

## MINUTES OF CONVOCATION

Friday, 1<sup>st</sup> October 2021  
9:00 a.m.  
Via Videoconference

### PRESENT:

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

.....

Secretary: James Varro

The Reporter was sworn.

### IN PUBLIC

#### TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

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

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She 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 thanked the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer acknowledged that yesterday, September 30, was the first National Day for Truth and Reconciliation. The Treasurer affirmed the Law Society's commitment to enhancing cultural competence within the legal professions as key to meaningfully advancing reconciliation.

#### LL.D. CEREMONY – FRANKLYN HARRIS BENNETT, LSM

The Treasurer introduced Franklyn Harris Bennett, LSM, the candidate for the degree of Doctor of Laws, *honoris causa*.

Mr. Marshall read the citation.

The Treasurer admitted Franklyn Harris Bennett to the degree of Doctor of Laws, *honoris causa*.

Mr. Bennett addressed Convocation.

The Treasurer thanked Mr. Bennett for honouring Convocation with his presence.

### TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by webcast and addressed the protocol for Convocation via Zoom videoconference.

The Treasurer welcomed the following guests to Convocation:

- Daniel Pinnington, President and Chief Executive Officer of LAWPRO
- Stephen G. Raby, Q.C., President of the Federation of Law Societies of Canada
- Jonathan G. Herman, Chief Executive Officer of the Federation of Law Societies of Canada

The Treasurer welcomed benchers back after the summer break and indicated that she is looking forward to working with benchers and staff on the Law Society's important regulatory initiatives.

The Treasurer reminded benchers of the Strategic Planning Mid-Term Review planned for later this month.

The Treasurer congratulated Robert Burd on his election as chair of the Paralegal Standing Committee for the term commencing September 14, 2021.

The Treasurer noted the tragic death of Julia Ferguson of Hicks Adams LLP and on behalf of Convocation expressed condolences to the firm and her family and friends.

The Treasurer thanked all licensees who participated in the National Well-Being Study.

The Treasurer noted Mental Health and Awareness Week from October 3 to 9, 2021.

The Treasurer reminded benchers that the deadline for submissions on the consultation by the Competence Task Force is November 30, 2021.

The Treasurer updated Convocation on the pilot project of innovative technological legal services called Access to Innovation or A2I, and advised that Will Morrison, Strategic Policy Counsel, has been appointed as Manager of the project, in preparation for its launch this fall.

The Treasurer advised benchers that she was honoured to take part in the Opening of the Courts ceremony on September 14, 2021 where she affirmed the Law Society's commitment to supporting transformational change in the justice system.

The Treasurer noted that The Action Group (TAG) will be hosting the sixth annual Access to Justice Week from October 25 to 29, 2021.

The Treasurer noted upcoming events:

- Hispanic Heritage Month celebration on October 19, 2021
- Law Society Remembrance Day Ceremony on November 10, 2021
- Louis Riel Day on November 16, 2021

The Treasurer reminded benchers of the deadline for nominations for the Law Society Awards on December 17, 2021 and encouraged everyone to consider nominations.

## REPORT FROM THE PRESIDENT OF THE FEDERATION OF LAW SOCIETIES OF CANADA

The Treasurer introduced Stephen G. Raby, Q.C., President of the Federation of Law Societies of Canada.

Mr. Raby addressed Convocation on the work of the Federation.

### MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. Lockhart, seconded by Mr. Troister, 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 23, 2021 and July 27, 2021 were confirmed.

### Tab 1.2 – APPOINTMENTS

THAT Michael Lesage be removed from the Access to Justice Committee at his own request.

THAT Cathy Corsetti be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

Carried

### Tab 1.3 – STRATEGIC PLANNING AND ADVISORY COMMITTEE REPORT

#### Re: By-Law 12 Amendments Respecting the Compensation Fund Subcommittee

THAT based on the recommendation of the Strategic Planning and Advisory Committee, Convocation make amendments to By-Law 12 as set out in the motion at Tab 1.3.1 to remove transitional provisions relating to establishing the Compensation Fund Subcommittee.

Carried

## LAWPRO REPORT

Mr. Spurgeon presented the Report.

### Re: LAWPRO 2022 Program of Insurance

It was moved by Mr. Spurgeon, seconded by Ms. Sellers, that Convocation approve the Primary Program of Insurance for 2022 as offered and recommended by the Lawyers' Professional Indemnity Company (LAWPRO) Board in the Report at Tab 2.1.

Carried

## PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Shortreed presented the Report.

### Re: Updates to Form 9D

It was moved by Ms. Shortreed, seconded by Ms. Lomazzo, that Convocation approve the motion at Tab 3.1.1 which amends Form 9D, Investment Authority, to update and correct an error.

Carried

## STRATEGIC PLANNING AND ADVISORY COMMITTEE REPORT

Mr. Burd presented the Report.

### Re: By-Law 3 Amendments Respecting the Paralegal Standing Committee Chair Election

It was moved by Mr. Burd, seconded by Ms. Horvat, that on the recommendation of the Strategic Planning and Advisory Committee, Convocation make amendments to By-Law 3 as set out in the motion at Tab 4.1.1 to simplify the description of the process to elect the chair of the Paralegal Standing Committee.

Carried

## HUMAN RIGHTS MONITORING GROUP REPORT

Ms. Walker presented the Report.

### Re: Letters of Intervention on Behalf of Jonathan Ross, Selma Masood and the Hong Kong Law Society

It was moved by Ms. Walker, seconded by Mr. Ross, that Convocation approve the letters and public statements in the following cases:

Jonathan Ross, Selma Masood, and the Hong Kong Law Society – Hong Kong – letter of intervention and public statement presented at Tab 5.1.

Carried

## ROLL-CALL VOTE

Adourian	For
Alford	For
Banning	For
Braithwaite	For
Brown	For
Burd	For
Charette	Abstain
Chiumminto	For
Corbiere	For
Corsetti	For
Desgranges	For
Epstein	Abstain
Esquega	For
Fagan	Abstain
Goldstein	Abstain
Graham	For
Groia	For
Horgan	For
Horvat	For
Klippenstein	For
Lalji	For
Lean	For
Lesage	For
Lewis	For
Lippa	For
Lockhart	For
Lomazzo	For
Lyon	For
Marshall	For
Murchie	For
Painchaud	For
Pineda	For
Pollock	For
Prill	For
Rosenthal	For
Ross	For
Sellers	For
Shi	Abstain
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkinson	For

Vote: 40 For; 5 Abstain

### *For Information:*

- Human Rights Monitoring Group Intervention - Afghanistan

IN PUBLIC

REPORTS FOR INFORMATION ONLY

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society of Ontario Financial Statements for the Six Months ended June 30, 2021
- LIRN Inc. Financial Statements for the Six Months ended June 30, 2021
- LAWPRO Financial Statements for the Six Months ended June 30, 2021
- Investment Compliance Reports
- In camera Item

EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

- Report of the Activities of the Discrimination and Harassment Counsel from January 1, 2021 to June 30, 2021

TRIBUNAL COMMITTEE REPORT

- Updates to Tribunal Practice Directions

CONVOCATION ROSE AT 11:43 A.M.

Confirmed in Convocation this 28<sup>th</sup> day of October 2021.

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Teresa Donnelly,  
Treasurer

**LAW SOCIETY OF ONTARIO**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 1, 2021

MOVED BY: Nancy Lockhart

SECONDED BY: Sidney Troister

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

DRAFT

MINUTES OF CONVOCATION

Wednesday, 23<sup>rd</sup> June 2021  
9:00 a.m.  
Via Videoconference

PRESENT:

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

.....

Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

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

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She 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 thanked the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer expressed condolences to the family and friends of the Afzaal family of London, Ontario, four members of which were tragically killed when struck by a vehicle, and to Muslim communities across Canada.

The Treasurer noted the tragic discovery in late May of the remains of 215 Indigenous children at the former Kamloops Indian Residential School, and on behalf of Convocation expressed condolences to the Tk'emlúps te Secwépemc First Nation, to all survivors of the residential school system, to all Indigenous Peoples of Canada and all those affected by this discovery.

Convocation observed one minute of silence as a symbol of respect for the 215 children.

The Treasurer advised that this tragedy highlights the important work the Law Society needs to conduct on the implementation of the Law Society's Indigenous Framework and recommendations of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples, as part of the work on reconciliation, equality, diversity and inclusion.

#### LL.D. CEREMONY – R. DOUGLAS ELLIOTT

The Treasurer introduced R. Douglas Elliott, the candidate for the degree of Doctor of Laws, *honoris causa*.

Mr. Falconer read the citation.

The Treasurer admitted R. Douglas Elliott to the degree of Doctor of Laws, *honoris causa*.

Mr. Elliott addressed Convocation.

The Treasurer thanked Mr. Elliott for honouring Convocation with his presence.

#### ELECTION OF TREASURER

The Secretary announced that at the close of nominations at 5:00 p.m. on May 13, 2021, there was one candidate for the election of Treasurer. Teresa Donnelly was declared elected as Treasurer for the term commencing June 23, 2021.

#### TREASURER'S REMARKS

The Treasurer advised Convocation that she was honoured to have been given the privilege to serve as Treasurer for another term and is looking forward to working with benchers and staff on the Law Society's strategic priorities.

The Treasurer welcomed those joining Convocation by webcast and addressed the protocol for Convocation via Zoom videoconference.

The Treasurer reminded benchers of the National Well Being Study currently underway and encouraged benchers to complete the survey and to encourage others to do so by June 25, 2021.

The Treasurer noted the ongoing work of the Law Society's Mental Health Working Group and that Convocation will hear more from the Group in the fall.

The Treasurer referred benchers to the report of the Competence Task Force in the Convocation materials and the call for comment that is being launched today on the Law Society's continuing competence framework.

The Treasurer reminded Convocation of the new contingency fee requirements that come into force on July 1, 2021, and the resources for the profession on the Law Society's website.

The Treasurer noted the Human Rights Award ceremony on June 15, 2021 and congratulated the Award's recipient, Professor Payam Akhavan.

The Treasurer noted a number of equity celebrations and events in June:

- National Accessibility Week on June 3, 2021
- PRIDE on June 14, 2021
- National Indigenous History Month and National Indigenous Peoples Solidarity Day on June 22, 2021
- Italian Heritage Month, Portuguese History and Heritage Month and Filipino Heritage Month.

The Treasurer noted the upcoming Access to Justice week from October 25 to 29, 2021 and that information will be available on The Action Group (TAG) website.

The Treasurer acknowledged the challenging times for the 1,250 paralegals and 4,154 lawyers who have been licensed since the start of the pandemic in March 2020. The Treasurer, on behalf of Convocation, welcomed them to the professions and wished them success in their careers.

The Treasurer addressed Convocation on the work and key activities of the Law Society since becoming Treasurer in June 2020, including the priorities for her term and Convocation's achievements. The Treasurer thanked benchers, Law Society staff, justice stakeholders and partners for their work on Law Society initiatives.

The Treasurer advised Convocation that a mid-term review of the Law Society's 2019 – 2023 strategic plan is scheduled for October 2021.

The Treasurer referred benchers to information reports in the Convocation materials, including an update on implementation of the 2018 Abiding Interest Report to strengthen the Law Society's relationship with Legal Aid Ontario.

#### MOTION – CONSENT AGENDA – Tab 1

It was moved by Mr. Marshall, seconded by Mr. Wilkes, 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 May 27, 2021 were confirmed.

#### Tab 1.2 – TRIBUNAL APPOINTMENT

That Andrew Spurgeon be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

Carried

## AUDIT AND FINANCE COMMITTEE REPORT

Mr. Groia presented the Report.

### Re: Law Society of Ontario Investment Policy

It was moved by Mr. Groia, seconded by Mr. Poliacik, that Convocation approve the new Investment Policy.

Carried

#### *For information:*

- LAWPRO Financial Statements for the Three Months ended March 31, 2021
- LIRN INC. Financial Statements for the Three Months ended March 31, 2021

## STRATEGIC PLANNING AND ADVISORY COMMITTEE REPORT

Ms. Horvat presented the Report.

### Re: Amendments to By-Law 3 on the Paralegal Standing Committee Chair Election Process

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that on the recommendation of the Strategic Planning and Advisory Committee, Convocation make amendments to By-Law 3 as set out in the motion at Tab 3.1.1 to modernize the process for the election of the Paralegal Standing Committee Chair.

Carried

#### *For information:*

- Update on 2019-2023 Strategic Plan Implementation

## TRIBUNAL COMMITTEE REPORT

Ms. Shin Doi presented the Report.

### Re: Amendments to the Rules of Practice and Procedure

It was moved by Ms. Shin Doi, seconded by Dr. Alford, that Convocation approve the proposed English and French amendments to the Law Society Tribunal Rules of Practice and Procedure, effective October 1, 2021, as set out at Tab 4.1 (English) and Tab 4.2 (French).

Carried

## HUMAN RIGHTS MONITORING GROUP

Ms. Walker presented the Report.

### Re: Letter of Intervention on Behalf of Thein Hlaing Tun and Ayeyar Lin Htut

It was moved by Ms. Walker, seconded by Mr. Wellman, that Convocation approve the letter and public statement in the following case:

Thein Hlaing Tun and Ayeyar Lin Htut – Myanmar – letter of intervention and public statement presented at Tab 5.1.

Carried

Mr. Charette, Mr. Desgranges, Mr. Goldstein, Mr. Lyon and Ms. Shi abstained.

## EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

### Re: Equity Partners Review

Beginning with comments from Mr. Fagan, benchers discussed the manner in which the subject of the information report was dealt with.

## REPORTS FOR INFORMATION ONLY

### ACCESS TO JUSTICE COMMITTEE REPORT

- An Abiding Interest: Implementation Update

### COMPETENCE TASK FORCE REPORT

- Call for Comment - Renewing the Law Society's Continuing Competence Framework

## EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

- Equity Partners Review

CONVOCATION ROSE AT 10:30 A.M.

DRAFT

MINUTES OF SPECIAL CONVOCATION

Tuesday, 27<sup>th</sup> July 2021  
9:00 a.m.  
Via Videoconference

PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Banack, Banning, Braithwaite, Brown, Burd, Charette, Chiummiento, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Graham, Groia, Horgan, Horvat, Klippenstein, Lalji, Lau, Lean, Lesage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Merali, Murchie, Painchaud, Parry, Poliacik, Pollock, Prill, Rosenthal, Ross, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker, Wellman, Wilkes and Wilkinson.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

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

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She 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 thanked 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 reminded benchers of the National Well-Being Study and the extension of the deadline for responses to the survey to July 30, 2021. The Treasurer encouraged everyone to complete the survey.

The Treasurer briefly addressed the motion at Tab 1, and noted the appointments of certain advisory groups in Schedule B.

## MOTION – COMMITTEE AND OTHER APPOINTMENTS

It was moved by Ms. Shortreed, seconded by Ms. Lalji:

THAT the attached list of appointments under **Schedule A** be approved.

THAT Catherine Banning be appointed to the Law Foundation of Ontario Board of Trustees.

THAT Jacqueline Horvat, Quinn Ross, and Claire Wilkinson be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

THAT Atrisha Lewis be removed from the Hearing Division of the Law Society Tribunal.

THAT Megan Shortreed be removed from the Appeal Division and Hearing Division of the Law Society Tribunal.

## SCHEDULE A

### COMMITTEE, TASK FORCE, WORKING GROUP AND OTHER APPOINTMENTS

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*Unless otherwise noted, not included in the list of appointments following Committees 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

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#### 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

Michael Lesage

Marian Lippa

Michelle Lomazzo

Cecil Lyon

Barbara Murchie

Brian Prill

Jonathan Rosenthal

Audit & Finance

Joseph Groia (Chair)  
Lubomir Poliacik (Vice-Chair)  
Catherine Banning  
Cathy Corsetti  
Seymour Epstein  
Gary Graham  
Philip Horgan  
Jacqueline Horvat  
Michelle Lomazzo  
C. Scott Marshall  
Clare Sellers  
Sidney Troister

Compensation Fund Subcommittee

Lubomir Poliacik (Chair)  
Cathy Corsetti  
Seymour Epstein  
Clare Sellers  
Sidney Troister

Compensation

Teresa Donnelly (Chair)  
Robert Burd  
Dianne Corbiere  
Joseph Groia  
Gerald Sheff

Equity and Indigenous Affairs

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

Paralegal Standing

Robert Burd (Chair)  
Geneviève Painchaud (Vice-Chair)  
Jack Braithwaite  
Cathy Corsetti  
Seymour Epstein  
Shelina Lalji  
Marian Lippa  
Michelle Lomazzo  
Trevor Parry  
Quinn Ross  
Chi-Kun Shi  
Doug Wellman  
Claire Wilkinson

Proceedings Authorization

Jonathan Rosenthal (Chair)  
Robert Adourian  
Atrisha Lewis  
Michelle Lomazzo  
Gerald Sheff  
Megan Shortreed

Professional Development and Competence

Barbara Murchie (Chair)  
Robert Adourian (Vice Chair)  
Alexander Wilkes (Vice-Chair)  
Jared Brown  
Murray Klippenstein  
Michael Lesage  
Atrisha Lewis  
Marian Lippa  
Cecil Lyon  
Isfahan Merali  
Sidney Troister  
Tanya Walker  
Doug Wellman  
Claire Wilkinson

Professional Regulation

Megan Shortreed (Chair)  
Michelle Lomazzo (Vice-Chair)  
Andrew Spurgeon (Vice-Chair)  
Gerard Charette  
Etienne Esquega  
Julian Falconer  
Jacqueline Horvat  
C. Scott Marshall  
Geneviève Painchaud  
Jonathan Rosenthal  
Quinn Ross  
Nicholas Wright

Strategic Planning and Advisory

Teresa Donnelly (Chair)

Jacqueline Horvat (Vice-Chair)

Robert Burd

Joseph Chiummianto

Dianne Corbiere

Cathy Corsetti

Joseph Groia

Philip Horgan

Nancy Lockhart

Barbara Murchie

Lubomir Poliacik

Julia Shin Doi

Megan Shortreed

Andrew Spurgeon

Sidney Troister

Diana Miles (*Ex Officio*)

Tribunal

Julia Shin Doi (Chair)

Ryan Alford (Vice-Chair)

Marian Lippa (Vice-Chair)

Catherine Banning

Jack Braithwaite (*Ex Officio*)

Jared Brown

Jean-Jacques Desgranges

John Fagan

Sam Goldstein

Philip Horgan

Cecil Lyon

Isfahan Merali

Barbara Murchie (*Ex Officio*)

Geoff Pollock

Chi-Kun Shi

Malcolm Mercer (*Ex Officio*)

## TASK FORCES

### Competence\*

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

### Technology Task Force

Jacqueline Horvat (Chair)  
Gary Graham (Vice-Chair)  
Joseph Chiumminto  
Seymour Epstein  
Sam Goldstein  
Cheryl Lean  
Michelle Lomazzo  
Geneviève Painchaud  
Brian Prill  
Quinn Ross  
Tanya Walker  
Doug Wellman  
Nicholas Wright

\* Membership unchanged.

## WORKING/OTHER GROUPS

### Human Rights Monitoring Group (Equity)

Julian Falconer (Co-Chair)  
Tanya Walker (Co-Chair)  
Marian Lippa  
Isfahan Merali  
Lubomir Poliacik  
Quinn Ross  
Doug Wellman

## OTHER APPOINTMENTS

### Summary Disposition

Chi-Kun Shi  
Tanya Walker

It was moved by Mr. Fagan, seconded by Mr. Lyon, that consideration of the motion for today's special Convocation be adjourned to the regular Convocation of benchers in September 2021.

Lost

### ROLL-CALL VOTE

Adourian	For
Alford	For
Banning	Against
Braithwaite	Against
Brown	For
Burd	Against
Charette	For
Corbiere	Against
Corsetti	Against
Desgranges	For
Epstein	Against
Esquega	Against
Fagan	For
Falconer	Against
Graham	For
Groia	Against
Horgan	For
Horvat	Against
Klippenstein	For
Lalji	Against
Lau	Against
Lean	For
Lesage	For
Lewis	Against
Lippa	Against
Lockhart	Against
Lomazzo	Against
Lyon	For
Marshall	Against
Merali	Against
Murchie	Against
Painchaud	Against
Parry	For
Poliacik	For
Prill	For
Rosenthal	Against
Ross	Against
Sellers	Against

Sheff	Against
Shi	For
Shin Doi	Against
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	Against
Wellman	Against
Wilkes	Against
Wilkinson	Against

Vote: 16 For; 32 Against

Ms. Shortreed and Ms. Lalji agreed to amend the motion to remove Michelle Lomazzo from the Hearing and Appeal Divisions of the Law Society Tribunal given Ms. Lomazzo's appointment to the Proceedings Authorization Committee.

The main motion as amended carried.

ROLL-CALL VOTE

Adourian	For
Alford	Abstain
Banning	For
Braithwaite	For
Burd	For
Charette	Abstain
Chiummiento	For
Corbiere	For
Corsetti	For
Desgranges	Abstain
Epstein	For
Esquega	For
Fagan	Against
Falconer	For
Graham	Abstain
Groia	For
Horvat	For
Klippenstein	Abstain
Lalji	For
Lau	For
Lean	Abstain
Lesage	Abstain
Lewis	For
Lippa	For
Lockhart	For
Lomazzo	For
Lyon	Abstain
Marshall	For
Murchie	For
Painchaud	For
Poliacik	For

Prill	Abstain
Rosenthal	For
Ross	For
Sellers	For
Sheff	For
Shi	Abstain
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For

Vote: 34 For; 1 Against; 10 Abstain

REPORTS FOR INFORMATION ONLY

MOTION – COMMITTEE AND OTHER APPOINTMENTS

- Schedule B – Other Appointments

CONVOCATION ROSE AT 10:38 A.M.

## LAW SOCIETY OF ONTARIO

### MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 1, 2021

THAT Michael Lesage be removed from the Access to Justice Committee at his own request.

THAT Cathy Corsetti be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

#### Explanatory Note

Bencher Cathy Corsetti has applied to be a member of the Tribunal. Under the Tribunal model approved by Convocation in 2012, benchers are eligible to be appointed to an initial term by virtue of their position. Ms. Corsetti has previously been a member of the Tribunal.



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

Tab 1.3

## **Strategic Planning and Advisory Committee**

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### **By-Law 12 Amendments Respecting the Compensation Fund Subcommittee**

**October 1, 2021**

**Committee Members:**

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

**Purpose of Report: Decision**

Authored By:

James Varro, Director, Office of the CEO and Corporate Secretary  
jvarro@lso.ca



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<b>The Recommended Amendments.....</b>	<b>2</b>



## Motion

**That based on the recommendation of the Strategic Planning and Advisory Committee, Convocation make amendments to By-Law 12 as set in the motion at Tab 1.3.1 to remove transitional provisions relating to establishing the Compensation Fund Subcommittee.**

## Background

On May 27, 2021, Convocation made amendments to By-Law 12 to establish the Compensation Fund Subcommittee of the Audit and Finance Committee, to replace the Compensation Fund Committee. This was done to eliminate the overlap between the work of the Compensation Fund Committee and the Audit and Finance Committee and to ensure a more efficient administration of the Fund.

The amendments to By-Law 12 to establish the Subcommittee included transitional provisions to deem the existing members of the Compensation Fund Committee as the members of the Subcommittee until such time as the members of the Subcommittee were appointed by Convocation pursuant to the By-Law. The members of the Subcommittee were appointed at the July 27, 2021 Convocation, and as such, the transitional provisions are no longer required.

## The Recommended Amendments

As shown in the track-changes version of the By-Law 12 amendments at **Tab 1.3.2**, subsections 3.1(2) and (3), which relate to the composition of the Subcommittee pending the appointments referenced above, are no longer needed. It is recommended that these subsections be removed from the By-Law. All other amendments to the By-Law made at the May Convocation remain.

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

**BY-LAW 12 [COMPENSATION FUND]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 1, 2021

MOVED BY

SECONDED BY

THAT By-Law 12 [Compensation Fund], in force immediately before this motion is moved, be amended as follows:

**1. Subsection 3.1 of the English version of the By-Law is revoked and the following substituted:**

**Composition**

3.1. Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Subcommittee shall consist of five persons appointed by Convocation from the Audit and Finance Committee, of whom,

- (a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;
- (b) two shall be lay benchers; and
- (c) one shall be a bencher who is licensed to provide legal services in Ontario.

**2. Subsection 3.1 of the French version of the By-Law is revoked and the following substituted:**

**Composition**

3.1. Malgré les paragraphes 109 (1) et (2) du Règlement administratif n° 3 [Les conseillers, le Conseil et les comités], le sous-comité du Fonds d'indemnisation est composé d'au moins cinq membres du Comité d'audit et de finance nommés par le Conseil, dont

- a) deux sont des conseillers autorisés à exercer le droit en Ontario comme avocats ;
- b) deux sont des conseillers non-juristes ;
- c) un est un conseiller autorisé à fournir des services juridiques en Ontario.

## **BY-LAW 12**

Made: May 1, 2007  
Amended: June 28, 2007  
May 27, 2010  
June 2, 2010 (editorial changes)  
September 22, 2011  
September 22, 2011 (editorial changes)  
April 25, 2013  
March 4, 2014  
October 24, 2019  
May 27, 2021

## **COMPENSATION FUND**

### **EXERCISE OF POWERS**

#### **Exercise of powers, etc.**

1. The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

1. Executive Director, Professional Regulation.
2. Manager and Senior Counsel, Professional Regulation.

### **COMPENSATION FUND SUBCOMMITTEE**

#### **Compensation Fund Subcommittee**

2. The Compensation Fund Subcommittee is established as a subcommittee of the Audit and Finance Committee.

#### **Application of By-Law**

3. (1) Subject to subsection (2), the following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Subcommittee:

1. Section 107.
2. Sections 109 to 116.

#### **Same**

(2) In the application of,

(a) subsections 107 (1) and (2) and sections 109 to 116, each reference to “standing committee” shall be read as a reference to “subcommittee”;

(b) subsection 107 (3), the reference to “under this Part” shall be read as a reference to “under By-Law 12 [Compensation Fund]; and

(c) sections 112 and 116 and subsections 113 (5) and 115 (1) and (2), each reference to “the

committee” shall be read as a reference to “the subcommittee”.

### **Composition**

3.1. ~~(1)~~ Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Subcommittee shall consist of five persons appointed by Convocation from the Audit and Finance Committee, of whom,

- (a) two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors;
- (b) two shall be lay benchers; and
- (c) one shall be a bencher who is licensed to provide legal services in Ontario.

### **~~Benchers appointed to the Compensation Fund Committee~~**

~~(2) Despite subsection (1), a bencher appointed to the Compensation Fund Committee immediately before the Compensation Fund Subcommittee is established under section 2 is deemed to be a bencher appointed to the Compensation Fund Subcommittee until Convocation first appoints benchers to the Subcommittee.~~

### **~~Chair and vice chair of the Compensation Fund Committee~~**

~~(3) The benchers appointed as chair and vice chair of the Compensation Fund Committee immediately before the Compensation Fund Subcommittee is established under section 2 are deemed to be appointed as chair and vice chair of the Compensation Fund Subcommittee, respectively, until Convocation first appoints benchers as the chair and vice chair of the Subcommittee.~~

### **Quorum**

3.2. (1) Despite subsection 114 (1) of By-Law 3 [Benchers, Convocation and Committees], three members of the Compensation Fund Subcommittee shall constitute a quorum for the purposes of the transaction of business.

### **Resolution in writing**

(2) A resolution in writing signed by at least three members of the Compensation Fund Subcommittee entitled to vote on the resolution at a meeting of the Subcommittee is as valid as if it had been passed at a meeting of the Subcommittee.

### **Mandate**

4. (1) The mandate of the Compensation Fund Subcommittee is to make grants from the Compensation Fund.

### **Grants over \$5000 re dishonesty of lawyers**

(1.1) The Compensation Fund Subcommittee may make grants from the Compensation Fund in amounts over \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of the Audit and Finance Committee or Convocation.

### **Grants over \$1500 re dishonesty of paralegals**

(1.2) The Compensation Fund Subcommittee may make grants from the Compensation Fund in

amounts over \$1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of the Audit and Finance Committee or Convocation.

**Powers**

4.1. The Compensation Fund Subcommittee may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

**Appointment of Claims Officers**

4.2. (1) The Compensation Fund Subcommittee may appoint as many persons as it considers necessary as Claims Officers for the purposes of assisting it to decide whether to make a grant from the Compensation Fund.

**Approval by Convocation of appointment not required**

(2) The appointment of a person as a Claims Officer is not subject to the approval of the Audit and Finance Committee or Convocation.

**Assistance to be provided by Claims Officer**

(3) The Compensation Fund Subcommittee may refer to a Claims Officer for consideration any question that is not a question of law alone arising from an application for a grant from the Compensation Fund.

**Procedure to be followed by Claims Officer**

(4) The Compensation Fund Subcommittee shall determine the procedure to be followed by a Claims Officer in the consideration of a question, including requiring a hearing.

**Recommendation of Claims Officer**

(5) A recommendation of a Claims Officer is not binding on the Compensation Fund Subcommittee.

REFEREES

**Appointment**

5. (1) Every employee of the Society who is a licensee and who holds any of the following offices is a referee for the purposes of subsection 51 (10) of the Act:

1. Manager, Compensation Fund.
2. Compensation Fund Counsel.

**Grants up to \$5000 re dishonesty of lawyers**

(2) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$5000 as a result of the dishonesty of a member, as defined in subsection 51 (13) of the Act, or a person licensed to practise law in Ontario as a barrister and solicitor and the making of such grants is not subject to the approval of Convocation.

### **Grants up to \$1500 re dishonesty of paralegals**

(3) A person who is a referee under subsection (1) may make grants from the Compensation Fund in amounts up to \$1500 as a result of the dishonesty of a person licensed to provide legal services in Ontario and the making of such grants is not subject to the approval of Convocation.

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## **RÈGLEMENT ADMINISTRATIF N° 12**

### **FONDS D'INDEMNISATION**

#### **EXERCICE DE POUVOIRS**

#### **Exercice de pouvoirs**

1. Les personnes qui occupent une des charges suivantes peuvent exercer les obligations et pouvoirs en application du paragraphe 51 (11.1) de la Loi :

1. Directrice administrative ou directeur administratif de la réglementation professionnelle.
2. Gestionnaire et avocat(e) principal(e), Règlementation professionnelle.

#### **SOUS-COMITÉ DU FONDS D'INDEMNISATION**

#### **Sous-comité du Fonds d'indemnisation**

2. Le sous-comité du Fonds d'indemnisation est créé en tant que sous-comité du Comité d'audit et de finance.

#### **Application du règlement administratif**

3. (1) Sous réserve du paragraphe (2), les dispositions suivantes du Règlement administratif n° 3 [Les conseillers, le Conseil et les comités] s'appliquent au sous-comité du Fonds d'indemnisation :

1. Article 107.
2. Articles 109 à 116.

#### **Idem**

(2) Pour l'application :

a) des paragraphes 107 (1) et (2) et des articles 109 à 116, « comité permanent » est interprété chaque fois comme « sous-comité » ;

b) du paragraphe 107 (3), « aux termes de cette partie » est interprété comme « aux termes du Règlement administratif n° 12 [Fonds d'indemnisation] ;

c) des articles 112 et 116 et des paragraphes 113 (5) et 115 (1) et (2), « comité » est interprété comme « sous-comité ».

## **Composition**

3.1. ~~(1)~~ Malgré les paragraphes 109 (1) et (2) du Règlement administratif n° 3 [Les conseillers, le Conseil et les comités], le sous-comité du Fonds d'indemnisation est composé d'au moins cinq membres du Comité d'audit et de finance nommés par le Conseil, dont

- a) deux sont des conseillers autorisés à exercer le droit en Ontario comme avocats ;
- b) deux sont des conseillers non-juristes ;
- c) un est un conseiller autorisé à fournir des services juridiques en Ontario.

## **~~Conseillers nommés au Comité du Fonds d'indemnisation~~**

~~(2) Malgré le paragraphe (1), un conseiller nommé au Comité du Fonds d'indemnisation immédiatement avant la création du sous-comité du Fonds d'indemnisation aux termes de l'article 2 est réputé être un conseiller nommé au sous-comité du Fonds d'indemnisation jusqu'à ce que le Conseil nomme des conseillers au sous-comité.~~

## **~~Présidence et vice-présidence du Comité du Fonds d'indemnisation~~**

~~(3) Les conseillers nommés à la présidence et à la vice-présidence du Comité du Fonds d'indemnisation immédiatement avant la création du sous-comité du Fonds d'indemnisation aux termes de l'article 2 sont réputés être nommés respectivement à la présidence et à la vice-présidence du sous-comité du Fonds d'indemnisation, jusqu'à ce que le Conseil nomme des conseillers à la présidence et à la vice-présidence du sous-comité.~~

## **Quorum**

3.2. (1) Malgré le paragraphe 114 (1) du Règlement administratif n° 3 [Les conseillers, le Conseil et les comités], le quorum pour les affaires courantes du sous-comité du Fonds d'indemnisation est de trois membres.

## **Résolution par écrit**

(2) Une résolution, écrite et signée par au moins trois membres du sous-comité du Fonds d'indemnisation qui sont habilités à voter aux réunions du sous-comité, a la même valeur que si elle avait été adoptée à une réunion du sous-comité.

## **Mandat**

4. (1) Le mandat du sous-comité du Fonds d'indemnisation est d'accorder des subventions du Fonds d'indemnisation.

## **Indemnités de plus de 5 000 \$ à l'égard de la malhonnêteté des avocats**

(1.1) Le sous-comité du Fonds d'indemnisation peut accorder des indemnités de plus de 5 000 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'un membre, tel que défini dans le paragraphe 51 (13) de la Loi, ou d'une personne autorisée à exercer le droit en Ontario comme avocat, et ces indemnités ne sont pas assujetties à l'approbation du Comité d'audit et de finance ou du Conseil.

## **Indemnités de plus de 1 500 \$ à l'égard de la malhonnêteté des parajuristes**

(1.2) Le sous-comité du Fonds d'indemnisation peut accorder des indemnités de plus de 1 500 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'une personne autorisée à fournir des

services juridiques en Ontario, et ces indemnités ne sont pas assujetties à l'approbation du Comité d'audit et de finance ou du Conseil.

#### **Pouvoirs**

4.1. Le sous-comité du Fonds d'indemnisation peut prendre toutes mesures et dispositions qu'il juge utiles pour l'exercice de ses fonctions.

#### **Nomination d'officiers des réclamations**

4.2. (1) Le sous-comité du Fonds d'indemnisation peut nommer autant de personnes qu'il juge nécessaires comme officiers des réclamations pour l'aider à décider d'accorder ou non une indemnité à partir du Fonds d'indemnisation.

#### **Approbation des nominations par le Conseil non requise**

(2) La nomination d'une personne comme officier des réclamations n'est pas assujettie à l'approbation du Comité d'audit et de finance ou du Conseil.

#### **Aide à fournir par l'officier des réclamations**

(3) Le sous-comité du Fonds d'indemnisation peut soumettre pour considération à un officier des réclamations toute question qui n'est pas uniquement une question de droit qui découle d'une demande d'indemnisation du Fonds.

#### **Procédure à suivre par l'officier des réclamations**

(4) Le sous-comité du Fonds d'indemnisation détermine la procédure à suivre par un officier des réclamations lors de la considération d'une question, y compris les demandes d'audience.

#### **Recommandations de l'officier des réclamations**

(5) Les recommandations d'un officier des réclamations ne lient pas le sous-comité du Fonds d'indemnisation.

### ARBITRES

#### **Nomination**

5. (1) Tout employé du Barreau qui est titulaire d'un permis et qui assume une des fonctions suivantes est un arbitre aux fins du paragraphe 51 (10) de la Loi :

1. Chef de service, Fonds d'indemnisation.
2. Avocat au Fonds d'indemnisation.

#### **Indemnités de moins de 5 000 \$ à l'égard de la malhonnêteté des avocats**

(2) Une personne qui est arbitre en vertu du paragraphe (1) peut accorder des indemnités de moins de 5 000 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'un membre, tel que défini dans le paragraphe 51 (13) de la Loi, ou d'une personne autorisée à exercer le droit en Ontario comme avocat, et ces indemnités ne sont pas assujetties à l'approbation du Conseil.

**Indemnités de moins de 1 500 \$ à l'égard de la malhonnêteté des parajuristes**

(3) Une personne qui est arbitre en vertu du paragraphe (1) peut accorder des indemnités de moins de 1 500 \$ à partir du Fonds d'indemnisation en raison de la malhonnêteté d'une personne autorisée à fournir des services juridiques en Ontario, et ces indemnités ne sont pas assujetties à l'approbation du Conseil.

**LAW SOCIETY OF ONTARIO**

RE: LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO) 2022 PROGRAM OF INSURANCE

MOVED BY: Andrew Spurgeon

SECONDED BY: Clare Sellers

THAT Convocation approve the Primary Program of Insurance for 2022 as offered and recommended by the Lawyers' Professional Indemnity Company (LAWPRO) Board in the Report at **Tab 2.1**.

## **Transmittal Memo**

**TO: The Treasurer and Convocation of the Law Society of Ontario**

**FROM: LAWPRO Board of Directors**

**DATE: October 1, 2021**

**RE: 2022 Insurance Program Proposal**

### **Introduction**

LAWPRO provides the mandatory professional liability insurance coverage for the more than 29,000 Ontario lawyers in private practice. The LAWPRO primary errors and omissions program (the “Primary Program”) is updated each year to address the current environment and the changing risks faced by the Ontario bar.

Each September, LAWPRO’s Board of Directors reports to Convocation on changes to the insurance program for the following calendar year. The timing of this Report is necessitated by the logistics of starting the application process in early November so that all policies can be renewed effective January 1, and the need to negotiate and place related or corollary reinsurance treaties prior to the renewal date.

For 2022, LAWPRO’s Board and Management conducted their annual review of the Primary Program and offers an insurance program with the changes outlined in the Report attached to this memo (see the Motion below).

LAWPRO was created in response to the “insurance crisis” of the early 1990s. To address the crisis, Convocation formed a Task Force which ultimately recommended the creation of a specialised, regulated insurance company with financial accountability. For the last 26 years, LAWPRO has operated based on the mandate and principles laid out in the 1994 Task Force Report. The mandate given to LAWPRO requires that it:

- Operate independently from the Law Society;
- Operate in a commercially reasonable manner (i.e., revenues must cover expenses);
- Offer premiums that generally reflect risk (i.e., those with greater risk pay higher premiums); and
- Settle claims fairly and quickly, though not on a “no-fault” basis.

In developing the details of the 2022 Primary Program, further to LAWPRO’s mandate from Convocation, LAWPRO’s Board and Management have considered coverage needs, claims trends and costs, including pandemic-related claims; the capital requirements it faces due to its

regulatory obligations; the changing environment in which lawyers practice; and comments received from the profession during the previous year. LAWPRO is very aware of and carefully considered the pressures on our insured professionals to control costs, especially in the current environment.

## **Claims trends**

Relative to the trend we saw before the pandemic, there was a significant decline in the number of claims reported to LAWPRO in 2020. There were 2,768 reported claims in 2020, down from 3,121 in 2019. However, all indications are that claims are increasing as business gets back to normal. For example, in the first half of 2021, LAWPRO received 1,718 reported claims, a count that is up 26% from the same period last year and up 12% from the same period in 2019.

Beyond claims count, LAWPRO monitors claims costs, which show every indication that business is returning to normal. Claims costs for the first half of 2021 were \$41.7 million, up 12% relative to the same period last year and up 8% relative to the same period in 2019.

The average cost per claim in recent years continues to grow, reaching \$37,200 from \$30,000 20 years ago. In a typical year, approximately 275 claims cost more than \$100,000, and 5-15 claims will hit the \$1 million dollar per claim policy limit.

See Paragraphs 18-27 in the attached Report for more information on claims trends.

## **2022 program**

With all this in mind, The LAWPRO Board has determined that the general structure of the current Primary Program continues to meet the needs and practice realities of the profession.

The standard base premium will remain unchanged from last year at \$3,000, despite the increasing claims volatility. Other than minor changes to the policy wording for underwriting clarity in conditions and definitions, all other coverage limits, discounts, terms and conditions will remain unchanged.

The following is a brief summary of the 2022 Primary Program (see Paragraph 13 in the attached Report for more details):

### *Standard base premium*

\$3,000 per insured lawyer (unchanged from 2021)

### *Coverage Limits*

\$1 million per claim/\$2 million aggregate limit applicable to claim expenses, indemnity payments and/or cost of repairs together

### *Innocent Party Coverage*

\$250,000 sublimit for innocent party claims per claim/in the aggregate is included in base coverage (additional Innocent Party coverage can be purchased)

*Transaction Premium Levy*

\$65 per real estate transaction and \$100 per civil litigation transaction

*Deductible*

Standard deductible is \$5,000 per claim (with options from \$0 to \$25,000).

*Premium Discounts*

*For those who take approved risk management courses*

\$50 discount per approved course, subject to a \$100 maximum

*For new lawyers*

- less than 1 full year in practice: 50% discount
- less than 2 years in practice: 40% discount
- less than 3 years in practice 30% discount
- less than 4 years in practice: 20% discount

*For those who limit their practice to criminal and/or immigration law (restricted areas of practice)*

- 50% discount

*For those who work part-time*

- 50% discount is available to practitioners who are below a specified hours per week and gross billings threshold

*For those employed at a Designated Agency<sup>1</sup>*

- 75% discount in recognition of low risk and enhanced access to justice

**Risk rating**

As part of its original mandate, LAWPRO sets its premiums to reflect the risk and kind of work that lawyers do (i.e., those with greater risks pay higher premiums and those with less risk pay lower premiums). Transaction levies, premium discounts and surcharges serve as the mechanisms that facilitate risk rating.

Recognizing they have a lower risk of claims, there are large numbers of LAWPRO insureds that qualify for significant premium discounts and pay far less than the base premium. Currently:

- 6,284 lawyers or 21% of all insureds who are new calls qualify for the New Lawyer Discount which ranges from 50%-20% over their first 4 years in practice

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<sup>1</sup> A "Designated Agency" can include a Civil Society Organization that has been approved for the general premium discount.

- 1,769 lawyers or 6% of all insureds who restrict their work to solely criminal or immigration qualify for the 50% Restricted Area of Practice Discount
- 2,398 lawyers or 8% of all insureds meet the part time threshold requirements and qualify for the 50% Part Time Practice Discount

In total that is 10,451 lawyers - 35% of all insureds - who receive significant premium discounts.

And roughly 25% of LAWPRO's insureds take advantage of the LAWPRO Risk Management Credit, thereby further reducing their premiums by \$50 or \$100 on an annual basis.

Further to the discussion in Paragraphs 49-63, the LAWPRO Board is satisfied the continued use of transaction and claims history levy revenues accomplishes the LAWPRO mandate of risk rating, and that the cost of insurance under the Primary Program continues to generally reflect the risk.

### **Financial accountability**

To avoid another insurance crisis, operating in a commercially reasonable manner (i.e., revenues must cover expenses) was one of the core mandates given to LAWPRO by Convocation in 1994. To meet the total expected Primary Program claims costs and operating expenses for 2022, LAWPRO evaluates its likely investment income, and then considers its revenue (i.e., premiums and transaction levies).

Unlike other insurance companies, LAWPRO does not operate to make an underwriting profit. It loses approximately 10 cents on every dollar due to the high loss ratio and a lower than market premium. The Company is able to break even with the returns on its investments. In a typical year, investment income provides a per policy subsidy for the base premium of a few to several hundred dollars.

### **Capital requirements**

As a regulated insurance company, LAWPRO must act in compliance with requirements of its regulator, the Financial Services Regulatory Authority (FSRA)).

Thus, as a final consideration before determining the base premium, LAWPRO must consider its capital needs. FSRA and other Canadian regulators use the Minimum Capital Test ("MCT") in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation that compares the insurer's capital or net assets available to the "capital required".

A preferred MCT range is set to provide an appropriate buffer, to allow the Company to withstand adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration, and still remain above the various regulatory thresholds. The MCT was

within LAWPRO's preferred range at December 31, 2020 (229%) and at June 30, 2021 (219%). And while it fell below the preferred range at June 30, 2020 (205%) due to the impacts of the pandemic, it remained above minimums set by FSRA. See Paragraphs 68-74 in the attached report for more details on what LAWPRO must do to set and meet MCT requirements.

The insurance industry is undergoing a complete financial statement overhaul from the move to International Financial Reporting Standards 17 (IFRS 17) effective January 1, 2023. We do not yet know the magnitude of this impact, but note that, all other things being equal, this change may require an increase to annual base premiums in one or more future years.

### **Why LAWPRO matters**

LAWPRO has been remarkably successful in achieving the mandate the Law Society gave it in 1994. It is a success the Benchers who made the decision to set up LAWPRO in the early 1990's can justifiably be proud of. Today, because of their foresight, and skilled management, LAWPRO offers many advantages to the bar including:

- Guaranteed availability of affordable insurance to all lawyer licensees
- Consistent coverage, terms, and conditions for all lawyer licensees
- Proactive assistance to help prevent claims from crystallizing and repairs on potential claims that may not trigger a deductible or premium increase
- Proactive claims prevention efforts and practical resources to help reduce claims risks (practicePRO)
- A coordinated and principled approach to handling claims that sees us shape legal standards of care by making reasonable settlements where a lawyer truly made a mistake and defending lawyers where no clear error was made or damages suffered
- Automatic, free Run-off coverage of \$250,000
- A built-to-purpose Excess insurance program with a competitive premium for solo and small firm lawyers
- Coverage for lawyers doing pro bono work in a wide variety of circumstances
- An insurance provider that is financially stable and can therefore be relied upon to pay claims

### **Conclusion**

The continued financial stability of the E&O program supports the Law Society's public protection mandate and provides financial security for members of the profession. LAWPRO has successfully navigated the operational and financial challenges of the pandemic, and is adapting to the new realities of a post-pandemic world.

LAWPRO expects there will be premium increases in future years because of pandemic-related claims costs, increased operational expenses, and changing capital requirements. Some consideration was given to increasing premiums for the 2022 program, but the Board recognized the financial challenges that many members of the profession currently face.

The LAWPRO Board considers the Primary Program outlined above and in the attached Report to be appropriate and consistent with LAWPRO's mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Primary Program of Insurance for 2022 to Convocation and asks for Convocation's acceptance of this Report, so that the 2022 Primary Program can be implemented by January 1, 2022.

Motion to be moved at the meeting of Convocation on October 1, 2021

**THAT Convocation approve the Primary Program of Insurance for 2022 as offered and recommended by the LAWPRO Board in the attached Report.**

*Original signed by Andrew Spurgeon*

*Original signed by Daniel Pinnington*

*Andrew Spurgeon*

*Daniel E. Pinnington*

Andrew Spurgeon  
LAWPRO Chair

Daniel E. Pinnington  
President & CEO



REPORT TO CONVOCATION  
(2022 Insurance Program Proposal)

OCTOBER 2021

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# LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")

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## REPORT TO CONVOCAATION OCTOBER 2021

### INTRODUCTION

1. LAWPRO provides the mandatory professional liability insurance coverage for the more than 29,000 Ontario lawyers in private practice. Each September, LAWPRO's Board of Directors reports to Convocation on changes to the insurance program for the following calendar year. The timing of this Report is necessitated by the logistics of starting the application process in early November so that all policies can be renewed effective January 1, and the need to negotiate and place related or corollary reinsurance treaties prior to the renewal date.
2. For 2022, LAWPRO's Board and Management conducted their annual review of the Primary Errors and Omissions Program (the "Primary Program") and offers an insurance program for 2022 with the changes outlined in this Report.
3. Based on LAWPRO's mandate from Convocation, careful consideration of coverage needs, claims trends, potential risks, regulatory requirements, and affordability, the LAWPRO Board of Directors recommends that Convocation accept this Primary Program of Insurance for 2022 so that it can be implemented by January 1, 2022.

### BACKGROUND

4. LAWPRO was created in response to the "insurance crisis" of the early 1990s. At that time, it was common practice for lawyers to engage in mortgage brokering when acting on real estate matters. In the aftermath of a real estate crash, many clients sued their lawyers for the financial losses they suffered. Largely as a result, in 1994, the Law Society of Ontario's ("Law Society" or "LSO") insurance program was underfunded by more than \$200 million.
5. The resulting crisis presented the Ontario Bar with one of the most serious challenges in its history: finding \$200 million to cover the claims the Law Society's insurance program faced and deciding whether to continue to provide Errors and Omissions ("E&O") coverage for Ontario lawyers or to withdraw from the insurance market entirely. Withdrawing completely would have meant that replacement insurance would be

unavailable at the previous price point and may not have been available at all if commercial carriers chose not enter the market, or not offer insurance to some lawyers because of their individual circumstances. Either way, the Law Society determined that "Convocation can no longer attempt to deliver a Rolls Royce insurance policy at the cost of a Ford."<sup>1</sup>

6. To address the crisis, Convocation formed a Task Force which ultimately recommended the creation of a specialised, regulated insurance company with financial accountability. Convocation accepted this recommendation and the mandate given requires that the Law Society's insurance program:

- Operate independently from the Law Society;
- Operate in a commercially reasonable manner (i.e., revenues must cover expenses);
- Offer premiums that generally reflect risk (i.e., those with greater risk pay higher premiums); and
- Settle claims fairly and quickly, though not on a "no-fault" basis.

