MINUTES OF CONVOCATION

Wednesday, 23rd June 2021
9:00 a.m.
Via Videoconference

PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Armstrong, Banack, Banning, Braithwaite, Brown, Burd, Charette, Chiummiento, 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.

Confirmed in Convocation this 1st day of October 2021.

Teresa Donnelly,
Treasurer

Tab 1

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2021

MOVED BY: Scott Marshall

SECONDED BY: Alexander Wilkes

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

D R A F T

MINUTES OF CONVOCATION

Thursday, 27th May, 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, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Krishna, Lau, Lean, Lesage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Merali, Minor, Murchie, Painchaud, Parry, Pineda, 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 thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

LL.D. CEREMONY – THE HONOURABLE GEORGE CZUTRIN

The Treasurer introduced Justice George Czutrin, the candidate for the degree of Doctor of Laws, *honoris causa.*

Ms. Lockhart read the citation.

The Treasurer admitted Justice Czutrin to the degree of Doctor of Laws, *honoris causa.*

Justice Czutrin addressed Convocation.

The Treasurer thanked Justice Czutrin for honouring Convocation with his presence.

TREASURER'S REMARKS

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer expressed condolences to the family of former bencher Frederick Bickford who passed away on April 21, 2021.

The Treasurer advised Convocation that she was pleased to co-host the Mental Health for Legal Professionals Summit last week with Beth Beattie of the Ministry of the Attorney General, which was attended by more than 4000 registrants.

The Treasurer notified benchers of the Toronto Lawyers Association and LAWPRO program on "Continuing to Manage – Mental Health, Resilience and Resources" scheduled for June 15, 2021.

The Treasurer advised benchers of the Federation of Law Societies of Canada and University of Sherbrooke National Well-Being Study, including a survey to be launched on June 7, 2021.

The Treasurer, noting that she hosted the LSO Awards Ceremony last evening, congratulated all award recipients.

The Treasurer advised that the Law Society of Ontario Human Rights Award event is scheduled for June 15, 2021, at which Professor Payam Akhavan will receive the award and provide a keynote address.

The Treasurer noted upcoming events:

- National Accessibility Week – May 30 to June 5, 2021
- Pride Month – with a virtual program on June 24, 2021
- National Indigenous Peoples Day – June 21, 2021
- Filipino Heritage Month in June – program on June 1, 2021
- Access to Justice Week – October 25 to 29, 2021

The Treasurer advised that the Law Society's Annual General Meeting was held on May 12, 2021 at which the motion filed for the meeting carried. The Treasurer also advised that the first part of the motion dealing with exemptions from paralegal licensing is being referred to the Paralegal Standing Committee, and that the second part of the motion addressing unauthorized practice is being referred to the Chief Executive Officer.

The Treasurer referred to information about the new contingency fee requirements effective July 1, 2021 on the Law Society's website and as the subject of an upcoming Continuing Professional Development (CPD) session on June 9, 2021.

The Treasurer noted that the Barreau du Québec relayed to her that they are pleased to hear that the Law Society approved by-law amendments to allow for the mobility of lawyers licensed in Québec.

The Treasurer congratulated bencher Murray Klippenstein who was named as an awardee by the Canadian Law Awards 2021 for Class Action Team of the Year for his work on *Good v. Toronto Police Service Board*.

The Treasurer congratulated Law Society General Counsel Elliot Spears, who will be awarded the Canadian Bar Association's Canadian Corporate Counsel Association, Ontario Chapter Award of Excellence on June 24, 2021.

The Treasurer referred benchers to information reports in the Convocation Materials, including the Law Society Tribunal 2020 Annual Report.

MOTION – CONSENT AGENDA – Tab 1

The Treasurer advised that at the request of Ms. Shi the Human Rights Monitoring Group Report is being removed from the Consent Agenda.

It was moved by Mr. Falconer, seconded by Mr. Spurgeon, that Convocation approve the remaining items on the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

Mr. Lyon abstained.

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of April 22, 2021 were confirmed.

Tab 1.2 – TRIBUNAL COMMITTEE REPORT

Re: Tab 1.2.1: Adjudicator Appointments/Reappointments

That Convocation appoint or reappoint the following for a term from May 27, 2021 to May 31, 2023:

a. to the Hearing Division of the Law Society Tribunal:

Ryan Alford, Raj Anand, Larry Banack, Jack Braithwaite, Chris Bredt, Jared Brown, Robert Burd, Jean-Jacques Desgranges, Seymour Epstein, Etienne Esquega, Sam Goldstein, Philip H. Horgan, Vern Krishna, Shelina Lalji, Cheryl R. Lean, Michael B. Lesage, Atrisha S. Lewis, Marian Lippa, Cecil Lyon, Scott Marshall, Isfahan Merali, Barbara Murchie, Ross Murray, Geneviève Painchaud, Jorge Pineda, Lubomir Poliacik, Geoff Pollock, Brian Prill, Clayton Ruby, Chi-Kun Shi, Julia Shin Doi, Megan Shortreed, Harvey Strosberg, Tanya Walker, Peter Wardle, Doug Wellman, Alexander Wilkes, Bradley Wright

b. to the Appeal Division of the Law Society Tribunal:

Ryan Alford, Raj Anand, Cathy Banning, Jack Braithwaite, Chris Bredt, Robert Burd, Seymour Epstein, Scott Marshall, Isfahan Merali, Barbara Murchie, Geneviève Painchaud, Lubomir Poliacik, Julia Shin Doi, Megan Shortreed, Tanya Walker, Peter Wardle, Doug Wellman

Carried

That Convocation appoint Jack Braithwaite as Vice-Chair of the Hearing Division for a term from May 27, 2021 to May 31, 2023.

Carried

IN PUBLIC

Tab 1.3 – PROFESSIONAL REGULATION COMMITTEE REPORT

Re: Report on the Annual General Meeting Motion Respecting Civil Rules

That Convocation approve the recommendation of the Professional Regulation Committee that a motion brought to the Law Society's 2020 Annual General Meeting relating to the Civil Rules not be considered further.

Carried

Tab 11 – MOTIONS

Re: Tab 11.1 – Election of Bencher

WHEREAS Paul M. Cooper who was elected from the Province of Ontario "B" Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, has been appointed a judge of the Ontario Court of Justice; and

WHEREAS upon being appointed a judge of the Ontario Court of Justice, Paul M. Cooper became unable to continue in office as a bencher thereby creating a vacancy in the number of benchers elected from the Province of Ontario "B" Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

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

Carried

The Treasurer welcomed Mr. Ross to Convocation.

The Treasurer congratulated Mr. Justice Paul Cooper on his appointment as a judge of the Ontario Court of Justice and thanked Justice Cooper for his contributions to the Law Society as a bencher over the past six years.

Re: Tab 11.2 – Committee Appointment

THAT Jack Braithwaite be appointed to the Tribunal Committee.

Carried

Tab 1.4 – HUMAN RIGHTS MONITORING GROUP REPORT

Mr. Falconer presented the Report.

Re: Requests for Interventions

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

a) Hejaaz Hizbullah – Sri Lanka – letter of intervention and public statement presented at Tab 1.3.1; and
b) Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan – China – letter of intervention and public statement presented at Tab 1.3.2.

Carried

ROLL-CALL VOTE

Adourian	For
Alford	Abstain
Banning	Against
Braithwaite	For
Brown	Abstain
Burd	For
Charette	Abstain
Chiummiento	Abstain
Corbiere	For
Corsetti	For
Desgranges	Abstain
Epstein	Abstain
Esquega	For
Fagan	Against
Falconer	For
Goldstein	Abstain
Graham	Abstain
Groia	For
Horgan	Abstain
Horvat	For
Klippenstein	Abstain
Lau	Abstain
Lean	Abstain
Lesage	For
Lewis	For
Lockhart	For
Lomazzo	For
Lyon	Against
Marshall	For
Murchie	For
Painchaud	For
Parry	Abstain
Pineda	For
Poliacik	For
Pollock	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
Wright	Abstain

Vote: 31 For; 3 Against; 16 Abstain

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Shortreed presented the Report.

Re: Amendments to the Law Society's By-Laws (Anti-Money Laundering and Terrorist Financing)

It was moved by Ms. Shortreed, seconded by Ms. Sellers, that Convocation approve the motion at Tab 2.1 which amends the Law Society's By-Laws 7.1 [Operational Obligations and Responsibilities] and 9 [Financial Transactions and Records], effective January 1, 2022 in order to implement amendments to the Federation of Law Societies Model Rules to fight money-laundering and terrorist financing.

Carried

ROLL-CALL VOTE

Adourian	For
Alford	Against
Banning	For
Braithwaite	For
Brown	Against
Burd	For
Charette	Against
Chiummiento	For
Corbiere	For
Corsetti	For
Desgranges	Abstain
Epstein	For
Esquega	For
Fagan	Against
Falconer	For
Goldstein	For
Graham	Against
Groia	For
Horgan	Against
Horvat	For
Klippenstein	Against

Lau	For
Lean	Against
Lesage	Against
Lewis	For
Lippa	For
Lockhart	For
Lomazzo	For
Lyon	Against
Marshall	For
Merali	For
Murchie	For
Painchaud	For
Parry	For
Pineda	Against
Poliacik	For
Pollock	Against
Prill	For
Rosenthal	For
Ross	For
Sellers	For
Sheff	For
Shi	Against
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For
Wright	Against

Vote: 37 For; 14 Against; 1 Abstain

PRIORITY PLANNING COMMITTEE REPORT

Ms. Horvat presented the Report.

Re: By-Law 3 Amendments Respecting Reforms to Certain Standing Committees Structure

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that on the recommendation of the Priority Planning Committee, Convocation make amendments to By-Law 3 as set out in the motion at Tab 3.1.1 to create a new standing committee called the Strategic Planning and Advisory Committee and its mandate and to revoke the mandates of the Government and Public Affairs Committee, the Litigation Committee and the Priority Planning Committee.

Carried

Re: Merger of Awards and External Appointments Functions

It was moved by Ms. Horvat, seconded by Ms. Corsetti, that on the recommendation of the Priority Planning Committee, Convocation approve the merger of the functions of the Law Society awards committees described in this report with the function of the Treasurer's

Appointments Advisory Group, and the assumption of the awards committees' terms of reference and processes in the Group's process.

Carried

COMPENSATION FUND COMMITTEE REPORT

Mr. Poliacik presented the Report.

Re: By-Law 12 Amendments to Improve the Administration of the Compensation Fund

It was moved by Mr. Poliacik, seconded by Ms. Painchaud, that Convocation approve the amendments to By-Law 12, found at Tab 4.1, as recommended by the Compensation Fund Committee.

Carried

Dr. Alford and Mr. Graham abstained.

PARALEGAL STANDING COMMITTEE REPORT

Mr. Burd presented the Report.

Re: Ending Exemptions from Paralegal Licensure for the Office of the Worker Advisor and the Office of the Employer Advisor

It was moved by Mr. Burd, seconded by Ms. Lomazzo, that Convocation approve an amendment to subsections 31(2) and (3) of By-Law 4 in order to end the following exemptions from the paralegal licensure, effective January 1, 2022: public servants in the service of the Office of the Worker Adviser ("OWA") and the Office of the Employer Adviser ("OEA"), with certain exceptions.

Carried

Mr. Lyon abstained.

IN PUBLIC

REPORTS FOR INFORMATION ONLY

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society of Ontario Financial Statements for the Three Months ended March 31, 2021
- Investment Compliance Reports for the Quarter ended March 31, 2021

EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

- Update on Discrimination and Harassment Counsel Program Review

HUMAN RIGHTS MONITORING GROUP REPORT

- Update on 2021 Human Rights Award

SECRETARY'S REPORT

- Law Society of Ontario Annual General Meeting

TRIBUNAL COMMITTEE REPORT

- Law Society Tribunal 2020 Annual Report
- Law Society Tribunal 2020 Annual Report on Statistics
- Law Society Tribunal Quarterly Statistics, for the period from January 1, 2021 to March 31, 2021

CONVOCATION ROSE AT 1:18 P.M

TAB 1.2

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2021

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

Explanatory Note

Bencher Andrew Spurgeon has applied to be a member of the Tribunal. Under the Tribunal model passed by Convocation in 2012, benchers are eligible to be appointed to an initial term by virtue of their position. Mr. Spurgeon has previously been a member of the Tribunal.

Law Society of Ontario | Barreau de l'Ontario

Tab 2

Audit & Finance Committee

Report to Convocation

June 23, 2021

Committee Members:

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

Authored By:

Finance
Brenda Albuquerque-Boutilier
Executive Director, Finance & CFO
416-947-3436

Table of Contents

FOR DECISION

Investment Policy

Motion
That Convocation approve the new Investment Policy.

In April 2021, Convocation approved the Audit & Finance Committee's ("Committee") recommendation that Connor Clark & Lunn ("CCL") be appointed as the Law Society's Investment Manager.

With the assistance of our Investment Advisor, Proteus Management ("Proteus") and with input from CCL, a new Investment Policy has been drafted based on the asset mixes and risk tolerances previously approved by the Committee, and suitable for CCL's segregated funds. The Law Society is completing contract negotiations with CCL and requires the Investment Policy to be finalized and approved. The updated Investment Policy is found at **Tab 2.1.1**.

The Investment Policy is reflective of the nature of the Law Society as a not-for-profit organization and the nature of the underlying reserves, which ultimately are used to fund the Law Society fulfilling its mandate. The approach underlying the Investment Policy is:

- superior rates of return over longer time periods will be achieved through active management of a broadly diversified portfolio of high-quality securities,
- high-risk securities, which could lead to excessive volatility and the possibility of a reduction in the capital value of the portfolios in a depressed market, are to be avoided, and
- extreme positions in either individual securities or in an asset class are to be avoided.

The primary objective of the Investment Policy is to preserve and enhance the real capital base of the portfolios. The secondary objective is to generate investment returns to assist the Law Society in funding its programs. The Law Society may have the ability to adopt a higher level of risk, but the Society's risk appetite historically has been low and the Investment Policy is reflective of the underlying Funds' nature, goals and purpose.

The notable change from the prior Investment Policy is in the asset mixes. The new asset mixes are based on the Investment Objectives and Risk Tolerance Questionnaire ("Questionnaire") completed by the Committee, the Priority & Planning Committee

members, the Chief Executive Officer and the Executive Director, Finance & CFO of the Law Society. The responses to this Questionnaire formed the basis of the Asset Mix Review, which was approved unanimously by the Audit and Finance Committee in November 2020.

The suitability of the asset mixes was evaluated from both a return and risk perspective as the asset mix should have a sufficient probability of achieving its return goals, while exhibiting an acceptable level of risk. The Asset Mix Review indicated that adding global equities to the asset classes under consideration in the policy would improve the risk-return trade-off. While the median return expectation only slightly increases, there are improvements to the downside scenarios.

Approach & Risk Tolerance Statements

General Fund

The Law Society takes a long-term approach towards investing the General Fund Portfolio while acknowledging that liquidity may be required from time to time. The General Fund Portfolio should be positioned to fund unplanned expenditures and emerging spending. Based on the Questionnaire results, the Law Society characterizes its financial capacity to withstand volatility as ‘higher than average’, but its willingness to withstand volatility as somewhat lower. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 9% in a given year in its pursuit of investment returns but something lower over a five-year horizon. The General Fund Portfolio has a higher tolerance for risk than the Compensation Fund.

Compensation Fund

The Law Society takes a long-term approach towards investing the Compensation Fund Portfolio while acknowledging that liquidity may be required from time to time. Liquidity requirements comprise lumpy and unpredictable claims activity, although generally there is lead time between receipt of Compensation Fund claims and grant payments. Given the magnitude of possible cash outflows for grants and a desire for timely processing of claims, the Compensation Fund Portfolio may require more liquidity than the General Fund Portfolio.

Based on the Questionnaire result, the Law Society characterizes its financial capacity to withstand volatility as ‘higher than average’, but its willingness to withstand volatility as somewhat lower, and particularly lower than the General Fund Portfolio. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 5% in a given year in its pursuit of investment returns but something lower over a five-year horizon.

E&O Fund

The nature of the E&O Fund Portfolio may change as the restriction related to the $15 million backstop for potential LAWPRO claims has been removed and the Law Society will be considering how it will use the funds in the near future. The decisions made will impact the investment objectives, liquidity requirements, and risk tolerance for this Portfolio.

The old and new proposed asset mixes are compared below. Included at **Tab 2.1.2**, as optional reading, is the Asset Mix Review Report prepared by Proteus based on the results of the Questionnaire.

Asset	Current Asset Mix, All Funds	Draft Asset Mix, General Fund	Draft Asset Mix, Compensation Fund	Draft Asset Mix, E&O Fund
Fixed Income	**70%**	**50%**	**65%**	**70%**
Canadian Equity	30%	17%	12%	10%
Global Equity	0%	33%	23%	20%
Total Equity	**30%**	**50%**	**35%**	**30%**
TOTAL	**100%**	**100%**	**100%**	**100%**

CCL proposes to use the following funds to implement these asset mixes:

- CCL Money Market
- CCL Short Term Bond
- CCL Fundamental Canadian Equity
- NS Partners Global Equity

As tabled above, fixed income assets will comprise a large percentage of the portfolios and under the draft Investment Policy may be invested within the following parameters:

Bond Holdings	Maximum
Federal and Federally Guaranteed Bonds	100%
Provincial and Provincially Guaranteed	80%
Municipals	10%
Total Non-Government Bonds	70%
Mortgage-backed securities	25%
Asset-backed securities	25%
Total Corporate Issues	65%
Total BBB Issues with Corporate issues	20%
Cash or Money Market	25%

The Committee unanimously recommends that Convocation approve the Investment Policy as presented.

FINANCE POLICIES & PROCEDURES	
Subject: Investment Policy	
Effective Date:	**Contact:** Director, Finance
Policy Issue Date:	**Supersedes:** April 26, 2018

Purpose & Background

1. The Law Society has adopted the following Investment Policy governing the management of the General Fund Long-Term Portfolio, the Compensation Fund Long-Term Portfolio and the Errors & Omissions Insurance Fund Long-Term Portfolio ("the Portfolios") as well as the operational investments ("Short-Term Operational Investments"). The Portfolios comprise the funds not required to finance the short-term obligations of the Law Society's operations.

2. The most recently approved revisions were informed by an exercise undertaken by the Law Society to revisit the objectives and risk tolerances of the Portfolios and an asset mix study guided by the Law Society's Investment Advisor.

Accountabilities and Responsibilities

3. **Convocation**
   Convocation shall:
   - review and approve the Investment Policy
   - approve investment performance objectives
   - approve the appointment and continuing retention of the Portfolio Manager and Custodian
   - receive periodic reports on the Portfolios' investment returns, and the administration of the Portfolios in the context of this Policy. This shall be done on at least an annual basis.

4. **Audit & Finance Committee**
   The Audit & Finance Committee shall:
   - review and recommend approval of the Investment Policy to Convocation
   - review the Portfolios and monitor their performance
   - review and recommend the appointment and continuing retention of the Investment Advisor, Portfolio Manager and Custodian
   - review and recommend investment performance objectives
   - periodically report to Convocation on the investment returns of the Portfolios, and the administration of the Portfolios. This shall be done on at least an annual basis.

5. **Law Society Management**
   Law Society management, supplemented by professional assistance when required, has overall responsibility for:
   - preparing and recommending changes to the Policy
   - recommending the selection of the Investment Advisor, Portfolio Manager and Custodian
   - recommending investment performance objectives

- monitoring the Portfolios to ensure compliance with legislative requirements and this policy
- periodically evaluating the Investment Advisor, Portfolio Manager and Custodian
- accounting for transactions in the Portfolios
- reviewing the Portfolios' investment returns and the administration of the Portfolios in the context of this policy. This shall be done on at least a quarterly basis.
- periodically report to Audit & Finance Committee on the investment returns of the Portfolios, and the administration of the Portfolios. This shall be done on at least an annual basis
- manage Short-Term Operational Investments within the context of this policy

6. **Investment Advisor**

The Investment Advisor shall provide investment advisory services including:

- Performance and compliance monitoring typically through the provision of detailed monitoring reports
- Reviewing the Investment Policy annually and making recommendations to ensure that it is up to date, relevant for a not-for-profit in a regulatory environment such as the Law Society and reflects industry and legislated standards.
- Preparing special manager and market alerts and reports on trends and issues of interest
- Assisting the Audit & Finance Committee in the fulfillment of its duties.

7. **Portfolio Manager**

The Portfolio Manager directs the business of the Portfolios' purchases and sales, has full investment discretion subject to the Investment Policy, and has responsibility for:

- Managing the Portfolios in terms of this Investment Policy, and in the best interests of the Law Society
- Providing compliance reporting to the Law Society on a quarterly basis on adherence to this Investment Policy
- Adhering to the best standards of industry practice
- Required communications as described in Section 59

8. **Custodian**

The Custodian shall:

- store and protect all ownership documentation for the Portfolios
- execute all transactions for the Portfolios as directed by the Portfolio Manager
- collect all income of the Portfolios
- provide monthly statements to the Law Society
- make all required filings to government, regulatory, taxation or other authorities

and shall be one of the following:

- A bank listed in Schedule I or II of the Bank Act (Canada)
- A trust company that is incorporated under the laws of Canada, and that has shareholders' equity of not less than $10,000,000
- A company that is incorporated under the laws of Canada and that is an affiliate of a bank or trust company referred to above and has shareholders' equity, of not less than $10,000,000.

Philosophy

9. The Law Society is of the belief that:
    - superior rates of return over longer time periods will be achieved through active management of a broadly diversified portfolio of high-quality securities
    - high-risk securities, which could lead to excessive volatility and the possibility of a reduction in the capital value of the Portfolios in a depressed market, are to be avoided
    - extreme positions in either individual securities or in an asset class are to be avoided

Business Characteristics

10. In order to establish an appropriate Investment Policy for the Portfolios, the following characteristics of the Law Society, relevant to the Portfolios, are noted.
    - The Law Society is the governing body of Ontario's legal profession
    - Governance of the Law Society is regulated by *The Law Society Act*
    - The Law Society is a not-for-profit corporation and is not subject to income or capital taxes
    - The primary revenue source for both the General Fund and the Compensation Fund are licensee annual fees, mainly received between January and April of each year
    - The primary revenue source for the E&O Fund is premiums and levies from licensees mainly received in the period November to January
    - Withdrawals from the Portfolios will depend on operating conditions and capital requirements and therefore the Portfolios should be sensitive to short-term volatility.

Portfolio Purpose & Characteristics

11. The General Fund serves as the Law Society's operating fund for program delivery and administrative activities. The purpose of the General Fund Portfolio is to serve as a contingency fund for the operations of the Law Society.

12. The Compensation Fund serves to relieve or mitigate losses incurred by the public in consequence of dishonesty on the part of a licensee. The purpose of the Compensation Fund Portfolio is to fund claims activity in excess of short-term funds. It is a discretionary fund established under the *Law Society Act*, and claim payments have a maximum of $500,000 for lawyers and $10,000 for paralegals.

13. The Errors & Omissions Insurance Fund ("E&O Fund") collects insurance premiums from licensees and remits amounts to LAWPRO. The E&O Fund Portfolio predominantly represents the accumulated balance of the E&O Fund less the Law Society's investment in LAWPRO.

14. The Short-Term Operational Investments finance the short-term obligations of the Law Society's operations.

Objectives

15. The primary objective is to preserve and enhance the real capital base of the Portfolios.

16. The secondary objective is to generate investment returns to assist the Law Society in funding its programs.

17. Even with the guidelines outlined in this Policy, the investment returns from the Portfolios will vary from year to year, reflecting market and economic conditions, levels of inflation, government policies and many other factors which are beyond the control of the Portfolio Manager. These outside factors should not deter the Portfolio Manager from exercising due diligence and using its best efforts to achieve the long-term primary investment objective for the Portfolios as set out above, and the following benchmarks:

    - By asset class
        - to outperform the appropriate market index return over a complete market cycle
    - By benchmark portfolio
        - To outperform the target asset mix benchmark as defined for each Fund in the Asset Mix and Rebalancing section below over a four-year moving average or complete market cycle

Liquidity Requirements

18. The General Fund Portfolio should be positioned to fund unbudgeted expenditures which are unpredictable in size and timing.

19. The Compensation Fund Portfolio's liquidity requirements comprises lumpy and unpredictable claims activity. The magnitude of cash outflows can vary affecting liquidity requirements, although generally there is lead time between the receipt of claims and grant payments. The Compensation Fund Portfolio generally requires more liquidity than the General Fund Portfolio.

20. The E&O Fund Portfolio is used to fund annual disbursements to the operating budget (funding up to $1.2 million). It is possible that a significant portion of the E&O Fund Portfolio will need to be liquidated within one to three years and it therefore requires more liquidity than the Compensation Fund.

Investment Time Horizon

21. The Law Society takes a long-term approach towards investing the General Fund Portfolio while acknowledging that liquidity may be required from time to time.

22. The Law Society takes a long-term approach towards investing the Compensation Fund Portfolio while acknowledging that liquidity may be required from time to time.

23. The Law Society takes a shorter-term approach towards investing the E&O Fund Portfolio due to the uncertainty around liquidity requirements.

Risk Tolerance

General Fund

24. The Law Society characterizes the financial capacity of the General Fund Portfolio to withstand volatility as 'higher than average', but the organization's willingness to withstand volatility as somewhat lower. The General Fund Portfolio has a higher tolerance for risk than the Compensation Fund.

25. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate an approximate loss of 9% in a given year in its pursuit of investment returns. The largest tolerable loss over five-year horizon is somewhat lower.

Compensation Fund

26. The Law Society characterizes the financial capacity of the Compensation Fund Portfolio to withstand volatility as 'higher than average', but the organization's willingness to withstand volatility as somewhat lower, and specifically lower than the General Fund Portfolio.

27. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 5% in a given year in its pursuit of investment returns. The largest tolerable loss over five-year horizon is somewhat lower.

E&O Fund

28. The Law Society characterizes the financial capacity of the E&O Fund Portfolio to withstand volatility as 'lower than average', and the organization's willingness to withstand volatility as low.

29. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 5% in a given year in its pursuit of investment returns. The largest tolerable loss over five-year horizon is somewhat lower.

Portfolio Manager

30. To achieve the portfolio objectives, the Law Society will retain the services of a firm registered as Investment Fund Manager and Portfolio Manager with the Ontario Securities Commission to manage the investment Portfolios on a discretionary basis within the constraints outlined in this document.

Asset Mix & Rebalancing

31. The following asset mix guidelines, based on market values, constitute the acceptable range of exposure for the various asset classes, which comprise each Portfolio:

General Fund Portfolio

	% of Total Fund			
	Minimum	*Benchmark Asset Mix*	Maximum	Benchmark Index
Cash and Short-Term	0%	0%	15%	FTSE Canada 91-Day T-Bill Index
Bonds	35%	50%	60%	FTSE Canada Short-Term Overall Bond Index
Total Fixed Income	**40%**	**50%**	**60%**	
Canadian Equity	7%	17%	27%	S&P/TSX Capped Composite Index
Global Equity	23%	33%	43%	MSCI World Net Index (CAD)
Total Equity	**40%**	**50%**	**60%**	

Compensation Fund Portfolio

	% of Total Fund			
	Minimum	*Benchmark Asset Mix*	Maximum	Benchmark Index
Cash and Short-Term	0%	0%	15%	FTSE Canada 91-Day T-Bill Index
Bonds	50%	65%	75%	FTSE Canada Short-Term Overall Bond Index
Total Fixed Income	**55%**	**65%**	**75%**	
Canadian Equity	2%	12%	22%	S&P/TSX Capped Composite Index
Global Equity	13%	23%	33%	MSCI World Net Index (CAD)
Total Equity	**25%**	**35%**	**45%**	

E&O Fund Portfolio

	% of Total Fund			
	Minimum	*Benchmark Asset Mix*	Maximum	Benchmark Index
Cash and Short-Term	0%	0%	15%	FTSE Canada 91-Day T-Bill Index
Bonds	55%	70%	80%	FTSE Canada Short-Term Overall Bond Index
Total Fixed Income	**60%**	**70%**	**80%**	
Canadian Equity	0%	10%	20%	S&P/TSX Capped Composite Index
Global Equity	10%	20%	30%	MSCI World Net Index (CAD)
Total Equity	**20%**	**30%**	**40%**	

32. The Portfolio Manager will rebalance the Portfolios within the allowable ranges on a regular basis.

33. The Short-Term Operational Investments will be invested in cash and short-term investments. Law Society Management has the discretion to allocate the funds between the Portfolio Manager's money market pooled fund and the Law Society's bank accounts.

Diversification

34. The investment risk of the Portfolios shall be reduced by maintaining a diversified selection of industries and companies which places primary emphasis on value, long-term growth, and safety of capital. All percentages are based on market values, except where indicated.

Short-Term Investments

35. Short-term investments may be held as separate short-term investments or in the Portfolios when appropriate as an alternative to bond and equity investments. The maximum term to maturity for short-term investments is 1 year, except for floating rate notes (FRNs) whose term to maturity may be longer than 1 year. In managing FRNs, the "effective term to maturity" is considered, where the maximum term is 3 months. Appropriate short-term investments are:
    (a) Treasury bills issued by the Government of Canada and provincial governments and their agencies
    (b) Obligations of trust companies and Canadian and foreign banks chartered to operate in Canada, including bankers' acceptances

(c) Commercial paper issued by Canadian corporations with a rating of "R1 low" or better as established by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.

36. No more than 10% of each of the portfolios may be invested in the securities of any one single issuer permitted in 34(b) and (c) above.

37. Where the Portfolio Manager operates a pooled money market fund, which meets the requirements set out in 34(a), (b) and (c), this pooled money market fund may be used as an alternative in order to achieve better rates and liquidity.

Bonds

38. Investment instruments allowed include:
    - bonds, debentures, notes, coupons, asset-backed securities, Tier 1 capital securities, structured notes, non-convertible preferred stock, term deposits, derivatives, guaranteed investment certificates and other evidence of indebtedness of Canadian or foreign issuers
    - NHA-insured mortgage-backed securities or collateralized mortgage-backed securities
    - Marketable private placements of bonds.

39. Each bond portfolio may be invested within the following parameters:

Bond Holdings	**Maximum**
Federal and Federally Guaranteed Bonds	100%
Provincials and Provincially Guaranteed Bonds	80%
Municipals	10%
Total Non-Government Bonds	70%
Mortgage-backed securities	25%
Asset-backed securities	25%
Total Corporate Issues	65%
Total BBB Issues with Corporate issues	20%
Cash or Money Market*	25%

* Cash or Money Market excludes any cash designated to collateralize derivatives exposure

40. Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of Government of Canada and provincial government bonds and their guarantees.

41. In line with the benchmark portfolio of the FTSE Canada Short Term Overall Bond Index, the normal Duration range for the bond portfolio administered under this policy should be between 1 and 5 years. The Duration of a portfolio is a measure of the portfolio's sensitivity to changes in the general level of interest rates (Duration multiplied by change in interest rates gives change in value of bond portfolio).

42. The emphasis within the bond portfolio will be on quality, with a minimum rating "BBB-" for bonds and debentures or “P2” for preferred shares by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.

43. In the event of a downgrade below “BBB-” for bonds and debentures, “P2” for preferred shares or “R-1 low” for short-term investments, the Portfolio Manager will advise of an appropriate course of action.

44. In cases where the recognized bond rating agencies do not agree on the credit rating, the bond will be classified according to the methodology used by FTSE, which states:
    - If two agencies rate a security, use the lower of the two ratings
    - If three agencies rate a security, use the most common; and
    - If all three agencies disagree, use the middle rating.

45. In the event that an issuer is no longer rated by a recognized bond rating agency, the securities held will no longer be considered to be investment grade and the Portfolio Manager will place the asset on a watch list subject to monthly review by the Portfolio Manager with the Law Society until such time as the security matures, is sold or until it is upgraded to a level consistent with the purchase quality standards as expressed in the guidelines listed above.

46. Derivative instruments will only be used in ways that are consistent with the portfolio's investment objectives. The underlying exposures facilitated through the use of derivatives will be incorporated into the portfolio’s constraints detailed above. Counterparty risk arising from derivative transactions will be limited to credits rated “A-” or better. Instruments used may include but are not limited to futures, forwards, options, and swaps. Derivatives cannot be used to facilitate or effect the borrowing of money.

Equities

47. The intent is to provide a diversified selection of Canadian and global common stocks, also allowing any of the following, provided that they are listed on a recognized stock exchange:
    - Convertible preferred stock and convertible debentures
    - Real estate investment trusts (“REITs”).

48. The market value of any one issuer cannot represent more than 10% of the market value of the asset class, or that equity's weight in the respective benchmark (S&P/TSX Capped Composite Index or MSCI World Index), whichever is greater.

Other Investments

49. Investments in open or closed-ended pooled or mutual funds are permitted provided that the assets of such funds are permissible investments under this Policy.

50. Deposit accounts of the custodian or Schedule 1 banks can be used to invest surplus cash holdings.

51. With the exception of rights, warrants and special warrants or instruments used for exposure purposes, no derivative investments will be permitted without the prior written approval of the Audit & Finance Committee.

52. No venture capital financing or non-conventional investments will be permitted without the prior written approval of the Audit & Finance Committee.

53. In the event any investment has no active market, the Portfolio Manager will advise of an appropriate course of action for the valuation of that investment.

Discretion

54. The Law Society must approve the use of any pooled funds. The Portfolio Manager is to have full discretion in the management of the assets of the Portfolios, selecting the appropriate asset mix, and the individual securities, within the guidelines set out herein.

Delegation of Voting Rights

55. The Portfolio Manager has been delegated the responsibility of exercising all voting rights acquired through the Portfolios' investments. The Portfolio Manager will exercise acquired voting rights with the intent of fulfilling the investment policies and objectives of the Fund. The Portfolio Manager is expected to act in good faith and to exercise the voting rights in a prudent manner that will maximize returns for the Portfolios, and to act against any proposal which will increase the risk level or reduce the investment value of the relevant security.

Performance Monitoring

56. The Audit & Finance Committee will monitor the performance of the Portfolio Manager semi-annually.

57. If the Portfolio Manager fails to achieve the objective over six consecutive quarters, the Audit & Finance Committee will consider if a review is required.

58. The Audit & Finance Committee will consider reviewing the Portfolio Manager when one or more of the following circumstances prevail:

    - the Portfolio Manager’s short-term underperformance is found to be a result of a change in the Portfolio Manager’s investment style, process or discipline or a change in the key investment personnel;
    - there is a significant change in the risk profile of the Portfolio Manager;
    - the Portfolio Manager’s investment style is no longer appropriate given the requirements of the Portfolios;
    - the Portfolio Manager’s reporting and client service are unsatisfactory; or
    - the Audit & Finance Committee has concerns regarding the Portfolio Manager’s ethics.

Communications

59. The Communications process between the Portfolio Manager and Law Society Management is flexible, but at a minimum will include the following:

- monthly transaction statements
- a quarterly written summary listing of all portfolio transactions from the Portfolio Manager
- a complete quarterly portfolio listing
- a quarterly written assessment of the North American economies and the financial markets, and impact on the Portfolios
- annual investment meetings with the Law Society. The agenda at these meetings would include an overview of the economy and the outlook for the financial markets, the current investment strategy, and a review of the performance results
- an annual review of the Investment Policy and the Portfolios' quality and diversification guidelines.
- timely notification of changes with respect to the organization, key investment professionals or investment process.

