they must either save a copy, if they wish to submit it by email, or print a copy to submit it by regular mail or fax. Once received, the By-Law Administrative Services department manually enters the submitted information into the

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<sup>1</sup> Law Society of Ontario, "Report on Opening or Closing a Trust Account (Subsection 4(1)5 of By-Law 8)," online: [https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/report-on-opening-or-closing-a-trust-account\\_en\\_2019-04-12.pdf](https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/report-on-opening-or-closing-a-trust-account_en_2019-04-12.pdf)

Law Society's internal AS400 database. By-Law Administration Services received and processed 938 Trust Account Forms in 2018, 705 in 2019, and 293 to date in 2020.

Ongoing reporting with respect to client funds held in trust is completed entirely through the Annual Report Filing, which licensees complete on the Law Society Portal. Section 4 solicits general information about whether a licensee or a licensee's firm operated a trust account in the preceding year. Licensees must also provide detailed information about any mixed trust accounts, including where the funds are held, the account number and the account holder name. In addition, licensees must report the total dollar value held in both mixed and separate trust accounts, and separate estate and/or power of attorney accounts and investments. Licensees must also answer whether their records disclosed overdrawn clients' trust ledger accounts at any point during the filing year and disclose the overdrawn amount if applicable.

Licensees who practise in a firm setting may designate a single licensee who can report most of the information detailed above on behalf of all of the firm's licensees.

#### **a) Recommendation**

The CEO recommends that the reporting of trust account information by licensees be automated and entered by licensees through the Portal. Licensees would be required to submit account opening and closing information throughout the year as applicable, and more detailed account information currently reported in the Annual Report would be entered into the Portal annually by the same licensees who currently provide that information in the Annual Report.

#### **b) Rationale/Risks**

The trust account information provided by licensees on their Annual Report is at the core of the Law Society's regulatory mandate and obligation to protect the public interest. As such, it is important that the information we obtain about licensee trust accounts is as accurate and current as possible.

This recommendation is linked to the recommendation in the CEO's Report to move to alternating short and long form Annual Report Filings. If that recommendation is adopted, the 'short form' would either have to contain trust account information, in which case it would cease to be short in length, or we would risk the integrity of our information about trust accounts, by only obtaining it every three years.

Moving trust account reporting to the Portal would:

- provide a means outside of the Annual Report by which licensees can be required to provide trust account information on an annual basis thereby maintaining the integrity of our information in respect of client funds held in trust;
- allow for a "short form" Annual Report;
- allow for the automation of trust account opening and closing information, which is currently a labour-intensive manual process.

Through the Portal, the Law Society would continue to solicit the same information that is currently provided by licensees through the Trust Account Form and the Annual Report, but would do so using one single touch point, without requiring manual entry by Law Society employees. For licensees, the process would largely remain the same. Account opening and closing information would be reported in the Portal throughout the year when applicable. More detailed trust account information would be required annually, also through the Portal, and licensees practising law or providing legal services in a firm setting would still designate a filing licensee to provide the required information on behalf of the firm.

### **c) Implementation**

Implementation would begin once a new section of the Portal can be built to allow for the submission of trust account information. The new Portal section would allow licensees to report on the opening and closing of trust accounts, as well as the more detailed trust account information that is currently provided by the designated licensee. Once the new section of the Portal is built, the deadline for filing annual trust account information would be aligned with the single, standardized due date of March 31 contemplated for the three primary administrative obligations set out below (see Recommendation 2, pages 11-12).

## **2. Automatic Administrative Suspensions**

Licensees can be administratively suspended for failing to comply with the following obligations by the required due dates:

- Payment of the Annual Fee
- Completion of the Annual Report
- Completion and reporting of Continuing Professional Development (“CPD”) requirements

The administrative suspension process is complex and labour-intensive for the Law Society, and largely opaque and confusing for licensees. Licensee obligations and the possible suspension for failure to comply with those obligations, as well as the imposition of late fees and the corresponding suspension for failure to pay a late fee, are imposed through the complex operation of both the *Law Society Act* and the by-laws. As is detailed below, the statutory requirement for default periods has led to both complex by-laws and organizational complexity.

Compliance requirements and late fees for failure to comply with the Annual Fee, the Annual Report filing and CPD requirements are provided for under By-Laws 5, 8 and 6.1 respectively. Those by-laws detail the specific administrative obligation, a date by which licensees must comply and a late fee for non-compliance. In addition, subsections 46(1) and 47(1)(a) of the *Law Society Act* require a default period before a suspension order is

made.<sup>2</sup> These default periods, the length of which is prescribed in the by-laws, lead to what are effectively nominal and actual due dates.