7. LAWPRO was created further to this recommendation and, for the last 26 years, it has operated based on the mandate and principles laid out in the 1994 Task Force Report.

8. LAWPRO has been remarkably successful in achieving the mandate the Law Society gave it in 1994. It is a success the Benchers who made the decision to set up LAWPRO in the early 1990's can justifiably be proud of. Today, because of their foresight, and skilled management, LAWPRO offers many advantages to the bar including:

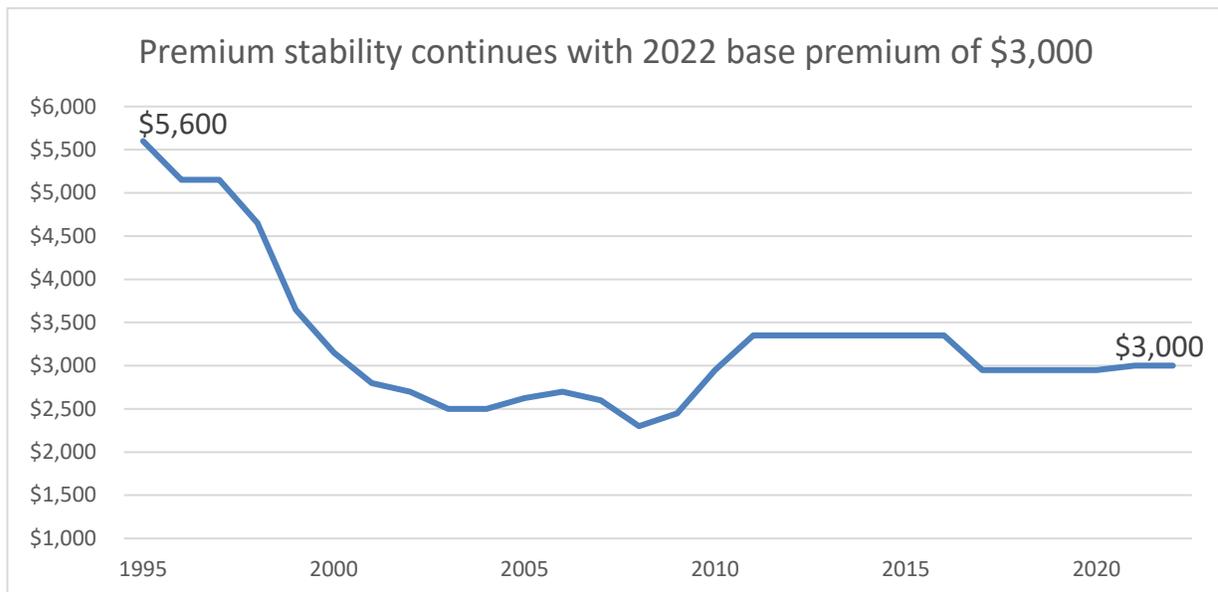
- a. Guaranteed availability of affordable insurance to all lawyer licensees;
- b. Consistent coverage, terms, and conditions for all lawyer licensees;
- c. Proactive assistance to help prevent claims from crystallizing and repairs on potential claims that may not trigger a deductible or premium increase;
- d. Proactive claims prevention efforts and practical resources to help reduce claims risks ([practicePRO](#));
- e. A coordinated and principled approach to handling claims that sees us shape legal standards of care by making reasonable settlements where a lawyer truly made a mistake and defending lawyers where no clear error was made or damages suffered;

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<sup>1</sup> *Report to Convocation of the Insurance Task Force and the Insurance Committee*, October 28, 1994 (Amended November 15, 1994), paragraph 51 on page 15.

- f. Automatic, free Run-off coverage of \$250,000;
- g. A built-to-purpose Excess insurance program with a competitive premium for solo and small firm lawyers;
- h. Coverage for lawyers doing *pro bono* work in a wide variety of circumstances; and
- i. An insurance provider that is financially stable and can therefore be relied upon to pay claims.

9. One of the strongest testimonies to LAWPRO’s success as a professionally run insurance company is a stable base premium that is lower today than it was 10 years ago and far lower than it was after the 1994 insurance crisis. The 2022 base premium is \$3,000, the same as it was last year. And it is worth noting many members of the profession pay much less than the base premium by taking advantage of the various discounts LAWPRO offers (see Paragraph 63).



10. Contrast the benefits that LAWPRO offers with the circumstances Ontario lawyers would likely face if one or more commercial insurers were providing insurance to the profession:

- a. Premiums would vary widely by firm size and area of practice, and for individuals with a history of reported claims;
- b. Carriers could simply refuse to insure individual lawyers they felt were too great a claims risk, making it impossible for some lawyers to maintain their practice status;
- c. Coverage terms and conditions would vary widely;

- d. The public would be at risk as it would be more difficult to know if a lawyer's coverage had been cancelled;
- e. A premium would likely be charged for Run-off coverage, and there would likely be separate premiums if the lawyer was at different firms;
- f. There would be the potential for gaps in coverage as a new policy would be required if a lawyer changed firms, and the lawyer would have to obtain a separate policy to cover claims from work done at a previous firm; and
- g. Lawyers would have to pay insurance broker fees, adding 15% or more to the cost of insurance.

11. The financial viability of an independent malpractice insurer, particularly in a hardening market when insurance can be more difficult to obtain at an affordable rate, is paramount to meeting the Law Society's public protection mandate. If LAWPRO's financial health is compromised, we run the chance of another insurance crisis, less protection for the public and no backstop for Ontario lawyers. This is the nightmare scenario the Law Society of England and Wales continues to struggle with almost a decade after several commercial insurers pulled out of its mandatory program.<sup>2</sup>

## 2022 PROGRAM FEATURES

12. As a matter of public protection, E&O insurance is required of all lawyers in private practice, including sole practitioners, lawyers practising in association or partnership, paralegals acting in partnership with lawyers, paralegals holding shares in professional corporations with lawyers, and lawyers practising in a law corporation who are providing services in private practices. Lawyers can be exempt from the insurance requirement and [exemption eligibility criteria are available at lawpro.ca](#). Exemption scenarios include when lawyers engage in the practice of law only for and on behalf of a corporate or government employer, as an employee or volunteer in a clinic that is funded by Legal Aid Ontario and that meets certain criteria, lawyers on a temporary leave of absence, or lawyers otherwise not practising law.

13. The following is a brief summary of the 2022 Primary Program:

### *Standard base premium*

- \$3,000 per insured lawyer (unchanged from 2021)

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<sup>2</sup> See "[Mandatory professional indemnity insurance & a mandatory insurer: A global perspective](#)" LAWPRO Magazine, November 2011; "[Aon unit in shock professional indemnity insurance exit](#)", Insurance Business UK, 23 Aug 2019) and "[Retired solicitors fear ruin when insurance safety net closes](#)" The Law Society Gazette, 19 April, 2021.

### *Coverage Limits*

- \$1 million per claim/\$2 million aggregate limit applicable to claim expenses, indemnity payments and/or cost of repairs together

### *Innocent Party Coverage*

- Innocent Party coverage protects members of the public and lawyers against the dishonest, fraudulent, criminal, or malicious acts or omissions of present or former partners, associates, employed lawyers and firm employees
- \$250,000 sublimit for innocent party claims per claim/in the aggregate is included in base coverage
- Additional Innocent Party coverage can be purchased to increase limits to \$500,000 per claim/aggregate for \$75 per insured lawyer or \$1 million per claim/aggregate for \$125 per insured lawyer

### *Transaction Premium Levy*

- \$65 per real estate transaction and \$100 per civil litigation transaction

### *Deductible*

- Standard deductible is \$5,000 per claim
- LAWPRO offers deductible options from \$0 to \$25,000. Insureds can choose to have the deductible apply to both claim expenses and indemnity payments, or to indemnity payments only. Premiums will increase or decrease depending on the deductible option. Each lawyer practicing in a law partnership or law corporation must elect the same amount and type of deductible as all other lawyers in the firm.

### *Premium Discounts*

#### *For those who take approved risk management courses*

- \$50 discount per approved course, subject to a \$100 maximum

#### *For new lawyers*

- less than 1 full year in practice: 50% discount
- less than 2 years in practice: 40% discount
- less than 3 years in practice 30% discount
- less than 4 years in practice: 20% discount

*For those who limit their practice to criminal<sup>3</sup> and/or immigration law (restricted areas of practice)*

- 50% discount

*For those who work part-time*

- 50% discount is available to practitioners who, in both their current and prior fiscal year, restrict their law practice to 20 hours per week on average for each week worked, up to 750 hours per year (including time for undocketed work), and have gross billings of \$90,000 per year or less

*For those employed at a Designated Agency<sup>4</sup>*

- 75% discount in recognition of low risk and enhanced access to justice

14. The following table contains examples of premiums which would be charged to members depending on the nature of their practice, along with historical premiums.

#### **Premium Rating Examples (In Dollars)**

	<b>1995<sup>5</sup></b>	<b>2005<sup>6</sup></b>	<b>2015<sup>7</sup></b>	<b>2022<sup>8</sup></b>
<b>Base premium</b>	\$5,600	\$2,625	\$3,350	<b>\$3,000</b>
<b>1. Sole Practitioner - Real Estate Law</b> - \$10,000 defence & indemnity deductible - early lump sum payment discount - \$250,000 Optional Innocent Party cover	\$6,000 <sup>9</sup>	\$2,528	\$3,549	<b>\$2,825</b>
<b>2. Firm Practitioner - Real Estate Law</b> - \$25,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$6,000 <sup>10</sup>	\$2,547	\$3,431	<b>\$2,725</b>
<b>3. New Lawyer Practising in Association</b> - first year in practice discount - \$250,000 Mandatory Innocent Party cover - \$10,000 defence & indemnity deductible - early lump sum payment discount	\$3,900 <sup>11</sup>	\$1,478	\$1,624	<b>\$1,225</b>

<sup>3</sup> Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

<sup>4</sup> A "Designated Agency" can include a Civil Society Organization that has been approved for the general premium discount.

<sup>5</sup> Members are also required to pay a \$25 levy for each civil litigation or real estate transaction not otherwise excluded.

<sup>6</sup> Members are also required to pay a \$50 levy for each civil litigation or real estate transaction not otherwise excluded.

<sup>7</sup> \$65 per real estate transaction and \$50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied.

<sup>8</sup> \$250,000 Innocent Party cover now provided free for all insureds.

<sup>9</sup> Subject to a \$6,000 defence and indemnity deductible (adjusted to \$7,500 in the case of an insured with one previous claim, or \$8,500 in the case of two previous claims).

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<b>4. Criminal Lawyer (sole practitioner)</b> - Restricted Areas of Practice discount - \$10,000 defence & indemnity deductible - early lump sum payment discount	\$5,600 <sup>12</sup>	\$1,228	\$1,374	<b>\$1,225</b>
<b>5. Part-time Lawyer (in association)</b> - Part-time Practitioner discount - \$1,000,000 Optional Innocent Party cover - \$10,000 defence & indemnity deductible	\$6,000 <sup>1314</sup>	\$1,877	\$1,923	<b>\$1,400</b>
<b>6. Firm Practitioner with 1 Claim</b> - claims history levy surcharge - \$5,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$8,500 <sup>15</sup>	\$5,375	\$6,100	<b>\$5,500</b>
<b>7. Sole Practitioner with 2 Claims</b> - claims history levy surcharge - \$5,000 defence & indemnity deductible	\$10,600 <sup>16</sup>	\$7,625	\$8,350	<b>\$8,000</b>
<b>8. Designated Agency Lawyer</b> - \$5,000 defence & indemnity deductible - Risk Management Credit (x 2)	\$5,600	\$2,550	\$3,250	<b>\$650<sup>17</sup></b>

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Subject to \$250,000 Innocent Party cover only, additional limits not available.

<sup>15</sup> Supra, note 11

<sup>16</sup> Supra, note 11

<sup>17</sup> If a lawyer is employed exclusively by one or more Designated Agencies and any civil litigation transaction is performed in the course of such employment, the Lawyer is not required to pay a civil litigation transaction levy surcharge.

## CONTINUING TO HELP LOWER RISK DURING THE PANDEMIC

15. The disruptions resulting from the COVID-19 pandemic are continuing to cause uncertainty for many lawyers. A number of resources prepared by practicePRO, LAWPRO's risk management initiative, have helped lawyers work remotely, manage changing legal technologies, understand new rules, and take steps to improve their health and wellness. Through the pandemic the most frequently accessed practicePRO resources were as follows (click on the links to see the individual resources):

- [Precedents and Retainers](#)
- [A Discussion: Continuing to Manage; Mental Health, Resilience and Resources](#)
- [Managing the Second Wave: Mental Health, Resilience and Resources](#)
- [Working Together, Remotely – Managing and Leading Through COVID and Beyond](#)
- [Tips for calculating limitations deadlines accounting for the COVID-19 emergency suspension period](#)
- [New Lawyer Resources](#)

A [full listing of all practicePRO COVID-related resources is available here](#). Visit the [practicePRO website](#) to access other LAWPRO risk management and claims prevention resources.

## PROMOTING ACCESS TO JUSTICE

16. In 2021, LAWPRO approved three new organizations that provide free legal services to the public for the “Designated Agencies” discount. Lawyers working in these organizations receive a discount equal to 75% off the base premium. Lawyers working in these agencies are also exempt from payment of the civil litigation levy for the services they provide through these agencies. Typically, these agencies promote human rights, justice initiatives, and otherwise enhance access to justice. There are a total of nine organizations with LAWPRO Designated Agency status.<sup>18</sup>

17. LAWPRO continues to support *pro bono* and initiatives intended to bolster legal services. Lawyers who do not maintain their practice coverage can still provide legal services to LAWPRO-approved Pro Bono Ontario programs and, if there is a claim, it will be covered as part of the run-off coverage that is usually not available for services provided after a lawyer ceases the practice coverage. Likewise, if a practising

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<sup>18</sup> See the [LAWPRO website for more details and a list of LAWPRO approved Designated Agencies](#).

lawyer takes part in these activities and a claim arises, that lawyer will not have to pay a claims history levy surcharge or deductible. To encourage lawyers to support each other and bolster skills within the profession, LAWPRO also treats claims associated with risk-approved mentoring activities in a similar fashion<sup>19</sup>.

## CLAIMS TRENDS

18. As the paragraphs below highlight in more detail, as a result of the pandemic, the count, cost and types of claims in the LAWPRO claims portfolio was different in 2020 and 2021 from prior years. At this point we can't fully know exactly how all the changes brought on by COVID-19 will affect claims in the coming years.

19. LAWPRO's long term experience is that claims come to light on average 2-3 years after the work on a matter was done. In real estate, family, and wills and estates matters, claims can arise decades after a file was closed.<sup>20</sup> In a typical year we would expect to see approximately 275 claims costing more than \$100,000, and 5-15 claims that will hit the \$1 million dollar per claim policy limit. Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were over three times more likely to report a claim during the past year than those with no claims in the prior 10 years. The 30% of LAWPRO insureds with 2 or more claims are responsible for 85% of LAWPRO's claims costs (See Appendix E).

20. Economic downturns typically mean an increase of malpractice claims as clients seek recompense from their lawyers for the losses they have suffered. While some parts of the economy have seen devastating impacts because of the pandemic, other parts have not been impacted and some are thriving. LAWPRO has not seen, at least at this point, an increase in claims related to economic losses as a result of the pandemic, likely due to increasing real estate prices and rising financial markets. If we see inflation, a real estate correction, and/or financial markets correction, we may see additional pandemic-related claims.

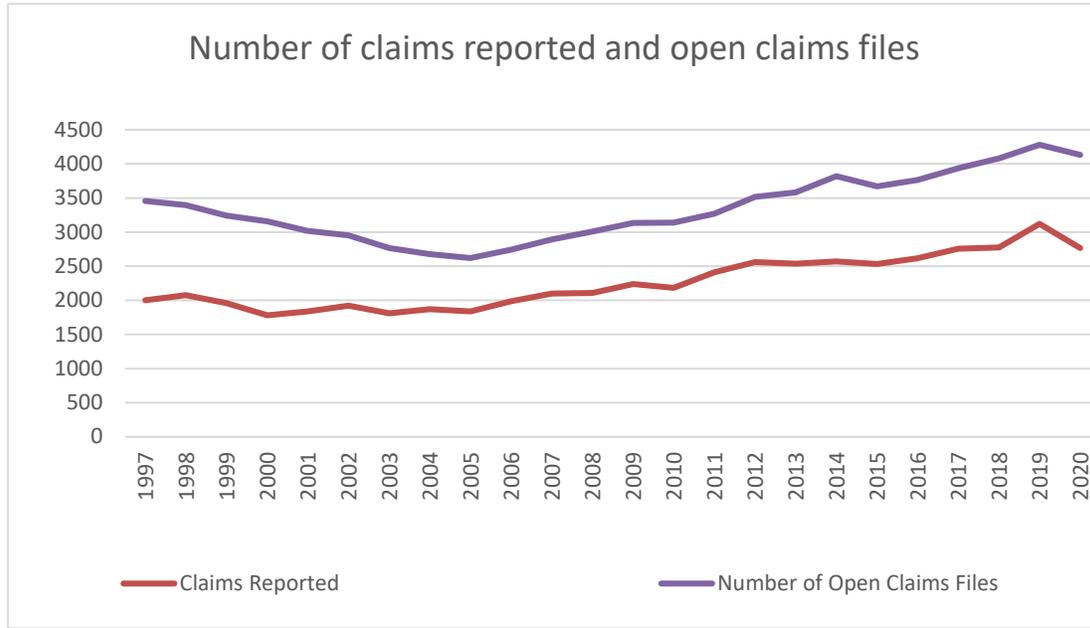
21. As the following graph illustrates, relative to the trend we have seen in recent years there was a significant decline in the number of claims reported to LAWPRO in 2020. There were 2,768 reported claims

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<sup>19</sup> For more on this, see the [LAWPRO Pro Bono Coverage](#) Chart.

<sup>20</sup> "[Don't let claims follow you into retirement](#)", LAWPRO Magazine Vol. 16.3 (February 2017).

in 2020, down from 3,121 in 2019. However, all indications are that claims are increasing as business gets back to normal. In the first half of 2021, LAWPRO has had 1,718 reported claims, a count that is up 26% from the same period last year and up 12% from the same period in 2019.



22. Beyond claims counts, LAWPRO monitors claims costs, which also show every indication that business is returning to normal. Claims costs for the first half of 2021 were \$41.7 million, up 12% relative to the same period last year and up 8% relative to the same period in 2019. Our current estimate for 2021 claim costs is \$102 million, and for 2022 is approximately \$100 million.

23. We also monitor the average cost of a claim over the long term. Claim costs have increased steadily over time, at an average annual rate of 3.6%. Total costs were \$59 million for 2000 and crossed the \$100 million threshold in 2016. Claims count has also increased over time, but at a lower on average annual rate of 2.1% over the period of 2010 to 2018. The net effect has been an increase in average cost per claim from \$33,600 in 2000 up to \$36,600 in 2018.<sup>21</sup>

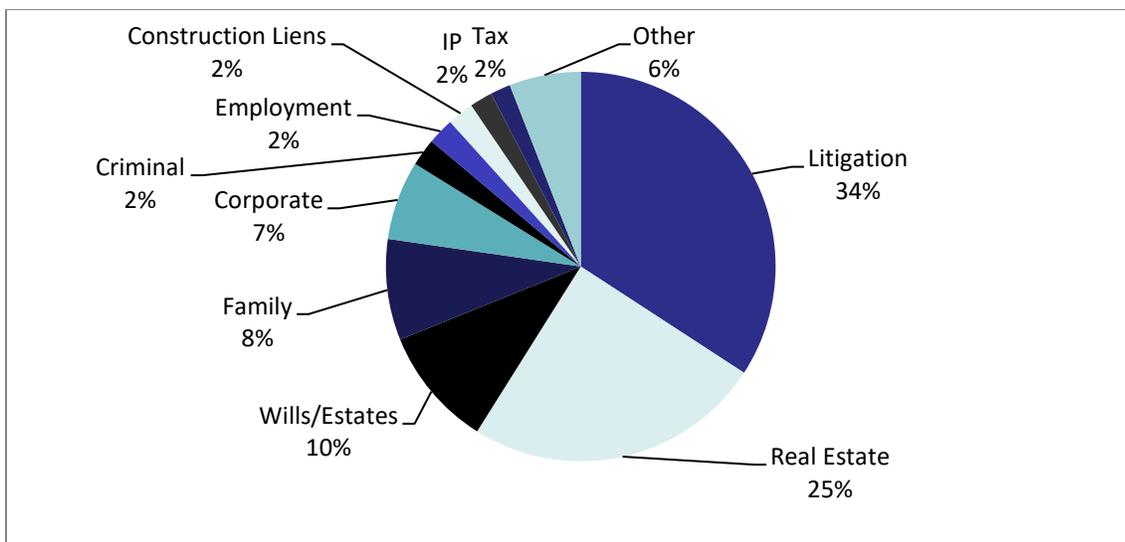
### What types of claims are happening?

<sup>21</sup> Average cost per claim figures quoted here do not include claims after 2018 as it typically takes 2-3 years for LAWPRO investigate and set a *reserve* on a claim file i.e., the amount we expect a claim will ultimately cost us.

24. Over the years, LAWPRO has seen fairly consistent claims trends by area of law and type of malpractice error, which are illustrated in the pie charts and discussed in more detail in the next two paragraphs.

25. When claims by area of law are considered, LAWPRO’s present risk analysis reaffirms the results of previous Reports to Convocation indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, as is illustrated in the pie chart below.<sup>22</sup> In 2020, the number of claims in these two areas of practice dropped but they still represented 51% of the claims reported under the Primary Program. The number of real estate-related claims decreased to 609 in 2020, from 648 the previous year. Litigation-related claims had an even larger decrease to 549 in 2020 from 822 the previous year, largely as a result of reduced litigation work due to the closure of the courts. This reduction in litigation and real estate-related claims (two areas particularly affected by closures due to the pandemic) account for most of the decline in new claims for 2020. Given the hot real estate market in the first half of 2021, real estate-related claims were higher than the same period in 2020 (287 vs. 243 claims), but not as high as the first half of 2019 (341 claims). Whereas, in the first half of 2021, litigation-related claims were significantly higher than 2020 (353 vs. 243) and higher than 2019 (340 claims).

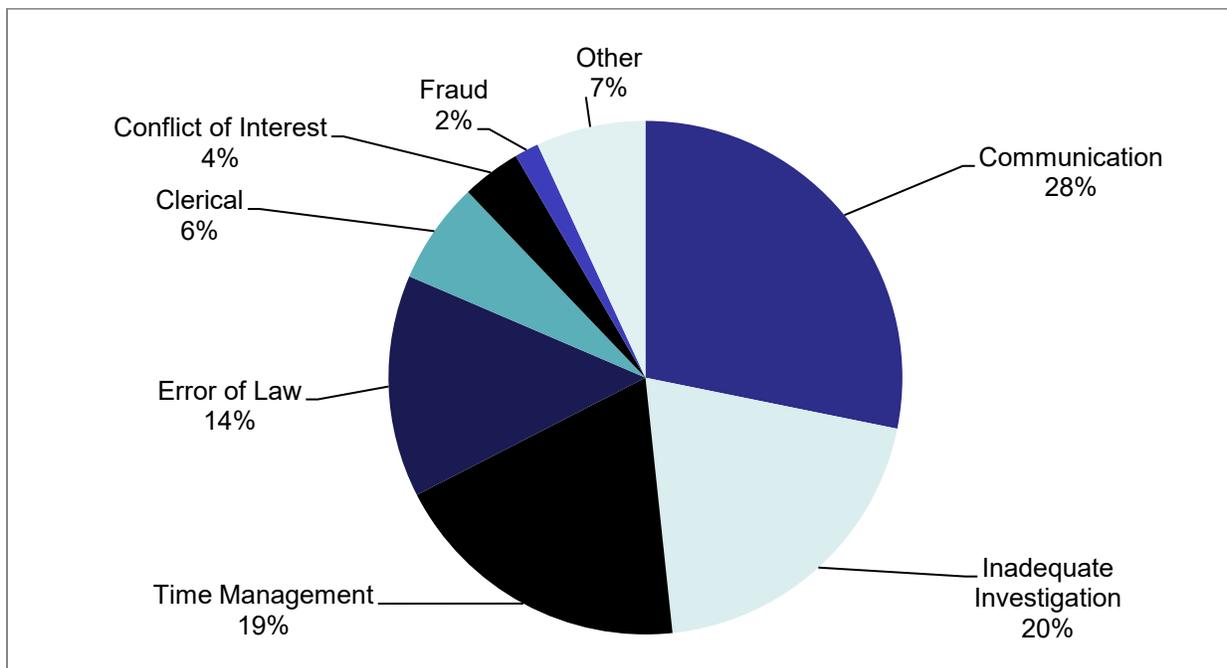
#### Claims Count by Area of Law (2010-2020)



<sup>22</sup> A more detailed description of the common claims scenarios for each of these broad error types in the second pie chart is available in Appendix “D”.

26. In 2020, inadequate investigation and communications errors tied – at 609 each – for the cause of the highest number of claims followed by time management and errors of law. There were 609 communication-related claims in 2020, a decrease from 724 the previous year. Similarly, there were 309 time management related claims in 2020 compared with 494 the previous year. The reduction in time management related claims was a direct result of less litigation activity due to the closing of the courts. As litigation activity picked up in late 2020 and early 2021 we saw a growing number of claims arise due to confusion around the tolling of limitations that occurred in mid-2020.

Claims Count by Description of Loss (2010-2020):



27. While there are variations across different areas of practice by type or error and proportion, they generally follow those illustrated in the above pie chart (i.e., communications, inadequate investigation and time management/deadline related errors are the most common errors in most areas of practice). Fact sheets that highlight the most common causes of malpractice claims for the major areas of practice can be viewed at [practicepro.ca/factsheets](https://practicepro.ca/factsheets).

## RISK MANAGEMENT INITIATIVES

28. A principal mandate of LAWPRO is to help the legal profession reduce claims by helping manage the risks associated with practice. As Professor Richard Susskind said: “*We like to build a fence around the top of a cliff, rather than station an ambulance at the bottom.*” This is accomplished through the practicePRO program; the TitlePLUS title insurance program, and support of the Member Assistance Plan (“MAP”) from Homewood Health. LAWPRO contributes almost one-half the cost of operating the MAP.

- **practicePRO® Program:** LAWPRO’s successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources that help lawyers avoid malpractice claims. All practicePRO resources are made available to all Ontario lawyers and paralegals at no charge. These include articles in *LAWPRO Magazine* and other law-related publications, information on the practicePRO website and AvoidAClaim blog, social media, and live presentations. The practicePRO website features LAWPRO’s claims prevention resources that are particularly valuable to solos and small firms.
- **Helping lawyers avoid fraud:** Thanks to LAWPRO’s efforts, fraud-related claims are down, but lawyers are still being victimized and fraud-related claims continue to be an ongoing and significant concern for LAWPRO. Currently, wire frauds are the most common with a handful of lawyers being victimized in a typical year (i.e., lawyers wiring funds from trust account after being duped with a fake cheque). Insureds can call LAWPRO in the event they are targeted by a suspected fraudster. Working within confidentiality obligations imposed by the *Rules of Professional Conduct*, one of our Fraud Team members will go through the common fraud scenarios to help spot red flags that may indicate the lawyer is being duped and help determine if the matter is legitimate or not. In the event the matter is a fraud and there is a potential claim, we will work with the lawyer to try to prevent the fraud and minimize potential claims costs. By visiting the AvoidAClaim.com blog and typing in names or scenarios, lawyers can see confirmed frauds reported to us. Our Cyber Fraud Fact Sheet and Real Estate Fraud Fact Sheet, available at [practicepro.ca/fraud](https://practicepro.ca/fraud), are a good reminder of key ways to identify possible dangerous situations. It is clear that LAWPRO’s efforts to help insureds avoid frauds have reduced the number of fraud-related claims.
- **The LAWPRO Risk Management Credit:** This premium credit, available since 2001, is a significant LAWPRO risk management initiative. To be eligible for a credit (\$50 each up to a maximum of

\$100) on premiums for 2022, lawyers (and paralegal insureds in combined licensee firms) must have participated in LAWPRO-approved CPD programs or Homewood Health e-Learning courses between September 16, 2020 and September 15, 2021. Tens of thousands of lawyers attended the over 241 programs that qualified for the credit during this period. The approval process is handled by LAWPRO (we look for programs that include content on where claims happen, why they happen, and the steps that can be taken to lessen the likelihood of a claim) and is distinct from the Law Society's CPD accreditation process.

- **TitlePLUS® Program:** TitlePLUS insurance is a competitive title insurance product that makes a positive difference in the Ontario real estate market. It expands the title insurance choices offered to consumers and lawyers and has helped broaden coverage while keeping title insurance premiums down. In addition, the TitlePLUS program regularly catches fraud due to automated, proprietary, and secret flags built into its underwriting that contributes to saving money – for consumers and the mandatory insurance program.
- **Member Assistance Program:** Lawyers are exposed to high levels of stress on a daily basis and long-term stress can drive people to use, misuse or even become addicted to alcohol or legal/illegal drugs, or to experience challenges to physical or mental health. While it can be difficult to identify the reasons underlying why errors occur and claims develop, stress, addictions, and other untreated wellness issues are often found or suspected to be contributing factors in many LAWPRO claims. To help support lawyers in private practice, LAWPRO contributes approximately one-half the annual cost of the Member Assistance Plan (“MAP”). The MAP provides confidential assistance to Ontario lawyers, paralegals, judges, students at Ontario law schools and accredited paralegal colleges, licensing-process candidates, and their families.

## CONTINUING STABILITY AND ONLY MINOR CHANGES IN THE PRIMARY PROGRAM FOR 2022

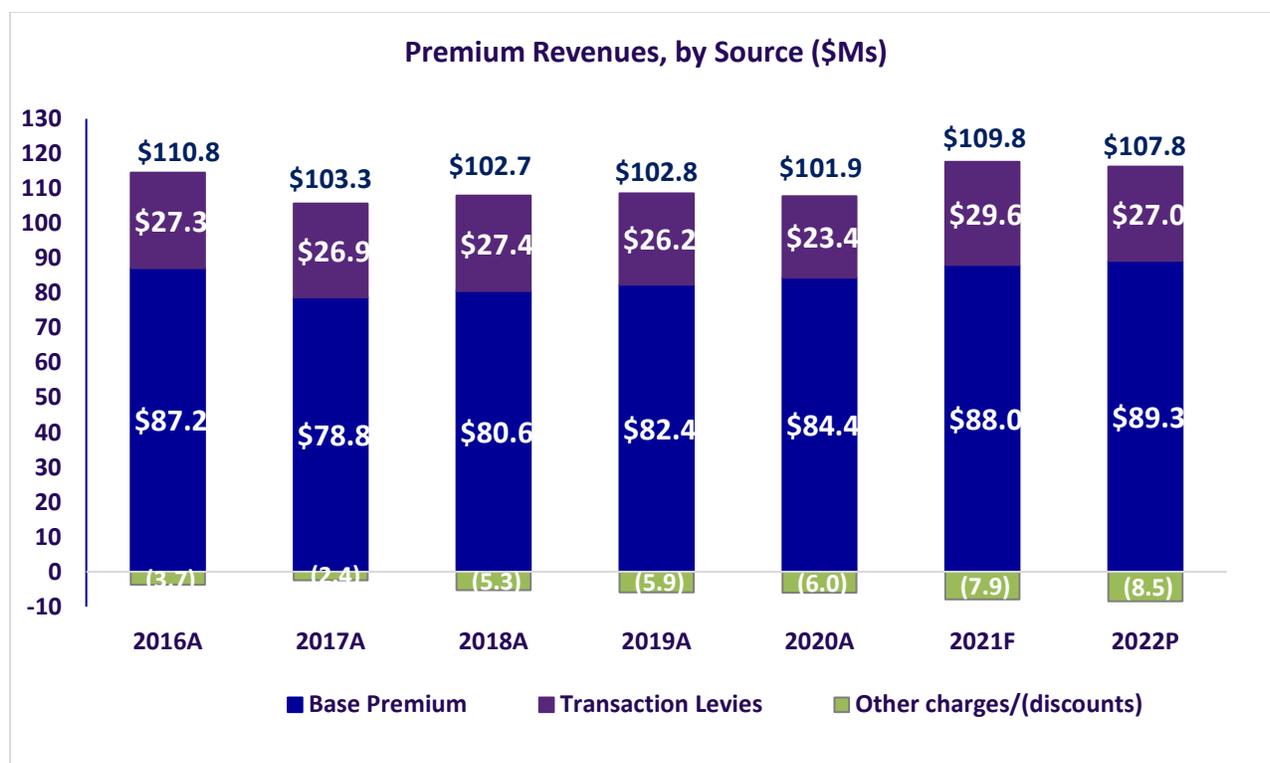
29. The LAWPRO Board has determined that the general structure of the current Primary Program continues to meet the needs and practice realities of the profession. In developing the details of the 2022 Primary Program, LAWPRO has considered claims trends and costs, including pandemic-related claims; and the pressure on our insured professionals to control costs, especially in the current environment. For the 2022 Primary Program, LAWPRO has focused on keeping the premium at the same levels as in 2021,

despite the increasing claims volatility. We will be making minor changes to the policy wording for underwriting clarity in conditions and definitions<sup>23</sup>.

## REVENUES

30. To meet the total expected Primary Program claims costs and operating expenses for 2022, LAWPRO evaluates its likely investment income, and then considers premiums, transaction levies, and other discounts and surcharges. LAWPRO does not operate to make an underwriting profit and loses approximately 10 cents on every dollar due to the high loss ratio and a lower than market premium. The Company is able to break even with its return on investments.

31. Premium revenues for recent years are illustrated in the following graph. The primary errors and omissions premium revenues projected for 2022 is \$107.8 million.



<sup>23</sup> These changes include clarifying the information required when providing notice of a claim, preventing “rolling” limitation periods when it comes to coverage disputes, and reinforcing the exclusion that applies when claims relate to enterprises owned by insureds (or their law partners or their spouses).

## *Investment Income*

32. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claims expenses, thereby reducing the amount of funds that must come from premium sources. In a typical year investment income provides a per policy subsidy for the base premium of a few to several hundred dollars.

33. LAWPRO's prudent investing philosophy includes a conservative, well-diversified equity portfolio. LAWPRO works to position its portfolio for capital preservation and steady growth. LAWPRO provides further stability to the Primary Program, with the assistance of two professional fund managers, by segregating sufficient money into a separate portfolio (the asset liability matched portfolio or "ALM portfolio") to pay anticipated future claims costs as they become due, and any surplus capital is held in a different portfolio ("Surplus portfolio"). The securities in the ALM portfolio consist of high-quality government and corporate fixed income securities, with the future cash inflows to LAWPRO arranged to coincide with the expected payout patterns of the future claim costs. The Surplus portfolio consists of a prudent mix of fixed income and equity securities.

34. The ALM Portfolio and the fixed income portion of the Surplus portfolio are impacted by interest rate changes, and together represent around 78.8% of the total investment portfolio. The Bank of Canada's overnight interest rates have been decreasing for some time, with sudden drops in 2020 due to the pandemic. The rate was dropped to 0.25% in March 2020 and has remained at that level. As such, the rates of return on fixed income securities have also remained low since that time. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. The rates are expected to remain low into 2023. This prolonged "low for long" environment has placed continued pressure on fixed income yields, while the eventual rise in central bank rates could result in a shock to fixed income security prices.

35. As a result of these risks, LAWPRO maintains a prudent investing philosophy to protect its investments. The portfolios had investment income, including unrealized gains, of \$16 million in 2020 as compared to \$41 million in 2019. The Company expects this downward trend on returns to continue. LAWPRO expects to receive significantly less investment income over the next 2-3 years due to the knock-on effects of the pandemic.

## *Levy Surcharges*

36. As part of its commitment to operating the Primary Program in a commercially-reasonable manner and better ensuring that premiums reflect the general practice risks of insureds (i.e., those that are a higher risk pay a higher premium), LAWPRO utilizes levy surcharges. The use of transaction levies ensures an element of risk rating in the Primary Program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which would likely occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when first introduced in 1995. For more information on risk rating, see the discussion beginning at paragraph 49 of this Report.

37. At present, the levy surcharges include a claims history levy surcharge, a \$100 civil litigation transaction levy and a \$65 real estate transaction levy. Revenues from these levy surcharges are applied as premium revenue, to supplement base premium revenue.

38. The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice (i.e., pay an extra \$2,500 per year for the five years following a claims payment), to \$25,000 for a lawyer with five claims paid in the last five years in practice. An additional \$10,000 is levied for each additional claim paid in excess of five.

39. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the revenue from real estate transaction levies declined by approximately 50% between 1999 and 2009 (prior to the increase in the real estate transaction levy for the 2010 Primary Program).

40. With respect to the real estate transaction levy, the increased use of title insurance is considered to be largely responsible for a reduction in the count of these levies since 1999. Lawyers acting for those obtaining an interest or charge in the land, in many instances, are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers. It is estimated that more than 90% of residential real estate transactions in Ontario are title-insured (LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy fillings). In recent years, the number of real estate transaction levies collected

has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

41. The Ontario real estate market has been resilient in the last few years, with home prices hitting record highs in 2021, but there are indications that the market will be down and varied in the near term. The Teranet-National Bank House Price Index<sup>24</sup> notes that in June 2021 Canada saw a record 12-month rise of home prices. More recent statistics show a decline in the number of home sales, which could mean that an end is in sight to the rapid rise in home prices. For the first half of 2021 real estate transaction levy revenue was \$10.8 million which is 29% greater than for the same period in 2020, and 17% greater than for the same period in 2019. We estimate the real estate transaction levies will be \$18.0 million in 2021 and \$19.1 million in 2022.

42. The shutdown of the courts in 2020 had a significant impact on civil litigation transaction levy revenue. Levies dropped from \$7.6 million in 2019 to \$5.8 million in 2020. For the first half of 2021, civil litigation transaction levy revenue was \$4.6 million which is higher than comparable periods for prior years (i.e., \$2.7 million for 2020 and \$3.1 million 2019.) We estimate civil litigation transaction levies will be \$7.7 million in 2021 and \$7.9 million in 2022.

#### *Real Estate Practice Coverage Option (REPCO)*

43. In 2006, title fraud had begun to spiral in Ontario. Organized crime was involved in the theft of titles from innocent homeowners in increasing numbers and a Court of Appeal decision in late 2005 affirmed that a fraudulently signed mortgage was valid and enforceable against an innocent homeowner<sup>25</sup>. The government took action with a series of fraud-prevention reforms. These included new eligibility criteria for those registering documents through the electronic land registry system. The new criteria included a prescribed form of insurance coverage that would respond in the event of fraud relating to the registration of fraudulent documents.

44. Now, all lawyers who practise real estate law in Ontario must purchase the Primary Program's Real Estate Practice Coverage Option. This coverage provides insurance protection to ensure that members of the public, and Land Titles Assurance Fund, are protected against the registration of

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<sup>24</sup> <https://housepriceindex.ca/2021/07/june2021/>

<sup>25</sup> For more on this, see Bob Aaron's Toronto Star article of December 30, 2006: "[In 2006, title fraud top real estate story](#)".

fraudulent instruments under the Land Titles Act. The coverage limit is \$250,000 per claim/\$1 million in the aggregate per policy period, applicable to claim expenses, indemnity payments and/or costs of repairs together. The premium is \$100 annually per insured lawyer.

### *Base Premium*

45. The full impact of the COVID-19 pandemic on LAWPRO remains to be seen. To meet capital requirements, the LAWPRO Board expects that premium increases will be necessary in future years due to lower investment income coupled with an expected increase in claims costs. To allow LAWPRO to meet minimum capital requirements set by our regulator, the Financial Services Regulatory Authority of Ontario, some consideration was given to raising premiums for the 2022 Primary Program, but the Board recognized the financial challenges that many members of the profession currently face. The base premium has been set at \$3,000, the same as last year. It should be noted that a base premium of \$3,000 per lawyer is still significantly lower than premiums charged at some points in the past (e.g., \$3,350 during the years 2011 through 2016, and \$5,600 per year just after the insurance crisis).

46. Professional lines insurance in Ontario, such as professional liability, were already facing a hardening insurance market, with premiums increasing and capacity being restricted. COVID-19 exacerbated this situation. Ontarians heading into their insurance renewals, whether personal or commercial insurance, continue to see substantial rate increases and many will find it more difficult to obtain insurance at an affordable price.

### THE ERRORS & OMISSIONS INSURANCE FUND

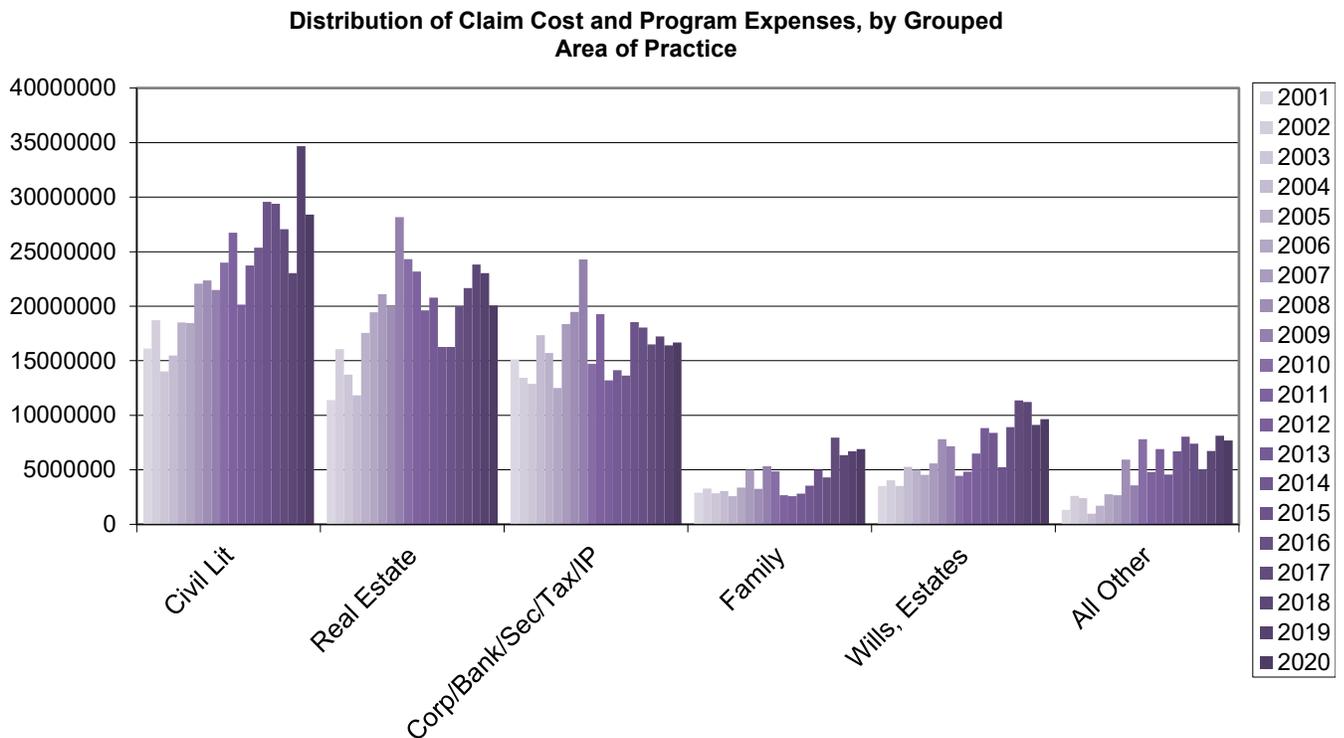
47. LAWPRO continues to manage the Law Society's Errors & Omissions Insurance Fund (the "E&O Fund"), the pool of funds relating to the insurance program the Law Society operated before LAWPRO was created. In recent years the E&O Fund has been in run-off mode as it has been used to settle outstanding claims for policies the Law Society's insurance program had in place between July 1, 1989, and December 31, 1994. Although it is possible that a claim from a policy from this time period could still be reported to LAWPRO, at June 30, 2021, the E&O Fund had no outstanding claims liabilities as all files for 1994 and prior years were closed.

48. With Convocation's annual approval of the LAWPRO Insurance Program, prior to 2020 the Law Society agreed to restrict \$15 million of the Errors & Omissions Fund balance to backstop the potential of

significant deterioration in the loss experience in the Primary Program. By mutual agreement between the Law Society and LAWPRO, the \$15 million backstop was discontinued effective January 1, 2020 as part of the 2020 Program and these funds were released and available to the Law Society as of that date.

## RISK RATING

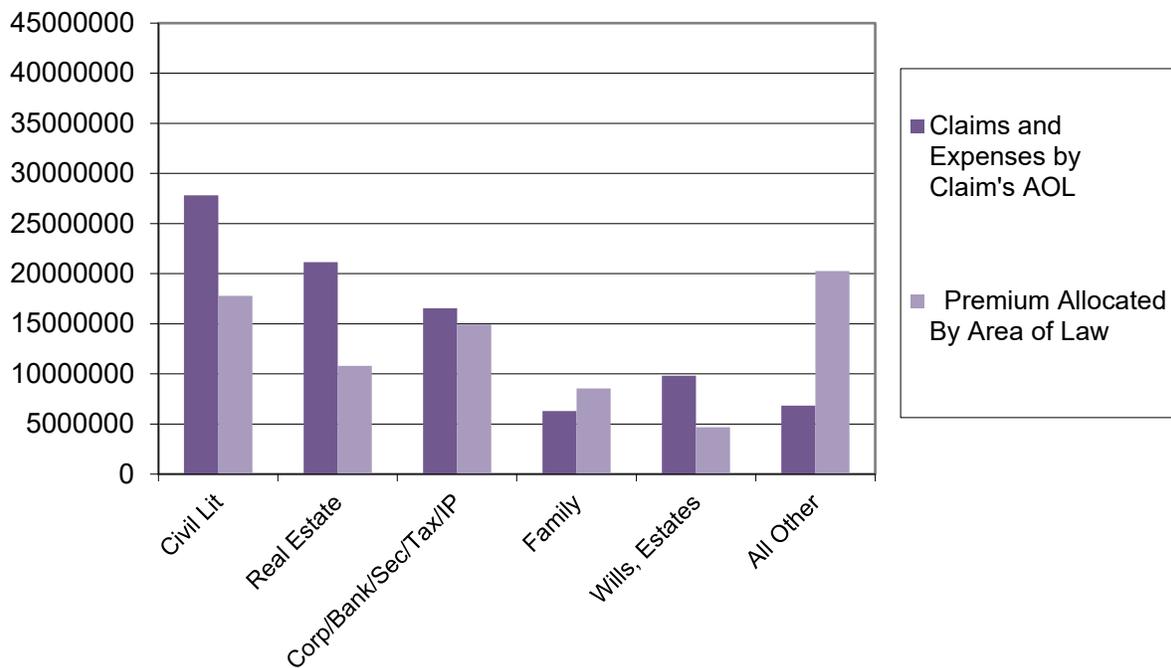
49. Risk rating, a concept raised throughout this Report, promotes fairness by allocating premium responsibility based on risk and deters claims by apportioning higher costs to riskier practitioners. The following chart shows the distribution of ultimate expected claims costs by area of practice.



50. Apparent from this chart are the significant claims costs in certain practice areas and the fact that real estate and litigation continue to be higher risk on a consistent basis over a multi-year period. At the same time, the fact that few lawyers practice exclusively in one area provides a compelling reason to group together common or related areas of practice.

51. For the purpose of risk rating, the Primary Program’s anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the Primary Program (including that seen under the Primary Program up to December 31, 2020), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.