60. Any time that the Portfolio Manager is not in compliance with this policy, they are required to advise the Director, Finance and the Executive Director, Finance & Chief Financial Officer ("CFO") of the Law Society promptly, detailing the breach and recommending a course of action to remedy the situation.

61. The Portfolio Manager will promptly communicate to the Law Society any changes to the approved pooled fund policies and guidelines.

Standard of Professional Conduct

62. All investment activities of the Portfolio Manager and their employees shall be conducted in accordance with the Code of Ethics and Standards of Professional Conduct of the CFA Institute.

63. The Portfolio Manager will manage the Portfolios with the care, diligence, and skill that a Portfolio Manager of ordinary prudence would use in dealing with institutional assets. The Portfolio Manager will also use all relevant knowledge and skill that it possesses or ought to possess as a prudent expert in investment management.

Securities Lending

64. No lending of securities is permitted.

Borrowing

65. The Portfolios shall not borrow money.

Conflicts of Interest – Investment Policy

66. Conflict of interest standards apply to all members of Convocation, Law Society management and the Portfolio Manager, as well as to all Agents employed by the Law Society, in the execution of their fiduciary responsibilities.

67. An 'Agent' is defined to mean a company, organization, association or individual, as well as its employees, retained by the Law Society to provide specific services with respect to the administration and management of the Law Society's investment assets.

68. In carrying out their fiduciary responsibilities, these parties must act at all times in the best interests, and for the benefit, of the Law Society. All parties must act in the manner that a "prudent person" would in matters related to the investment strategy and portfolio management.

69. No affected person shall accept a gift or gratuity or other personal favour, other than one of nominal value, from an individual with whom the person deals in the course of performance of his or her duties and responsibilities.

70. In the execution of their duties, all of the parties listed in Section 66 above shall disclose any material conflict of interest relating to them, or any material ownership of securities, which could impair their ability to render unbiased decisions, as it relates to the administration of the investment assets.

71. Further, it is expected that none of the parties listed in Section 66 above shall make any personal financial gain (direct or indirect) because of their fiduciary position. However, normal and reasonable fees and expenses incurred in the discharge of their responsibilities are permitted if documented and approved by the Law Society.

72. It is incumbent on any party affected by this Policy who believes that he/she may have a material conflict of interest, or who is aware of any conflict of interest, to notify the CEO or the CFO of the Law Society. Disclosure should be made promptly after the affected person becomes aware of the conflict. The CEO or CFO, in turn, will decide what action is appropriate under the circumstances but, at a minimum, will table the matter at the next regular meeting of the Audit & Finance Committee.

73. No affected person who has or is required to make a disclosure as contemplated in this Policy shall participate in any discussion, decision or vote relating to any proposed investment or transaction in respect of which he or she has made or is required to make disclosure.

Changes to Policy

74. This Investment Policy may only be changed by Convocation on the specific recommendation of the Audit & Finance Committee.

Law Society of Ontario

Asset Mix Review

November 2020

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SECTION I - INTRODUCTION

Purpose

The purpose of this report is to examine the investment characteristics of the Law Society's long-term investment portfolios (the "Portfolios") in order to assist the Audit & Finance Committee ("the Committee") in determining the appropriateness of the current investment policy asset mix ("Current Policy Mix") and assessing the merits of other potential asset mixes. The goal is to select a strategic mix of asset classes for each Fund that will help meet its goals while not subjecting the portfolio to an unnecessary level of risk.

Overview of Report & Process

Proteus follow a systematic approach to helping organizations determine the appropriate asset mix using the following process:

1. Setting Objectives and assess risk tolerance (Section II)
2. Assess the current asset allocation and potential alternatives (Section III)

Proteus conducted a questionnaire with the Committee, the Priority Planning Committee, and management to help us understand the different perspectives on investment objectives, risks, biases and preferences. The results of the survey inform the analysis contained in this report along with our comments and observations.

This report will provide the basis for discussion regarding modeling / stress testing of each Portfolio's asset mix. It will also examine how changes to the current asset mix may be beneficial.

We ask that you review this report and executive summary before the meeting on November 19th. There will be some aspects of the report which may be new to you, or may require discussion / explanation by Proteus at the meeting. The real value of this review process is not the written report itself but the ensuing dialogue. To that end, we look forward to our discussion with the Committee, please bring your questions.

There is no one correct asset mix which applies to everyone. Organizations should try to achieve the most appropriate asset mix for their own unique risk tolerance. We have drafted risk tolerance statements for each of the Portfolios.

This report is a preliminary analysis and is not an exhaustive examination of all possible scenarios the Committee may want to consider now or in the future. The Committee may request additional analysis, different assumptions or other changes.

Next Steps

1) Discuss report and asset mix modelling results at November 19th meeting
2) Confirm agreement with risk tolerance statements or make suggested edits
3) Determine whether any additional analysis may be required
4) Select appropriate asset mix for each Portfolio
5) Discuss implementation plan including details of investment manager search
6) Proteus to update Investment Policy for Committee approval, scheduled for completion at the Committee's meeting in January 2021

Executive Summary

- The purpose of this exercise is to select a suitable asset mix for each of the Portfolios. Suitability can be evaluated from both a return and risk perspective. The Law Society should select an asset mix with a sufficient probability of achieving its goals, while exhibiting an acceptable level of risk.

- The efficient frontier analysis indicates that adding global equities to the asset classes under consideration in the policy would improve the risk-reward trade-off. The simulation results indicate that while the median return expectation only slightly increases, there are improvements to the downside scenarios. The incremental benefit is greater for portfolios with higher equity allocations. There is no expected benefit to adding universe bonds to the portfolio at this time.

- For all the portfolio we modelled, the equity components have a split of 1/3 exposure to Canadian equities and 2/3 to global equities.

- In evaluating an asset mix's suitability for the Law Society's Portfolios, we recommend focusing on the median and downside projected outcomes of the simulations. The 50th percentile return serves as a logical starting point for aligning with the Fund's target return. However, it's also important to understand the downside risks or the bad and worst probable outcomes. Therefore, we've highlighted the 5th percentile and 1st percentile outcomes in the analysis. While the probability of experiencing a "catastrophic outcome" (defined in report) is low (1%), it's important and prudent for investors to understand the full range of possible outcomes when selecting an asset mix. **Ultimately, the Committee needs to be comfortable with the level of risk inherent in the asset mix it chooses, and that it can withstand these tail risk events if they do occur.**

General Fund Portfolio

- The target return can be calculated using an inflation target and spending expectations. We calculated a target return for the General Fund Portfolio of 5.4% based on an annual disbursement of $600,000 (discussed further in the report). Results indicate it's unlikely the Portfolio would achieve these target returns without materially higher equity exposure which does not reconcile with the risk tolerance assessment. We note the investment policy indicates that generating investment returns to assist the Law Society in funding its programs is a secondary objective to the primary objective of capital preservation.

- As a not-for-profit, the Law Society prioritizes capital preservation over the pursuit of outsized investment returns. According to the investment policy, the primary objective of the portfolio is to preserve and enhance the real capital base. The secondary objective is to generate invest returns to assist the Law Society in funding its programs.

- The Law Society characterizes the General Fund Portfolio's financial capacity to withstand volatility as 'higher than average', but its willingness to withstand volatility as somewhat lower. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 9% in a given year in its pursuit of investment returns but something less over a five-year horizon. The General Fund Portfolio has a higher tolerance for risk than the Compensation Fund.

- The Current Policy Mix's expected 10-year return of 2.9% annualized outpaces expected inflation but falls significantly short of the target return of 5.4%. The General Fund Portfolio would need to take materially more equity risk to be expected to sustainably support a $600,000 annual outflow without eroding purchasing power.

- In order to attain a 50% probability of achieving the target return, an asset mix of approximately 75% equities and 25% short-term bonds would need to be selected. However, the downside scenarios for this asset mix are worse than what most respondents considered tolerable over a given one- or five-year period. The Committee will need to either adjust what they consider to be a tolerable loss (i.e. accept more risk) or settle for a lower return target. A lower return target may lead to erosion of long-term purchasing power of the capital base and could potentially lead to higher licensee fees or lower spending. However, it may be consistent with the portfolio's primary objective of capital preservation.

- Looking at projected downside scenarios, a bad year's return for the Current Policy Mix (5th percentile) is expected to be -5.3%. A catastrophic year's return (1st percentile) would be -7.9%. In other words, there is a 5% probability of experiencing a -5.3% return or worse and a 1% probability of achieving a -7.9% return or worse. This improves to -4.4% and -7.1% respectively for the 30/70 portfolio which has the same weight to equities but is diversified across both Canadian and global equities. The questionnaire results indicated 8.8% was approximately the largest loss that could be tolerated in a given year (some respondents thought lower and some higher). Therefore, the Committee may be comfortable taking additional risk in the General Fund Portfolio in the pursuit of higher returns.

- The questionnaire results indicated the Committee is more risk averse over a five-year horizon. All the asset mixes we modelled would exceed the largest tolerable loss (1% annualized) at the 1st percentile. Now that the Committee has a better understanding of the range of possible outcomes, it may need to adjust its expectations and tolerance for the worst possible outcomes. Looking at

the 5th percentile outcome, the 50% equities/ 50% fixed income asset mix aligns with the 1% annualized acceptable loss. However, the Committee would need to be comfortable with a 5% possibility of larger losses.

- Based on the long-term results of the Wealth Simulation, the General Fund Portfolio balance is expected to decline over time if it stays invested in the Current Policy Mix. There would be an additional decline in its purchasing power as the model's figures are nominal and have not been adjusted for inflation. The General Fund Portfolio would need to invest in the 50/50 or 60/40 mix to be expected to grow from its current level.

- **Recommendation:** The risk tolerance assessment suggested the Committee may be willing to accept more risk than the General Fund Portfolio is currently taking. To assist the Committee with the decision of selecting an asset mix, we recommend you start by considering the merits and risks of implementing an asset mix of 50% equities and 50% fixed income (the 50/50 mix illustrated in the report). In order to do so, please answer the following questions:

    1. Is the median expected return of 4.1% (annualized) over the 10-year horizon acceptable? This is an improvement from the Current Policy Mix's median expected return of 2.9%. Keep in mind, it is lower than the target return of 5.4% required to support a $600,000 annual disbursement and keep up with inflation. However, the probability of achieving the target return would improve from 7.4% to 28.3%.

    2. Are you comfortable accepting a portfolio loss of 6.8% in a given year? This translates to a $1.2 million loss on a $17.6 million portfolio. According to the simulation results, 5% of the time this mix will produce a return of -6.8% or worse in a given year. Are you comfortable accepting a loss of 10.8% in a given year? This translates to a $1.9 million loss on a $17.6 million portfolio. The results indicate that 1% of the time this mix will produce a result return of -10.8% or worse.

    3. Are you comfortable accepting a loss of 5.0% (-1.0% annualized) over a 5-year horizon? The simulation results suggest 5% of the time this mix will produce an equivalent result or worse. Are you comfortable accepting a loss of 14.1% (-3.0% annualized) over a given 5-year horizon? The results indicate that 1% of the time this mix will produce a return of -14.1% or worse.

    If the answer to either question 2 or 3 is 'no', you may need to move on to evaluating a less risky asset mix such as the 40% equities / 60% fixed income mix. If the answer to question 1 is 'no', you may need to move on to evaluating a riskier asset mix such as the 60% equities / 40% fixed income.

Compensation Fund Portfolio

- Based on an assumed outflow of $5 million every five years, the Compensation Fund Portfolio target return was calculated to be 5.4%. Coincidentally, this is the same figure as the General Fund Portfolio target return.

- Similar to the General Fund Portfolio, as a not-for-profit, the Law Society prioritizes capital preservation over the pursuit of outsized investment returns. According to the investment policy, the primary objective of the portfolio is to preserve and enhance the real capital base. The secondary objective is to generate invest returns to assist the Law Society in funding its programs.

- The Compensation Fund Portfolio generally requires more liquidity than the General Fund Portfolio due to the magnitude and unpredictability of cash outflows. The Law Society characterizes the Compensation Fund Portfolio's financial capacity to withstand volatility as 'higher than average', but its willingness to withstand volatility as somewhat lower, and particularly lower than the General Fund Portfolio. Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 5% in a given year in its pursuit of investment returns but something lower over a five-year horizon.

- The Compensation Fund Portfolio would need to take materially more equity risk to support historical levels of outflows.

- In order to attain a 50% probability of achieving the target return, an asset mix of approximately 25% short-term bonds and 75% equities would need to be selected. However, the downside scenarios for this asset mix are worse than what most respondents considered tolerable over a given one- or five-year period. The Committee will need to either adjust what they consider to be a tolerable loss (i.e. accept more risk), or settle for a lower return target.

- The simulated returns show that by diversifying the equity sleeve into global equities, the portfolio could increase its equity exposure to 35%, achieving a higher expected return with improved expected downside scenarios.

- As previously noted, a bad year's return for the Current Policy Mix (5^{th} percentile) is expected to be -5.3%. A catastrophic year's return (1^{st} percentile) would be -7.9%. The downside scenarios for a 35% equities portfolio (with global equities) are -4.9% and -8.0% respectively. The questionnaire results indicated 5.0% was approximately the largest loss that could be tolerated in a given year (some respondents thought lower and some higher). Based on these projected downside scenarios, it's not clear the Committee would be comfortable increasing the overall risk of the Compensation Fund Portfolio.

- **Recommendation:** Besides the discrepancy between the return target required to support outflows and the portfolio's current expected return, there wasn't much evidence in the risk tolerance assessment to suggest the Committee would be comfortable taking significantly more risk in the Compensation Fund Portfolio. However, by diversifying into global equities, the portfolio can take more equity exposure with improved downside scenarios. To assist the Committee with the decision of selecting an asset mix, we recommend you start by considering the merits and risks of implementing an asset mix of 35% equities and 65% fixed income (the 35/65 mix illustrated in the report, which includes global equities). In order to do so, please answer the following questions:

    1. Is the median expected return of 3.3% (annualized) over the 10-year horizon acceptable? This is an improvement from the Current Policy Mix's median expected return of 2.9%. Keep in mind, it is lower than the target return of 5.4% required to support a $5 million outflow every five years and keep up with inflation. However, the probability of achieving the target return over the 10-year period would improve from 7.4% to 11.2%.

    2. Are you comfortable accepting a portfolio loss of 4.9% in a given year? According to the simulation results, 5% of the time this mix will produce a return of -4.9% or worse in a given year. Are you comfortable accepting a loss of 8.0% in a given year? The results indicate that 1% of the time this mix will produce a result return of -8.0% or worse.

    3. Are you comfortable accepting a loss of 3.0% (-0.6% annualized) over a 5-year horizon? The simulation results suggest 5% of the time this mix will produce that result or worse. Are you comfortable accepting a loss of 10.1% (-2.1% annualized) over a given 5-year horizon? The results indicate that 1% of the time this mix will produce a result return of -10.1% or worse.

    If the answer to either question 2 or 3 is 'no', you may need to move on to evaluating a less risky asset mix such as the 30% equities / 70% fixed income mix. If the answer to question 1 is 'no', you may need to move on to evaluating a riskier asset mix such as the 40% equities / 60% fixed income.

E&O Fund Portfolio

- It's our understanding that the nature of the E&O Fund Portfolio may change as the restriction related to the $15 million backstop for potential claims has been removed and the Law Society will be considering how it will use the funds in the near future. The decisions made will impact the investment objectives, liquidity requirements, and risk tolerance for this portfolio.

- Given the uncertainty around the E&O Fund and its time horizon, we do not think its possible to assess its risk tolerance at this time.

- **Recommendation:** Any money that might be spent in the short-term should not be allocated to equities.

SECTION II – SETTING OBJECTIVES & RISK TOLERANCE

The purpose of this exercise is to select a suitable asset mix for each of the Portfolios. Suitability can be evaluated from both a return and risk perspective. In other words, the Law Society should select an asset mix with a sufficient probability of achieving its goals, while exhibiting an acceptable level of risk.

To start, we need to identify a return objective and assess the risk tolerance of each Portfolio.

Setting the Target Return

One of the questions that needs to be answered is how much does the Law Society need or want to earn? Usually this is linked to the amount needed to support current or desired levels of spending from the portfolio. For some organizations, this might be referred to as a "required return". For the Law Society, which is less reliant on its investment income, it could be characterized as a target return or aspirational return. For the rest of this report, we will refer to it as a target return.

Building up the target return, we start with an inflation target. Most respondents to the risk tolerance questionnaire agreed it is important for the portfolios to keep up with inflation. Next, we can add a component to represent the portfolio's annual cash outflows.

For the General Fund, there have not been any outflows from the long-term portfolio over the last 10 years. The money has been available to cover unplanned expenditures related to the operations of the organization but has not been needed. However, the organization's operating budget has sourced annual disbursements from the E&O Portfolio each year, typically ranging from $600,000 to $1,200,000. Given the uncertainty around the E&O Portfolio moving forward, it may be prudent to assume those disbursements will be sourced from the General Fund Portfolio in the future, at least for our modelling purposes.

Target Return ($600k spend) = inflation expectations + spending expectations
= 2% + 3.4%
= 5.4%

Target Return ($1.2m spend) = 2% + 6.8%
= 8.8%

On pages 33 and 34 of the Appendix, the simulation results indicate the probability of achieving an 8.8% annualized long-term return is very low. This is an unrealistic return target in the current capital market environment. Therefore, we'll focus on the 5.4% target return for this report.

For the Compensation Fund, portfolio disbursements are typically lumpy and unpredictable. As shown in the cash flow table below, there have been two disbursements of $5 million each, over the last 10 years. The average annual disbursement over the last 10 years is $1 million. We can also calculate a target return using the five-year average annual disbursement of $2 million, however this will result in an unattainable return target.

Compensation Fund Cash Flows

Year	Net Cash Flow	Year	Net Cash Flow
2019	$ -	**2014**	$ -
2018	$ -	**2013**	$ -
2017	$ (5,000,000)	**2012**	$ -
2016	$ -	**2011**	$ -
2015	$ (5,000,000)	**2010**	$ -

Coincidentally, the disbursement assumptions for the General Fund and Compensation Fund produce the same target returns based on the market value of each portfolio at Sept 30, 2020. Again, the target return of 8.8% is not realistic so we will focus on the 5.4% return target for the Compensation Fund as well. However, we will simulate the ending balances of the Compensation Fund Portfolio which will take into account the full $10 million outflow.

Target Return ($1m spend) = 2% + 3.4%
= 5.4%

Target Return ($2m spend) = 2% + 6.8%
= 8.8%

We note the investment policy indicates that the objective of generating investment returns to assist the Law Society in funding its programs is secondary in priority to capital preservation.

Risk Tolerance Assessment

Risk tolerance encapsulates the amount of uncertainty that someone is willing to accept when making a financial decision. Risk tolerance is a relative measure and unique to each situation. It is composed of two independent yet related items which must be balanced with the desire to earn high returns: the willingness to take risk and the ability to take risk.

Please refer to the materials from the October 7 meeting for a summary of the examination of factors affecting risk tolerance.

In Section III, the results from the asset mix modelling and return forecasts are presented. The expected downside scenarios produced from each asset mix can serve as an indicator of its suitability from a risk perspective.

The questionnaire asked respondents to identify the largest tolerable loss in a given year, as well as a given 5-year period. The median questionnaire result for each portfolio was as follows:

	Largest Tolerable Loss	
	1-year	**5-year**
General Fund	8.8%	5.0% (or 1.0% annualized)
Compensation Fund	5.0%	5.0% (or 1.0% annualized)

Philosophy & Risk Tolerance Statements

General Fund

As a not-for-profit, the Law Society prioritizes capital preservation over the pursuit of outsized investment returns. According to the investment policy, the primary objective of the portfolio is to preserve and enhance the real capital base. The secondary objective is to generate invest returns to assist the Law Society in funding its programs.

The Law Society takes a long-term approach towards investing the General Fund Portfolio while acknowledging that liquidity may be required from time to time.

The General Fund Portfolio should be positioned to fund unplanned expenditures and emerging spending. The Portfolio could also be used to fund annual disbursements to the operating budget (ranging from $600,000 to $1.2 million) if these disbursements will no longer be available from the E&O Fund. This will depend on how the Committee and Convocation decides to allocate the E&O Fund Portfolio.

The Law Society characterizes its financial capacity to withstand volatility as 'higher than average', but its willingness to withstand volatility as somewhat lower.

Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 9% in a given year in its pursuit of investment returns but something lower over a five-year horizon.

The General Fund Portfolio has a higher tolerance for risk than the Compensation Fund.

Compensation Fund

As a not-for-profit, the Law Society prioritizes capital preservation over the pursuit of outsized investment returns. According to the investment policy, the primary objective of the portfolio is to preserve and enhance the real capital base. The secondary objective is to generate invest returns to assist the Law Society in funding its programs.

The Law Society takes a long-term approach towards investing the Compensation Fund Portfolio while acknowledging that liquidity may be required from time to time.

Liquidity requirements comprise of lumpy and unpredictable claims activity and the Portfolio should be positioned accordingly. Given the magnitude of the cash outflows, the Compensation Fund Portfolio generally requires more liquidity than the General Fund Portfolio.

The Law Society characterizes its financial capacity to withstand volatility as 'higher than average', but its willingness to withstand volatility as somewhat lower, and particularly lower than the General Fund Portfolio.

Recognizing the uncertainty inherent in capital markets, the Law Society would generally be willing to tolerate a loss of around 5% in a given year in its pursuit of investment returns but something lower over a five-year horizon.

E&O Fund

It's our understanding that the nature of the E&O Fund Portfolio may change as the restriction related to the $15 million backstop for potential claims has been removed and the Law Society will be considering how it will use the funds in the near future. The decisions made will impact the investment objectives, liquidity requirements, and risk tolerance for this portfolio.

Given the uncertainty of the investment time horizon, it's not possible to assess the risk tolerance at this time.

SECTION III – ASSET MIX MODELING

Introduction to Modeling & Methodology

Studies have shown that the asset mix employed by an investor is the primary driver of risk and may determine between 80-90% of the variability of returns over time. Thus, setting the correct asset mix is the most important activity for the Committee in relating to risk and return for an investment program. The remainder of the variability is explained by factors such as investment manager selection and market timing.

In this section we examine the efficiency of the Current Policy Mix and the effect of adding additional asset classes in order to identify optimal asset mixes, from a risk and return perspective, as alternatives for consideration. We will then forecast the range of probable outcomes for each alternative asset mix with the goal of identifying the optimal portfolio that aligns with the Law Society's expectations for return and risk.

For this analysis we utilize two different but complementary techniques:

1. Resampled Efficient Frontier Analysis (using Mean-Variance Optimization)
2. Monte Carlo Simulation Analysis

For the efficient frontier analysis, we performed two cases:

1. Using only existing asset classes
2. Using additional asset classes which are not current employed (universe bonds and global equities)

See page 29 of the Appendix for a more detailed discussion of the methodologies utilized.

Capital Markets Assumptions Inputs Summary

Mean-variance optimization is an analytical method used to identify optimal asset mix portfolios from a risk-return perspective. The efficient frontier is the set of portfolios that have the best (or most efficient) risk / return characteristics of all the various combinations of asset classes possible. The results of the efficient frontier analysis can help the Law Society:

- Determine how efficient the current investment policy mix is, from a risk-return perspective.
- Assess the risk-reward benefits of adding new asset classes to the portfolio, such as 'Universe bonds' or global equities.
- Identify the spectrum of optimal asset mixes, known as the efficient frontier, to serve as a starting point for other portfolio asset mixes under consideration

To complete an efficient frontier analysis (see Appendix B for an introduction to the concept / techniques), several assumptions need to be established and input into the optimizer.

The capital market assumptions below are Proteus' current base projections and are meant to represent an estimate of medium to long term (7 to 10+ years) asset class returns. Projections take into account historical asset class returns, asset class relationships and current market characteristics. The current estimated returns for these asset classes are lower than historical returns and we have made some modifications to the historical correlations to provide a greater degree of conservatism in the modeling. As with all projections, expected returns should be revisited from time-to-time in light of actual experience and prevailing conditions.

Asset Classes	Expected Return	Standard Deviation
Short Term Bonds	1.25	2.75
Universe Bonds	1.25	4.00
Canadian Equity	6.00	15.50
Global Equity	6.50	14.50

Legend

Expected Return – Long term projected average rate of return.

Standard Deviation – Measures the variability (or volatility) of period returns above and below the average return.

Correlation - A mathematical representation of the tendency of two funds' returns to move in the same direction. Higher (1.0 is the maximum) correlation statistics represent very high similarity in return patterns and lower values (-1.0 is the minimum) represent the tendency of returns to move in opposite directions. A Correlation Matrix (next page) is a table which shows how each asset class correlates to each other.

Correlation Matrix

	Short Term Bonds	Universe Bonds	Canadian Equity	Global Equity
Short Term Bonds	1.00	0.90	0.20	0.10
Universe Bonds	0.90	1.00	0.20	0.25
Canadian Equity	0.20	0.20	1.00	0.70
Global Equity	0.10	0.25	0.70	1.00

The correlation assumptions utilized in the modeling exercise are Proteus' forward-looking correlation assumptions, based on what our research would indicate to be reasonable.

Alternative Asset Mixes

Asset Class	Current Policy Mix	0/100	10/90	20/80	30/70	40/60	50/50	60/40	70/30	80/20	90/10	100/0
Short Term Bonds	70.0%	100.0%	90.0%	80.0%	70.0%	60.0%	50.0%	40.0%	30.0%	20.0%	10.0%	0.0%
Canadian Equity	30.0%	0.0%	5.0%	7.0%	10.0%	13.0%	17.0%	20.0%	23.0%	27.0%	30.0%	33.0%
Global Equity	0.0%	0.0%	5.0%	13.0%	20.0%	27.0%	33.0%	40.0%	47.0%	53.0%	60.0%	67.0%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

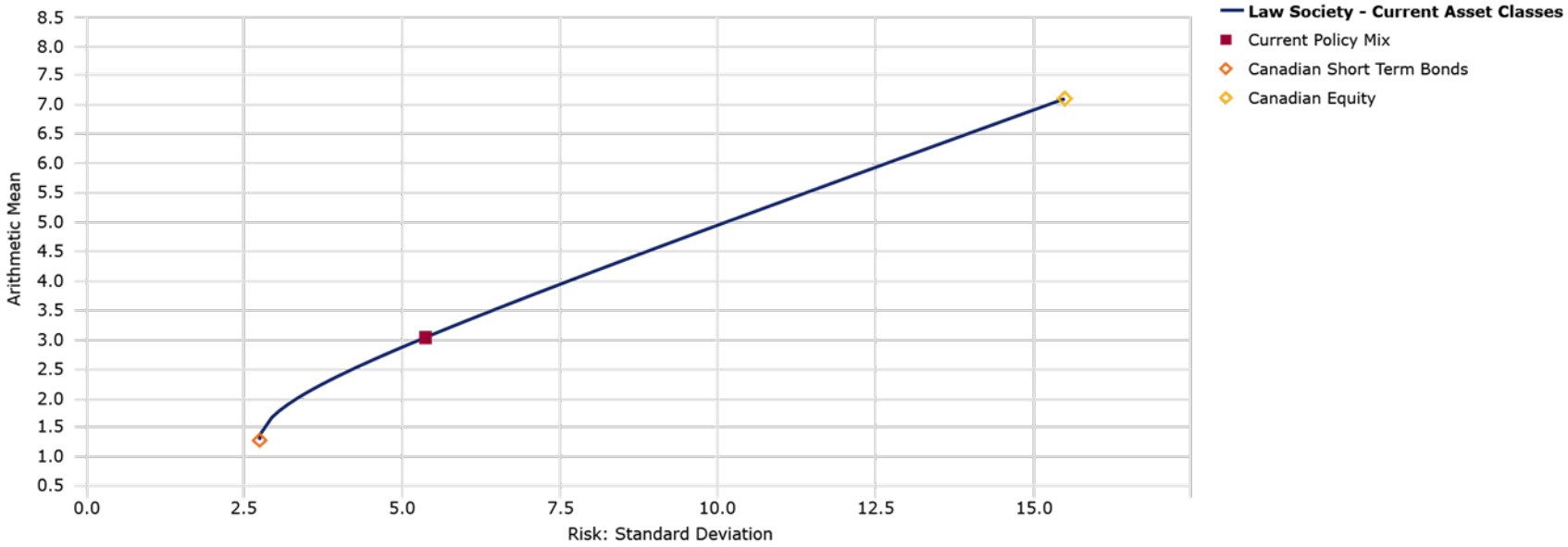
We have modelled the results for several asset classes across the risk spectrum. The labels indicate the proportion of equities to fixed income. For example, the 30/70 mix is comprised of a 30% weighting to equities and 70% weighting to fixed income. We have included this broad of a range to give the Law Society a full picture of the possible outcomes. However, in some sections we will narrow down the focus to asset classes that are reasonable alternatives given the Law Society's needs and preferences.

The results of the analysis indicated there was no benefit to adding 'Universe Bonds' at this time so we have not included them in our alternative mixes.

Efficient Frontier Analysis

Current Asset Classes

Efficient Frontier

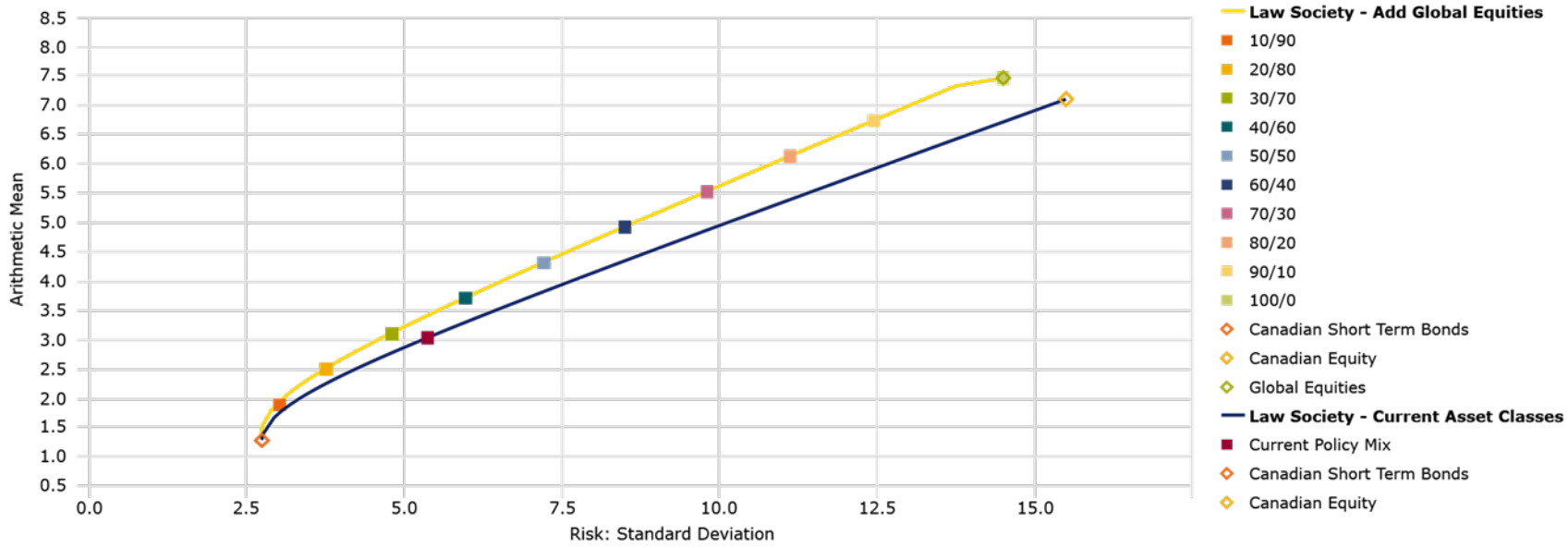


Using our capital market assumptions, the mean variance optimization calculates the expected risk and return for every possible asset mix combination that can be constructed with the current asset classes, Canadian equities and short term bonds. These calculations can be plotted graphically with expected average return on the Y-axis and expected average risk (standard deviation) on the X-axis. The efficient frontier (blue line) is made up of all optimal portfolios that maximize expected return at a given level of risk.

This will serve as the baseline for comparing to the efficient frontier with other asset classes.

Addition of Global Equities

In this updated efficient frontier analysis, we included global equities in the model as a new potential asset class. This efficient frontier (gold line) has moved up and to the left from its original position (blue line). This indicates the effect of adding global equities is an improved risk-reward ratio. The improvement is more pronounced for portfolios further along the risk curve.



We've also plotted the alternative portfolios which can all be found along the efficient frontier.

Conclusions

- Adding global equities to the asset classes under consideration in the policy would improve the risk-reward trade-off. However, the incremental benefit is greater for portfolios with higher equity allocations.
- There is no expected benefit to adding universe bonds to the portfolio at this time. Refer to the Appendix for the efficient frontier graph. The remainder of the analysis will exclude this asset class from consideration.
- The equity components of the efficient mixes include 1/3 exposure to Canadian equities and 2/3 to global equities.

Simulation of Asset Mix Results (Return Forecast)

Inputs Summary

Monte Carlo simulations help estimate the probability of possible future returns and wealth values over time. We have simulated the results for some alternative asset mixes for the Law Society's consideration. Refer to pages 35-36 of the Appendix for the results across the full risk spectrum of mixes.

Monte Carlo simulations can also incorporate the effects of ongoing cash inflows and disbursements (included later in the wealth forecast).

Asset Mix Choices:	Various Alternative Mixes
Simulations / Period:	10,000
Time Periods:	1-, 3-, 5-, 10-year periods

Return Forecast Percentiles (Annualized)

	Percentile				
	75th	50th	25th	5th	1st
1 Year					
Current Policy Mix	6.3	2.8	-0.7	-5.3	-7.9
20/80	4.9	2.3	-0.1	-3.4	-5.8
30/70	6.1	2.9	-0.2	-4.4	-7.1
35/65	6.8	3.1	-0.4	-4.9	-8.0
40/60	7.4	3.4	-0.5	-5.5	-8.9
50/50	8.8	3.9	-0.7	-6.8	-10.8
60/40	10.2	4.5	-1.0	-8.1	-13.0
75/25	12.2	5.2	-1.5	-10.4	-15.9
3 Year					
Current Policy Mix	5.0	2.8	0.8	-1.9	-3.5
20/80	3.9	2.4	0.9	-1.1	-2.4
30/70	4.8	2.9	1.1	-1.4	-3.0
35/65	5.3	3.2	1.2	-1.6	-3.4
40/60	5.8	3.5	1.2	-1.9	-3.9
50/50	6.9	4.0	1.3	-2.5	-4.9
60/40	7.9	4.5	1.3	-3.1	-5.8
75/25	9.4	5.2	1.4	-4.0	-7.5
5 Year					
Current Policy Mix	4.5	2.9	1.3	-0.9	-2.3
20/80	3.6	2.4	1.3	-0.3	-1.3
30/70	4.4	3.0	1.5	-0.5	-1.8
35/65	4.9	3.2	1.6	-0.6	-2.1
40/60	5.3	3.5	1.7	-0.7	-2.4
50/50	6.2	4.0	1.9	-1.0	-3.0
60/40	7.1	4.5	2.0	-1.4	-3.7
75/25	8.5	5.2	2.2	-2.0	-4.8
10 Year					
Current Policy Mix	4.1	2.9	1.7	0.2	-0.8
20/80	3.2	2.4	1.6	0.5	-0.3
30/70	4.0	3.0	2.0	0.5	-0.4
35/65	4.4	3.3	2.1	0.5	-0.5
40/60	4.8	3.5	2.3	0.5	-0.7
50/50	5.6	4.1	2.5	0.4	-1.0
60/40	6.4	4.6	2.8	0.3	-1.4
75/25	7.6	5.4	3.1	0.0	-1.9

Interpreting the Results

The table on the previous page presents the forecasted returns (annualized percentages) for a few assets mixes under consideration from the Monte Carlo simulation. We've simulated the returns over 1-, 3-, 5-, and 10-year periods.