The applicable administrative elements are summarized in the chart below and described in greater detail in the following paragraphs.

	<b>Annual Fee</b>	<b>Annual Report Filing</b>	<b>CPD</b>
<b>Compliance Nominal Due Date</b>	January 1 (s. 2(1) of By-Law 5)	March 31 (s. 5(1) of By-Law 8)	December 31 (s. 3(1) of By-Law 6.1)
<b>Late Fee Nominal Due Date</b>	January 1 (s. 6(3) of By-Law 5)	March 31 (s. 6(6) of By-Law 8)	January 1 (s. 6(2) of By-Law 6.1)
<b>Late Fee Amount</b>	\$150	\$200	\$200
<b>Actual Due Dates (End of the Default Period after which the licensee may be suspended for non-compliance and/or non-payment of the late fee)</b>	March 2 (60 days after January 1; ss. 5(1.2) and 6(5) of By-Law 5)	May 30 (60 days after March 31; ss. 6(5) and 6(8) of By-Law 8)	January 31 (30 days after January 1; s. 6(3) of By-Law 6.1)

### ***Annual Fee and Annual Report Filing Compliance***

Pursuant to subsection 2(1) of By-Law 5, the Annual Fee is due on January 1 of each year and pursuant to subsection 5(1) of By-Law 8, licensees must file their Annual Report by March 31 of each year. However, since a licensee cannot be suspended for failure to pay the Annual Fee or submit their Annual Report until the passage of a 60-day default period, the actual due date for each requirement is effectively the end of the default period, in particular for those who understand the process.

The by-laws also establish a due date for each late fee, which corresponds to the date on which the administrative obligation is due. Under subsection 6(3) of By-law 5, the Annual

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<sup>2</sup> Those subsections provide that a person appointed for the purpose by Convocation may make an order suspending a licensee's licence, if for a period prescribed by the by-laws the licensee has been in default of the applicable by-law requirements.

Fee late fee (i.e. for failure to pay the Annual Fee on time) is due on the day on which payment of the Annual Fee is due (i.e. January 1), and under subsection 6(6) of By-Law 8, the Annual Report filing late fee (i.e. for failure to file the Annual Report on time) is due on the day on which the Annual Report is required to be filed (i.e. March 31). The by-laws, however, do not require payment of the late fee until 60 days later.<sup>3</sup> Therefore, the by-laws create a system where the actual late fee due date is at the end of the default period.

### ***CPD Compliance***

Under subsection 49(1) of the *Law Society Act*, a licensee who fails to comply with the CPD requirements in By-Law 6.1 may be suspended immediately, without the passage of a default period.

Subsection 6(1) of By-Law 6.1 establishes a late fee for failure to comply with the CPD obligation. Unlike the late fees for the Annual Fee and the Annual Report Filing, the CPD late fee is not due on the same day that compliance is required. Licensees must report their CPD activities by December 31 of each year, while the fee for late CPD compliance is due on January 1 of the year immediately following.

Subsection 6(3) establishes a 30-day default period before a licensee can be suspended for failure to pay the CPD late fee.

### ***Suspension Process***

Licensees who fail to comply with the above administrative requirements may be suspended by an order of a person appointed by Convocation. Licensees may also be suspended for failure to pay an outstanding late fee, even after they have remedied the underlying compliance issue. In addition, for Annual Fee suspensions, licensees must also pay a \$300 reinstatement fee before they can return to an active status.

Each suspension and late fee process is largely the same, with parts conducted in the Finance department, and in the By-Law Administration Services and Membership Services departments of the Client Service Centre.

### ***Reminders Leading Up to the Nominal Due Date***

Leading up to the nominal due date, a significant number of reminders are sent to those licensees who have not yet complied. In 2019, for instance, over 200,000 CPD compliance notices were sent prior to the December 31 deadline.

Some of these reminders are posted to each licensee's Portal in an effort to compel compliance, including statements of account for licensees who have not yet paid their annual fees. Licensees will receive an email advising that a document has been posted to their Portal account but must log into the Portal in order to see the document. Some

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<sup>3</sup> See subsection 6(2) of By-Law 5, and subsection 6(5) of By-Law 8.

reminders are sent as emails to the applicable mass distribution group. As the due date approaches, reminders are posted or emailed with increased frequency. If there are a higher than usual number of licensees who have not complied, additional mass email reminders may also be sent, since some licensees do not check their Portal accounts despite repeated reminders.