**Comparison of Projected 2022 Premium by Lawyer's Area of Practice to Claims and Expenses by Claim's Area of Law**

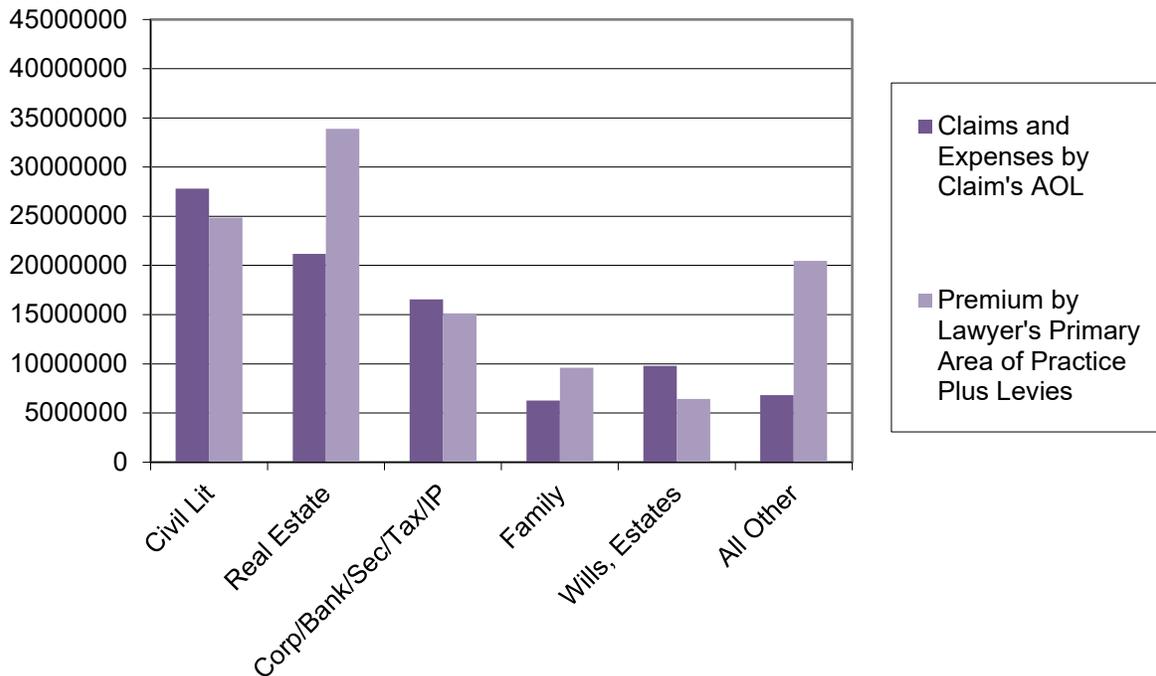


52. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the areas of real estate law and civil litigation. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premiums, to avoid any substantial dislocation among the bar in the higher areas of practice which would otherwise occur with risk rating.<sup>26</sup> Without transaction levies, real estate and litigation lawyers would be paying a base premium two to three time higher than the current LAWPRO base premium.

<sup>26</sup> 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 37-37; and 1996 LAWPRO Report to Convocation, pp.32-36.

53. By including the transaction and claims history surcharge levies in the calculation, a shortfall for real estate and civil litigation claims costs is typically reduced.

**Comparison of Projected 2022 Premium by Lawyer's Area of Practice + Allocated Levies to Claims and Expenses by Claim's Area of Law**



54. The above chart compares the anticipated premiums sorted by the lawyer's primary area of practice (plus the claims history surcharge, Real Estate Practice Coverage Option ("REPCO") premium and transaction levies) to the anticipated claims costs and expenses for each area of law. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a more acceptable correlation between revenues and claims for civil litigation. The pandemic caused a significant reduction in both real estate and litigation transaction levies in 2020 and has bounced back given the increase in work in these areas in 2021. With these changes, the relationship between real estate and civil litigation costs and premium revenue by lawyers in these two primary areas of practice will need to be monitored to determine whether any further action should be taken on this category in future years. It is worth noting that LAWPRO obtains area of practice information from lawyer's self reporting on insurance applications and from the Law Society. The data from the latter is retrospective and may reflect a lawyer's area of practice one or more years in the past. Lawyers' areas of practice may vary over time – as they did in 2020 – which also impacts this analysis.

55. The chart above does indicate some subsidy by area of practice, especially by the practitioners in the “All Other” category. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas, if they were broken down in greater detail, and especially if there is a larger claim.

56. The area of wills and estates has experienced an increase in claim costs over the past decade. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

57. Despite family law claims trending upwards over time, the revenues collected from family law practitioners continue to both cover the associated losses and support the exemption of this work from civil litigation levies.

58. Appreciating the foregoing variables and possibilities of comparison by area of practice, and notwithstanding the atypical variations caused by the pandemic in 2020 and 2021, it appears that the Primary Program will substantially meet its objectives of risk rating. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of insurance under the Primary Program is considered to be generally reflective of the risk. Notably, the Task Force Report acknowledged that “...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk.”<sup>27</sup>

59. Other aspects reviewed in the analysis included the exposure based on the size of the firm, year of call, geographic location and prior claims history. The overall results of this analysis reaffirm the premium discounts already in place, including the surcharge applied to practitioners with a prior claims history. The results of this analysis are reproduced in select graphs in [Appendices “A”, “B”, and “C”](#).

60. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice, as well as the higher risk associated with real estate conveyancing and civil litigation.

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<sup>27</sup> 1994 Insurance Committee Task Force Report, at page 17.

61. Accordingly, the LAWPRO Board is satisfied with the continued use of transaction and claims history levy revenues as premium, with the result that the cost of insurance under the Primary Program continues to generally reflect the risk.

62. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in the [Premium Rating Examples section](#) at page 8 of this Report.

63. LAWPRO offers many different risk-rated discounts. The number of Ontario lawyers that qualify for the most significant premium discounts is summarized in the following table:

Description of sample discounts	Number of lawyers who claim these sample discounts as of Aug 1, 2021
New Lawyer Discount (20%-50% discount)	6,284 lawyers (21% of all insureds)
Restricted Area of Practice Discount (50% discount)	1,769 lawyers (6% of all insureds)
Part Time Practice Discount (50% discount)	2,398 lawyers (8% of all insureds)
<b>TOTAL</b>	<b>10,451 lawyers (35% of all insureds)</b>

**REINSURANCE AND CAPITAL PRESERVATION**

64. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

65. In its early years, LAWPRO purchased Primary Program-wide quota share reinsurance<sup>28</sup>. A stronger financial position and more stable claims experience enabled LAWPRO to cease reinsuring the Primary Program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO’s own capital, the resources of the Errors & Omissions Fund up to a \$15 million cap were effectively relied on starting in 2003. The \$15 million backstop was discontinued effective the 2020 Program.

66. For 2022, LAWPRO will again look to purchase reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005 (the “Clash Excess of Loss

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<sup>28</sup> “Quota share” reinsurance is an arrangement where an insurer (like LAWPRO) will cede or give a portion of its premiums and claims risk to another insurer (a “reinsurer”) at a fixed percentage. This allows the insurer to retain such risks and premiums as it is comfortable with, while passing on the rest to the reinsurer(s).

Reinsurance”<sup>29</sup>). This protection against aggregated losses extends across both the Primary Program and TitlePLUS business, and offers some measure of protection against a series of claims, such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in the title affecting an entire condominium project. In light of the continuing harder reinsurance market (i.e., a situation where insurance coverage is harder to come by and premiums increase), LAWPRO is braced for rate increases for this type of protection for 2022.

67. Accordingly, 100% of the premiums and losses for the Primary Program will again be retained by LAWPRO in 2022, subject to reinsurance protecting the Primary Program from multiple losses arising out of a common event or nexus.

## CAPITAL REQUIREMENTS

68. As LAWPRO has worked through some quite challenging times, its prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO has maintained a solid capital base, as well as a robust asset liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. LAWPRO has received a consistent “A” (Excellent) rating from A.M. Best Co. each year since 2000, and since 2012 has retained its “stable” outlook. (An “outlook”, which looks more to the future, is different from a “rating”.)

69. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the Minimum Capital Test (“MCT”) in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer’s capital or net assets available to the “capital required”. Through the capital required component of the test, regulators prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer’s balance sheet.

70. A significant amount of the margin requirement relates to the 25% additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes professional liability coverage). Given the steady historical growth of LAWPRO’s net claims liabilities over

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<sup>29</sup> “Excess of loss” reinsurance is an arrangement where a reinsurer will indemnify an insurer for losses that exceed a specified limit. The insurer and reinsurer can negotiate the amount of risk the insurer retains before the reinsurance responds, the upper limit of the reinsurance coverage, and the premium (which is typically calculated based on the insurer’s annual premiums, subject to a minimum premium amount).

the last decade or so, even a positive net income result can often be accompanied by a decline in LAWPRO's MCT ratio. The second most impactful factor on the margin requirement is the equity risk on the equity portfolio which attracts a 30% additional capital requirement.

71. The determination of a specific insurer's "ideal" MCT ratio is difficult, as historic industry approaches were primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels, such as the 100% minimum and 150% supervisory levels (meaning the regulator could come in to take over management and operations if an insurer falls below this level). In 2016, LAWPRO completed its first capital assessment pursuant to the Office of the Superintendent of Financial Institutions' *Guideline E-19 Own Risk and Solvency Assessment ("ORSA")* and the Autorité des Marchés Financiers' *Guidance on Capital Adequacy Requirements*, resulting in LAWPRO's internal target ratio being lowered from 180% to 170%. This result has been reaffirmed in all subsequent years.

72. In addition, as part of the above exercise and reconfirmed this year, the Board set LAWPRO's long-term preferred operating range at 210% to 240% based on LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differs significantly from those of other commercial insurers in Canada. An MCT result in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range.

73. The MCT was within the preferred range at December 31, 2020 (229%) and at June 30, 2021 (219%). It fell below the preferred range at June 30, 2020 (205%) due to the impacts of the pandemic. The preferred range is set to provide an appropriate buffer, to allow the Company to withstand adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration, and still remain above the various regulatory thresholds.

74. The insurance industry is undergoing a complete financial statement overhaul from the move to International Financial Reporting Standards 17 (IFRS 17) effective January 1, 2023. The Office of the Superintendent of Financial Institutions (OSFI) has indicated that they expect IFRS 17 to be capital neutral for the industry as a whole, but not necessarily for individual companies. LAWPRO expects IFRS 17 to have a negative impact on the company's MCT. We do not yet know the magnitude of this impact, but note that, all other things being equal, this change may require an increase to annual base premiums in one or more future years.

## CONCLUSION

75. LAWPRO has successfully navigated the operational and financial challenges of the pandemic and is adapting to move into the new realities of a post-pandemic world. While a premium increase is not warranted at this time, LAWPRO expects there will be premium increases in future years as a result of pandemic-related claims costs, increased operational expenses, and changing capital requirements.

76. The LAWPRO Board considers the Primary Program outlined above to be appropriate and consistent with LAWPRO's mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Primary Program of Insurance for 2022 and asks for Convocation's acceptance of this Report at the October Convocation, so that the 2022 Primary Program can be implemented by January 1, 2022.

77. ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

October 2021

Andrew Spurgeon

Chairperson of the Board

Lawyers' Professional Indemnity Company

Daniel E. Pinnington

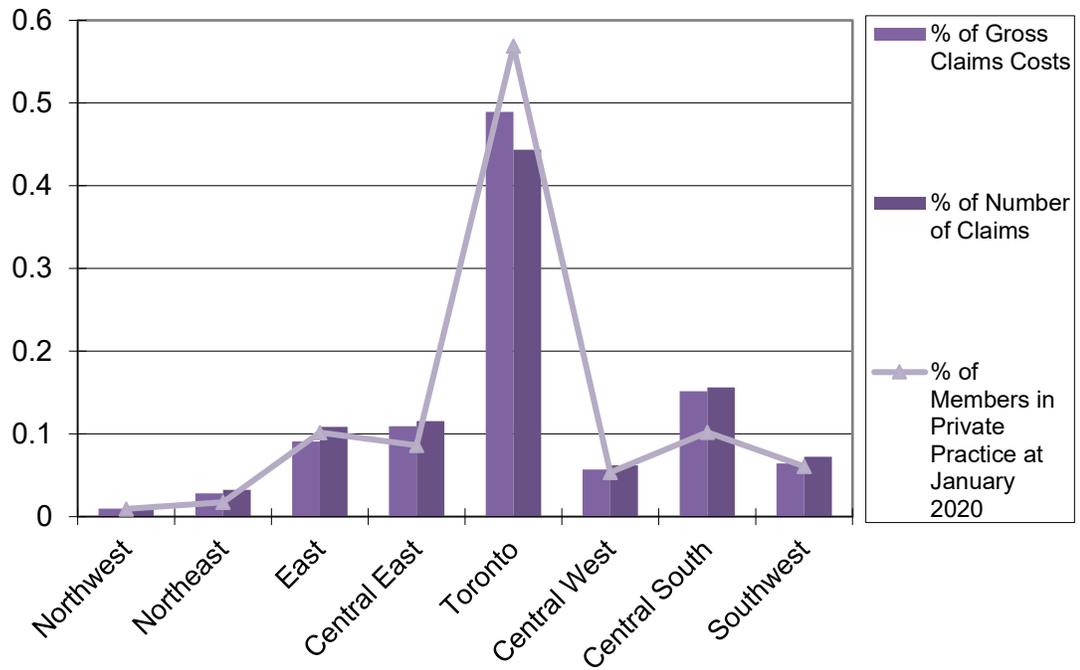
President & CEO

Lawyers' Professional Indemnity Company

## Appendix "A"

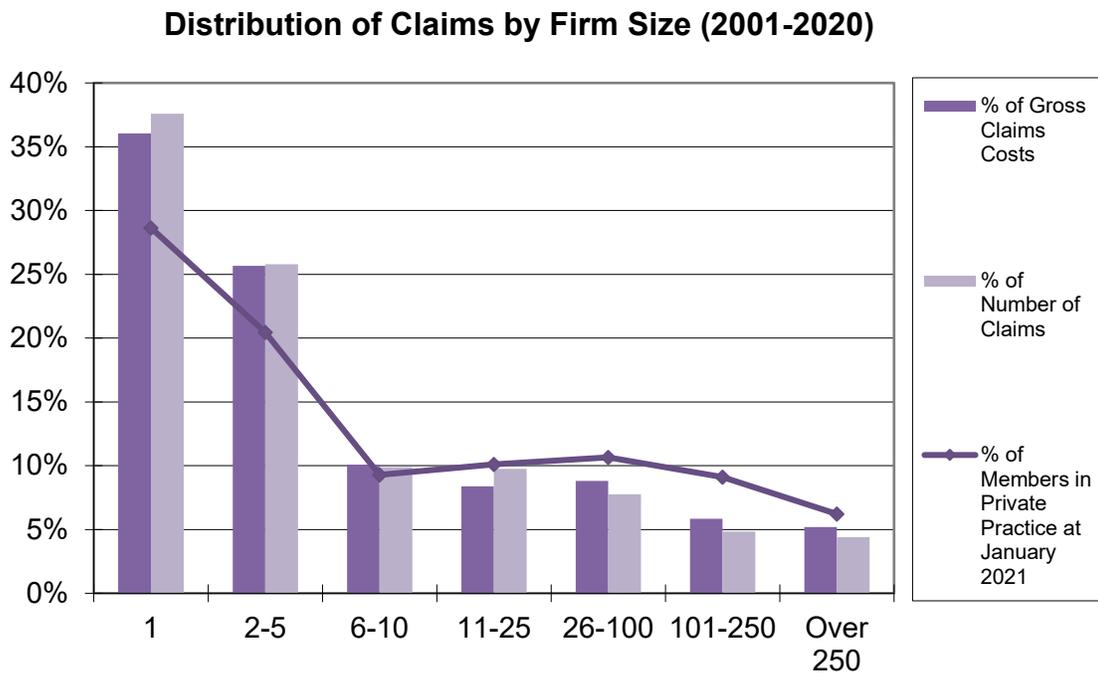
### Distribution of Claims by Geographic Region

**Distribution of Claims by Geographic Region (2001-2020)**

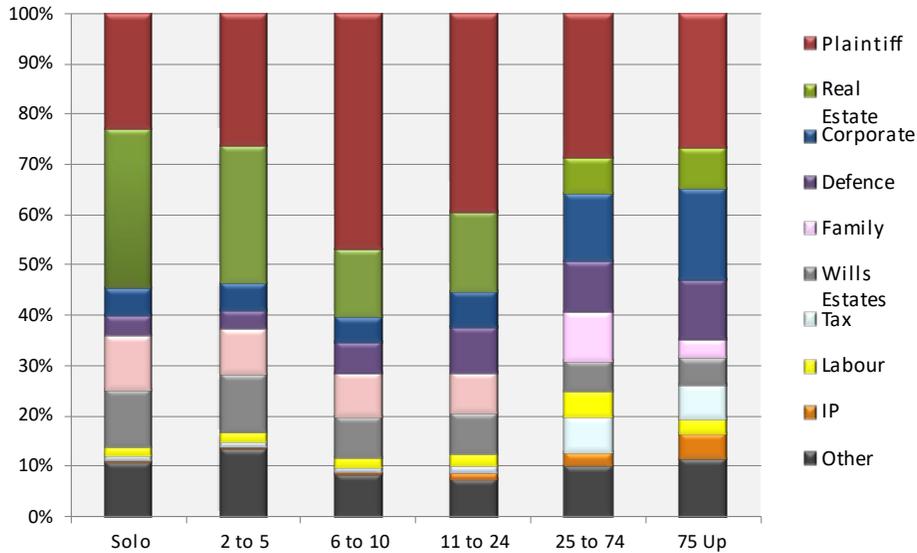


## Appendix "B"

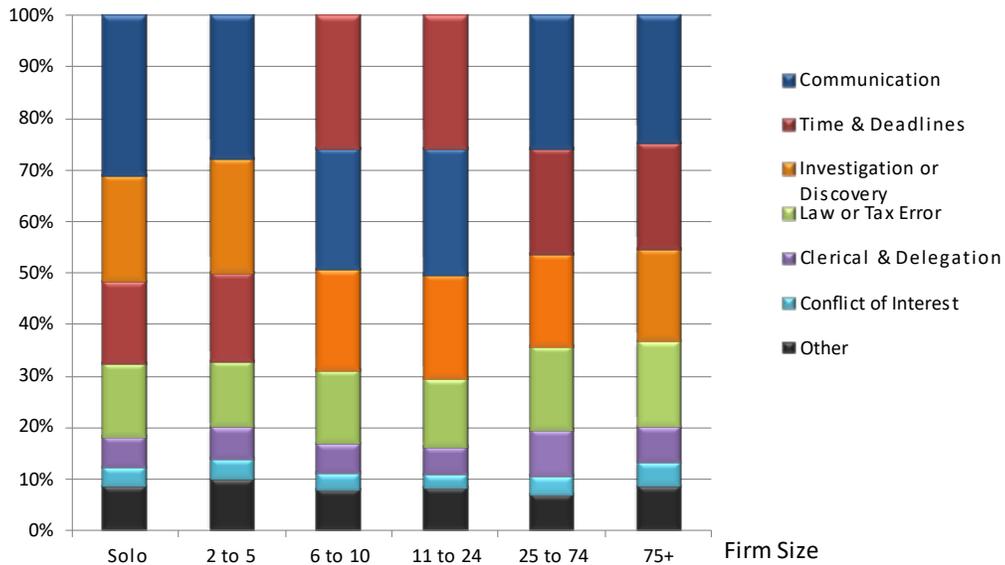
### Distribution of Claims by Firm Size



## LAWPRO claims count by area of law and firm size (2010-20)

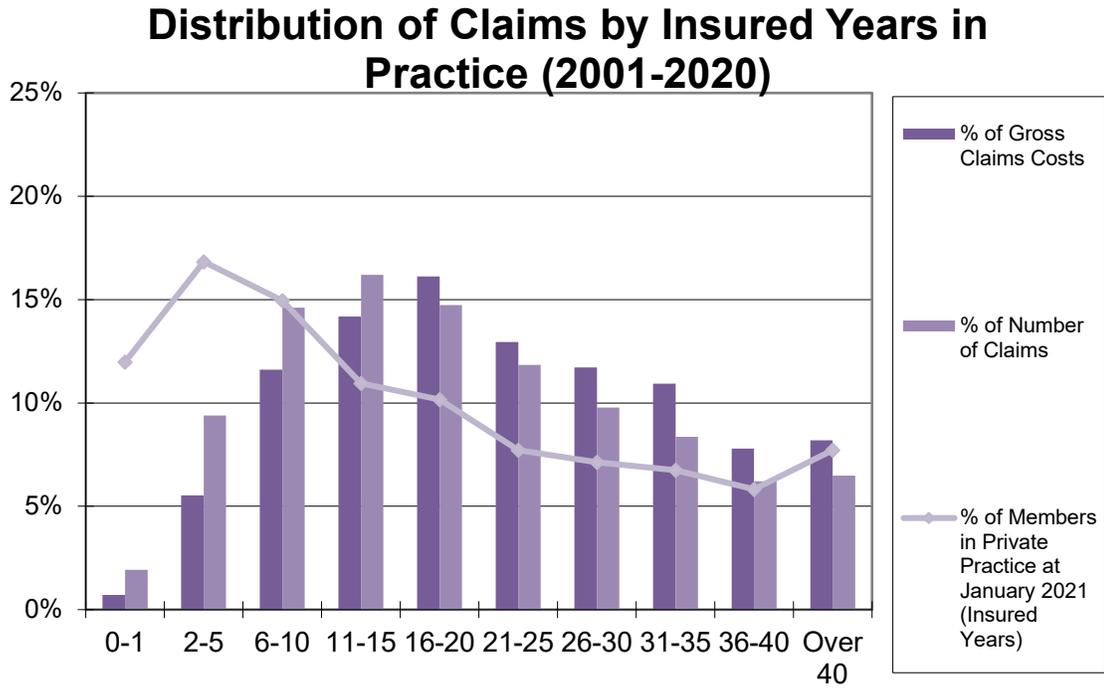


## LAWPRO claims count by error type and firm size (2010-20)



## Appendix "C"

### Distribution of Claims by Years in Practice



## Appendix “D”

### Detailed Descriptions of Causes of Loss

**Communications:** Communication-related errors (including poor communication, not keeping clients informed or failing to obtain client consent) are the biggest causes of claims in all areas of law (except litigation, where it is the #2 cause) and in firms of all sizes. While the most numerous claims, they are at the same time the most easily prevented. Lawyers can reduce their exposure to these types of claims by controlling client expectations, actively communicating with the client at all stages of a matter, documenting advice and instructions, and confirming in writing what work was done on a matter at each step along the way.

**Time management:** These kinds of claims including failing to ascertain a deadline, failing to calendar the deadline, and failing to react to the deadline even when it was known. These lapses often become claims when a limitation period ends up being missed or an action is administratively dismissed due to failing to move the litigation forward appropriately. There are also claims resulting from procrastination when a lawyer lets files that require work languish for extended periods of time. Time management claims are heavily concentrated in the litigation field, as it is so reliant on deadlines. Practice management software and tickler systems can help prevent these claims, as can lawyers building in more time cushions so that they are not adversely affected by unexpected delays.

**Inadequate investigation:** Modern technology and busy practices may be behind the tendency of lawyers to give quick legal advice without taking extra time to dig deeper or ask appropriate questions on a client’s matter. In recent years, LAWPRO has seen a big increase in these types of claims in real estate, litigation and will/estates areas of law. High-volume real estate practice often means lawyers do not have enough time to ask the clients about their plans for the property, and as a result don’t do the necessary searches or obtain the proper title insurance.

**Failure to know/apply the law:** These claims result from a lawyer not having sufficient or current knowledge of the relevant law on a matter in which he or she is working. Extensive federal and provincial legislation, as well as voluminous case law, help make this the second-most-common type of claim in family law. This category also includes failing to know or appreciate the

consequences of tax law in corporate/commercial matters. Lawyers can best avoid this type of claim by sticking to the law they know best and not “dabbling” in other areas.

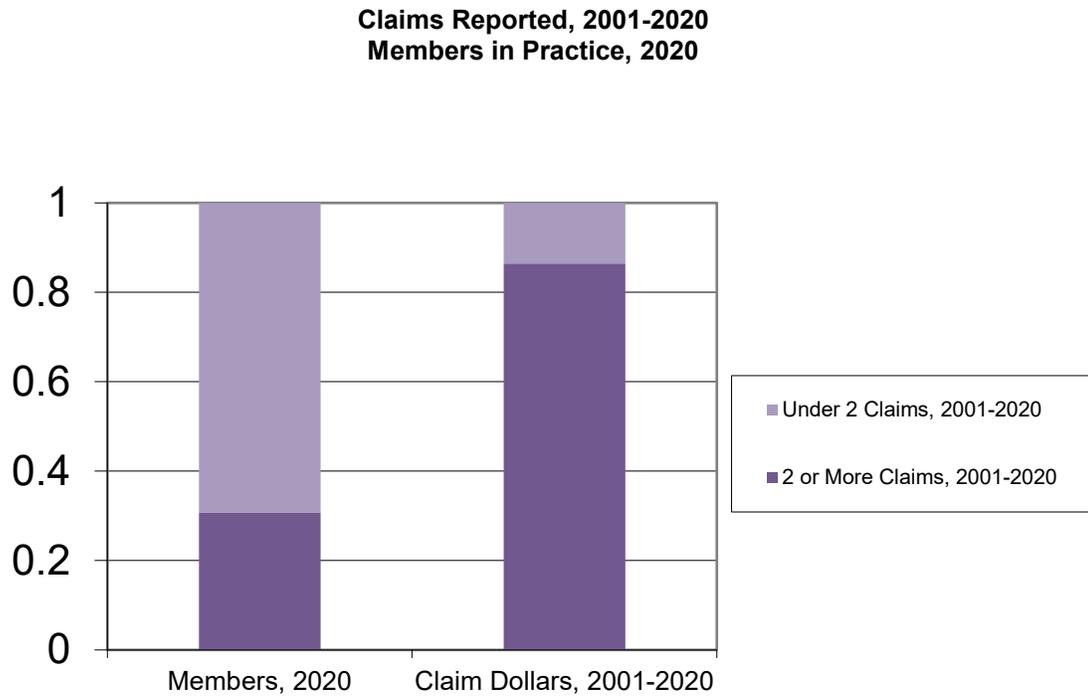
**Conflict of interest:** There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple clients/entities, real estate and corporate commercial lawyers experience proportionately more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

**Clerical errors:** These types of errors include things such as simple clerical mistakes, errors in mathematical calculation, work delegated to an employee or outsider that is not checked and failure to file documents. As important as delegation is to the efficient functioning of a law firm, lawyers need to take the time to review the work as they are ultimately responsible for it.

**Fraud:** Fraud continues to be a significant risk for LAWPRO, one which could cost the Primary Program significant claims dollars if not prevented. Lawyers are reporting attempted frauds to LAWPRO on a daily basis. Fraudsters on occasion still successfully dupe lawyers and law clerks, and it is not just real estate lawyers who are targeted. Litigation, business and family law lawyers are regular targets of bad cheque scams involving debt collections, spousal support payments and business loans. “Phishing” attempts and other cyber hacking methods are targeting lawyer trust accounts. Through our efforts, including publication of Fraud Fact sheets which are available at [practicepro.ca/fraud](http://practicepro.ca/fraud), Ontario lawyers are clearly more aware of frauds, but ever more sophisticated frauds mean lawyers must continue to be vigilant.

## Appendix "E"

The 30% of LAWPRO insureds with 2 or more claims are responsible for 85% of LAWPRO's claims costs



## Appendix “F”

**LAWPRO** Vision, Mission & Values and Corporate Social Responsibility are available for download at: <https://www.lawpro.ca/about/vision-values/>

LAWPRO developed a vision, mission and values statement as a high-level road map to help us identify priorities, guide our activities, and provide a benchmark against which we measure ourselves. It also provides an ideal framework for how LAWPRO meets its mandate to be efficient, effective and accountable.

**Vision:** To be regarded as the preferred insurer in all markets and product lines in which we do business.

**Mission:** To be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession.

**Values:** These statements inform our customers and employees of our core beliefs, fundamental goals and priorities that we pursue in our everyday work.

- *Professionalism:* Individually and as a team, we hold ourselves to the highest professional standards. We deliver programs and services known for quality and cost-effectiveness, and for being practical, helpful and relevant. We demand the best of ourselves every day and in everything we do.
- *Innovation:* We foster a climate in which creativity, innovation and change can flourish. We share ideas, skills and knowledge and encourage continual learning. We value teamwork and collaboration, and the diverse strengths and perspectives of others.
- *Integrity:* We act with the highest levels of integrity in all of our interactions and decisions. We aim to always be consistent, fair, ethical and accountable.
- *Service:* We strive for excellence in customer service. We share our knowledge, experience and expertise with our customers and with each other, so that together we can identify, prevent and solve problems. We take the time to listen and understand, so we can respond effectively and empathetically to our customers and to each other. We demonstrate courtesy and genuine respect for all.
- *Leadership:* We try to make the world a better place, and to that end lend our energies and expertise to many communities.

**TAB 3**  
**Report to Convocation**  
**October 1, 2021**

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**Professional Regulation Committee**

**Committee Members**

**Megan Shortreed (Chair)**

**Michelle Lomazzo (Vice-Chair)**

**Andrew Spurgeon (Vice-Chair)**

Gerard Charette

Etienne Esquega

Julian Falconer

Jacqueline Horvat

C. Scott Marshall

Geneviève Painchaud

Jonathan Rosenthal

Quinn Ross

Nicholas Wright

**Purpose of Report: Decision**

**Prepared by the Policy Division**  
**Matthew Wylie (416-947-3953)**

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**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 3.1**

## **Professional Regulation Committee**

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### **Updates to Form 9D**

October 1, 2021

#### **Committee Members:**

**Megan Shortreed (Chair)**  
**Michelle Lomazzo (Vice-Chair)**  
**Andrew Spurgeon (Vice-Chair)**  
Gerard Charette  
Etienne Esquega  
Julian Falconer  
Jacqueline Horvat  
C. Scott Marshall  
Geneviève Painchaud  
Jonathan Rosenthal  
Quinn Ross  
Nicholas Wright

#### **Authored By:**

Matthew Wylie  
mwylie@lso.ca

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# Motion

**That Convocation approve the Motion at Tab 3.1.1, which amends Form 9D, Investment Authority, to update and correct an error.<sup>1</sup>**

## Context

### A. Form 9D

Lawyers who act for or receive money from a lender in a private mortgage transaction are required to have their client complete Form 9D, *Investment Authority*.

Form 9D requires that the client provide information about the transaction as a means of evidencing that they are making an informed investment decision. The Form was initially adopted by Convocation as one of a number of measures in response to an increase in claims to the Compensation Fund related to lawyer “mortgage brokering”, including transactions where the solicitor was alleged to have failed to disclose to their lender client the basic aspects of the transaction.

Form 9D is a prescribed form pursuant to subsection 24(9) of By-Law 9.

The current Form 9D includes a Disclosure statement, which states:

*I (or we) acknowledge being advised by you as my (or our) lawyer that you do not have any direct or indirect interest in the borrower (or borrowers). (Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect interest in the borrower or borrowers.)*

Below the disclosure, there is the additional statement (the “Statement”), which provides:

*(If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (Rule 3.4-31 of the Rules of Professional Conduct)).*

The Statement has two issues:

1. It references a rule (3.4-31), which is no longer in use; and
2. Its conclusion, that a lawyer with an interest in the borrower or borrowers is unable to act on a loan, is incorrect.

Because Form 9D is part of By-Law 9, amending the form to correct this inconsistency requires approval by Convocation.

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<sup>1</sup> A copy of Form 9D, Investment Authority, is [available on the Law Society's website](#).

The reference to Rule 3.4.31 appears to have arisen through an oversight when amendments to Rule 3.4 were approved by Convocation in May, 2016.

The Statement, that a lawyer cannot act for a lender client if the lawyer has an interest in the borrower(s), however, is incorrect. In fact, certain rules contemplate circumstances where a lawyer is able to act for a lender, despite having an interest in the borrower.

For instance, while a lawyer may not be able to directly borrow from an investor client, or create an entity by which to do so indirectly, a lawyer does appear to be able to act for an investor client to arrange a loan to a corporation, syndicate or partnership (a “corporation etc.”) in which the lawyer has an interest. For instance, Rule 3.4-29, paragraph (iv) contemplates a circumstance under which a lawyer or the lawyer’s spouse has a direct or indirect “substantial” interest in a corporation etc. and provides that the lawyer must require that a client lending to that corporation etc. receive independent legal representation.

By specifying that independent legal representation is needed where the lawyer or their spouse’s direct or indirect interest is “substantial”, the Rule allows that a lawyer or their spouse might have a “insubstantial interest” in a corporation etc., and the lawyer could still act for the lender client with out a requiring that they receive independent legal representation.

Similarly, under Rule 3.4-33.1, a lawyer may hold syndicated mortgages or loans for investor clients in circumstances where the lawyer owns less than five per cent of any class of shares in the borrower, or has a larger interest if the investor client is provided with certain disclosures.<sup>2</sup>

## Recommendation

The Committee considered possible options to amend Form 9D to correct this issue. Ultimately, the Committee determined that the preferred approach was to remove the statement, and amend the disclosure to require that the client:

- be advised whether the lawyer has a direct or indirect interest in the borrower;
- be provided with details of the interest in writing, in circumstances where the lawyer has a direct or indirect interest in the borrower; and
- in those circumstances, be provided with an explanation by the lawyer about how their direct or indirect interest in the borrower is permitted under the *Rules of Professional Conduct*, including the Transactions with Clients rules.

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<sup>2</sup> A completed reporting letter on the transaction, a trust declaration signed by the person in whose name the mortgage or any security instrument is registered, and a copy of the duplicate registered mortgage or security instrument.

This option was preferred as it requires that the lawyer provide a clear explanation, which will result in better communication between the client and their lawyer.

The Motion also includes the following two additional amendments, which are intended to update the Form:

1. The “note to lawyer” at the beginning of the Form includes a statement that “this form may be entered on a word processor”.

It is recommended that this statement be removed as it is antiquated and no longer necessary.

2. The Form includes two warnings, one of which notes that any loss the client may suffer on the mortgage investment will not be insured under the lawyer’s professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it. That statement is followed by a footnote, which references and quotes clause (g) of Part III of LAWPRO’s *Professional Liability Insurance Policy for Lawyers*.

The wording of clause (g) has changed. Therefore, it is recommended that this note be amended to use the current language in the policy.

## **Next Steps**

If the Motion at Tab 3.1.1 is adopted by Convocation, Form 9D will be amended as set out.

LAW SOCIETY OF ONTARIO  
BY-LAWS MADE UNDER  
SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT  
BY-LAW 9  
[FINANCIAL TRANSACTIONS AND RECORDS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 1, 2021

MOVED BY MEGAN SHORTREED

SECONDED BY MICHELLE LOMAZZO

THAT By-Law 9 [Financial Transactions and Records], in force immediately before this motion is moved, be amended as follows:

**1. The “Note to lawyer” at the beginning of the English version of Form 9D is amended by deleting “This form may be entered on a word processor.”**

**2. Paragraph C. 1 of the English version of Form 9D is deleted and the following substituted:**

1. You as my (*our*) lawyer has advised me (*us*) that:

(a) You do not have any direct or indirect interest in the borrower.

or

(b) You have or intend to have a direct or indirect interest in the borrower, details of which have been provided to me (*us*) in writing. You have explained to me (*us*) how your direct or indirect interest in the borrower is permitted under the *Rules of Professional Conduct*, including the Transactions with Clients rules.

*(Specify (a) or (b). If (a) is selected, indicate the date on which the lawyer advised you that they have no direct or indirect interest in the borrower. If (b) is selected, append all relevant documents, including a certificate or waiver of independent legal advice where required, to this Form.)*

**3. The footnote (“\*”) to paragraph 2 of the “Warning” that follows paragraph C. 1 of the English version of Form 9D is deleted and the following substituted:**

*\*(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply “to any CLAIM in any way relating to or arising out of an INSURED acting as a MORTGAGE*

*BROKER, or to any CLAIM in any way relating to or arising out of circumstances in which an INSURED provided before July 1, 2008, PROFESSIONAL SERVICES in conjunction therewith".)*

**4. The “Note à l’avocat/l’avocate” at the beginning of the French version of Form 9D is amended by deleting “Le formulaire peut être informatisé.”**

**5. Paragraph C. 1 of the French version of Form 9D is deleted and the following substituted:**

1. Vous, en votre qualité d’avocat, m’avez/nous avez déclaré :

a) que vous n’avez aucun intérêt direct ou indirect dans les affaires de l’emprunteur/l’emprunteuse.

ou

b) que vous avez ou avez l’intention d’avoir un intérêt direct ou indirect dans les affaires de l’emprunteur/l’emprunteuse, dont vous m’avez/nous avez remis les détails par écrit. Vous m’avez/nous avez expliqué en quoi votre intérêt direct ou indirect dans les affaires de l’emprunteur/l’emprunteuse est permis en vertu du *Code de déontologie*, notamment des règles portant sur les opérations avec les clients.

*(Préciser a) ou b). Si a) est sélectionné, indiquer la date à laquelle l’avocat/l’avocate vous a informé qu’il/elle n’avait aucun intérêt direct ou indirect dans les affaires de l’emprunteur/l’emprunteuse. Si b) est sélectionné, joindre au présent formulaire tous les documents pertinents, y compris un certificat ou une renonciation à des conseils juridiques indépendants le cas échéant.)*

**6. The footnote (“\*”) to paragraph 2 of the “Mise en garde” that follows paragraph C. 1 of the French version of Form 9D is deleted and the following substituted:**

*\*(Aux termes de l’alinéa g) de la partie III de la police d’assurance responsabilité civile professionnelle des avocats, est exclue « toute RÉCLAMATION se rapportant de quelque manière que ce soit aux activités d’un ASSURÉ à titre de COURTIER EN HYPOTHÈQUES, ou découlant de celles-ci, ou toute RÉCLAMATION se rapportant de quelque manière que ce soit aux circonstances dans lesquelles un ASSURÉ a fourni avant le 1<sup>er</sup> juillet 2008 des SERVICES PROFESSIONNELS conjointement avec ce qui précède, ou découlant de ces circonstances.)*



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 4**

## **Report to Convocation October 1, 2021**

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### **Strategic Planning and Advisory Committee**

**Committee Members:**

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

**Purpose of Report: Decision**

**Prepared by:**  
James Varro, Director, Office of the CEO and Corporate Secretary  
[jvarro@lso.ca](mailto:jvarro@lso.ca)

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By-Law 3 Amendments Respecting the Paralegal Standing Committee Chair Election.....**Tab 4.1**



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

Tab 4.1

## **Strategic Planning and Advisory Committee**

### **By-Law 3 Amendments Respecting the Paralegal Standing Committee Chair Election**

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October 1, 2021

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 on the recommendation of the Strategic Planning and Advisory Committee, Convocation make amendments to By-Law 3 as set out in the motion at Tab 4.1.1 to simplify the description of the process to elect the chair of the Paralegal Standing Committee.**

## Background

Further to the changes to the process in By-Law 3 to elect the chair of the Paralegal Standing Committee (PSC) approved at the June 23, 2021 Convocation, the Strategic Planning and Advisory Committee (“the Committee”) is recommending that further changes be made to simplify the description of the process. These changes would not impact the election process or change or vary any of the changes that were made on June 23.

## The Recommendations

The amendments remove language in By-Law 3 that appears to be redundant or unnecessary, as well as provisions that seem to spell out operations to be followed that do not need to be in the By-Law (the provisions requiring the reporting of results to the PSC, for example).

In this way, only the essentials of how the chair is elected would appear in the By-Law, with details of the process to vote and related provisions left to the procedures that the Elections Officer prepares and publishes ahead of the election, under the authority of the By-Law.

These changes align with the Treasurer’s and CEO’s initiatives to improve processes and ensure that instruments describing governance procedures include only what is required to fulfill the particular governance purpose.

The changes to By-Law 3 for approval are set out in the track changes version of the By-Law at **Tab 4.1.2.**

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 OCTOBER 1, 2021

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. Sections 130.1 to 130.12 of the English version of the By-Law are revoked and the following substituted:**

**Definitions**

130.1. In sections 130.2 to 130.12,

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of those sections;

“member” means member of the Committee.

**Appointment of chair**

130.2. Immediately after it elects a chair in accordance with sections 130.3 to 130.12, the Committee shall appoint the member elected as its chair.

**Day of the election of chair**

130.3. (1) There shall be an election of chair by the Committee,

(a) on the day of the first regular meeting of the Committee in September after an election of benchers licensed to provide legal services under Part I.1 of this By-Law; and

(b) on every anniversary of the day mentioned in clause (a), until the next election of benchers licensed to provide legal services under Part I.1 of this By-Law.

**Election as first matter of business**

(2) The election of chair shall be the first matter of business for the Committee on the day of the election of chair.

### **Elections Officer**

130.4. The election of chair shall be conducted by the Elections Officer.

### **Who may be candidate**

130.5. (1) A person may be a candidate in the election of chair if the person meets all of the following requirements:

1. The person was elected as benchler licensed to provide legal services in Ontario under Part I.1 of this By-Law and took office as a member pursuant to this Part.
2. The person is nominated by at least one member in accordance with subsection (2).
3. The person consents to the nomination.

### **Nomination requirements**

(2) The nomination of a person as a candidate in the election of chair must,

- (a) be in writing;
- (b) be signed by the person being nominated, to indicate their consent to the nomination;
- (c) be signed by the member or members of the Committee nominating the person as a candidate; and
- (d) be submitted to the Elections Officer by the time specified by the Elections Officer.

### **Election by acclamation**

130.6. If after the time specified by the Elections Officer for the submission of nominations there is only one candidate in the election of chair, that candidate shall be elected as chair.

### **Poll: election of chair**

130.7. If after the time specified by the Elections Officer for the submission of nominations there are two or more candidates in the election of chair, a poll shall be conducted to elect the chair.

### **Elections Officer to establish procedures**

130.8. For a poll required under sections 130.7 and 130.12, the Elections Officer shall establish the procedures by which a member may vote that shall be,

- (a) such that the anonymity of a member and the secrecy of the member's votes are preserved; and
- (b) published for members prior to the opening of the poll.

### **Right to vote**

130.9. (1) Every person who is a member on the day of the election of chair is entitled to vote on any ballot in a poll required under section 130.7 or subsection 130.12 (1) if the member is in attendance at the meeting of the Committee at the time of the ballot.

### **Casting vote**

(2) A member of the Committee shall cast their vote in a poll required under section 130.7 or subsection 130.12 (1) in accordance with the procedures established by the Elections Officer under section 130.8.

### **Vote for one candidate only**

130.10. (1) Each member voting on a ballot in a poll required under section 130.7 shall vote for one candidate only.

**Counting votes**

(2) After all members entitled to vote on any ballot in a poll required under section 130.7 have voted or declined to vote, the Elections Officer shall cause the votes cast for each candidate to be counted.

**Chair elected by majority**

(3) The chair shall be elected by a majority of votes cast.

**No majority**

(4) If no candidate receives a majority of votes cast on the first ballot in a poll required under section 130.7, subject to section 130.11, a second ballot shall be conducted to elect the chair.

**Second ballot required**

(5) If a second ballot is required under subsection (4), the candidate on the previous ballot who received the least number of votes shall be removed as a candidate in the election of chair.

**Application of subs. (4) and (5) to second and further ballots**

(6) Subsections (4) and (5) apply to the second ballot and, with necessary modifications, any further ballots in the election of chair.

**Casting tie-breaking vote**

130.11. If at any time an equal number of votes is cast for two candidates when there are not more than two candidates on the ballot and an additional vote would entitle one of the candidates to be elected as chair, the vice-chair of the Committee shall, in full view of the Elections Officer, randomly select one of the candidates and cast an additional vote for that candidate.

**Poll to select candidate or candidates to remain in election**

130.12. (1) If an equal number of votes is cast for two or more candidates on any ballot in a poll required under section 130.7 and an additional vote for one or more but not all of them would entitle one or more of them to remain in the election of chair, a poll shall be conducted to select the candidate or candidates to remain in the election.

**Vote for candidate or candidates to remain in election**

(2) A member voting on a ballot in a poll required under subsection (1) shall vote for the candidate or candidates, but not for all the candidates, whom the member wishes to remain in the election of chair.

**Counting votes**

(3) After all members voting on a ballot in a poll required under subsection (1) have voted or declined to vote on a ballot, the Elections Officer shall cause the votes cast for each candidate to be counted.

**Removal of candidate**

(4) The candidate who receives the least number of votes in a poll required under subsection (1) shall be removed as a candidate in the election of chair.

**Further polls**

(5) If two or more candidates in a poll required under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted with the names of those candidates listed on

the ballot until only one candidate from all the candidates included in the initial poll conducted under this section is removed as a candidate in the election of chair.

**Application of subs. (2), (3) and (4)**

(6) Subsections (2), (3) and (4) apply, with necessary modifications, to a further poll required under subsection (5).

**2. Sections 130.1 to 130.12 of the French version of the By-Law are revoked and the following substituted:**

**Définitions**

130.1. Dans les articles 130.2 à 130.12,

« membre » désigne un membre du Comité ;

« responsable de l'élection » désigne la personne que le directeur général ou la directrice générale charge d'appliquer ces articles.

**Nomination à la présidence**

130.2. Immédiatement après avoir pourvu à sa présidence conformément aux articles 130.3 à 130.12, le Comité nomme le membre qu'il élit président ou présidente.

**Jour de l'élection du président ou de la présidente**

130.3. (1) Le Comité procède à l'élection du président ou de la présidente :

a) d'une part, à la première réunion ordinaire du Comité en septembre après l'élection des conseillers et des conseillères pourvus d'un permis les autorisant à fournir des services juridiques prévue à la partie I.1 du présent règlement administratif ;

b) d'autre part, à chaque anniversaire du jour visé à l'alinéa a), jusqu'à la prochaine élection des conseillers et des conseillères pourvus d'un permis les autorisant à fournir des services juridiques prévue à la partie I.1 du présent règlement administratif.

**Élection comme premier point à l'ordre du jour**

(2) L'élection du président ou de la présidente constitue le premier point à l'ordre des travaux du Comité le jour de cette élection.

**Responsable de l'élection**

130.4. Le ou la responsable de l'élection administre l'élection du président ou de la présidente.

**Candidats**

130.5. (1) Une personne peut être candidate à l'élection du président ou de la présidente si elle satisfait à toutes les exigences suivantes :

1. La personne élue en tant que conseiller ou conseillère pourvue d'un permis l'autorisant à fournir des services juridiques en Ontario en vertu de la partie I.1 du présent règlement administratif et qui prend ses fonctions de membre conformément à cette partie.

2. La personne est mise en candidature par au moins un membre conformément au paragraphe (2).

3. La personne consent à sa mise en candidature.

#### **Mises en candidature : critères**

(2) La mise en candidature d'une personne lors de l'élection du président ou de la présidente doit réunir les conditions suivantes :

- a) elle est faite par écrit ;
- b) elle porte la signature du candidat ou de la candidate pour indiquer son consentement ;
- c) elle porte la signature du ou des membres du Comité qui met la personne en candidature ;
- d) elle est présentée au ou à la responsable de l'élection dans le délai qu'il ou elle précise.

#### **Élection sans concurrent**

130.6. Si, après l'expiration du délai de présentation des mises en candidature précisé par le ou la responsable de l'élection, il n'y a qu'un seul candidat ou une seule candidate à l'élection du président ou de la présidente, cette personne est déclarée élue.

#### **Scrutin : élection du président ou de la présidente**

130.7. Si, après l'expiration du délai de présentation des mises en candidature précisé par le ou la responsable de l'élection, il y a plusieurs candidats ou candidates à l'élection du président ou de la présidente, un scrutin est tenu pour pourvoir à la présidence.

#### **Procédures fixées par le ou la responsable de l'élection**

130.8. Pour tenir un scrutin en vertu des articles 130.7 et 130.12, les procédures de vote fixées par le ou la responsable de l'élection :

- a) protègent l'anonymat d'un membre et le secret de son vote ;
- b) sont publiées pour les membres avant l'ouverture du scrutin.

#### **Droit de vote**

130.9. (1) Quiconque est membre le jour de l'élection du président ou de la présidente a une voix au scrutin tenu en vertu de l'article 130.7 ou du paragraphe 130.12 (1) si le membre est présent à la réunion du Comité au moment du scrutin.

#### **Vote**

(2) Les membres du Comité votent lors d'un scrutin tenu en vertu de l'article 130.7 ou du paragraphe 130.12 (1) conformément à la procédure établie par le ou la responsable de l'élection en vertu de l'article 130.8.

#### **Vote pour un seul candidat**

130.10. (1) Les membres qui participent à un scrutin tenu en vertu de l'article 130.7 ne votent que pour un seul candidat ou une seule candidate.

#### **Dépouillement**

(2) Après que tous les membres ayant droit de vote lors d'un scrutin tenu en vertu de l'article 130.7 ont voté ou refusé de voter, le ou la responsable de l'élection organise le décompte des voix exprimées par candidat.

#### **Président élu ou présidente élue par la majorité**

(3) La personne qui a reçu le nombre le plus élevé de voix est élue à la présidence.

#### **Pas de majorité**

(4) Si aucun candidat ne reçoit une majorité des voix au premier tour de scrutin tenu en vertu de l'article 130.7, sous réserve de l'article 130.11, un deuxième tour de scrutin est tenu afin d'élire le président ou la présidente.

#### **Deuxième tour de scrutin**

(5) S'il est nécessaire de procéder à un deuxième tour de scrutin conformément au paragraphe (4), le candidat ou la candidate qui a reçu le moins de voix est retiré du processus électoral.