The purpose of the simulation is to help the Law Society understand the range of probable return outcomes for various asset mixes across the risk spectrum. The columns represent different percentiles or probabilities. For example, the 10-year return of the Current Policy Mix is 2.9% (annualized) at the 50th percentile. This means half the simulated outcomes resulted in returns above 2.9% and half the outcomes were below 2.9%.

Percentile	Outcome
75th Percentile	Above Average Outcome
50th Percentile	Median Outcome
25th Percentile	Below Average Outcome
5th Percentile	Bad Outcome
1st Percentile	Catastrophic Outcome

In evaluating an asset mix's suitability for the Law Society's Portfolios, we recommend focusing on the median and downside projected outcomes. The 50th percentile return serves as a logical starting point for aligning with the Fund's target return. However, it's also important to understand the downside risks or the bad and worst probable outcomes. Therefore, we've highlighted the 5th percentile and 1st percentile outcomes. While the probability of experiencing a catastrophic outcome is low (1%), it's important and prudent for investors to understand the full range of possible outcomes when selecting an asset mix. **Ultimately, the Committee needs to be comfortable with the level of risk inherent in the asset mix it chooses, and that it can withstand these tail risk events if they do occur.**

Observations

- The Current Policy Mix's expected 10-year return of 2.9% annualized outpaces inflation but falls significantly short of the target return of 5.4%. The General Fund and Compensation Fund portfolios would need to take materially more equity risk to support historical levels of outflows. In the following wealth simulations, we have simulated the value of the portfolios over time to show the gradual decline after cash outflows.

- In order to attain a 50% probability of achieving the target return, an asset mix of approximately 25% short-term bonds and 75% equities would need to be selected. However, the downside scenarios for this asset mix are much worse than what most respondents considered tolerable over a given one- or five-year period. The Committee will need to either adjust what they consider to be a tolerable loss (i.e. accept more risk), or settle for a lower return target.

- Comparing the results of the Current Policy Mix with the 30/70 portfolio shows the benefit of diversifying the equity sleeve globally. The expected return (50th percentile) slightly improves but the downside scenarios are also better outcomes. The expected benefit would be higher for portfolios with higher exposure to equities. Even the asset mix with 35% equities has improved downside scenarios versus the Current Policy Mix.

- A bad year's return for the Current Policy Mix (5th percentile) is expected to be -5.3%. A catastrophic year's return (1st percentile) would be -7.9%. This improves to -4.4% and -7.1% respectively for the 30/70 portfolio which includes global equities. Therefore, from the perspective of the largest tolerable loss in a given year (8.8% for General Fund, 5.0% for Compensation Fund), the Law Society may be comfortable taking additional risk in the General Fund Portfolio in the pursuit of higher returns.

- To provide some recent context to the above numbers, the one-year return for the General Fund Portfolio as at March 31, 2020 (post-COVID crash) was -5.6%. However, the Current Policy Mix return over the same period was only -1.9% as much of the loss was attributable to active management and FGP's underperformance.

- The questionnaire results indicated the Committee is more risk averse over a five-year horizon. All the asset mixes we modelled would exceed the largest tolerable loss (1% annualized for both General Fund and Compensation Fund) at the 1st percentile. Now that the Committee has a better understanding of the range of possible outcomes, it may need to adjust its expectations for the worst possible outcomes. Looking at the 5th percentile (1-in-20 year event), the 50/50 investment mix aligns with the 1% annualized acceptable loss.

Simulation of Asset Mix Results (Wealth Forecast)

Inputs Summary

The Wealth forecasts simulate the ending market values of the Portfolios across different asset mix choices. The first wealth simulation presents the results for the General Fund Portfolio

Asset Mix Choices:	Various Alternative Mixes
Initial Assets:	$17.6 (Approximate level of General Fund Portfolio assets as of Sept 30, 2020 in millions)
Cash Flows:	$0.6 annual outflow (Representing $600,000 annual disbursement in millions)
Simulations / Period:	10,000
Time Periods:	1-, 3-, 5-, 10-year periods

General Fund Wealth Forecast Percentiles ($600k Spend)

	Percentile				
	75th	50th	25th	5th	1st
Current Policy Mix					
1 Year	18.1	17.5	16.9	16.1	15.7
3 Year	18.4	17.2	16.2	14.9	14.1
5 Year	18.5	17.0	15.6	13.9	12.9
10 Year	18.7	16.3	14.3	11.8	10.5
20/80					
1 Year	17.8	17.4	17.0	16.4	16.0
3 Year	17.8	17.0	16.3	15.3	14.7
5 Year	17.6	16.6	15.6	14.4	13.6
10 Year	17.0	15.5	14.1	12.3	11.2
30/70					
1 Year	18.0	17.5	17.0	16.3	15.8
3 Year	18.3	17.3	16.3	15.1	14.4
5 Year	18.4	17.1	15.8	14.2	13.2
10 Year	18.6	16.5	14.7	12.4	10.9
40/60					
1 Year	18.3	17.6	16.9	16.1	15.5
3 Year	18.8	17.6	16.4	14.9	13.9
5 Year	19.3	17.6	16.0	14.1	12.8
10 Year	20.4	17.6	15.2	12.3	10.6
50/50					
1 Year	18.5	17.7	16.9	15.8	15.2
3 Year	19.4	17.8	16.4	14.6	13.5
5 Year	20.2	18.0	16.1	13.8	12.4
10 Year	22.2	18.7	15.7	12.1	10.2
60/40					
1 Year	18.7	17.8	16.8	15.6	14.8
3 Year	20.0	18.1	16.5	14.3	13.1
5 Year	21.1	18.5	16.2	13.5	11.9
10 Year	24.2	19.8	16.1	12.0	9.8

Interpreting the results

The table on the previous page presents the forecasted ending balance of the General Fund Portfolio for several asset mixes from the Monte Carlo simulation. These results are after $600,000 in annual outflows and are not adjusted for inflation.

Observations

- The riskier portfolios with more equity produce a wider range of probable outcomes.
- Focusing on the longer-term results, the General Fund Portfolio balance is expected to decline over time if it stays invested in the Current Policy Mix. There would be an additional decline in its purchasing power as these figures are nominal and have not been adjusted for inflation.
- If the Portfolio invested in the 40/60 mix, the portfolio balance is expected to remain relatively flat over time, after taking into account the annual spending. Again, there would still be an erosion of purchasing power due to inflation.
- The General Fund Portfolio would need to invest in the 50/50 or 60/40 mix to be expected to grow from its current level of $17.6 million.

Simulation of Asset Mix Results (Wealth Forecast)

Inputs Summary

The Wealth forecasts simulate the ending market values of the Portfolios across different asset mix choices. This wealth simulation presents the results for the Compensation Fund Portfolio. We've removed the 60/40 mix and presented the results of the 10/90 mix given that the Compensation Fund has a lower tolerance for risk.

Asset Mix Choices:	Various Alternative Mixes
Initial Assets:	$29.3 (Approximate level of Compensation Fund Portfolio assets as of Sept 30, 2020 in millions)
Cash Flows:	$5 million outflow at beginning of year 1 and 5
Simulations / Period:	10,000
Time Periods:	1-, 3-, 5-, 10-year periods

Compensation Fund Portfolio Wealth Forecast Percentiles ($5m outflow in years 1 and 5)

	Percentile				
	75th	50th	25th	5th	1st
1 Year					
Current Policy Mix	25.8	25.0	24.1	23.0	22.4
10/90	25.2	24.7	24.3	23.6	23.1
20/80	25.5	24.9	24.3	23.5	22.9
30/70	25.8	25.0	24.2	23.2	22.6
35/65	25.9	25.1	24.2	23.1	22.4
40/60	26.1	25.1	24.2	23.0	22.1
50/50	26.4	25.2	24.1	22.6	21.7
3 Year					
Current Policy Mix	28.1	26.4	24.9	22.9	21.8
10/90	26.6	25.7	24.8	23.6	22.8
20/80	27.2	26.1	25.0	23.5	22.6
30/70	28.0	26.5	25.1	23.3	22.2
35/65	28.4	26.7	25.2	23.1	21.9
40/60	28.8	26.9	25.2	22.9	21.5
50/50	29.7	27.3	25.3	22.5	20.9
5 Year					
Current Policy Mix	25.1	22.8	20.8	18.2	16.7
10/90	22.7	21.5	20.4	18.9	17.9
20/80	23.8	22.2	20.8	18.9	17.8
30/70	25.0	23.0	21.1	18.8	17.3
35/65	25.6	23.3	21.2	18.6	16.9
40/60	26.2	23.7	21.3	18.5	16.6
50/50	27.6	24.4	21.5	18.1	16.0
10 Year					
Current Policy Mix	29.9	26.4	23.3	19.6	17.6
10/90	25.3	23.6	22.0	19.9	18.6
20/80	27.4	25.1	23.0	20.3	18.7
30/70	29.7	26.6	23.9	20.5	18.3
35/65	31.0	27.4	24.3	20.4	18.1
40/60	32.3	28.2	24.7	20.3	17.9
50/50	35.1	29.8	25.4	20.1	17.3

Observations

- Again, the riskier portfolios with more equity produce a wider range of probable outcomes.

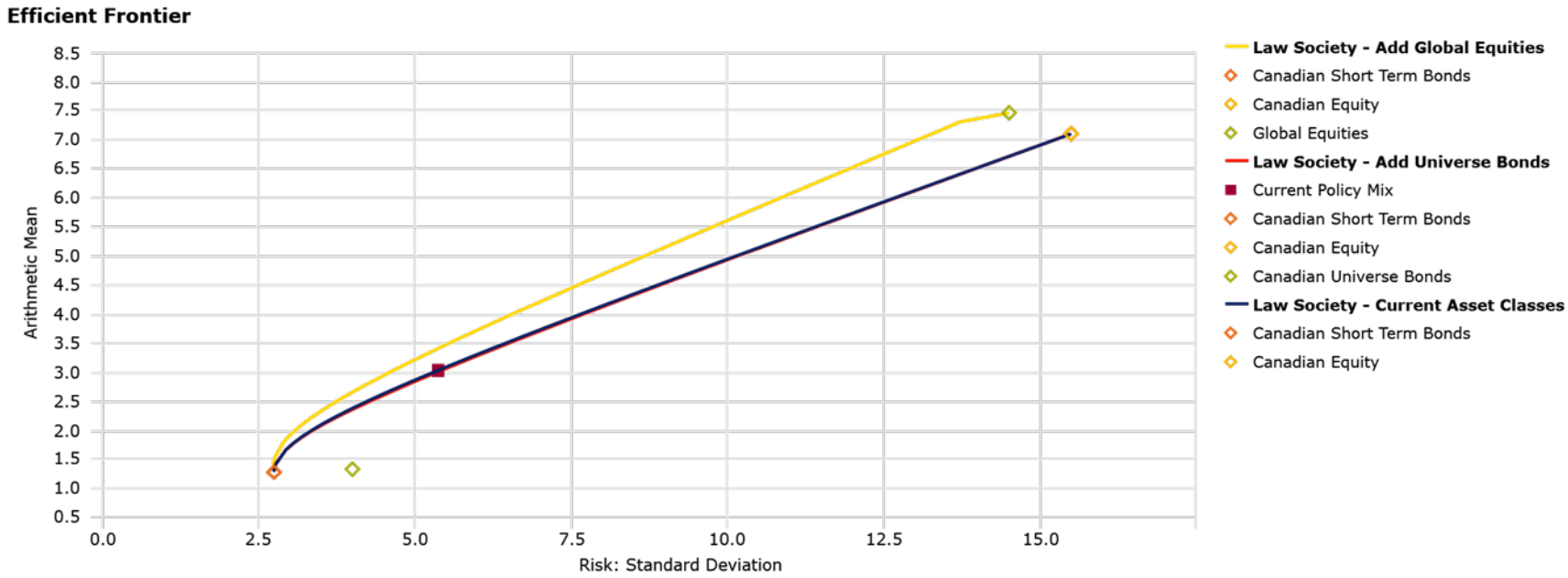
- Focusing on the longer-term results, the Compensation Fund Portfolio balance is expected to decline over time if it stays invested in the Current Policy Mix. There would be an additional decline in its purchasing power as these figures are nominal and have not been adjusted for inflation.

- The Compensation Fund Portfolio would need to invest in the 50/50 mix to be expected to grow from its current level of $29.3 million.

- Over the 10-year horizon, the 35/65 portfolio is expected to have a $1 million higher ending balance than the Current Policy Mix (according to 50th percentile). The downside scenarios are also expected to have higher ending balances.

APPENDIX

Add Universe Bonds to Efficient Frontier



The Law Society's portfolios are currently invested in short-term bonds with a duration ranging from one to five years. In this updated efficient frontier analysis, we included "Universe" bonds in the model as a new potential asset class. Universe bond mandates represent the broader Canadian investment-grade bond market and have a higher duration than short-term bond mandates.

The red frontier includes current asset classes and adds universe bonds. The updated efficient frontier did not move from its previous position (you can barely see the red frontier under the original blue one). Therefore, there is no expected benefit to adding universe bonds to the portfolio at this time. Looking at the capital market assumptions, this is intuitive as the universe bonds asset class does not offer additional expected return over short-term bonds but has higher expected risk.

MEAN-VARIANCE & EFFICIENT FRONTIER ANALYSIS DETAIL

Mean-Variance Optimization Methodology

According to mean-variance theory, in determining a strategic asset mix, an investor should allocate assets among the portfolios that align with the investor's risk tolerance. Using the framework of the Capital Asset Pricing Model and Modern Portfolio Theory, a disciplined quantitative approach can be used to help construct the portfolio. The process will identify the most efficient portfolio allocations, which have the highest possible return for a given level of risk, or the lowest possible risk for a given return; efficient portfolios make the most efficient use of risk.

Efficient portfolios plot graphically on the efficient frontier, which is part of the mean-variance frontier. Each portfolio on the mean-variance frontier represents the portfolio with the least variance of the return for its level of expected return. The efficient frontier looks only at the portfolios that dominate all others at any given level of expected return or risk, eliminating all others in the feasibility set.

The key in determining a useful efficient frontier is in the accuracy of the inputs (expected return, expected risk, expected correlation). The recommended asset allocation is highly sensitive to changes in the inputs and estimation error. The most important input is the expected return assumptions for each asset class, which has been estimated to be roughly 10 times as important as the accuracy in variances and 20 times more important than the accuracy of the covariance or correlations. A small change specifically in the expected return assumptions can have a drastic effect on the asset allocation of the portfolio. The solution is to conduct sensitivity analysis or the concept of resampling discussed below.

The efficient frontier has other limitations. Most notably, the method assumes returns are normally distributed. Real world evidence suggests that security returns are not normally distributed and experience more extreme movements (in the tail of the bell curve) than a normal distribution would suggest.

The limitation of the efficient frontier in extreme events is driven by a change in the way assets relate to each other (correlation) under such circumstances. The market collapse in 2008 caused otherwise distinct markets to behave in the same way (they nearly all collapsed). Portfolio managers who expected foreign diversification to cushion a drop in domestic markets saw correlations, which were much lower prior to the collapse, approach one. Historical data does not necessarily hold true in the future and an appropriate weight must be given to intuitive projections. Likewise, mean-variance optimization is a single-horizon model meaning that it is limited in its ability to measure risk within the investment horizon due to correlations changing during the period. Furthermore, the

framework does not consider such attributes as liquidity risk and marketability which can cause rebalancing issues over time. Controlling for these factors is more of an art than a science.

Despite the limitations listed, Proteus believes the model provides valuable insight into the risk/return parameters of the portfolio. Assumptions about the asset class behaviour are still required for the mean-variance analysis and the framework allows practitioners a familiar tool for analyzing portfolios. The limitation of the base metrics established in volatility and correlation contribute fractionally to the estimation error in the model. The crux of any estimation error will most likely result from the expected return assumption.

Qualitative aspects or judgement can be incorporated by applying reasonable constraints to asset class allocations. For example, limiting an asset class to 30 percent of the portfolio can express a preference for diversification. However, too many constraints can cause the model to reflect the investor's biases.

Resampled Efficient Frontier Analysis Overview

Portfolio theory and research demonstrate the benefits of diversification both at the individual security level (multiple securities in a fund) and at the asset class level (multiple asset classes in a portfolio). Asset classes with low or negative correlation provide diversification benefits. Efficient Frontier analysis is a mathematical process designed to help determine appropriate strategic asset allocations based on various inputs. As forecasting expected returns, volatility and correlations is prone to estimation error, confidence in the results of a single mean-variance optimization can be lacking. Therefore, we re-run the optimization many times using a range of inputs around the point estimates to gauge the results' sensitivity to variation in the inputs. The simulation generates a set of simulated returns and produces the weights or allocations for each set. Information from each simulated set is integrated into one frontier called the resampled efficient frontier. It is defined as the portfolio defined by the average weights on each asset class for the simulated efficient portfolios with that return rank.

Portfolios resulting from the resampled efficient frontier approach tend to be more diversified and more stable through time than those on a conventional frontier.

- **Efficient Frontier Theory** – An investor will want to invest in an asset mix that has the highest return potential for a given risk level (measured by standard deviation). The traditional techniques used to model efficient frontiers assume that the parameters for optimization (expected return, standard deviation and correlation) are known exactly.

- **Investor Reality** – Actual forward looking risk / return parameters can only be estimated and if the estimations are incorrect, then the output of the optimization can be misleading.

- **Solution** - Resampled Efficiency provides a mechanism for using uncertain information in portfolio optimization.

- Resampling calculates portfolios that are close to efficient under a large number of possible future scenarios, not just one.

Our optimizer runs 250 different scenarios and produces the average efficient frontier.

SIMULATION ANALYSIS DETAIL

Monte Carlo Simulation Overview

Monte Carlo Simulation is a computer based technique that involves the calculation and statistical description of the outcomes resulting in a particular strategic asset allocation under random scenarios for investment return, inflation, and other relevant variables. The method provides information about the range of possible investment results from a given allocation over a specified time horizon, including the probability that the outcome will occur. The simulation technique compliments the mean-variance optimization. Where mean-variance optimization is a method based on calculus, Monte Carlo simulation is a statistical tool. The tool examines a range of possible outcomes and allows for issues that are difficult to formulate analytically, such as the effect of rebalancing.

The following pages provide additional simulation results.

Probability of Achieving Target Return (%)

	Target Return	
	5.4%	8.8%
1 Year		
Current Policy Mix	30.6	13.6
0/100	6.5	0.4
10/90	11.9	1.3
20/80	21.3	4.9
30/70	29.8	11.6
35/65	32.9	15.1
40/60	36.1	18.9
50/50	41.2	25.1
60/40	44.9	30.3
70/30	48.2	34.8
75/25	49.5	36.3
80/20	50.4	38.2
90/10	52.1	40.9
100/0	53.5	43.0
3 Year		
Current Policy Mix	21.0	3.7
0/100	0.6	0.0
10/90	2.7	0.0
20/80	9.4	0.3
30/70	19.6	2.4
35/65	24.3	4.5
40/60	29.2	7.5
50/50	37.4	13.7
60/40	43.0	19.7
70/30	47.2	25.5
75/25	48.8	28.3
80/20	50.5	31.1
90/10	53.6	35.6
100/0	55.3	38.8

Probability of Achieving Target Return (%)

	Target Return	
	5.4%	8.8%
5 Year		
Current Policy Mix	15.1	1.0
0/100	0.0	0.0
10/90	0.6	0.0
20/80	4.3	0.0
30/70	13.2	0.5
35/65	18.8	1.4
40/60	24.5	3.2
50/50	33.7	7.9
60/40	41.3	13.5
70/30	46.8	19.9
75/25	48.9	23.0
80/20	50.8	25.7
90/10	54.0	30.7
100/0	56.3	35.4
10 Year		
Current Policy Mix	7.4	0.0
0/100	0.0	0.0
10/90	0.0	0.0
20/80	0.8	0.0
30/70	6.2	0.0
35/65	11.2	0.1
40/60	17.0	0.4
50/50	28.3	2.2
60/40	38.1	6.5
70/30	46.4	12.0
75/25	49.3	15.3
80/20	52.1	18.7
90/10	56.8	24.7
100/0	60.4	30.1

Return Forecast Percentiles (Annualized)

	Percentile				
	75th	50th	25th	5th	1st
1 Year					
Current Policy Mix	6.3	2.8	-0.7	-5.3	-7.9
0/100	3.0	1.2	-0.6	-3.3	-4.8
10/90	3.8	1.7	-0.2	-3.0	-4.9
20/80	4.9	2.3	-0.1	-3.4	-5.8
30/70	6.1	2.9	-0.2	-4.4	-7.1
40/60	7.4	3.4	-0.5	-5.5	-8.9
50/50	8.8	3.9	-0.7	-6.8	-10.8
60/40	10.2	4.5	-1.0	-8.1	-13.0
70/30	11.5	5.0	-1.3	-9.6	-15.0
75/25	12.2	5.2	-1.5	-10.4	-15.9
80/20	12.9	5.5	-1.7	-11.1	-16.8
90/10	14.3	6.0	-2.0	-12.3	-18.9
100/0	15.8	6.6	-2.2	-13.8	-20.9
3 Year					
Current Policy Mix	5.0	2.8	0.8	-1.9	-3.5
0/100	2.3	1.2	0.2	-1.3	-2.3
10/90	3.0	1.8	0.7	-1.0	-2.1
20/80	3.9	2.4	0.9	-1.1	-2.4
30/70	4.8	2.9	1.1	-1.4	-3.0
40/60	5.8	3.5	1.2	-1.9	-3.9
50/50	6.9	4.0	1.3	-2.5	-4.9
60/40	7.9	4.5	1.3	-3.1	-5.8
70/30	8.9	5.0	1.4	-3.7	-6.9
75/25	9.4	5.2	1.4	-4.0	-7.5
80/20	9.9	5.5	1.4	-4.4	-8.0
90/10	10.9	6.0	1.4	-5.0	-9.0
100/0	11.9	6.5	1.4	-5.7	-10.2

Return Forecast Percentiles (Annualized)

	Percentile				
	75th	50th	25th	5th	1st
5 Year					
Current Policy Mix	4.5	2.9	1.3	-0.9	-2.3
0/100	2.1	1.2	0.4	-0.8	-1.6
10/90	2.8	1.8	0.9	-0.3	-1.2
20/80	3.6	2.4	1.3	-0.3	-1.3
30/70	4.4	3.0	1.5	-0.5	-1.8
40/60	5.3	3.5	1.7	-0.7	-2.4
50/50	6.2	4.0	1.9	-1.0	-3.0
60/40	7.1	4.5	2.0	-1.4	-3.7
70/30	8.0	5.0	2.1	-1.8	-4.4
75/25	8.5	5.2	2.2	-2.0	-4.8
80/20	8.9	5.5	2.2	-2.2	-5.2
90/10	9.8	6.0	2.3	-2.6	-6.0
100/0	10.7	6.4	2.3	-3.1	-6.8
10 Year					
Current Policy Mix	4.1	2.9	1.7	0.2	-0.8
0/100	1.8	1.2	0.7	-0.2	-0.8
10/90	2.5	1.8	1.2	0.3	-0.3
20/80	3.2	2.4	1.6	0.5	-0.3
30/70	4.0	3.0	2.0	0.5	-0.4
40/60	4.8	3.5	2.3	0.5	-0.7
50/50	5.6	4.1	2.5	0.4	-1.0
60/40	6.4	4.6	2.8	0.3	-1.4
70/30	7.2	5.1	3.0	0.1	-1.7
75/25	7.6	5.4	3.1	0.0	-1.9
80/20	8.0	5.6	3.2	-0.1	-2.0
90/10	8.8	6.1	3.4	-0.3	-2.5
100/0	9.5	6.5	3.6	-0.5	-2.9

FOR INFORMATION

LAWPRO Financial Statements for the Three Months ended March 31, 2021

The Audit & Finance Committee recommends that Convocation receive the first 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 a quarterly financial reporting to the shareholder.

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 THREE MONTHS ENDED MARCH 31, 2021

Table of Contents

Financial Overview

Financial information presented in this report includes LAWPRO's financial results for the three months ended March 31, 2021 (Q1 2021), and the financial position as at March 31, 2021. Reference to budget is for the same period, and reference to prior year is for the same period in 2020. Please refer to exhibits at the end of this report in conjunction with the commentary. The highlights are as follows:

Financial results for the three months ended March 31, 2021

- **Net Earned Premiums** of $27.8M which was 8% higher than budget ($25.8M) and 9% greater than prior year ($25.6M). Variance to budget was due to higher transaction levies for the Ontario mandatory program and higher TitlePLUS premium. Q1 2021 was higher than prior year due to more FPEs for the Ontario mandatory program and higher TitlePLUS premiums

- **Net Claims Incurred** of $29.2M was 3% or $0.8M lower than budget ($30.0M) and 10% or $3.4M lower than prior year ($32.6 M). The changes in discount rate ($7.2M) and PfAD rate for 2020 ($1.1M) contributed to a net favorable development of $8.3M

- **Underwriting Loss** of $7.8M was $3.5M or 31% better than budget ($11.3M loss), and significantly better than prior year ($13.0M loss). The significant drivers for underwriting results were favorable premiums, claims and general expenses

- **Investment Loss** of $3.0M was $1.3M better than the prior year ($4.4M loss), and $6.1M lower than budget income ($3.1M). The $4.6M loss in the Asset Liability Matching portfolio was the main driver

- **Net loss before Tax** of ($10.8M) was worse than budget by $2.6M ($8.2M loss) but better than prior year ($17.4M loss). The $2.6M difference between actual and budget is attributable to investment loss ($6.1M of the difference) partially offset by underwriting income ($3.5M of the difference)

- **Net Loss** of $7.9M was $2.0M worse than budget ($5.9M) but $4.7M better than prior period ($12.6M loss)

- **Other Comprehensive Loss** of $0.6M was $0.9M worse than budget ($0.3M Income) but $24.7M better than prior period ($25.3M loss). Prior year experienced a large loss in equity markets due to the pandemic

- **Comprehensive Loss** of $8.5M versus budgeted comprehensive loss of $5.6M, and a prior period comprehensive loss of $37.9M

Financial Position as at March 31, 2021

- **Shareholder's equity** was $261.1M compared with $269.6M at December 31, 2020. The $8.5M decrease was made up of a $7.9M decrease in Retained Earnings and a $0.6M decrease in Accumulated Other Comprehensive Income (AOCI)
- The $7.9M retained earnings decrease represents the net loss for Q1 2021
- The $0.6M AOCI decrease represents a reduction in unrealized gains due to the pandemic's impact on the markets as at March 31, 2021 as compared to December 31, 2020
- **Margin of $204.0M of insurance assets greater than liabilities**. Insurance assets (cash and cash equivalents, investments, investment income due and accrued) of $718.6M, ($3.9M increase from December 31, 2020) to cover claims liabilities of $514.6M ($2.4M increase from December 31, 2020)
- The **MCT ratio at March 31, 2021 was 205%**, compared with 229% at December 31, 2020, 197% at March 31, 2020, and 242% at December 31, 2019
- The lower MCT ratio at March 31, 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. This was slightly offset by less capital required for interest sensitive assets

Statement of Financial Position

in $000s

AS AT		March 31 2021		December 31 2020
Assets				
Cash and cash equivalents		11,743		7,748
Investments		702,956		704,018
Investment income due and accrued		3,916		2,977
Due from reinsurers		38		22
Due from insureds		5,007		3,652
Due from the Law Society of Ontario		64,486		7,936
Reinsurers' share of provisions for:				-
Claims liabilities		50,523		50,189
Unearned premiums		5,378		-
Deferred policy aquisition expenses		2,541		-
Other receivables		10,162		796
Other assets		2,059		1,466
Property and equipment		11,105		11,690
Intangible assets		1,125		1,006
Current tax assets		8,552		4,938
Deferred income taxes		5,891		5,958
Total assets		**885,482**		**802,396**
Liabilities				
Claims liabilities				
Gross	481,704		471,007	
Net discount	(24,417)		(17,229)	
Net PfAD (asset) liability	57,280	514,567	58,377	512,155
Unearned premiums		85,978		1,130
Unearned reinsurance commissions		1,146		-
Due to reinsurers		5,368		831
Due to insureds		32		110
Expenses due and accrued		6,367		7,866
Lease liabilites		10,164		10,263
Other taxes due and accrued		741		471
Total liabilities		624,363		532,826
Shareholders' Equity				
Capital stock issued and paid		5,000		5,000
Contributed surplus		30,645		30,645
Retained earnings		216,057		223,967
Accumulated other comprehensive income		9,417		9,958
Total shareholder's equity		261,119		269,570
Total liabilities and shareholders' equity		**885,482**		**802,396**

Statement of Profit or Loss

in $000s

FOR THE 3 MONTHS ENDED MARCH 31	Actual 2021	Budget 2021	Variance to Budget $	Variance to Budget %	Actual 2020	Variance to Prior Year $	Variance to Prior Year %
Gross written premiums							
Ontario	106,969	104,060	2,909	3	105,975	994	1
Excess	6,050	6,100	(50)	(1)	5,972	78	1
Title	1,436	1,218	218	18	967	469	49
Total GWP	114,455	111,378	3,077	3	112,914	1,541	1
Change in unearned premium revenue							
Ontario	(80,288)	(79,158)	(1,130)	(1)	(81,103)	815	1
Excess	(4,559)	(4,575)	16	-	(4,499)	(60)	(1)
Total change in UPR	(84,847)	(83,733)	(1,114)	(1)	(85,602)	755	1
Gross earned premiums	**29,608**	**27,645**	**1,963**	**7**	**27,312**	**2,296**	**8**
Reinsurance ceded							
Ontario - Clash (Gross)	1,619	1,619	-	-	1,558	61	4
Less: Change in unearned ceded	(1,214)	(1,214)	-	-	(1,168)	(46)	(4)
Excess (Gross)	5,445	5,490	(45)	(1)	5,375	70	1
Less: Change in unearned ceded	(4,103)	(4,118)	15	-	(4,049)	(54)	(1)
TitlePLUS - Clash (Gross)	80	81	(1)	(1)	92	(12)	(13)
Less: Change in unearned ceded	(60)	(61)	1	2	(69)	9	13
Total reinsurance ceded	1,767	1,797	(30)	(2)	1,739	28	2
Net earned premiums							
Ontario	26,276	24,497	1,779	7	24,482	1,794	7
Excess	149	153	(4)	(3)	147	2	1
Title	1,416	1,198	218	18	944	472	50
Total NEP	27,841	25,848	1,993	8	25,573	2,268	9
Gross claims incurred							
Ontario	35,572	26,300	9,272	35	27,682	7,890	29
Excess	1,210	1,216	(6)	-	1,195	15	1
Title	(756)	548	(1,304)	(238)	1,245	(2,001)	(161)
	36,026	28,064	7,962	28	30,122	5,904	20
Reinsurer's share of claims incurred							
Ontario	(8)	-	(8)	(100)	131	(139)	(106)
Excess	1,089	1,094	(5)	-	1,075	14	1
Title	23	-	23	100	(13)	36	277
	1,104	1,094	10	1	1,193	(89)	(7)
Net claims incurred	34,922	26,970	7,952	29	28,929	5,993	21
Claims discount change	(7,188)	(244)	(6,944)	(2,846)	(630)	(6,558)	(1,041)
PfAD change	(1,097)	323	(1,420)	(440)	1,799	(2,896)	(161)
Subtotal	26,637	27,049	(412)	(2)	30,098	(3,461)	(11)
Add: ULAE	2,571	2,979	(408)	(14)	2,506	65	3
Total NCI	29,208	30,028	(820)	(3)	32,604	(3,396)	(10)
Reinsurance commission earned							
Excess	375	384	(9)	(2)	371	4	1
Profit commission earned (expensed)							
Ontario	11	-	11	100	(146)	157	108
Premium taxes	893	829	64	8	823	70	9
Operating expenses	8,392	9,558	(1,166)	(12)	7,801	591	8
Less: ULAE	(2,571)	(2,979)	408	14	(2,506)	(65)	(3)
General expenses	5,821	6,579	(758)	(12)	5,295	526	10
Finance Costs	101	101	-	-	105	(4)	(4)
Underwriting income (loss)	(7,796)	(11,305)	3,509	31	(13,029)	5,233	40
Investment income (before net unrealized gains)	6,786	3,132	3,654	117	(3,815)	10,601	278
Change in unrealized gains and losses	(9,751)	-	(9,751)	(100)	(534)	(9,217)	(1,726)
Investment income (loss)	(2,965)	3,132	(6,097)	(195)	(4,349)	1,384	32
Net income (loss) before taxes	(10,761)	(8,173)	(2,588)	(32)	(17,378)	6,617	38
Income taxes	(2,851)	(2,263)	(588)	(26)	(4,743)	1,892	40
Net income (loss)	**(7,910)**	**(5,910)**	**(2,000)**	**(34)**	**(12,635)**	**4,725**	**37**
Other comprehensive income (loss)	(541)	323	(864)	(267)	(25,319)	24,778	98
Total comprehensive income (loss)	**(8,451)**	**(5,587)**	**(2,864)**	**(51)**	**(37,954)**	**29,503**	**78**
U/W Combined Ratio (discounted basis)	128%	143%			151%		
Claims Ratio (discounted basis)	105%	116%			127%		
U/W Combined Ratio (undiscounted basis)	157%	143%			146%		
Claims Ratio (undiscounted basis)	135%	116%			123%		

Statement of Comprehensive Income

in $000s

FOR THE 3 MONTHS ENDED MARCH 31	2021	2020
Profit (loss)	**(7,910)**	**(12,635)**
Other comprehensive income, net of income tax:		
Items that will not be reclassified subsequently to profit or loss:		
Remeasurements of defined benefit plans, net of income tax expense (recovery) of $0 [2020: $0]	-	-
Items that may be reclassified subsequently to profit or loss:		
Available-for-sale assets		
Net changes unrealized gains (losses), net of income tax expense (recovery) of ($39) [2020: ($11,500)]	(104)	(31,897)
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of ($157) [2020: ($862)]	(437)	(2,391)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of $0 (2020: $3,234)	-	8,969
Other comprehensive income	**(541)**	**(25,319)**
Comprehensive income	**(8,451)**	**(37,954)**