### *Notices Leading Up to the Actual Due Date*

Once the due date has passed, licensees who have still not complied have a notice posted in their Portal account or receive an email advising that:

- the applicable requirement has not been completed;
- a late fee will be applied; and
- their licence may be suspended if they do not comply with the requirement and pay the late fee by the expiry of the default period.

Notices are not generated according to any fixed schedule and may be posted with increased frequency, especially leading up to the end of the default period, in an effort to spur delinquents into compliance. For instance, in 2018, almost 18,000 Annual Report notices were sent out during the default period.

### *Late Fee Applied*

After the default period, the late fee is applied. Licensees are notified that the late fee has been added to their accounts and they are provided with time in which to pay the late fee, after which the summary suspension process commences. Each year a significant number of late fees are applied. For instance, in 2019, 6,855 licensees were assessed an Annual Fee late fee and 1,588 CPD late fees were applied.

### *Summary Suspension*

The summary suspension process for each requirement generally starts within a month of the expiry of the default period. However, there may be a delay in beginning that process to allow for the posting of additional notices or sending of additional mass emails in years where the number of delinquents is higher than usual, with the goal of reducing the number of suspensions. As IT solutions are prioritized and scoped, efficiencies will be considered for this process.

Lists of non-compliant licensees are compiled. Suspension orders are then drafted for presentation to the summary order Bencher (i.e. a person appointed by Convocation to make an order suspending a licensee's licence under sections 46, 47 and 49 of the *Law Society Act*.)

Once the orders are signed by the summary order Bencher, a notice of suspension is served by regular mail and deemed to be completed on the fifth business day after mailing. Under the terms of the order, the suspension is to commence on the date of

deemed service, unless the licensee fulfills the outstanding requirements prior to that date. A copy of the notice is posted to the licensee's Portal account.

Between the day the notice is served and the effective date of the suspension, the responsible department provides the names of licensees who have satisfied the administrative obligation to By-Law Administration Services, which ensures the licensees are removed from the final suspension list.

Licensees are not notified again. Once the suspension becomes effective, the licensee's status is changed to "suspended" in the Law Society's internal database, as well as on the public-facing Lawyer and Paralegal Directory.

When a lawyer is administratively suspended, the Law Society notifies LAWPRO of the status change. The administratively suspended lawyer would have no LAWPRO coverage for professional services provided *during* the suspension (i.e., while the lawyer is engaging in the unauthorized practice of law).<sup>4</sup> However, the lawyer will likely have Run-Off coverage available for professional services provided *before* the lawyer was suspended. All lawyers leaving practice (including suspended lawyers) automatically have \$250,000 lifetime Run-Off coverage, which they can buy-up.<sup>5</sup>

LawPRO has a 30-day period during which it makes no changes to the coverage of a suspended lawyer, provided that the lawyer brings themselves into compliance before the end of the 30 days. The rationale for this period is that, in LAWPRO's experience, many administratively suspended lawyers bring themselves back into good standing in fairly short order. If the lawyer has returned to good standing before the 30 days are up, there would be no update made in LAWPRO's system, no change in coverage would appear in their records, and no notice would be sent to the lawyer. If the lawyer is still suspended 30 days after LAWPRO received the suspension notification from the Law Society, LAWPRO would process the exemption and correspondence would be sent to the lawyer advising that they are on Exemption A (not practising law in Ontario) as of their suspension date.

It appears that the likelihood of a claim being denied coverage because professional services were provided while a lawyer was on a temporary suspension is very small (under 1% of the claims closed in a given year).

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<sup>4</sup> See LAWPRO, "Policy Definitions," online: <https://www.lawpro.ca/your-policy/policy/policy-definitions/>

<sup>5</sup> The \$250,000 Run-Off coverage is a one-time limit, per claim and in the aggregate. Run-Off coverage is inferior to the coverage that the lawyer would have if they had not been suspended (\$1,000,000 per claim and \$2,000,000 in the aggregate). See LAWPRO, "Run-Off coverage and exemption from premiums," online: <https://www.lawpro.ca/faqs/about-coverage-as-an-exempt-lawyer/>; and LAWPRO, "Private Practice," online: <https://www.lawpro.ca/your-policy/practice-status/private-practice/>

## ***Reinstatement Process***

The reinstatement process also differs for each administrative obligation and is administered through the Client Service Centre.