#### **Application des par. (4) et (5) au deuxième tour de scrutin et scrutins supplémentaires**

(6) Les paragraphes (4) et (5) s'appliquent au deuxième tour de scrutin et, avec les modifications nécessaires, à tout scrutin supplémentaire pour élire un président ou une présidente.

#### **Voix prépondérante**

130.11. Si au moins deux candidats ou candidates reçoivent un nombre égal de voix lorsqu'il n'y a pas plus de deux candidats sur le bulletin et qu'une voix supplémentaire permettrait à l'un ou à l'une d'eux d'être élu(e) à la charge de président, le vice-président ou la vice-présidente du Comité, devant le ou la responsable de l'élection, choisit au hasard l'un des candidats ou l'une des candidates et exprime une voix supplémentaire pour lui ou pour elle.

#### **Scrutin pour choisir quels candidats restent en lice**

130.12. (1) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix pour un candidat ou une candidate inscrit(e) sur un bulletin de vote dans un scrutin tenu en vertu de l'article 130.7 et qu'une voix supplémentaire pour un ou plusieurs, mais pas tous, permettrait à l'un ou à plusieurs d'entre eux de rester en lice dans l'élection du président ou de la présidente, un scrutin a lieu afin de choisir le candidat ou la candidate ou les candidats qui resteront en lice.

#### **Vote pour conserver des candidats dans l'élection**

(2) Les membres qui participent au scrutin tenu en vertu du paragraphe (1) votent pour le ou les candidats ou la ou les candidates qu'ils souhaitent conserver pour l'élection du président ou de la présidente, mais non pour la totalité de ceux-ci ou de celles-ci.

#### **Dépouillement**

(3) Après que tous les membres qui participent au scrutin tenu en vertu du paragraphe (1) ont voté ou refusé de voter, le ou la responsable de l'élection organise le décompte des voix exprimées par candidat ou candidate.

#### **Élimination des candidats**

(4) Le candidat ou la candidate qui reçoit le nombre le moins élevé de voix dans le scrutin tenu en vertu du paragraphe (1) est éliminé de la liste des candidats et candidates à l'élection du président ou de la présidente.

#### **Scrutins supplémentaires**

(5) Si au moins deux candidats ou candidates figurant dans le scrutin tenu en vertu du paragraphe (1) reçoivent chacun le nombre de voix le moins élevé et le même nombre de voix, d'autres scrutins où apparaissent les noms des candidats et candidates en lice sont tenus jusqu'à ce qu'une candidate ou un

candidat visé par le premier scrutin soit éliminé de la liste des candidats et candidates à l'élection du président ou de la présidente.

**Application des par. (2), (3) et (4)**

(6) Les paragraphes (2), (3) et (4) s'appliquent, avec les modifications nécessaires, à tout scrutin supplémentaire tenu en vertu du paragraphe (5).

**3. Subsection 130.13 (4) of the English version of the By-Law is revoked and the following substituted:**

**Application of provisions**

(4) Sections 130.1, 130.2 and sections 130.4 to 130.12 apply to the appointment and election of chair under subsection (3), except that in the application of section 130.2, the reference to "sections 130.3 to 130.12" shall be read as a reference to "sections 130.4 to 130.12".

**4. Subsection 130.13 (4) of the French version of the By-Law is revoked and the following substituted:**

**Application de dispositions**

(4) Les articles 130.1, 130.2 et 130.4 à 130.12 s'appliquent à la nomination et à l'élection du président ou de la présidente visées au paragraphe (3), mais pour l'application de l'article 130.2, la référence aux « articles 130.3 à 130.12 » est interprétée comme une référence aux « articles 130.4 à 130.12 ».

**5. Subsection 130.13 (6) of the English version of the By-Law is amended by striking out "elected under subsection 130.3" and substituting "appointed under section 130.2".**

**6. Subsection 130.13 (6) of the French version of the By-Law is amended by striking out "soit élu aux termes de l'article 130.3" and substituting "soit nommé aux termes de l'article 130.2".**

**BY-LAW 3**

Made: May 1, 2007  
Amended: June 28, 2007  
September 20, 2007  
November 22, 2007  
June 26, 2008  
April 30, 2009  
September 24, 2009  
September 24, 2009 (editorial changes)  
February 25, 2010  
May 27, 2010  
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October 28, 2010  
November 9, 2010 (editorial changes)  
November 25, 2010  
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April 26, 2012  
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February 27, 2014  
March 4, 2014  
September 24, 2014  
April 23, 2015  
February 23, 2017  
April 26, 2018  
September 27, 2018  
September 27, 2018 (editorial changes)  
April 25, 2019  
May 6, 2019 (editorial changes)  
June 19, 2019 (editorial changes)  
May 12, 2020  
May 28, 2020  
August 6, 2020  
September 24, 2020  
May 27, 2021  
June 15, 2021 (editorial changes)  
June 23, 2021

**BENCHERS, CONVOCATION AND COMMITTEES**

...

**PART VII**

**PARALEGAL STANDING COMMITTEE**

## INTERPRETATION

### **Interpretation: “Committee”**

128. In this Part, “Committee” means the Paralegal Standing Committee.

## ESTABLISHMENT OF COMMITTEE

### **Establishment of Committee**

129. There is hereby established a standing committee to be known as the Paralegal Standing Committee in English and Comité permanent des parajuristes in French.

## JURISDICTION OF COMMITTEE

### **Jurisdiction of Committee**

130. The Committee is responsible for developing, for Convocation’s approval, policy options on the following matters:

1. The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence.
2. The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.
3. The regulation of persons licensed to provide legal services in Ontario in respect of,
  - i. the handling of money and other property, and
  - ii. the keeping of financial records.
4. The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.
5. The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability.
6. The professional competence of persons licensed to provide legal services in Ontario, including,
  - i. the requirements to be met by such persons with respect to continuing legal education, and
  - ii. the review of the professional business of such persons.
7. Guidelines for professional competence applicable to persons licensed to provide legal services in Ontario.
8. The provision of legal services through professional corporations.
9. The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society’s functions under the Act, by persons licensed to provide legal services in Ontario.
10. The election of five persons who are licensed to provide legal services in Ontario as benchers.
11. The appointment of the chair of the Committee.

## CHAIR

## **Definitions**

130.1. In sections 130.24 to 130.12,

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of those sections;

“member” means member of the Committee.

## **Appointment of chair**

130.2. ~~(1) Immediately after it elects a chair in accordance with sections 130.3 to 130.12, t~~The Committee shall appoint the member elected as its chair ~~the member of the Committee whom it elects as chair in accordance with sections 130.3 to 130.12.~~

## **Time of appointment**

~~(2) The Committee shall appoint a chair of the Committee immediately after it elects a chair in accordance with sections 130.3 to 130.12.~~

## **Day of the eElection of chair: time**

130.3. (1) There shall be an election of chair by the Committee,

(a) on the day of the first regular meeting of the Committee in September after an election of benchers licensed to provide legal services under Part I.1 of this By-Law; and

(b) on every anniversary of the day mentioned in clause (a), until the next election of benchers licensed to provide legal services under Part I.1 of this By-Law.

## **Election as first matter of businessSame**

(2) The election of chair ~~by the Committee~~ shall be the first matter of business for the Committee on the day of the election of chair.

## **Elections Officer**

130.4. ~~(1)~~ The election of chair shall be conducted by the Elections Officer.

## **Elections Officer to establish procedures**

~~(2) For a poll required under sections 130.7 and 130.12, the Elections Officer shall establish the procedures by which a member of the Committee may vote and, prior to the opening of the poll, shall publish the procedures for members of the Committee.~~

## **Who may be candidate**

130.5. (1) A person may be a candidate in the election of chair if the person meets all of the following requirements:

1. TheEvery person ~~who~~ was elected as bencher licensed to provide legal services in Ontario under Part I.1 of this By-Law and took office as a member ~~of the Committee~~ pursuant to this Part, ~~may be a candidate in the election of chair if the person is nominated as a candidate in accordance with this section.~~

2. The person is nominated by at least one member in accordance with subsection (2).

3. The person consents to the nomination.

**~~Nomination and consent~~**

~~-(2) A candidate in the election of chair must,~~

~~-(a) be nominated by at least one member of the Committee; and~~

~~-(b) consent to the nomination.~~

**Nomination requirements**

(~~3~~2) The nomination of a person as a candidate in the election of chair must,

(a) be in writing;

(b) be signed by the person being nominated, to indicate their consent to the nomination;

(c) be signed by the member or members of the Committee nominating the person as a candidate; and

(d) be submitted to the Elections Officer by the time specified by the Elections Officer.

**~~Invalid nomination~~**

~~-(4) A nomination that does not comply with subsection (3) is invalid and the person who is the subject of the nomination shall not be a candidate in the election of chair.~~

**Election by acclamation**

130.6. If after the time specified by the Elections Officer for the submission of nominations there is only one candidate in the election of chair, ~~the Elections Officer shall declare that candidate to have been~~shall be elected ~~as the~~ chair.

**Poll: election of chair**

130.7. (~~1~~) If after the time specified by the Elections Officer for the submission of nominations there are two or more candidates in the election of chair, a poll shall be conducted to elect the chair.

**Elections Officer to establish procedures**

130.8. For a poll required under sections 130.7 and 130.12, the Elections Officer shall establish the procedures by which a member may vote that shall be,

(a) such that the anonymity of a member and the secrecy of the member’s votes are preserved; and

(b) published for members prior to the opening of the poll.

**~~Poll: anonymity of member and secrecy of votes~~**

~~-(2) The procedures for conducting a poll shall be such that the anonymity of a member of the Committee and the secrecy of the member’s votes are preserved.~~

**~~Poll: r~~Right to vote**

130.9. (13) Every person who is a member of the Committee on the day of the election of chair is entitled to vote on any ballot in a poll required under section 130.7 or subsection 130.12 (1) if the member is in attendance at the meeting of the Committee at the time of the ballot in the election of chair.

**~~Poll: c~~Casting vote**

(~~2~~4) A member of the Committee shall cast their vote in a poll required under section 130.7 or subsection 130.12 (1) in accordance with the procedures established by the Elections Officer under subsection 130.48-

(2).

**Procedure for voting: first ballot**

~~130.8. (1) On the day of the election of chair, each member of the Committee who is in attendance at the meeting of the Committee at the time of the first ballot shall receive a first ballot listing the names of all candidates in the election of chair.~~

**Procedure for voting: second ballot**

~~(2) If the chair is not elected as a result of the votes cast on the first ballot, each member of the Committee who is in attendance at the meeting of the Committee at the time of the second ballot shall receive a second ballot listing the names of the candidates remaining in the election of chair at the time of that ballot.~~

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

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

**Vote for one candidate only**

~~130.10. (4) (1) Each member of the Committee voting on a ballot in a poll required under section 130.7~~the election of chair shall vote for one candidate only.

**Counting votes**

~~130.9. (24) After all members entitled to vote on any ballot in a poll required under section 130.7 of the Committee voting on a ballot in the election of chair have voted or declined to vote on the ballot, the Elections Officer shall cause the votes cast for each candidate to be counted.~~

**Counting votes: application**

~~(2) Subsection (1) applies to the count of votes on the first ballot in the election of the chair and, with necessary modifications, to the count of votes on the second and any further ballot in the election of chair.~~

**Report of results: two candidates**Chair elected by majority

~~130.10. (31) If on any ballot in the election of chair there are not more than two candidates, immediately after causing the votes cast for each candidate to be counted, the Elections Officer shall report the results to the Committee and shall declare to be elected as chair the candidate who received the larger number of votes.~~The chair shall be elected by a majority of votes cast.

**Report of results: three or more candidates**No majority

~~(24) If on any ballot in the election of chair there are three or more candidates and, after causing the votes to be counted, the Elections Officer determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the Elections Officer shall report the results to the Committee and shall declare to have be elected as chair the candidate who received the largest number of votes.~~If no candidate receives a majority of votes cast on the first ballot in a poll required under section 130.7, subject to section 130.11, a second ballot shall be conducted to elect the chair.

### **Same**

~~(3) If on any ballot in the election of chair there are three or more candidates and, after causing the votes to be counted, the Elections Officer determines that no candidate received more than 50 percent of all votes cast for all candidates, the Elections Officer shall report to the Committee that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect the chair.~~

### **Further Second ballot required**

~~(45) If a further second ballot is required under subsection (34), the Elections Officer shall report to the Committee the candidate on the previous ballot who received the least number of votes and that candidate shall be removed as a candidate in the election of chair.~~

### **Application of subs. (4) and (5) to second and further ballots**

(6) Subsections (4) and (5) apply to the second ballot and, with necessary modifications, any further ballots in the election of chair.

### **Casting tie-breaking vote**

130.11. If at any time an equal number of votes is cast for two candidates when there are not more than two candidates on the ballot and an additional vote would entitle one of the candidates to be ~~declared to be~~ elected as chair, the vice-chair of the Committee shall, in full view of the Elections Officer, randomly select one of the candidates and cast an additional vote for that candidate.

### **Equal number of votes Poll to select candidate or candidates to remain in election**

130.12. (1) If ~~at any time~~ an equal number of votes is cast for two or more candidates on any ballot in a poll required under section 130.7 and an additional vote for one or more but not all of them would entitle one or more of them to remain in the election of chair, a poll shall be conducted to select the candidate or candidates to remain in the election.

### **Anonymity of member and secrecy of votes**

~~(2) The procedures for conducting a poll under subsection (1) shall be such that the anonymity of a member of the Committee and the secrecy of the member's votes are preserved.~~

### **Right to vote**

~~(3) Each member of the Committee entitled to vote in the election of chair is entitled to vote in a poll conducted under subsection (1).~~

### **Ballet**

~~(4) Each member of the Committee entitled to vote in a poll conducted under subsection (1) who is in attendance at the meeting of the Committee at the time of the ballot shall receive a ballot listing the names of the candidates who received the equal and least number of votes.~~

### **Vote for candidate or candidates to remain in election**

~~(52) A member of the Committee voting on a ballot in a poll required conducted under subsection (1) shall vote for the candidate or candidates, but not for all the candidates, whom the member wishes to remain in the election of chair.~~

### **Casting vote**

~~(6) A member of the Committee shall cast their vote in a poll conducted under subsection (1) in accordance with the procedures established by the Elections Officer under subsection 130.4 (2).~~

### **Counting votes**

(73) After all members of the Committee voting on a ballot in a poll ~~required~~ conducted under subsection (1) have voted or declined to vote on a ballot, the Elections Officer shall cause the votes cast for each candidate to be counted.

### **Report of results**

~~(8) Immediately after causing the votes cast for each candidate in a poll conducted under subsection (1) to be counted, the Elections Officer shall report the results to the Committee.~~

### **Removal of candidate**

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

### **Further polls**

(105) If two or more candidates in a poll ~~required~~ conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted ~~under subsection (1) with the names of those candidates listed on the ballot, for the candidates with the same number of votes,~~ until only one candidate from all the candidates included in the initial poll conducted under ~~this section~~ subsection (1) is removed as a candidate in the election of chair.

### **Application of subs. (2), (3) and (4)**

(6) Subsections (2), (3) and (4) apply, with necessary modifications, to a further poll required under subsection (5).

### **Taking office**

130.13. (1) A person appointed as chair shall take office immediately after their appointment and shall remain in office until their successor takes office.

### **Ceasing to be chair**

(2) Despite subsection (1), a person ceases to be the chair of the Committee if the person ceases to be an elected benchner licensed to provide legal services in Ontario.

### **Vacancy in office**

(3) If the chair resigns, is removed from office or for any reason is unable to act during their term in office, or if there is for any other reason a vacancy in the office of chair of the Committee other than in the period between the completion of an election of benchers under Part I.1 of this By-Law and the first regular meeting of Convocation in September, the Committee shall appoint a new chair whom it elects as soon as is practicable.

### **Application of provisions**

(4) Sections 130.1, 130.2 and sections 130.4 to 130.12 apply to the appointment and election of chair under subsection (3), except that in the application of section 130.2, the reference to "sections 130.3 to

130.12” shall be read as a reference to “sections 130.4 to 130.12”.

**Acting chair**

(5) If the chair of the Committee for any reason is temporarily unable to perform the duties or exercise the powers of the chair during their term in office, or if there is a vacancy in the office of the chair of the Committee other than in the period between the completion of an election of benchers under Part I.1 of this By-Law and the first regular meeting of Convocation in September, the vice-chair shall perform the duties and exercise the powers of the chair until,

- (a) the chair is able to perform the duties or exercise the powers of the chair; or
- (b) a new chair is appointed under subsection (3).

**Acting chair: election year**

(6) If there is a vacancy in the office of chair of the Committee in the period between the completion of an election of benchers under Part I.1 of this By-Law and the first regular meeting of Convocation in September, the vice-chair shall perform the duties and exercise the powers of the chair until a new chair is ~~elected under section 130.3~~appointed under section 130.2.

VICE-CHAIR

**Appointment by Convocation**

130.14. (1) Convocation shall appoint as vice-chair of the Committee a member of the Committee who is,

- (a) an elected bencher who is licensed to practise law in Ontario as a barrister and solicitor; or
- (b) a lay bencher.

**Term of office**

(2) A person appointed as vice-chair of the Committee shall take office immediately after his or her appointment and shall remain in office until his or her successor takes office.

**Appointment at pleasure**

(3) Despite subsection (2), the vice-chair of the Committee holds office at the pleasure of Convocation.

**Vacancy**

(4) If there is a vacancy in the office of vice-chair or the vice-chair of the Committee for any reason is unable to act, the Treasurer may appoint as vice-chair of the Committee another member who is,

- (a) an elected bencher who is licensed to practise law in Ontario as a barrister and solicitor; or
- (b) a lay bencher.

**Appointment by Treasurer subject to ratification**

(5) The appointment of a member of the Committee as vice-chair of the Committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

OPERATION OF COMMITTEE

**Term of office of Committee members appointed by Convocation**

131. (1) Subject to subsection (2), a person who is appointed as a member of the Committee by Convocation shall continue to be a member of the Committee until his or her successor is appointed.

**Removal from Committee**

(2) Convocation may remove from the Committee any person that it has appointed as a member of the Committee if the person fails to attend three consecutive meetings of the Committee.

**Term of office of Committee members who are paralegal benchers**

(3) The five benchers elected in an election of benchers under Part I.1 of this By-law shall take office as members of the Committee at the first regular meeting of the Committee following the election and, subject to any by-law that provides for the removal of benchers from Convocation, shall remain in office until their successors take office.

**Quorum**

132. Four members of the Committee constitute a quorum for the transaction of business.

**Meetings by telephone conference call, etc.**

133. The Committee may meet to transact business by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

**Right to attend meeting**

134. (1) Subject to subsection (2), no person other than a member of the Committee may attend a meeting of the Committee.

**Same**

(2) The following persons who are not members of the Committee may attend a meeting of the Committee:

1. A bencher.
2. An officer or employee of the Society.
3. A person not mentioned in paragraph 1 or 2 with the permission of the Committee.

**Voting rights**

135. Only members of the Committee may vote at meetings of the Committee.

GENERAL

**Non-application of Part VI**

136. The provisions of Part VI do not apply with respect to the Committee.

PART VIII

COMMENCEMENT

**Commencement of Part VI**

137. Part VI comes into force on May 25, 2007.

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## RÈGLEMENT ADMINISTRATIF N° 3

### LES CONSEILLERS, LE CONSEIL ET LES COMITÉS

...

#### PARTIE VII

#### COMITÉ PERMANENT DES PARAJURISTES

##### INTERPRÉTATION

##### **Interprétation : « Comité »**

128. Dans la présente partie, « Comité » désigne le Comité permanent des parajuristes.

##### CONSTITUTION DU COMITÉ

##### **Constitution du Comité**

129. Est constitué un comité permanent nommé Comité permanent des parajuristes en français et Paralegal Standing Committee en anglais.

##### COMPÉTENCE DU COMITÉ

##### **Compétence du Comité**

130. Le Comité élabore et soumet à l'approbation du Conseil des options stratégiques concernant les questions suivantes :

1. Les catégories de permis autorisant à fournir des services juridiques en Ontario délivrés en application de la Loi, l'étendue des activités autorisées dans le cadre de chaque catégorie ainsi que les conditions ou les restrictions auxquelles est assujettie chaque catégorie.

2. L'octroi à des personnes d'un permis les autorisant à fournir des services juridiques en Ontario, y compris les qualités requises à cette fin et les autres exigences pertinentes ainsi que les modalités de demande de permis.

3. La réglementation des personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario en ce qui a trait aux éléments suivants :

- i. la manutention de sommes d'argent et d'autres biens,
- ii. la tenue de registres financiers.

4. Les règles de déontologie applicables aux personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario.

5. Les exigences auxquelles doivent satisfaire les personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario sur le plan de l'assurance responsabilité professionnelle.

6. La compétence professionnelle des personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario, notamment ce qui suit :

- i. les exigences auxquelles elles doivent satisfaire sur le plan de la formation permanente,
- ii. l'inspection de leurs activités professionnelles.

7. Les lignes directrices concernant la compétence professionnelle des personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario.

8. La fourniture de services juridiques par le biais de sociétés professionnelles.

9. La communication au Barreau de renseignements se rapportant aux activités qu'il exerce aux termes de la présente loi, ainsi que le dépôt d'attestations, de rapports et d'autres documents se rapportant à ces activités, par les personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario.

10. L'élection de cinq personnes titulaires d'un permis les autorisant à fournir des services juridiques en Ontario comme conseillers ou conseillères.

11. La nomination du président ou de la présidente du Comité.

## PRÉSIDENCE

### **Définitions**

130.1. Dans les articles 130.4-2 à 130.12,

« membre » désigne un membre du Comité ;

« responsable de l'élection » désigne la personne que le directeur général ou la directrice générale charge d'appliquer ces articles.

### **Nomination à la présidence**

130.2. ~~(1) Immédiatement après avoir pourvu à sa présidence conformément aux articles 130.3 à 130.12, Le Comité nomme le membre qu'il élit président ou présidente pourvu à sa présidence en y nommant celui de ses membres qu'il élit président ou présidente conformément aux articles 130.3 à 130.12.~~

### **Moment de la nomination**

~~(2) Le Comité pourvu à sa présidence immédiatement après avoir élu le président ou la présidente conformément aux articles 130.3 à 130.12.~~

### **Jour de l'élection du président ou de la présidente - moment**

130.3. (1) Le Comité procède à l'élection du président ou de la présidente :

(a) d'une part, à la première réunion ordinaire du Comité en septembre après l'élection des conseillers et des conseillères pourvus d'un permis les autorisant à fournir des services juridiques prévue à la partie I.1 du présent règlement administratif ;

(b) d'autre part, à chaque anniversaire du jour visé à l'alinéa a), jusqu'à la prochaine élection des conseillers et des conseillères pourvus d'un permis les autorisant à fournir des services juridiques prévue à la partie I.1 du présent règlement administratif.

### **Idem Élection comme premier point à l'ordre du jour**

(2) L'élection du président ou de la présidente du Comité constitue le premier article point à l'ordre des travaux du Comité le jour de cette élection.

## Responsable de l'élection

130.4. ~~(1)~~ Le ou la responsable de l'élection administre l'élection du président ou de la présidente.

### ~~Le ou la responsable de l'élection établit la procédure~~

~~-(2) Pour tenir le scrutin en vertu des articles 130.7 et 130.12, le ou la responsable de l'élection établit la procédure selon laquelle les membres du Comité peuvent voter et, avant l'ouverture du scrutin, publie la procédure au profit des membres du Comité.~~

## Candidats

130.5. (1) Une personne peut être candidate à l'élection du président ou de la présidente si elle satisfait à toutes les exigences suivantes :

1. La ~~Toute~~ personne élue en tant que conseiller ou conseillère pourvue d'un permis l'autorisant à fournir des services juridiques en Ontario en vertu de la partie I.1 du présent règlement administratif et qui prend ses fonctions de membre du Comité conformément à cette partie ~~peut être candidate à l'élection du président ou de la présidente si elle est mise en candidature conformément au présent article.~~

2. La personne est mise en candidature par au moins un membre conformément au paragraphe (2).

3. La personne consent à sa mise en candidature.

### ~~Mise en candidature et consentement~~

~~-(2) Tout candidat ou toute candidate à l'élection du président ou de la présidente :~~

~~-(a) d'une part, est mis en candidature par au moins un membre du Comité ;~~

~~-(b) d'autre part, consent à sa mise en candidature.~~

### Mises en candidature : critères

(23) La mise en candidature d'une personne lors de l'élection du président ou de la présidente doit réunir les conditions suivantes :

(a) elle est faite par écrit ;

(b) elle porte la signature du candidat ou de la candidate pour indiquer son consentement ;

(c) elle porte la signature du ou des membres du Comité qui met la personne en candidature ;

(d) elle est présentée au ou à la responsable de l'élection dans le délai qu'il ou elle précise.

### ~~Mise en candidature invalide~~

~~-(4) La mise en candidature qui ne respecte pas le paragraphe (3) est invalide et la personne qu'elle sert à mettre en candidature n'est pas candidate à l'élection du président ou de la présidente.~~

### Élection sans concurrent

130.6. Si, après l'expiration du délai de présentation des mises en candidature précisé par le ou la responsable de l'élection, il n'y a qu'un seul candidat ou une seule candidate à l'élection du président ou de la présidente, cette personne est le ou la responsable de l'élection le ou la déclarée élue.

### Scrutin : élection du président ou de la présidente

130.7. ~~(1)~~ Si, après l'expiration du délai de présentation des mises en candidature précisé par le ou la responsable de l'élection, il y a plusieurs candidats ou candidates à l'élection du président ou de la

présidente, ~~il est tenu~~ un scrutin est tenu pour pourvoir à la présidence.

### **Procédures fixées par le ou la responsable de l'élection**

130.8. Pour tenir un scrutin en vertu des articles 130.7 et 130.12, les procédures de vote fixées par le ou la responsable de l'élection :

- a) protègent l'anonymat d'un membre et le secret de son vote ;
- b) sont publiées pour les membres avant l'ouverture du scrutin.

### **Scrutin : ~~anonymat et vote secret~~**

~~-(2) La procédure pour tenir le scrutin garantit l'anonymat des membres du Comité et protège le secret de leur vote.~~

### **Scrutin : ~~d~~Droit de vote**

130.9. (13) Quiconque est membre le jour de l'élection du président ou de la présidente a une voix au scrutin tenu ~~droit de vote~~ en vertu de l'article 130.7 ou du paragraphe 130.12 (1) si le membre est présent à la réunion du Comité au moment du scrutin aux fins de l'élection du président ou de la présidente quiconque est membre du Comité le jour de l'élection.

### **Scrutin : ~~v~~Vote**

(42) Les membres du Comité votent lors d'un scrutin tenu en vertu de l'article 130.7 ou du paragraphe 130.12 (1) conformément à la procédure établie par le ou la responsable de l'élection en vertu ~~du paragraphe de l'article~~ 130.48-(2).

### **Procédure de vote : ~~premier tour de scrutin~~**

~~130.8. (1) Le jour de l'élection du président ou de la présidente, au premier tour de scrutin, tous les membres du Comité présents à la réunion du Comité reçoivent un bulletin où apparaissent les noms des candidats et candidates à l'élection du président ou de la présidente en lice.~~

### **Procédure de vote : ~~deuxième tour de scrutin~~**

~~-(2) Si le président ou la présidente n'a pas été élu à la suite du décompte des voix exprimées lors du premier tour de scrutin, les membres du Comité présents à la réunion du Comité au moment du deuxième scrutin participent alors au deuxième tour de scrutin et reçoivent un bulletin où apparaissent les noms des candidats et candidates à l'élection du président ou de la présidente encore en lice.~~

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

~~-(3) Lors de l'élection du président ou de la présidente, le paragraphe (2) s'applique, avec les adaptations nécessaires, aux tours de scrutin subséquents.~~

### **Vote pour un seul candidat**

130.10. (1) ~~(4)~~ Les membres ~~du Comité~~ qui participent à un scrutin tenu en vertu de l'article 130.7 lors de l'élection du président ou de la présidente ne votent que pour un seul candidat ou une seule candidate.

### **Dépouillement**

130.9. (12) Après que tous les membres ayant droit de vote lors d'un scrutin tenu en vertu de l'article 130.7 du Comité qui participent à un scrutin lors de l'élection du président ou de la présidente ont

voté ou refusé de voter, le ou la responsable de l'élection organise le décompte des voix exprimées par candidat.

#### **Dépouillement : application**

~~–(2) Le paragraphe (1) s'applique au décompte des voix exprimées au premier tour de scrutin de l'élection du président ou de la présidente et, avec les adaptations nécessaires, au décompte des voix exprimées au second tour de scrutin et aux tours de scrutin subséquents.~~

#### **Président élu ou présidente élue par la majorité**

~~130.10. (31) Si deux noms seulement apparaissent sur les bulletins de vote, le ou la responsable de l'élection, immédiatement après avoir organisé le décompte de voix par candidat, annonce les résultats du scrutin au Comité et déclare président ou présidente~~ la personne qui a reçu le nombre le plus élevé de voix est élue à la présidence.

#### **Pas de majorité**

~~–(24) Si aucun candidat ne reçoit une majorité des voix au premier tour de scrutin tenu en vertu de l'article 130.7, sous réserve de l'article 130.11, un deuxième tour de scrutin est tenu afin d'élire le président ou la présidente.~~ au moins trois noms apparaissent sur les bulletins de vote et que le ou la responsable de l'élection, après avoir organisé le décompte de voix, détermine qu'au moins un candidat ou une candidate a reçu plus de 50 pour cent des voix, il ou elle annonce les résultats du scrutin au Comité et déclare président ou présidente la personne qui a reçu le nombre le plus élevé de voix.

#### **Idem**

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

#### **Deuxième tour de scrutin supplémentaire**

~~(45) S'il est nécessaire de procéder à un deuxième~~ autre tour de scrutin conformément au paragraphe (34), ~~le ou la responsable de l'élection annonce au Conseil le nom du~~ le candidat ou ~~de~~ la candidate qui a reçu le moins de voix ~~et son nom~~ est retiré du processus électoral.

#### **Application des par. (4) et (5) au deuxième tour de scrutin et scrutins supplémentaires**

~~(6) Les paragraphes (4) et (5) s'appliquent au deuxième tour de scrutin et, avec les modifications nécessaires, à tout scrutin supplémentaire pour élire un président ou une présidente.~~

#### **Voix prépondérante**

130.11. Si au moins deux candidats ou candidates reçoivent un nombre égal de voix lorsqu'il n'y a pas plus de deux candidats sur le bulletin et qu'une voix supplémentaire permettrait à l'un ou à l'une d'eux d'être déclaré élu(e) à la charge de président, le vice-président ou la vice-présidente du Comité, devant le ou la responsable de l'élection, choisit au hasard l'un des candidats ou l'une des candidates et exprime une voix supplémentaire pour lui ou pour elle.

#### **Scrutin pour choisir quels candidats restent en lice**

~~Nombre égal de voix~~  
130.12. (1) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix pour un candidat ou une candidate inscrit(e) sur un bulletin de vote dans un scrutin tenu en vertu de l'article 130.7 et

qu'une voix supplémentaire pour un ou plusieurs, mais pas tous, permettrait à l'un ou à plusieurs d'entre eux de rester en lice dans l'élection du président ou de la présidente, un scrutin a lieu afin de choisir les candidats ou la candidate ouet, les candidates qui resteront en lice.

#### **Anonymat des membres et scrutin secret**

~~-(2) Le procédure de scrutin en vertu du paragraphe (1) garantit l'anonymat des membres du Comité et protège le secret de leur vote.~~

#### **Droit de vote**

~~-(3) Les membres du Comité habilités à voter à l'élection du président ou de la présidente ont le droit de participer au scrutin prévu au paragraphe (1).~~

#### **Bulletin**

~~-(4) Les membres du Comité habilités à participer au scrutin prévu au paragraphe (1) qui sont présents à la réunion du Comité au moment du scrutin reçoivent un bulletin où apparaissent les noms des candidats ou des candidates qui ont reçu le moins élevé et le même nombre de voix.~~

#### **Vote pour conserver des candidats dans l'élection**

~~(52)~~ Les membres du Comité qui participent au scrutin prévu tenu en vertu du au paragraphe (1) votent pour le ou les candidats ou la ou les candidates qu'ils souhaitent conserver pour l'élection du président ou de la présidente, mais non pour la totalité de ceux-ci ou de celles-ci.

#### **Vote**

~~-(6) Les membres du Comité votent dans le cadre du scrutin mené en vertu du paragraphe (1) conformément à la procédure établie par le ou la responsable de l'élection en vertu du paragraphe 130.4 (2).~~

#### **Dépouillement**

~~(73)~~ Après que toutes les membres qui participent au scrutin prévu tenu en vertu dau paragraphe (1) ont voté ou refusé de voter, le ou la responsable de l'élection organise le décompte des voix exprimées par candidat ou candidate.

#### **Annnonce des résultats**

~~-(8) Immédiatement après avoir organisé le décompte des voix par candidat ou candidate dans le scrutin prévu au paragraphe (1), le ou la responsable de l'élection annonce les résultats du scrutin au Comité.~~

#### **Élimination des candidats**

~~(94)~~ Le candidat ou la candidate qui reçoit le nombre le moins élevé de voix dans le scrutin prévu tenu en vertu dau paragraphe (1) est éliminé de la liste des candidats et candidates à l'élection du président ou de la présidente.

#### **Scrutins supplémentaires**

~~(105)~~ Si au moins deux candidats ou candidates figurant dans le scrutin prévu tenu en vertu dau paragraphe (1) reçoivent chacun le nombre de voix le moins élevé et le même nombre de voix, d'autres scrutins où apparaissent les noms des candidats et candidates en lice prévus à ce paragraphe sont tenus pour ces candidats et candidates jusqu'à ce qu'une candidate ou un candidat visé par le premier scrutin soit éliminé de la liste des candidats et candidates à l'élection du président ou de la présidente.

### **Application des par. (2), (3) et (4)**

(6) Les paragraphes (2), (3) et (4) s'appliquent, avec les modifications nécessaires, à tout scrutin supplémentaire tenu en vertu du paragraphe (5).

### **Entrée en fonction**

130.13. (1) La personne nommée à la charge de président entre en fonction immédiatement après sa nomination et conserve son poste jusqu'à l'entrée en fonction de son successeur.

### **Cessation de fonction**

(2) Malgré le paragraphe (1), cesse d'occuper la charge de président du Comité la personne qui cesse d'être conseillère élue pourvue d'un permis l'autorisant à fournir des services juridiques en Ontario.

### **Vacance**

(3) En cas de démission, de destitution ou, pour quelque raison que ce soit, d'empêchement du président ou de la présidente au cours de son mandat, ou en cas de vacance de la charge, sauf dans la période entre la fin d'une élection des conseillers en vertu de la partie I.1 du présent règlement administratif et la première réunion ordinaire du Conseil en septembre, le Comité nomme un nouveau président ou une nouvelle présidente qu'il élit dès la première occasion.

### **Application de dispositions**

(4) L'article ~~Les articles 130.1~~, 130.2 et ~~les articles~~ 130.4 à 130.12 s'appliquent à la nomination et à l'élection du président ou de la présidente visées au paragraphe (3), mais pour l'application de l'article 130.2, la référence aux « articles 130.3 à 130.12 » est interprétée comme une référence aux « articles 130.4 à 130.12 ».

### **Président intérimaire**

(5) Si, pour quelque raison que ce soit, le président ou la présidente du Comité est temporairement incapable de remplir les attributions de sa charge au cours de son mandat, ou en cas de vacance de la charge, sauf dans la période entre la fin d'une élection des conseillers en vertu de la partie I.1 du présent règlement administratif et la première réunion ordinaire du Conseil en septembre, le vice-président ou la vice-présidente remplit les attributions de la charge de président jusqu'à ce que se présente l'une des situations suivantes :

- a) le président ou la présidente est en mesure de remplir les attributions de sa charge ;
- b) un nouveau président ou une nouvelle présidente est nommé conformément au paragraphe (3).

### **Présidence intérimaire : année d'élection**

(6) Si le poste de président ou présidente du Comité est vacant dans la période entre la fin d'une élection des conseillers en vertu de la partie I.1 du présent règlement administratif et la première réunion ordinaire du Conseil en septembre, le vice-président ou la vice-présidente s'acquitte des tâches et des fonctions de président jusqu'à ce qu'un nouveau président ou nouvelle présidente soit nommé élu aux termes de l'article 130.32.

VICE-PRÉSIDENT

### **Nomination par le Conseil**

130.14. (1) Le Conseil nomme à la charge de vice-président du Comité le membre de ce dernier qui est :

- a) soit un conseiller élu ou une conseillère élue qui est pourvu d'un permis l'autorisant à pratiquer le droit en Ontario à titre d'avocat ou d'avocate ;
- b) soit un conseiller ou une conseillère non juriste.

### **Mandat**

(2) La personne nommée à la charge de vice-président entre en fonction immédiatement après sa nomination et conserve son poste jusqu'à l'entrée en fonction de son successeur.

### **Mandat amovible**

(3) Malgré le paragraphe (2), le vice-président ou la vice-présidente du Comité occupe ses fonctions au gré du Conseil.

### **Vacance**

(4) En cas d'empêchement du vice-président ou de la vice-présidente du Comité, ou de vacance du poste, le trésorier ou la trésorière peut nommer à sa place un autre membre qui est :

- a) soit un conseiller élu ou une conseillère élue qui est pourvu d'un permis l'autorisant à pratiquer le droit en Ontario à titre d'avocat ou d'avocate ;
- b) soit un conseiller ou une conseillère non juriste.

### **Ratification de la nomination**

(5) La nomination d'un membre du Comité à la vice-présidence qui est visée au paragraphe (4) est subordonnée à la ratification du Conseil à la première réunion ordinaire qui suit la nomination.

## **FUNCTIONNEMENT DU COMITÉ**

### **Mandat des membres du Comité nommés par le Conseil**

131. (1) Sous réserve du paragraphe (2), les personnes nommées au Comité par le Conseil occupent leurs fonctions jusqu'à la nomination de leurs successeurs.

### **Expulsion**

(2) Le Conseil peut expulser du Comité les membres qu'il y a nommés et qui n'assistent pas à trois de ses réunions consécutives.

### **Mandat des membres du Comité qui sont des conseillers parajuristes**

(3) Les cinq conseillers élus en vertu de la partie I.1 du présent règlement administratif entrent en fonction à titre de membres du Comité à la première réunion ordinaire du Comité suivant l'élection et, sous réserve des règlements qui prévoient leur destitution, occupent leur charge jusqu'à l'entrée en fonction de leurs successeurs.

### **Quorum**

132. Le quorum pour les affaires courantes du Comité est de quatre membres.

### **Réunions par téléconférence**

133. Le Comité peut se réunir pour traiter ses affaires courantes par téléconférence ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes qui participent aux réunions puissent communiquer les unes avec les autres simultanément.

### **Droit d'assister aux réunions**

134. (1) Sous réserve du paragraphe (2), seuls les membres du Comité peuvent assister à ses réunions.

### **Idem**

(2) Bien que n'étant pas membres du Comité, les personnes suivantes peuvent assister à ses réunions :

1. Les conseillers et les conseillères.
2. La direction et le personnel du Barreau.
3. Outre les personnes mentionnées aux alinéas 1 et 2, celles qui y sont autorisées par le Comité.

### **Droit de vote**

135. Seuls les membres du Comité ont le droit de voter à ses réunions.

## **DISPOSITIONS GÉNÉRALES**

### **Non-application de la partie VI**

136. Les dispositions de la partie VI ne s'appliquent pas au Comité.

## **PARTIE VIII ENTRÉE EN VIGUEUR**

### **Entrée en vigueur**

137. La présente partie est entrée en vigueur le 25 mai 2007.



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 5**

## **HUMAN RIGHTS MONITORING GROUP**

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### **Letters of Intervention on Behalf of Jonathan Ross, Selma Masood, and the Hong Kong Law Society**

October 1, 2021

**Committee Members:**

**Julian Falconer (Co-Chair)**

**Tanya Walker (Co-Chair)**

Marian Lippa

Isfahan Merali

Lubomir Poliacik

Quinn Ross

Doug Wellman

**Authored By:**

Jason Pichelli

JPichell@lso.ca

**FOR DECISION**

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION**

**That Convocation approve the letters and public statements in the following cases:**

**Jonathan Ross, Selma Masood, and the Hong Kong Law Society – Hong Kong – letter of intervention and public statement presented at TAB 5.1.**

**Rationale**

The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,

- a. review information that comes to its attention about human rights violations that target members of the professions and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- b. determine if the matter is one that requires a response from the Law Society; and
- c. prepare a response for review and approval by Convocation.

**Key Issues and Considerations**

The Monitoring Group considered the following factors when making a decision about the cases:

- a. there are no concerns about the quality of sources used for this report; and
- b. the letters and public statements regarding the threats made to lawyers Jonathan Ross and Selma Masood, and the Hong Kong Law Society fall within the mandate of the Monitoring Group.

## KEY BACKGROUND

### **HONG KONG – THREATS MADE TO LAWYERS JONATHAN ROSS AND SELMA MASOOD, AND TO THE HONG KONG LAW SOCIETY**

#### **Sources of Information**

The background information for this report was retrieved from the following sources:

- a. Amnesty International.<sup>1</sup>
- b. Reuters<sup>2</sup>
- c. Hong Kong Free Press<sup>3</sup>
- d. South China Post<sup>4</sup>
- e. FR24 News<sup>5</sup>

#### **Background**

The Hong Kong Law Society held an election on August 24 for five of its governing council's 20 seats. While the voting process is an annual event for the Hong Kong Law Society, this year's race drew a high level of media attention. This is in large part due to the fact that last year's election roughly coincided with the introduction of a controversial national security law in China and four of the five seats in the 2020 election were won by outspoken lawyers who were very critical of the new law<sup>6</sup>. This national security law was the subject of numerous large protests, as well as the arrests and convictions of several prominent lawyers and pro-democracy figures in Hong Kong. In this year's election, four self-described "neutral" candidates received a large amount of negative attention as China continues to assert more control over pro-democracy voices within Hong Kong.

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<sup>1</sup> Amnesty International. "Hong Kong: National Security Law has created a human rights emergency". June 30, 2021. Online: <https://www.amnesty.org/en/latest/press-release/2021/06/hong-kong-national-security-law-has-created-a-human-rights-emergency/>

<sup>2</sup> Promfret, James. Hong Kong Law Society election underscores tensions over China, legal system. Reuters. August 24, 2021. Online: [Hong Kong Law Society election underscores tensions over China, legal system | Reuters](https://www.reuters.com/article/hong-kong-law-society-election-underscores-tensions-over-china-legal-system/idKCN24A0001/)

<sup>3</sup> Cheng, Selina. Hong Kong Free Press. "Candidate withdraws from Hong Kong Law society election citing threats to himself and family". August 21, 2021. Online: <https://hongkongfp.com/tag/jonathan-ross/>

<sup>4</sup> Lau, Chris. "Conflicting views on Hong Kong Law Society election won by candidates backing professionalism over politics". South China Post. August 24, 2021. Online: [https://www.scmp.com/news/hong-kong/politics/article/3146211/hundreds-ballots-stuck-administrative-limbo-add-new-layer?module=perpetual\\_scroll&pgtype=article&campaign=3146211](https://www.scmp.com/news/hong-kong/politics/article/3146211/hundreds-ballots-stuck-administrative-limbo-add-new-layer?module=perpetual_scroll&pgtype=article&campaign=3146211)

<sup>5</sup> Hong Kong's Lam asks group of lawyers to stay out of politics. FR24 News. August 17, 2021. Online: [Hong Kong's Lam asks group of lawyers to stay out of politics - | FR24 News English](https://www.fr24.com/news/hong-kong-law-society-election-underscores-tensions-over-china-legal-system/)

<sup>6</sup> Rigby, Ben, and Malpas, John. 'A shameful and sad day' – in-house lawyer withdraws from Hong Kong Law society elections citing threats. The Global Legal Post. August 23, 2021. Online: ['A shameful and sad day' – in-house lawyer withdraws from Hong Kong law society elections citing threats - The Global Legal Post](https://www.thegloballegalpost.com/news/hong-kong-law-society-election-underscores-tensions-over-china-legal-system/)

Initially elected in 2017 under a moderate and politically neutral ticket, lawyers Jonathan Ross, formerly of Skadden capital markets; Denis Brock, a disputes partner at O'Melveny & Myers; Selma Masood, a principal at SM & Co Solicitors; and Henry Wheare, an IP partner at Nixon Peabody CWL; have represented themselves as 'fearless supporters of the rule of law'<sup>7</sup>.

Over the summer, pro-Beijing newspapers, such as Ta Kung Pao, came out strongly against candidates without strong Beijing ties, saying "a 'liberal' faction...will carry out 'ulterior political goals' if it wins a majority of seats"<sup>8</sup>. A second newspaper, Wen Wei Po, referred to the group as "independence advocates", a punishable claim under Hong Kong's new national security regime<sup>9</sup>.

In early August, a cover story in Eastweek, a Hong Kong-based weekly Chinese language magazine, featured the four lawyers and described them as a "political" faction aligned with the pro-democracy movement<sup>10</sup>. Ross and Masood have stated publicly that such claims are untrue.

On August 14, the state-controlled Chinese newspaper People's Daily warned the Law Society to not become political like the Bar Association, which has spoken out on contentious issues in the past, including the national security law<sup>11</sup>. The article also directly threatened the independence of the Law Society, stating if the Law Society supports the pro-democracy movement, "you will lose the recognition of the government ... and suddenly collapse"<sup>12</sup>.

According to Reuters, since the People's Daily editorial, more than 30 articles, columns and editorials in pro-Beijing media outlets, including the previously mentioned Ta Kung Pao and Wen Wei Po, have attacked the so-called "liberal" camp<sup>13</sup>.

Some of these outlets also praised the candidates in a rival slate, labelled as the "professional" camp, including Justin Yuen, a member of the CPPCC, a Chinese political consultative body; and Careen Wong, who has ties to pro-Beijing politician Junius Ho<sup>14</sup>.

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<sup>7</sup> Rigby, Ben, and Malpas, John. 'A shameful and sad day' – in-house lawyer withdraws from Hong Kong Law society elections citing threats. The Global Legal Post. August 23, 2021. Online: ['A shameful and sad day' – in-house lawyer withdraws from Hong Kong law society elections citing threats - The Global Legal Post](#)

<sup>8</sup> Promfret, James. Hong Kong Law Society election underscores tensions over China, legal system. Reuters. August 24, 2021. Online: [Hong Kong Law Society election underscores tensions over China, legal system | Reuters](#)

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Promfret, James. Hong Kong Law Society election underscores tensions over China, legal system. Reuters. August 24, 2021. Online: [Hong Kong Law Society election underscores tensions over China, legal system | Reuters](#)

On August 17<sup>th</sup>, three days after the People’s Daily article was released and one week ahead of the Law Society’s election, Hong Kong Chief Executive Carrie Lam said in a press conference that if the Law Society or candidates in the election become involved in political issues “the government will consider severing ties with it”<sup>15</sup>. Last April, Lam made similar threats to the Hong Kong Bar Association after the President was publicly critical of the sentences handed down to three prominent members: Martin Lee, Margaret Ng, and Albert Ho<sup>16</sup>.

### **Current Status**

On August 21, three days ahead of the election, Mr. Ross withdrew his candidacy for a council seat, saying that he had been receiving threats and feared for his safety and the safety of his family. <sup>17</sup> In his announcement, he was also quoted as saying “It is a shameful and sad day for Hong Kong that an election for council of our honourable institution has sunk to this level.”<sup>18</sup>

The Law Society said in a statement that it had filed a report with the police regarding the alleged threats to Ross and had advised him to do the same.

In a comment on social media on August 23, Masood stated that she “endured three weeks if not more of bullying,” including threats<sup>19</sup>.

That same week, several other civil society institutions were dissolved as a result of political pressure from China, including:

- Civil Rights Front, a pro-democracy group that holds an annual rally and was the leader in organizing the large national security protests<sup>20</sup>
- The 95,000 member Union of Professional Teachers<sup>21</sup>

On August 24<sup>th</sup>, the five candidates from the “professionalism” slate won their election, and the neutral candidates were defeated. Each of the “professionalism” candidates used the threat against the Law Society’s regulatory status in their campaigns, stating in their materials and websites that if the “liberal” candidates were elected, the Law Society would lose its regulatory authority<sup>22</sup>.