Statement of Changes in Equity

in $000s

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
Balance at December 31, 2019	**5,000**	**30,645**	**203,480**	**32,176**	**271,301**
Total comprehensive income for the year	-	-	21,010	(22,741)	(1,731)
Transfer of defined benefit remeasurements from OCI to retained earnings			(523)	523	-
Balance at December 31, 2020	**5,000**	**30,645**	**223,967**	**9,958**	**269,570**
Total comprehensive income for the year	-	-	(7,910)	(541)	(8,451)
Transfer of defined benefit remeasurements from OCI to retained earnings			-	-	-
Balance at March 31, 2021	**5,000**	**30,645**	**216,057**	**9,417**	**261,119**

Insurance Ratios

TEST	TARGET	MAR 2021	DEC 2020	MAR 2020	DEC 2019	DEC 2018
SOLVENCY RATIOS						
Minimum Capital Test *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*	Preferred = 210-240% [Minimum: 170%]	205%	229%	197%	242%	237%
Net Claims Liabilities / Equity *Measures Net Claims Liabilities as a % of Equity and provides a simple test of the leveraged position of the company*	< 200%	178%	171%	196%	164%	171%
Liabilities / Liquid Assets *Liabilities as a % of Cash & Equivalents and Investments measures company's ability to meet its financial demands*	< 105%	80%	68%	83%	66%	66%
Net Underwriting leverage *Measures the company's ability to absorb financial shocks. Equal to net written premiums as a percentage of equity*	< 100%	41%	40%	45%	40%	42%
PROFITABILIITY RATIOS						
Return on equity *Net Income (last twelve months) as a percentage of equity*	> 0%	10.4%	7.8%	-2.4%	1.8%	6.6%
Comprehensive return on equity *Comprehensive income (last twelve months) as a percentage of equity*	> 0%	11.2%	-0.6%	-10.8%	6.8%	-0.1%
Combined Operating Ratio *Total underwriting expenses as a percentage of net earned premium*	110%	128%	117%	151%	116%	97%
Claims (or Loss) Ratio *Net Claims Incurred as a percentage of Net Earned Premum*	75%	105%	94%	127%	92%	75%
Expense ratio *Measures general expenses, excluding commissions, as a % of net earned premiums*	28%	24%	24%	24%	24%	24%

in target

worse than target

Claims Payments & Statistics – Ontario Primary E&O

Ontario mandatory E&O Program - Claims count and payment statistics
For the three months ended March 31, 2021

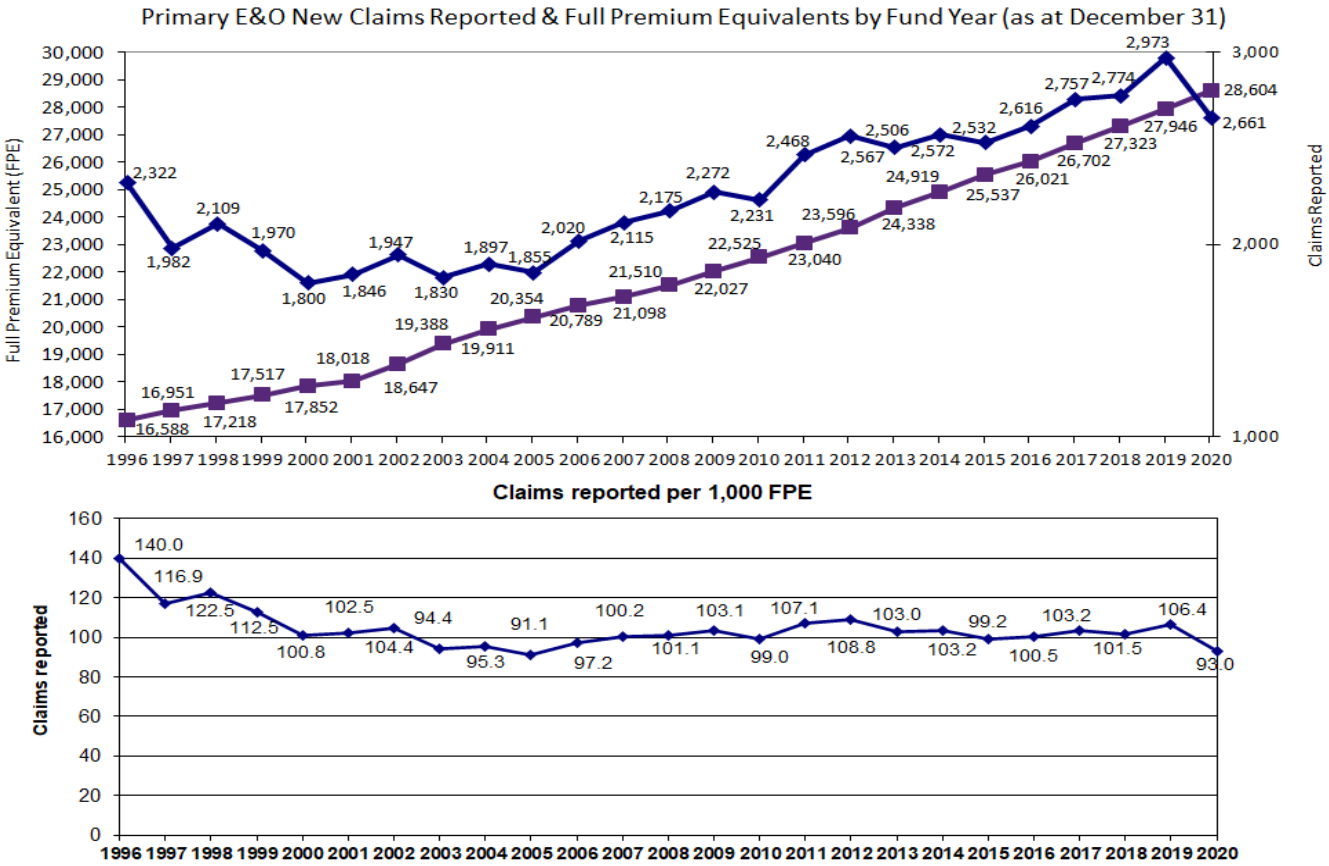
Claims count

Number of Claims	2021	2020	Change	% Change
Open Claims (All fund years)	4,326	4,343	(17)	0%
Activated during year:				
new reports*	813	737	76	10%
reopened	69	52	17	33%
	882	789	93	12%
All fund years - Closed during year	689	729	(40)	-5%
*new reports - current fund year only	578	489	89	18%

Claim payments

Costs	2021	2020	Change	% Change
	$ 000s	$ 000s	$ 000s	
Indemnity	10,289	6,595	3,694	56%
Legal Fees	10,769	12,052	(1,283)	-11%
Adjuster Fees	129	50	79	158%
Other	576	805	(229)	-28%
Total	21,763	19,502	2,261	12%

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

April 22, 2021

Subject: Quarterly Compliance Report as at March 31, 2021
for Lawyers' Professional Indemnity Company

As of and for the quarter ending March 31, 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,

Brian Lancaster, CFA, CAIA
Vice-President

Compliance Statement

The undersigned confirms that, throughout the 3-month period ending March 31st, 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 April 13th, 2021

Thomas Di Stefano, CFA
Interim Chief Compliance Officer

FOR INFORMATION

LIRN Inc. Financial Statements for the Three Months Ended March 31, 2021

The Audit & Finance Committee recommends that Convocation receive the first quarter financial statements for LIRN Inc. for information.

LIRN Inc. (LIRN) is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations (FOLA) and the Toronto Lawyers' Association (TLA). LIRN is a wholly-owned subsidiary of the Law Society. LIRN has two classes of shares: 100 common shares and 100 special shares. The Law Society holds all of the common shares outstanding. Of the special shares outstanding, 25 are held by the TLA and 75 are held by FOLA.

There is a quarterly financial reporting schedule to the shareholder in compliance with the Unanimous Shareholders Agreement. These interim financial statements convey the performance of LIRN before the end of the year. The financial statements have been approved by LIRN's Board.

LIRN is fully funded by the Law Society through the lawyer's annual fee. In 2021, the county library component is $159 per lawyer. Grants to the 48 county libraries comprise most of LIRN's expenditures with the balance being centralized expenses such as access to online research products.

LiRN
Legal Information and Resource Network

FINANCIAL REPORT
For the three months ended March 31, 2021

KEY POINT SUMMARY

Overall Results

1. Results for the first quarter identify an excess of expenses over revenues of $246,886. The prorated budget for the first quarter envisaged an excess of expenses over revenues of $262,168.

2. The positive variance from budget of $15,282 for the quarter is primarily due to no special grants made to date, the pandemic limiting travel and board of directors' expenses, and lower costs related to group benefits and centralized publication purchases. The primary negative variance was in the Transition category with expenses associated with 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 actual grant from the Law Society was $1.8 million in the first quarter and matched budgeted amounts for the period. The comparable 2020 amount was $2 million with the funding decrease approved as part of the Law Society's 2021 budget.

Expenses

4. Total expenses were $2.1 million and are in line with budget.

5. Transition expense of $22,791 for the quarter is approximately $10,000 over budget and relates to the data analyst hired on a fee for service basis as approved by the Board. The transition expense budgeted for the year of $50,000 is projected to be exceeded by at least $30,000 predominantly related to data collection efforts expected to continue to the end of the year.

6. 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 $12,470.

7. Other centralized expenses of $24,721 primarily includes library courier costs and publications provided by the Law Society to each of the 48 county law libraries. Timing differences in publication purchases mainly contributed to the negative variance from budget of $6,055.

8. County and district law libraries grants of $1.8 million are the same as the first quarter of 2020 and have been weighted towards the beginning of the year to assist libraries in adjusting to the reduction of annual funding.

Balance Sheet

9. Cash and short-term investments of $879,295 has decreased from the same period in 2020 ($1.1 million) due to the excess of expenses over revenues in the intervening period.

10. Accounts payable and accrued liabilities of $123,254 are higher than 2020 ($74,112) because of the timing of payment for audit fees, and the current year total including accruals related to payroll and data analysis services, both new expenses to 2021.

11. The fund balance of the General Fund has decreased from $525,246 at the end of the first quarter of 2020 to $286,803 at March 31, 2021 based on the excess of expenses over revenues for the period of April 2020 to March 2021. The overall 2021 budget envisages $455,580 being drawn from the fund balance of the General Fund for the year.

12. The Reserve Fund has a balance at the end of March of both years of $500,000.

LiRN
Legal Information and Resource Network

Statement of Financial Position
Stated in Dollars
March 31, 2021
Unaudited

	2021	2020
Assets		
Current Assets		
Cash and short-term investments	879,295	1,065,240
Accounts receivable	22,545	26,417
Prepaid expense	8,417	7,901
Total Assets	**910,257**	**1,099,558**
Liabilities, Share Capital and Fund Balances		
Liabilities		
Accounts payable and accrued liabilities	123,254	74,112
Total Liabilities	**123,254**	**74,112**
Share Capital and Fund Balances		
Share capital	200	200
General fund	286,803	525,246
Reserve fund	500,000	500,000
Total Share Capital and Fund Balances	**787,003**	**1,025,446**
Total Liabilities, Share Capital and Fund Balance	**910,257**	**1,099,558**

This statement includes the financial resources of the LIRN Inc. entity only.

LiRN
Legal Information and Resource Network

Statement of Operating Revenues and Expenses
Stated in Dollars
For the three months ending March 31, 2021
Unaudited

	2021 Actual	YTD Budget	YTD Variance	Annual Budget	2020 Actual
REVENUES					
Law Society of Ontario grant	1,804,298	1,804,298	-	7,217,194	2,004,773
Interest income	677	-	677	-	3,197
Total revenues	**1,804,975**	**1,804,298**	**677**	**7,217,194**	**2,007,970**
EXPENSES					
Head office / administration					
Salaries and benefits	45,175	48,750	3,575	195,000	-
Administration	7,594	7,500	(94)	30,000	-
Professional fees	3,780	3,375	(405)	13,500	3,631
Transition	22,791	12,500	(10,291)	50,000	18,833
Other	5,299	17,769	12,470	75,300	6,940
Total head office / administration expenses	**84,639**	**89,894**	**5,255**	**363,800**	**29,404**
Law libraries - centralized purchases					
Electronic products and services	93,506	93,750	244	375,000	90,784
Group benefits and insurance	83,829	93,240	9,411	373,000	83,548
Other	24,721	18,666	(6,055)	145,100	8,820
Total law libraries - centralized purchases	**202,056**	**205,656**	**3,600**	**893,100**	**183,152**
County and district law libraries - grants	1,765,166	1,765,166	-	6,393,274	1,765,166
Capital and special needs grants	-	5,750	5,750	22,600	13,000
Total county and district law libraries expenses	**1,765,166**	**1,770,916**	**5,750**	**6,415,874**	**1,778,166**
Total expenses	**2,051,861**	**2,066,466**	**14,605**	**7,672,774**	**1,990,722**
Excess of revenues over expenses (expenses over revenues)	**(246,886)**	**(262,168)**	**15,282**	**(455,580)**	**17,248**

This statement includes the revenues and expenses of the LIRN Inc. entity only.

LiRN
Legal Information and Resource Network

Statement of Changes in Fund Balances
Stated in Dollars
For the three months ending March 31, 2021
Unaudited

	2021			2020
	General Fund	Reserve Fund	**Total**	**Total**
Balance, beginning of year	533,689	500,000	**1,033,689**	**1,007,998**
Excess of revenues over expenses (expenses over revenues)	(246,886)	-	**(246,886)**	**17,248**
Balance, end of period	**286,803**	**500,000**	**786,803**	**1,025,246**

Law Society of Ontario | Barreau de l'Ontario

Tab 3

Report to Convocation
June 23, 2021

Strategic Planning and Advisory Committee

Committee Members:

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

Purpose of Report: Decision and Information

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

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Law Society of Ontario | Barreau de l'Ontario

Tab 3.1

Strategic Planning and Advisory Committee

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

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June 23, 2021

Authored By:

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

jvarro@lso.ca

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Motion

That on the recommendation of the 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 chair of the Paralegal Standing Committee.

A. Executive Summary

Currently, voting for the Chair of the Paralegal Standing Committee (PSC) is required to be done in person at the Paralegal Standing Committee meeting in September and by paper ballot. Following amendments to By-Law 3 made by Convocation in 2020 to implement online voting for the Treasurer's election, the Committee is recommending that changes be made to facilitate voting in the election of the chair of the PSC either in person with paper ballots or online, if a poll to elect the chair is required. This is necessary given the ongoing uncertainty of in person meetings in the fall of 2021 as a result of the COVID-19 pandemic. This is also a means to modernize the election process, consistent with a focus by the Treasurer and the Chief Executive Officer on efficiency and modernization.

The proposed amendments to By-Law 3 are set out in the track-changes version of the By-Law at **Tab 3.1.2.**

Background

A. Current Election Process

Given the ongoing meeting restrictions as a result of the COVID-19 pandemic, and the uncertainty of changes to those restrictions by the fall of 2021, the Law Society needs to provide a voting method in addition to the paper-based in-person voting process for the PSC chair election at the PSC meeting in September if a poll is required to elect the chair. Facilitating an online voting process is also an opportunity to modernize the election process in keeping with the efforts of the Treasurer and the Law Society's CEO to makes changes to increase efficiencies. While the paper-based election process is not administratively burdensome for this election, given the very small electorate of 13 members of the PSC, it is appropriate to plan for an online voting process should it be required.

This report describes changes that will facilitate an electronic (online) voting process similar to that for the election of the Treasurer, adopted in 2020.

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

- A secret ballot;
- Paper ballots used on any required ballot;
- In-person voting at the PSC meeting in September;
- A vote for one candidate only on any ballot;
- If more than two candidates, if necessary, additional paper ballots and in-person voting at the September PSC meeting until a candidate who receives more than 50% of votes cast is declared elected;
- Use of a ballot box; and
- A requirement for the Elections Officer to count the votes in the presence of the vice-chair of the PSC.

Changes to the Election Process

A. Key Components

While the basic process in By-Law 3 to elect the PSC chair remains the same[1], changes in the procedures in By-Law 3 are recommended that would continue to allow for an in person paper-based election or facilitate an online voting process. In both scenarios, the By-Law would provide that the Elections Officer establish and publish election procedures that would detail the method and process for voting.

---

[1] The process will continue to provide for the following:

- Election of the chair in September
- A secret ballot
- Eligible voters are members of the PSC
- A candidate is elected PSC chair if they receive more than 50% of the votes cast
- In the event of a tie vote among two candidates, the PSC vice-chair randomly selects a candidate and casts a vote for that candidate

The following is recommended for future PSC chair elections, beginning in fall 2021, where there are two or more candidates, requiring a poll to elect the chair.

1. **Voting procedures to be established and published by the Elections Officer**

   Similar to the process in By-Law 3 for the Treasurer election, the revised process will require the Elections Officer, the person who manages the PSC chair election, to establish and publish voting procedures for the election. Whether the voting is in person and paper-based or online, the procedures will include a description of how the voting system will work and how votes may be cast. This requirement means that the detailed procedures for the method of casting votes do not need to be set out in the By-Law.

2. **A voting period on the day of the PSC September meeting**

   Voting would open on the day of the PSC's September meeting, as currently provided in the By-Law. The election would continue to be the first order of business at that meeting. The election would continue until the chair is elected in accordance with the By-Law.

3. **Ballots as required for election**

   On any ballot – paper or online - PSC members choose the one candidate of their choice, in accordance with the By-Law.

   The By-Law provides that if a candidate receives more than 50% of the votes cast on a ballot, they are declared elected as chair. The voting procedures would utilize a first ballot and the required number of subsequent ballots for the election.

   If there are two or more candidates, PSC members would be required to select one candidate of their choice, as currently required under the By-Law, and mark the ballot with that choice. When all members who wish to cast a ballot have voted, the votes on the ballots will be counted and the results will be announced by the Elections Officer.

   In the event of a tie vote where there are two candidates, as provided in the By-Law, the PSC vice-chair will manually randomly choose the name of one candidate and cast another vote for that candidate, who will then be declared elected.

   Where there are more than two candidates and no candidate receives more than 50% of the votes cast, a subsequent ballot would be required. This ballot would exclude the candidate who received the least number of votes on the first ballot, who is removed as a

candidate in the election. A ballot would then be provided for the votes of PSC members and the result announced once voting is completed and ballots counted.

B. By-Law 3 Amendments

As shown in the track-changes version of By-Law 3 at **Tab 3.1.2**, the amendments

- provide that the voting procedures are established and published by the Elections Officer,
- remove references to paper ballots, in-person voting and the ballot box, as these would be included in the procedures to be published, as applicable,
- provide that the description of the voting process for the election is to be set out in the procedures described above, and
- remove references to the Elections Officer counting the votes in the presence of the PSC vice-chair.

The Committee is satisfied that the changes to the process in By-Law 3 will continue to provide an election scheme that meets the objective of a fair process for the election of the PSC chair and preserves its integrity.

LAW SOCIETY OF ONTARIO

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

BY-LAW 3 [BENCHERS, CONVOCATION AND COMMITTEES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 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. Clause 130.3 (1) (a) of the French version of the By-Law is amended by striking out "comité" and substituting "Comité".

2. Section 130.4 of the English version of the By-Law is revoked and the following substituted:

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.

3. Section 130.4 of the French version of the By-Law is revoked and the following substituted:

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.

4. Clause 130.5 (3) (b) of the English version of the By-Law is amended by striking out "his or her" and substituting "their".

5. Subsection 130.7 (2) of the English version of the By-Law is revoked the following substituted:

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.

6. Subsection 130.7 (2) of the French version of the By-Law is revoked and the following substituted:

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.

7. Section 130.7 of the English version of the By-Law is amended by adding the following subsection:

Poll: casting vote
(4) A member of the Committee shall cast their vote in accordance with the procedures established by the Elections Officer under subsection 130.4 (2).

8. Section 130.7 of the French version of the By-Law is amended by adding the following subsection:

Scrutin : vote
(4) Les membres du Comité votent conformément à la procédure établie par le ou la responsable de l'élection en vertu du paragraphe 130.4 (2).

9. Subsections 130.8 (1) and (2) of the English version of the By-Law are amended by striking out "in person" wherever it appears.

10. Subsections 130.8 (1) and (2) of the French version of the By-Law are amended by striking out "en personne" wherever it appears.

11. Subsection 130.8 (4) of the English version of the By-Law is revoked and the following substituted:

Vote for one candidate only
(4) Each member of the Committee voting on a ballot in the election of chair shall vote for one candidate only.

12. Subsection 130.8 (4) of the French version of the By-Law is revoked and the following substituted:

Vote pour un seul candidat
(4) Les membres du Comité qui participent à un scrutin lors de l'élection du président ou de la présidente ne votent que pour un seul candidat ou une seule candidate.

13. Subsection 130.8 (5) of the English and French versions of the By-Law is revoked.

14. Subsection 130.9 (1) of the English version of the By-Law is revoked and the following substituted:

Counting votes
130.9. (1) After all members 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.

15. Subsection 130.9 (1) of the French version of the By-Law is revoked and the following substituted:

Dépouillement
130.9. (1) Après que tous les membres 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.

16. Subsection 130.10 (1) of the English version of the By-Law is amended by striking out "after counting the votes cast for each candidate" and substituting "after causing the votes cast for each candidate to be counted".

17. Subsection 130.10 (1) of the French version of the By-Law is amended by striking out "après avoir procédé au décompte de voix par candidat" and substituting "après avoir organisé le décompte de voix par candidat".

18. Subsections 130.10 (2) and (3) of the English version of the By-Law are amended by striking out "after counting the votes" wherever it appears and substituting "after causing the votes to be counted" in each case.

19. Subsections 130.10 (2) and (3) of the French version of the By-Law are amended by striking out "après avoir procédé au décompte de voix" wherever it appears and substituting "après avoir organisé le décompte de voix" in each case.

20. Section 130.11 of the English version of the By-Law is amended by striking out "in the presence of the Elections Officer" and substituting "in full view of the Elections Officer".

21. Section 130.11 of the French version of the By-Law is amended by striking out "en présence du ou de la responsable de l'élection" and substituting "devant le ou la responsable de l'élection".

22. Subsections 130.12 (1) and (3) of the French version of the By-Law are amended by striking out "un sondage" wherever it appears and substituting "un scrutin" in each case.

23. Subsection 130.12 (2) of the English version of the By-Law is revoked and the following substituted:

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.

24. Subsection 130.12 (2) of the French version of the By-Law is revoked and the following substituted:

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.

25. Subsection 130.12 (4) of the English version of the By-Law is amended by striking out "in person".

26. Subsection 130.12 (4) of the French version of the By-Law is amended by striking out "au sondange prévu au paragraph (1) qui sont présents en personne a la réunion " and substituting "au scrutin prévu au paragraphe (1) qui sont présents à la réunion".

27. Subsection 130.12 (5) of the English version of the By-Law is revoked and the following substituted:

Vote for candidate or candidates to remain in election
(5) A member of the Committee voting on a ballot in a poll 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.

28. Subsection 130.12 (5) of the French version of the By-Law is revoked and the following substituted:

Vote pour conserver des candidats dans l'élection
(5) Les membres du Comité qui participent au scrutin prévu 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.

29. Subsection 130.12 (6) of the English version of the By-Law is revoked and the following substituted:

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).

30. Subsection 130.12 (6) of the French version of the By-Law is revoked and the following substituted:

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).

31. Subsection 130.12 (7) of the English version of the By-Law is revoked and the following substituted:

Counting votes

(7) After all members of the Committee voting on a ballot in a poll 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.

32. Subsection 130.12 (7) of the French version of the By-Law is revoked and the following substituted:

Dépouillement

(7) Après que toutes les membres qui participent au scrutin prévu au 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.

33. Subsection 130.12 (8) of the English version of the By-Law is revoked and the following substituted:

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.

34. Subsection 130.12 (8) of the French version of the By-Law is revoked and the following substituted:

Annonce 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 annonceles résultats du scrutin au Comité.

35. Subsection 130.12 (9) of the French version of the By-Law is amended by striking out "le sondage" and substituting "le scrutin".

36. Subsection 130.12 (10) of the French version of the By-Law is revoked and the following substituted:

Scrutins supplémentaires

(10) Si au moins deux candidats ou candidates figurant dans le scrutin prévu au paragraphe (1) reçoivent le moins élevé et le même nombre de voix, d'autres scrutins 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.

37. Subsections 130.13 (1), (3) and (5) of the English version of the By-Law are amended by striking out "his or her" wherever it appears and substituting "their" in each case.

BY-LAW 3

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BENCHERS, CONVOCATION AND COMMITTEES

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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

Definition
130.1. In sections 130.4 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.

Appointment of chair
130.2. (1) The Committee shall appoint 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.

Election 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.

Same
(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) Every 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.

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) 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 ~~his or her~~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 elected the chair.

Poll
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.

Poll: ~~secret ballot~~anonymity of member and secrecy of votes
(2) ~~A poll to elect the chair shall be conducted by secret ballot.~~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: right to vote
(3) Every person who is a member of the Committee on the day of the election of chair is entitled to vote in the election of chair.

Poll: casting vote
(4) A member of the Committee shall cast their vote in accordance with the procedures established by the Elections Officer under subsection 130.4 (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 ~~in person~~ 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 ~~in person~~ 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~~Marking ballot~~

(4) Each member of the Committee voting on a ballot in the election of chair shall vote for one candidate only ~~on the ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate~~.

~~Ballot box~~

~~(5) After a member of the Committee voting on a ballot in the election of chair has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Elections Officer, put the ballot into the ballot box.~~

Counting votes

130.9. (1) After all members 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. ~~in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.~~

Counting votes: 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

130.10. (1) If on any ballot in the election of chair there are not more than two candidates, immediately after causing~~counting~~ 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.

Report of results: three or more candidates

(2) If on any ballot in the election of chair there are three or more candidates and, after causing~~counting~~ 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.

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~~counting the votes~~, 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 ballot required

(4) If a further ballot is required under subsection (3), 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.

Casting tie-breaking vote

130.11. If at any time an equal number of votes is cast for two candidates 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 the presence~~ 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

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

~~Secret ballot~~Anonymity of member and secrecy of votes

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

Ballot

(4) Each member of the Committee entitled to vote in a poll conducted under subsection (1) who is in attendance ~~in person~~ 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~~Marking ballot~~

(5) A member of the Committee voting on a ballot in a poll conducted under subsection (1) shall vote for the candidate or candidates, but not for all the candidates, whom ~~he or she~~the member wishes to remain in the election of chair ~~and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen~~.

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).

~~Ballot box~~

~~(6) After a member of the Committee voting on a ballot in a poll conducted under subsection (1) has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Elections Officer, put the ballot into the ballot box.~~

Counting votes

(7) After all members of the Committee voting on a ballot in a poll 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.~~in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.~~

Report of results

(8) Immediately after causing~~counting~~ 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

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

Further polls

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

Taking office

130.13. (1) A person appointed as chair shall take office immediately after ~~his or her~~their appointment and shall remain in office until ~~his or her~~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 bencher 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 ~~his or her~~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) Section 130.2 and sections 130.4 to 130.12 apply to the appointment and election of chair under subsection (3).

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 ~~his or her~~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.

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.

RÈGLEMENT ADMINISTRATIF N^{O} 3

LES CONSEILLERS, LE CONSEIL ET LES COMITÉS

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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 règlementation 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

Définition
130.1. Dans les articles 130.4 à 130.12, « 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) Le Comité pourvoit 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 pourvoit à sa présidence immédiatement après avoir élu le président ou la présidente conformément aux articles 130.3 à 130.12.

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~~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
(2) L'élection du président ou de la présidente du Comité constitue le premier article 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) 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.

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
(3) 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
103.6. 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, le ou la responsable de l'élection le ou la déclare élu.

Scrutin
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 pour pourvoir à la présidence.

Scrutin : anonymat et vote secret
(2) La procédure pour tenir le ~~Le~~ scrutin garantit l'anonymat des membres du Comité et protège le secret de leur vote~~tenu pour pourvoir à la présidence est secret~~.

Scrutin: droit de vote
(3) A droit de vote aux fins de l'élection du président ou de la présidente quiconque est membre du Comité le jour de l'élection.

Scrutin : vote
(4) Les membres du Comité votent conformément à la procédure établie par le ou la responsable de l'élection en vertu du paragraphe 130.4 (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 ~~en personne~~ 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 ~~en personne~~ 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~~Comment remplir le bulletin~~

(4) Les membres du Comité qui participent à un scrutin lors de l'élection du président ou de la présidente ne votent que pour un seul candidat ou une seule candidate ~~par bulletin de vote en sélectionnant le nom du candidat ou de la candidate de leur choix~~.

~~**Boite de scrutin**~~

~~(5) Après avoir rempli leurs bulletins de vote, les membres du Comité qui participent à un scrutin lors de l'élection du président ou de la présidente les plient de façon à ce que les noms des candidats et des candidates ne soient pas visibles et, en présence du ou de la responsable de l'élection, les déposent dans la boite de scrutin.~~

Dépouillement

130.9. (1) Après que tous les membres 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 ~~, en l'absence de toutes les personnes sauf du vice-président ou de la vice-présidente du Comité, ouvre la boite de scrutin, en retire tous les bulletins, les ouvre et procède au~~ 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.

Annonce des résultats: deux candidats

130.10. (1) Si deux noms seulement apparaissent sur les bulletins de vote, le ou la responsable de l'élection, immédiatement après avoir organisé le ~~procédé au~~ 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.

Annonce des résultats: au moins trois candidats

(2) Si au moins trois noms apparaissent sur les bulletins de vote et que le ou la responsable de l'élection, après avoir organisé le ~~procédé au~~ 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 ~~procédé au~~ 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.

Tour de scrutin supplémentaire

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

Voix prépondérante

130.11. Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un ou à l'une d'eux d'être déclaré élu à la charge de président, le vice-président ou la vice-présidente du Comité, devant le ~~en présence du~~ ou ~~de~~ 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.

Nombre égal de voix

130.12. (1) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'un ou à plusieurs d'entre eux de rester en lice dans l'élection du président ou de la présidente, un ~~sondage~~scrutin a lieu afin de choisir les candidats et les candidates qui resteront en lice.

Anonymat des membres et s~~S~~crutin 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~~Le sondage tenu en application du paragraphe (1) a lieu par scrutin secret~~.

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 ~~sondage~~scrutin prévu au paragraphe (1).

Bulletin

(4) Les membres du Comité habilités à participer au ~~sondage~~scrutin prévu au paragraphe (1) qui sont présents ~~en personne~~ 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~~Comment remplir le bulletin~~

(5) Les membres du Comité qui participent au ~~sondage~~scrutin prévu 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~~, en sélectionnant le nom de chaque candidat ou de chaque candidate de leur choix~~.

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).

~~**Boite de scrutin**~~

~~(6) Après avoir rempli leurs bulletins de vote, les membres du Comité qui participent au sondage prévu au paragraphe (1) les plient de façon que les noms des candidates et des candidats ne soient pas visibles et, en présence du ou de la responsable de l'élection, les déposent dans la boite de scrutin.~~

Dépouillement

(7) Après que toutes les membres qui participent au ~~sondage~~scrutin prévu au paragraphe (1) ont voté ou refusé de voter, le ou la responsable de l'élection organise le ~~, en l'absence de toutes les personnes sauf du vice-président ou de la vice-présidente du Comité, ouvre la boite de scrutin, en retire tous les bulletins, les ouvre et procède au~~ décompte des voix exprimées par candidat ou candidate.

Annonce des résultats

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

Élimination des candidats

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

Scrutins~~Sondages~~ supplémentaires

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

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 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).

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 élu aux termes de l'article 130.3.

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.

FONCTIONNEMENT 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 3.2

Strategic Planning and Advisory Committee

Update on 2019 – 2023 Strategic Plan Implementation

June 23, 2021

Authored By:

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

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Issue

This report updates Convocation on the implementation of the key objectives approved by Convocation for the Law Society's 2019-2023 Strategic Plan. The last update was in February 2021.

A. Introduction

In February 2020, Convocation approved the 2019-2023 Strategic Plan for the Law Society. The key objectives in the Plan are:

- Achieving proportionate regulation
- Ensuring competence and quality of service
- Determining appropriate scope of regulation
- Facilitating access to justice

Since February 2020, these objectives have been pursued in tandem with other work that was already in progress, including ongoing implementation of previously approved priorities.

Further, consideration of the four objectives reveals a number of linkages and interdependencies among them, set out below, that have been taken into account as the Law Society implements the Plan.

- Proportionate regulation and change in the scope of regulation must be achieved in ways that maintain appropriate standards of competence and quality of service.
- Ensuring the competence and quality of service provided by lawyers and paralegals is central to the Law Society's mandate, and informs proportionate regulation.
- Changes to the scope of regulation could facilitate the public's assess to justice.
- Enhanced access to justice must maintain appropriate standards of competence and quality of service.

The impact of the COVID-19 pandemic on Law Society governance process and operations has affected the progress of initiatives under the Plan. However, to the extent possible, management has utilized operational tactics that will support achieving outcomes associated with the key objectives, in consultation with committees and task forces tasked with framing policy decisions related to the objectives. The organization also revised operational approaches to ensure ongoing alignment of functions with the Law Society's priorities while changing supports and resources to adapt to the situation presented by the pandemic . These "pivots" to ensure the Law Society is responsive to this challenging situation resulted in some new avenues of support for licensees, some of which are discussed in this report.

Implementation of the strategic plan also necessarily involved a consideration of resource/budget implications and required cost recommendations, as appropriate. These were integrated into the 2021 budget and will be integrated in future budget planning cycles in the bencher term.

Reproduced below are the key objectives, their significance and a description of actions, as approved by Convocation in February 2020, updated to June 2021 to show what the Law Society has done under each objective.

Progress on the Key Objectives of the 2019-2023 Strategic Plan

A. Achieving Proportionate Regulation

Why This Is Significant

Regulation of Ontario's lawyers and paralegals should be sufficient to protect the public interest and not excessive so as to become an unnecessary burden on those who are regulated.

What the Law Society Will Do

Given the strong consensus among benchers on the need for and benefits of self-regulation, the Law Society will explore proportionate regulation using the risk to the public as the guiding principle. This may involve streamlining processes and regulatory functions related to the day-to-day interactions and obligations of licensees, as distinct from complaints and discipline procedures, by focusing on regulation of core activities that most directly protect the public.