### *Annual Report*

Licensees who are suspended for failing to file the Annual Report Filing must contact By-Law Administration Services and are advised to complete the Annual Report for the year for which they were suspended and, if they have been suspended for more than one year, the most recent Annual Report filing.<sup>6</sup> They also are required to submit a statutory declaration attesting to the fact that for the intervening years, they did not practise law/provide legal services, did not hold trust monies or client property, did not operate a trust account and that they complied with the applicable *Guidelines for Licensees who are Suspended*.<sup>7</sup>

A licensee suspended for failing to submit the Annual Report filing will not have their licence reinstated until they have also paid the applicable late filing fee.

### *Annual Fee*

Licensees who are suspended for failure to pay their Annual Fee must contact Membership Services and arrange for the payment of the outstanding fee, the applicable late fee and the \$300 reinstatement fee in order to cure their suspension. If only one of these payments is made, a partial reinstatement will be made to show which payments have been made and what is outstanding. This information is available in the Portal.

### *Continuing Professional Development*

In order to be reinstated, a suspended licensee must complete any outstanding CPD obligations. Since the licensee is not able to input past CPD hours into the Portal, Membership Services manually enters the hours as reported by the licensee. Once all outstanding hours have been reported, and the licensee has paid the outstanding late fee, they will be reinstated.

#### **a) Recommendation**

The CEO recommends an approach that would revise the administrative obligation process including due dates and default periods, to provide consistency and clarity for licensees and to reduce internal administrative burdens. Once fully implemented, the new approach would provide one due date for the three primary administrative obligations

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<sup>6</sup> Prior to 2002, licensees were suspended each year that they failed to file their Annual Report. Accordingly, licensees who were suspended prior to 2002 must complete an Annual Report filing for each year up to and including 2001.

<sup>7</sup> See Law Society of Ontario, "Guidelines for Suspended Lawyers and Paralegals," online: <https://lso.ca/about-lso/legislation-rules/guidelines-for-suspended-lawyers-and-paralegals>

(Annual Fee, Annual Report filing and CPD). If licensees fail to meet the due date, the Law Society would move promptly to the suspension, effectively eliminating the late fee requirement and the default periods.

### **b) Rationale/Risks**

The current suspension and late fee process is confusing for licensees who often have difficulty determining when compliance is actually required. It also is a burden for staff who are regularly required to explain and justify the relevant by-law sections. Staggered due dates have served as a means to control work flow in departments but result in some licensees receiving what may seem like a constant stream of notices and reminders. Long default periods create false deadlines, but only for those licensees who are able to understand and navigate the process.

Licensees will benefit from a streamlined and clarified process, including with technological improvements, standardized due dates and the elimination of publicized default periods. However, non-compliant licensees may react negatively to the proposed changes to the summary suspension process, as the current process allows many opportunities for curing defaults. Ultimately, it is expected that compliance rates will improve as a result of a clearer and more consistent process. The elimination of late fees would result in a reduction of budgeted revenue of \$1.5 million per year, but adoption of the new process, combined with implementation of other strategic change items recommended by the CEO would result in net savings by the end of 2023.

### **c) Implementation**

In order to provide consistency and clarity, the following steps are recommended:

- By-Law amendments to allow for:
  - A single standardized due date of March 31 for the Annual Report filing, Annual Fee and CPD obligations beginning in 2021
  - The elimination of all late fees.
- A reduction of the default periods, staggered to allow for sufficient notice to licensees and changes to Law Society internal processes:
  - Remaining at 30 days for 2021 and 2022
  - Reducing in 2023 (e.g. 15 days).<sup>8</sup>
- Notices and warnings about outstanding obligations, the new deadlines, and their consequences communicated to licensees leading up to the due date.
- Identification of and development by 2023 of a new technology solution to allow for automatic suspensions, replacing the current manual process.
- Training of employees and resource planning to support the one due date and associated new processes.

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<sup>8</sup> Without amendments to subsections 46(1) and 47(1)(a) of the *Law Society Act*, a default period is required. 15 days allows sufficient time for the suspension process to begin. However, licensees would not receive notices during this 15-day period and it would not be publicized as an “alternate due date” for licensees.

- Review and redrafting, where necessary, of all communications to licensees about due dates and suspension timelines to ensure clarity and transparency.