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<sup>15</sup> Hong Kong’s Lam asks group of lawyers to stay out of politics. FR24 News. August 17, 2021. Online: [Hong Kong’s Lam asks group of lawyers to stay out of politics – . | FR24 News English](#)

<sup>16</sup> Ibid

<sup>17</sup> Cheng, Selina. Hong Kong Free Press. “Candidate withdraws from Hong Kong Law society election citing threats to himself and family”. August 21, 2021. Online: [Jonathan Ross Archives | Hong Kong Free Press HKFP \(hongkongfp.com\)](#)

<sup>18</sup> Ibid

<sup>19</sup> Hong Kong’s Lam asks group of lawyers to stay out of politics. FR24 News. August 17, 2021. Online: [Hong Kong’s Lam asks group of lawyers to stay out of politics – . | FR24 News English](#)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Lau, Chris. “Conflicting views on Hong Kong Law Society election won by candidates backing professionalism over politics”. South China Post. August 24, 2021. Online: [https://www.scmp.com/news/hong-kong/politics/article/3146211/hundreds-ballots-stuck-administrative-limbo-add-new-layer?module=perpetual\\_scroll&pgtype=article&campaign=3146211](https://www.scmp.com/news/hong-kong/politics/article/3146211/hundreds-ballots-stuck-administrative-limbo-add-new-layer?module=perpetual_scroll&pgtype=article&campaign=3146211)

September 23, 2021

H.E. Xi Jinping  
President of the People's Republic of China  
State Council General Office  
2 Fuyoujie  
Xichengqu  
Beigingshi 10017  
People's Republic of China

The Honourable Carrie Lam  
Chief Executive of Hong Kong  
Office of the Chief Executive  
1 Tim Wa Avenue  
Tamar, Hong Kong

Your Excellency and Chief Executive Lam:

**Re: Threats to lawyers Jonathan Ross and Selma Masood, and to the Hong Kong Law Society**

I write on behalf of the Law Society of Ontario to voice our grave concern over the threats made to lawyer Jonathan Ross and his family, Selma Masood, and the Hong Kong Law Society. When lawyers, paralegals, judges, and human rights advocates have suffered from fundamental injustices, we advocate for the protection of their rights.

Jonathan Ross and Selma Masood, both lawyers practicing in Hong Kong, were candidates in the Hong Kong Law Society's election this summer. Both had been previously elected in 2017 on platforms in support of the rule of law.

Over the summer in advance of the election, state-controlled Chinese media and candidates with ties to the Chinese government repeatedly threatened the Hong Kong Law Society, claiming that the Law Society risks losing its regulatory authority. This threat was repeated over 30 times in various outlets. The threat carried weight, since two other prominent civil society institutions, the Civil Rights Front and the Union of Professional Teachers, were recently dissolved. Furthermore, these threats were repeated by Hong Kong Chief Executive Carrie Lam during her weekly press conference.

On August 21<sup>st</sup>, three days ahead of the election, Jonathan Ross withdrew his candidacy, saying that he had been receiving threats and feared for his safety and the safety of his family. On August 23<sup>rd</sup>, Selma Masood stated that she had also been the target of threats and bullying. The personal threats received by Jonathan Ross and Selma Masood are a direct result of the statements made by Chief Executive Lam and the state-controlled People's Daily.

On August 24<sup>th</sup>, the five candidates with ties to the Chinese government were elected. Each of those candidates used the threat against the Law Society's regulatory status in their campaigns, stating in their materials and websites that if the other "liberal" candidates were elected, the Law Society would lose its regulatory authority

In light of these circumstances, the Law Society of Ontario urges Your Excellency and Chief Executive Lam to comply with China's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society of Ontario urges the Governments of China and Hong Kong to:

- a. immediately put an end to all acts of harassment against Jonathan Ross, Selma Masood, and the Hong Kong Law Society;

- b. ensure that all lawyers are free from arbitrary interference in their privacy, family, home, or correspondence, and from attacks upon their honour and reputations;
- c. ensure that all lawyers, paralegals and human rights defenders in Hong Kong can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Teresa Donnelly  
Treasurer

*\*The Law Society of Ontario is the governing body for more than 55,000 lawyers and 9,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal professions in the public interest, and the Law Society has a duty advance the cause of justice and the rule of law.*

cc:

Ambassador Cong Peiwu  
Embassy of the People's Republic of China in Canada  
515 St. Patrick Street, Ottawa, Ontario  
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Fax: (613) 789-1911  
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The Honourable Marc Garneau, Minister of Foreign Affairs

Dominic Barton, Canadian Ambassador of Canada to the People's Republic of China, The Embassy of Canada to China

Ketty Nivyabandi, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Wang Junfeng, All China Lawyers Association

Albert Ho Chun Yan, Chairperson, China Human Rights Lawyers Concern Group

Sophie de Graaf, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Mary Lawlor, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brillman, International Human Rights Policy Adviser, The Law Society of England and Wales

## **Proposed Public Statement on behalf of Jonathan Ross, Selma Masood, and the Hong Kong Law Society**

### **The Law Society of Ontario condemns the threats against lawyers Jonathan Ross and Selma Masood, and to the independence of the Hong Kong Law Society**

Toronto, ON — The Law Society of Ontario is condemning the threats to lawyers Jonathan Ross and Selma Masood, and to the Hong Kong Law Society. When lawyers, paralegals, judges, and human rights advocates have suffered from fundamental injustices, we advocate for the protection of their rights.

Jonathan Ross and Selma Masood, both lawyers practicing in Hong Kong, were candidates in the Hong Kong Law Society's election this summer. Both had been previously elected in 2017 on platforms in support of the rule of law.

Over the summer in advance of the election, state-controlled Chinese media and candidates with ties to the Chinese government repeatedly threatened the Hong Kong Law Society, claiming that the Law Society risks losing its regulatory authority. This threat was repeated over 30 times in various outlets. The threat carried weight, since two other prominent civil society institutions, the Civil Rights Front and the Union of Professional Teachers, were recently dissolved. Furthermore, these threats were repeated by Hong Kong Chief Executive Carrie Lam during her weekly press conference.

On August 21<sup>st</sup>, three days ahead of the election, Jonathan Ross withdrew his candidacy, saying that he had been receiving threats and feared for his safety and the safety of his family. On August 23<sup>rd</sup>, Selma Masood stated that she had also been the target of threats and bullying. The personal threats received by Jonathan Ross and Selma Masood are a direct result of the statements made by Chief Executive Lam and the state-controlled People's Daily.

On August 24<sup>th</sup>, the five candidates with ties to the Chinese government were elected. Each of those candidates used the threat against the Law Society's regulatory status in their campaigns, stating in their materials and websites that if the other "liberal" candidates were elected, the Law Society would lose its regulatory authority.

In light of these circumstances, the Law Society of Ontario urges Your Excellency and Chief Executive Lam to comply with China's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance,

harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society of Ontario urges the Governments of China and Hong Kong to:

- a. immediately put an end to all acts of harassment against Jonathan Ross, Selma Masood, and the Hong Kong Law Society;
- b. ensure that all lawyers are free from arbitrary interference in their privacy, family, home, or correspondence, and from attacks upon their honour and reputations;
- c. ensure that all lawyers, paralegals and human rights defenders in Hong Kong can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.



**Law Society**  
of Ontario

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**Tab 5.2**

## **Human Rights Monitoring Group**

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### **Information Report: August 2021 Intervention in Afghanistan**

October 1, 2021

**Committee Members:**

**Julian Falconer (Co-Chair)**

**Tanya Walker (Co-Chair)**

Marian Lippa

Isfahan Merali

Lubomir Poliacik

Quinn Ross

Doug Wellman

**Authored By:**

Jason Pichelli

JPichell@LSO.ca

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# Purpose

This report informs Convocation of an intervention regarding Canada's Afghan settlement program, which was approved by Treasurer Teresa Donnelly because Convocation approval of the intervention was impractical given the urgent timelines in the case.

## Context

### A. Background

On April 14, President Biden announced that the United States would be moving forward with the previously announced agreement to withdraw from Afghanistan<sup>1</sup>. In May, the Taliban began setting up checkpoints and outposts throughout the country, and steadily increased their presence through June and July<sup>2</sup>. In early August, the Taliban began taking control of provincial capitals and major cities and reached the capital city of Kabul on August 15. As the Taliban's control over Afghanistan grew, many Afghans began to flee the country.

On August 13, the Government of Canada announced that it was expanding its special resettlement program for Afghanistan, to ensure that Canadians, Afghans who had helped the Government of Canada (such as interpreters), and vulnerable individuals and their families could be resettled safely in Canada on an urgent basis<sup>3</sup>.

On August 16, the Law Society of England and Wales wrote to the UK government, urging the government to take action to protect legal professionals in Afghanistan, with particular concern for the 270 women judges<sup>4</sup>. Reports had begun to surface from organizations connected to the Afghan legal community that members of the judiciary were being directly threatened by members of the Taliban. This information was shared with the LSO by the IAWJ, and was independently reported by the media on August 17<sup>5</sup>. Some women judges had received threatening notes from members of the Taliban who they had previously sent to

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<sup>1</sup> Mellen, Ruby. "The shocking speed of the Taliban's advance: A visual timeline". The Washington Post. August 16, 2021. Online: [The shocking speed of the Taliban's advance: A visual timeline - The Washington Post](#)

<sup>2</sup> Mellen, Ruby. "The shocking speed of the Taliban's advance: A visual timeline". The Washington Post. August 16, 2021. Online: [The shocking speed of the Taliban's advance: A visual timeline - The Washington Post](#)

<sup>3</sup> Ministry of Immigration, Refugees and Citizenship Canada. "Canada expands resettlement program to bring more Afghans to safety". Government of Canada. News Release. August 13, 2021. Online: [Canada expands resettlement program to bring more Afghans to safety - Canada.ca](#)

<sup>4</sup> The Law Society of England and Wales. "Bar Council, BHRC and Law Society urge UK Government to offer asylum to legal professionals in Afghanistan". August 16, 2021. Online: [Bar Council, BHRC and Law Society urge UK Government to offer asylum to legal professionals in Afghanistan - Bar Human Rights Committee](#)

<sup>5</sup> Bernstein, Jaela. "Afraid for their lives, Afghan women judges desperately seek escape from Taliban" CBC. August 17, 2021. Online: [Afraid for their lives, Afghan women judges desperately seek escape from Taliban | CBC News](#)

jail, and had been in fear of their lives since the Taliban began liberating prisoners from jail on August 9.

On August 17, 2021 the Law Society of Ontario sent a letter to the Canadian government urging it to include women judges and their families in the Afghan resettlement program. The Law Society's letter was based on reports from groups such as the International Association of Women Judges (IAWJ) indicating that women judges were being deliberately targeted by the Taliban. A public statement was also posted on the Law Society website, outlining the information gathered in preparing the intervention, as well as the demands made by the Law Society.

These documents were prepared using the same standard approach and process that the Human Rights Monitoring Group (the Monitoring Group) has used to prepare interventions in the past. Information was gathered from trusted sources, such as the IAWJ and the Law Society of England and Wales. The intervention was written and approved by the Monitoring Group on August 16. As a result of the rapidly deteriorating situation in Afghanistan and information shared by the IAWJ regarding direct threats made to women in the judiciary, the Monitoring Group asked the Treasurer to review the materials so that they could be issued as soon as possible.

The Treasurer agreed that the intervention should be issued urgently. The intervention letter was signed and sent on August 17, and the public statement was posted at the same time.

## **B. Considerations**

The Monitoring Group considered the following factors when making a decision about the case:

- a. there are no concerns about the quality of sources used for this report; and
- b. the letter and public statement regarding the safety of women judges in Afghanistan falls within the mandate of the Monitoring Group.

The background information used to support the intervention was retrieved from the following sources:

- a. The International Association of Women Judges<sup>6</sup>
- b. The Government of Canada<sup>7</sup>
- c. The Law Society of England and Wales<sup>8</sup>
- d. The Guardian<sup>9</sup>
- e. The Washington Post<sup>10</sup>
- f. CBC<sup>11</sup>

### C. Human Rights Monitoring Group mandate

The mandate of the Monitoring Group is to:

- i. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- ii. to review information that comes to its attention about human rights violations that target human rights defenders in the same event or circumstances as a member of the legal profession or the judiciary as described above;
- iii. determine if the matter is one that requires a response from the Law Society; and
- iv. prepare a response for review and approval by Convocation.

Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation.

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<sup>6</sup> International Association of Women Judges. "Official Statement on the Current Situation in Afghanistan". Public Statement. August 16, 2021. Online: [Official IAWJ Statement on the Current Situation in Afghanistan - International Association of Women Judges](#)

<sup>7</sup> Ministry of Immigration, Refugees and Citizenship Canada. "Canada expands resettlement program to bring more Afghans to safety". Government of Canada. News Release. August 13, 2021. Online: [Canada expands resettlement program to bring more Afghans to safety - Canada.ca](#)

<sup>8</sup> The Law Society of England and Wales. "Bar Council, BHRC and Law Society urge UK Government to offer asylum to legal professionals in Afghanistan". August 16, 2021. Online: [Bar Council, BHRC and Law Society urge UK Government to offer asylum to legal professionals in Afghanistan - Bar Human Rights Committee](#)

<sup>9</sup> Harding, Luke. "Two female judges shot dead in Kabul as wave of killings continues". The Guardian. January 17, 2021. Online: [Two female judges shot dead in Kabul as wave of killings continues | Afghanistan | The Guardian](#)

<sup>10</sup> Mellen, Ruby. "The shocking speed of the Taliban's advance: A visual timeline". The Washington Post. August 16, 2021. Online: [The shocking speed of the Taliban's advance: A visual timeline - The Washington Post](#)

<sup>11</sup> Bernstein, Jaela. "Afraid for their lives, Afghan women judges desperately seek escape from Taliban" CBC. August 17, 2021. Online: [Afraid for their lives, Afghan women judges desperately seek escape from Taliban | CBC News](#)



Law Society  
of Ontario

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Treasurer's Office  
416-947-3300  
1-800-668-7380  
[treasurer@lso.ca](mailto:treasurer@lso.ca)

August 17, 2021

**Sent by email to:**

[Minister@cic.gc.ca](mailto:Minister@cic.gc.ca)

[Marco.Mendicino@parl.gc.ca](mailto:Marco.Mendicino@parl.gc.ca)

The Honourable Marco E. L. Mendicino, P.C., M.P.  
Minister of Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
Ottawa, Ontario  
K1A 1L1

Dear Minister Mendicino,

**Re: Safety of Women Judges in Afghanistan**

I write on behalf of the Law Society of Ontario to voice our grave concern over reports regarding the rapidly deteriorating situation in Afghanistan, and the high risk this situation represents for women in the judiciary. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

In a [recent statement](#), the President of the International Association of Women Judges (IAWJ), Justice Susan Glazebrook, urged governments to include Afghan women judges and their families in the special support measures that have been extended to personnel who provided essential services to military forces. She wrote:

“By serving as judges and helping develop the Afghan judicial branch, women judges have helped establish the rule of law in their country, an essential pillar of a democratic state. Allowing them to be at the mercy of the Taliban and insurgent groups, given what they have sacrificed, would be tragic indeed.”

The Law Society of Ontario supports this statement, and is urging you to include women judges and their families in your [recently expanded resettlement program](#). As women leaders, it is the Law Society's position that women judges should qualify for the program, and we urge you to use the tools and resources available to bring these women and their families to safety. Currently, almost 250 women serve as judges in Afghanistan and over 217 are members of the Afghan Women Judges Association, which is affiliated with the international association.

While it is appreciated that the resettlement program recently announced by Canada contemplates that women leaders, among others, have already left

Afghanistan and are in a third country, we urge Canada to take steps to directly address the plight of those women judges who remain in Afghanistan. We are advised by the regional Director for the association, Nova Scotia Supreme Court Justice Mona Lynch, that all 217 members of the Afghan Women Judges association remain in hiding in Afghanistan.

Women in the judiciary have already been the target of violence. In January, [two women judges were murdered](#) while driving to their office in a court vehicle. It has also been reported that women judges have been receiving threatening notes from jailed prisoners. Now that Taliban has been freeing prisoners from Afghan jails, these threats have become more acute.

The global human rights community also agrees that these women are at risk. According to Human Rights Watch, civilians who promote human rights and democracy are at a high risk of being targeted by the Taliban. According to Agnes Callamard, Amnesty International's Secretary General, women human rights defenders are at serious risk of Taliban reprisals.

The Bar Council, the Bar Human Rights Committee of England and Wales, and the Law Society of England and Wales have also [issued a statement](#) on this issue, calling on the UK government to offer evacuation, safety, and asylum within the UK to the women judges and their families, as well as other members of the legal professions in serious danger. They stated in part:

**“We are extremely worried about the situation of at least 250 women judges in the country who we consider to be at particular risk. We urge the UK government not to abandon these courageous defenders of the rule of law and – in liaison with its international allies – to offer evacuation and safety and asylum in the UK to those women judges, their families, and other members of the legal profession who are in serious danger.”**

We adopt those statements. We urgently request that women in the judiciary be included in the Government's definition of vulnerable Afghans so that they and their families may receive immediate protection.

Yours truly,



Teresa Donnelly  
Treasurer

*\*The Law Society of Ontario is the governing body for more than 55,000 lawyers and 9,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest, and the Law Society has a duty to advance the cause of justice and the rule of law.*

Copies:

The Honourable Justin Trudeau, Prime Minister of Canada

The Honourable Harjit S. Sajjan, P.C., M.P., Minister of National Defence

The Honourable Marc Garneau, Minister of Foreign Affairs

The Honourable David Lametti, Minister of Justice and Attorney General of Canada

Catrina Tapley, Deputy Minister of Immigration, Refugees and Citizenship Canada

Justice Gillian D. Butler, President, Canadian Chapter of the International Association of Women Judges

Justice Mona Lynch, Regional Director for North America, International Association of Women Judges

The Honourable Richard Wagner, Chief Justice, Supreme Court of Canada

The Honourable Lise Maisonneuve, Chief Justice, Ontario Court of Justice

The Honourable George Strathy, Chief Justice, Court of Appeal for Ontario

The Honourable Geoffrey B. Morawetz, Chief Justice, Superior Court of Justice

His Excellency, the Honourable Bob Rae, Canadian Ambassador to the United Nations

Ketty Nivyabandi, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Sophie de Graaf, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Mary Lawlor, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

## Public Statement on Afghanistan

### **The Law Society of Ontario calls for women in the judiciary be included in the Canadian Government's definition of vulnerable Afghans**

Toronto, ON — The Law Society of Ontario is gravely concerned over the many recent reports regarding the rapidly deteriorating situation in Afghanistan, and the high risk this situation represents for women in the judiciary. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

In a recent statement, the President of the International Association of Women Judges (IAWJ), Justice Susan Glazebrook, urged governments around the world to include Afghan women judges and their families in the special support measures that have been extended to personnel who provided essential services to military forces. Currently, almost 250 women serve as judges in Afghanistan and over 217 are members of the Afghan Women Judges Association, which is affiliated with the international association. Justice Glazebrook wrote that “by serving as judges and helping develop the Afghan judicial branch, women judges have helped establish the rule of law in their country, an essential pillar of a democratic state. Allowing them to be at the mercy of the Taliban and insurgent groups, given what they have sacrificed, would be tragic indeed.”

The Law Society of Ontario supports this statement. The Treasurer, working closely with the Law Society's Human Rights Monitoring Group, has sent a letter to the Canadian Government urging them to include women judges and their families in their recently expanded resettlement program. It is the Law Society's position that women judges should qualify for the Canadian program, under the definition of women leaders, and we're urging all governments to use the tools and resources available to bring these women and their families to safety.

While it is appreciated that the resettlement program recently announced by Canada contemplates that women leaders, among others, have already left Afghanistan and are in a third country, we urge Canada to take steps to directly address the plight of those women judges who remain in Afghanistan. The Law Society has been advised that all 217 members of the Afghan Women Judges association remain in hiding in Afghanistan.

Women in the judiciary have already been the target of violence. In January, two women judges were murdered while driving to their office in a court vehicle. It has also been reported that women judges have been receiving threatening notes from jailed prisoners. Now that Taliban has been freeing prisoners from Afghan jails, these threats have become more acute.

The global human rights community also agrees that these women are at high risk. According to Human Rights Watch, civilians who promote human rights and democracy are at a high risk of being targeted by the Taliban. According to Agnes Callamard, Amnesty International's Secretary General, women human rights defenders are at serious risk of Taliban reprisals.

The Bar Council, the Bar Human Rights Committee of England and Wales, and the Law Society of England and Wales have also issued a statement on this issue, calling on the UK government to offer evacuation,

safety, and asylum within the UK to the women judges and their families, as well as other members of the legal professions in serious danger. They stated in part:

“We are extremely worried about the situation of at least 250 women judges in the country who we consider to be at particular risk. We urge the UK government not to abandon these courageous defenders of the rule of law and – in liaison with its international allies – to offer evacuation and safety and asylum in the UK to those women judges, their families, and other members of the legal profession who are in serious danger.”

We adopt those statements. We urgently request that women in the judiciary be included in the Canadian Government’s definition of vulnerable Afghans so that they and their families may receive immediate protection.



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 6**

## **Audit & Finance Committee**

### **Report to Convocation**

October 1, 2021

**Committee Members:**

Joseph Groia (Chair)  
Lubomir Poliacik (Vice-Chair)  
Catherine Banning  
Cathy Corsetti  
Seymour Epstein  
Gary Graham  
Philip Horgan  
Jacqueline Horvat  
Michelle Lomazzo  
C. Scott Marshall  
Clare Sellers  
Sidney Troister

**Authored By:**

Finance  
Brenda Albuquerque-Boutilier  
Executive Director, Finance & CFO  
416-947-3436

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## FOR INFORMATION

### Law Society of Ontario Financial Statements For the six months ended June 30, 2021

**The Audit & Finance Committee recommends that the financial statements of the Law Society for the first six months of 2021 be received by Convocation for information.**

This is part of the quarterly financial reporting schedule to Convocation. These interim statements convey the performance of the Law Society before the end of the year. Unlike annual statements, interim statements are not audited.

These financial statements present the financial position and operations of the Society and include the General Funds (or operating funds) and a number of special purpose or restricted funds.

- The Compensation Funds are restricted by the Law Society Act
- The Errors and Omissions Insurance Fund (E&O Fund), the Capital Allocation Fund, the Invested in Capital and Intangible Assets Fund, the County Libraries Fund and the “Other Restricted Funds” (Repayable Allowance Fund, Special Projects Fund and Parental Leave Assistance Fund) are restricted by Convocation.

Information on General Funds and restricted funds is provided in [Appendix A](#).

The Financial Statements for the six months ended June 30, 2021 comprise the following statements:

- Statement of Financial Position
- Statement of Revenues and Expenses and Change in Fund Balances, detailing results of operations for lawyers and paralegals
- Schedule of Restricted Funds
- Supplemental schedules include Statements of Financial Position for the Compensation Fund and E&O Fund, and Schedules of Revenues and Expenses for the Combined General Funds, Lawyer and Paralegal General Funds, the Compensation Funds and the Errors and Omissions Insurance Fund

## Financial Statement Highlights

### General Fund

The lawyer General Fund shows an excess of revenues over expenses of \$4.9 million at the end of the second quarter of 2021, compared to a budget that planned for excess expenses over revenues of \$4.6 million for the same period. The paralegal General Fund experienced \$224,000 in excess revenues over expenses at the end of the second quarter of 2021 compared to a budgeted excess of expenses over revenues of \$1 million for the same period.

The main reason for the positive financial performance in 2021 compared to budget within the General Funds is expenses being less than budget across all departments driven by the pandemic curtailing operating expenses and numerous staffing vacancies that existed in the first quarter of the year. The variance in salary and benefits that exists across all divisions is attributable to the hiring freeze implemented in 2020 only being lifted at the beginning of 2021 in conjunction with a new budget year. Positions were filled gradually throughout the first six months of the year. In addition, recruitment for some positions took longer than anticipated because of the specialized nature of the positions.

The fund balance of the lawyer General Fund is \$35.2 million as of June 30, 2021 which has increased from \$25.6 million at the same time last year. The increase in fund balance is attributable to:

- Strong performance on the investment portfolio over the past year resulting in significant unrealized gains
- Better than budgeted revenue results related to CPD programs
- the cost containment measures introduced by management in the spring of 2020 in response to the pandemic that continued into 2021, including renegotiated contracts related to building services such as cleaning, maintenance and print and mail services
- circumstantial savings realized because of travel restrictions, a shift to virtual meetings and events, and the resulting effect of no catering costs, with the impact most noted in relation to bench remuneration and expenses, and stakeholder engagement events
- Efficiencies resulting from the implementation of online examinations.

The Law Society's Fund Balance Management Policy is to maintain a lawyer General Fund balance within a minimum and maximum benchmark of two to three months of budgeted General Fund expenses. For 2021, the range is \$16.8 million to \$25.2 million. As the lawyer General Fund balance was projected to be above the benchmark, the 2021 budget planned for the use of \$6.2 million of the fund balance to fund operations and reduce the 2021 lawyer annual fees.

Pandemic related cost reductions continue to result in variances between actual and budgeted expenses. As a result, the lawyer General Fund balance is projected to be above benchmark at the end of 2021 and the draft 2022 budget plans to use a portion of the lawyer General Fund balance to fund operations in 2022.

The paralegal General Fund balance is \$2.1 million as of June 30, 2021 which is an increase from \$485,000 at the same period last year. Similar to the lawyer General Fund, it has experienced the benefits of expense reduction measures. The paralegal General Fund budget for 2021 incorporated the use of \$1.1 million in fund balance to fund operations and reduce annual fees for 2021. The fund balance of the paralegal General Fund will also be considered in planning the 2022 budget.

The Law Society's strong financial position at the end of the second quarter in 2021 provides the flexibility required to maintain operations and temporarily fund the 2021 Annual Fee COVID-19 Deferral Option for licensees.

### **Restricted Funds**

The Law Society's Restricted Funds report an excess of revenues over expenses of \$5.8 million for the first half of 2021, compared to an excess of revenues over expenses of \$3.8 million in 2020. The key components are:

- a. In the Compensation Fund, an excess of revenues over expenses of \$4 million (2020 – excess of revenues over expenses of \$4.5 million) (further explained in this report).
- b. In the E&O Fund, an excess of revenues over expenses of \$1.9 million (2020 – excess of expenses over revenues of \$675,000) due primarily to unrealized gains on long-term investments.
- c. Total Restricted Fund expenses increased from \$55.3 million to \$60.9 million as increased premium revenues collected in the E&O Fund are transferred to LAWPRO as a flow through.

### ***Compensation Fund***

The lawyer pool of the Compensation Fund had an excess of revenues over expenses for the six months ended June 30, 2021 of \$4 million compared to a budget that planned an excess of expenses over revenues of \$56,000 for the same period. A combination of unbudgeted unrealized gains of \$2.4 million on the investment portfolio and a lower than budgeted provision for grants expense contributed to this variance. The prorated budget for grants expenses as of June 30, 2021 was \$2.2 million compared to actual grant expenses of \$408,000, resulting in the grants expense being \$1.8 million less than budget. The lawyer pool of the Compensation Fund ended the second quarter with a fund balance of \$34.6 million and is within the benchmarks of the Fund Balance Management Policy, with the minimum of \$19.6 million.

The paralegal pool of the Compensation Fund had excess of revenues over expenses for the first half of the year of \$31,000 compared to a budget that planned an excess of expenses over revenues of \$40,000 for the same period. Unrealized gains on the investment portfolio resulted in unbudgeted revenues of \$124,000. This was offset by the provision for grants expense exceeding budget by \$47,000. The paralegal pool of the Compensation Fund balance is \$990,000 as at June 30, 2021.

### ***Errors & Omissions Insurance Fund***

The E&O Fund had net revenues over expenses of \$1.9 million in the first six months of the year due to unrealized gains on the investment portfolio. The E&O Fund balance has increased to \$57.3 million as of June 30, 2021. The 2021 budget includes a transfer of \$1.2 million from the E&O Fund to the lawyer General Fund for operations.

### ***Capital Allocation Fund***

The Capital Allocation Fund had net revenues over expenses of \$1.2 million for the first six months of 2021 as some capital projects have been delayed due to pandemic related restrictions and supply shortages. There are several facility and information technology infrastructure projects in progress that will see spending in the latter part of 2021.

## **Statement of Revenues and Expenses and Change in Fund Balances**

### **Revenues**

#### ***Annual Fees***

Annual fees recognized in the first six months of \$44.5 million decreased by \$2.5 million compared to 2020 but are trending favourably when compared to the 2021 budget. The 2021 budget incorporated an annual fee reduction for lawyers and paralegals of \$193 and \$42, respectively, partially offset by an increase in the number of full-fee equivalent paying lawyers of 1,075. Annual fee revenue is recognized monthly.

#### ***Insurance Premium and Levies***

Insurance premiums and levies have increased from \$49.2 million in the first six months of 2020 to \$54.2 million in 2021 due to an increase in transaction levy revenues and the net effect of an increase in LAWPRO's base premium from \$2,950 to \$3,000.

#### ***Professional Development and Competence***

PD&C revenues comprise income from the licensing process and continuing professional development ("CPD"). Total year-to-date revenues of \$9.6 million are higher than the current year-to-date budget of \$9.2 million.

Lawyer licensing process revenues of \$5.7 million are slightly less than the 2021 budget of \$5.9 million. This is primarily driven by the reduced fee for administrative Calls to the Bar. The 2021 budget assumed a partial return to in-person licensing ceremonies, but pandemic restrictions continue to hinder the ability to resume in-person activities.

Paralegal licensing process revenues of \$700,000 are in line with the 2021 budget of \$687,000.

CPD revenues were \$3.2 million at the end of June 2021, which is higher than the 2021 budget of \$2.7 million. The 2021 budget incorporated a reduction of \$2.5 million in CPD revenues from the prior year with the expectation that large group gathering restrictions would continue into 2021. The CPD team has been successfully delivering programs virtually with growth in attendance over the past year.

#### ***Change in Fair Value of Investments***

The change in fair value of investments show total unrealized gains of \$5.6 million compared to unrealized losses of \$3.0 million in the same period in 2020. The change in

fair value is not budgeted. It is anticipated that with the transition to the new investment manager in the third quarter, the unrealized gains will be realized and reflected as part of investment income. Investment income of \$1.1 million is comparable to last year and close to budget.

### ***Other Revenues***

Other revenues totalling \$3.8 million is higher than budget of \$3.1 million and in line with 2020 actuals of \$3.7 million. The notable components of Other revenues in 2021 are ordered costs, Ontario Report revenue, professional corporation fees and pre-authorized payment plan fees.

The favourable performance to budget is due to higher than budgeted ordered cost recoveries, professional corporations' fees, and pre-authorized payment plan fees. These increases were partially offset by catering revenues being under budget due to the continued closure of catering operations.

### **Expenses**

#### ***Professional Regulation, Tribunals and Compliance***

Professional Regulation, Tribunals and Compliance expenses totalling \$15.0 million are less than the 2020 amount of \$15.6 million and are less than budget by \$1.8 million. This is primarily due to staffing vacancies, lower than budgeted external counsel fees, and the continued impact of work at home protocols that produced savings in travel, office, and document reproduction costs.

#### ***Professional Development and Competence***

PD&C expenses totalling \$12.9 million are less than the 2020 amount of \$13.8 million and are less than budget by \$2.0 million. The 2021 budget assumed in-person licensing examinations but the decision to continue on-line examinations for the next three years was made by Convocation in February 2021. With this decision, spending is anticipated throughout the rest of the year to improve the infrastructure for longer term administration of online examinations. This will reduce some of the current variance between actual PD&C expenses and budget. Other reasons for lower expenses include staffing vacancies and reduced travel costs as audits and reviews continue to be performed entirely remotely.

### ***Corporate Services***

Total Corporate Services expenses of \$13.2 million are in line with 2020 expenses and are less than budget by \$1.3 million. The key drivers for the difference between budget and actual are mainly related to lower security, cleaning and building operational costs with the continuation of work at home protocols. With the planned return of employees to the office in the last quarter of the year, expenses will be incurred related to health and safety protocols, room configuration to support virtual meeting attendance, etc.

### ***Convocation, Policy and Outreach***

Total Convocation, Policy and Outreach expenses of \$3.1 million are in line with 2020 expenses and are less than budget by \$2.2 million. The variance from budget relates to reduced expenses in the areas of benchers remuneration, expenses and functions, stakeholder engagement, the unused contingency, and underspending related to policy, media relations and communications.

### ***Services to Licensees and Public***

Services to licensees and public expenses are \$2.7 million compared to \$3.2 million in 2020 and are less than budget by \$455,000. The main reason for the lower spending when compared to prior year is due to the closure of the catering operation effective March 2020. The continued closure of the catering operations is also the reason for the lower spending compared to budget.

## **Statement of Financial Position**

### ***Cash & Short-Term Investments***

The total of cash and short-term investments at the end of the second quarter is \$93.1 million (2020 - \$73.9 million). Of this amount, \$19.3 million (2020 - \$19.7 million) pertains to the Compensation Fund and is held in separate accounts. The increase in cash over the prior year is attributable to 2021 reflecting the regular collection of licensee annual fees and pre-authorized payment ("PAP") plan amounts monthly that were deferred until August in 2020 because of the pandemic. This cash balance will decrease over the year as the collection of annual fees is highest in the first quarter with spending throughout the year. The Law Society has sufficient working capital on hand to discharge its short- and medium-term obligations.

### ***Accounts Receivable***

Accounts receivable at the end of the second quarter is \$49.4 million (2020 - \$57.8 million). The reason for the higher accounts receivable balance in 2020 is primarily due to the relief measures provided to licensees in 2020, specifically, the delay of suspensions for non-payment of annual fees and the deferral of withdrawals related to the monthly PAP plan. Typically, the monthly payments would begin in March of the year and continue for 10 months, but in 2020, instalments under the PAP plan scheduled for April, May, June and July were deferred until August.

### ***Portfolio Investments***

Portfolio investments are shown at fair value of \$76.1 million (2020 - \$64.1 million) and reflect unrealized gains of \$5.6 million in the first half of 2021 related to improved financial market conditions. Of the total portfolio investments at the end of June 2021, \$20.1 million pertains to the General Funds, \$33.5 million pertains to the Compensation Fund, and \$22.5 million pertains to the E&O Fund. Portfolio investments were at their lowest point in March 2020 and have recovered throughout 2020 and into 2021 resulting in a large swing within the investment portfolio when compared to the prior year.

### ***Deferred Revenue***

Deferred revenue is made up of annual fees, licensing process revenues and insurance premiums which are recognized over the full year. The balance at the end of the second quarter of 2021 is \$95.1 million (2020 - \$95.0 million).

### ***Provision for Unpaid Grants Liability***

The provision for unpaid grants liability represents the estimate for unpaid grants and inquiries against the Compensation Fund, supplemented by the costs for processing these grants. The current balance of \$15.1 million has decreased slightly from \$15.5 million in 2020. The paralegal Compensation Fund provision for unpaid grants comprises \$310,000 of the total Compensation Fund provision for unpaid grants.

# Appendix A

## General Fund & Restricted Fund

### General Fund

The General Fund accounts for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers and paralegals. This fund reports unrestricted resources.

The Society's policy is to maintain the General Fund balance at no less than two and no more than three months of General Fund budgeted expenses.

If the General Fund balance exceeds three months of budgeted General Fund expenses, Convocation shall utilize the excess for one or more of the following:

- Mitigate the General Fund fee for the next fiscal year;
- Transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

If the General Fund balance is less than two months of budgeted General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the General Fund fund balance is more than two months of budgeted General Fund expenses and less than three months of budgeted General Fund expenses, Convocation may appropriate funds from the General Fund balance for one or more of the following:

- Mitigate the General Fund fee for the next fiscal year;
- Transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

### Restricted Funds

#### Compensation Fund

The Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of

dishonesty on the part of a licensee, in connection with the licensee's professional business or in connection with any trust of which the licensee was a trustee. The Compensation Fund is restricted in use by the Law Society Act.

Pursuant to the Law Society Act, the Compensation Fund is supported by licensee annual fees, investment income and recoveries. The Compensation Fund accounts for program delivery, administration and payment of grants and has separate fund balances for lawyer licensees and paralegal licensees.

The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.

If the Lawyer Compensation Fund balance exceeds four one-in-one hundred-year events, Convocation shall utilize some or all of the excess for the following:

- Mitigation of the Lawyer Compensation Fund fee for the next fiscal year; or
- Annual mitigation of the Lawyer Compensation Fund fee shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.

If the Lawyer Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the Lawyer Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:

- Mitigate the Lawyer Compensation Fund levy for the next fiscal year;
- Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
- Leave the fund balance at its current balance for the upcoming fiscal year.

## **Errors and Omissions Insurance Fund**

The Errors and Omissions Insurance Fund (“E&O Fund”) accounts for insurance-related transactions between LAWPRO, the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers, reported as revenues, and remits these amounts to LAWPRO, reported as expenses.

Pursuant to section 61 of the Law Society Act, the Society arranges mandatory professional liability insurance for practising lawyers with LAWPRO, and through the E&O Fund, levies the insured lawyers. Each year, the premium for the insurance program is established through a process whereby LAWPRO provides an offer for review and acceptance by Convocation. The offer provides details on the components of the insurance program, including anticipated base premiums, claims history levies, transaction-based levies and amounts to be drawn from the E&O Fund balance.

## **Capital Allocation Fund**

The Capital Allocation Fund is maintained to provide a source of funds for the acquisition and maintenance of the Society’s capital and intangible assets which comprise buildings and major equipment including computers and software. Amounts of assets capitalized, according to the Society’s capital asset policy, are transferred to the Invested in Capital and Intangible Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund.

## **Invested in Capital and Intangible Assets Fund**

The Invested in Capital and Intangible Assets Fund records transactions related to the Society’s capital assets and intangible assets, specifically acquisitions, amortization and disposals.

## **County Libraries Fund**

The County Libraries Fund records transactions related to the Society’s support of county law libraries. As approved by Convocation, the fund accumulates funds for county library purposes, which are remitted to LIRN.

## **Other Restricted Funds**

The Repayable Allowance Fund provides loans for tuition and living expenses to candidates in the lawyer licensing process.

The Special Projects Fund is maintained to ensure that financing is available for ongoing special projects approved by Convocation.

The Parental Leave Assistance Fund accounts for the delivery of the Parental Leave Assistance Program (“PLAP”) and is funded by lawyers’ fees. PLAP provides financial assistance to lawyers in firms of five lawyers or fewer who have a net annual practice income of less than \$50,000 and who do not have access to any other parental leave financial benefits. Under PLAP, the Society provides a fixed sum of \$750 a week to eligible applicants for up to 12 weeks to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave.



## Statement of Financial Position

Unaudited

Stated in thousands of dollars

As at June 30

	2021	2020
<b>Assets</b>		
<b>Current Assets</b>		
Cash and short-term investments	93,111	73,855
Accounts receivable	49,437	57,779
Prepaid expenses	56,822	57,299
<b>Total current assets</b>	<b>199,370</b>	<b>188,933</b>
Investment in subsidiaries	35,642	35,642
Portfolio investments	76,092	64,128
Loan receivable	1,692	1,436
Capital assets	6,851	7,708
Intangible assets	2,232	2,989
<b>Total Assets</b>	<b>321,879</b>	<b>300,836</b>
<b>Liabilities and Fund Balances</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued liabilities	10,911	10,766
Deferred revenue	95,076	94,950
Due to LAWPRO	46,759	49,017
<b>Total current liabilities</b>	<b>152,746</b>	<b>154,733</b>
Provision for unpaid grants/claims	15,092	15,499
Unclaimed trust funds	6,141	5,743
Lease obligations	777	702
<b>Total Liabilities</b>	<b>174,756</b>	<b>176,677</b>
<b>Fund Balances</b>		
<b>General funds</b>		
Lawyers	35,170	25,533
Paralegals	2,056	1,571
<b>Restricted funds</b>		
Compensation - lawyers	34,590	26,318
Compensation - paralegals	990	916
Errors and omissions insurance	57,307	53,770
Capital allocation	6,632	4,039
Invested in capital and intangible assets	9,083	10,697
County libraries	56	97
Other	1,239	1,218
<b>Total Fund Balances</b>	<b>147,123</b>	<b>124,159</b>
<b>Total Liabilities and Fund Balances</b>	<b>321,879</b>	<b>300,836</b>



## Statement of Revenues and Expenses and Change in Fund Balances

Unaudited  
Stated in thousands of dollars  
For the six months ended June 30

	2021	2020	2021	2020	2021	2020	2021	2020
	General Fund Lawyer		General Fund Paralegal		Restricted Funds		Total	
<b>Revenues</b>								
Annual fees	34,148	33,218	2,734	2,722	7,643	11,118	44,525	47,058
Insurance premiums and levies	-	-	-	-	54,151	49,222	54,151	49,222
Professional development and competence	8,508	7,817	1,066	1,346	-	-	9,574	9,163
Investment income	296	358	38	45	738	761	1,072	1,164
Change in fair value of investments	1,325	(622)	168	(79)	4,146	(2,313)	5,639	(3,014)
Other	3,392	2,894	402	441	32	381	3,826	3,716
<b>Total revenues</b>	<b>47,669</b>	<b>43,665</b>	<b>4,408</b>	<b>4,475</b>	<b>66,710</b>	<b>59,169</b>	<b>118,787</b>	<b>107,309</b>
<b>Expenses</b>								
Professional regulation, tribunals and compliance	14,188	14,260	829	1,293	-	-	15,017	15,553
Professional development and competence	11,512	12,381	1,385	1,389	-	-	12,897	13,770
Corporate services	11,736	11,800	1,443	1,494	-	-	13,179	13,294
Convocation, policy and outreach	2,813	2,763	283	277	-	-	3,096	3,040
Services to licensees and public	2,484	2,989	244	285	-	-	2,728	3,274
Restricted	-	-	-	-	60,887	55,330	60,887	55,330
<b>Total expenses</b>	<b>42,733</b>	<b>44,193</b>	<b>4,184</b>	<b>4,738</b>	<b>60,887</b>	<b>55,330</b>	<b>107,804</b>	<b>104,261</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>4,936</b>	<b>(528)</b>	<b>224</b>	<b>(263)</b>	<b>5,823</b>	<b>3,839</b>	<b>10,983</b>	<b>3,048</b>
<b>Fund balances, beginning of year</b>	<b>30,301</b>	<b>26,106</b>	<b>1,832</b>	<b>1,834</b>	<b>104,007</b>	<b>93,171</b>	<b>136,140</b>	<b>121,111</b>
<b>Interfund transfers</b>	<b>(67)</b>	<b>(45)</b>	<b>-</b>	<b>-</b>	<b>67</b>	<b>45</b>	<b>-</b>	<b>-</b>
<b>Fund balances, end of period</b>	<b>35,170</b>	<b>25,533</b>	<b>2,056</b>	<b>1,571</b>	<b>109,897</b>	<b>97,055</b>	<b>147,123</b>	<b>124,159</b>



## Schedule of Restricted Funds

Unaudited  
Stated in thousands of dollars  
For the six months ended June 30

	2021						2020		
	Compensation Fund		Errors and omissions insurance	Capital allocation	Invested in capital and intangible assets	County libraries	Other restricted	Total	Total
Lawyer	Paralegal								
<b>Fund balances, beginning of year</b>	30,543	959	55,386	5,458	10,548	85	1,028	104,007	93,171
<b>Revenues</b>									
Annual fees	1,937	3	-	1,873	-	3,580	250	7,643	11,118
Insurance premiums and levies	-	-	54,151	-	-	-	-	54,151	49,222
Investment income	463	24	251	-	-	-	-	738	761
Change in fair value of investments	2,352	124	1,670	-	-	-	-	4,146	(2,313)
Other	30	2	-	-	-	-	-	32	381
<b>Total revenues</b>	4,782	153	56,072	1,873	-	3,580	250	66,710	59,169
<b>Total expenses</b>	735	122	54,151	706	1,465	3,609	99	60,887	55,330
<b>Excess of revenues over expenses (expenses over revenues)</b>	4,047	31	1,921	1,167	(1,465)	(29)	151	5,823	3,839
<b>Interfund transfers</b>	-	-	-	7	-	-	60	67	45
<b>Fund balances, end of period</b>	34,590	990	57,307	6,632	9,083	56	1,239	109,897	97,055



**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	<b>2021 Budget YTD</b>	<b>Variance</b>	<b>2020 Actual</b>
<b>REVENUES</b>				
Annual fees	36,882	36,531	351	35,940
Professional development and competence	9,574	9,242	332	9,163
Investment income	334	388	(54)	403
Change in fair value of investments	1,493	-	1,493	(701)
Other	3,794	2,956	838	3,335
<b>Total revenues</b>	<b>52,077</b>	<b>49,117</b>	<b>2,960</b>	<b>48,140</b>
<b>EXPENSES</b>				
Professional regulation, tribunals and compliance	15,017	16,849	1,832	15,553
Professional development and competence	12,897	14,912	2,015	13,770
Corporate services	13,179	14,488	1,309	13,294
Convocation, policy and outreach	3,096	5,318	2,222	3,040
Services to licensees and public	2,728	3,183	455	3,274
<b>Total expenses</b>	<b>46,917</b>	<b>54,750</b>	<b>7,833</b>	<b>48,931</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>5,160</b>	<b>(5,633)</b>	<b>10,793</b>	<b>(791)</b>



**General Fund - Lawyers**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	<b>2021 Budget YTD</b>	<b>Variance</b>	<b>2020 Actual</b>
<b>REVENUES</b>				
Annual fees	34,148	33,835	313	33,218
Professional development and competence	8,508	8,235	273	7,817
Investment income	296	340	(44)	358
Change in fair value of investments	1,325	-	1,325	(622)
Other	3,392	2,631	761	2,894
<b>Total revenues</b>	<b>47,669</b>	<b>45,041</b>	<b>2,628</b>	<b>43,665</b>
<b>EXPENSES</b>				
Professional regulation, tribunals and compliance	14,188	15,938	1,750	14,260
Professional development and competence	11,512	13,185	1,673	12,381
Corporate services	11,736	12,906	1,170	11,800
Convocation, policy and outreach	2,813	4,775	1,962	2,763
Services to licensees and public	2,484	2,824	340	2,989
<b>Total expenses</b>	<b>42,733</b>	<b>49,628</b>	<b>6,895</b>	<b>44,193</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>4,936</b>	<b>(4,587)</b>	<b>9,523</b>	<b>(528)</b>



**General Fund - Paralegals**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	<b>2021 Budget YTD</b>	<b>Variance</b>	<b>2020 Actual</b>
<b>REVENUES</b>				
Annual fees	2,734	2,696	38	2,722
Professional development and competence	1,066	1,007	59	1,346
Investment income	38	48	(10)	45
Change in fair value of investments	168	-	168	(79)
Other	402	325	77	441
<b>Total revenues</b>	<b>4,408</b>	<b>4,076</b>	<b>332</b>	<b>4,475</b>
<b>EXPENSES</b>				
Professional regulation, tribunals and compliance	829	911	82	1,293
Professional development and competence	1,385	1,727	342	1,389
Corporate services	1,443	1,582	139	1,494
Convocation, policy and outreach	283	543	260	277
Services to licensees and public	244	359	115	285
<b>Total expenses</b>	<b>4,184</b>	<b>5,122</b>	<b>938</b>	<b>4,738</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>224</b>	<b>(1,046)</b>	<b>1,270</b>	<b>(263)</b>



**LAW SOCIETY OF ONTARIO**  
**Lawyers and Paralegals Compensation Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	<b>2021 Budget YTD</b>	<b>Variance</b>	<b>2020 Actual</b>
<b>REVENUES</b>				
Annual fees	1,940	1,918	22	4,759
Investment income	487	500	(13)	499
Change in fair value of investments	2,476	-	2,476	(1,376)
Recoveries	32	175	(143)	381
<b>Total revenues</b>	<b>4,935</b>	<b>2,593</b>	<b>2,342</b>	<b>4,263</b>
<b>EXPENSES</b>				
Provision for unpaid grants	513	2,303	1,790	(539)
Administrative	344	386	42	334
<b>Total expenses</b>	<b>857</b>	<b>2,689</b>	<b>1,832</b>	<b>(205)</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>4,078</b>	<b>(96)</b>	<b>4,174</b>	<b>4,468</b>



**Compensation Fund - Lawyers**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	<b>2021 Budget YTD</b>	<b>Variance</b>	<b>2020 Actual</b>
<b>REVENUES</b>				
Annual fees	1,937	1,915	22	4,719
Investment income	463	475	(12)	474
Change in fair value of investments	2,352	-	2,352	(1,307)
Recoveries	30	166	(136)	338
<b>Total revenues</b>	<b>4,782</b>	<b>2,556</b>	<b>2,226</b>	<b>4,224</b>
<b>EXPENSES</b>				
Provision for unpaid grants	408	2,245	1,837	(600)
Administrative	327	367	40	324
<b>Total expenses</b>	<b>735</b>	<b>2,612</b>	<b>1,877</b>	<b>(276)</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>4,047</b>	<b>(56)</b>	<b>4,103</b>	<b>4,500</b>



**Compensation Fund - Paralegals**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	<b>2021 Budget YTD</b>	<b>Variance</b>	<b>2020 Actual</b>
<b>REVENUES</b>				
Annual fees	3	3	-	40
Investment income	24	25	(1)	25
Change in fair value of investments	124	-	124	(69)
Recoveries	2	9	(7)	43
<b>Total revenues</b>	<b>153</b>	<b>37</b>	<b>116</b>	<b>39</b>
<b>EXPENSES</b>				
Provision for unpaid grants	105	58	(47)	61
Administrative	17	19	2	10
<b>Total expenses</b>	<b>122</b>	<b>77</b>	<b>(45)</b>	<b>71</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>31</b>	<b>(40)</b>	<b>71</b>	<b>(32)</b>



## Compensation Fund

### Statement of Financial Position

*Unaudited*

*Stated in thousands of dollars*

*As at June 30*

	2021	2020
<b>Assets</b>		
<b>Current Assets</b>		
Cash	18,472	18,868
Short-term investments	862	861
<b>Total Current Assets</b>	<b>19,334</b>	19,729
Portfolio investments	33,481	28,095
<b>Total Assets</b>	<b>52,815</b>	47,824
<b>Liabilities and Fund Balance</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued liabilities	147	237
Deferred revenue	1,966	4,768
Due to General Fund	30	86
<b>Total Current Liabilities</b>	<b>2,143</b>	5,091
Provision for unpaid grants/claims - lawyers	14,782	15,339
Provision for unpaid grants/claims - paralegals	310	160
<b>Total Liabilities</b>	<b>17,235</b>	20,590
Fund balance - lawyers	34,590	26,318
Fund balance - paralegals	990	916
<b>Total Fund Balance</b>	<b>35,580</b>	27,234
<b>Total Liabilities and Fund Balance</b>	<b>52,815</b>	47,824



**Errors & Omissions Insurance Fund**  
**Statement of Financial Position**

*Unaudited*

*Stated in thousands of dollars*

*As at June 30*

	2021	2020
<b>Assets</b>		
<b>Current Assets</b>		
Cash	456	221
Short-term investments	589	587
Accounts receivable	30,855	31,584
Prepaid E&O premiums incurred	55,984	56,460
<b>Total Current Assets</b>	<b>87,884</b>	88,852
<b>Investment in subsidiary</b>	<b>35,642</b>	35,642
<b>Portfolio investments</b>	<b>22,505</b>	19,159
<b>Total Assets</b>	<b>146,031</b>	143,653
<b>Liabilities and Fund Balance</b>		
<b>Current Liabilities</b>		
Due to LawPRO	46,851	49,054
Unearned E&O premiums recovered	41,873	40,829
<b>Total Current Liabilities</b>	<b>88,724</b>	89,883
<b>Fund Balance</b>	<b>57,307</b>	53,770
<b>Total Liabilities and Fund Balance</b>	<b>146,031</b>	143,653



## Errors and Omissions Insurance Fund

### Schedule of Revenues and Expenses and Change in Fund Balance

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2021 Actual</b>	2020 Actual
<b>REVENUES</b>		
Insurance premiums and levies	<b>54,151</b>	49,222
Investment income	<b>251</b>	262
Change in fair value of investments	<b>1,670</b>	(937)
Other income	-	-
<b>Total revenues</b>	<b>56,072</b>	48,547
<b>EXPENSES</b>		
Administrative Expenses	-	-
Insurance	<b>54,151</b>	49,222
<b>Total expenses</b>	<b>54,151</b>	49,222
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>1,921</b>	(675)
Interfund transfers	-	-
Change in fund balance	<b>1,921</b>	(675)
Fund balance, beginning of year	<b>55,386</b>	54,445
Fund balance, end of period	<b>57,307</b>	53,770

## FOR INFORMATION

### LiRN Inc. Financial Statements for the Six Months ended June 30, 2021

**The Audit & Finance Committee recommends that Convocation receive the second quarter financial statements for LiRN Inc. for information.**

LiRN Inc. (“LiRN”) is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations (“FOLA”) and the Toronto Lawyers’ Association (“TLA”), all shareholders of the organization.