June 2021 Update - What the Law Society Has Done

1. Transition of issues from the Proportionate Regulation Task Force (created August 2019) to regulatory committees in March 2020 and following.
2. Launch of the regulatory "sandbox" for innovative technological legal services (April 2021)
3. By-Law changes to enable streamlined Annual Report Filings process (November 2020)
4. Permission for licensing candidates to choose between an administrative licensing process or participation in a formal licensing ceremony (call to the bar) (decision in June 2020)

5. Removal of the requirement for licensing candidates to sign the Rolls of the Court of Appeal and the Superior Court of Ontario (decision in June 2020)

6. Implementing online licensing examinations, to continue to the end of the 2023-2024 licensing cycle, and reduction of the articling term from 10 months to 8 months, to continue to the end of the 2021-2022 licensing cycle (spring 2020; February 2021)

7. By-Law changes to end the requirement for the Law Society to approve the names of licensee professional corporations. (February 2021)

8. By-Law changes to remove requirements that licensees notify the Law Society before entering into affiliations, apply for approval before entering into multi-discipline partnerships and file annual reports in respect of an affiliation or a multi-discipline partnership (February 2021)

9. By-Law changes to end the reciprocity requirement for the issuance of a Foreign Legal Consultant permit (February 2021)

10. By-Law changes to permit Quebec lawyers to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces (April 2021)

11. By-Law changes to discontinue the Professional Conduct and Practice in Ontario Course. (February 2021)

12. By-Law changes to implement of a single default period for the requirements to pay an annual fee, report on compliance with CPD requirements and file an annual report, beginning in 2021 (November 2020)

13. By-Law changes to eliminate all late fees for non-compliance with the requirements above (November 2020)

14. By-Law changes to reduce the default periods for the requirements above to 30 days for 2021 and 2022, and agreement to a further reduced period for 2023, to enable a prompt suspension process for a licensee who fails to comply with the requirements by the required date (November 2020, following decision in August 2020)

15. Implementing a “COVID Response program” that allows eligible licensees to defer their 2021 annual fees to March 31, 2022 upon application where annual fees are paid directly by the licensee or by their small legal or paralegal firm (constituted by 5 licensees or less) (November 2020)

B. Ensuring Competence and Quality of Service

Why This Is Significant

As the competence of lawyers and paralegals is central to the Law Society's mandate to protect the public interest, the Law Society's regulation must ensure that lawyers and paralegals maintain their professional knowledge and skills and provide legal services competently and professionally throughout their careers.

What the Law Society Will Do

The important role for the Law Society in ensuring that lawyers and paralegals maintain and enhance competence is found in the statutory function to ensure that lawyers and paralegals meet standards of learning and professional competence that are appropriate for the legal services they provide.
The Law Society will explore the effectiveness of its regulation of post-license competence to ensure the maintenance and enhancement of high quality services to the public from licensees. Through appropriate, targeted methods, the Law Society will focus on

- opportunities to support the increased viability of newer licensees as competent professionals and their ongoing development,
- the potential to enhance competence through limited licensing/credentialing options,
- mitigation of any risk of longer serving licensees providing services of diminished quality, and
- better engagement with licensees to inform them about the nature and benefits of Law Society competence-focussed resources.

June 2021 Update - What the Law Society Has Done

1. By-Law changes to address the scope of activities for paralegals in criminal law matters as a result of federal Bill-75 changes (February 2021)

2. Evolving CPD offerings to support increased demand for digital learning opportunities and addressing on a broad range of legal practice competencies and career stages (spring 2020)

3. Implementing online licensing examinations, to continue to the end of the 2023-2024 licensing cycle, and reduction of the articling term from 10 months to 8 months, to continue to the end of the 2021-2022 licensing cycle (spring 2020; February 2021)

4. COVID-19 FAQs prepared and published to address a range of practice management and business of law activities to support licensee competence and quality of service (spring 2020)

5. Support for numerous engagement activities through the Office of the Treasurer that target the value and benefits of LSO competence-focussed resources (i.e. regional roundtables, Treasurer's Liaison Group, law association meetings) (ongoing)

6. Work of the Competence Task Force, including consideration of post-call competence programs and activities (September 2020 onward), consideration of a competence framework and preparation of a report by the Task Force including a call for comment on renewing the Law Society's continuing competence framework (January-June 2021)

C. Determining Appropriate Scope of Regulation

Why This is Significant

As the self-regulator of legal services in Ontario and the legal professionals who provide them, ensuring effectiveness of regulation requires that the Law Society periodically confirm the scope of what and how it regulates, particularly in an environment where accessibility of affordable legal services is an issue and significant advances in technology and related innovations are taking place.

What the Law Society Will Do

The Law Society will explore a number of issues and consider proposals that in the public interest may expand or clarify the scope of its regulatory authority over legal service providers. This could include but would not be limited to the following:

- technology in practice and related innovations;
- direct-to-consumer services regulation;
- services provided by non-licensees;
- practice-specific regulation, which may also align with limited licensing options as enhancements to competency and quality of service; and
- the relationship of scope to access to justice.

The analysis should address the benefits and risks to the public of changing the scope of regulation or permitting certain unregulated services.

June 2021 Update - What the Law Society Has Done

1. Launch of the regulatory "sandbox" for innovative technological legal services (April 2021)

2. By-Law changes to remove the exemption from paralegal licensing for Injured Worker Outreach Services workers (February 2020).

3. By-Law changes to remove the exemption from paralegal licensing for the Office of the Worker Advisor and Office of the Employer Advisor (May 2021)

4. Family Legal Service Provider consultation (reported June 2020)

D. Facilitating Access to Justice

Why This Is Significant

Recognizing the difficulty experienced by many Ontarians in accessing affordable legal services, the Law Society's statutory obligation to regulate so as to facilitate access to justice – and advancing confidence in the regulator's commitment to the public interest - is of strategic significance.

What the Law Society Will Do

The Law Society will determine the direction and extent of activities that it will undertake to regulate so as to facilitate access to justice. This includes determining the most effective ways to regulate legal services. This should be done in a manner that directly and appropriately facilitates and does not unnecessarily restrict access to justice while protecting the public interest.

June 2021 Update - What the Law Society Has Done

1. Amendments to conflict of interest rules of conduct respecting short term limited legal services through Legal Aid Ontario (October 2019)

2. Launch of the regulatory "sandbox" for innovative technological legal services (April 2021)

3. Family Legal Service Provider consultation (reported June 2020)

4. Support for the work of The Action Group on Access to Justice that includes information exchange on implementation of programs and procedures by stakeholders in Ontario to facilitate access to justice in family law (October-November 2020; Access to Justice Week October 25-29, 2021).

5. Amendments to rules of conduct respecting contingency fee reforms (October 2020); updated resources for the public and licensees including comprehensive FAQs and CPD programming (early 2021 and forward)

6. Continuing implementation of recommendations of the 2018 Abiding Interest Report of the Legal Aid Working Group and continued work with the Alliance for Sustainable Legal Aid (ASLA) to strengthen the Law Society's relationship with Legal Aid Ontario and promote robust legal aid.

Law Society of Ontario | Barreau de l'Ontario

Tab 4

Tribunal Committee

For decision

June 23, 2021

Committee Members:

Julia Shin Doi (Chair)
Ryan Alford (Vice-Chair)
Marian Lippa (Vice-Chair)
Malcolm M. Mercer (*ex officio*)
Catherine Banning
Jack Braithwaite
Jared Brown
Jean-Jacques Desgranges
John Fagan
Michael LeSage
C. Scott Marshall
Isfahan Merali
Barbara Murchie
Geneviève Painchaud
Chi-Kun Shi
Tanya Walker

Authored By:

Lisa Mallia,
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For decision

Tab 4 Report on proposed Law Society Tribunal Rules of Practice and Procedure

Tab 4.1 Rules of Practice and Procedure – redlined (English)

Tab 4.2 Règles de Pratique et de Procédure – marqué (Français)

Tab 4.3 Rules of Practice and Procedure – clean (English)

Tab 4.4 Règles de Pratique et de Procédure – pas de marqué (Français)

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Issue – Rules of Practice and Procedure

The Tribunal Committee unanimously asks Convocation to approve the proposed amendments Law Society Tribunal *Rules of Practice and Procedure*, to be effective October 1, 2021.

Motion

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 (Français).

Note: *Tab 4.3 (English) and Tab 4.4 (Français) are clean drafts showing the amendments made.*

Executive Summary

Beginning in November 2020, the Tribunal Committee has worked with Tribunal Chair Malcolm M. Mercer to review the policy implications brought about by the government measures undertaken following the declaration of a COVID-19 pandemic and the Tribunal's mandate to continue operations. The focus has been on what has been learned and accomplished at the Tribunal during this time and how to best proceed in the future.

Convocation was provided with a copy of the draft changes to the Law Society Tribunal *Rules of Practice and Procedure* in April 2021. The Law Society and the public were invited to comment by May 30, 2021. No comments from the public were received.

The effective date of October 1, 2021 will provide ample notice of the changes to those appearing before the Tribunal and to other stakeholders as well as provide time to review and update the Tribunal's practice directions to reflect the changes.

Committee Process

The Committee discussed the Rules and proposed policy changes and later draft language at the November 2020, and January, February, and April 2021 Committee meetings. The Rules were also discussed at the March 2021 meeting of the Tribunal Chair's Practice Roundtable and meetings and e-mail exchanges with the Law Society Tribunal's post-pandemic working group.

The Tribunal Chair's Practice Roundtable is a forum for the Tribunal to consult with and obtain feedback from those who practice before the Tribunal and is made up of individuals who regularly

appear before the Tribunal as counsel whether representing licensees / licence applicants, the Law Society or as duty counsel.

The Tribunal's post-pandemic working group is a group made up of Tribunal staff, adjudicators (Benchers) and counsel from the LSO and the duty counsel program who expressed an interest in considering how the Tribunal can best respond to the pandemic and moving forward.

Background

As a result of pandemic measures, all Law Society staff, including those at the Tribunal, began working at home during the last two weeks of March 2020. All in-person appearances were cancelled at that time and since then, appearances have taken place by videoconference, teleconference or in writing.

Most merits and motion hearings have taken place by videoconference; PMCs have taken place by teleconference, and PHCs have transitioned from primarily by teleconference to primarily by videoconference. While most of the hearings initially scheduled for videoconferences were summary hearings or uncontested matters, as the pandemic continues more continuation dates, and hearings for more complex matters, are being scheduled to take place by videoconference. As of February 17, 2021, all in-person hearings at the Tribunal have been cancelled to the end of September 2021.

The professions and the public have been kept up-to-date by notices posted on the Tribunal's website such as this one. The notices are also published on the Tribunal's twitter feed.

While many of the steps taken to adapt the Tribunal's processes in response to pandemic measures were ad-hoc, the Tribunal Committee, together with the Tribunal Chair, is tasked with considering the policy implications on the Tribunal of pandemic measures.

Discussion

The proposed changes to the *Rules of Practice and Procedure* reflect the discussions that have taken place at the Committee and also comments received from the Roundtable and working group.

Electronic Documents

There was little, if any, negative response to the proposed move to electronic filing of documents and maintaining an electronic record of proceeding, supplemented by physical documents only where physical documents are, by their nature, required.

Concern was raised that some licensees / licence applicants will require assistance to ensure that their documents complied with any requirements set out in a practice direction. Standardization of formats, file naming conventions, pagination and ease of use were all issues discussed in regards to electronic documents. It is desirable to ensure that panels of three or five are not unnecessarily duplicating work to access filed materials.

Electronic Appearances

There has been much discussion about whether certain types of, or indeed all, appearances should be electronic by default or not. The responses to this question have been varied.

On the one hand, some have suggested that in addition to substantial savings for parties and for the Tribunal (on office space, transportation, hotel accommodations etc.), moving to a presumption of videoconference hearings will also increase access to the Tribunal for licensees / licence applicants residing outside of Toronto. Licensees / licence applicants and out of town adjudicators would not have to travel to Toronto, incurring transportation, accommodation and other costs which would be compounded if they are also represented at the Tribunal. Positive environmental impacts were also raised.

On the other hand, feedback received from representatives appearing at the Tribunal included concern about any presumption of virtual hearings. Some suggested that in-person hearings should remain the default and/or the licensee / licence applicant ought to retain the right to choose an in-person reason. Others did not agree that the licensee / licence applicant ought to have essentially a veto but agreed that videoconference hearings ought not to be the default.

There was broad agreement that videoconference appearances and hybrid hearings would be appropriate. The differences of opinion were with respect to the extent to which in-person hearings were appropriate.

Availability of technology and connectivity

Concerns about difficulties accessing reliable technology (both hardware and reliable/sufficient internet connection) by licensees / licence applicants and the need to address those difficulties were often mentioned. In addition, the ability of all licensees / licence applicants to actually use the technology was raised. The issue of access to justice also includes improving access to the Tribunal for licensees and licence applicants wherever located throughout the province. There is substantial interest in working to ensure access to technology and connectivity for effective remote access to the Tribunal and its proceedings.

Proposed Amendments

The proposed amendments to the Rules reflect the Committee's intent to move forward with greater reliance on electronic / videoconference hearings and acceptance of electronic documents.

Highlights

Rule 1 has been updated to include the importance of efficient processes and proceedings.

Rule 5 has been updated to reflect the move to electronic documents. Corresponding changes have also been made in Rule 3 regarding starting proceedings. Rule 13 – record of proceedings has been updated to reflect this move as well. Rule 18.2 was similarly updated.

Rule 9 addresses the manner of appearance and sets out that the Tribunal will direction the manner of the appearance. Rule 2.1(2) sets out a non-exhaustive list of considerations to be taken into account in making the determination. Rule 7.3 has been deleted as a consequence.

We are also using this time to make some updates to the language and certain rules to make them easier to understand and apply, based on experience gained over the last year.

Rule 6.4 is updated to reflect the language used in the Act. The same is true for Rules 9.9 and 9.10, though Rule 9.10 requires someone who wants to make an audio recording to notify the Tribunal.

Improvements are proposed for Rule 17 to account for experience in applying the rule over the past year. Issues have arisen in multiple proceedings because of the requirement in the initial rule to base calculations on the date a notice of appeal was filed, regardless of any steps taken afterwards. The update proposed changes this to use a "deadline" as the basis for calculating time; either the deadline established in Rule 17.3 or as otherwise set by the Tribunal.

Law Society Tribunal
Tribunal du Barreau

LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

Effective January 1, 2020,

amended effective October 1, 2020, October 1, 2021

CONTENTS

RULE 1: PURPOSES AND INTERPRETATION

Purposes

1.1 The purposes of these rules are to:

(a) establish fair processes that consider the interests of the public, the legal professions, individual licensees and licence applicants;

(b) promote timely determination of proceedings in accordance with the public interest;

~~(b)~~(c) ensure efficient processes and proceedings;

~~(c)~~(d) ensure that the Tribunal's processes are clear and understandable;

~~(d)~~(e) allow for flexibility to adapt processes to the needs of particular cases and types of cases, including those involving disadvantaged and vulnerable persons;

~~(e)~~(f) promote early identification of issues in dispute and facilitate agreement and resolution;

~~(f)~~(g) ensure that processes and proceedings are transparent to the public and to licensees and licence applicants; and

~~(g)~~(h) allow licensees and licence applicants to participate effectively in the process, whether or not they have a representative.

Interpretive Principles

1.2 These rules shall be interpreted and applied in accordance with their purposes.

1.3 Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.

1.4 The Tribunal may exercise its powers at the request of a party or on its own initiative.

1.5 The Tribunal may decide not to ~~strictly~~ apply these rules strictly unless to do so would be inconsistent with legislation, regulations or a mandatory rule.

~~1.5~~1.6 The Tribunal operates electronically to the extent reasonably possible taking into account the purposes set out in Rule 1.1 and where doing so improves access to the Tribunal and is procedurally fair.

RULE 2: APPLICATION AND DEFINITIONS

Name

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

Application

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

Definitions

2.3 In these rules, unless the context requires otherwise:

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

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

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

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

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

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

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

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

"document" includes electronic records ("*document*");

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Tribunal's File Sharing Platform" means an electronic file sharing system established by or approved by the Tribunal for use by parties and others in Tribunal proceedings ("▪");

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

Same meaning as in the Act

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

Calculating time

2.5 In calculating time under these rules, or under a direction or order made under these rules:

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

RULE 3: STARTING AND WITHDRAWING PROCEEDINGS

Service

3.1 (1) A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-17) and information sheet (Forms 18-25).

(2) A party must serve an originating process and information sheet by:

(a) hand delivery to the person being served;

(b) regular mail, registered mail or courier sent to the party's home and / or business addresses;

~~(b)~~(c) electronically by e-mail sent to the party's home and / or business e-mail addresses; or

~~(c)~~(d) any other method agreed to by the person being served or directed by the Tribunal.

(3) The Law Society must file originating processes and information sheets electronically.

(4) The addresses mentioned in Rule 3.1 (2) (b) and (c) are:

(a) in the case of licensees, the addresses provided to the Law Society under By-Law 8; and

(b) in the case of licence applicants, the addresses provided to the Law Society during the licensing process.

Amending an originating process

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

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

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

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

Withdrawing a proceeding or motion

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

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

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

RULE 4: ADDITIONAL PARTICIPANTS

Adding parties

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

Intervenors

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

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

Friend of the Tribunal

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

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

How to serve

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

(a) hand delivery;

(b) regular mail, registered mail or courier;

(c) e-mail, if less than 20 MB;

(d) uploading an electronic document to the Tribunal's File Sharing Platform and serving notice on the other party that the electronic document has been uploaded; ~~fax, if the document is 20 pages or less;~~ or

(e) any other method agreed to by the person being served or directed by the Tribunal.

Effective date of service

5.2 Service is deemed to be effective:

(a) if the document is ~~faxed, e-mailed, uploaded to the file-sharing system, hand delivered or delivered by courier~~served, other than by mail, before 5 p.m. on a business day, on that day;

(b) if the document is ~~faxed, e-mailed, uploaded to the file-sharing system, hand delivered or delivered by courier~~served, other than by mail, on a holiday or after 5 p.m. on a business day, on the next business day;

(c) if the document is mailed, on the fifth business day after mailing.

Service using contact information in the Law Society's records

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

Confirmation of service

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

(a) a Confirmation of Service form (Form 27), which may be provided in the body of an e-mail;

(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 including by

i. copying the Tribunal in the original e-mail to the other person; or

~~i.~~ii. forwarding the original e-mail to the Tribunal; or

~~(c)~~(d) written acceptance of service by the person served, which may be provided ~~electronically~~by e-mail to the Tribunal.

Communication with the Tribunal

5.5 (1) All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding.

(2) All communication with a panel other than during an appearance shall be sent in writing to the Tribunal Office, and may be sent electronically.

Respectful communication

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

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

Acceptance of documents by the Tribunal

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

Filing requirements: electronic and hard copies

~~5.8~~

~~5.9~~ Other than physical documents filed at an in-person appearance, ~~(1) The following~~ ~~A~~all documents must be filed in electronic ~~copy~~form and be in accordance with the Tribunal's practice direction on electronic filing ~~:~~

~~(a) pre-hearing conference memoranda;~~

~~5.10~~5.8 ~~(b) any document less than 10 pages, unless filed at an appearance~~.

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

~~(a) agreed statements of facts (not including exhibits);~~

~~(b) affidavits (not including exhibits);~~

~~(c) requests to admit;~~

~~(d) draft orders;~~

~~(e) facta;~~

~~(f) written submissions; and~~

~~(g) notices of motion.~~

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

Filing electronic documents

5.115.9 Where possible, Eelectronic copies of documents may must be filed in pdf format or, alternatively, in both pdf and other formats such as .doc, .ppt and .xlsx. Word and/or pdf format, Electronic documents may be filed by e-mail (if less than 20 MB), on a USB drive, by the Tribunal's File Sharing Platform or by such other method as the Tribunal may permit. The document file name and the structure and format of the electronic document must include the Tribunal file number, the name of the document and the party filingcomply with the Tribunal's practice direction on electronic documentsfiling.

Filing physical documentshard copy documents

5.10 When Where a party files a documentsing in physical formhard copy at an in-person appearance:

(1) the party must file:

(a) two copies of the document if the appearance is before a single-member panel;

(b) four copies of the document if the appearance is before a three-member panel; or

(c) six copies of the document if the appearance is before a five-member panel;

together with an electronic copy, or an additional un-tabbed and unbound hard copy, of the physical document.

(2) the electronic copy of the physical document filed by the party, or an electronic copy created by the Tribunal if no electronic copy is filed by the party, becomes part of the record of proceeding but the physical document does not.

Layout

5.11 (1) Documents prepared forfiled with the Tribunal proceedings must be legible. Written documents must be typed or printed. Electronic documents must be formatted to be printed on white 8.5 by 11 inch paper 216 millimetres by 279 millimetres (8.5 by 11 inches), using 12-point font, double-spaced, except for quotations which may be single-spaced, with a margin of at least 1 ½ inches on the left-hand side.

(2) Physical documents must be on white 8.5 by 11 inch paper 216 millimetres by 279 millimetres (8.5 by 11 inches).

5.12 (3) These requirements do not apply to documentary evidence or copies of documentary evidence.

Facta

5.13 A factum must include at least the following sections:

(a) overview;

(b) issues;

(c) facts, argument and law;

(d) the order requested;

(e) schedule A, containing a list of authorities referred to; and

(f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

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

Books of authorities

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

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

~~Covers~~

~~5.16 The front and back covers of bound documents must be:~~

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

~~(b) white if filed by a licensee or licence applicant;~~

~~(c) buff if filed by any other party; or~~

~~(d)~~(a) ~~red if the document is subject to a not public order, non-disclosure order or publication ban, unless the document was filed before the order was made.~~

RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION

First appearance

6.1 (1) The date of the first appearance, in Hearing Division proceedings, is set out on the information sheet.

(2) For a summary hearing, interlocutory suspension or restriction motion, or motion to vary or cancel an interlocutory suspension or restriction, the first appearance is the scheduled hearing date. The applicant must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.

(3) For all other Hearing Division proceedings, the first appearance is a proceeding management conference. Available proceeding management conference dates are posted on the Tribunal website.

(4) An appeal hearing is scheduled by the Tribunal Office once the appeal has been perfected.

Who may schedule or adjourn

6.2 An appearance may be scheduled or adjourned by:

(a) a pre-hearing conference or proceeding management conference;

(b) the assigned hearing panel or its chair; or

(c) the Tribunal Office, if the scheduling or adjournment is on consent.

Adjournments

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

6.4 An order adjourning an appearance may include such terms and conditions as the panel considers appropriate. ~~The Tribunal may order that there be terms to an adjournment.~~

Accommodation

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

Accommodation for Witnesses

6.6 Where it would be fair and in the interests of justice, the Tribunal may:

(a) permit a support person to sit near a witness while the witness testifies;

(b) order that a witness testify in a manner that would allow the witness not to see the licensee, licence applicant or any other person;

(c) order that a licensee or licence applicant not personally conduct the cross-examination of a witness, and shall appoint counsel for the purpose of conducting the cross-examination without cost to the licensee or licence applicant; and

(d) make other orders accommodating or protecting witnesses.

Failure to attend or participate

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

RULE 7: CASE MANAGEMENT

Principles

7.1 The Tribunal applies active case management throughout the course of proceedings, so that, among other things:

(a) proceedings move forward in a fair and timely way, in the public interest;

(b) scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;

(c) issues are identified early so the parties have the opportunity to fully prepare; and

(d) adjournments are granted only due to unforeseeable and exceptional circumstances.

Case management directions

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

(a) a proceeding management conference;

(b) a pre-hearing conference;

(c) a hearing or case conference, by the assigned hearing panel; or

(d) a case conference, by the chair of the assigned hearing panel, prior to or between hearing days.

[~~Format~~

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

Endorsement

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

Proceeding management conference

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

Directions at proceeding management conference

7.6 A proceeding management conference panel may:

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding;

(c) hear and decide a procedural motion;

(d) make a not public order, non-disclosure order or publication ban; and

(e) make any other procedural directions, including directions about process at the hearing.

Pre-hearing conference

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

Issues discussed at pre-hearing conference

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

(a) the identification, limitation or simplification of the issues in the proceeding;

(b) the identification and limitation of evidence and witnesses;

(c) the possibility of settlement of any or all of the issues in the proceeding;

(d) the possibility of the parties entering into an agreed statement of facts; and

(e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

When a pre-hearing conference is scheduled

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

Confidential and without prejudice

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

Directions at pre-hearing conference

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

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding; and

(c) make any other procedural directions to move the matter forward toward hearing in a fair and timely manner, including directions about process at the hearing.

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

Pre-hearing conference memoranda

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

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

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

Limitation on assignment of pre-hearing conference Tribunal member

7.13 (1) Except with agreement of the parties, a Tribunal member who conducted a pre-hearing conference in an application shall not be assigned to a motion or merits hearing

or to any appeal of that proceeding, nor shall a member of the panel assigned to a hearing preside at a pre-hearing conference. The parties must confirm their agreement by filing a consent (Form 31).

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

Case conference

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

Directions at case conference

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

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding;

(c) make a not public order, non-disclosure order or publication ban; and

(d) make any other procedural directions.

RULE 8: MOTIONS

Motions

8.1 (1) A motion must be made by notice of motion (Form 28) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) If a motion date has not been confirmed by the Tribunal at the time the notice of motion is served and filed, the notice of motion must indicate that the motion will be heard on a date to be set by the Tribunal.

(3) The Tribunal may direct that the parties attend a proceeding management conference before setting a motion date.

(4) A motion may not be brought prior to the start of the proceeding to which it relates.

Motion materials

8.2 (1) This rule applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.

(2) At least 10 days before the hearing of the motion, the moving party must serve and file a motion record that includes the notice of motion, together with a factum and a book of authorities.

(3) A responding party to the motion must serve and file a factum, together with a motion record and book of authorities, if any, at least three days before the hearing of the motion.

(4) A motion record must have consecutively numbered pages and contain;

(a) a table of contents that lists each document contained in the motion record and describes each by its nature and date, including exhibits, which shall be described by their nature, date and exhibit number or letter;

(b) the notice of motion, if not already included in another party's motion record; and

(c) all affidavits and other material upon which the party intends to rely.

(5) Where cross-examination on an affidavit in a motion record occurs, it will take place before the panel at the motion hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter. The party calling the witness must ensure the attendance of the witness for cross-examination.

Motions on consent or unopposed motions

8.3 When a motion is on consent or unopposed:

(a) facta and books of authorities are not required unless ordered by the Tribunal; and

(b) the moving party must file a draft of the order sought and any consents.

RULE 9: APPEARANCES

Manner~~Form~~ of appearance

9.1 (1) ~~Unless otherwise provided, an appearance shall take place in person.~~As directed by the Tribunal, an appearance shall occur by telephone, by videoconference, in writing or in ~~-~~person.

(2) In directing the manner of an appearance, the Tribunal takes into account the purposes set out in Rule 1.1, that applications before the Tribunal involve parties, witnesses and members who may be remote from the Tribunal and that there are costs and benefits associated with in-person hearings to be taken into account.

Attending an in-person appearance electronically

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

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

(3) Subject to direction by the panel, a panelist may attend an in-person appearance by videoconference.

Written or electronic appearance

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

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

Converting the manner of appearance

9.3 (3) The panel assigned to an written appearance may convert the appearance to a telephone, a videoconference, an in-writing or an in-person appearance from the manner of appearance otherwise directed. to an electronic or in-person appearance and the panel assigned to an electronic appearance may convert the appearance to an in-person appearance.

Language

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

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

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

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

Location

~~9.5~~9.4 (1) Subject to Rules 9.5(2) and (3), an in-person hearing shall be held at the Law Society Tribunal in Toronto.

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

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

Hearing proceedings together or consecutively

~~9.6~~9.5 (1) The Tribunal may order that two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other, if:

(a) the proceedings have a question of fact, law or mixed fact and law in common;

(b) the proceedings involve the same parties;

(c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or

(d) for any other reason an order ought to be made under this rule.

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

Consent to hearing before one member of the Tribunal

~~9.7~~9.6 The parties to a conduct proceeding may consent to the application being heard by one member of the Tribunal under O. Reg. 167/07, s. 2(1) by filing a consent (Form 31) with the Tribunal.

Transcripts

~~9.8~~9.7 (1) A person wishing to have a copy of the transcript of a public appearance must order it, at their own expense, from the reporting service that recorded the appearance.

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

Images and recording

9.9 Subject to rule 9.10, ~~No~~ no one other than a court reporting service may, without leave:

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

(b) ~~(b)~~ take a screen shot or make a video or audio recording of an ~~electronic~~ appearance.

9.10 Subject to providing prior written notice to the Tribunal, ~~A~~a representative, a party acting in person 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.

RULE 10: DISCLOSURE AND PRODUCTION

Law Society's obligation to disclose

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

Production from the Law Society

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

Interlocutory suspension or restriction motions

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

Production from third parties

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

Witness statements and document books

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

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

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

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

(2) The Law Society must comply with this rule no later than 14 days before a summary hearing and no later than 20 days before any other merits hearing. A licensee or licence applicant must comply with this rule no later than seven days before a summary hearing and no later than 10 days before any other merits hearing.

Expert reports

10.6 (1) Each party must provide to every other party, no later than 60 days before a hearing, a copy of the affidavit or written report of every expert witness the party intends to call.

(2) An affidavit or report of an expert must include an Acknowledgement of Expert's Duty (Form 33).

Consequences of failure to disclose

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

RULE 11: EVIDENCE

Agreed facts

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

Affidavit evidence

11.2 (1) The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.

(2) Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before a court reporter.

(3) The party calling the witness must ensure the attendance of the witness for cross-examination.

Deemed admissions

11.3 (1) A party may request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. The request must be in Form

29 and served on the other party. The request to admit must include a copy of any document mentioned in it unless the other party already has the document. A request must be served no later than:

(a) 30 days before the hearing if the request contains 75 paragraphs or less;

(b) 50 days before the hearing if the request contains 76-200 paragraphs;

(c) 70 days before the hearing if the request contains more than 200 paragraphs.

(2) The party on whom the request is served must serve a response no later than;

(a) 20 days after the date of service if the request contains 75 paragraphs or less;

(b) 40 days after the date of service if the request contains 76-200 paragraphs;

(c) 60 days after the date of service if the request contains more than 200 paragraphs.

(3) The response must be in Form 30 and must, in relation to each fact and document mentioned in the request:

(a) admit the truth of the fact or the authenticity of the document;

(b) specifically deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or

(c) refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.

(4) If a party fails to respond to a request to admit or fails to respond in a manner that complies with this rule, that party will be deemed to admit, for the purposes of the proceeding only, the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(5) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(6) If a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved, the Tribunal shall take the denial or refusal into account in exercising its discretion respecting costs.

(7) The Tribunal may relieve a party from a deemed admission.

Filing materials before the hearing

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

Summons

11.5 (1) The Tribunal may, by summons, require any person to give evidence on oath or affirmation at a hearing and/or produce in evidence at a hearing specified documents and things.

(2) A summons shall be in Form 32, and may be signed by the Registrar or a Tribunal member.

(3) On request of a party, unless a panel has directed otherwise, the Tribunal Office may provide a blank summons to a party.

(4) The party that obtains a summons must serve the summons on the witness, and pay attendance money as set out in Tariff A under the *Rules of Civil Procedure*.

Exclusion of witnesses

11.6 (1) Subject to Rule 11.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.

(2) A party or a person instructing a party's representative shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.

(3) Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

Admission of evidence

11.7 (1) The rules of evidence applicable in civil proceedings apply in Tribunal proceedings, except where these rules provide otherwise.

(2) Sections 15(4) and 16 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 apply to the admission of evidence in Tribunal proceedings.

(3) Sections 15(1) and (2) of the *Statutory Powers Procedure Act* apply to the admission of evidence in interlocutory suspension or restriction motions.

(4) Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

Previously Admitted Evidence

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

(a) the party against whose interest the evidence is sought to be admitted was a party to the other proceeding,

(b) the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and

(c) an issue in the other proceeding is substantially similar to an issue in the current proceeding.

Limits on examination or cross-examination

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

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

Information obtained by the Discrimination and Harassment Counsel

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

RULE 12: INTERLOCUTORY SUSPENSION OR RESTRICTION MOTIONS

Authority

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

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

Motions rule applies

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

When authorization required

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

Service and materials

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

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

(a) it is not practical; or

(b) the delay it could cause may lead to serious consequences.

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

Interim interlocutory suspension or restriction

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

Duration of interlocutory suspension or restriction

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

Grounds to vary or cancel

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

Motion to vary or cancel

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

RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY

Record of proceeding

13.1 (1) The record of proceeding consists of:

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

(b) all exhibits, including any marked “for identification”;

(c) all other documents and correspondence from a party or other participant, reviewed by a panel, except for the purpose of a pre-hearing conference;

(d) all notices of hearing;

(e) all endorsements;

(f) all orders made by the Tribunal;

(g) all reasons issued by the Tribunal; and

(h) all transcripts filed with the Tribunal.

(2) Items listed out in Rule 13.1(a) to 13.1(h) that became part of the Record of Proceeding after [date to be determined] shall be maintained in electronic form unless the Tribunal determines otherwise.

Open tribunal

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

(2) Anyone may attend a public appearance unless the Tribunal orders otherwise.

Departing from openness

13.3 (1) The Tribunal may make a not public order, non-disclosure order or publication ban only if:

(a) an order is necessary to prevent a serious risk to the administration of justice because reasonable alternative measures will not do so; and

(b) the benefits of the order outweigh the effects on the right to free expression and the transparency of the administration of justice.

(2) If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

Capacity proceedings

13.4 In applying Rule 13.3 to a request for a not public order, non-disclosure order or publication ban in a capacity proceeding, a panel shall consider:

(a) that a central issue in capacity proceedings is the licensee's health;

(b) the nature and impact on the public of any of the licensee's actions that led to the proceeding;

(c) any stigma related to the nature of the licensee's health issues;

(d) the possible impact of disclosure on the licensee's or others' health; and

(e) any other relevant factor.

Children and sexual misconduct complainants

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

Privilege

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

Effect of not public order

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

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

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

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

Effect of non-disclosure order

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

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

Effect of publication ban

13.9 (1) When a publication ban has been made, the hearing and Tribunal file remain open to the public.

(2) No one may publish in any document or broadcast or transmit in any way information or documents subject to a publication ban.

(3) The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

Effect of order

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

RULE 14: ORDERS AND REASONS

Orders

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

Power to make orders

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

Addressing capacity issues in conduct applications

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

Formal order

14.4 (1) Any party may prepare a draft of a formal order.

(2) A formal order shall be in Form 34-38 as appropriate.

(3) A party that has prepared a draft of a formal order may submit it to the Tribunal, before or after a panel makes its decision.

(4) The draft order will be treated as a submission and the panel may amend the order.

(5) Where a formal order is not prepared by any party, it will be prepared by the Tribunal Office.

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

Reasons

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

Correction of errors

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

RULE 15: COSTS

Power to award costs

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

(a) in a licensing, conduct, capacity, competence or non-compliance proceeding, where the proceeding was unwarranted, or where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; or

(b) in a proceeding not mentioned in clause (a), where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

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

(a) where a determination adverse to the licensee or licence applicant was made; or

(b) where the licensee or licence applicant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

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

Tariff

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

Security for costs

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

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

(a) the applicant has an order against him or her for costs in the same or another proceeding under the Act that remains unpaid in whole or in part;

(b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the applicant has

insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or

(c) in the case of a licensing or restoration proceeding, there is good reason to believe that the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

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

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

RULE 16: REPRIMANDS

Administration of reprimands

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

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

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

Appeals and reprimands

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

RULE 17: APPEALS

Orders that may be appealed

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

Deadline for appeal

17.2 (1) To start an appeal, the appellant must file a notice of appeal (Form 14 or 15) and information sheet (Form 24 or 25) within 30 days of the date of the final order in the

Hearing Division proceeding appealed from. After that, an appeal may be started only with the written consent of the respondent to the appeal or with leave.