### 3. Exempted over 65

#### ***Applicable By-Laws***

Section 1 of By-Law 5 provides that a licensee shall pay an Annual Fee, unless exempt. Subsections 2(2) to 2(4) delineate three Annual Fee categories:

- 100% - applicable to all licensees who practise law or provide legal services.
- 50% - applicable to licensees who do not practise law or provide legal services but who are otherwise employed, including licensees employed in education, government or in a corporate position where they are not required to practise law or provide legal services.
- 25% - applicable to licensees:
  - who do not engage in any remunerative work and do not practise law or provide legal services
  - who are in full-time attendance at a university, college or designated educational institution and do not practise law or provide legal services
  - who are on a pregnancy or parental leave and do not practise law or provide legal services.

On the basis of these categories, licensees who retire and/or leave the practice of law but want to remain licensees of the Law Society are assessed fees at either 50%, if they engage in any remunerative work, or 25% if they are no longer working.

Subsection 4(1) of By-Law 5 provides an exemption from the requirement to pay the Annual Fee for licensees who:

- Are over 65 years of age; and
- Do not practise law or provide legal services in Ontario, or
- Practise law in Ontario only on a pro bono basis through:
  - a program registered with Pro Bono Law Ontario; or
  - a clinic, within the meaning of the *Legal Aid Services Act, 1998*, funded by Legal Aid Ontario, that is approved by Pro Bono Law Ontario.

Licensees who satisfy these requirements, including those in the 50% fee category, may apply to the By-Law Administration Services department for an exemption from the Annual Fee payment. There is no fee for an exemption application.

#### ***Over-65 Profile***

In order to qualify for the exemption, the licensee must not be practising law or providing legal services. Therefore, absent the exemption, these licensees would fall into either the 50% or 25% fee category.

There are currently 10,642 lawyers and 666 paralegals who are 65 years or older. Of those, approximately 4,500 lawyers and 400 paralegals are not exempt from the requirement to pay annual fees. Most of these licensees appear to be practising law or providing legal services, however, there are approximately 800 licensees 65 years of age or older who have not applied for an exemption despite being in the 25% or 50% fee category.

Approximately 6,000 licensees have been granted exemptions. From existing Law Society records, it appears that the vast majority (in excess of 95%) of these licensees are not engaged in any remunerative work and would therefore be required to pay fees at the 25% rate, with an Annual Fee payment of \$516.50 (plus HST) for 2020.<sup>9</sup>

### ***Licensee retirements***

If this exemption were removed, licensees who want to retire and pay no fees would be required to surrender their licence or become administratively suspended. Licensees can surrender their licence by submitting the required application and meeting the following requirements:

- Filing all outstanding Annual Reports.
- Providing evidence that all trust/mixed trust accounts have been closed and have a zero balance (for applicants who were sole practitioners in Ontario at any time within the last three years from the date of their application).
- Providing evidence that the applicant no longer has signing authority over any trust/mixed trust accounts (for applicants who were partners, employees or associates in Ontario at any time within the last three years from the date of their application).
- Providing evidence that all open estates have been closed or the applicant no longer has signing authority (for lawyers only).

Applications are reviewed by By-Law Administration Services. Once a licensee's application to surrender their licence has been processed, the former licensee appears on the Law Society Directory for a period of three years. During that time they are listed as "Licence Surrendered – Administrative Surrender of Licence".

#### **a) Recommendation**

The CEO recommends the removal of 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 following years.

#### **b) Rationale/Risks**

It is conservatively estimated that removing this exemption would generate approximately \$2 million in budgeted revenue per annum. As noted above, there are approximately 6,000

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<sup>9</sup> For 2020, the 50% category payment is \$1,033.00 (plus HST).

licensees over 65 years of age who have been granted an exemption from paying fees. Approximately 400 licensees are granted this exemption each year, and that number is likely to grow due to demographics in the profession.

There is no policy rationale for exempting non-practising over-65 licensees from paying the Annual Fee, when licensees who are under 65 must still pay fees in the 50% or 25% category. The Law Society is required to maintain records for these exempt licensees and they do receive Law Society communications and may use Law Society resources. These licensees do not cost or burden the Law Society any more than younger licensees who are similarly situated (i.e. not practising law or providing legal services), however, as a matter of fairness these licensees should have the same fee obligations as their younger colleagues.

If the exemption is removed, it is assumed that a portion of these licensees will choose to surrender their licence as opposed to paying fees. Retroactively removing the exemption will generate a negative reaction from those who have benefitted from the exemption or those approaching 65 who would benefit from the exemption.