LiRN is a wholly-owned subsidiary of the Law Society with two classes of shares: 100 common shares and 100 special shares. The Law Society holds all of the common shares outstanding. Of the special shares outstanding, 25 are held by the TLA and 75 are held by the FOLA.

There is a quarterly financial reporting schedule to the shareholder in compliance with the Unanimous Shareholders Agreement. These interim financial statements convey the performance of LiRN before the end of the year. The financial statements have been approved by LiRN’s Board.

LiRN is fully funded by the Law Society through the lawyer’s annual fee. The LiRN component of the annual fee for 2021 is \$159 per lawyer. Grants to the 48 county libraries comprised most of LiRN’s expenditures with the balance being centralized expenses such as access to online research products.

## FINANCIAL REPORT

For the six months ended June 30, 2021

### KEY POINT SUMMARY

#### Overall Results

1. Results for the first half of 2021 identify an excess of expenses over revenues of \$256,276. The prorated budget for the first half projected an excess of expenses over revenues of \$310,873.
2. The positive variance from budget of \$54,597 for the period is due to lower than budgeted group benefit costs, no special grants made to date and the pandemic limiting travel and board of directors' expenses. The primary negative variance was in transition expenses as approved by the Board with the retention of a consultant to support data collection to inform LiRN decision making.

#### Revenues

3. The Law Society grant includes amounts for central administration and quarterly transfers to the 48 county law libraries. The grant from the Law Society was \$3.6 million in the first six months, in line with budget, and 10% less than the comparable 2020 amount of \$4 million.

#### Expenses

4. Total expenses were \$3.9 million, materially in line with budget.
5. Administration expenses of \$110,295 have increased significantly from 2020 with staffing and associated operations in place for 2021 with no comparable expenses in 2020 until August.
6. The transition expense of \$45,391 is approximately \$20,000 over budget and relates to the data analyst retained on a fee-for-service basis as approved by the Board. The transition expense budget for the year of \$50,000 is projected to be exceeded by at least \$40,000 predominantly related to data collection efforts expected to continue to the end of 2021.
7. Other head-office expenses primarily include governance meetings, staff & travel and continuing professional development which have all been curtailed because of the pandemic resulting in a positive variance from budget of \$29,331.

8. Group benefits and insurance expenses have a positive variance of \$18,904. The timing of renewals requires conservative budgeting for these two items.
9. Other centralized expenses of \$38,265 primarily includes library courier costs and publications provided by the Law Society to each of the 48 county law libraries. The comparative figure in 2020 was \$9,765 with expenses, especially publication purchases, reduced because of the pandemic.
10. County and district law libraries grants of \$3.3 million are slightly more than half the budget for the year after being weighted towards the beginning of the year to assist libraries in adjusting to the reduction of annual funding for 2021.

### **Statement of Financial Position**

11. Cash and short-term investments of \$827,000 have decreased from the same period in 2020 (\$993,000) primarily due to the excess of expenses over revenues in the intervening period.
12. Accounts payable and accrued liabilities of \$167,000 are higher than 2020 (\$43,000) because of the timing of payment for insurance premiums and the current year total including accruals related to accounting and data analysis services, new in 2021.
13. The fund balance of the General Fund has decreased from \$559,000 at the end of June 2020 to \$277,000 at the end of June 2021 as a result of the excess of expenses over revenues in the intervening period. The 2021 budget envisaged \$455,580 being drawn from the fund balance of the General Fund for the year.
14. The Reserve Fund has a balance at the end of June of both years of \$500,000.



Legal Information and Resource Network

## Statement of Financial Position

Stated in Dollars

June 30, 2021

Unaudited

	2021	2020
<b>Assets</b>		
<b>Current Assets</b>		
Cash and short-term investments	826,757	993,049
Accounts receivable	23,990	24,420
Prepaid expense	93,600	84,230
<b>Total Assets</b>	<b>944,347</b>	<b>1,101,699</b>
<b>Liabilities, Share Capital and Fund Balances</b>		
<b>Liabilities</b>		
Accounts payable and accrued liabilities	166,732	42,617
<b>Total Liabilities</b>	<b>166,732</b>	<b>42,617</b>
<b>Share Capital and Fund Balances</b>		
Share capital	200	200
General fund	277,415	558,882
Reserve fund	500,000	500,000
<b>Total Share Capital and Fund Balances</b>	<b>777,615</b>	<b>1,059,082</b>
<b>Total Liabilities, Share Capital and Fund Balances</b>	<b>944,347</b>	<b>1,101,699</b>

*This statement includes the financial resources of the LiRN Inc. entity only.*



Legal Information and Resource Network

**Statement of Operating Revenues and Expenses**

Stated in Dollars

For the six months ending June 30, 2021

Unaudited

	2021 Actual	YTD Budget	Variance	Annual Budget	2020 Actual
<b>REVENUES</b>					
Law Society of Ontario grant	3,608,596	3,608,596	-	7,217,194	4,009,546
Interest income	1,745	-	1,745	-	4,997
<b>Total revenues</b>	<b>3,610,341</b>	<b>3,608,596</b>	<b>1,745</b>	<b>7,217,194</b>	<b>4,014,543</b>
<b>EXPENSES</b>					
<b>Head office / administration</b>					
Administration	110,295	119,250	8,955	238,500	7,261
Transition	45,391	25,000	(20,391)	50,000	39,927
Other	10,207	39,538	29,331	75,300	10,720
<b>Total head office / administration expenses</b>	<b>165,893</b>	<b>183,788</b>	<b>17,895</b>	<b>363,800</b>	<b>57,908</b>
<b>Law libraries - centralized purchases</b>					
Electronic products and services	187,013	187,500	487	375,000	181,568
Group benefits and insurance	167,577	186,480	18,904	373,000	169,086
Other	38,265	42,332	4,067	145,100	9,765
<b>Total law libraries - centralized purchases</b>	<b>392,855</b>	<b>416,312</b>	<b>23,457</b>	<b>893,100</b>	<b>360,419</b>
County and district law libraries - grants	3,307,869	3,307,869	-	6,393,274	3,530,332
Capital and special needs grants	-	11,500	11,500	22,600	15,000
<b>Total county and district law libraries expenses</b>	<b>3,307,869</b>	<b>3,319,369</b>	<b>11,500</b>	<b>6,415,874</b>	<b>3,545,332</b>
<b>Total expenses</b>	<b>3,866,617</b>	<b>3,919,469</b>	<b>52,852</b>	<b>7,672,774</b>	<b>3,963,659</b>
<b>Excess of (expenses over revenues) revenues over expenses</b>	<b>(256,276)</b>	<b>(310,873)</b>	<b>54,597</b>	<b>(455,580)</b>	<b>50,884</b>

*This statement includes the revenues and expenses of the LiRN Inc. entity only.*



Legal Information and Resource Network

**Statement of Changes in Fund Balances**

Stated in Dollars

*For the six months ending June 30, 2021*

Unaudited

	<b>2021</b>			<b>2020</b>
	General Fund	Reserve Fund	<b>Total</b>	<b>Total</b>
Balance, beginning of year	533,691	500,000	<b>1,033,691</b>	<b>1,007,998</b>
Excess of (expenses over revenues) revenues over expenses	(256,276)	-	<b>(256,276)</b>	<b>50,884</b>
<b>Balance, end of period</b>	<b>277,415</b>	<b>500,000</b>	<b>777,415</b>	<b>1,058,882</b>

**FOR INFORMATION**

**LAWPRO Financial Statements**  
**for the Six Months ended June 30, 2021**

**The Audit & Finance Committee recommends that Convocation receive the second quarter financial statements for Lawyers' Professional Indemnity Company (LAWPRO) for information.**

The Law Society provides mandatory professional liability insurance to lawyers through LAWPRO, a provincially licensed insurer and wholly-owned subsidiary of the Law Society. There is quarterly financial reporting to the shareholder conveying the performance of LAWPRO before the end of the year.

The professional liability insurance program generally requires practising lawyers to pay premiums and levies to the Law Society's Errors & Omissions Fund that contribute toward the premium paid by the Law Society to fund the anticipated costs of professional liability claims made in each annual policy period.

In addition to providing mandatory lawyers professional liability insurance, LAWPRO also sells optional excess lawyers professional liability insurance and title insurance.

In September 2020, LAWPRO reported directly to Convocation on changes to the Law Society's professional liability insurance program for 2021.

The base premium for professional liability insurance coverage for Ontario lawyers is \$3,000 for 2021. The annual policy limits are \$1 million per claim and \$2 million in aggregate per licensee.

The statements have been approved by LAWPRO's Board.



**Lawyers' Professional Indemnity Company  
("LAWPRO" or "the Company")**

UNAUDITED FINANCIAL RESULTS  
FOR THE SIX MONTHS ENDED JUNE 30, 2021

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## Financial Overview

Financial information presented in this report includes LAWPRO's financial results for the six months ended June 30, 2021 ("Q2 YTD 2021"), three months ended June 30, 2021 ("Q2"), and the financial position as at June 30, 2021. Reference to budget is for the same period Q2 YTD 2021, and reference to prior year is for the same period in Q2 YTD 2020. Please refer to exhibits at the end of this report in conjunction with the commentary.

Lines of Business: Ontario primary professional liability program is referred to as "Primary E&O", Ontario excess professional liability program is referred to as "Excess E&O", and the national title insurance program is referred to as "TitlePLUS".

### Financial results for the six months ended June 30, 2021

- **Net Earned Premiums YTD** of \$57.7M were 11% higher than budget (\$52.0M) and 13% greater than prior year (\$51.0M). Variance to budget was due to higher transaction levies for Primary E&O and higher TitlePLUS premium. Q2 YTD 2021 was higher than prior year due to more FPEs for Primary E&O and higher TitlePLUS premiums. Q2 Net Earned Premiums of \$29.8M was 14% higher than budget (\$26.2M)
- **Net Claims Incurred YTD** of \$51.8M was 14% or \$8.1M lower than budget (\$59.9M) and 23% or \$15.5M lower than prior year (\$67.3M). The changes in discount rate (\$4.4M) and PfAD rate (\$0.6M) contributed to a net favorable development of \$5.0M. Q2 Net Claims Incurred of \$22.6M was 24% or \$7.3M lower than budget (\$29.9M)
- **Underwriting Loss YTD** of \$6.8M was \$14.9M or 69% better than budget (\$21.7M loss), and significantly better than prior year (\$27.7M loss). The significant drivers for underwriting results were favorable premiums, claims and general expenses. Q2 Underwriting Income of \$1.0M was \$11.4M or 110% better than budget (\$10.4M loss).
- **Investment Loss YTD** of \$0.3M was \$11.5M lower than the prior year (\$11.2M income), and \$7.0M lower than budget income (\$6.7M income). The \$2.3M loss in the Asset Liability Matching portfolio was the main driver. Q2 Investment Income of \$2.7M was \$0.9M or 26% lower than budget (\$3.6M income)
- **Net loss before Tax YTD** of \$7.1M was better than budget by \$7.9M (\$15.0M loss) and better than prior year (\$16.5M loss). The \$7.9M difference between actual and budget is attributable to underwriting income (\$14.9M of the difference) partially offset by investment loss (\$7.0M of the difference). Q2 Net Income Before Tax of \$3.6M was \$10.4M better than budgeted Net Loss Before Tax of \$6.8M
- **Net Loss YTD** of \$4.8M was \$6.0M better than budget (\$10.8M loss) and \$7.1M better than prior period (\$11.9M loss). Q2 Net Income of \$3.1M was \$8.0M better than budgeted Net Loss of \$4.9M

- **Other Comprehensive Income** YTD of \$7.9M was \$7.3M better than budget (\$0.6M Income) and \$22.5M better than prior period (\$14.6M loss). Prior year experienced a large loss in equity markets due to the pandemic. Q2 Other Comprehensive Income of \$8.5M was \$8.2M better than budget (\$0.3M income)
- **Comprehensive Income** YTD of \$3.1M versus budgeted comprehensive loss of \$10.2M, and a prior period comprehensive loss of \$26.5M. Q2 Comprehensive Income of \$11.6M was significantly better than budget of \$4.6M loss

#### Financial Position as at June 30, 2021

- **Shareholder's equity** was \$272.7M compared with \$269.6M at December 31, 2020. The \$3.1M increase was made up of a \$7.9M increase in Accumulated Other Comprehensive Income (AOCI) partially offset by a \$4.8M decrease in Retained Earnings
- The \$4.8M Retained Earnings decrease represents the net loss for Q2 YTD 2021. Q1 had a net loss of \$7.9M, whereas Q2 had net income of \$3.1M
- The \$7.9M AOCI increase represents an increase in unrealized gains as at June 30, 2021, as compared to December 31, 2020. The \$7.9M was made up of an after-tax increase in market value of \$10.4M in equity securities, partially offset by a reduction in the after-tax market value of \$2.5M in bonds and debentures
- **Margin of \$225.1M of insurance assets greater than liabilities.** Insurance assets (cash and cash equivalents, investments, investment income due and accrued) of \$741.2M, (\$26.4M increase from December 31, 2020) to cover claims liabilities of \$516.1M (\$3.9M increase from December 31, 2020)
- The **MCT ratio at June 30, 2021, was 219%**, compared with 229% at December 31, 2020, 205% at June 30, 2020, and 242% at December 31, 2019
- The lower MCT ratio at June 30, 2021, compared to December 31, 2020, is mainly due to the temporarily elevated Unearned Premium Revenue and Accounts Receivable related to the new 2021 fund year program, as well as a substantial increase in equities. This was offset by less capital required for interest sensitive assets and reduced liabilities relative to budget

## Statement of Financial Position

in \$000s

AS AT	June 30 2021	December 31 2020
<b>Assets</b>		
Cash and cash equivalents	10,259	7,748
Investments	728,293	704,018
Investment income due and accrued	2,630	2,977
Due from reinsurers	36	22
Due from insureds	4,630	3,652
Due from the Law Society of Ontario	46,848	7,936
Reinsurers' share of provisions for:		-
Claims liabilities (Exhibit 14a)	52,125	50,189
Unearned premiums	3,588	-
Deferred policy acquisition expenses	1,732	-
Other receivables	4,815	796
Other assets	2,840	1,466
Property and equipment	11,223	11,690
Intangible assets	1,335	1,006
Current tax assets	5,195	4,938
Deferred income taxes	5,650	5,958
<b>Total assets</b>	<b>881,199</b>	<b>802,396</b>
<b>Liabilities</b>		
Claims liabilities (Exhibit 14a)	516,095	512,155
Unearned premiums	59,031	1,130
Unearned reinsurance commissions	764	-
Due to reinsurers	3,091	831
Due to insureds	57	110
Expenses due and accrued	18,952	7,866
Lease liabilities	10,063	10,263
Other taxes due and accrued	453	471
<b>Total liabilities</b>	<b>608,506</b>	<b>532,826</b>
<b>Shareholders' Equity</b>		
Capital stock issued and paid	5,000	5,000
Contributed surplus	30,645	30,645
Retained earnings	219,167	223,967
Accumulated other comprehensive income	17,881	9,958
<b>Total shareholder's equity</b>	<b>272,693</b>	<b>269,570</b>
<b>Total liabilities and shareholders' equity</b>	<b>881,199</b>	<b>802,396</b>

## Statement of Profit or Loss

in \$000s

FOR THE 6 MONTHS ENDED JUNE 30	Actual	Budget	Variance to Budget		Actual	Variance to Prior Year	
	2021	2021	\$	%	2020	\$	%
<b>Gross written premiums</b>							
Ontario	109,009	103,843	5,166	5	104,586	4,423	4
Excess	6,034	6,100	(66)	(1)	5,961	73	1
Title	4,059	2,564	1,495	58	2,258	1,801	80
Total GWP	119,102	112,507	6,595	6	112,805	6,297	6
<b>Change in unearned premium revenue</b>							
Ontario	(54,858)	(53,858)	(1,000)	(2)	(55,364)	506	1
Excess	(3,043)	(3,050)	7	-	(3,004)	(39)	(1)
Total change in UPR	(57,901)	(56,908)	(993)	(2)	(58,368)	467	1
<b>Gross earned premiums</b>	<b>61,201</b>	<b>55,599</b>	<b>5,602</b>	<b>10</b>	<b>54,437</b>	<b>6,764</b>	<b>12</b>
<b>Reinsurance ceded</b>							
Ontario - Clash (Gross)	1,619	1,619	-	-	1,558	61	4
Less: Change in unearned ceded	(809)	(810)	1	-	(779)	(30)	(4)
Excess (Gross)	5,430	5,490	(60)	(1)	5,365	65	1
Less: Change in unearned ceded	(2,738)	(2,745)	7	-	(2,704)	(34)	(1)
TitlePLUS - Clash (Gross)	81	81	-	-	92	(11)	(12)
Less: Change in unearned ceded	(41)	(41)	-	-	(46)	5	11
Total reinsurance ceded	3,542	3,594	(52)	(1)	3,486	56	2
<b>Net earned premiums</b>							
Ontario	53,341	49,176	4,165	8	48,443	4,898	10
Excess	299	305	(6)	(2)	296	3	1
Title	4,019	2,524	1,495	59	2,212	1,807	82
Total NEP	57,659	52,005	5,654	11	50,951	6,708	13
<b>Gross claims incurred</b>							
Ontario	50,906	52,600	(1,694)	(3)	47,756	3,150	7
Excess	2,414	2,440	(26)	(1)	2,384	30	1
Title	275	1,154	(879)	(76)	767	(492)	(64)
Total	53,595	56,194	(2,599)	(5)	50,907	2,688	5
<b>Reinsurer's share of claims incurred</b>							
Ontario	11	-	11	100	(18)	29	161
Excess	2,172	2,196	(24)	(1)	2,145	27	1
Title	24	-	24	100	(8)	32	400
Total	2,207	2,196	11	1	2,119	88	4
<b>Net claims incurred</b>	51,388	53,998	(2,610)	(5)	48,788	2,600	5
Claims discount change	(4,420)	(488)	(3,932)	(806)	9,701	(14,121)	(146)
PfAD change	(567)	645	(1,212)	(188)	3,864	(4,431)	(115)
Subtotal	46,401	54,155	(7,754)	(14)	62,353	(15,952)	(26)
Add: ULAE	5,396	5,726	(330)	(6)	4,935	461	9
Total NCI	51,797	59,881	(8,084)	(14)	67,288	(15,491)	(23)
<b>Reinsurance commission earned</b>							
Excess	753	769	(16)	(2)	745	8	1
<b>Profit commission earned (expensed)</b>							
Ontario	8	-	8	100	(14)	22	157
<b>Premium taxes</b>	1,842	1,668	174	10	1,638	204	12
<b>Operating expenses</b>	16,782	18,416	(1,634)	(9)	15,189	1,593	10
Less: ULAE	(5,396)	(5,726)	330	6	(4,935)	(461)	(9)
General expenses	11,386	12,690	(1,304)	(10)	10,254	1,132	11
<b>Finance Costs</b>	200	200	-	-	208	(8)	(4)
<b>Underwriting income (loss)</b>	(6,805)	(21,665)	14,860	69	(27,706)	20,901	75
Investment income (before net unrealized gains)	9,322	6,712	2,610	39	883	8,439	956
Change in unrealized gains and losses	(9,622)	-	(9,622)	(100)	10,318	(19,940)	(193)
Investment income (loss)	(300)	6,712	(7,012)	(104)	11,201	(11,501)	(103)
<b>Net income (loss) before taxes</b>	(7,105)	(14,953)	7,848	52	(16,505)	9,400	57
<b>Income taxes</b>	(2,305)	(4,125)	1,820	44	(4,650)	2,345	50
<b>Net income (loss)</b>	<b>(4,800)</b>	<b>(10,828)</b>	<b>6,028</b>	<b>56</b>	<b>(11,855)</b>	<b>7,055</b>	<b>60</b>
<b>Other comprehensive income (loss)</b>	7,923	647	7,276	1,125	(14,566)	22,489	154
<b>Total comprehensive income (loss)</b>	<b>3,123</b>	<b>(10,181)</b>	<b>13,304</b>	<b>131</b>	<b>(26,421)</b>	<b>29,544</b>	<b>112</b>
<b>U/W Combined Ratio (discounted basis)</b>	111%	141%			154%		
<b>Claims Ratio (discounted basis)</b>	90%	115%			132%		
<b>U/W Combined Ratio (undiscounted basis)</b>	119%	142%			135%		
<b>Claims Ratio (undiscounted basis)</b>	97%	116%			113%		

## Statement of Comprehensive Income

in \$000s

<b>FOR THE 6 MONTHS ENDED JUNE 30</b>	<b>2021</b>	<b>2020</b>
<b>Profit (loss)</b>	<b>(4,800)</b>	<b>(11,855)</b>
Other comprehensive income, net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit plans, net of income tax expense (recovery) of \$0 [2020: \$0]	-	-
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<i>Available-for-sale assets</i>		
Net changes unrealized gains (losses), net of income tax expense (recovery) of \$2,935 [2020: (\$7,670)]	8,141	(21,273)
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$78) [2020: (\$854) ]	(218)	(2,368)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of \$0 (2020: \$3,272)	-	9,075
<b>Other comprehensive income</b>	<b>7,923</b>	<b>(14,566)</b>
<b>Comprehensive income</b>	<b>3,123</b>	<b>(26,421)</b>

## Statement of Changes in Equity

in \$000s

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
<b>Balance at December 31, 2019</b>	<b>5,000</b>	<b>30,645</b>	<b>203,480</b>	<b>32,176</b>	<b>271,301</b>
Total comprehensive income for the year	-	-	21,010	(22,741)	(1,731)
Transfer of defined benefit remeasurements from OCI to retained earnings			(523)	523	-
<b>Balance at December 31, 2020</b>	<b>5,000</b>	<b>30,645</b>	<b>223,967</b>	<b>9,958</b>	<b>269,570</b>
Total comprehensive income for the year	-	-	(4,800)	7,923	3,123
Transfer of defined benefit remeasurements from OCI to retained earnings			-	-	-
<b>Balance at June 30, 2021</b>	<b>5,000</b>	<b>30,645</b>	<b>219,167</b>	<b>17,881</b>	<b>272,693</b>

## Insurance Ratios

TEST	TARGET	JUN 2021	DEC 2020	JUN 2020	DEC 2019	DEC 2018
<b>SOLVENCY RATIOS</b>						
<b>Minimum Capital Test</b> <i>Measures the excess of capital available to capital required based on a risk-based capital adequacy framework. Used to determine capital adequacy of a company</i>	Preferred = 210-240%  [Minimum: 170%]	219%	229%	207%	242%	237%
<b>Net Claims Liabilities / Equity</b> <i>Measures Net Claims Liabilities as a % of Equity and provides a simple test of the leveraged position of the company</i>	< 200%	170%	171%	192%	164%	171%
<b>Liabilities / Liquid Assets</b> <i>Liabilities as a % of Cash &amp; Equivalents and Investments measures company's ability to meet its financial demands</i>	< 105%	75%	68%	78%	66%	66%
<b>Net Underwriting leverage</b> <i>Measures the company's ability to absorb financial shocks. Equal to net written premiums as a percentage of equity</i>	< 100%	41%	40%	43%	40%	42%
<b>PROFITABILITY RATIOS</b>						
<b>Return on equity</b> <i>Net Income (last twelve months) as a percentage of equity</i>	> 0%	10.8%	7.8%	-3.1%	1.8%	6.6%
<b>Comprehensive return on equity</b> <i>Comprehensive income (last twelve months) as a percentage of equity</i>	> 0%	10.7%	-0.6%	-6.7%	6.8%	-0.1%
<b>Combined Operating Ratio</b> <i>Total underwriting expenses as a percentage of net earned premium</i>	110%	111%	117%	154%	115%	97%
<b>Claims (or Loss) Ratio</b> <i>Net Claims Incurred as a percentage of Net Earned Premium</i>	75%	90%	94%	132%	92%	75%
<b>Expense ratio</b> <i>Measures general expenses, excluding commissions, as a % of net earned premiums</i>	28%	23%	24%	23%	24%	24%

in target

worse than target

## Claims Payments & Statistics – Ontario Primary E&O

Ontario Primary E&O Program - Claims count and payment statistics  
For the six months ended June 30, 2021

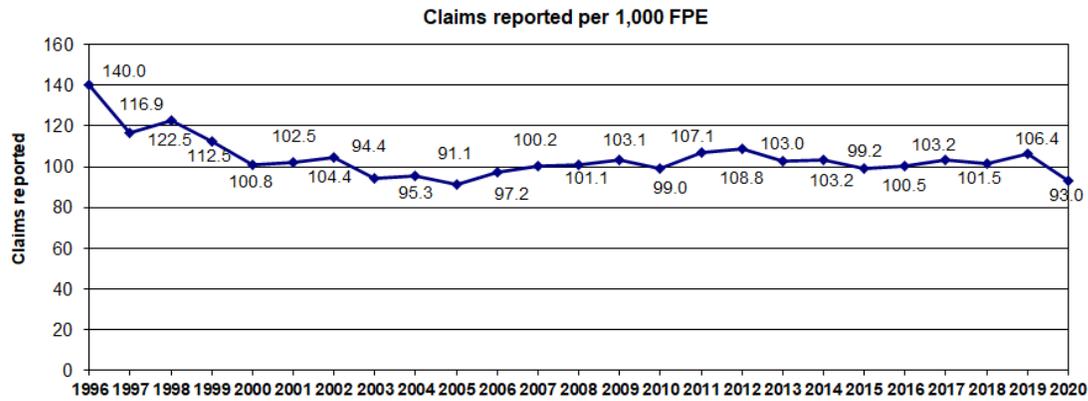
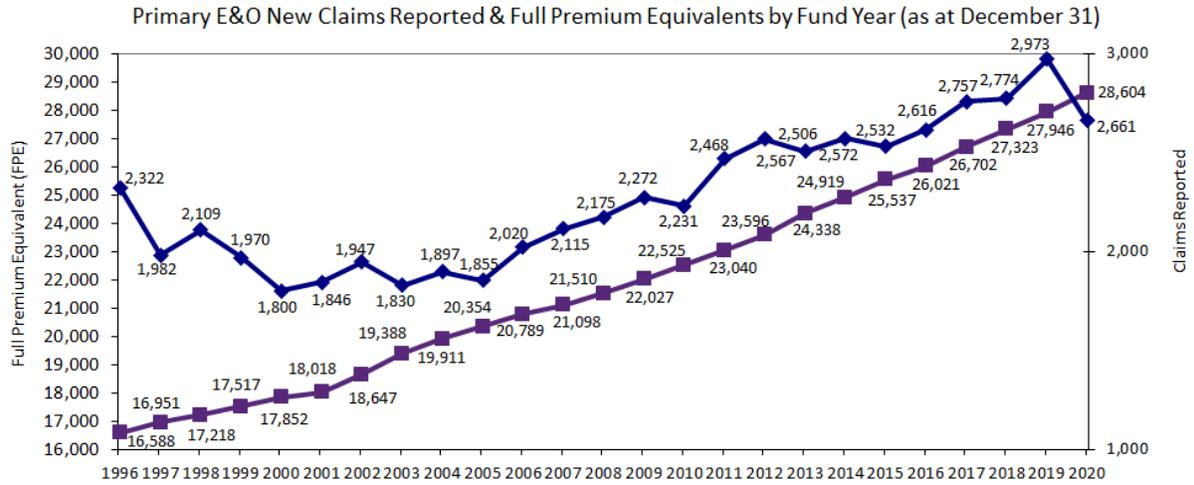
### Claims count

Number of Claims	2021	2020	2019	2021 vs 2020 Change	2021 vs 2020 % Change	2021 vs 2019 Change	2021 vs 2019 % Change
Open Claims (All fund years)	4,394	4,202	4,140	192	5%	254	6%
Activated during year:							
new reports*	1,615	1,292	1,437	323	25%	178	12%
reopened	103	76	98	27	36%	5	5%
	1,718	1,368	1,535	350	26%	183	12%
All fund years - Closed during year	1,457	1,449	1,384	8	1%	73	5%
*new reports - current fund year only	1,293	979	1,197	314	32%	96	8%

### Claim payments

Costs	2021	2020	2019	2021 vs 2020 Change	2021 vs 2020 % Change	2021 vs 2019 Change	2021 vs 2019 % Change
	\$ 000s	\$ 000s	\$ 000s	\$ 000s		\$ 000s	
Indemnity	18,352	14,177	18,275	4,175	29%	77	0%
Legal Fees	21,888	21,635	18,447	253	1%	3,441	19%
Adjuster Fees	207	84	111	123	146%	96	86%
Other	1,231	1,390	1,796	(159)	-11%	(565)	-31%
Total	41,678	37,286	38,629	4,392	12%	3,049	8%

## New Claims Reported and FPEs by Fund Year – Ontario Primary E&O





CIBC Asset Management Inc.  
161 Bay Street, Suite 2230  
Toronto ON M5J 2S8  
Tel: 416-364-5620  
Fax: 416-364-4472

Confidential

July 22, 2021

Subject: Quarterly Compliance Report as at June 30, 2021  
for Lawyers' Professional Indemnity Company

As of and for the quarter ending June 30, 2021, we hereby certify that to the best of our knowledge the investments in the Lawyers' Professional Indemnity Company portfolio were in compliance, based on our records which are issued on a trade date basis, in accordance with the Investment Policy Statement dated January 1, 2020.

Yours truly,

A handwritten signature in blue ink, appearing to read "B. Lancaster", with a small dot at the end.

Brian Lancaster, CFA, CAIA  
Vice-President

## Compliance Statement

The undersigned confirms that, throughout the 3-month period ending June 30th, 2021:

The portfolio managed by Fiera Capital Corporation for Lawyers' Professional Indemnity Company (the "Account") was in compliance with the investment guidelines and restrictions applicable to the Account.

The Fiera Funds held in the Account (the "Funds") were in compliance with the investment guidelines and restrictions applicable to the Funds.

The undersigned confirms that, to the best of his knowledge, no investigation or disciplinary action has been commenced against Fiera Capital Corporation during the period by any securities regulatory authority.

Dated July 14th, 2021

A handwritten signature in blue ink, appearing to read "Thomas Di Stefano".

Thomas Di Stefano, CFA  
Head of Compliance - Canada

**FOR INFORMATION**

**Investment Compliance Reports for the  
Quarter ended June 30, 2021**

**The Committee recommends the Investment Compliance Reports for the quarter ended June 30, 2021 be received by Convocation for information.**

Under the Law Society Investment Policy, Law Society management shall report quarterly on compliance with the Policy.

The Law Society, and its investment manager, has complied with the Investment Policy for the quarter ending June 30, 2021.

**LAW SOCIETY OF ONTARIO  
STATEMENT OF INVESTMENT COMPLIANCE  
SHORT TERM INVESTMENTS  
As at June 30, 2021**

<b>Investment Parameters</b>	<b>Guidelines</b>	<b>Compliance</b>
<b>1. Asset Mix</b>		
Federal and provincial treasury bills	Allowed	Yes
Bankers acceptances	Allowed	Yes
Commercial paper	Allowed	Yes
Investment Manager Money Market Fund	Allowed	Yes
Premium Savings Account	Allowed	Yes
FGP Money Market Fund	Allowed	Yes
<b>2. Quality Requirements</b>		
Commercial paper rating	Min. R1	N/A
Liquidity	Max term to maturity of 365 days	Yes
<b>3. Quantity Restrictions</b>		
Commercial paper of a single corporate issuer	Max 8% of fund	Yes
<b>4. Other Restrictions</b>		
Equity Securities	None	Yes
Direct investments in:		
Resource properties	None	Yes
Mortgages and mortgage-backed securities	None	Yes
Real estate	None	Yes
Venture capital financing	None	Yes
Derivatives	None	Yes

*Christianne Abou-Saab*

---

Christianne Abou-Saab  
Director, Finance

**Law Society of Ontario  
General Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending June 30, 2021)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	45%	70%	80%	Y
<b>Total Fixed Income</b>	<b>60%</b>	<b>70%</b>	<b>80%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>20%</b>	<b>30%</b>	<b>40%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
<b>Each bond portfolio may be invested within the following parameters:</b>				
Bond Holdings	Asset Mix			
	Maximum	Target	Minimum	Compliance* (Y/N)
Federal and Federally Guaranteed Bonds	100%	46%	26%	Y
Provincials, Provincially Guarantees and Municipals	38%	18%	0%	Y
Total Corporate Issues	56%	36%	0%	Y
Total BBB Issues with Corporate Issues	18%	8%	0%	Y
Cash or Money Market	5%	0%	0%	Y
Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of those guaranteed by the Government of Canada and/or a provincial government.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Investment policy dated February 23, 2017. \*If policy not complied with, comment on specifics.

September 1, 2021  
Date: \_\_\_\_\_

  
Philip Stathopoulos  
Manager, Compliance

**Law Society of Ontario  
Compensation Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending June 30, 2021)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	45%	70%	80%	Y
<b>Total Fixed Income</b>	<b>60%</b>	<b>70%</b>	<b>80%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>20%</b>	<b>30%</b>	<b>40%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
<b>Each bond portfolio may be invested within the following parameters:</b>				
Bond Holdings	Asset Mix			
	Maximum	Target	Minimum	Compliance* (Y/N)
Federal and Federally Guaranteed Bonds	100%	46%	26%	Y
Provincials, Provincially Guarantees and Municipals	38%	18%	0%	Y
Total Corporate Issues	56%	36%	0%	Y
Total BBB Issues with Corporate Issues	18%	8%	0%	Y
Cash or Money Market	5%	0%	0%	Y
Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of those guaranteed by the Government of Canada and/or a provincial government.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Investment policy dated February 23, 2017.

\*If policy not complied with, comment on specifics.

September 1, 2021

Date:



**Philip Stathopoulos  
Manager, Compliance**

**Law Society of Ontario  
E&O Insurance Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending June 30, 2021)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	45%	70%	80%	Y
<b>Total Fixed Income</b>	<b>60%</b>	<b>70%</b>	<b>80%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>20%</b>	<b>30%</b>	<b>40%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
<b>Each bond portfolio may be invested within the following parameters:</b>				
Bond Holdings	Asset Mix			
	Maximum	Target	Minimum	Compliance* (Y/N)
Federal and Federally Guaranteed Bonds	100%	46%	26%	Y
Provincials, Provincially Guarantees and Municipals	38%	18%	0%	Y
Total Corporate Issues	56%	36%	0%	Y
Total BBB Issues with Corporate Issues	18%	8%	0%	Y
Cash or Money Market	5%	0%	0%	Y
Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of those guaranteed by the Government of Canada and/or a provincial government.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Investment policy dated February 23, 2017.

\*If policy not complied with, comment on specifics

September 1, 2021

**Date:**



**Philip Stathopoulos  
Manager, Compliance**



TAB 8

## **Equity and Indigenous Affairs Committee**

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### **Report on the Activities of the Discrimination and Harassment Counsel**

October 1, 2021

**Committee Members:**

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

**Authored By:**

Reshma Budhwani  
[rbudhwan@lso.ca](mailto:rbudhwan@lso.ca)



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## Purpose

The Equity and Indigenous Affairs Committee (the “Committee”) submits the following report to Convocation for information: Report of the Activities of the Discrimination and Harassment Counsel (DHC) for the Law Society of Ontario for the period of January 1, 2021 to June 30, 2021 (**TAB 8.1**).

## Context

The DHC provides regular reports on its activities to the Committee as outlined in subsection 20(1) of By-law 11, *Regulation of Conduct, Capacity and Professional Competence*.

The Acting DHC Fay Faraday and the Alternate DHC Natasha Persaud reported on the DHC’s activities from January 1, 2021 to June 30, 2021 at the September 15, 2021 Committee meeting. The majority of the Committee voted to submit the report to Convocation for information.

The DHC assists anyone who may have experienced discrimination or harassment based on human rights grounds by a lawyer, paralegal or student member of the Law Society. The DHC is funded by the Law Society but operates independently. As per By-law 11, information received by the DHC is kept confidential. The only information provided to the Law Society is anonymous statistical data showing the number and type of complaints and anonymous demographic data about complainants.

**Tab 8.1**

**REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF ONTARIO**

For the period from 1 January 2021 to 30 June 2021

Prepared by Fay Faraday  
with Lai-King Hum and Natasha Persaud

Discrimination and Harassment Counsel

10 September 2021

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## A. INTRODUCTION

1. Under their respective *Rules of Professional Conduct* and *Paralegal Rules of Conduct*, lawyers and paralegals licensed in Ontario have legal and ethical obligations as professionals to deliver their services and engage in and conduct their employment practices in a manner that is free of discrimination and harassment.
2. Rules 6.3 and 6.3.1 of the *Rules of Professional Conduct* set out these professional obligations for lawyers as follows:

6.3-3 A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1, 6.3.1-2 and 6.3-3.

3. The “requirements of human rights laws in force in Ontario” which lawyers have a “special responsibility to respect” are the prohibitions against both discrimination or harassment on prohibited grounds of discrimination listed in the Ontario *Human Rights Code*. The discrimination or harassment must also have taken place within one of the social areas recognized in the *Human Rights Code* (discrimination or harassment in relations to goods, services and facilities; accommodation; employment; contracts; and vocational associations).

4. These *Rules of Professional Conduct* are supplemented by 29 paragraphs of commentary that provide guidance on the interpretation and application of these *Rules* and outline how they are anchored in equivalent legal obligations under the provincial *Human Rights Code* and *Occupational Health and Safety Act*.
5. Rule 2.03 of the *Paralegal Rules of Conduct* holds paralegals to professional standards of human rights compliance as follows:
  - (3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.
  - (4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.
  - (5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.
  - (6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.
  - (7) A paralegal shall ensure that his or her employment practices do not offend this rule.
6. The Discrimination and Harassment Counsel (DHC) program was established in 1999 as an independent office funded by, but operating at arm's length from, the Law Society of Ontario. The DHC began operating in the fall of 1999 to provide information to and support individuals who had experienced discrimination or harassment by licensees contrary to their binding rules of professional conduct as

a means to help eradicate discrimination in the legal profession.<sup>1</sup>

7. In carrying out its functions, the DHC supports the LSO's core regulatory function of holding licensees accountable for compliance with their *Rules of Professional Conduct* and *Paralegal Code of Conduct*. This is necessary to ensure that public trust in the self-governing legal professions is not eroded by abuses of power through discriminatory or harassing behaviour by professionals.
8. The DHC can be accessed by email at [assistance@dhcounsel.on.ca](mailto:assistance@dhcounsel.on.ca), toll free by phone at 1-877-790-2200, or through direct message on Twitter @DH\_Counsel.
9. The DHC serves two important functions:
  - (a) The DHC provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process; and
  - (b) The DHC provides anonymized statistical data to the Law Society of Ontario so that the regulator can better understand the dynamic and nature of concerns about discrimination and harassment that are being raised in the legal professions and address possibly systemic issues of discrimination and harassment in the legal professions. This statistical data is released publicly to support public accountability of a profession that is self-governing.
10. The DHC services are provided without charge to members of the public as well as to licensees.
11. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in

---

<sup>1</sup> In its current mandate, the DHC does not provide representation or legal advice to individuals, nor does the DHC investigate or decide complaints.

the Ontario *Human Rights Code*, in one or more of the five social areas to which the *Code* applies. This is the discriminatory conduct prohibited by the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any of the listed prohibited grounds does not fall within the mandate of the DHC Program.

12. The complaints reported to the DHC arise in a variety of contexts, including but not limited to:
  - (a) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
  - (b) participants in litigation – whether they are clients, witnesses, articling students, paralegals or lawyers – who have experienced discrimination and/or harassment by opposing counsel or opposing paralegals and justice system employees (such as court/tribunal staff, law firm staff, process servers, etc.) who have experienced discrimination and/or harassment by licensees in the course of litigation;
  - (c) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced harassment and/or discrimination by licensees in the workplace based on intersecting or distinct grounds of prohibited discrimination;
  - (d) service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing and/or have experienced discrimination and/or harassment by licensees in the context of professional training programs, continuing professional education programs, public or privately hosted legal events; and
  - (e) members of the public, service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing or have experienced discrimination and/or harassment by

licensees in other contexts which implicate the licensees' professional obligations.

13. People also contact the DHC with a range of concerns that are related or adjacent to discriminatory and harassing behaviour by licensees. These include complaints about licensees' lack of compliance with other elements of their respective rules of professional conduct; complaints about abusive employment within legal offices; complaints about judicial conduct; complaints about discrimination and harassment involving licensees from other provinces; and discrimination and harassment complaints not involving lawyers or paralegals. People also contact the DHC program seeking information proactively about the nature of services provided by the program. For all of these related or adjacent issues, the DHC provides information and guidance about other resources that the individual can access but does not provide the more extensive coaching, mediation or conciliation services that are outlined in the next section of this report. The number of contacts that are wholly unconnected to the DHC's mandate are very limited.
14. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. The Counsel who is on duty rotates each week. When any individual Counsel is unable to act due to a conflict of interest, one of the other Counsels handles the matter. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website. Ms Hum assists individuals who seek service in French.

## **B. SERVICES PROVIDED BY THE DHC**

15. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who is an expert in discrimination and harassment law and issues, who has skills of mediation and conciliation regarding human rights, who has skills of cultural competence, and who is committed to promoting compliance with professional

ethical standards in the legal professions.

16. The DHC also supports lawyers and paralegals to comply with their professional rules of conduct by participating in continuing professional education events to advance licensees' training on the substantive legal issues and best practices to ensure compliance with their codes of conduct and human rights laws.
17. The DHC does not provide legal advice or legal representation. The DHC does not conduct investigations or fact finding. Instead, the DHC provides general information and guidance to complainants to assist them in identifying and evaluating their options to resolve their concerns, provides information to licensees to support best practices, and where appropriate, provides focused mediation or conciliation. The nature of services provided is outlined below.

#### **Counselling, Data Collection and Coaching for Self-Help**

18. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
19. Some complainants want to report their experiences to the DHC so that their experience will be recorded as part of the DHC's semi-annual statistics. For complainants, this is an important means of alerting the legal profession to the reality and frequency of discrimination and harassment by licensees and of providing an evidence-based foundation for change.
20. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
21. The DHC also provides informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with the DHC. This coaching of respondent licensees aims to ensure that they understand their professional obligations regarding human rights compliance in their service delivery and workplaces and that they move toward best practices. This informal coaching may be appropriate in situations where the complainant wishes to remain anonymous

but authorizes the DHC to contact the respondent, advise them of their alleged behaviour in breach of human rights without making any finding, and educate or remind the respondent of their professional and legal obligations. Even though the DHC cannot make any factual findings, such calls are effective in providing education and guidance to respondent licensees.

**Information about Avenues of Recourse**

22. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
  - (a) speaking to their union representative (if they are unionized and the complaint relates to their employment);
  - (b) filing an internal complaint within their workplace (if the complaint relates to their employment);
  - (c) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
  - (d) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
  - (e) filing a formal complaint of professional misconduct with the Law Society;
  - (f) contacting the police (where criminal conduct is alleged);
  - (g) filing a complaint about an articling principal with the Law Society's Articling Program;
  - (h) contacting the Human Rights Legal Support Centre for legal advice on Human Rights Tribunal of Ontario matters; and
  - (i) contacting a lawyer regarding possible civil causes of action.
23. Complainants are provided with information about each of these options, including:

- (a) what (if any) costs might be involved in pursuing an option;
- (b) whether legal representation is required in order to pursue an option;
- (c) referral to resources on how to obtain legal representation such as the Law Society's Lawyer Referral Service, <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>, (actual referrals to specific lawyers, paralegals or law firms are not made by the DHC);
- (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are required, where to locate the requisite forms, etc.);
- (e) what processes are involved in pursuing any of the available options (e.g. investigation, conciliation, mediation, adjudication, etc.);
- (f) what general types of remedies might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
- (g) what general time limits exist for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

### **Resolution Services**

- 24. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
- 25. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually

satisfactory settlement of the issues raised in the complaint.

26. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual “without prejudice” undertaking by both parties.
27. Where informal conciliation services are offered, the complainant is advised that the DHC can contact the respondent confidentially and discuss the complainant’s concerns with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant’s counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.
28. Some complainants are not interested in the DHC’s resolution services because they are seeking an adjudicative process to create a formal record of the respondent’s misconduct or they desire a process that includes a fact-finding investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC’s offer of resolution services. On occasion, however, respondents decline to participate.

29. During this reporting period two formal mediation processes were requested by complainants. One mediation was successfully completed during the reporting period. Multiple informal resolutions have been used.