(2) The motion record for a motion to extend the time to appeal must include a draft notice of appeal.

(3) No later than 10 days after filing the notice of appeal, the appellant must serve and file written confirmation from the court reporting service that all transcripts of the proceeding under appeal not already filed in the Hearing Division, have been ordered.

(4) If otherwise entitled to appeal, the respondent may cross-appeal by serving and filing a notice of cross-appeal (Form 17) no later than 15 days after being served with the notice of appeal. No information sheet is required with a notice of cross-appeal.

Perfecting the appeal

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

Dismissal for delay and deemed withdrawal

17.4 (1) If an appeal is not perfected by the deadline, the respondent may bring a motion to dismiss the appeal for delay.

(2) If the appeal has not been perfected ~~five~~ three months from the ~~date the notice of appeal was filed~~deadline, the Registrar shall ~~advise~~ notify the parties that the appeal will be deemed withdrawn if not perfected within ~~six months after the notice of appeal was filed~~ by 30 days after the date of the Registrar's notice.

(3) If an appellant to cross-appeal wishes to pursue the cross-appeal even if the appeal is deemed withdrawn, the respondent must notify the Tribunal ~~within two weeks~~ by 14 days after the date of ~~of receiving~~ the Registrar's notice under Rule 17.4 (2).

(4) If the appeal has not been perfected within ~~six months of the date the notice of appeal was filed~~ by 30 days after the date of the Registrar's notice under Rule 17.4(2), the Registrar shall deem the appeal withdrawn. If the appellant to cross-appeal has advised of a desire to pursue a cross-appeal, a proceeding management conference shall be scheduled to set a timeline for the hearing of the cross-appeal.

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

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

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

Deadline for respondent's materials if cross-appeal filed

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

Respondent to cross-appeal materials

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

Compendia

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

RULE 18: FRESH EVIDENCE ON APPEAL

Motion to introduce fresh evidence

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

Proposed fresh evidence ~~in sealed envelope~~

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

Hearing of fresh evidence motion

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

Hearing of appeal in any event

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

Where respondent consents

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

Timing of Fresh Evidence Motion

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

RULE 19: APPEAL MATERIALS

Appeal books

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

(a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;

(b) a copy of the notice of appeal and any notice of cross-appeal, as amended;

(c) a copy of the order or orders appealed from;

(d) a copy of all endorsements and reasons of the Hearing Division in the proceeding;

(e) a copy of the originating process that initiated the proceeding before the Hearing Division;

(f) a copy of any exhibits that are referred to in the appellant's factum;

(g) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the appellant's factum;

(h) a copy of any directions given at a proceeding management conference in the appeal;

(i) a copy of any endorsements, orders and reasons of the Appeal Division made in the appeal; and

(j) where any of the materials are subject to a non-publication order, a copy of the non-publication order.

(2) The respondent's appeal book must contain, in consecutively numbered pages with numbered tabs:

(a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;

(b) a copy of any exhibits referred to in the respondent's factum that are not included in the appellant's appeal book; and

(c) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the respondent's factum that are not included in the appellant's appeal book.

(3) Any documents subject to a not public order, non-disclosure order or publication ban must be included in a separate appeal book volume.

Appeal facta

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

RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS

Starting administrative suspension order appeal

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

(2) An administrative suspension order appeal may be started beyond this time limit with consent of the Law Society or leave of the Tribunal.

Administrative suspension order appeals on consent

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

Filing of affidavits and hearing

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

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

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

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

Pre-hearing conference

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

APPENDIX A – Tariff of Fees for Services

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

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

Law Society Tribunal
Tribunal du Barreau

TRIBUNAL DU BARREAU
RÈGLES DE PRATIQUE ET DE PROCÉDURE

En vigueur le 1er janvier 2020,

modifications en vigueur le 1er octobre 2020, le 1er octobre, 2021

TABLES DES MATIÈRES

RÈGLE 1 : OBJET ET INTERPRÉTATION

Objet

1.1 Voici l'objet des présentes règles :

a) Établir des processus équitables qui tiennent compte de l'intérêt du public, des professions juridiques, des titulaires et des demandeurs de permis individuels ;

b) Favoriser la résolution des instances en temps opportun, dans l'intérêt public ;

~~b)~~c) Veiller à ce que les procédures et les instances soient efficaces ;

~~c)~~d) Veiller à ce que les procédures du Tribunal soient claires et compréhensibles ;

~~d)~~e) Permettre d'adapter avec flexibilité les procédures aux cas et types de cas particuliers, y compris ceux qui impliquent des personnes désavantagées et vulnérables ;

~~e)~~f) Encourager l'identification précoce des questions en litige et faciliter l'entente et la résolution ;

~~f)~~g) Assurer des procédures et des instances transparentes pour le public et pour les titulaires et les demandeurs de permis ;

~~g)~~h) Permettre aux titulaires et aux demandeurs de permis de participer activement aux processus, avec ou sans représentant.

Principes d'interprétation

1.2 Les présentes règles sont interprétées et appliquées conformément à leur objet.

1.3 Les ordonnances et les directives rendues en application des présentes règles sont proportionnelles à l'importance et à la complexité des questions en litige.

1.4 Le Tribunal peut exercer ses pouvoirs à la demande d'une partie ou de sa propre initiative.

1.5 Le Tribunal peut décider de ne pas appliquer ~~strictement~~ les présentes règles strictement à moins que cela ne soit incompatible avec la loi, les règlements ou une règle obligatoire.

~~1.5~~1.6 Le Tribunal fonctionne en mode électronique dans la mesure du possible en tenant compte de l'objet de la Règle 1.1 et lorsque ce mode améliore l'accès au Tribunal et respecte l'équité procédurale.

RÈGLE 2 : CHAMP D'APPLICATION ET DÉFINITIONS

Nom

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

Champ d'application

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

Définitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

« plateforme de partage de dossiers du Tribunal » S'entend d'un système de partage de dossiers électroniques établi ou approuvé par le Tribunal pour utilisation par les parties et d'autres dans les instances du Tribunal (« Tribunal's

File Sharing Platform »)

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

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

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

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

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

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

(« *Tribunal* ») S'entend au sens de la Loi

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

Calcul des délais

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

a) si le délai est exprimé en nombre de jours séparant deux évènements, il se calcule en excluant le jour où a lieu le premier évènement, mais en incluant le jour où a lieu le second ;

b) si le délai fixé est inférieur à sept jours, les congés ne sont pas comptés ;

c) si le délai pour accomplir un acte expire un congé, l'acte peut être accompli le jour suivant qui n'est pas un congé ;

d) tout document qui est réputé reçu un congé et toute signification qui est réputée faite un congé est réputé l'être le jour suivant qui n'est pas un congé.

RÈGLE 3 : INTRODUCTION ET RETRAIT D'UNE INSTANCE

Signification

3.1 (1) Une partie introduit une instance en signifiant et en déposant l'acte introductif d'instance (formulaires 1 à 17) et la fiche d'information appropriée (formulaires 18 à 25).

(2) Une partie doit signifier l'acte introductif d'instance et la fiche d'information par l'un ou l'autre des modes suivants :

a) en main propre à la personne qui reçoit la signification ;

b) par la poste, courrier recommandé ou par messagerie au domicile de la partie ou à son adresse professionnelle ;

~~b)~~c) par courriel à l'adresse personnelle de la partie ou à son adresse professionnelle ;

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

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

(4) Les adresses mentionnées dans la Règle 3.1 (2) b) et c) sont :

a) dans le cas des titulaires de permis, les adresses fournies au Barreau en vertu du Règlement administratif n° 8;

b) dans le cas des demandeurs de permis, les adresses fournies au Barreau pendant le processus d'accès à la profession.

Modifier un acte introductif d'instance

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

a) auprès de la Section de première instance, au plus tard 10 jours avant l'audience sur le fond ;

b) auprès de la Section d'appel, avant la mise en état de l'appel.

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

Retrait d'une instance ou d'une motion

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

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

l'instance ou la motion.

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

RÈGLE 4 : PARTICIPANTS ADDITIONNELS

Jonction de parties

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

Intervenants

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

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

Intervenants désintéressés

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

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

Mode de signification

5.1 Un document autre que l'acte introductif d'instance peut être signifié selon l'un ou l'autre des modes suivants :

a) en main propre ;

b) par la poste, par courrier recommandé ou par messagerie ;

c) par courriel, si le document est inférieur à 20 Mo ;

d) ~~par~~ en téléversant un document électronique sur la plateforme de partage de dossiers du Tribunal et en signifiant un avis à l'autre partie indiquant que le document électronique a été téléversé ~~télécopieur, si le document comprend au maximum 20 pages~~ ;

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

Date de validité de la signification

5.2 La signification est réputée valide :

a) le jour même, si le document est signifié, autrement que par la poste, ~~transmis par télécopieur, par courriel, remis en main propre ou livré par service de messagerie~~ avant 17 h un jour ouvrable ;

b) le jour ouvrable suivant, si le document est signifié, autrement que par la poste, ~~transmis par télécopieur, par courriel, remis en main propre ou livré par service de messagerie un congé~~, un jour férié ou après 17 h un jour ouvrable ;

c) le cinquième jour ouvrable après l'envoi, si le document est transmis par la poste.

Signification utilisant les coordonnées dans les registres du Barreau

5.3 La signification à un titulaire de permis au moyen des coordonnées fournies au Barreau en vertu du Règlement administratif nº 8, art. 3 et 4, est réputée valide à moins d'une ordonnance contraire du Tribunal.

Confirmation de la signification

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

a) une confirmation de la signification (formulaire 27) qui peut être fournie dans le corps d'un courriel ;

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, notamment :

(i) en ajoutant le Tribunal en copie conforme au courriel original à l'autre personne ;

~~(i)~~(ii) en faisant suivre le courriel original au Tribunal;

~~c)~~d) l'acceptation par écrit de la personne qui reçoit la signification, laquelle peut être fournie par courriel au Tribunal.

Communication avec le Tribunal

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

(2) Toutes les communications avec une formation, autres que durant une comparution,

sont envoyées par écrit au greffe du Tribunal, et peuvent être envoyées par voie électronique.

Communications respectueuses

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

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

Acceptation de documents par le Tribunal

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

Exigences du dépôt : copies électroniques et copies papier

5.8 Outre les documents physiques déposés lors d'une comparution en personne, tous les ~~(1) Les~~ documents ~~suivants~~ doivent être déposés en format électronique~~,~~ et être conformes à la directive de pratique du Tribunal sur le dépôt électronique. ~~:~~

~~a) mémoires de conférence préparatoire à l'audience ;~~

~~b) les documents de moins de 10 pages, sauf ceux déposés lors d'une comparution.~~

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

~~a) exposés conjoints des faits (à l'exclusion des pièces) ;~~

~~b) affidavits (à l'exclusion des pièces) ;~~

~~c) demandes d'aveux ;~~

~~d) projets d'ordonnance ;~~

~~e) mémoires ;~~

~~f) observations écrites ;~~

~~g) avis de motion.~~

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

Dépôt des documents électroniques

5.9 Lorsque possible, les ~~copies~~ documents électroniques ~~de documents peuvent~~ doivent être déposées en format ~~Word ou~~ PDF ou sinon, en PDF et dans un format tel que .doc, .ppt et .xlsx. Les documents électroniques peuvent être déposés ~~,~~ par courriel (si moins de 20 ~~-~~Mo), sur une clé USB, sur la plateforme de partage de dossiers du Tribunal ou par tout autre mode permis par le Tribunal. Les noms de fichier et la structure et le format du document électronique doivent être conformes à la directive de pratique du Tribunal sur le dépôt électronique~~préciser le numéro de dossier du Tribunal, le nom du document et la partie qui le dépose~~.

Dépôt des documents ~~en copie papier~~physiques

5.10 Lorsqu'~~La~~ une partie ~~qui~~ dépose ~~des~~ un ~~documents~~ document en format physique lors d'une comparution en personne :~~copie papier doit fournir~~

(1) La partie doit déposer :

a) deux exemplaires si la comparution se déroule devant une formation composée d'un seul membre ;

b) quatre exemplaires si la comparution se déroule devant une formation composée de trois membres ;

c) six exemplaires si la comparution se déroule devant une formation composée de cinq membres.

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

(2) La copie électronique du document physique déposé par la partie, ou une copie électronique créée par le Tribunal si aucune copie électronique n'est déposée par la partie, fait partie du dossier de l'instance, mais pas le document physique.

Présentation

5.11 (1) Les documents déposés ~~préparés~~ auprès du ~~pour une instance du~~ Tribunal doivent être lisibles. Les documents écrits doivent être dactylographiés ou imprimés. Les documents électroniques ~~-~~doivent être mis en page pour être imprimés sur du papier blanc de 216 millimètres sur 279 millimètres (8 ½ pouces sur 11 pouces)~~, dans une taille de caractères de 12 points, à double interligne, sauf les citations qui peuvent être à simple interligne, avec une marge de 1 ½ pouce à gauche~~.

(2) Les documents physiques doivent être présentés sur du papier blanc de 216 millimètres sur 279 millimètres (8 ½ pouces sur 11 pouces).

~~(2)~~(3) Ces exigences ne s'appliquent pas à la preuve documentaire ni aux copies de la preuve documentaire.

Mémoires

~~5.10~~5.12 Un mémoire doit comprendre au moins les sections suivantes :

a) aperçu ;

b) questions en litige ;

c) faits, arguments et droit ;

d) ordonnance recherchée ;

e) annexe A, contenant une liste des textes à l'appui ;

f) annexe B, contenant le texte de toutes les dispositions pertinentes des lois, des règlements, des règlements administratifs et des règles des codes de déontologie.

~~5.11~~5.13 Sauf autorisation, un mémoire ne doit pas dépasser 30 pages.

Recueil des textes à l'appui

~~5.12~~5.14 (1) Les parties doivent souligner les passages dans leur recueil des textes à l'appui qu'ils entendent invoquer au cours de leur plaidoirie.

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

~~Couvertures~~

~~5.13 Les couvertures avant et arrière d'un document relié doivent être :~~

~~a) vertes si le document est déposé par le Barreau ;~~

~~b) blanches si le document est déposé par un titulaire de permis ou un demandeur de permis ;~~

~~c) chamois si le document est déposé par une autre partie ;~~

~~rouges si le document est assujetti à une ordonnance interdisant l'accès au public, à une ordonnance de non-divulgation ou à une interdiction de publication, à moins que le document ait été déposé avant que l'ordonnance ne soit rendue~~

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

Première comparution

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

(2) Lorsqu'il s'agit d'une audience sommaire, d'une motion pour suspension ou

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

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

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

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

6.2 Une comparution peut être inscrite au calendrier ou ajournée :

a) lors d'une conférence préparatoire à l'audience ou d'une conférence de gestion de l'instance ;

b) par la formation d'audience ou par le président de cette formation ;

c) par le greffe du Tribunal, si l'inscription de la comparution au calendrier ou l'ajournement de celle-ci est sur consentement.

Ajournements

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

6.4 Une ordonnance reportant une comparution peut comprendre des conditions que la formation estime appropriées~~Le Tribunal peut ordonner qu'un ajournement soit sujet à des conditions~~.

Mesures d'adaptation

6.5 En vertu du *Code des droits de la personne*, L.R.O. 1990, chap. H.19, les participants à une instance ont droit à des mesures d'adaptation, à moins que cela n'entraine un préjudice injustifié. Un participant à une instance doit informer le Tribunal dès que possible de toute mesure d'adaptation requise.

Accommodement des témoins

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

a) permettre à une personne de soutien de s'assoir près d'un témoin pendant qu'il témoigne ;

b) ordonner qu'un témoin témoigne d'une manière qui lui permette de ne pas voir le titulaire de permis, le demandeur de permis ou toute autre personne ;

c) ordonner qu'un titulaire de permis ou un demandeur de permis ne procède pas personnellement au contrinterrogatoire d'un témoin, et nomme un avocat pour procéder au contrinterrogatoire sans frais pour le titulaire de permis ou le demandeur de permis ;

d) rendre tout autre ordonnance pour accommoder ou protéger les témoins.

Défaut d'assister ou de participer

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

RÈGLE 7 : GESTION DE L'INSTANCE

Principes

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

a) l'instance progresse de façon équitable et avec célérité dans l'intérêt public ;

b) le temps d'audience prévu soit utilisé de façon efficace et efficiente, pour que la formation d'audience entende et tranche les questions en litige ;

c) les problèmes soient identifiés tôt pour que les parties aient le temps de bien se préparer ;

d) des ajournements soient accordés uniquement s'il s'agit de circonstances imprévues et exceptionnelles.

Directives de gestion de l'instance

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

a) lors d'une conférence de gestion de l'instance ;

b) lors d'une conférence préparatoire à l'audience ;

c) lors d'une audience ou d'une conférence relative à la cause, par la formation d'audience ;

d) lors d'une conférence relative à la cause, par le président de la formation

d’audience, avant ou entre les jours d’audience.

~~Format~~

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

Inscription

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

Conférence de gestion de l’instance

7.5 Le Tribunal peut, de sa propre initiative ou à la demande d’une des parties, tenir une conférence de gestion de l’instance.

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

7.6 Lors d’une conférence de gestion de l’instance, la formation peut :

a) fixer une date de comparution ou l’ajourner ;

b) établir des délais ou des dates limites pour différentes étapes de l’instance ;

c) entendre et trancher une motion de procédure ;

d) rendre une ordonnance interdisant l’accès au public, une ordonnance de non-divulgation ou une interdiction de publication ;

e) donner toute autre directive de procédure, y compris des directives relatives au processus à suivre lors de l’audience.

Conférence préparatoire à l’audience

7.7 La conférence préparatoire à l’audience a pour objet de faciliter une résolution équitable de l’instance, de la façon la plus expéditive possible.

Questions abordées lors d’une conférence préparatoire à l’audience

7.8 Lors d’une conférence préparatoire à l’audience, la formation peut aborder les questions suivantes avec les parties :

a) la définition, la restriction ou la simplification des questions en litige ;

b) la définition et la restriction des éléments de preuve et des témoins ;

c) la possibilité de s’entendre sur tout ou partie des questions en litige dans

l'instance ;

d) la possibilité pour les parties de s'entendre sur un exposé conjoint des faits ;

e) les étapes procédurales appropriées pour parvenir à la tenue d'une audience de façon juste et expéditive.

Obligation de fixer une conférence préparatoire à l'audience

7.9 Une conférence préparatoire à l'audience doit être fixée promptement pour toute instance, sauf s'il s'agit d'une audience sommaire, d'une motion pour suspension ou restriction interlocutoire, d'une motion de modification ou annulation d'une ordonnance de suspension ou restriction interlocutoire, ou d'un appel, à moins que la cause ne soit prête pour l'audience. Sur motion d'une partie ou de sa propre initiative, le Tribunal peut fixer une conférence préparatoire à l'audience dans toute instance et à tout moment.

Confidentielle et sous toutes réserves

7.10 La conférence préparatoire à l'audience est confidentielle et sous toutes réserves. Il est interdit de divulguer ce qui s'est passé lors de la conférence préparatoire à l'audience ou le contenu d'un mémoire de conférence préparatoire à l'audience, sauf ordonnance contraire ou obligation statutaire. La formation peut résumer dans l'inscription le résultat des discussions et les directives données.

Directives lors d'une conférence préparatoire à l'audience

7.11 (1) La formation qui dirige une conférence préparatoire à l'audience peut faire ce qui suit :

a) fixer une date de comparution ou l'ajourner ;

b) fixer des délais ou des dates limites pour différentes étapes de l'instance ;

c) donner toute autre directive sur la procédure visant à arriver à une audience de façon juste et expéditive, notamment des directives sur le processus à suivre lors de l'audience.

(2) La formation qui dirige une conférence préparatoire à l'audience peut donner des directives sur la procédure, avec ou sans le consentement des parties.

Mémoire de conférence préparatoire à l'audience

7.12 (1) Chaque partie prépare un mémoire de conférence préparatoire à l'audience contenant un exposé des faits sur lesquels la partie se fonde ainsi que sa position sur les questions en litige.

(2) Le mémoire de chaque partie est envoyé par courriel aux autres parties et au greffe du Tribunal. Le mémoire du Barreau doit être envoyé au moins sept jours avant la première conférence préparatoire à l'audience. Le mémoire du titulaire de permis ou du

demandeur de permis doit être envoyé au moins deux jours avant la première conférence préparatoire à l'audience.

(3) Le Tribunal peut dispenser de l'obligation de déposer un mémoire de conférence préparatoire à l'audience s'il est jugé que la préparation du mémoire ne serait pas pratique ou utile dans les circonstances.

Restriction relative à l'affectation d'un membre du Tribunal de la conférence préparatoire à l'audience

7.13 (1) Sauf avec le consentement des parties à l'instance, un membre du Tribunal qui a dirigé une conférence préparatoire à l'audience ne sera pas affecté à l'audience sur le fond, à une motion, ni à un appel de l'instance, et un membre de la formation d'audience ne sera pas affecté à une conférence de gestion de l'instance. Les parties doivent confirmer leur consentement en déposant un formulaire de consentement (formulaire 31).

(2) La présente règle n'empêche pas un membre du Tribunal qui a présidé la conférence préparatoire à l'audience de présider une conférence de gestion de l'instance.

Conférence relative à la cause

7.14 Le Tribunal peut tenir une conférence relative à la cause de sa propre initiative, selon les directives données lors d'une conférence de gestion de l'instance, ou à la demande d'une des parties.

Directives lors d'une conférence relative à la cause

7.15 Lors d'une conférence relative à la cause, la formation d'audience ou le président de la formation peut :

a) fixer une date de comparution ou l'ajourner ;

b) fixer des délais ou des dates limites pour différentes étapes de l'instance ;

c) rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication ;

d) donner toute autre directive sur la procédure.

RÈGLE 8 : MOTIONS

Motions

8.1 (1) Les motions sont présentées par voie d'avis de motion (formulaire 28) sauf si l'avis n'est pas nécessaire en raison de circonstances ou de la nature de la motion.

(2) Si le Tribunal n'a pas confirmé une date de motion au moment de la signification et du dépôt de l'avis de motion, l'avis doit indiquer que la motion sera entendue à une date

qui sera fixée par le Tribunal.

(3) Le Tribunal peut exiger que les parties comparaissent à une conférence de gestion de l'instance avant de fixer une date pour l'audition de la motion.

(4) Aucune motion ne peut être présentée avant le début de l'instance à laquelle elle a trait.

Dossier de motion

8.2 (1) La présente règle s'applique si une motion est présentée par voie d'avis de motion, sauf en cas de directives contraires spécifiques du Tribunal.

(2) Au moins dix jours avant l'audition de la motion, l'auteur de la motion signifie et dépose un dossier de motion qui comprend l'avis de motion, accompagné d'un mémoire et un recueil des textes à l'appui.

(3) Au moins trois jours avant l'audition de la motion, la partie intimée signifie et dépose un mémoire, accompagné d'un dossier de motion et d'un recueil des textes à l'appui, le cas échéant.

(4) Le dossier de motion comprend, dans des pages numérotées consécutivement ;

a) une table des matières décrivant chaque document, en indiquant la nature et la date du document, et chaque pièce, en indiquant la nature et la date de la pièce ainsi que son numéro ou sa lettre ;

b) l'avis de motion, s'il n'est pas déjà compris dans le dossier de motion d'une autre partie ;

c) tous les affidavits et autres documents sur lesquels la partie entend s'appuyer.

(5) En cas de contrinterrogatoire sur affidavit dans un dossier de motion, celui-ci se déroulera devant la formation d'audience de la motion, à moins que les parties acceptent ou que le Tribunal ordonne qu'il se déroule devant un auditeur officiel. La partie qui convoque le témoin doit s'assurer de la présence du témoin au contrinterrogatoire.

Motion sur consentement ou motion non contestée

8.3 Dans le cas d'une motion sur consentement ou non contestée :

a) les mémoires et les recueils des textes à l'appui ne sont pas requis à moins que le Tribunal ne l'ordonne ;

b) l'auteur de la motion doit déposer un projet de l'ordonnance demandée et tout consentement.

RÈGLE 9 : COMPARUTIONS

~~Méthode~~ Mode de comparution

9.1 (1) Selon les directives du Tribunal, une comparution se fait par téléphone, par vidéoconférence, par écrit ou ~~Sauf disposition contraire, les comparutions se font~~ en personne.

(2) Lorsqu'il détermine le mode de comparution, le Tribunal tient compte de l'objet de la Règle 1.1, du fait que les demandes présentées au Tribunal concernent des parties, des témoins et des membres qui peuvent être éloignés du Tribunal ainsi que des couts et des avantages associés aux audiences en personne.

Assister à une comparution en personne par voie électronique

~~9.1~~9.2 (1) Sous réserve du paragraphe (2), une partie ou son représentant peut, sur demande, assister à une comparution en personne par téléphone ou par ~~voie électronique~~vidéoconférence.

(2) Le témoin qui fournit une preuve orale et le représentant ou la partie non représentée qui interroge le témoin lors d'une comparution en personne doivent comparaitre en personne, à moins que l'autre partie consente à ce qu'il assiste par voie électronique ou que le Tribunal l'y autorise.

~~(2)~~(3) Sous réserve de la directive de la formation, un membre de la formation peut assister à une comparution en personne par vidéoconférence.

~~Comparution sur pièces ou par voie électronique~~

~~(1) Le Tribunal peut exiger, à la demande d'une partie ou de sa propre initiative, qu'une comparution, en tout ou en partie, soit tenue sur pièces ou par voie électronique.~~

~~Une demande de comparution sur pièces ou par voie électronique peut être déterminée par écrit.~~

Conversion du mode de comparution

9.3 La formation qui préside une comparution peut en convertir le mode, soit par téléphone, par vidéoconférence, par écrit ou en personne, sauf indication contraire~~voie électronique ou en personne, et la formation qui préside une comparution par voie électronique peut convertir la comparution en comparution en personne~~.

Langue

9.4 (1) Une instance est instruite en anglais, en français, ou dans les deux langues, au choix du titulaire de permis ou du demandeur de permis.

(2) Un titulaire de permis ou un demandeur de permis qui demande un changement de langue en cours d'instance doit déposer sa demande dans les 30 jours qui suivent la

signification de l'acte introductif d'instance.

(3) Les documents déposés dans une langue autre que l'anglais ou le français doivent être accompagnés d'une traduction dans la langue de l'instance réalisée par un traducteur compétent, ainsi que d'un certificat du traducteur indiquant qu'il s'agit d'une traduction certifiée conforme et exacte au mieux de ses connaissances.

(4) Une partie qui entend convoquer un témoin nécessitant une interprétation, en avise le Tribunal le plus tôt possible, et ce au moins sept jours avant l'audience à laquelle l'interrogatoire du témoin est prévue.

Lieu

9.5 (1) Sous réserve des paragraphes (2) et (3), une audience en personne se tient au Tribunal du Barreau à Toronto.

(2) Si toutes les parties consentent à ce qu'une audience se tienne à l'extérieur de Toronto, mais dans la Province de l'Ontario, l'audience se tient à l'endroit convenu.

(3) Le Tribunal peut ordonner qu'une audience se tienne dans un autre endroit.

Réunion ou instruction consécutive d'instances

9.6 (1) Le Tribunal peut ordonner qu'au moins deux instances soient, en tout ou en partie, instruites en même temps ou immédiatement l'une après l'autre si, selon le cas :

a) elles ont en commun une question de droit ou de fait ou les deux ;

b) elles mettent en cause les mêmes parties ;

c) elles naissent de la même opération ou du même évènement ou de la même série d'opérations ou d'évènements ;

d) il est pour toute autre raison approprié de rendre une ordonnance en application de la présente règle.

(2) Si une ordonnance est rendue en vertu du paragraphe (1), le Tribunal détermine l'effet de procéder à l'instruction simultanée ou consécutive des instances sur le fond et peut donner des directives à l'égard de cet effet.

Consentement à l'instruction de l'instance par un seul membre du Tribunal

9.7 Les parties à une instance portant sur la conduite peuvent consentir à ce que la requête soit entendue par un seul membre du Tribunal en vertu du paragraphe 2 (1) du Règl. de l'Ont. 167/07 en déposant leur consentement (formulaire 31) auprès du Tribunal.

Transcriptions

9.8 (1) La personne qui désire obtenir la transcription d'une comparution publique doit la

commander, à ses frais, auprès du service de sténographie qui a enregistré l'audience.

(2) La première partie qui obtient la transcription d'une comparution publique est responsable du cout des copies électroniques et papier destinées au Tribunal, lesquelles seront déposées directement auprès du Tribunal par le service de sténographie.

Images et enregistrements

9.9 Sous réserve de la règle 9.10, nNul ne peut, outre le service de sténographie judiciaire, sans autorisation,

a) prendre des photos, ou faire des enregistrements vidéos ou audios sur les lieux du Tribunal ou pendant l'audience ;
b) faire une capture d'écran ou faire des enregistrements vidéos ou audios d'une comparution par vidéoconférence.

9.10 Sous réserve d'un préavis écrit au Tribunal, un représentant, une partie agissant en personne ou un journaliste peut réaliser discrètement un enregistrement audio lors d'une comparution dans le seul but de compléter ou de remplacer les notes prises pendant la comparution.

RÈGLE 10 : DIVULGATION ET PRODUCTION

Obligation du Barreau de divulguer

10.1 Le Barreau doit divulguer au titulaire de permis ou au demandeur de permis, dans un délai raisonnable après le dépôt de la requête, tous les documents en sa possession potentiellement pertinents et qui ne sont pas protégés par un quelconque privilège. Les documents protégés par un privilège doivent être indiqués à l'autre partie.

Production par le Barreau

10.2 Le titulaire de permis ou le demandeur de permis qui présente une motion de production supplémentaire de la part du Barreau doit inclure dans son dossier de motion la correspondance antérieure avec le représentant du Barreau dans laquelle il demande ces documents, et la réponse du représentant du Barreau.

Motions pour suspension ou restriction interlocutoire

10.3 Les règles 10.1 et 10.2 ne s'appliquent pas aux motions pour suspension ou restriction interlocutoire, ce qui n'empêche pas une formation de rendre des ordonnances de divulgation dans le cadre de telles instances.

Production par des tierces parties

10.4 Si une partie demande la production de documents à une tierce partie, la partie qui fait la demande doit obtenir une date de motion et signifier à la tierce partie une assignation à comparaitre exigeant que la tierce partie se présente à la date de la motion, l'indemnité de présence et un avis de motion. L'avis de motion doit indiquer la pertinence des

documents dont la production est demandée à la tierce partie.

Déclarations des témoins et recueils de documents

10.5 (1) Chaque partie doit remettre aux autres parties :

a) un recueil de documents contenant tous les éléments de preuve documentaire que la partie prévoit de présenter à l'audience ;

b) une liste des témoins que la partie entend convoquer ;

c) un affidavit, une déclaration de témoin signée ou un résumé des éléments de preuve orale prévus pour chaque témoin, ainsi que les coordonnées du témoin ou les coordonnées d'une personne par l'intermédiaire de laquelle il est possible de contacter ce dernier.

(2) Le Barreau doit se conformer à la présente règle au moins 14 jours avant une audience sommaire et au moins 20 jours avant toute autre audience sur le fond. Un titulaire de permis ou un demandeur de permis doit se conformer à la présente règle au moins sept jours avant une audience sommaire et au moins 10 jours avant toute autre audience sur le fond.

Rapports d'experts

10.6 (1) Chaque partie doit fournir aux autres parties, au plus tard 60 jours avant une audience, une copie de l'affidavit ou du rapport écrit de chaque témoin expert que la partie entend convoquer.

(2) Un affidavit ou un rapport d'expert doit comprendre une reconnaissance du devoir de l'expert (formulaire 33).

Conséquences du défaut de divulguer

10.7 Les éléments de preuve qui ne sont pas divulgués ou produits comme l'exige la présente règle sont inadmissibles, sauf avec l'autorisation du Tribunal.

RÈGLE 11 : PREUVE

Accord sur les faits

11.1 La formation peut recevoir les faits sur lesquels les parties se sont mises d'accord sans autre preuve, et s'appuyer sur eux.

Preuve par affidavit

11.2 (1) L'interrogatoire principal d'un témoin peut être mené au moyen d'un affidavit, sauf ordonnance contraire du Tribunal.

(2) Tout contrinterrogatoire sur affidavit se déroule devant la formation d'audience, à

moins que les parties acceptent, ou que le Tribunal ordonne, qu'il se déroule devant un auditeur officiel.

(3) La partie qui convoque le témoin doit s'assurer de la présence du témoin au contrinterrogatoire.

Aveux réputés

11.3 (1) Une partie peut demander à une autre partie de reconnaitre, aux fins de l'instance uniquement, la véracité d'un fait ou l'authenticité d'un document. La demande doit être rédigée selon le formulaire 29 et signifiée à l'autre partie. La demande d'aveux doit comprendre une copie de tout document mentionné dans la demande à moins que l'autre partie ne l'ait déjà en sa possession. Une demande d'aveux doit être signifiée au plus tard :

a) 30 jours avant l'audience si elle contient au plus 75 paragraphes ;

b) 50 jours avant l'audience si elle contient 76 à 200 paragraphes ;

c) 70 jours avant l'audience si elle contient plus de 200 paragraphes.

(2) La partie à qui la demande d'aveux est signifiée doit signifier une réponse au plus tard ;

a) 20 jours après la date de signification si la demande contient au plus 75 paragraphes ;

b) 40 jours après la date de signification si la demande contient 76 à 200 paragraphes ;

c) 60 jours après la date de signification si la demande contient plus de 200 paragraphes.

(3) La réponse doit être rédigée selon le formulaire 30 et doit, par rapport à chaque fait et document mentionné dans la demande, selon le cas :

a) reconnaitre la véracité du fait ou l'authenticité du document ;

b) nier expressément la véracité du fait ou l'authenticité du document et donner les motifs de la dénégation ;

c) refuser de reconnaitre la véracité du fait ou l'authenticité du document et donner les motifs du refus.

(4) Si une partie fait défaut de répondre à une demande d'aveux ou de répondre d'une manière conforme à la présente règle, cette partie sera réputée reconnaitre, aux fins de l'instance uniquement, la véracité des faits ou l'authenticité des documents mentionnés dans la demande d'aveux.

(5) Si une partie à qui une demande d'aveux a été signifiée ne se présente pas ou ne participe pas à l'audience sur le fond de l'instance, que la partie ait signifié une réponse ou non, la partie sera réputée reconnaitre, aux fins de l'instance uniquement, la véracité des faits ou l'authenticité des documents mentionnés dans la demande d'aveux.

(6) Si une partie nie ou refuse de reconnaitre la véracité d'un fait ou l'authenticité d'un document après avoir reçu une demande d'aveux, et si par la suite la véracité du fait ou du document est établie, le Tribunal prend la dénégation ou le refus en considération dans l'exercice de son pouvoir discrétionnaire d'adjudication des dépens.

(7) Le Tribunal peut rendre une ordonnance pour rétracter les aveux réputés d'une partie.