### **c) Implementation**

If Convocation were to adopt the CEO's recommendation regarding Exempted over 65, the following steps would be required to implement it:

- Amendments to By-Law 5.
- Targeted communications to exempt licensees, with as much notice as possible.
- General communication to all licensees, stressing themes of fairness to all licensees and modernization.
- Changes are proposed to be in effect for 2021, so fees could be collected from the target group.
- The modification of Law Society Directory language to acknowledge that exempt licensees who choose to surrender their licences have retired.

## **4. Exempted Life Members**

Subsection 4(6) of By-Law 5 provides that a licensee who has practised law in Ontario for a period of 50 years is exempt from the payment of the Annual Fee.

Granting life member exemptions is a largely manual process. In February of each year, the Law Society runs a list of licensees called 50 years prior and then vets the list to determine whether each licensee has in fact practised law for 50 years using the criteria set out in subsection 4(7). Eligible licensees are then congratulated for obtaining life member status and advised that they will no longer be required to pay the Annual Fee.

### **a) Recommendation**

The CEO recommends that this exemption be removed beginning in 2021 and for following years.

### **b) Rationale/Risks**

Removing the exemption could generate revenue conservatively estimated at \$700,000 per year.

Currently 728 licensees have been granted life member status. Of those, approximately 475 appear to still be working in a law firm, government or in-house setting. Approximately 250 life members have advised that they are not working. Life members who continue to practise law or provide legal services require the same Law Society resources as other practising licensees. They may access Law Society services, such as the Practice Management Helpline, and may become the subject of an actionable complaint. In addition, all life members receive a benefit that is not available to licensees who have not been in practice for 50 years, which may be perceived as unfair.

If the exemption is removed, it is assumed that some number of the life members who have advised us that they are not working will choose to surrender their licence as opposed to paying fees. It also is assumed that some number of those who have advised that they are in a position that requires a 100% fee payment would move into either the 50% or the 25% category.<sup>10</sup>

Since the majority of licensees who have been granted life member status are still working, they may use Law Society resources, such as the Practice Management Helpline, and they may be the subject of a complaint, requiring review by various Law Society departments.

### **c) Implementation**

If Convocation were to adopt the CEO's recommendation regarding Exempted Life Members, the following steps would be required to implement it:

- Amendments to By-Law 5.
- Targeted communications to life members, with as much notice as possible.
- General communication to all licensees, stressing themes of fairness to all licensees and modernization.
- Changes are proposed to be in effect for 2021, so fees could be collected from the target group.
- The modification of Law Society Directory language to acknowledge that life members who choose to surrender their licences have retired.

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<sup>10</sup> For 2020, the 100% fee payment is \$2,066 plus HST.

## 5. Revocation after Administrative Suspension of one year or more

Over 7,000 licensees are currently administratively suspended. The following provides a breakdown of suspensions:

Length of Time Suspended	Lawyer	Paralegal	Total
Less than 1 year	245	362	607
1-4 years	794	1,214	2,008
5-9 years	857	941	1,798
10-14 years	511	38	549
15 years or more	2,473	0	2,473
Total Currently Administratively Suspended	4,880	2,555	7,435

Currently, administratively suspended licensees remain in that status indefinitely or until they have remedied the outstanding requirements that led to their suspension. Over time, these licensees will often be suspended for each applicable administrative obligation, with the corresponding late fees.

Despite being administratively suspended, the Law Society must maintain records for these licensees, who continue to receive Law Society communications. These licensees may also be the subject of complaints. The Law Society may also be contacted about these licensees, for instance with requests for old client files. Often multiple contacts are required only to confirm that the licensee remains non-responsive.

### a) Recommendation

The CEO recommends that the Law Society use the authority in subsection 48(1) of the *Law Society Act* to enable the Law Society to revoke the licence of anyone whose licence has been administratively suspended for more than 12 months.

### b) Rationale/Risks

Although subsection 48(1) provides the express authority to revoke the licence of a person who has been administratively suspended for more than 12 months, the Law Society has never exercised that authority. Instead, the Law Society maintains records for these licensees, with corresponding administrative requirements. Beginning the process to revoke the licence of some of these licensees is expected to have the following benefits:

- It would remove licensees who are no longer engaged with the Law Society and who are non-responsive.
- It would ensure more realistic and reliable statistics and data about the number of licensees and demographics.
- It may result in increased revenue as some of these licensees will move to comply with the underlying obligation and reinstate their licence, including with respect to annual fees owing.