### **Referrals**

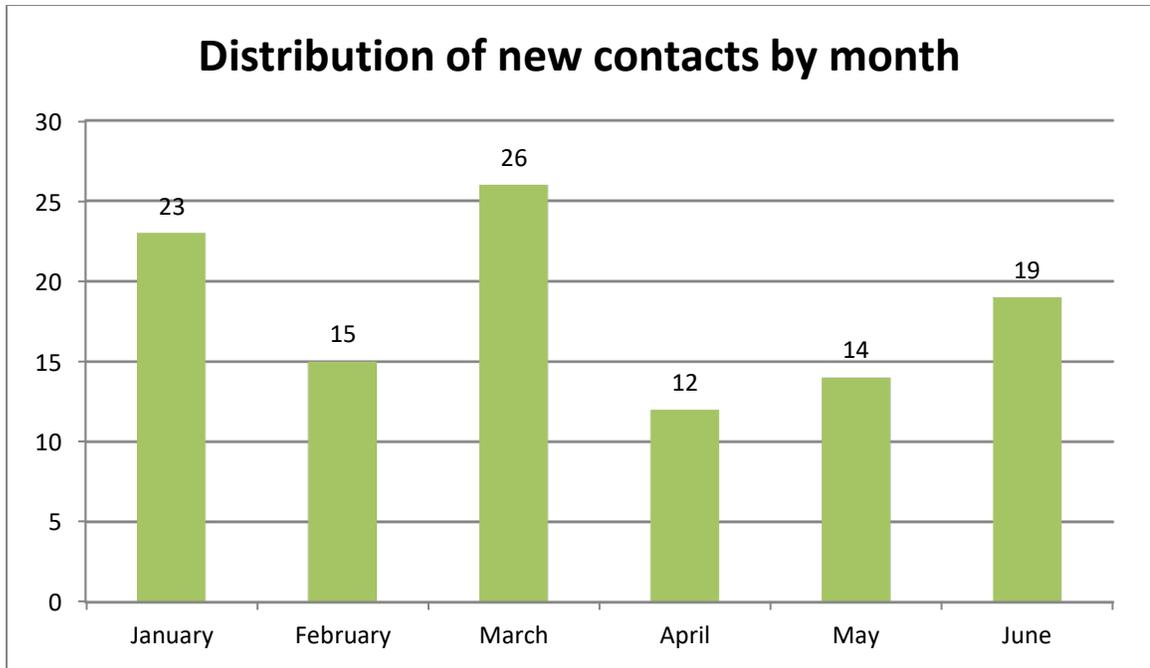
30. The DHC refers some complainants to other agencies or organizations where appropriate (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.
31. The DHC does not operate a lawyer referral service.

### **C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM**

32. The six months covered by this report again fall entirely within the continuing period of the COVID-19 pandemic. During this period, legal work continued to be delivered primarily remotely in accordance with physical distancing directives and lockdowns.
33. Nevertheless, from January to June 2021, 109 individuals contacted the DHC with a new matter,<sup>2</sup> for an average of 18.2 new contacts per month. This is the highest number of contacts since early 2018 during the height of the #MeToo movement. The frequency of new contacts was distributed across the six-month period as shown in the following chart.

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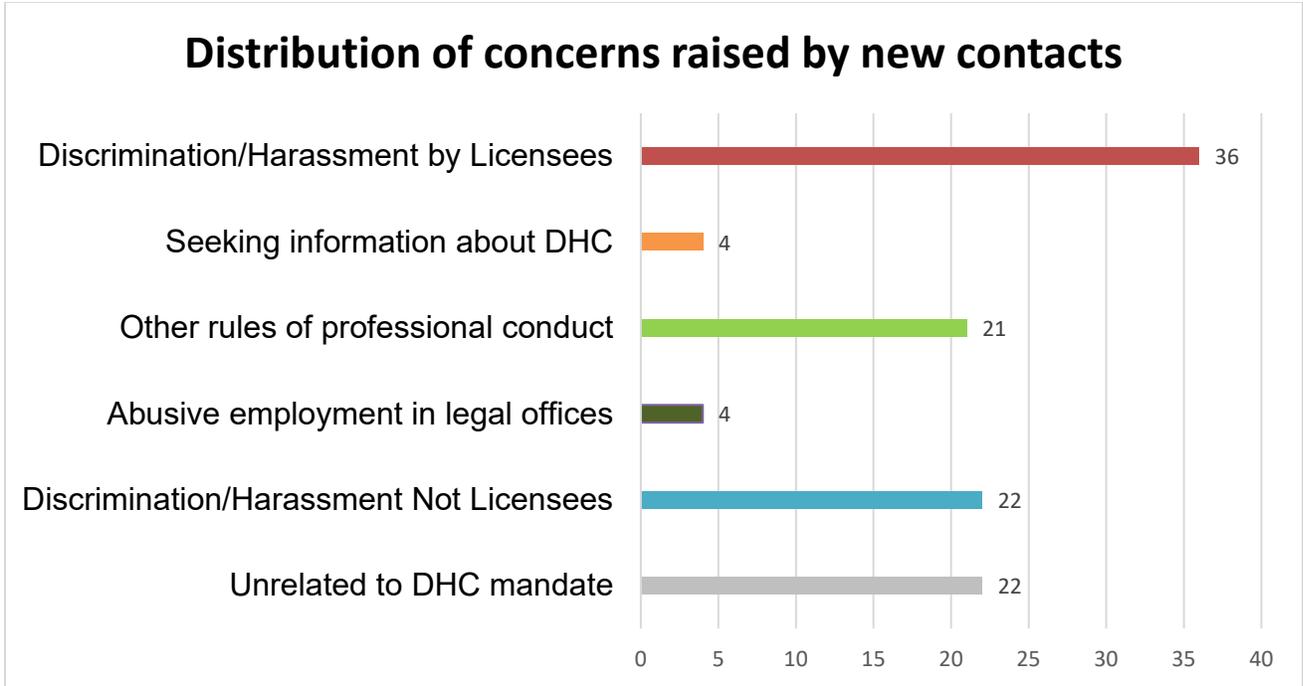
<sup>2</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.



34. During this reporting period, one new contact requested services in French.

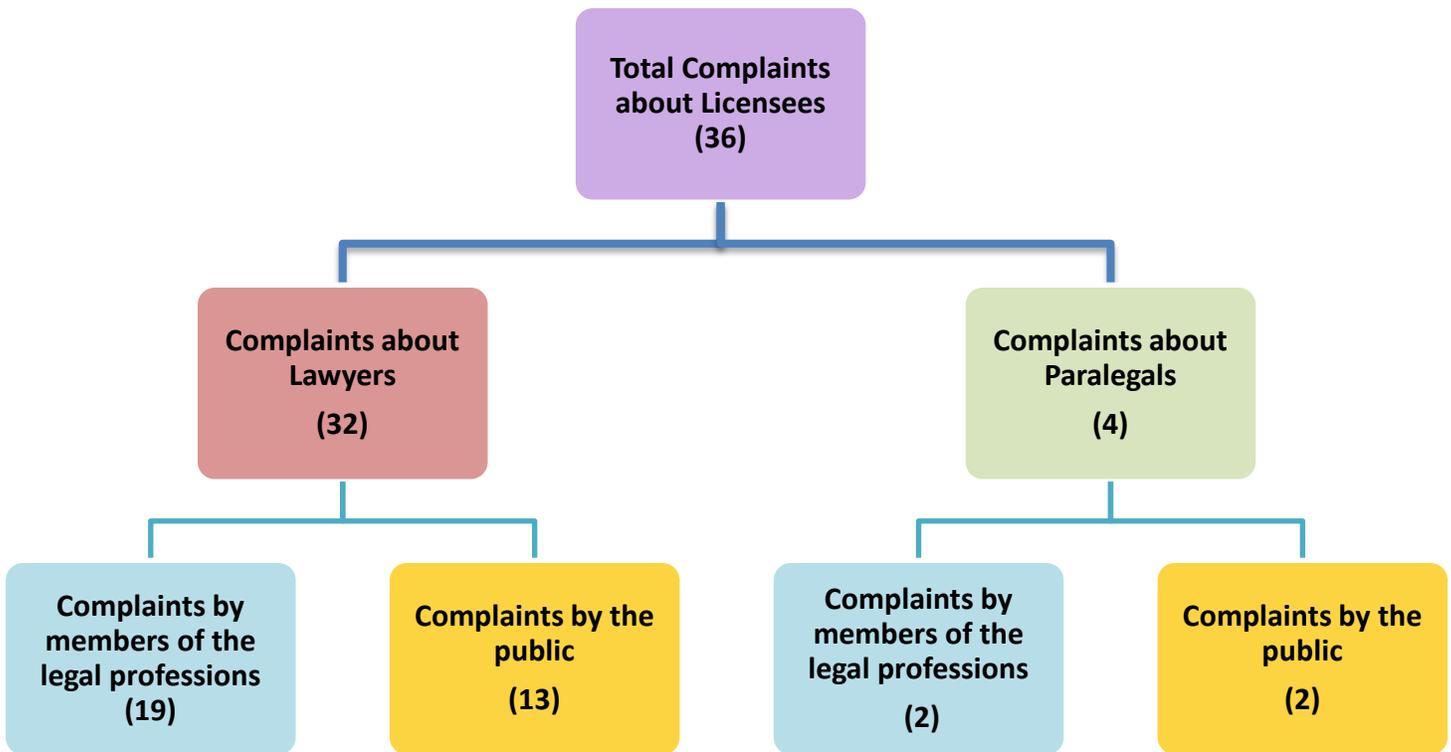
**D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS**

35. Of the 109 new contacts with the Program during this period, 36 raised substantive concerns about discrimination and/or harassment by licensees and 4 proactively sought information about the DHC's services. A further 21 contacts raised substantive concerns about licensees' conduct in relation to other duties of professional responsibility and 4 raised concerns about abusive employment practices in legal offices. There were 22 new contacts raising discrimination and harassment complaints in contexts not involving licensees or involving licensees outside Ontario. Finally, 22 contacts were unconnected with the DHC's mandate. The distribution of concerns is represented in the graph below:



36. Of the 36 contacts raising concerns about discrimination and harassment by licensees, 32 raised concerns about lawyers and 4 about paralegals.
37. Of the 32 complaints about lawyers, 13 were made by members of the public, and 19 were made by individuals or groups within the legal professions. Of the 4 complaints about paralegals, 2 were made by members of the public and 2 were made by individuals within the legal professions. The breakdown of complaints made about licensees is represented on the chart on the next page.

### Source of Complaints Against Licensees – Chart 1



#### **Complaints about Lawyers by Members of the Legal Profession**

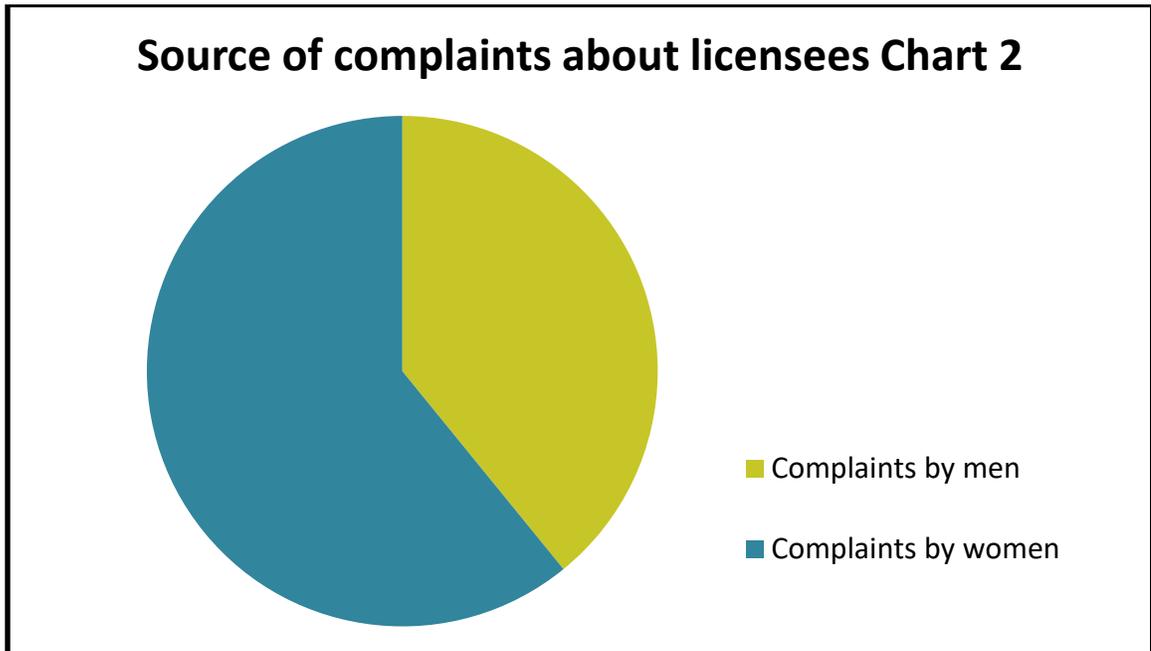
38. The 19 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession and a variety of roles within the justice system as follows:

- 13 complaints by lawyers;
- 1 by a student;
- 1 by a paralegal; and
- 4 by non-licensee staff at legal workplaces.

39. Of the 19 complaints against lawyers made by members of the legal profession:

14 (74%) were made by women, 11 of whom (79%) voluntarily self-identified as racialized women and/or women with disabilities;

5 (26%) were made by men, all of whom are racialized.

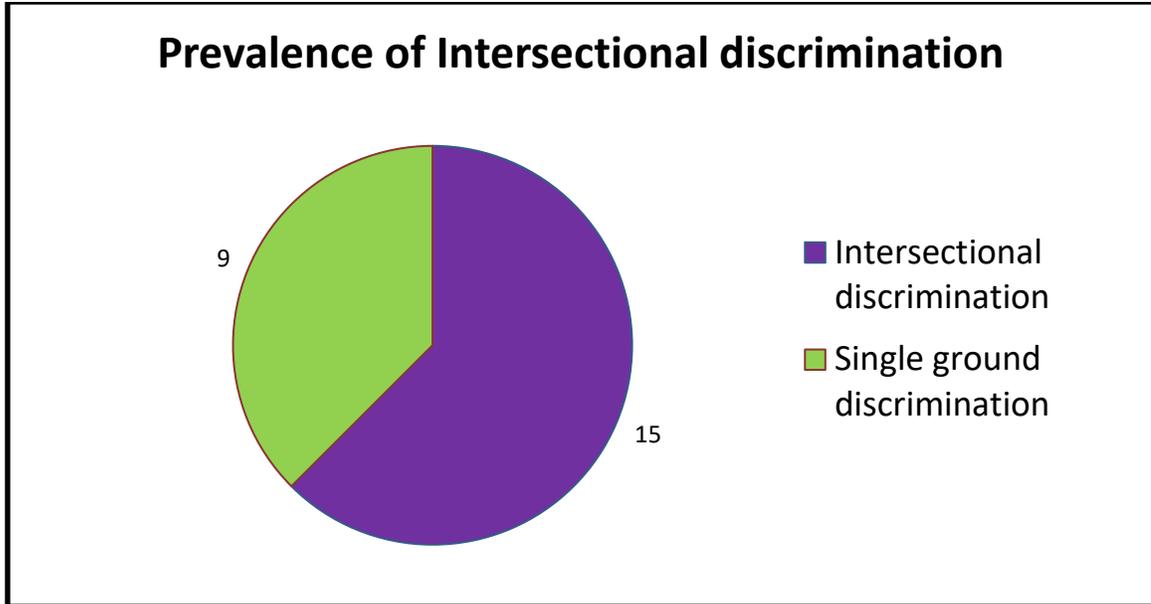


40. Of the 19 complaints from members of the legal profession, 13 complaints (68%) related to the complainants' employment and the remaining 6 complaints (32%) related to interactions with lawyers in other professional contexts.

41. Of the 19 complaints from members of the legal profession:

15 complaints (79%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, ethnic origin, place of origin, and gender identity.

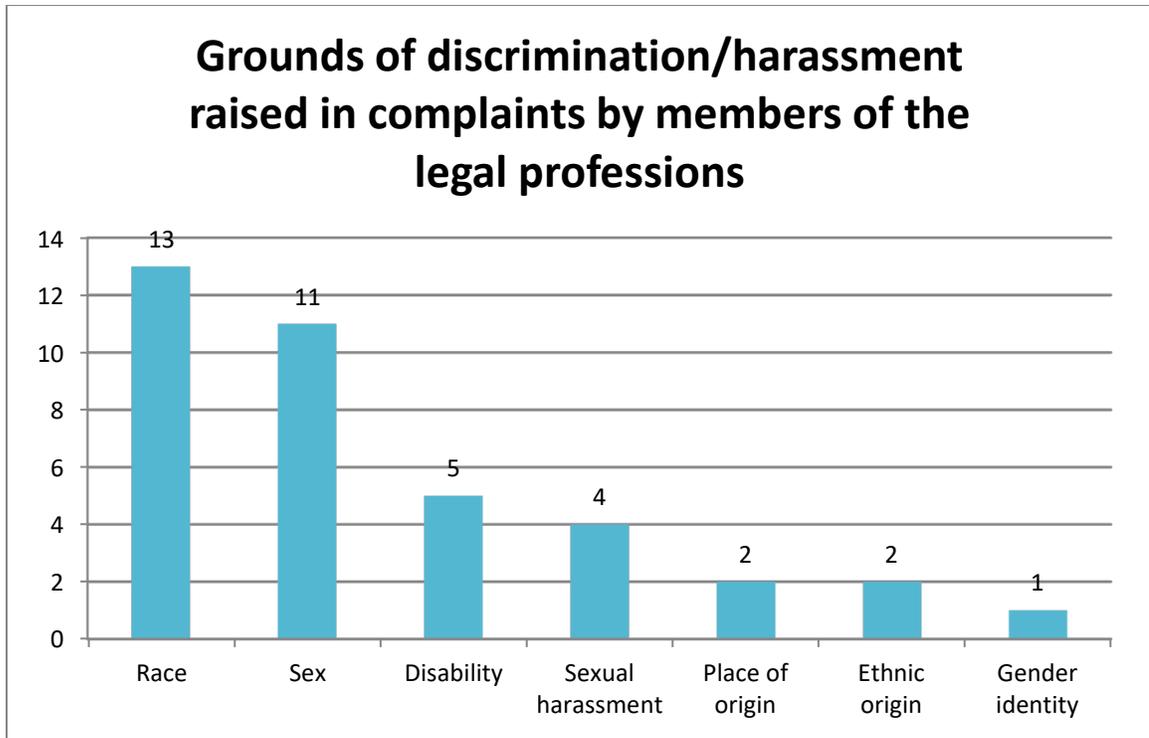
4 complaints (21%) raised a single ground of discrimination, primarily sexual harassment and disability.



42. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by members of the legal profession about the conduct of lawyers. For the first time, race was the most frequently raised ground of complaint. The total exceeds 19 as the majority of complaints raised more than one ground of discrimination

Race	13
Sex	11
Disability	5
Sexual harassment	4
Place of origin	2
Ethnic origin	2
Gender identity	1

The distribution of grounds of discrimination and harassment are depicted in the table on the following page.



43. The complaints with respect to employment typically involved a power (seniority, security of employment) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment, including peer-level harassment by law firm partners. The range of behaviour that was complained about in the context of employment included:
- (a) Race and sex discrimination in the form of denial of work opportunities, delayed career advancement, significantly lower pay than junior non-racialized and/or male colleagues, being subjected to reprisals, including threats, public verbal abuse and termination for complaining about discrimination;
  - (b) Racial harassment in the form of explicitly racist abuse;
  - (c) Sexual harassment, including pressure to engage in sexual relationships in return for access to better work assignments;

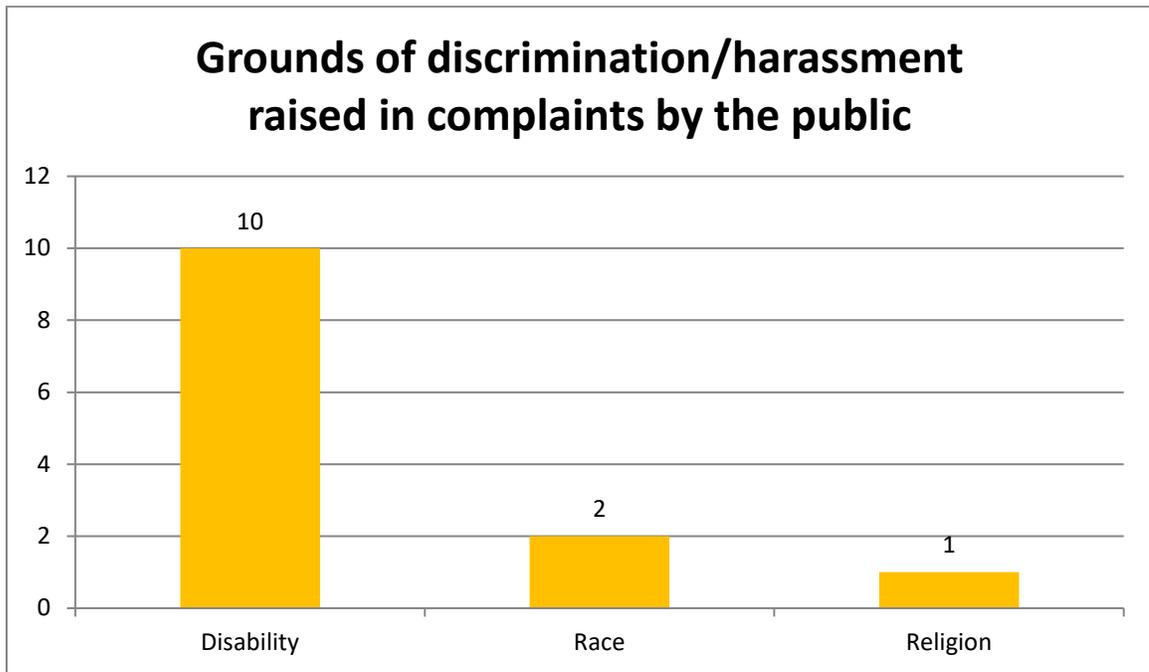
- (d) Discrimination and harassment with respect to disability including refusal to accommodate disabilities, denial of opportunities and denial of career progression due to disabilities;
  - (e) Verbal harassment with respect to place of origin/ethnic origin and denial of opportunities at work; and
  - (f) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of termination.
44. The range of behaviour identified in complaints about lawyers in other professional settings included sexist and racist comments and explicit comments demeaning people based on disabilities in public settings; sexual and/or racial harassment; and harassment on the basis of place of origin.
45. Continuing the pattern noted in the last semi-annual report, there continues to be a notable increase in complaints about lawyers engaging in explicit racial and sexual harassment in public contexts and public online platforms (including in connection with litigation) as well as in communications directly targeting the complainant.
46. Again, the frequency of contacts raising concerns about intersecting discrimination, indicate that the burden of discriminatory and harassing behaviour within the legal profession falls most heavily on women, and particularly racialized women. Moreover, this discriminatory and harassing behaviour is experienced at all stages of women's careers in law from their time as students through to senior stages in their careers. The consistency of these systemic patterns is concerning. Also concerning is the fact that complaints about racial harassment and discrimination were, for the first time, the most frequently raised ground of complaint.

#### **Complaints about Lawyers by Members of the Public**

47. During this reporting period, 13 complaints were made about lawyers by members

of the public: 10 complaints were made by clients who reported discrimination or harassment by their own lawyer; 3 complaints were made about opposing counsel.

48. The majority of complaints (10) involved discrimination and/or harassment on the basis of disability, two involved race discrimination, one involved sex discrimination and one involved discrimination on the basis of religion as reflected in the graph below.



49. The complaints about disability overwhelmingly involved either the complainant's own lawyer and/or opposing counsel failing to accommodate disabilities; opposing counsel's refusal to agree to accommodations in the context of legal proceedings; and clients' own lawyers taking advantage of the complainant because of their disability.
50. Lawyers' failure to accommodate disabilities remains a consistently frequent point of complaint for clients and continues to highlight the need for focused professional training to ensure that all lawyers know and are able to meet their obligations to accommodate to the point of undue hardship.

**Complaints about Paralegals**

51. Three of the four complaints made about paralegals were made by women and all complaints raised concerns about harassment on the basis of sex and/or disability.

**E. PROMOTIONAL AND EDUCATIONAL ACTIVITIES**

52. The DHC's ability to engage in proactive actions to raise awareness of the DHC's services and promote licensee compliance with the relevant codes of conduct continues to be restricted due to the COVID-19 pandemic. Throughout this reporting period, the DHC Program was promoted in the Law Society's monthly e-Bulletins to licensees. The LSO continues to maintain a bilingual website for the DHC Program.



**Tab 9**

## **Tribunal Committee**

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### **For Information**

October 1, 2021

**Committee Members:**

Julia Shin Doi (Chair)

Ryan Alford (Vice-Chair)

Marian Lippa (Vice-Chair)

Malcolm M. Mercer (*ex officio*)

Jack Braithwaite (*ex officio*)

Barbara Murchie (*ex officio*)

Catherine Banning

Jared Brown

Jean-Jacques Desgranges

John Fagan

Sam Goldstein

Philip Horgan

Cecil Lyon

Isfahan Merali

Geoff Pollock

Chi-Kun Shi

**Authored By:**

Lisa Mallia, Tribunal counsel

lmallia@lso.ca

## For Information

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Tab 9.3	Filing Documents
Tab 9.4	Public Access to Hearings and Tribunal Files
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# Tribunal Practice Directions – For Information

## A. Executive Summary

Several of the current practice directions have been updated to reflect changes in the *Rules of Practice and Procedure*, which were approved by the Committee and then Convocation, and are scheduled to take effect on October 1, 2021. In addition, a new practice direction on Electronic Filing has been drafted, again to reflect changes in the Tribunal's *Rules of Practice and Procedure*.

## B. Committee Process

The Committee met on September 15, 2021. Committee members Julia Shin Doi (Chair), Ryan Alford and Marian Lippa (Vice-Chairs), Malcolm M. Mercer (*ex officio*), Jack Braithwaite (*ex officio*), Barbara Murchie (*ex officio*), Catherine Banning, Jared Brown, Jean-Jacques Desgranges, John Fagan, Sam Goldstein, Philip Horgan, Cecil Lyon, Geoff Pollock, and Chi-Kun Shi attended. Benchers Michael Lesage and Alexander Wilkes and staff members Lawrence Barker, Tina Yuen and Lisa Mallia also attended.

## C. Background

Several of the current practice directions have been updated to reflect changes in the *Rules of Practice and Procedure*, which were approved by the Committee and then Convocation, and are scheduled to take effect on October 1, 2021. In addition, a new practice direction on Electronic Filing has been drafted, again to reflect changes in the Tribunal's *Rules of Practice and Procedure*.

In the past, due to the fact that the practice directions were novel, they went to Convocation for approval. However, this is not required and continuing this approach is contrary to the nature and purpose of practice directions and hinders their efficient amendment. The practice directions are meant to be written explanations of how the parties can expect to proceed in a certain area or how a particular issue may be dealt with by the Tribunal. They ought to be responsive to changing conditions and are intended to evolve as the Tribunal's jurisprudence evolves as well as in response to changes in administrative law and policy.

The Tribunal Committee's mandate:

*(1)...is to develop, in conjunction with the Chair of the Law Society Tribunal, for Convocation's approval policy options on all matters relating to the Law Society Tribunal, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.*

*(2) Subject to the approval of Convocation, in conjunction with the Chair of the Law Society Tribunal, the Tribunal Committee may prepare rules of practice and procedure*

While sub-2 requires that the *Rules of Practice and Procedure* are “subject to the approval of Convocation,” once those policy options have been made – and reflected in approved Rules – it is not necessary to return to Convocation for every update to the practice directions in much the same way that Convocation does not approve the content of adjudicator education and training.

Consequently, the Committee unanimously agreed that practice directions should be given to Convocation for information.

**Tabs 9.1 – 9.7** contain the updated versions of the practice directions in English, along with the new practice direction on electronic documents.

**Tabs 9.8 – 9.14** contain the updated versions of the practice directions in French, along with the new practice direction on electronic documents.

Not all practice directions required revisions as a result of the Rule changes taking effect on October 1, 2021. This report includes only those that were changed. The full list of guides can be found on the Law Society Tribunal’s website at: <https://lawsocietytribunal.ca/guides/> and <https://lawsocietytribunal.ca/guides/?lang=fr>.



## PRACTICE DIRECTION ON ACCOMMODATION

### Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. All participants in a proceeding should be able to take part in the Tribunal process and the Tribunal will provide accommodation under the *Human Rights Code*, RSO 1990, c. H. 19 where required.

### Accommodation

Under the *Code*, participants in proceedings are entitled to equal treatment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. They are entitled to accommodation of their needs arising from these grounds, to the point of undue hardship.

A participant in a proceeding must advise the Tribunal as soon as possible of any accommodation requests: Rule 6.5. To make a request, send the details by e-mail to [tribunal@lso.ca](mailto:tribunal@lso.ca). The participant must take part in the accommodation process so that an appropriate accommodation can be implemented, which will generally include providing documentation to support the request. Accommodation will be provided in a manner that respects dignity and allows the participant to take part in the Tribunal process.

### Examples

Examples of accommodations of disability-related needs are more frequent or longer breaks throughout the day, shortened hearing days and allowing a participant to alternate between sitting and standing.

### The Tribunal's facilities

Tribunal hearings are generally held by videoconference or in-person.

Videoconference hearings occur using Zoom. Members of the public and the media can attend electronic hearings by contacting the Tribunal Office. Participants can connect to a Zoom hearing using a computer, mobile device or telephone.

Most in-person hearings are held at the Tribunal's offices at 375 University Ave, Suite 402 in Toronto. The Tribunal premises, including the hearing rooms, break-out rooms and washrooms, are accessible to wheelchairs and other mobility devices. Assistive listening devices are available.

When an in-person hearing occurs at a location other than the Tribunal's offices, for example, for out-of-Toronto hearings, accessibility is part of the consideration for choosing a location.

### Accommodation for vulnerable witnesses

The panel may permit a support person to sit next to a witness while testifying. The support person should not communicate with the witness while they are testifying, should remain on camera in a videoconference hearing, and must not disrupt the process. Under some



circumstances, witnesses may testify in a separate room or behind a screen to avoid seeing a particular participant in the hearing. The Tribunal may order that a licensee or licence applicant not personally conduct cross-examination and appoint counsel to do so and may make other orders accommodating witnesses that would be fair and in the interests of justice: Rule 6.6. The most frequent use of these types of orders is in cases involving child witnesses or allegations of sexual misconduct.

## Indigenous peoples

The Tribunal aims to adapt its processes to the needs and traditions of Indigenous participants. Indigenous participants have the option of affirming on an eagle feather at Tribunal hearings, and the Tribunal has an eagle feather available for this purpose. Interpreters to and from Indigenous languages will be provided on request. The Tribunal has adopted procedures to meet the needs of Indigenous participants and integrate Indigenous traditions and beliefs, including:

- conducting hearings close to local communities;
- having local Elders present at the hearing;
- including traditional ceremonies, such as smudging ceremonies, before and after hearings;
- modified seating, such as arranging the hearing room in a circle;
- staff and adjudicators wearing informal clothing during a hearing.

Indigenous licensees, licence applicants and witnesses are invited to contact the Tribunal Office at [tribunal@lso.ca](mailto:tribunal@lso.ca) to request these or other appropriate modifications to the Tribunal process.

## Interpretation from other languages

The Tribunal will provide an interpreter where a witness is giving evidence in a language other than the language of the proceeding. The party calling a witness requiring interpretation must notify the Tribunal as early as possible, and no later than seven days prior to the hearing, so that arrangements may be made: Rule 9.4.



## PRACTICE DIRECTION ON ELECTRONIC DOCUMENTS

### Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal applies the open court principle: proceedings are presumed to be open and accessible to the public, including the media. As transparency is a core value of the Tribunal, decisions, rules, processes and policies are made available to licensees and the public. All documents filed with the Tribunal in a proceeding or received by a panel are open and accessible to the public unless ordered otherwise.

The Tribunal operates electronically to the extent reasonably possible taking into account the Tribunal's purposes and where doing so improves access to the Tribunal and is procedurally fair.

### Resources

To assist parties in working with electronic documents, resources can be found at [\[hyperlink\]](#).

Rule 5 of the Tribunal's *Rules of Practice and Procedure* are available at [lawsocietytribunal.ca/rules-of-practice/](https://lawsocietytribunal.ca/rules-of-practice/).

Parties should also refer to the practice directions on serving documents and filing documents.

### Electronic documents

All documents must be filed with the Tribunal in electronic form in accordance with the *Rules of Practice and Procedure*, except for:

- a. documentary evidence where it is necessary that an original physical document be in evidence;
- b. documents filed during an in-person hearing if it is more convenient for the parties and the panel to receive physical copies.

Where a physical document is filed, an electronic copy must still be filed, if feasible, otherwise an extra unbound, un-tabbed physical copy must be provided at the time the physical document is filed: Rule 5.10.

All electronic documents for a hearing should be combined into one or a small number of .pdf files. The page numbering will start at page 1 for the title page so that they correspond with the page number within the .pdf file. All references in filed material and oral submissions to page numbers must be to the page number of the .pdf file.

Each file must contain a table of contents, indexed to the .pdf page number of each document included. In addition, each of the documents should be clearly identified with a bookmark that takes the reader to the first page of that document. Exhibits to affidavits should be indexed in the table of contents and bookmarked as well. It is helpful but not mandatory that the table of contents listing be linked to the corresponding document within the file.



## How to serve and file electronic documents

### Smaller electronic documents – up to 20 MB

Electronic documents up to 20 MB in size may be served and filed by e-mail.

An electronic document may be served and filed by sending an e-mail to the other party and the Tribunal attaching the electronic document. An electronic document that has previously been served on the other party may be filed with the Tribunal by forwarding the original e-mail to the Tribunal.

### Larger electronic documents – 20MB or larger

For electronic documents larger than 20 MB in size, parties may submit a USB key, together with a cover letter, or upload to the Tribunal's File Sharing Platform. For information and assistance about the File Sharing Platform, please e-mail a request to [tribunal@lso.ca](mailto:tribunal@lso.ca).

### Documents subject to not public orders

The document name of any electronic document to which a not public or non-disclosure order, or publication ban applies must indicate that fact. See the section on electronic document names below.

If an electronic document is filed by e-mail and is subject to a not public or non-disclosure order, or publication ban, the e-mail by which it is served and filed should clearly reference the applicable order in the body of the e-mail. If no such order is currently in place but the party providing the document wishes to seek one from the Tribunal, that should be clearly stated in the e-mail.

For example:   \*\* PLEASE NOTE: The transcript dated July 21, 2020 is subject to a non-publication order made by the panel on July 21, 2020. \*\*

or

          \*\* PLEASE NOTE: The respondent is asking that his affidavit dated August 10, 2021 be not public pending a determination by the panel. \*\*

If an electronic document is filed by USB key or using the Tribunal File Sharing Platform and is subject to a not public or non-disclosure order, or publication ban, please advise the Tribunal by e-mail, or in the case of a USB filing, in the accompanying cover letter.

## Electronic document file formats

The Tribunal's standard for electronic documents is the .pdf format. Where there is more than one document contained within a .pdf file, bookmarks are required for each document.

In addition to filing a .pdf version of an electronic document, parties are welcome to provide another copy in another format such as .doc, .ppt and .xlsx.

All electronic documents should be text searchable.



Each page of a .pdf file must be sequentially numbered from the first page of the file. This is best done using the Bates numbering feature in .pdf software, which is explained [here](https://helpx.adobe.com/acrobat/using/add-headers-footers-pdfs.html) (https://helpx.adobe.com/acrobat/using/add-headers-footers-pdfs.html).

Documents may not be password protected unless directed by the Tribunal.

Where an electronic document is a scanned copy of a physical document, the scanning should be done at 300 dpi, using colour and not grayscale.

## Caselaw to be hyperlinked

Written submissions including factums should refer to authorities using CanLII citations and be hyperlinked to the case on CanLII.

Hypertext references should display the URL destination to ensure better accessibility for people using screen readers and other approaches.

## Electronic document names

Electronic documents filed with the Tribunal must follow this naming standard.

The standard document name includes seven pieces of information separated by spaces:

- a. the last name of the licensee or licence applicant
- b. the Tribunal file number
- c. who filed the document
- d. the document type
- e. the document date
- f. the word PROTECTED where the document is subject to a not public or non-disclosure order, or publication ban
- g. an optional additional alphabetic identifier for documents of the same type and date

### The parts of the standard document name

Tribunal file numbers follow the pattern 21H-021 or 21A-003. The first two digits indicate the year in which the originating notice was filed with the Tribunal. Applications begun in the Hearing Division are designated by the letter H. Appeals to the Appeal Division are designated by the letter A. The last three digits are assigned in sequence throughout the year.

If the licensee or licence applicant files the electronic document then the code is LIC. If the Law Society files the electronic document then the code is LSO. For anyone else, the code is OTH.

The codes for document types are set out below.

The document date is shown as YY.MM.DD.

If subject to a not public or non-disclosure order, or publication ban, the word PROTECTED is included.



### Examples of document names

For example, **Smith 20H-123 LIC AFF 21.06.09.pdf** would be the document name for an affidavit dated June 9, 2021 that was filed by the Licensee or Licence Applicant in application *Smith, 20H-123*.

If there was an affidavit dated June 9, 2021 that was subject to a not-public order, the document name would be **Smith 20H-123 LIC AFF 21.06.09 PROTECTED.pdf**.

If there were two affidavits of June 9, 2021 and no protective order, the document names would be:

**Smith 20H-123 LIC AFF 21.06.09 A.pdf**

**Smith 20H-123 LIC AFF 21.06.09 B.pdf**

### Document types

The following document codes are to be used in the standard document name.

Code	Type
AFF	Affidavit
ASF	Agreed Statement of Facts
APP	Appeal Book
BOC	Bill of Costs
BOA	Book of Authorities
COS	Confirmation of Service
CON	Consent to PHC Panelist
DOX	Document Book
END	Endorsement
FAC	Factum
HBR	Hearing Brief
INF	Information Sheet
MOT	Motion Record
NOM	Notice of Motion
NOW	Notice of Withdrawal
ORD	Order
NOP	Originating Process including Notice of Application, Notice of Appeal and Notice of Cross Appeal
OTH	Other
PHC	PHC Memorandum
RTA	Request to Admit
TRA	Transcript
SUB	Submissions



## PRACTICE DIRECTION ON FILING DOCUMENTS

### Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal follows the open court principle: proceedings are open and accessible to the public, which includes all documents filed in a proceeding or received by a panel, unless ordered otherwise.

Please refer also to the practice directions on serving documents and electronic documents.

### Filing documents at the Tribunal

#### Filing Requirements

Other than physical documents filed at an in-person appearance, all documents must be filed in electronic form and be in accordance with the Tribunal's practice direction on electronic documents.

If you will be asking a panel to make a not public order, non-disclosure order or publication ban and are filing the document ahead of the hearing, you must include a cover e-mail or letter requesting the materials to be not public pending a determination by the panel.

#### Electronic documents

Where possible, electronic documents must be filed in pdf format. Parties may also file a further copy in another format such as .doc, .ppt and .xlsx.

All documents for a hearing should be combined into one or a small number of .pdf files. The file name, structure and format of electronic documents must comply with the Tribunal's [practice direction on electronic documents](#).

Electronic documents may be filed by e-mail if less than 20 MB. Electronic documents that are 20 MB or greater in size may be filed on a USB drive or using the [Tribunal's File Sharing Platform](#).

#### Physical documents

Physical documents may only be filed during an in-person appearance. Physical documents should only be filed where it is impractical to file an electronic document.

Where a physical document is filed at an in-person appearance, the party filing the document must file:

- a. one copy for each member of the panel and one copy for the Tribunal; and
- b. either an electronic copy of the physical document or an additional un-tabbed and unbound copy of the physical document.

#### Layout

The following requirements apply to documents other than documentary evidence or copies of documentary evidence.



Documents filed with the Tribunal must be legible. Written documents must be typed or printed.

Electronic documents must be formatted to be printed on white paper 216 millimetres by 279 millimetres (8.5 by 11 inches). Physical documents must be on white paper 216 millimetres by 279 millimetres (8.5 by 11 inches).

### **Other communications with the Tribunal**

Any communications with the Tribunal about the substance of the proceeding must be copied to all parties and must be sent electronically: Rule 5.5. Any correspondence not copying all parties will be returned or will not be processed.

All documents filed and all communications with the Tribunal must be relevant to the proceeding and respectful to all participants in the proceeding and to the Tribunal: Rule 5.6.



# PRACTICE DIRECTION ON PUBLIC ACCESS TO HEARINGS AND TRIBUNAL FILES

## Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal applies the open court principle: proceedings are presumed to be open and accessible to the public, including the media. As transparency is a core value of the Tribunal, decisions, rules, processes and policies are available to licensees and the public.

This practice direction refers to case law; please note that there may be other or newer cases that also apply.

## Open Tribunal

Tribunal proceedings, except for pre-hearing conferences, are open to the public unless ordered otherwise. Tribunal files may be viewed by anyone, except for documents that have been ordered to be not public: Rule 13.2. As well, materials filed as proposed fresh evidence on appeal are not public until a panel determines whether they are admissible: Rule 18.2.

## Attending a hearing

Information about all merits hearings is posted on the [Tribunal's website](#) 90 days before the hearing, or less if the hearing is to be held within 90 days of being scheduled. The Tribunal's Communications Coordinator sends a weekly "proceeding update" by e-mail that includes a list of the next week's scheduled hearings. There is a sign-up box for this e-mail on the Tribunal's website at <https://lawsocietytribunal.ca/weekly-proceedings-update/>.

The Tribunal has prepared a Guide to Attending a Hearing, available on the Tribunal's website at <https://lawsocietytribunal.ca/wp-content/uploads/2019/12/EN-Guide-for-Attending-a-Hearing.pdf>.

Tribunal hearings generally take place by videoconference or in-person.

Video-conference hearings take place using Zoom. Members of the public and the media can attend video-conference hearings by contacting the Tribunal Office at [tribunal@lso.ca](mailto:tribunal@lso.ca). Observers can connect to a Zoom hearing using a computer, mobile device or telephone.

Most in-person hearings are held at the Tribunal's offices at 375 University Ave, Suite 402, in Toronto. Some are held at different locations across the province.

## Accessing the Tribunal file

The Tribunal keeps a copy of all documents that are filed in a proceeding or received by the panel. Any member of the public may ask to review any of the public documents in a Tribunal file. Rule 13.1 of the *Rules of Practice and Procedure* sets out what documents are available to the public. They include:

- materials filed with the Tribunal;



- exhibits;
- other documents and correspondence from a party received by a panel, except for the purpose of a pre-hearing conference;
- notices of hearing, endorsements, orders, and reasons of the Tribunal; and
- transcripts filed with the Tribunal.

Information about how to request access to materials from active and closed files is on the Tribunal website: <http://sotribunal.wpengine.com/accessing-closed-tribunal-files/>.

## Not public orders, non-disclosure orders and publication bans

Sometimes the Tribunal departs from openness by making an order that an appearance, or documents that would otherwise form part of the public record, be not public, not disclosed or subject to a publication ban.

When a participant asks that there be a not public order, non-disclosure order or publication ban, the panel must balance the open court principle and transparency with privilege and privacy interests. The balancing test adopted from the Supreme Court of Canada's jurisprudence is reflected in Rule 13.3. *Law Society of Upper Canada v. Xynnis*, [2014 ONLSAP 9](#) explains how this balancing is applied at the Law Society Tribunal: , The order must be necessary to prevent a serious risk to the administration of justice, or another important public interest, and the benefits of the order must outweigh the negative effects on the right to freedom of expression and the open court principle. An order is not justified merely on the basis of a desire to avoid publicity, embarrassment or exposure of personal information about the licensee or licence applicant.

Privileged, or possibly privileged, documents are automatically not public: Rule 13.6. So are children's identities, and the identities of persons who allege sexual assault or misconduct, unless they are an adult and request otherwise: Rule 13.5.

Specific considerations in capacity proceedings are set out in Rule 13.4, recognizing that there may be special privacy considerations when an individual's health is the main issue in the proceeding.

### Where the hearing or documents are subject to a not public order

When an oral appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may attend, or order or review the transcript. An exception is that witnesses may view the transcript of their own testimony: Rule 13.7(2). Members of the public will be asked to leave the hearing for the portion of the hearing that is being held in the absence of the public. Not public documents will not be provided to any members of the public reviewing the file.

### Where the hearing or documents are subject to a publication ban

When a publication ban has been made, no one may publish or broadcast in any way information or documents subject to the publication ban: Rule 13.9(2). The hearing and Tribunal file remain open to the public; members of the public will not be asked to leave the hearing and anyone can order the transcript. However, a copy of the order is provided to any members of the public reviewing the file.



### Where the hearing is subject to a non-disclosure order

A non-disclosure order is made when it is determined that information referred to in an open hearing should not be public. A non-disclosure order prohibits anyone who was present from disclosing what was said, and the documents are treated in the same manner as not public documents: Rule 13.8.

## Recordings and transcripts

### Recording

A party acting in person, their representative or a journalist may unobtrusively make an audio recording at an appearance for the sole purpose of supplementing or replacing notes made during the appearance. However, prior written notice must be given to the Tribunal before doing so.

Otherwise, no one, other than a court reporting service hired by the Tribunal for that purpose, may, without permission from the Tribunal:

- (a) take photographs or make a video or audio recording in the Tribunal premises or the hearing room; or
- (b) take a screen shot or make a video or audio recording of an appearance.

Recordings made by the court reporting service are used to prepare transcripts and as a result are considered internal working documents which are not available to the public pursuant to the terms of the contract between the Tribunal and the reporting service.

### Transcripts

All oral appearances are recorded by a reporting service, except pre-hearing conferences. Any person, whether a party to the proceeding or not, may order a copy of the transcript from the reporting service at their own expense. Whenever a transcript is ordered, the Tribunal receives a copy directly from the reporting service: Rule 9.8. The fee for the Tribunal's copy is paid by the first party to order the transcript. Links to the court reporting services used by the Tribunal are on the Tribunal's website: <https://lawsocietytribunal.ca/useful-links/>.

Hearing transcripts, if contained in the Tribunal file, can be viewed by any person reviewing a file. Transcripts cannot be copied or photographed.



## PRACTICE DIRECTION ON SERVING DOCUMENTS

### Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal follows the open court principle: proceedings, including all documents filed with the Tribunal or received by a panel, are open and accessible to the public unless ordered otherwise.

Parties should also refer to the practice directions on filing documents and electronic documents.

### Where to serve

When a document is to be served on the Law Society, the party shall e-mail it to the Law Society representative the party has been dealing with, if any, or call Professional Regulation Division at: 416-947-3300 / 1-800-668-7380 / TTY: 416-644-4886 for assistance.

Documents may also be physically delivered to:

Law Society of Ontario  
Professional Regulation Division  
393 University Avenue, 11<sup>th</sup> Floor  
Toronto ON M5G 1E6

When the Rules require a party to serve a document on a licensee, the party may use the contact information provided to the Law Society by the licensee under By-Law 8, ss. 3 and 4 unless otherwise ordered by the Tribunal: Rule 5.3. By-Law 8 sets out a licensee's requirement to keep contact information up to date.

### Starting proceedings

#### Originating Process

An originating process is the document that begins the proceeding: a notice of application; notice of referral for hearing; notice of appeal; notice of administrative suspension order appeal; notice of cross-appeal; notice of motion – interlocutory suspension or restriction; or notice of motion – vary or cancel interlocutory suspension or restriction. These forms, and their corresponding information sheets, are found in the Tribunal's [Forms](#), and fillable versions are available [here](#).

All originating process documents and corresponding information sheets must be served by hand delivery, regular or registered mail or courier, or e-mail. The parties may also agree to another method of service: Rule 3.1.

After it has been served, the originating process and information sheet must be filed with the Tribunal along with a [confirmation of service](#) or other proof of service that sets out how it was served on the respondent: Rule 5.4.



## Serving other documents

Once the proceeding has begun, other documents may have to be served on the other party. These include notices of motion and motion materials, requests to admit, responses to a request to admit, and hearing materials.

These other documents may be served by: (i) hand delivery; (ii) regular mail, registered mail or courier; (iii) e-mail, if less than 20 MB; or (iv) using the Tribunal's File Sharing Platform: Rule 5.1. The parties can also agree on another method of service.

## When is service effective?

Rule 5.2 sets out that, if sent by fax, e-mail, hand delivered or delivered by courier before 5 p.m. on a business day, service is deemed effective on that day; and if after 5 p.m., on the next business day. If a document is sent by regular mail, then service is deemed to be effective on the fifth business day after mailing.

## Confirming service

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

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

## Demonstrating service where the licensee does not attend

It may be that the Law Society served an originating process in accordance with the Rules but the licensee does not attend the hearing. The Tribunal's jurisprudence requires the Law Society to provide evidence that it properly served the licensee. The Law Society may file a "service brief" setting out its attempts to contact the licensee and what response, if any, was received.

If the panel is satisfied that the licensee was properly served then the hearing can proceed without the licensee being present: Rule 6.7. This occurred, for example, in *Law Society of Ontario v. Ryu*, [2018 ONLSTH 123](#) and *Law Society of Upper Canada v. Shivarattan*, [2010 ONLSHP 102](#). Please note that other and newer cases may also apply.



# PRACTICE DIRECTION ON TRANSCRIPTS AND RECORDINGS

## Introduction

The Tribunal's role is to process, hear and decide regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal follows the open court principle and proceedings are presumed to be open and accessible to the public, including the media. Transparency is a core value of the Tribunal and decisions, rules, processes and policies are available to licensees and the public.