Dépôt de documents avant l'audience

11.4 Une partie peut déposer un exposé conjoint des faits, une demande d'aveux réputée reconnue, un affidavit ou un recueil de documents aux fins d'examen par la formation avant l'audience. Le dépôt de ces documents n'empêche pas une autre partie de s'opposer à leur admissibilité à l'audience. Les parties peuvent demander que les documents ne soient pas rendus publics jusqu'à l'audience.

Assignation

11.5 (1) Le Tribunal peut assigner une personne à comparaitre pour témoigner sous serment ou par affirmation solennelle à une audience ou pour produire en preuve des documents ou des objets précisés.

(2) L'assignation est rédigée selon le formulaire 32, et peut être signée par le greffier ou un membre du Tribunal.

(3) Sur demande d'une partie, à moins qu'une formation n'instruise autrement, le greffe du Tribunal peut lui délivrer une assignation en blanc.

(4) La partie qui obtient une assignation doit la signifier au témoin, et verser l'indemnité de présence au témoin conformément au tarif A des *Règles de procédure civile*.

Exclusion de témoins

11.6 (1) Sous réserve du paragraphe (2), le Tribunal peut exiger l'exclusion d'un témoin de l'audience jusqu'à ce qu'il soit appelé à témoigner.

(2) Une partie ou une personne qui instruit le représentant d'une partie ne peut être exclue, mais une ordonnance peut être rendue pour que cette personne soit appelée à témoigner avant les autres témoins de la partie.

(3) Sauf ordonnance contraire du Tribunal, nul ne peut communiquer à un témoin exclu le contenu des témoignages entendus pendant son absence avant que ce témoin ait lui-

même témoigné.

Admission en preuve

11.7 (1) Les règles de preuve applicables aux instances civiles s'appliquent aux instances du Tribunal, sauf si ces règles n'en disposent autrement.

(2) Les paragraphes 15 (4) et 16 de la *Loi sur l'exercice des compétences légales*, L.R.O. 1990, chapitre S. 22 s'appliquent à l'admission de la preuve dans les instances du Tribunal.

(3) Les paragraphes 15 (1) et (2) de la Loi sur l'exercice des compétences légales s'appliquent à l'admission de la preuve dans les motions pour suspension ou restriction interlocutoire.

(4) Toute preuve qui doit être présentée ou toute exigence qui doit être satisfaite avant qu'un registre bancaire ou commercial ne soit reçu ou admis en preuve en vertu de toute règle de common law ou d'un texte législatif peut être présentée ou satisfaite par le témoignage oral ou par affidavit d'une personne donné au mieux de sa connaissance et de sa croyance.

Preuve déjà admise

11.8 La preuve déjà admise peut être admise si les parties à l'instance y consentent, ou si toutes les conditions suivantes sont réunies :

a) la partie contre qui l'admission de la preuve est recherchée était ou est une partie à l'autre instance ;

b) la partie contre qui l'admission de la preuve est recherchée a donné le témoignage en question ou a eu la possibilité de contrinterroger le témoin à l'autre instance ;

c) une question en litige dans l'autre instance est sensiblement semblable à une question en litige dans l'instance en cours

Limites de l'interrogatoire ou du contrinterrogatoire

11.9 (1). Une formation ne permet pas un contrinterrogatoire répétitif, abusif ou autrement inapproprié.

(2) Une formation peut imposer des limites raisonnables à la poursuite de l'interrogatoire ou du contrinterrogatoire d'un témoin si elle est convaincue que l'interrogatoire ou le contrinterrogatoire a déjà fait toute la lumière sur tout ce qui touche aux questions en litige dans le cadre de l'instance.

Information obtenue par le conseiller ou la conseillère juridique en matière de discrimination et de harcèlement

11.10 Nonobstant toute autre règle, les renseignements obtenus par le conseiller ou la

conseillère juridique en matière de discrimination et de harcèlement dans l'exercice de ses fonctions en application de l'alinéa 19 (1) a) du Règlement administratif nº 11 ne doivent pas être utilisés au cours d'une audience, et y sont inadmissibles.

RÈGLE 12 : MOTIONS POUR SUSPENSION OU RESTRICTION INTERLOCUTOIRE

Pouvoir

12.1 (1) Sur motion du Barreau, le Tribunal peut rendre une ordonnance interlocutoire ayant pour effet de suspendre un permis, d'imposer des conditions ou de restreindre la manière dont un titulaire de permis peut pratiquer le droit ou fournir des services juridiques.

(2) Sur motion d'un titulaire de permis ou du Barreau, le Tribunal peut modifier ou annuler une ordonnance interlocutoire prise en application de la présente règle.

Application de la règle sur les motions

12.2 La règle 8 s'applique, sauf si elle diffère de la présente règle, aux motions pour suspension ou restriction interlocutoire.

Autorisation nécessaire

12.3 Si la motion se rapporte à une instance où la Section de première instance n'a pas commencé l'audience sur le fond, le Barreau doit obtenir l'autorisation du Comité d'autorisation des instances pour présenter une motion pour suspension ou restriction interlocutoire.

Signification et documents

12.4 (1) Dans une motion pour suspension ou restriction interlocutoire, le Barreau doit signifier et déposer un avis de motion, une fiche d'information, un dossier de motion, un mémoire et un recueil des textes à l'appui au moins trois jours avant l'audience sur la motion, sauf si la motion est entendue sur préavis d'au moins 10 jours, dans quel cas ceux-ci doivent être déposés au moins 10 jours avant l'audience, ou sauf ordonnance contraire du Tribunal.

(2) Le Tribunal peut ordonner que la signification n'est pas nécessaire dans un ou l'autre des cas suivants :

a) si elle n'est pas pratique ;

b) si le délai qu'elle entrainerait risque d'avoir des conséquences graves.

(3) Le titulaire de permis doit signifier et déposer un dossier de motion, un mémoire et un recueil des textes à l'appui, le cas échéant, au plus tard à 14 h la veille de l'audience sur la motion, à moins que la motion soit entendue sur préavis de 10 jours ou plus, dans quel cas le titulaire de permis doit les déposer au moins trois jours avant l'audience.

Suspension ou restriction interlocutoire intérimaire

12.5 Sauf ordonnance contraire, une ordonnance de suspension ou restriction interlocutoire intérimaire demeure en vigueur jusqu'à ce que la motion pour suspension ou restriction interlocutoire soit tranchée.

Durée de la suspension ou restriction interlocutoire

12.6 Sauf ordonnance contraire, une ordonnance de suspension ou restriction interlocutoire demeure en vigueur jusqu'à ce qu'une ordonnance définitive soit rendue dans l'instance sur la conduite à laquelle se rapporte la motion, ou que le Tribunal modifie ou annule l'ordonnance.

Raisons pour modifier ou annuler

12.7 Une ordonnance de suspension ou restriction interlocutoire peut être modifiée ou annulée pour tenir compte d'une nouvelle preuve ou d'un changement de circonstances important.

Motion en modification ou en annulation

12.8 Pour faire une demande de modification ou d'annulation d'une ordonnance de suspension ou restriction interlocutoire, une partie doit signifier et déposer une motion en modification ou en annulation de suspension ou restriction interlocutoire (formulaire 8 ou 9) et une fiche d'information (formulaire 21 ou 22).

RÈGLE 13 : DOSSIER DE L'INSTANCE ET TRANSPARENCE

Dossier de l'instance

13.1 (1) Le dossier de l'instance comprend ce qui suit :

a) tous les documents déposés auprès du Tribunal, à moins que celui-ci ne les refuse en ce qu'ils ne sont pas conformes aux présentes règles, à une ordonnance ou à une directive ;

b) toutes les pièces, y compris celles qui sont cotées à des fins d'identification ;

c) tous les autres documents et correspondances d'une partie ou d'un autre participant examinés par une formation, sauf ceux déposés aux fins d'une conférence préparatoire à l'audience ;

d) tous les avis d'audience ;

e) toutes les inscriptions ;

f) toutes les ordonnances rendues par le Tribunal ;

g) tous les motifs rendus par le Tribunal ;

h) toutes les transcriptions déposées auprès du Tribunal.

(2) Les éléments énumérés aux règles -13.1 a) à 13.1 h) qui ont été intégrés au dossier de l'instance après le [date à déterminer] sont conservés sous forme électronique, sauf si le Tribunal en décide autrement.

Publicité des débats

13.2 (1) Le contenu du dossier de l'instance et toutes les comparutions, à l'exception des conférences préparatoires à l'audience, sont publics, sauf ordonnance contraire du Tribunal ou d'un tribunal judiciaire.

(2) Toute personne peut assister à une comparution publique sauf ordonnance contraire du Tribunal ou d'un tribunal judiciaire.

Dérogation au principe de publicité

13.3 (1) Le Tribunal peut rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication seulement dans les cas suivants :

a) l'ordonnance est nécessaire pour écarter un risque sérieux pour la bonne administration de la justice, vu l'absence d'autres mesures raisonnables pouvant écarter ce risque ;

b) les effets bénéfiques de l'ordonnance sont plus importants que ses effets préjudiciables sur le droit à la libre expression et sur la transparence de l'administration de la justice.

(2) Si une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication est nécessaire, le Tribunal rend l'ordonnance qui affecte le moins le principe de publicité tout en atteignant son objectif.

Instances sur la capacité

13.4 Lorsqu'elle applique la règle 13.3 à une demande d'ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication dans une instance relative à la capacité, la formation tient compte de ce qui suit :

a) le fait qu'une question centrale de l'instance sur la capacité est la santé du titulaire de permis ;

b) la nature et les répercussions sur le public de toute action du titulaire de permis ayant mené à l'instance ;

c) toute stigmatisation liée à la nature des problèmes de santé du titulaire de

permis ;

d) les répercussions possibles de la divulgation sur la santé du titulaire de permis ou d'autrui ;

e) tout autre facteur pertinent.

Enfants et plaignants victimes d'inconduite sexuelle

13.5 Une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication est rendue pour éviter que l'identité des enfants et des personnes qui allèguent une agression ou une inconduite sexuelle ne soit rendue publique, sauf demande contraire d'un adulte qui allègue une agression ou une inconduite sexuelle.

Privilège

13.6 À moins d'avoir le consentement du détenteur du privilège, le Tribunal ordonne que les documents privilégiés ou potentiellement privilégiés de même que la preuve concernant les documents et les communications privilégiés ou potentiellement privilégiés ne soient pas rendus publics.

Effets d'une ordonnance interdisant l'accès au public

13.7 (1) Lorsqu'une comparution n'est pas publique, nul ne peut y assister sauf le titulaire de permis ou le demandeur de permis, les représentants des parties, les témoins et quiconque y étant admis par la formation.

(2) Lorsqu'une comparution n'est pas publique, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut recevoir ou voir la transcription, mais les témoins peuvent voir la transcription de leur propre témoignage.

(3) Quand un document n'est pas public, il ne doit pas être remis à une personne autre que les parties, leurs représentants ou une personne qui témoigne au sujet du dit document.

(4) Nul ne peut divulguer ce qui s'est passé pendant une comparution non publique sauf aux parties ou à leurs représentants. Nulle personne qui a pris connaissance d'un document non public dans le cadre d'une instance ne peut divulguer son contenu à des personnes autres que les parties ou leurs représentants.

Effets d'une ordonnance de non-divulgation

13.8 (1) Lorsqu'une ordonnance de non-divulgation a été rendue, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut recevoir ou voir la transcription, mais les témoins peuvent voir la transcription de leur propre témoignage.

(2) Nul ne peut divulguer ce qui s'est passé pendant une comparution faisant l'objet d'une

ordonnance de non-divulgation sauf aux parties ou à leurs représentants. Nulle personne qui a pris connaissance d'un document non public dans le cadre d'une comparution ne peut divulguer son contenu à des personnes autres que les parties ou leurs représentants.

Effets d'une interdiction de publication

13.9 (1) En cas d'interdiction de publication, l'audience et le dossier du Tribunal demeurent ouverts au public.

(2) Nul ne peut publier un document ou diffuser ou transmettre de quelque façon que ce soit des renseignements ou des documents qui font l'objet d'une interdiction de publication.

(3) Le Tribunal et le service de sténographie judiciaire qui transcrit l'instance incluent un avis écrit de toute interdiction de publication sur les documents et les transcriptions visés.

Effets d'une ordonnance

13.10 Aucune ordonnance visée par la présente règle n'empêche le personnel du Tribunal ou les membres d'une formation d'avoir accès aux documents qui se trouvent dans les dossiers du Tribunal ou d'assister à une comparution.

RÈGLE 14 : ORDONNANCES ET MOTIFS

Ordonnances

14.1 Sauf disposition contraire, une ordonnance ou une directive prend effet à compter de la date à laquelle elle est rendue, que ce soit oralement, dans une inscription, dans des motifs ou dans une ordonnance officielle, et qu'une inscription ou une ordonnance officielle ait été rendue ou non.

Pouvoir de rendre des ordonnances

14.2 Il est interdit à une formation composée d'un seul membre du Tribunal affecté à une audience sommaire de rendre une ordonnance révoquant le permis d'un titulaire de permis ou permettant à un titulaire de permis de rendre un permis.

Aborder les questions de capacité dans les requêtes relatives à la conduite

14.3 Avec le consentement des parties, une formation de trois membres affectée à une requête relative à la conduite en vertu de l'art. 34 de la Loi peut traiter de questions qui devraient autrement faire l'objet d'une requête en incapacité prévue à l'article 38 de la Loi, et peut rendre toute ordonnance visée à l'article 40 de la Loi.

Ordonnance officielle

14.4 (1) Une des parties peut préparer le projet d'ordonnance officielle.

(2) Une ordonnance officielle est rédigée selon les formulaires 34-38 appropriés.

(3) La partie qui a préparé le projet d'ordonnance officielle peut le soumettre au Tribunal, avant ou après que la formation ait pris une décision.

(4) Le projet d'ordonnance est traité comme une observation et la formation peut modifier l'ordonnance.

(5) Si l'une des parties ne prépare pas une ordonnance officielle, le greffe du Tribunal s'en chargera.

(6) N'importe quel membre d'une formation peut signer l'ordonnance officielle ou les motifs.

Motifs

14.5 La formation doit rendre des motifs pour toute ordonnance définitive rendue dans une instance relative à la capacité ou dans un appel. Pour toute autre instance, la formation est tenue de rendre des motifs seulement si une partie en fait la demande dans un délai de 30 jours après la prise de l'ordonnance.

Correction d'erreurs

14.6 Le greffier, une personne désignée par le greffier ou un membre de la formation qui a rédigé l'inscription, l'ordonnance ou les motifs, peuvent corriger une erreur typographique, une erreur de calcul ou une erreur mineure semblable.

RÈGLE 15 : DÉPENS

Pouvoir d'adjudication des dépens

15.1 (1) Le Barreau ne peut être condamné aux dépens que dans l'un ou l'autre des cas suivants :

a) dans une instance portant sur la délivrance d'un permis, la conduite, la capacité, la compétence professionnelle ou l'inobservation, si l'instance était injustifiée ou si le Barreau a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute ;

b) dans une instance non visée à l'alinéa, a) si le Barreau a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

(2) Le titulaire de permis ou le demandeur de permis peut être condamné aux dépens dans l'un ou l'autre des cas suivants :

a) si la décision rendue lui est défavorable ;

b) s'il a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

(3) Un intervenant ou un tiers peut être condamné aux dépens s'il a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

Tarif

15.2 Lorsqu'une formation adjuge des dépens, elle tient compte du tarif des honoraires relatifs aux services, sans toutefois être liée par celui-ci (annexe A).

Cautionnement pour dépens

15.3 (1) Le Barreau peut demander un cautionnement pour dépens dans une instance portant sur la délivrance d'un permis, si le requérant a déjà été titulaire d'un permis du Barreau en Ontario ; dans une instance portant sur la remise en vigueur ; dans une instance portant sur le rétablissement ; dans une instance portant sur un différend concernant des conditions.

(2) Sur motion du Barreau, la formation peut rendre une ordonnance de cautionnement pour dépens équitables s'il est établi que :

a) le requérant fait l'objet d'une ordonnance de condamnation aux dépens dans la même instance ou dans une autre instance en application de la Loi et que ceux-ci n'ont pas encore été acquittés, en totalité ou en partie ;

b) dans le cas d'une instance portant sur le rétablissement ou un différend concernant des conditions, il existe de bonnes raisons de croire que l'instance est injustifiée et que le requérant n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné ;

c) dans le cas d'une instance portant sur la délivrance ou la remise en vigueur d'un permis, il existe de bonnes raisons de croire que le requérant n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné.

(3) Sauf ordonnance contraire du Tribunal, le requérant contre qui est rendue une ordonnance de cautionnement pour dépens ne peut prendre aucune mesure dans l'instance tant que le cautionnement n'a pas été versé.

(4) Si le requérant ne verse pas le cautionnement imposé par l'ordonnance de cautionnement pour dépens, la formation peut, sur motion du Barreau, ordonner le rejet de l'instance.

RÈGLE 16 : RÉPRIMANDES

Administration des réprimandes

16.1 (1) Une réprimande est administrée soit oralement lors d'une audience ouverte au public, soit par écrit.

(2) Une réprimande écrite fait partie intégrante du dossier de l'instance.

(3) Une réprimande peut être administrée par n'importe quel membre de la formation qui l'a ordonnée.

Appels et réprimandes

16.2 L'administration d'une réprimande n'affecte pas le droit d'interjeter appel de l'ordonnance ni n'affecte les arguments qui peuvent être soulevés en appel.

RÈGLE 17 : APPELS

Ordonnances susceptibles d'appel

17.1 (1) Les articles 49.32 et 49.33 de la Loi régissent le recours en appel d'une ordonnance définitive.
(2) Une ordonnance intérimaire ou interlocutoire de la Section de première instance est sans appel, sauf si l'ordonnance tranche de façon définitive une motion de suspension interlocutoire, auxquels cas elle peut être portée en appel par une des parties.

Délai pour l'introduction de l'appel

17.2 (1) Pour introduire un appel, l'appelant doit déposer un avis d'appel (formulaire 14 ou 15) et une fiche d'information (formulaire 24 ou 25) dans les 30 jours après la date de l'ordonnance définitive de la Section de première instance rendue dans le cadre l'instance faisant l'objet de l'appel. Après ce délai, un appel peut être introduit seulement avec le consentement écrit de l'intimé ou avec autorisation du Tribunal.

(2) Le dossier de motion pour prolonger le délai de recours en appel doit comprendre un projet d'avis d'appel.

(3) Au plus tard 10 jours après avoir déposé l'avis d'appel, l'appelant doit signifier et déposer une confirmation écrite du service de sténographie judiciaire indiquant que toutes les transcriptions de l'instance interjetée en appel qui n'ont pas déjà été déposées auprès de la Section de première instance, ont été commandées.

(4) S'il a le droit d'appeler, l'intimé peut introduire un appel incident en signifiant et en déposant un avis d'appel incident (formulaire 17) au plus tard 15 jours après avoir reçu signification de l'avis d'appel. Aucune fiche d'information n'est requise pour un avis d'appel incident.

Mise en état de l'appel

17.3 L'appelant doit mettre l'appel en état dans les 60 jours suivant le dépôt de l'avis d'appel

ou dans les 60 jours suivant la date à laquelle la formation a rendu ses motifs de l'ordonnance définitive, selon la dernière de ces dates. Un appel est mis en état en signifiant et en déposant son recueil d'appel, son mémoire, son recueil des textes à l'appui et toutes transcriptions non déposées dans le cadre de l'instance devant la Section de première instance.

Rejet pour cause de retard et retrait réputé

17.4 (1) Si un appel n'est pas mis en état dans le délai imparti, l'intimé peut présenter une motion de rejet de l'appel pour cause de retard.

(2) Si l'appel n'a pas été mis en état dans un délai de ~~cinq~~ trois mois à partir de la date limite~~de dépôt de l'avis d'appel~~, le greffier informe les parties que l'appel sera réputé retiré s'il n'est pas mis en état dans les 30 jours ~~six mois~~ après la date de l'avis du greffier~~le dépôt de l'avis d'appel~~.

(3) Si l'appelant d'un appel incident désire poursuivre l'appel incident même si l'appel est réputé retiré, l'intimé doit informer le Tribunal dans les 14 jours ~~deux semaines~~ après la date ~~avoir reçu~~ de l'avis du greffier selon le paragraphe 2 de la présente règle.

(4) Si l'appel n'a pas été mis en état dans les ~~six~~ 30 jours ~~mois~~ après la date de l'avis du greffier selon le paragraphe 2 de la présente règle ~~du dépôt de l'avis d'appel~~, le greffier déclare l'appel comme retiré. Si l'appelant d'un appel incident avait indiqué vouloir poursuivre l'appel incident, une conférence de gestion de l'instance est fixée pour établir les délais pour l'audition de l'appel incident.

(5) Le Tribunal peut rétablir un appel ou un appel incident qui a été réputé retiré.

Date de dépôt de la documentation de l'intimé s'il n'y a pas d'appel incident

17.5 Si l'intimé n'a pas déposé d'appel incident, il doit signifier et déposer son recueil d'appel, son mémoire et son recueil des textes à l'appui au plus tard 14 jours avant l'audition de l'appel.

Date de dépôt de la documentation de l'intimé s'il y a appel incident

17.6 Si l'intimé a déposé un appel incident, il doit signifier et déposer son recueil d'appel, son mémoire et son recueil des textes à l'appui au plus tard 30 jours après la mise en état de l'appel. L'intimé doit déposer un mémoire et un recueil d'appel qui portent à la fois sur l'appel et l'appel incident.

Documentation de l'intimé à l'appel incident

17.7 Si l'intimé a introduit un appel incident, l'appelant doit déposer un mémoire en tant qu'intimé de l'appel incident et peut déposer un recueil d'appel supplémentaire et un recueil des textes à l'appui supplémentaire au plus tard 14 jours avant l'audition de l'appel.

Recueil condensé

17.8 Au plus tard cinq jours avant l'audition de l'appel, chaque partie doit déposer un recueil condensé qui contient les documents qui seront invoqués dans sa plaidoirie.

RÈGLE 18 : NOUVELLE PREUVE EN APPEL

Motion pour présenter de nouvelles preuves

18.1 Sauf si l'intimé y consent, l'appelant qui désire présenter à l'audition de l'appel une preuve qui n'a pas été entendue par la Section de première instance doit, au moyen d'un avis de motion, présenter une motion à la Section d'appel pour ce faire.

Nouvelles p~~P~~reuves proposées ~~dans une enveloppe scellée~~

18.2 L'appelant qui présente une motion sur la nouvelle preuve doit déposer, avec le dossier de motion, une copie électronique ~~suffisamment de copies~~ des nouvelles preuves~~comme le prescrit la règle 5.6, et ce dans des enveloppes scellées distinctes~~ identifiées comme nouvelles preuves, ~~-~~qui ne seront pas rendues publiques jusqu'à ce que la décision sur la motion soit tranchée.

Audition de la motion sur la nouvelle preuve

18.3 Une motion déposée en vertu de la présente règle sera entendue au début de l'audition de l'appel.

Audition de l'appel quelle que soit l'issue

18.4 Les parties doivent être prêtes à procéder à l'audition de l'appel à la date fixée, quelle que soit la décision rendue sur la motion en vertu de la présente règle.

Consentement de l'intimé

18.5 Si l'intimé consent à la présentation d'une nouvelle preuve, la preuve peut être incluse dans les documents des parties et invoquée dans ceux-ci, tant qu'il est clairement indiqué qu'il s'agit d'une nouvelle preuve qui n'a pas été entendue par la Section de première instance.

Moment de la motion pour présenter de nouvelles preuves

18.6 Une motion pour présenter de nouvelles preuves est signifiée et déposée au même moment où l'appel est mis en état, à moins que les autres éléments de preuve ne soient découverts par la suite.

RÈGLE 19 : DOCUMENTATION D'APPEL

Recueil d'appel

19.1 (1) Le recueil d'appel de l'appelant doit contenir, dans des pages consécutivement numérotées avec des onglets numérotés :

a) une table des matières énumérant chaque document inclus dans le recueil d'appel et décrivant chaque document en indiquant sa nature et sa date ;

b) une copie de l'avis d'appel et de tout avis d'appel incident, tel que modifié ;

c) une copie de l'ordonnance ou des ordonnances faisant l'objet du recours en appel ;

d) une copie de toutes les inscriptions et de tous les motifs de la Section de première instance rendus dans la cadre de l'instance ;

e) une copie de l'acte introductif d'instance déposé auprès de la Section de première instance ;

f) une copie de toutes pièces auxquelles il est fait référence dans le mémoire de l'appelant ;

g) une copie de tout document déposé auprès de la Section de première instance qui est pertinent à l'appel et auquel il est fait référence dans le mémoire de l'appelant ;

h) une copie de toute directive donnée lors d'une conférence de gestion de l'instance dans l'appel ;

i) une copie de toute inscription faite ou de toute ordonnance et de tout motif rendu par la Section d'appel dans l'appel ;

j) si des documents font l'objet d'une ordonnance interdisant l'accès au public, une copie de cette ordonnance.

(2) Le recueil d'appel de l'intimé doit contenir, dans des pages consécutivement numérotées avec des onglets numérotés :

a) une table des matières énumérant chaque document inclus dans le recueil d'appel et décrivant chaque document en indiquant sa nature et sa date ;

b) une copie des pièces auxquelles il est fait référence dans le mémoire de l'intimé et qui ne sont pas dans le recueil d'appel de l'appelant ;

c) une copie des autres documents déposés auprès de la Section de première instance qui sont pertinents à l'appel et auxquels il est fait référence dans le mémoire de l'intimé et qui ne sont pas dans le recueil d'appel de l'appelant.

(3) Tout document faisant l'objet d'une ordonnance interdisant l'accès au public, d'une ordonnance de non-divulgation ou d'une interdiction de publication doit être inclus dans un recueil d'appel séparé.

Mémoires d'appel

19.2 Dans un mémoire d'appel, les renvois à la transcription de l'instance devant la Section de première instance doivent indiquer la date, le numéro de page et de ligne, et les renvois aux pièces doivent indiquer l'onglet et le numéro de page du recueil d'appel pertinent.

RÈGLE 20 : APPELS D'ORDONNANCES DE SUSPENSION ADMINISTRATIVE

Introduction d'un appel d'ordonnance de suspension administrative

20.1 (1) L'appelant peut introduire un appel d'ordonnance de suspension administrative en signifiant au Barreau et en déposant auprès du Tribunal un avis d'appel d'ordonnance de suspension administrative (formulaire 16) et une fiche d'information (formulaire 25) dans les 30 jours suivant la date à laquelle l'ordonnance de suspension administrative est réputée avoir été reçue par l'appelant.

(2) Un appel d'une ordonnance de suspension administrative peut être introduit après ce délai avec le consentement du Barreau ou l'autorisation du Tribunal.

Appels d'ordonnance de suspension administrative sur consentement

20.2 L'appel d'ordonnance de suspension administrative sur consentement est entendu par écrit. Le consentement écrit des parties et un projet d'ordonnance doivent être déposés auprès du Tribunal au moment du dépôt de l'avis d'appel d'ordonnance de suspension administrative ou dès que possible après le dépôt. Il n'est pas nécessaire de déposer d'autre document sauf si le Tribunal l'exige.

Dépôts d'affidavits et audience

20.3 (1) Le Barreau doit déposer un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'ordonnance de suspension administrative au plus tard 30 jours après le dépôt de l'avis d'appel d'ordonnance de suspension administrative.

(2) L'appelant doit déposer un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'appel au plus tard 45 jours après le dépôt de l'avis d'appel d'ordonnance de suspension administrative.

(3) Les contrinterrogatoires des déposants et toute contrepreuve seront entendus oralement lors de l'audience de l'appel, sauf ordonnance contraire.

(4) Aucun mémoire ne doit être déposé avant l'audience, sauf ordonnance contraire.

Conférence préparatoire à l'audience

20.4 Le greffe du Tribunal fixe une conférence préparatoire à l'audience pour chaque appel d'ordonnance de suspension administrative après le dépôt des affidavits.

ANNEXE A – Tarif des honoraires relatifs aux services

Tarifs	
Avocat(e) (20 ans et plus de pratique)	Jusqu'à concurrence de 350 $ l'heure
Avocat(e) (12 à 20 ans)	Jusqu'à concurrence de 325 $ l'heure
Avocat(e) (11 à 12 ans)	Jusqu'à concurrence de 315 $ l'heure
Avocat(e) (10 à 11 ans)	Jusqu'à concurrence de 300 $ l'heure
Avocat(e) (9 à 10 ans)	Jusqu'à concurrence de 285 $ l'heure
Avocat(e) (8 à 9 ans)	Jusqu'à concurrence de 270 $ l'heure
Avocat(e) (7 à 8 ans)	Jusqu'à concurrence de 255 $ l'heure
Avocat(e) (6 à 7 ans)	Jusqu'à concurrence de 240 $ l'heure
Avocat(e) (5 à 6 ans)	Jusqu'à concurrence de 225 $ l'heure
Avocat(e) (4 à 5 ans)	Jusqu'à concurrence de 215 $ l'heure
Avocat(e) (3 à 4 ans)	Jusqu'à concurrence de 205 $ l'heure
Avocat(e) (2 à 3 ans)	Jusqu'à concurrence de 195 $ l'heure
Avocat(e) (1 à 2 ans)	Jusqu'à concurrence de 180 $ l'heure
Avocat(e) (moins de 1 an)	Jusqu'à concurrence de 165 $ l'heure
Avocat(e) employé(e) du Barreau de l'Ontario, autre que les avocats du Service de discipline	Jusqu'à concurrence de 190 $ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (au moins 10 ans d'expérience de parajuriste)	Jusqu'à concurrence de 150 $ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (5 à 10 ans d'expérience de parajuriste)	Jusqu'à concurrence de 120 $ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (1 à 5 ans d'expérience de parajuriste)	Jusqu'à concurrence de 90 $ l'heure
Étudiant(e)	Jusqu'à concurrence de 90 $ l'heure

Adjoint(e) juridique	Jusqu'à concurrence de 90 $ l'heure
Vérificateur(trice) judiciaire employé(e) du Barreau de l'Ontario	Jusqu'à concurrence de 190 $ l'heure
Enquêteur(euse) ou agent(e) des plaintes et de la résolution employé(e) du Barreau de l'Ontario	Jusqu'à concurrence de 90 $ l'heure

Law Society Tribunal
Tribunal du Barreau

LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

Effective January 1, 2020,

amended effective October 1, 2020, October 1, 2021

CONTENTS

RULE 1: PURPOSES AND INTERPRETATION

Purposes

1.1 The purposes of these rules are to:

(a) establish fair processes that consider the interests of the public, the legal professions, individual licensees and licence applicants;

(b) promote timely determination of proceedings in accordance with the public interest;

(c) ensure efficient processes and proceedings;

(d) ensure that the Tribunal's processes are clear and understandable;

(e) allow for flexibility to adapt processes to the needs of particular cases and types of cases, including those involving disadvantaged and vulnerable persons;

(f) promote early identification of issues in dispute and facilitate agreement and resolution;

(g) ensure that processes and proceedings are transparent to the public and to licensees and licence applicants; and

(h) allow licensees and licence applicants to participate effectively in the process, whether or not they have a representative.

Interpretive Principles

1.2 These rules shall be interpreted and applied in accordance with their purposes.

1.3 Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.

1.4 The Tribunal may exercise its powers at the request of a party or on its own initiative.

1.5 The Tribunal may decide not to apply these rules strictly unless to do so would be inconsistent with legislation, regulations or a mandatory rule.

1.6 The Tribunal operates electronically to the extent reasonably possible taking into account the purposes set out in Rule 1.1 and where doing so improves access to the Tribunal and is procedurally fair.

RULE 2: APPLICATION AND DEFINITIONS

Name

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

Application

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

Definitions

2.3 In these rules, unless the context requires otherwise:

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

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

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

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

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

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

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

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

"document" includes electronic records ("*document*");

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Tribunal's File Sharing Platform" means an electronic file sharing system established by or approved by the Tribunal for use by parties and others in Tribunal proceedings ("▪");

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

Same meaning as in the Act

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

Calculating time

2.5 In calculating time under these rules, or under a direction or order made under these rules:

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

RULE 3: STARTING AND WITHDRAWING PROCEEDINGS

Service

3.1 (1) A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-17) and information sheet (Forms 18-25).

(2) A party must serve an originating process and information sheet by:

(a) hand delivery to the person being served;

(b) regular mail, registered mail or courier sent to the party's home and / or business addresses;

(c) electronically by e-mail sent to the party's home and / or business e-mail addresses; or

(d) any other method agreed to by the person being served or directed by the Tribunal.

(3) The Law Society must file originating processes and information sheets electronically.

(4) The addresses mentioned in Rule 3.1 (2) (b) and (c) are:

(a) in the case of licensees, the addresses provided to the Law Society under By-Law 8; and

(b) in the case of licence applicants, the addresses provided to the Law Society during the licensing process.

Amending an originating process

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

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

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

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

Withdrawing a proceeding or motion

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

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

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

RULE 4: ADDITIONAL PARTICIPANTS

Adding parties

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

Intervenors

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

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

Friend of the Tribunal

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

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

How to serve

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

(a) hand delivery;

(b) regular mail, registered mail or courier;

(c) e-mail, if less than 20 MB;

(d) uploading an electronic document to the Tribunal's File Sharing Platform and serving notice on the other party that the electronic document has been uploaded; or

(e) any other method agreed to by the person being served or directed by the Tribunal.

Effective date of service

5.2 Service is deemed to be effective:

(a) if the document is served, other than by mail, before 5 p.m. on a business day, on that day;

(b) if the document is served, other than by mail, on a holiday or after 5 p.m. on a business day, on the next business day;

(c) if the document is mailed, on the fifth business day after mailing.

Service using contact information in the Law Society's records

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

Confirmation of service

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

(a) a Confirmation of Service form (Form 27), which may be provided in the body of an e-mail;

(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 including by

i. copying the Tribunal in the original e-mail to the other person; or

ii. forwarding the original e-mail to the Tribunal; or

(d) written acceptance of service by the person served, which may be provided by e-mail to the Tribunal.

Communication with the Tribunal

5.5 (1) All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding.

(2) All communication with a panel other than during an appearance shall be sent in writing to the Tribunal Office, and may be sent electronically.

Respectful communication

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

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

Acceptance of documents by the Tribunal

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

Filing requirements: electronic and hard copies

5.8 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 filing.

Filing electronic documents

5.9 Where possible, electronic documents must be filed in pdf format or, alternatively, in both pdf and other formats such as .doc, .ppt and .xlsx. Electronic documents may be filed by e-mail (if less than 20 MB), on a USB drive, by the Tribunal's File Sharing Platform or by such other method as the Tribunal may permit. The file name and the structure and format of the electronic document must comply with the Tribunal's practice direction on electronic documents.

Filing physical documents

5.10 Where a party files a document in physical form at an in-person appearance:

(1) the party must file:

(a) two copies of the document if the appearance is before a single-member panel;

(b) four copies of the document if the appearance is before a three-member panel; or

(c) six copies of the document if the appearance is before a five-member panel;

together with an electronic copy, or an additional un-tabbed and unbound copy, of the physical document.