- It would ease administrative burdens on the Law Society associated with these licensees remaining on our records.

Some suspended licensees may react negatively, if they had assumed that they could remain suspended for several years and then become reinstated through the relatively simple process described at page 10, above. While licensees who have been administratively suspended for more than 12 months may see their licences revoked pursuant to this recommendation, they would still be able to reapply for licensing as though their licence had been surrendered. Because both a revocation and a surrender result in the loss of the licence, the process for becoming licensed again is the same.

Licensees who surrender their licence may apply for licensing following surrender. An Application for Licensing Following Surrender must be completed and submitted to the Complaints and Compliance department of the Client Service Centre, along with an application fee of \$300 (plus HST). The application must be accompanied by supporting documents including a civil actions search, a Canadian Police Information Centre report, a Superintendent of Bankruptcy search and a copy of the licensee's LAWPRO Errors & Omissions Claims History. Applicants must also pay any outstanding Law Society fees, and any outstanding funds owed to LAWPRO, and must submit any outstanding Annual Reports. Once the application is approved, the licensee will be reinstated.<sup>11</sup>

The rules that other regulators apply to administratively suspended members are varied. The following random sample illustrates a continuum, with our Law Society falling in the middle. For instance, on one end of the spectrum, the Nova Scotia Barristers' Society and the Law Society of British Columbia do not appear to have the authority to revoke the licence of a lawyer who has been administratively suspended for a certain period of time.<sup>12</sup> In contrast a non-legal regulator, the Ontario College of Social Workers and Social Service Workers, may revoke a certificate of registration that has been suspended for more than two years for failure to pay a fee or penalty or provide information required by the by-

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<sup>11</sup> Applicants who were permitted to surrender or had their licence revoked through the discipline process follow the same process, but are subject to a hearing by the Law Society Hearing Division, which determines whether the licensee should be reinstated.

<sup>12</sup> In Nova Scotia, a lawyer who fails to comply with obligations such as payment of annual fees, filing of annual report and satisfaction of CPD requirements, may be suspended by the Nova Scotia Barristers' Society. However, the Society does not appear to have the authority to revoke the suspended practising certificate if it remains suspended after a certain time period. See subregulations 4.5.1 and 4.1.1 of the Regulations Made pursuant to Nova Scotia's [Legal Profession Act, S.N.S 2004, c.28](#).

In British Columbia, the Law Society of British Columbia may suspend a lawyer who fails to complete their CPD requirements or file a trust report by the applicable deadline, but does not appear to be empowered to revoke their licence if it remains suspended after a certain time period. However, the treatment accorded to lawyers who fail to pay their annual fee by the deadline appears to be quite different than that applicable to other administrative requirements: the lawyer simply "ceases to be a member." See Rules 3-32 and 3-81 of the Law Society of British Columbia's [Law Society Rules 2015](#), and subsection 25(1) of British Columbia's [Legal Profession Act, SBC 1998, c 9](#).

laws.<sup>13</sup> Further, the Law Society of Alberta may have the name of a member struck off the Roll if the member has been administratively suspended for four consecutive years for reasons that include, for instance, failure to confirm compliance with the CPD requirement, meet certain reporting requirements or pay the annual fee by a certain date.<sup>14</sup>

### c) Implementation

The revocation process would start with licensees who have been suspended for more than 10 years. Significant notice through multiple channels would be provided to impacted licensees. An initial notice would be provided through various channels, including the Gazette and the Ontario Reports. Although directed at licensees who have been suspended for 10 years or more, it is expected that this notice may spur other licensees to cure their suspensions.

After the publication of those notices, attempts would be made to make individual contact with the approximately 3,000 lawyers and 40 paralegals who have been suspended for 10 years or more. These licensees would be contacted electronically where possible, and at their last known address, to advise that we will be moving toward revocation in 2021.

Through 2021 and 2022, the process will continue for licensees who have been suspended for less than 10 years, moving down to licensees who have been suspended for five years or less.

As contact is made with individual licensees, they would be given the opportunity to fulfil their outstanding administrative obligations. This would provide a particular opportunity for licensees who have allowed themselves to be suspended as an alternative to either surrendering their licence or paying fees at either the 50% or 25% rate. Such licensees would now be required to make that choice pending revocation. Those licensees who do not wish to cure their suspension would be moved onto a list that would then be presented to the summary order Benchers in due course. Once revoked, licensees who wished to be licensed again would have to follow the application process outlined above and comply with any administrative obligations that were outstanding when their licence was revoked.