## Transcripts

All oral appearances are recorded by a reporting service, except pre-hearing conferences. Any person, whether a party to the proceeding or not, may order a copy of the transcript from the reporting service at their own expense. The first party to order a transcript must also pay a fee for the Tribunal's electronic copy. The Tribunal's copy is provided directly to the Tribunal by the reporting service: Rule 9.8.

Hearing transcripts, if contained in the Tribunal file, can be viewed by any person reviewing a file. Transcripts cannot be copied or photographed.

## When the hearing is subject to a not public or non-disclosure order

When an oral appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may order or review the transcript. Witnesses may view the transcript of their own testimony: Rules 13.7(2) and 13.8(1).

## When the hearing is subject to a publication ban

When a publication ban has been made, the hearing and Tribunal file remain open to the public. No one may publish or broadcast in any way information or documents subject to the publication ban: Rule 13.9(2).

## Transcripts on appeal

Rule 17 deals with appeals at the Tribunal. Rule 17.2 sets out the deadline for appeals. Within ten days of filing a notice of appeal, the appellant must serve and file written confirmation from the reporting service that all transcripts of the proceeding under appeal have been ordered: Rule 17.2 (3). Transcripts do not need to be ordered again if they have already been filed with the Tribunal.

## Recording

A party acting in person, their representative or a journalist may unobtrusively make an audio recording at an appearance for the sole purpose of supplementing or replacing notes made during the appearance. However, written notice to the Tribunal is required before doing so.

Otherwise no one, other than the reporting service hired by the Tribunal for that purpose, may take photographs or make a video or audio recording in the Tribunal premises or the hearing



without permission. This includes taking a screenshot or making a video or audio recording of an electronic appearance: Rule 9.9. Recordings made by the reporting service are used to prepare the transcripts and as a result are considered internal working documents and are thus not available to the public pursuant to the terms of the contract between the Tribunal and the reporting service.

## **How to give notice or ask for permission**

As described above, a party acting in person, their representative or a journalist who wishes to make an audio recording at an appearance is required to give prior written notice before doing so.

The person giving notice should advise the Tribunal Office's Administrator or the File Management Coordinator (FMC) responsible for the file, on arriving at the Tribunal for the hearing. The Administrator or FMC will advise the panel that notice has been given.

A member of the public who wishes to record the hearing should advise the Tribunal as soon as possible. The person making the request should advise the Tribunal Office's Administrator or the File Management Coordinator (FMC) responsible for the file, on arriving at the Tribunal for the hearing. The Administrator or FMC will advise the panel of the request so that it can be addressed as a preliminary matter.



## PRACTICE DIRECTION ON WITNESSES

### Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal's role is to reach a fair and just outcome and its processes are designed to seek the truth. The Tribunal values the evidence and time of all witnesses who testify before it. Witnesses' testimony plays an important role in deciding cases.

### Respect

Parties' and representatives' written and oral communications with witnesses, including during examination and cross-examination, must be respectful to them: Rule 5.6. Similarly, witnesses must treat all other participants in the proceeding with respect.

### Methods of hearing

Appearances may take place electronically, in person or in writing: Rule 9. Electronic hearings typically take place by videoconference, using the Zoom platform. At an electronic hearing, all participants, including witnesses, attend electronically using a computer, smartphone or tablet. The Tribunal has a [guide](#) to attending Zoom hearings that may be helpful to witnesses participating in a videoconference hearing.

### Methods of testimony

A witness may testify in person, electronically by video or telephone conference, or by affidavit.

### Testifying by video or teleconference at an in-person appearance

A witness can testify by video or teleconference at an in-person appearance if the parties consent or the Tribunal gives leave: Rule 9.2. The Tribunal has electronically equipped hearing rooms, and a witness can testify remotely by video conference from any device with a camera and a microphone, including a computer, smartphone or tablet. The Tribunal's equipment allows the witness to see the panel, representative or party asking questions and the other party or representative. If the parties agree or permission has been granted, the Scheduling Coordinator will make the arrangements for the video conference. The parties should advise the Tribunal of the consent or ask for permission as far in advance as possible so the Tribunal can make arrangements.

### Affidavits

A witness's evidence-in-chief may be given by affidavit, unless the Tribunal orders otherwise: Rule 11.2(1). Affidavits may also form part of a motion record filed by a party under Rule 8.2. Cross-examination, if any, on a witness's affidavit takes place before the panel at the hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter: Rules 8.2(5) and 11.2(2). Where the witness is vulnerable or cross-examination is likely to be contentious, cross-examination should be before the panel.



## Exclusion of witnesses

On request, the Tribunal will generally make an order that anyone who may be a witness not attend the hearing and that those present not communicate with excluded witnesses about the evidence until they have given their evidence: Rule 11.6.

## Accommodation

Witnesses are entitled to accommodation of their needs under the *Human Rights Code* and to other accommodations that would be fair and in the interests of justice: Rules 6.5 and 6.6. Examples are extra breaks throughout the day for health reasons, alternating between sitting and standing if prolonged sitting is difficult, and interpretation to and from a language other than the language of the proceeding: Rule 9.4(4).

If you are a witness who requires accommodation, please contact the Tribunal and/or the party who is calling you as a witness.

The Tribunal may make other orders to accommodate or protect witnesses where it would be fair and in the interests of justice: Rule 6.6(d).

## Support person

The Tribunal may permit a support person to sit next to a witness while they testify: Rule 6.6(a). The support person should not communicate with the witness while they are testifying, should remain on camera in a videoconference hearing and must not disrupt the process.

A support person will be permitted on request, unless there would be harm to the hearing process. Support people must be arranged in advance and the need for a support person will not generally be a ground for an adjournment. The Tribunal may decide that a proposed support person is not appropriate, for example if they are a witness, or it appears they will not respect the limitations of their role. The Tribunal may direct that a support person be removed if they are not acting as required.

## Manner of testifying and cross-examination

Children under 18, those alleging sexual assault or harassment and others may have difficulty testifying in the presence of the licensee/licence applicant, or another person, for appropriate reasons related to factors including age, disability, illness, trauma or emotional state.

To address this, and when it would be fair and in the interests of justice, the Tribunal may permit a witness to testify in a manner that would allow the witness to not see the licensee/licence applicant or other person: Rule 6.6(b). Generally, this will be done by having the witness testify by videoconference from an adjacent hearing room. Other possible methods are a screen or other device that would allow the witness not to see the person. In an electronic hearing, the licensee/licence applicant or other person may be asked to turn off their video camera.

The Tribunal may order that the licensee/licence applicant not personally conduct the cross-examination of witnesses. When it makes such an order the Tribunal will appoint counsel to do so at its cost: Rule 6.6(c). The Tribunal will maintain a list of counsel the licensee/licence applicant can select.



## **No adverse inference**

The Tribunal cannot find that testimony is less worthy of belief because a witness has been accommodated.

## **Cross-examination**

Cross-examination plays an important role in the truth-finding process. There are limits, however, and it must not be abused. Cross-examination of a witness cannot be repetitive, abusive or otherwise inappropriate: Rule 11.9(1). The panel must stop cross-examination that includes harassment, misrepresentation, or groundless questions with irrelevant innuendo. The panel may also limit examination or cross-examination where the examination or cross-examination has been sufficient to disclose the matters at issue in the proceeding: Rule 11.9(2).



## DIRECTIVE DE PRATIQUE SUR LES MESURES D'ADAPTATION

### Introduction

Le Tribunal traite, entend et tranche des cas de règlementation des avocats et parajuristes de l'Ontario d'une manière équitable, juste et dans l'intérêt public. Tous les participants à une instance devraient être en mesure de prendre part aux instances du Tribunal, qui fournira des mesures d'adaptation à cet effet conformément au *Code des droits de la personne*, L.R.O. 1990, chap. H. 19 lorsque nécessaire.

### Mesures d'adaptation

En vertu du *Code*, les participants aux instances ont droit à un traitement égal sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'état matrimonial, l'état familial ou un handicap. Ils ont droit à des mesures d'adaptation dans la mesure où elles ne causent pas de préjudice injustifié.

Un participant à une instance doit informer le Tribunal dès que possible de toute mesure d'adaptation requise : règle 6.5. Pour faire une demande, prière d'envoyer les renseignements à [tribunal@lso.ca](mailto:tribunal@lso.ca). Le participant doit participer au processus d'adaptation pour veiller à mettre en œuvre la mesure la plus appropriée, ce qui nécessite généralement de fournir de la documentation à l'appui de la demande. Les mesures d'adaptation seront fournies de manière à respecter la dignité et à permettre au participant de prendre part aux instances du Tribunal.

### Exemples

Comme exemple de mesures d'adaptation des besoins relatifs au handicap, on retrouve des pauses plus fréquentes ou plus longues pendant la journée, des jours d'audience raccourcis et la permission d'alterner entre rester debout et s'asseoir.

### Les locaux du Tribunal

Les audiences se déroulent généralement par vidéoconférence ou en personne.

Les audiences par vidéoconférence se font par Zoom. Les membres du public et les médias peuvent assister aux audiences par voie électronique en contactant le greffe du Tribunal. Les participants peuvent se connecter à une audience sur Zoom au moyen d'un ordinateur, d'un appareil mobile sans fil ou d'un téléphone.

La plupart des audiences se tiennent aux bureaux du Tribunal au 375, av. University, bureau 402 à Toronto. Les locaux du Tribunal, y compris les salles d'audience, les salles de réunion et les salles de bain, sont accessibles aux fauteuils roulants et à d'autres aides à la mobilité. Des dispositifs d'aide à l'écoute sont disponibles.

Lorsqu'une audience en personne se déroule ailleurs que dans les locaux du Tribunal, comme dans le cas des audiences hors de Toronto, le choix de l'emplacement tient compte de l'accessibilité.



## Mesures d'adaptation pour les témoins vulnérables

La formation peut permettre à une personne de soutien de s'asseoir près d'un témoin pendant qu'il témoigne. La personne de soutien ne doit pas communiquer avec le témoin pendant qu'il témoigne, doit demeurer devant la caméra lors d'une audience par vidéoconférence et ne doit pas perturber le déroulement. Dans certaines circonstances, les témoins peuvent témoigner dans une salle séparée ou derrière un écran pour éviter de voir un participant à l'audience. Le Tribunal peut ordonner qu'un titulaire de permis ou un demandeur de permis ne procède pas personnellement au contrainterrogatoire d'un témoin, et nomme un avocat pour ce faire, et peut rendre toute autre ordonnance pour accommoder les témoins de manière équitable et dans l'intérêt de la justice : règle 6.6. On retrouve le plus souvent ce type d'ordonnance dans les cas impliquant des enfants témoins ou des allégations d'inconduite sexuelle.

## Peuples autochtones

Le Tribunal entend adapter ses processus aux besoins et aux traditions des participants autochtones. Les participants autochtones peuvent prêter serment sur une plume d'aigle lors des audiences devant le Tribunal, qui mettra une plume d'aigle à leur disposition. Des interprètes de langues autochtones seront fournis sur demande. Le Tribunal a adopté des procédures pour répondre aux besoins des participants autochtones et pour intégrer les traditions et croyances autochtones, y compris :

- en menant des audiences près des communautés locales ;
- en ayant des Aînés présents à l'audience ;
- en incluant des cérémonies traditionnelles, comme des cérémonies de purification, avant et après les audiences ;
- en modifiant la disposition des sièges, comme pour former un cercle dans la salle d'audience ;
- en permettant au personnel et aux arbitres de porter des vêtements informels pendant une audience.

Les titulaires de permis autochtones, les demandeurs de permis autochtones et les témoins autochtones sont invités à contacter le greffe du Tribunal à [tribunal@lso.ca](mailto:tribunal@lso.ca) pour demander de telles modifications au processus du Tribunal.

## Interprétation pour d'autres langues

Le Tribunal fournira les services d'un interprète si une personne témoigne dans une autre langue que celle de l'instance. La partie qui convoque un témoin nécessitant une interprétation doit en aviser le Tribunal dès que possible au moins sept jours avant l'audience, afin que des dispositions puissent être prises : règle 9.4.



## DIRECTIVE DE PRATIQUE SUR LES DOCUMENTS ÉLECTRONIQUES

### Introduction

Le Tribunal traite, entend et tranche des cas de règlementation des avocats et parajuristes de l'Ontario d'une manière équitable et juste, et dans l'intérêt public. Le Tribunal suit le principe de la publicité des débats : les instances sont réputées ouvertes et accessibles au public, y compris les médias. Comme la transparence est une valeur fondamentale du Tribunal, les décisions, règles, processus et politiques sont accessibles aux titulaires de permis et au public. Tous les documents déposés au Tribunal dans le cadre d'une instance ou reçus par une formation sont ouverts et accessibles au public, à moins d'ordonnance contraire.

Le Tribunal fonctionne par voie électronique dans la mesure du possible en tenant compte des objectifs du Tribunal et lorsque cela permet d'améliorer l'accès au Tribunal et d'assurer l'équité de la procédure.

### Ressources

Pour aider les parties à travailler avec des documents électroniques, des ressources sont offertes au [\[hyperlink\]](#).

La règle 5 des *Règles de pratique et de procédure* du Tribunal se trouve au <https://lawsocietytribunal.ca/regles-de-pratique-et-de-procedure/?lang=fr>.

Les parties devraient aussi consulter les directives de pratique sur la signification des documents et le dépôt des documents.

### Documents électroniques

Tous les documents doivent être déposés au Tribunal en format électronique conformément aux *Règles de pratique et de procédure*, à l'exception :

- a) de la preuve documentaire lorsqu'il est nécessaire de présenter en preuve un document physique original ;
- b) des documents déposés lors d'une audience en personne s'il est plus facile pour les parties et la formation de recevoir des copies papier.

Lorsqu'un document physique est déposé, une copie électronique doit quand même être déposée, si possible, sinon une copie papier additionnelle sans onglets ni reliure doit être fournie au moment où le document physique est déposé : règle 5.10.

Tous les documents pour une audience devraient être combinés en un seul dossier ou en un petit nombre de fichiers .pdf. La pagination commence à la page 1 pour la page de titre de façon à correspondre au numéro de page dans le document .pdf. Toutes les références à la pagination dans les documents déposés et dans les observations verbales doivent correspondre à la pagination du document .pdf.



Chaque dossier doit contenir une table des matières, avec un index des numéros de pages de la version PDF de chaque document. De plus, chaque document devrait être clairement identifié par un signet qui amène le lecteur à la première page de ce document. Les pièces accompagnant les affidavits devraient être indexées dans la table des matières et mises en signet. Il est utile mais non obligatoire que la table des matières soit liée au document correspondant dans le dossier.

## Comment signifier et déposer des documents électroniques

### Documents électroniques plus petits – jusqu'à 20 Mo

Les documents électroniques de 20 Mo maximum peuvent être signifiés et déposés par courriel.

Un document électronique peut être signifié et déposé en envoyant un courriel à l'autre partie et au Tribunal en y joignant le document électronique. Un document électronique qui a déjà été signifié à l'autre partie peut être déposé auprès du Tribunal en envoyant le courriel original au Tribunal.

### Documents électroniques plus grands – 20 Mo ou plus

Pour les documents électroniques d'une taille supérieure à 20 Mo, les parties peuvent soumettre une clé USB, accompagnée d'une lettre de présentation, ou les téléverser sur la plateforme de partage de documents du Tribunal. Pour toute information et assistance au sujet de la plateforme de partage de documents, veuillez envoyer écrire à [tribunal@lso.ca](mailto:tribunal@lso.ca).

### Documents assujettis à une ordonnance interdisant l'accès au public

Le nom des documents électroniques assujettis à une ordonnance interdisant l'accès au public ou de non-divulgence, ou à une interdiction de publication doit indiquer ce fait. Voir la section sur les noms des documents électroniques ci-dessous.

Si un document électronique est déposé par courriel et fait l'objet d'une ordonnance interdisant l'accès au public ou de non-divulgence, ou à une interdiction de publication, le courriel qui sert à la signification et au dépôt devrait référencer clairement l'ordonnance applicable dans le corps du courriel. Si aucune ordonnance de ce type n'est actuellement en vigueur, mais que la partie qui fournit le document souhaite en demander une au Tribunal, cela doit être clairement indiqué dans le courriel.

Par exemple : \*\* REMARQUE : La transcription datée du 21 juillet 2020 fait l'objet d'une ordonnance de non-publication rendue par la formation le 21 juillet 2020. \*\*

ou

\*\* REMARQUE : L'intimé demande que son affidavit daté du 10 août 2021 ne soit pas rendu public en attendant la décision de la formation. \*\*

Si un document électronique est déposé par clé USB ou en utilisant la plateforme de partage de documents du Tribunal et qu'il fait l'objet d'une ordonnance interdisant l'accès au public ou de non-divulgence, ou d'une interdiction de publication, veuillez en informer le Tribunal par courriel, ou dans le cas d'un dépôt par clé USB, dans la lettre de présentation.



## Formats de documents électroniques

La norme du Tribunal pour les documents électroniques est le format .pdf. Lorsqu'un fichier .pdf contient plus d'un document, des signets sont nécessaires pour chaque document.

Outre le dépôt d'une version .pdf d'un document électronique, les parties sont invitées à fournir une autre copie dans un autre format tel que .doc, .ppt et .xlsx.

Tous les documents électroniques doivent pouvoir faire l'objet d'une recherche textuelle.

Chaque page d'un fichier .pdf doit être numérotée de manière séquentielle à partir de la première page du fichier. La meilleure façon de procéder est d'utiliser la fonction de numérotation Bates du logiciel .pdf, qui est expliquée [ici](https://helpx.adobe.com/acrobat/using/add-headers-footers-pdfs.html) (<https://helpx.adobe.com/acrobat/using/add-headers-footers-pdfs.html>).

Les documents ne doivent pas être protégés par un mot de passe, sauf si le Tribunal l'exige.

Lorsqu'un document électronique est une copie numérisée d'un document physique, la numérisation doit être effectuée à 300 dpi, en couleur et non en niveaux de gris.

## Références hypertextes aux précédents

Les observations écrites, y compris les mémoires, doivent faire référence aux sources en utilisant les citations de CanLII et contenir un hyperlien vers la cause sur CanLII.

Les références hypertextes doivent afficher la destination de l'URL afin d'assurer une meilleure accessibilité pour les personnes utilisant des lecteurs d'écran et autres méthodes.

## Nom de document électronique

Les documents électroniques déposés auprès du Tribunal doivent respecter cette norme de dénomination.

Le nom standard d'un document comprend sept éléments d'information séparés par des espaces :

- a) le nom de famille du titulaire de permis ou du demandeur de permis
- b) le numéro de dossier du Tribunal
- c) le nom de la personne qui dépose le document
- d) le type de document
- e) la date du document
- f) le mot PROTÉGÉ si le document fait l'objet d'une ordonnance interdisant l'accès au public ou de non-divulgence, ou d'une interdiction de publication
- g) un identifiant additionnel facultatif sur les documents de même type et date

### Les parties du nom standard du document

Les numéros de dossier du Tribunal suivent le modèle 21H-021 ou 21A-003. Les deux premiers chiffres indiquent l'année au cours de laquelle l'avis initial a été déposé auprès du Tribunal. Les requêtes introduites auprès de la Section de première instance sont désignées par la lettre H.



Les appels auprès de la Section d'appel sont désignés par la lettre A. Les trois derniers chiffres sont attribués en séquence tout au long de l'année.

Si le titulaire ou le demandeur de permis dépose le document électronique, le code est LIC. Si le Barreau dépose le document électronique, le code est LSO. Pour toute autre personne, le code est OTH.

Voici ci-dessous les codes pour les types de documents.

La date du document est affichée ainsi : AA.MM.JJ

S'il fait l'objet d'une ordonnance interdisant l'accès au public ou de non-divulgence, ou d'une interdiction de publication, on y ajoute le mot PROTÉGÉ.

### Exemples de noms de document

Par exemple, **Smith 20H-123 LIC AFF 21.06.09.pdf** serait le nom d'un affidavit daté du 9 juin 2021 déposé par le titulaire ou le demandeur de permis dans la requête *Smith, 20H-123*.

S'il y avait un affidavit daté du 9 juin 2021 faisant l'objet d'une ordonnance interdisant l'accès au public, le nom du document serait **Smith 20H-123 LIC AFF 21.06.09 PROTÉGÉ.pdf**

S'il y avait deux affidavits le 9 juin 2021 et aucune ordonnance de protection, les noms des documents seraient :

**Smith 20H-123 LIC AFF 21.06.09 A.pdf**

**Smith 20H-123 LIC AFF 21.06.09 B.pdf**

### Types de document

Les codes suivants doivent être utilisés dans le nom de document standardisé.

Code	Type
AFF	Affidavit
ASF	Exposé conjoint des faits
APP	Recueil d'appel
BOC	Mémoire de dépens
BOA	Recueil des textes à l'appui
COS	Confirmation de la signification
CON	Consentement au membre de la CPA
DOX	Recueil de documents
END	Inscription
FAC	Mémoire
HBR	Mémoire d'audience
INF	Fiche d'information
MOT	Dossier de motion
NOM	Avis de motion
NOW	Avis de retrait
ORD	Ordonnance



NOP	Acte introductif d'instance, y compris avis de requête, avis d'appel et avis d'appel incident
OTH	Autre
PHC	Mémoire de CPA
RTA	Demande d'aveux
TRA	Transcription
SUB	Observations



# DIRECTIVE DE PRATIQUE SUR LE DÉPÔT DE DOCUMENTS

## Introduction

Le Tribunal traite, entend et tranche des cas de règlementation des avocats et des parajuristes de l'Ontario d'une manière équitable, juste et dans l'intérêt public. Le Tribunal suit le principe de la publicité des débats : les instances sont ouvertes et accessibles au public, y compris tous les documents déposés dans le cadre d'une instance ou reçus par une formation, à moins d'ordonnance contraire.

Veillez également consulter les directives de pratique sur la signification des documents et des documents électroniques.

## Dépôt de documents au Tribunal

### Exigences de dépôt

Outre les documents physiques déposés lors d'une comparution en personne, tous les documents doivent être déposés en format électronique et être conformes à la directive de pratique du Tribunal sur le dépôt électronique.

Si vous demandez à une formation d'assujettir un document à une ordonnance interdisant l'accès au public, à une ordonnance de non-divulgence ou à une interdiction de publication et que vous déposez le document avant la date de l'audience, vous devez inclure une lettre ou une lettre de présentation demandant que les documents ne soient pas rendus publics en attendant la décision de la formation.

### Documents électroniques

Lorsque possible, les documents électroniques doivent être déposés en format PDF. Les parties peuvent aussi déposer une autre copie dans un format comme .doc, .ppt et .xlsx.

Tous les documents pour une audience devraient être combinés en un seul dossier ou en un petit nombre de fichiers .pdf. Le nom de fichier, et la structure et le format des documents électroniques doivent respecter la [directive de pratique du Tribunal sur les documents électroniques](#).

Les documents électroniques peuvent être déposés par courriel si la taille est inférieure à 20 Mo. Les documents électroniques qui dépassent 20 Mo peuvent être déposés sur une clé USB ou en utilisant la [plateforme de partage des documents du Tribunal](#).

### Documents physiques

Les documents physiques ne peuvent être déposés que lors d'une comparution en personne. Ces documents ne devraient être déposés que lorsqu'il est impossible de les déposer en format électronique.

Lorsqu'un document physique est déposé en personne, la partie qui le dépose doit déposer :

- a) une copie pour chaque membre de la formation et une copie pour le Tribunal ;



- b) soit une copie électronique du document physique ou une copie additionnelle sans onglets ni reliure du document.

### Présentation

Les exigences qui suivent s'appliquent aux documents autres que les preuves documentaires ou les copies des preuves documentaires.

Les documents déposés au Tribunal doivent être lisibles. Les copies papier doivent être tapées ou imprimées.

Les documents électroniques doivent être mis en forme pour être imprimables sur du papier de 216 millimètres sur 279 millimètres (8 ½ pouces sur 11 pouces). Les documents physiques doivent être imprimés sur du papier blanc de 216 millimètres sur 279 millimètres (8 ½ pouces sur 11 pouces).

### **Autres communications avec le Tribunal**

Des copies de toutes les communications avec le Tribunal sur la substance de l'instance doivent être envoyées à toutes les parties, et doivent être envoyées par voie électronique : règle 5.5. Toute correspondance qui n'est pas envoyée à toutes les parties sera retournée ou ne sera pas traitée.

Tous les documents déposés et toutes les communications avec le Tribunal doivent être pertinents à l'instance et respectueux à l'égard de tous les participants à l'instance et du Tribunal : règle 5.6.



# DIRECTIVE DE PRATIQUE SUR L'ACCÈS PUBLIC AUX AUDIENCES ET AUX DOSSIERS DU TRIBUNAL

## Introduction

Le Tribunal traite, entend et tranche des cas de règlementation des avocats et des parajuristes de l'Ontario d'une manière équitable, juste et dans l'intérêt public. Le Tribunal suit le principe de la publicité des débats : les instances sont réputées ouvertes et accessibles au public, y compris aux médias. Comme la transparence est une valeur fondamentale du Tribunal, les décisions, règles, processus et politiques sont accessibles aux titulaires de permis et au public.

Cette directive de pratique renvoie à des précédents ; veuillez noter que d'autres décisions ou des décisions plus récentes peuvent aussi s'appliquer.

## Tribunal ouvert

Les instances du Tribunal, à l'exception des conférences préparatoires à l'audience, sont ouvertes au public à moins d'une ordonnance à l'effet contraire. Quiconque peut consulter les dossiers du Tribunal, à l'exception des documents visés par une ordonnance interdisant l'accès au public : règle 13.2. De plus, les documents déposés en tant que nouvelle preuve en appel ne sont pas publics jusqu'à ce qu'une formation décide qu'ils sont admissibles : règle 18.2.

## Assister à une audience

Tous les renseignements concernant les audiences sur le fond sont affichés sur le [site Web du Tribunal](#) 90 jours avant l'audience, ou moins si l'audience doit être tenue dans moins de 90 jours. La coordonnatrice des communications du Tribunal envoie un message hebdomadaire sur les mises à jour des audiences par courriel comprenant une liste des audiences prévues la semaine suivante. Il y a une boîte pour s'inscrire à cette liste d'envoi sur le site Web du Tribunal au <https://lawsocietytribunal.ca/mise-a-jour-hebdomadaire-des-audiences/?lang=fr>.

Le Tribunal a préparé un guide pour assister à une audience, disponible sur le site Web du Tribunal au <https://lawsocietytribunal.ca/wp-content/uploads/2019/12/FR-Assister-a-une-audience.pdf>.

Les audiences se déroulent généralement par vidéoconférence ou en personne.

Les audiences par vidéoconférence se font par Zoom. Les membres du public et les médias peuvent assister aux audiences par vidéoconférence en contactant le greffe du Tribunal à [tribunal@lso.ca](mailto:tribunal@lso.ca). Les personnes qui désirent observer peuvent se connecter à une audience par Zoom à l'aide d'un ordinateur, d'un appareil mobile ou d'un téléphone.

La plupart des audiences se tiennent aux bureaux du Tribunal au 375, av. University, bureau 402 à Toronto. Certaines sont tenues ailleurs dans la province.



## Accéder aux dossiers du Tribunal

Le Tribunal conserve une copie de tous les documents déposés lors des audiences ou reçus par la formation. Tout membre du public peut demander de consulter les documents publics dans un dossier du Tribunal. La règle 13.1 des *Règles de pratique et de procédure* indique les documents qui sont accessibles au public. Ils comprennent :

- les documents déposés auprès du Tribunal ;
- les pièces ;
- les autres documents et correspondances reçus par une formation, sauf ceux déposés aux fins d'une conférence préparatoire à l'audience ;
- les avis d'audience, inscriptions, ordonnances et motifs du Tribunal ;
- les transcriptions déposées auprès du Tribunal.

Pour savoir comment faire une demande d'accès aux documents dans les dossiers actifs et clos, rendez-vous au site Web du Tribunal au <https://lawsocietytribunal.ca/acces-aux-dossiers-du-tribunal/?lang=fr>.

## Ordonnance interdisant l'accès au public, ordonnance de non-divulgence et interdiction de publication

Il arrive que le Tribunal déroge au principe de publicité en rendant une ordonnance interdisant l'accès au public, une ordonnance de non-divulgence ou une interdiction de publication visant une comparution ou des documents qui seraient normalement dans le registre public.

Lorsqu'un participant demande une ordonnance interdisant l'accès au public, une ordonnance de non-divulgence ou une interdiction de publication, la formation doit trouver un juste équilibre entre le principe de la publicité des débats et la transparence en fonction des privilèges et des intérêts confidentiels. Le critère pour cet équilibre adopté dans la jurisprudence de la Cour suprême du Canada est pris en compte dans la règle 13.3. La décision *Law Society of Upper Canada c. Xynnis*, [2014 ONLSAP 9](#) explique comment cet équilibre est appliqué par le Tribunal du Barreau. L'ordonnance doit être nécessaire pour écarter un risque sérieux pour la bonne administration de la justice ou un autre intérêt public important, et ses effets bénéfiques doivent surpasser ses effets préjudiciables sur le droit à la libre expression et le principe de la publicité des débats. Une ordonnance n'est pas justifiée simplement en fonction d'un désir d'éviter la publicité, l'embarras ou l'exposition des renseignements personnels sur le titulaire de permis ou le demandeur de permis.

Les documents privilégiés ou potentiellement privilégiés sont automatiquement visés par une ordonnance interdisant l'accès au public : règle 13.6. Il en va de même pour l'identité des enfants et des personnes qui allèguent une agression ou une inconduite sexuelle, sauf demande contraire d'un adulte qui allègue une agression ou une inconduite sexuelle : règle 13.5.

La règle 13.4 énonce des considérations spécifiques concernant les instances relatives à la capacité et reconnaît qu'il peut y avoir des considérations particulières relatives à la vie privée lorsque la santé d'une personne est la question principale de l'instance.



### Lorsque l'audience ou les documents sont sujets à une ordonnance interdisant l'accès au public

Lorsqu'une comparution orale n'est pas publique, nul ne peut y assister sauf le titulaire de permis ou le demandeur de permis, et les représentants des parties et nul autre que ces derniers ne peut recevoir ou voir les transcriptions. Par contre, les témoins peuvent voir la transcription de leur propre témoignage : règle 13.7 (2). Les membres du public seront invités à quitter l'audience pour la partie qui se déroule en l'absence du public. Les documents non publics ne seront pas transmis aux membres du public qui examinent le dossier.

### Lorsque l'audience ou les documents sont assujettis à une interdiction de publication

En cas d'interdiction de publication, personne ne peut publier un document ou diffuser de quelque façon que ce soit des renseignements ou des documents qui font l'objet d'une interdiction de publication : règle 13.9 (2). L'audience et le dossier du Tribunal demeurent ouverts au public ; les membres du public ne seront pas invités à quitter l'audience et tout le monde peut demander la transcription. Cependant, une copie de l'ordonnance est remise aux membres du public qui examinent le dossier.

### Lorsque l'audience est assujettie à une ordonnance de non-divulgation

Une ordonnance de non-divulgation est rendue lorsqu'il est déterminé que l'information mentionnée lors d'une audience publique ne devrait pas être publique. Une ordonnance de non-divulgation interdit à toute personne présente de divulguer ce qui a été dit, et les documents sont traités de la même manière que les documents non publics : règle 13.8.

## **Enregistrements et transcriptions**

### Enregistrement

Une partie qui agit en personne, son représentant ou un journaliste peut faire discrètement un enregistrement audio lors d'une comparution dans le seul but de compléter ou de remplacer les notes prises pendant la comparution. Toutefois, il faut en donner un avis écrit au Tribunal à l'avance.

Sinon, outre le service de sténographie judiciaire engagé par le Tribunal à cet effet, nul ne peut, sans autorisation du Tribunal :

- a) prendre des photos ou faire un enregistrement vidéo ou audio dans les locaux du Tribunal ou pendant l'audience ;
- b) faire une capture d'écran ou un enregistrement vidéo ou audio d'une comparution électronique

Les enregistrements effectués par le service de sténographie judiciaire servent à préparer des transcriptions et sont donc considérés comme des documents de travail internes qui ne sont pas accessibles au public conformément aux termes du contrat entre le Tribunal et le service de sténographie judiciaire.

### Transcriptions

Toutes les comparutions verbales sont consignées par un service de sténographie judiciaire, sauf les conférences préparatoires à l'audience. Toute personne, qu'elle soit partie à une



instance ou non, peut commander une copie de la transcription auprès du service de sténographie à ses propres frais. Lorsqu'une transcription est commandée, le Tribunal reçoit une copie directement du service de sténographie : règle 9.8. Les frais de la copie du Tribunal sont payés par la première partie qui commande la transcription. Les liens aux services de sténographie judiciaire utilisés par le Tribunal sont sur le site Web du Tribunal : <https://lawsocietytribunal.ca/useful-links-fr/?lang=fr>.

Les transcriptions des audiences, si elles sont contenues dans le dossier du Tribunal, peuvent être consultées par toute personne qui examine un dossier. Les transcriptions ne peuvent être ni copiées ni photographiées.



# DIRECTIVE DE PRATIQUE SUR LA SIGNIFICATION DE DOCUMENTS

## Introduction

Le Tribunal traite, entend et tranche des cas de réglementation des avocats et parajuristes de l'Ontario d'une manière équitable et juste, et dans l'intérêt public. Le Tribunal suit le principe de la publicité des débats : les instances, y compris tous les documents déposés au Tribunal ou reçus par une formation, sont ouvertes et accessibles au public, à moins d'ordonnance contraire.

Les parties devraient aussi consulter les directives de pratique sur le dépôt de documents et sur les documents électroniques.

## Où signifier

Lorsqu'un document doit être signifié au Barreau, la partie doit l'envoyer par courriel au représentant du Barreau avec lequel la partie a déjà traité, le cas échéant, ou téléphoner à la Direction de la réglementation professionnelle au 416-947-3300 / 1-800-668-7380 / ATS: 416-644-4886 pour obtenir de l'aide.

Les documents peuvent également être livrés physiquement au :

Barreau de l'Ontario  
Direction de la réglementation professionnelle  
393, av. University, 11<sup>e</sup> étage  
Toronto (Ontario) M5G 1E6

Quand les Règles exigent qu'une partie signifie un document à un titulaire de permis, la partie peut utiliser les coordonnées fournies au Barreau par le titulaire de permis en vertu du Règlement administratif n° 8, art. 3 et 4, à moins d'une ordonnance contraire du Tribunal : règle 5.3. Le Règlement administratif n° 8 énonce l'obligation pour le titulaire de permis de tenir à jour ses coordonnées.

## Introduire une instance

### Acte introductif d'instance

Un acte introductif d'instance est le document qui permet d'introduire une instance : un avis de requête, un avis de renvoi à l'audience, un avis d'appel, un avis d'appel d'ordonnance de suspension administrative, un avis d'appel incident, un avis de motion pour une suspension ou une restriction interlocutoire ou un avis de motion pour modifier ou annuler une suspension ou une restriction interlocutoire. Ces formulaires et leur fiche d'information connexe se trouvent dans les [Formulaires](#) du Tribunal et des versions remplies se trouvent [ici](#).

Une partie doit signifier l'acte introductif d'instance et la fiche d'information en main propre, par la poste, par courrier recommandé, par messagerie ou par courriel. Les parties peuvent aussi convenir d'un autre mode de signification : règle 3.1.



Après qu'ils ont été signifiés, l'acte introductif d'instance et la fiche d'information doivent être déposés auprès du Tribunal avec une [confirmation de signification](#) ou autre preuve de signification qui démontre comment ils ont été signifiés à l'intimé : règle 5.4.

## Signifier d'autres documents

Une fois l'instance introduite, d'autres documents peuvent devoir être signifiés à l'autre partie. Il s'agit notamment des avis de motion et des documents pour la motion, des demandes d'aveux, des réponses à une demande d'aveux et des documents pour l'audience.

Ces autres documents peuvent être signifiés : (i) en main propre, (ii) par la poste, par courrier recommandé ou par messagerie, (iii) par courriel s'ils ne dépassent pas 20 Mo ; (iv) par le biais de la plateforme de partage des documents du Tribunal : règle 5.1. Les parties peuvent également convenir d'un autre mode de signification.

## Validité de la signification

La règle 5.2 énonce que la signification est réputée valide le jour même, si le document est transmis par télécopieur, par courriel, en main propre ou par messagerie avant 17 h un jour ouvrable, et le jour ouvrable suivant, si le document est transmis après 17 h. Si un document est envoyé par la poste, la signification est réputée valide le cinquième jour ouvrable après l'envoi.

## Confirmation de la signification

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

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

## Faire la preuve de la signification quand le titulaire de permis est absent

Il se peut que le Barreau ait signifié un acte introductif d'instance conformément aux règles, mais que le titulaire de permis n'assiste pas à l'audience. La jurisprudence du Tribunal exige que le Barreau fournisse la preuve qu'il a correctement signifié l'acte au titulaire. Le Barreau peut déposer un « dossier de signification » exposant ses tentatives pour contacter le titulaire de permis et la réponse reçue, le cas échéant.

Si la formation est convaincue que le titulaire de permis a reçu la signification dans les formes, alors l'audience peut procéder sans la présence du titulaire de permis : règle 6.7. Cela s'est produit, par exemple, dans les décisions *Law Society of Ontario c. Ryu*, [2018 ONLSTH 123](#) et *Law Society of Upper Canada c. Shivarattan*, [2010 ONLSHP 102](#). Veuillez noter que d'autres décisions ou des décisions plus récentes peuvent aussi s'appliquer.



# DIRECTIVE DE PRATIQUE SUR LES TRANSCRIPTIONS ET LES ENREGISTREMENTS

## Introduction

Le Tribunal traite, entend et tranche des cas de règlementation des avocats et parajuristes de l'Ontario d'une manière équitable, juste et dans l'intérêt public. Le Tribunal suit le principe de la publicité des débats et les instances sont réputées ouvertes et accessibles au public, y compris aux médias. La transparence est une valeur fondamentale du Tribunal et les décisions, règles, processus et politiques sont accessibles aux titulaires de permis et au public.

## Transcriptions

Toutes les comparutions verbales sont consignées par un service de sténographie judiciaire, sauf les conférences préparatoires à l'audience. Toute personne, qu'elle soit partie à une instance ou non, peut commander une copie de la transcription auprès du service de sténographie à ses propres frais. La première partie qui obtient une transcription doit également payer des frais pour la copie électronique du Tribunal. La copie du Tribunal est fournie directement au Tribunal par le service de sténographie : règle 9.8.

Les transcriptions des audiences, si elles sont contenues dans le dossier du Tribunal, peuvent être consultées par toute personne qui examine un dossier. Les transcriptions ne peuvent être ni copiées ni photographiées.

## Lorsque l'audience est assujettie à une ordonnance interdisant l'accès au public ou à une ordonnance de non-divulgaration

Lorsqu'une comparution orale n'est pas publique, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut commander ou examiner la transcription. Les témoins peuvent voir la transcription de leur propre témoignage : règles 13.7 (2) et 13.8 (1).

## Lorsque l'audience est assujettie à une interdiction de publication

En cas d'interdiction de publication, l'audience et le dossier du Tribunal demeurent ouverts au public. Personne ne peut publier un document ou diffuser de quelque façon que ce soit des renseignements ou des documents qui font l'objet d'une interdiction de publication : règle 13.9 (2).

## Transcriptions pour un appel

La règle 17 traite des appels auprès du Tribunal. La règle 17.2 énonce le délai pour l'introduction des appels. Au plus tard 10 jours après avoir déposé l'avis d'appel, l'appelant doit signifier et déposer une confirmation écrite du service de sténographie judiciaire indiquant que toutes les transcriptions de l'instance interjetée en appel ont été commandées : règle 17.2 (3). Les transcriptions n'ont pas besoin d'être commandées à nouveau si elles ont déjà été déposées auprès du Tribunal.



## Enregistrement

Une partie qui comparait en personne, son représentant ou un journaliste peut faire discrètement un enregistrement audio lors d'une comparution dans le seul but de compléter ou de remplacer les notes prises pendant la comparution. Toutefois, il faut en donner un avis écrit au Tribunal à l'avance.

Sinon, nul ne peut, outre le service de sténographie judiciaire engagé par le Tribunal à cet effet, prendre des photos, ou faire un enregistrement vidéo ou audio sur les lieux du Tribunal ou pendant l'audience sans permission. Cela inclut la capture d'écran ou l'enregistrement vidéo ou audio d'une comparution électronique : règle 9.9. Les enregistrements effectués par le service de sténographie judiciaire servent à préparer les transcriptions et sont donc considérés comme des documents de travail internes et ne sont pas accessibles au public conformément aux termes du contrat entre le Tribunal et le service de sténographie judiciaire.

## Comment donner un avis ou demander une permission

Comme indiqué ci-dessus, une partie qui comparait en personne, son représentant ou un journaliste qui souhaite faire un enregistrement audio lors d'une comparution en donne un avis écrit à l'avance.

La personne qui donne un tel avis doit informer l'administratrice du greffe du Tribunal ou le coordonnateur de la gestion des dossiers (CGD) responsable du dossier, dès son arrivée au Tribunal pour l'audience. L'administratrice ou le CGD informera la formation que l'avis a été donné.

Un membre du public qui souhaite enregistrer l'audience doit en informer le Tribunal dès que possible. La personne qui fait la demande doit en informer l'administratrice du greffe du Tribunal ou le coordonnateur de la gestion des dossiers (CGD) responsable du dossier, dès son arrivée au Tribunal pour l'audience. L'administratrice ou le CGD informera la formation de la demande afin que celle-ci puisse être traitée de manière préliminaire.



# DIRECTIVE DE PRATIQUE SUR LES TÉMOINS

## Introduction

Le Tribunal traite, entend et tranche des cas de règlementation des avocats et parajuristes de l'Ontario d'une manière équitable et juste, et dans l'intérêt public. Le rôle du Tribunal est de parvenir à un résultat juste et équitable et ses procédures sont conçues pour découvrir la vérité. Le Tribunal apprécie les preuves et le temps de tous les témoins qui comparaissent devant lui. Leurs témoignages jouent un rôle important dans le jugement des affaires.

## Respect

Les communications écrites et orales des parties et des représentants avec les témoins, y compris pendant l'interrogatoire et le contrinterrogatoire, doivent être respectueuses de ces derniers : règle 5.6. De même, les témoins doivent traiter tous les autres participants à l'instance avec respect.

## Modes de comparution

Les comparutions peuvent avoir lieu par voie électronique, en personne ou par écrit : règle 9. Les audiences électroniques se déroulent généralement par vidéoconférence, en utilisant la plateforme Zoom. Lors d'une audience électronique, tous les participants, y compris les témoins, y assistent électroniquement à l'aide d'un ordinateur, d'un téléphone intelligent ou d'une tablette. Le Tribunal a un [guide](#) sur les audiences par Zoom qui peut être utile aux témoins participant à une audience par vidéoconférence.

## Modes de témoignage

Un témoin peut témoigner en personne, par conférence vidéo ou téléphonique, ou par affidavit.

## Témoigner par vidéo ou téléconférence à une comparution en personne

Un témoin peut témoigner par vidéo ou téléconférence lors d'une comparution en personne si les parties y consentent ou si le Tribunal l'y autorise : règle 9.2. Le Tribunal dispose de salles d'audience munies de matériel électronique, et un témoin peut témoigner à distance par vidéoconférence à partir de n'importe quel appareil muni d'une caméra et d'un microphone, y compris un ordinateur, un téléphone intelligent ou une tablette. L'équipement du Tribunal permet au témoin de voir la formation, le représentant ou la partie qui pose des questions et l'autre partie ou son représentant. Si les parties sont d'accord ou si une autorisation a été accordée, la coordonnatrice des horaires prendra les dispositions nécessaires pour la vidéoconférence. Les parties doivent informer le Tribunal du consentement ou demander la permission le plus tôt possible afin que le Tribunal puisse prendre les dispositions nécessaires.

## Affidavits

L'interrogatoire principal d'un témoin peut être mené au moyen d'un affidavit, sauf ordonnance contraire du Tribunal : règle 11.2 (1). Les affidavits peuvent aussi faire partie d'un dossier de motion déposé par une partie en vertu de la règle 8.2. Le contrinterrogatoire, le cas échéant, sur



l'affidavit d'un témoin se déroule devant la formation d'audience, à moins que les parties acceptent ou que le Tribunal ordonne qu'il se déroule devant un sténographe judiciaire : règles 8.2 (5) et 11.2 (2). Lorsque le témoin est vulnérable ou que le contrinterrogatoire est susceptible d'être controversé, le contrinterrogatoire doit se faire devant la formation.

## Exclusion de témoins

Sur demande, le Tribunal ordonnera généralement que toute personne susceptible d'être un témoin n'assiste pas à l'audience et que les personnes présentes ne communiquent pas avec les témoins exclus au sujet de la preuve avant d'avoir donné leur témoignage : règle 11.6.

## Mesures d'adaptation

Les témoins ont droit à des mesures d'adaptation à leurs besoins en vertu du *Code des droits de la personne* et à d'autres mesures qui soient équitables et dans l'intérêt de la justice : règles 6.5 et 6.6. Il peut s'agir, par exemple, de pauses additionnelles tout au long de la journée pour des raisons de santé, d'une alternance entre la position assise et la position debout si une séance assise prolongée est difficile, ou encore de l'interprétation dans les deux sens d'une langue autre que la langue de l'instance : règle 9.4 (4).

Si vous êtes un témoin qui a besoin d'une mesure d'adaptation, veuillez contacter le Tribunal et/ou la partie qui vous convoque comme témoin.

Le Tribunal peut rendre d'autres ordonnances pour accommoder ou protéger les témoins lorsque cela est équitable et dans l'intérêt de la justice : règle 6.6 d).

## Personne de soutien

Le Tribunal peut permettre à une personne de soutien de s'asseoir près d'un témoin pendant qu'il témoigne : règle 6.6 a). La personne de soutien ne doit pas communiquer avec le témoin pendant qu'il témoigne, doit demeurer devant la caméra lors d'une audience par vidéoconférence et ne doit pas perturber le déroulement.

Une personne de soutien sera autorisée sur demande, à moins que cela ne nuise au déroulement de l'audience. Les personnes de soutien doivent être organisées à l'avance et le besoin d'une personne de soutien ne sera généralement pas un motif d'ajournement. Le Tribunal peut décider qu'une personne de soutien proposée ne convient pas, par exemple si elle est un témoin ou s'il semble qu'elle ne respectera pas les limites de son rôle. Le Tribunal peut ordonner qu'une personne de soutien soit renvoyée si elle n'agit pas comme il se doit.

## Manière de témoigner et contrinterrogatoire

Les enfants de moins de 18 ans, les personnes alléguant une agression ou un harcèlement sexuel et d'autres personnes peuvent avoir des difficultés à témoigner en présence du titulaire de permis ou du demandeur de permis ou d'une autre personne pour des raisons liées à des facteurs tels que l'âge, le handicap, la maladie, le traumatisme ou l'état émotionnel.

Pour traiter ce problème, et lorsque cela serait équitable et dans l'intérêt de la justice, le Tribunal peut permettre à un témoin de témoigner d'une manière qui lui permettrait de ne pas voir le titulaire de permis ou le demandeur de permis ou une autre personne : règle 6.6 b). Généralement, cela se fait en faisant témoigner le témoin par vidéoconférence depuis une salle



d'audience adjacente. On peut aussi utiliser un écran ou un autre dispositif qui permettrait au témoin de ne pas voir la personne. Lors d'une audience électronique, on pourra demander au titulaire de permis, au demandeur de permis ou à l'autre personne d'éteindre sa caméra vidéo.

Le Tribunal peut ordonner qu'un titulaire de permis ou un demandeur de permis ne procède pas personnellement au contrainterrogatoire des témoins. Lorsqu'il rend une telle ordonnance, le Tribunal nomme un avocat pour procéder au contrainterrogatoire à ses frais : règle 6.6 c). Le Tribunal maintiendra une liste d'avocats que le titulaire de permis ou le demandeur de permis peut choisir.

### **Pas d'inférence défavorable**

Le Tribunal ne peut pas conclure qu'un témoignage est moins digne de foi parce qu'un témoin a bénéficié d'une mesure d'adaptation.

### **Contrainterrogatoire**

Le contrainterrogatoire joue un rôle important dans le processus de recherche de la vérité. Il y a cependant des limites et il ne faut pas en abuser. Le contrainterrogatoire d'un témoin ne peut pas être répétitif, abusif ou inapproprié de quelque manière que ce soit : règle 11.9 (1). La formation doit mettre un terme aux contrainterrogatoires qui comprennent du harcèlement, de fausses déclarations ou des questions sans fondement comportant des insinuations non pertinentes. La formation peut également imposer des limites à l'interrogatoire ou au contrainterrogatoire lorsque celui-ci a fait toute la lumière sur tout ce qui touche aux questions en litige dans le cadre de l'instance : règle 11.9 (2).