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<sup>13</sup> See subsections 23(1) and (4) of the *Social Work and Social Service Work Act, 1998, S.O. 1998, c. 31*, and section 14.3 of *O. Reg. 383/00 (Registration)*, made under the *Social Work and Social Service Work Act, 1998, S.O. 1998, c. 31*.

<sup>14</sup> The Law Society of Alberta benchers have the statutory power to make rules “providing for the striking off the roll of the name of a member whose membership has been suspended for a period of at least 2 years” for failure to pay a fee or assessment, file a document or do any other act by the time specified by the rules. See clause 7(2)(h) of the *Legal Profession Act, RSA 2000, c L-8*.

The applicable rule provides that “[o]n the application of the Executive Director and on notice to the member, the Benchers may order that the name of a member be struck off the Roll at any time following the expiration of a period of 4 consecutive years during which a rules suspension... has been in effect.” A ‘rules suspension’ is a suspension for reasons that include, for instance, failure to confirm compliance with the CPD requirement, meet certain reporting requirements or pay the annual fee by a certain date. See Subrule 167(1)(b) and Rule 169 of *The Rules of the Law Society of Alberta*.

As the process moves to licensees who have been suspended for five years or less, licensees who face administrative suspensions will be informed about timelines and consequences at the time of their suspension. Prior to moving ahead with revocation, individual contact with these licensees will be attempted using the channels outlined above in order to advise that their licence will be revoked and provide an opportunity to resolve the suspension.

## NOTICE OF MOTION

Notice is hereby given pursuant to section 93 of By-Law 3 of our intention to make the following motion at the next meeting of Convocation on 6 August 2020:

\_\_Clare Sellers\_\_\_\_\_  
Mover: Clare Sellers, July 15, 2020

\_\_Nancy Lockhart\_\_\_\_\_  
Seconded: Nancy Lockhart, July 15, 2020

(Motion with original signatures received by the Secretary)

## MOTION

That By-Law 3 be amended by adding Part IX as follows:

### PART IX

#### BENCHER CODE OF CONDUCT

138. In this Part,

“Bencher” means elected, appointed, ex officio, emeritus benchers and includes ex officio and emeritus Treasurers

“Governance Policies and Practices” means the Governance Policies and Practices that were adopted by Convocation on February 28, 2019 as may be amended from time to time.

“Bencher Code of Conduct” means the Bencher Code of Conduct that was incorporated into the Governance Policies and Practices as may be amended from time to time.

“Declaration of Adherence” means the Declaration of Adherence that was incorporated into the Governance Policies and Practices as may be amended from time to time.

139. All Benchers are bound by the Bencher Code of Conduct which is incorporated by and forms part of this By-Law.

140. Each Bencher shall execute a copy of the Declaration of Adherence and deliver same to the Secretary of Convocation.

141. A Bencher who fails to comply with section 140 of this Part or who purports to withdraw from their Declaration of Adherence or any part thereof:

- a. may not take part in a debate in Convocation;
- b. may not move or second a motion in Convocation;
- c. is not entitled to receive any remuneration from the Society pursuant to Part III of this By-Law;
- d. is ineligible for appointment by Convocation to a standing committee or task force; and
- e. may not attend, take part in a debate in, or vote at, a standing committee, task force, working group or any other committee of the Law Society even if a member thereof

unless and until such Bencher has executed a copy of the Declaration of Adherence and has delivered same to the Secretary of Convocation.

142. The Treasurer or Convocation may request the resignation of a Bencher who has failed to execute a copy of the Declaration of Adherence and deliver same to the Secretary of Convocation after either:

- a. becoming a Bencher; or
- b. purporting to withdraw from their Declaration of Adherence or any part thereof

where such failure continues for at least 60 days.

143. The Treasurer and Convocation are required and authorized to act as provided for in Part 4 of the Bencher Code.

144. The rules of practice and procedure mentioned in section 60 of the Bencher Code are the rules of practice and procedure made under the *Law Society Act* modified to the extent necessary to apply as if Convocation were a panel of the Hearing Division.

145. Without limitation, the "certain rights and privileges" mentioned in section 63(b) of the Bencher Code may include the rights and privileges mentioned in subsections (a) to (e) of section 141 of this By-Law.

146. The provisions of this Part shall prevail to the extent of any inconsistency with this By-Law or any other By-Law.