(2) the electronic copy of the physical document filed by the party, or an electronic copy created by the Tribunal if no electronic copy is filed by the party, becomes part of the record of proceeding but the physical document does not.

Layout

5.11 (1) 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).

(2) Physical documents must be on white paper 216 millimetres by 279 millimetres (8.5 by 11 inches).

(3) These requirements do not apply to documentary evidence or copies of documentary evidence.

Facta

5.12 A factum must include at least the following sections:

(a) overview;

(b) issues;

(c) facts, argument and law;

(d) the order requested;

(e) schedule A, containing a list of authorities referred to; and

(f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

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

Books of authorities

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

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

RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION

First appearance

6.1 (1) The date of the first appearance, in Hearing Division proceedings, is set out on the information sheet.

(2) For a summary hearing, interlocutory suspension or restriction motion, or motion to vary or cancel an interlocutory suspension or restriction, the first appearance is the scheduled hearing date. The applicant must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.

(3) For all other Hearing Division proceedings, the first appearance is a proceeding management conference. Available proceeding management conference dates are posted on the Tribunal website.

(4) An appeal hearing is scheduled by the Tribunal Office once the appeal has been perfected.

Who may schedule or adjourn

6.2 An appearance may be scheduled or adjourned by:

(a) a pre-hearing conference or proceeding management conference;

(b) the assigned hearing panel or its chair; or

(c) the Tribunal Office, if the scheduling or adjournment is on consent.

Adjournments

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

6.4 An order adjourning an appearance may include such terms and conditions as the panel considers appropriate.

Accommodation

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

Accommodation for Witnesses

6.6 Where it would be fair and in the interests of justice, the Tribunal may:

(a) permit a support person to sit near a witness while the witness testifies;

(b) order that a witness testify in a manner that would allow the witness not to see the licensee, licence applicant or any other person;

(c) order that a licensee or licence applicant not personally conduct the cross-examination of a witness, and shall appoint counsel for the purpose of conducting the cross-examination without cost to the licensee or licence applicant; and

(d) make other orders accommodating or protecting witnesses.

Failure to attend or participate

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

RULE 7: CASE MANAGEMENT

Principles

7.1 The Tribunal applies active case management throughout the course of proceedings, so that, among other things:

(a) proceedings move forward in a fair and timely way, in the public interest;

(b) scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;

(c) issues are identified early so the parties have the opportunity to fully prepare; and

(d) adjournments are granted only due to unforeseeable and exceptional circumstances.

Case management directions

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

(a) a proceeding management conference;

(b) a pre-hearing conference;

(c) a hearing or case conference, by the assigned hearing panel; or

(d) a case conference, by the chair of the assigned hearing panel, prior to or between hearing days.

Endorsement

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

Proceeding management conference

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

Directions at proceeding management conference

7.5 A proceeding management conference panel may:

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding;

(c) hear and decide a procedural motion;

(d) make a not public order, non-disclosure order or publication ban; and

(e) make any other procedural directions, including directions about process at the hearing.

Pre-hearing conference

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

Issues discussed at pre-hearing conference

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

(a) the identification, limitation or simplification of the issues in the proceeding;

(b) the identification and limitation of evidence and witnesses;

(c) the possibility of settlement of any or all of the issues in the proceeding;

(d) the possibility of the parties entering into an agreed statement of facts; and

(e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

When a pre-hearing conference is scheduled

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

Confidential and without prejudice

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

Directions at pre-hearing conference

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

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding; and

(c) make any other procedural directions to move the matter forward toward hearing in a fair and timely manner, including directions about process at the hearing.

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

Pre-hearing conference memoranda

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

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

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

Limitation on assignment of pre-hearing conference Tribunal member

7.12 (1) Except with agreement of the parties, a Tribunal member who conducted a pre-hearing conference in an application shall not be assigned to a motion or merits hearing

or to any appeal of that proceeding, nor shall a member of the panel assigned to a hearing preside at a pre-hearing conference. The parties must confirm their agreement by filing a consent (Form 31).

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

Case conference

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

Directions at case conference

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

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding;

(c) make a not public order, non-disclosure order or publication ban; and

(d) make any other procedural directions.

RULE 8: MOTIONS

Motions

8.1 (1) A motion must be made by notice of motion (Form 28) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) If a motion date has not been confirmed by the Tribunal at the time the notice of motion is served and filed, the notice of motion must indicate that the motion will be heard on a date to be set by the Tribunal.

(3) The Tribunal may direct that the parties attend a proceeding management conference before setting a motion date.

(4) A motion may not be brought prior to the start of the proceeding to which it relates.

Motion materials

8.2 (1) This rule applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.

(2) At least 10 days before the hearing of the motion, the moving party must serve and file a motion record that includes the notice of motion, together with a factum and a book of authorities.

(3) A responding party to the motion must serve and file a factum, together with a motion record and book of authorities, if any, at least three days before the hearing of the motion.

(4) A motion record must have consecutively numbered pages and contain;

(a) a table of contents that lists each document contained in the motion record and describes each by its nature and date, including exhibits, which shall be described by their nature, date and exhibit number or letter;

(b) the notice of motion, if not already included in another party's motion record; and

(c) all affidavits and other material upon which the party intends to rely.

(5) Where cross-examination on an affidavit in a motion record occurs, it will take place before the panel at the motion hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter. The party calling the witness must ensure the attendance of the witness for cross-examination.

Motions on consent or unopposed motions

8.3 When a motion is on consent or unopposed:

(a) facta and books of authorities are not required unless ordered by the Tribunal; and

(b) the moving party must file a draft of the order sought and any consents.

RULE 9: APPEARANCES

Manner of appearance

9.1 (1) As directed by the Tribunal, an appearance shall occur by telephone, by videoconference, in writing or in person.

(2) In directing the manner of an appearance, the Tribunal takes into account the purposes set out in Rule 1.1, that applications before the Tribunal involve parties, witnesses and members who may be remote from the Tribunal and that there are costs and benefits associated with in-person hearings to be taken into account.

Attending an in-person appearance electronically

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

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

(3) Subject to direction by the panel, a panelist may attend an in-person appearance by videoconference.

Converting the manner of appearance

9.3 The panel assigned to an appearance may convert the appearance to a telephone, a videoconference, an in-writing or an in-person appearance from the manner of appearance otherwise directed.

Language

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

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

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

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

Location

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

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

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

Hearing proceedings together or consecutively

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

(a) the proceedings have a question of fact, law or mixed fact and law in common;

(b) the proceedings involve the same parties;

(c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or

(d) for any other reason an order ought to be made under this rule.

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

Consent to hearing before one member of the Tribunal

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

Transcripts

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

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

Images and recording

9.9 Subject to rule 9.10, no one other than a court reporting service may, without leave:

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

(b) take a screen shot or make a video or audio recording of an appearance.

9.10 Subject to providing prior written notice to the Tribunal, a representative, a party acting in person 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.

RULE 10: DISCLOSURE AND PRODUCTION

Law Society's obligation to disclose

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

Production from the Law Society

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

Interlocutory suspension or restriction motions

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

Production from third parties

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

Witness statements and document books

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

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

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

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

(2) The Law Society must comply with this rule no later than 14 days before a summary hearing and no later than 20 days before any other merits hearing. A licensee or licence applicant must comply with this rule no later than seven days before a summary hearing and no later than 10 days before any other merits hearing.

Expert reports

10.6 (1) Each party must provide to every other party, no later than 60 days before a hearing, a copy of the affidavit or written report of every expert witness the party intends to call.

(2) An affidavit or report of an expert must include an Acknowledgement of Expert's Duty (Form 33).

Consequences of failure to disclose

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

RULE 11: EVIDENCE

Agreed facts

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

Affidavit evidence

11.2 (1) The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.

(2) Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before a court reporter.

(3) The party calling the witness must ensure the attendance of the witness for cross-examination.

Deemed admissions

11.3 (1) A party may request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. The request must be in Form 29 and served on the other party. The request to admit must include a copy of any document mentioned in it unless the other party already has the document. A request must be served no later than:

(a) 30 days before the hearing if the request contains 75 paragraphs or less;

(b) 50 days before the hearing if the request contains 76-200 paragraphs;

(c) 70 days before the hearing if the request contains more than 200 paragraphs.

(2) The party on whom the request is served must serve a response no later than;

(a) 20 days after the date of service if the request contains 75 paragraphs or less;

(b) 40 days after the date of service if the request contains 76-200 paragraphs;

(c) 60 days after the date of service if the request contains more than 200 paragraphs.

(3) The response must be in Form 30 and must, in relation to each fact and document mentioned in the request:

(a) admit the truth of the fact or the authenticity of the document;

(b) specifically deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or

(c) refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.

(4) If a party fails to respond to a request to admit or fails to respond in a manner that complies with this rule, that party will be deemed to admit, for the purposes of the proceeding only, the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(5) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(6) If a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved, the Tribunal shall take the denial or refusal into account in exercising its discretion respecting costs.

(7) The Tribunal may relieve a party from a deemed admission.

Filing materials before the hearing

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

Summons

11.5 (1) The Tribunal may, by summons, require any person to give evidence on oath or affirmation at a hearing and/or produce in evidence at a hearing specified documents and things.

(2) A summons shall be in Form 32, and may be signed by the Registrar or a Tribunal member.

(3) On request of a party, unless a panel has directed otherwise, the Tribunal Office may provide a blank summons to a party.

(4) The party that obtains a summons must serve the summons on the witness, and pay attendance money as set out in Tariff A under the *Rules of Civil Procedure*.

Exclusion of witnesses

11.6 (1) Subject to Rule 11.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.

(2) A party or a person instructing a party's representative shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.

(3) Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

Admission of evidence

11.7 (1) The rules of evidence applicable in civil proceedings apply in Tribunal proceedings, except where these rules provide otherwise.

(2) Sections 15(4) and 16 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 apply to the admission of evidence in Tribunal proceedings.

(3) Sections 15(1) and (2) of the *Statutory Powers Procedure Act* apply to the admission of evidence in interlocutory suspension or restriction motions.

(4) Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

Previously Admitted Evidence

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

(a) the party against whose interest the evidence is sought to be admitted was a party to the other proceeding,

(b) the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and

(c) an issue in the other proceeding is substantially similar to an issue in the current proceeding.

Limits on examination or cross-examination

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

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

Information obtained by the Discrimination and Harassment Counsel

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

RULE 12: INTERLOCUTORY SUSPENSION OR RESTRICTION MOTIONS

Authority

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

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

Motions rule applies

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

When authorization required

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

Service and materials

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

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

(a) it is not practical; or

(b) the delay it could cause may lead to serious consequences.

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

Interim interlocutory suspension or restriction

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

Duration of interlocutory suspension or restriction

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

Grounds to vary or cancel

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

Motion to vary or cancel

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

RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY

Record of proceeding

13.1 (1) The record of proceeding consists of:

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

(b) all exhibits, including any marked “for identification”;

(c) all other documents and correspondence from a party or other participant, reviewed by a panel, except for the purpose of a pre-hearing conference;

(d) all notices of hearing;

(e) all endorsements;

(f) all orders made by the Tribunal;

(g) all reasons issued by the Tribunal; and

(h) all transcripts filed with the Tribunal.

(2) Items listed out in Rule 13.1(a) to 13.1(h) that became part of the Record of Proceeding after [date to be determined] shall be maintained in electronic form unless the Tribunal determines otherwise.

Open tribunal

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

(2) Anyone may attend a public appearance unless the Tribunal orders otherwise.

Departing from openness

13.3 (1) The Tribunal may make a not public order, non-disclosure order or publication ban only if:

(a) an order is necessary to prevent a serious risk to the administration of justice because reasonable alternative measures will not do so; and

(b) the benefits of the order outweigh the effects on the right to free expression and the transparency of the administration of justice.

(2) If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

Capacity proceedings

13.4 In applying Rule 13.3 to a request for a not public order, non-disclosure order or publication ban in a capacity proceeding, a panel shall consider:

(a) that a central issue in capacity proceedings is the licensee's health;

(b) the nature and impact on the public of any of the licensee's actions that led to the proceeding;

(c) any stigma related to the nature of the licensee's health issues;

(d) the possible impact of disclosure on the licensee's or others' health; and

(e) any other relevant factor.

Children and sexual misconduct complainants

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

Privilege

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

Effect of not public order

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

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

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

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

Effect of non-disclosure order

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

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

Effect of publication ban

13.9 (1) When a publication ban has been made, the hearing and Tribunal file remain open to the public.

(2) No one may publish in any document or broadcast or transmit in any way information or documents subject to a publication ban.

(3) The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

Effect of order

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

RULE 14: ORDERS AND REASONS

Orders

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

Power to make orders

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

Addressing capacity issues in conduct applications

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

Formal order

14.4 (1) Any party may prepare a draft of a formal order.

(2) A formal order shall be in Form 34-38 as appropriate.

(3) A party that has prepared a draft of a formal order may submit it to the Tribunal, before or after a panel makes its decision.

(4) The draft order will be treated as a submission and the panel may amend the order.

(5) Where a formal order is not prepared by any party, it will be prepared by the Tribunal Office.

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

Reasons

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

Correction of errors

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

RULE 15: COSTS

Power to award costs

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

(a) in a licensing, conduct, capacity, competence or non-compliance proceeding, where the proceeding was unwarranted, or where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; or

(b) in a proceeding not mentioned in clause (a), where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

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

(a) where a determination adverse to the licensee or licence applicant was made; or

(b) where the licensee or licence applicant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

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

Tariff

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

Security for costs

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

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

(a) the applicant has an order against him or her for costs in the same or another proceeding under the Act that remains unpaid in whole or in part;

(b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or

(c) in the case of a licensing or restoration proceeding, there is good reason to believe that the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

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

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

RULE 16: REPRIMANDS

Administration of reprimands

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

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

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

Appeals and reprimands

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

RULE 17: APPEALS

Orders that may be appealed

17.1 (1) Sections 49.32 and 49.33 of the Act set out when an appeal of a final order may be started.

(2) There is no appeal of an interim or interlocutory order of the Hearing Division, except of an order that finally disposes of an interlocutory suspension or restriction motion, which can be appealed by either party.

Deadline for appeal

17.2 (1) To start an appeal, the appellant must file a notice of appeal (Form 14 or 15) and information sheet (Form 24 or 25) within 30 days of the date of the final order in the Hearing Division proceeding appealed from. After that, an appeal may be started only with the written consent of the respondent to the appeal or with leave.

(2) The motion record for a motion to extend the time to appeal must include a draft notice of appeal.

(3) No later than 10 days after filing the notice of appeal, the appellant must serve and file written confirmation from the court reporting service that all transcripts of the proceeding under appeal not already filed in the Hearing Division, have been ordered.

(4) If otherwise entitled to appeal, the respondent may cross-appeal by serving and filing a notice of cross-appeal (Form 17) no later than 15 days after being served with the notice of appeal. No information sheet is required with a notice of cross-appeal.

Perfecting the appeal

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

Dismissal for delay and deemed withdrawal

17.4 (1) If an appeal is not perfected by the deadline, the respondent may bring a motion to dismiss the appeal for delay.

(2) If the appeal has not been perfected three months from the deadline, the Registrar shall notify the parties that the appeal will be deemed withdrawn if not perfected within by 30 days after the date of the Registrar's notice.

(3) If an appellant to cross-appeal wishes to pursue the cross-appeal even if the appeal is deemed withdrawn, the respondent must notify the Tribunal by 14 days after the date of the Registrar's notice under Rule 17.4 (2).

(4) If the appeal has not been perfected within by 30 days after the date of the Registrar's notice under Rule 17.4(2), the Registrar shall deem the appeal withdrawn. If the appellant to cross-appeal has advised of a desire to pursue a cross-appeal, a proceeding management conference shall be scheduled to set a timeline for the hearing of the cross-appeal.

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

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

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

Deadline for respondent's materials if cross-appeal filed

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

Respondent to cross-appeal materials

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

Compendia

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

RULE 18: FRESH EVIDENCE ON APPEAL

Motion to introduce fresh evidence

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

Proposed fresh evidence

18.2 The appellant who makes a fresh evidence motion must file, together with the motion record, an electronic copy of the evidence identified as proposed fresh evidence, which shall not be public pending a decision on the motion.

Hearing of fresh evidence motion

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

Hearing of appeal in any event

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

Where respondent consents

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

Timing of Fresh Evidence Motion

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

RULE 19: APPEAL MATERIALS

Appeal books

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

(a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;

(b) a copy of the notice of appeal and any notice of cross-appeal, as amended;

(c) a copy of the order or orders appealed from;

(d) a copy of all endorsements and reasons of the Hearing Division in the proceeding;

(e) a copy of the originating process that initiated the proceeding before the Hearing Division;

(f) a copy of any exhibits that are referred to in the appellant's factum;

(g) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the appellant's factum;

(h) a copy of any directions given at a proceeding management conference in the appeal;

(i) a copy of any endorsements, orders and reasons of the Appeal Division made in the appeal; and

(j) where any of the materials are subject to a non-publication order, a copy of the non-publication order.

(2) The respondent's appeal book must contain, in consecutively numbered pages with numbered tabs:

(a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;

(b) a copy of any exhibits referred to in the respondent's factum that are not included in the appellant's appeal book; and

(c) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the respondent's factum that are not included in the appellant's appeal book.

(3) Any documents subject to a not public order, non-disclosure order or publication ban must be included in a separate appeal book volume.

Appeal facta

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

RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS

Starting administrative suspension order appeal

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

(2) An administrative suspension order appeal may be started beyond this time limit with consent of the Law Society or leave of the Tribunal.

Administrative suspension order appeals on consent

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

Filing of affidavits and hearing

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

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

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

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

Pre-hearing conference

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

APPENDIX A – Tariff of Fees for Services

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

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

Law Society Tribunal
Tribunal du Barreau

TRIBUNAL DU BARREAU
RÈGLES DE PRATIQUE ET DE PROCÉDURE

En vigueur le 1er janvier 2020,

modifications en vigueur le 1er octobre 2020, 1er octobre 2021

TABLES DES MATIÈRES

RÈGLE 1 : OBJET ET INTERPRÉTATION

Objet

1.1 Voici l'objet des présentes règles :

(a) Établir des processus équitables qui tiennent compte de l'intérêt du public, des professions juridiques, des titulaires et des demandeurs de permis individuels ;

(b) Favoriser la résolution des instances en temps opportun, dans l'intérêt public ;

(c) Veiller à ce que les procédures et les instances soient efficaces ;

(d) Veiller à ce que les procédures du Tribunal soient claires et compréhensibles ;

(e) Permettre d'adapter avec flexibilité les procédures aux cas et types de cas particuliers, y compris ceux qui impliquent des personnes désavantagées et vulnérables ;

(f) Encourager l'identification précoce des questions en litige et faciliter l'entente et la résolution ;

(g) Assurer des procédures et des instances transparentes pour le public et pour les titulaires et les demandeurs de permis ;

(h) Permettre aux titulaires et aux demandeurs de permis de participer activement aux processus, avec ou sans représentant.

Principes d'interprétation

1.2 Les présentes règles sont interprétées et appliquées conformément à leur objet.

1.3 Les ordonnances et les directives rendues en application des présentes règles sont proportionnelles à l'importance et à la complexité des questions en litige.

1.4 Le Tribunal peut exercer ses pouvoirs à la demande d'une partie ou de sa propre initiative.

1.5 Le Tribunal peut décider de ne pas appliquer les présentes règles strictement à moins que cela ne soit incompatible avec la loi, les règlements ou une règle obligatoire.

1.6 Le Tribunal fonctionne en mode électronique dans la mesure du possible en tenant compte de l’objet de la Règle 1.1 et lorsque ce mode améliore l’accès au Tribunal et respecte l’équité procédurale.

RÈGLE 2 : CHAMP D'APPLICATION ET DÉFINITIONS

Nom

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

Champ d'application

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

Définitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

« ordonnance interdisant l'accès au public » S'entend d'une ordonnance interdisant

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

« plateforme de partage de dossiers du Tribunal » S'entend d'un système de partage de dossiers électroniques établi ou approuvé par le Tribunal pour utilisation par les parties et d'autres dans les instances du Tribunal (« Tribunal's File Sharing Platform »)

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

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

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

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

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

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

S'entend au sens de la Loi

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

Calcul des délais

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

(a) si le délai est exprimé en nombre de jours séparant deux évènements, il se calcule en excluant le jour où a lieu le premier évènement, mais en incluant le jour où a lieu le second ;

(b) si le délai fixé est inférieur à sept jours, les congés ne sont pas comptés ;

(c) si le délai pour accomplir un acte expire un congé, l'acte peut être accompli le jour suivant qui n'est pas un congé ;

(d) tout document qui est réputé reçu un congé et toute signification qui est réputée faite un congé est réputé l'être le jour suivant qui n'est pas un congé.

RÈGLE 3 : INTRODUCTION ET RETRAIT D'UNE INSTANCE

Signification

3.1 (1) Une partie introduit une instance en signifiant et en déposant l'acte introductif d'instance (formulaires 1 à 17) et la fiche d'information appropriée (formulaires 18 à 25).

(2) Une partie doit signifier l'acte introductif d'instance et la fiche d'information par l'un ou l'autre des modes suivants :

(a) en main propre à la personne qui reçoit la signification ;

(b) par la poste, courrier recommandé ou par messagerie au domicile de la partie ou à son adresse professionnelle ;

(c) par courriel à l'adresse personnelle de la partie ou à son adresse professionnelle ;

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

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

(4) Les adresses mentionnées dans la Règle 3.1 (2) b) et c) sont :

(a) dans le cas des titulaires de permis, les adresses fournies au Barreau en vertu du Règlement administratif n^{o} 8;

(b) dans le cas des demandeurs de permis, les adresses fournies au Barreau pendant le processus d'accès à la profession.

Modifier un acte introductif d'instance

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

(a) auprès de la Section de première instance, au plus tard 10 jours avant l'audience sur le fond ;

(b) auprès de la Section d'appel, avant la mise en état de l'appel.

(2) Une partie peut modifier un acte introductif d'instance après le délai fixé avec le

consentement de l’autre partie ou avec l’autorisation du Tribunal.

Retrait d’une instance ou d’une motion

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

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

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

RÈGLE 4 : PARTICIPANTS ADDITIONNELS

Jonction de parties

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

Intervenants

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

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

Intervenants désintéressés

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

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

Mode de signification

5.1 Un document autre que l’acte introductif d’instance peut être signifié selon l’un ou l’autre des modes suivants :

(a) en main propre ;

(b) par la poste, par courrier recommandé ou par messagerie ;

(c) par courriel, si le document est inférieur à 20 Mo ;

(d) en téléversant un document électronique sur la plateforme de partage de dossiers du Tribunal et en signifiant un avis à l'autre partie indiquant que le document électronique a été téléversé ;

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

Date de validité de la signification

5.2 La signification est réputée valide :

(a) le jour même, si le document est signifié, autrement que par la poste, avant 17 h un jour ouvrable ;

(b) le jour ouvrable suivant, si le document est signifié, autrement que par la poste, un jour férié ou après 17 h un jour ouvrable ;

(c) le cinquième jour ouvrable après l'envoi, si le document est transmis par la poste.

Signification utilisant les coordonnées dans les registres du Barreau

5.3 La signification à un titulaire de permis au moyen des coordonnées fournies au Barreau en vertu du Règlement administratif nº 8, art. 3 et 4, est réputée valide à moins d'une ordonnance contraire du Tribunal.

Confirmation de la signification

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

(a) une confirmation de la signification (formulaire 27) qui peut être fournie dans le corps d'un courriel ;

(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, notamment :

i. en ajoutant le Tribunal en copie conforme au courriel original à l'autre personne ;

ii. en faisant suivre le courriel original au Tribunal;

(d) l’acceptation par écrit de la personne qui reçoit la signification, laquelle peut être fournie par courriel au Tribunal.

Communication avec le Tribunal

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

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

Communications respectueuses

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

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

Acceptation de documents par le Tribunal

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

Exigences du dépôt : copies électroniques et copies papier

5.8 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.

Dépôt des documents électroniques

5.9 Lorsque possible, les documents électroniques doivent être déposés en format PDF ou sinon, en PDF et dans un format tel que .doc, .ppt et .xlsx. Les documents électroniques peuvent être déposés par courriel (si moins de 20 Mo), sur une clé USB, sur la plateforme de partage de dossiers du Tribunal ou par tout autre mode permis par le Tribunal. Les noms de fichier et la structure et le format du document électronique doivent être conformes à la directive de pratique du Tribunal sur le dépôt électronique.

Dépôt des documents physiques

5.10 Lorsqu'une partie dépose un document en format physique lors d'une comparution en personne :

(1) La partie doit déposer :

(a) deux exemplaires si la comparution se déroule devant une formation composée d'un seul membre ;

(b) quatre exemplaires si la comparution se déroule devant une formation composée de trois membres ;

(c) six exemplaires si la comparution se déroule devant une formation composée de cinq membres.

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

(2) La copie électronique du document physique déposé par la partie, ou une copie électronique créée par le Tribunal si aucune copie électronique n'est déposée par la partie, fait partie du dossier de l'instance, mais pas le document physique.

Présentation

5.11 (1) Les documents déposés auprès du Tribunal doivent être lisibles. Les documents écrits doivent être dactylographiés ou imprimés. Les documents électroniques doivent être mis en page pour être imprimés sur du papier blanc de 216 millimètres sur 279 millimètres (8 ½ pouces sur 11 pouces).

(2) Les documents physiques doivent être présentés sur du papier blanc de 216 millimètres sur 279 millimètres (8 ½ pouces sur 11 pouces).

(3) Ces exigences ne s'appliquent pas à la preuve documentaire ni aux copies de la preuve documentaire.

Mémoires

5.12 Un mémoire doit comprendre au moins les sections suivantes :

(a) aperçu ;

(b) questions en litige ;

(c) faits, arguments et droit ;

(d) ordonnance recherchée ;

(e) annexe A, contenant une liste des textes à l'appui ;

(f) annexe B, contenant le texte de toutes les dispositions pertinentes des lois, des règlements, des règlements administratifs et des règles des codes de déontologie.

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

Recueil des textes à l'appui

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

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

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

Première comparution

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

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

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

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

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

6.2 Une comparution peut être inscrite au calendrier ou ajournée :

(a) lors d'une conférence préparatoire à l'audience ou d'une conférence de gestion de l'instance ;

(b) par la formation d'audience ou par le président de cette formation ;

(c) par le greffe du Tribunal, si l'inscription de la comparution au calendrier ou l'ajournement de celle-ci est sur consentement.

Ajournements

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

6.4 Une ordonnance reportant une comparution peut comprendre des conditions que la formation estime appropriées.

Mesures d'adaptation

6.5 En vertu du *Code des droits de la personne*, L.R.O. 1990, chap. H.19, les participants à une instance ont droit à des mesures d'adaptation, à moins que cela n'entraine un préjudice injustifié. Un participant à une instance doit informer le Tribunal dès que possible de toute mesure d'adaptation requise.

Accommodement des témoins

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

(a) permettre à une personne de soutien de s'assoir près d'un témoin pendant qu'il témoigne ;

(b) ordonner qu'un témoin témoigne d'une manière qui lui permette de ne pas voir le titulaire de permis, le demandeur de permis ou toute autre personne ;

(c) ordonner qu'un titulaire de permis ou un demandeur de permis ne procède pas personnellement au contrinterrogatoire d'un témoin, et nomme un avocat pour procéder au contrinterrogatoire sans frais pour le titulaire de permis ou le demandeur de permis ;

(d) rendre tout autre ordonnance pour accommoder ou protéger les témoins.

Défaut d'assister ou de participer

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

RÈGLE 7 : GESTION DE L'INSTANCE

Principes

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

(a) l'instance progresse de façon équitable et avec célérité dans l'intérêt public ;

(b) le temps d'audience prévu soit utilisé de façon efficace et efficiente, pour que la formation d'audience entende et tranche les questions en litige ;

(c) les problèmes soient identifiés tôt pour que les parties aient le temps de bien se préparer ;

(d) des ajournements soient accordés uniquement s'il s'agit de circonstances imprévues et exceptionnelles.

Directives de gestion de l'instance

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

(a) lors d'une conférence de gestion de l'instance ;

(b) lors d'une conférence préparatoire à l'audience ;

(c) lors d'une audience ou d'une conférence relative à la cause, par la formation d'audience ;

(d) lors d'une conférence relative à la cause, par le président de la formation d'audience, avant ou entre les jours d'audience.

Inscription

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

Conférence de gestion de l'instance

7.4 Le Tribunal peut, de sa propre initiative ou à la demande d'une des parties, tenir une conférence de gestion de l'instance.

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

7.5 Lors d'une conférence de gestion de l'instance, la formation peut :

(a) fixer une date de comparution ou l'ajourner ;

(b) établir des délais ou des dates limites pour différentes étapes de l'instance ;

(c) entendre et trancher une motion de procédure ;

(d) rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication ;

(e) donner toute autre directive de procédure, y compris des directives relatives au processus à suivre lors de l'audience.

Conférence préparatoire à l'audience

7.6 La conférence préparatoire à l'audience a pour objet de faciliter une résolution équitable de l'instance, de la façon la plus expéditive possible.

Questions abordées lors d'une conférence préparatoire à l'audience

7.7 Lors d'une conférence préparatoire à l'audience, la formation peut aborder les questions suivantes avec les parties :

(a) la définition, la restriction ou la simplification des questions en litige ;

(b) la définition et la restriction des éléments de preuve et des témoins ;

(c) la possibilité de s'entendre sur tout ou partie des questions en litige dans l'instance ;

(d) la possibilité pour les parties de s'entendre sur un exposé conjoint des faits ;

(e) les étapes procédurales appropriées pour parvenir à la tenue d'une audience de façon juste et expéditive.

Obligation de fixer une conférence préparatoire à l'audience

7.8 Une conférence préparatoire à l'audience doit être fixée promptement pour toute instance, sauf s'il s'agit d'une audience sommaire, d'une motion pour suspension ou restriction interlocutoire, d'une motion de modification ou annulation d'une ordonnance de suspension ou restriction interlocutoire, ou d'un appel, à moins que la cause ne soit prête pour l'audience. Sur motion d'une partie ou de sa propre initiative, le Tribunal peut fixer une conférence préparatoire à l'audience dans toute instance et à tout moment.

Confidentielle et sous toutes réserves

7.9 La conférence préparatoire à l'audience est confidentielle et sous toutes réserves. Il est interdit de divulguer ce qui s'est passé lors de la conférence préparatoire à l'audience ou le contenu d'un mémoire de conférence préparatoire à l'audience, sauf ordonnance

contraire ou obligation statutaire. La formation peut résumer dans l'inscription le résultat des discussions et les directives données.

Directives lors d'une conférence préparatoire à l'audience

7.10 (1) La formation qui dirige une conférence préparatoire à l'audience peut faire ce qui suit :

(a) fixer une date de comparution ou l'ajourner ;

(b) fixer des délais ou des dates limites pour différentes étapes de l'instance ;

(c) donner toute autre directive sur la procédure visant à arriver à une audience de façon juste et expéditive, notamment des directives sur le processus à suivre lors de l'audience.

(2) La formation qui dirige une conférence préparatoire à l'audience peut donner des directives sur la procédure, avec ou sans le consentement des parties.

Mémoire de conférence préparatoire à l'audience

7.11 (1) Chaque partie prépare un mémoire de conférence préparatoire à l'audience contenant un exposé des faits sur lesquels la partie se fonde ainsi que sa position sur les questions en litige.

(2) Le mémoire de chaque partie est envoyé par courriel aux autres parties et au greffe du Tribunal. Le mémoire du Barreau doit être envoyé au moins sept jours avant la première conférence préparatoire à l'audience. Le mémoire du titulaire de permis ou du demandeur de permis doit être envoyé au moins deux jours avant la première conférence préparatoire à l'audience.

(3) Le Tribunal peut dispenser de l'obligation de déposer un mémoire de conférence préparatoire à l'audience s'il est jugé que la préparation du mémoire ne serait pas pratique ou utile dans les circonstances.

Restriction relative à l'affectation d'un membre du Tribunal de la conférence préparatoire à l'audience

7.12 (1) Sauf avec le consentement des parties à l'instance, un membre du Tribunal qui a dirigé une conférence préparatoire à l'audience ne sera pas affecté à l'audience sur le fond, à une motion, ni à un appel de l'instance, et un membre de la formation d'audience ne sera pas affecté à une conférence de gestion de l'instance. Les parties doivent confirmer leur consentement en déposant un formulaire de consentement (formulaire 31).

(2) La présente règle n'empêche pas un membre du Tribunal qui a présidé la

conférence préparatoire à l'audience de présider une conférence de gestion de l'instance.

Conférence relative à la cause

7.13 Le Tribunal peut tenir une conférence relative à la cause de sa propre initiative, selon les directives données lors d'une conférence de gestion de l'instance, ou à la demande d'une des parties.

Directives lors d'une conférence relative à la cause

7.14 Lors d'une conférence relative à la cause, la formation d'audience ou le président de la formation peut :

(a) fixer une date de comparution ou l'ajourner ;

(b) fixer des délais ou des dates limites pour différentes étapes de l'instance ;

(c) rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication ;

(d) donner toute autre directive sur la procédure.

RÈGLE 8 : MOTIONS

Motions

8.1 (1) Les motions sont présentées par voie d'avis de motion (formulaire 28) sauf si l'avis n'est pas nécessaire en raison de circonstances ou de la nature de la motion.

(2) Si le Tribunal n'a pas confirmé une date de motion au moment de la signification et du dépôt de l'avis de motion, l'avis doit indiquer que la motion sera entendue à une date qui sera fixée par le Tribunal.

(3) Le Tribunal peut exiger que les parties comparaissent à une conférence de gestion de l'instance avant de fixer une date pour l'audition de la motion.

(4) Aucune motion ne peut être présentée avant le début de l'instance à laquelle elle a trait.

Dossier de motion

8.2 (1) La présente règle s'applique si une motion est présentée par voie d'avis de motion, sauf en cas de directives contraires spécifiques du Tribunal.

(2) Au moins dix jours avant l'audition de la motion, l'auteur de la motion signifie et

dépose un dossier de motion qui comprend l'avis de motion, accompagné d'un mémoire et un recueil des textes à l'appui.

(3) Au moins trois jours avant l'audition de la motion, la partie intimée signifie et dépose un mémoire, accompagné d'un dossier de motion et d'un recueil des textes à l'appui, le cas échéant.

(4) Le dossier de motion comprend, dans des pages numérotées consécutivement ;

(a) une table des matières décrivant chaque document, en indiquant la nature et la date du document, et chaque pièce, en indiquant la nature et la date de la pièce ainsi que son numéro ou sa lettre ;

(b) l'avis de motion, s'il n'est pas déjà compris dans le dossier de motion d'une autre partie ;

(c) tous les affidavits et autres documents sur lesquels la partie entend s'appuyer.

(5) En cas de contrinterrogatoire sur affidavit dans un dossier de motion, celui-ci se déroulera devant la formation d'audience de la motion, à moins que les parties acceptent ou que le Tribunal ordonne qu'il se déroule devant un auditeur officiel. La partie qui convoque le témoin doit s'assurer de la présence du témoin au contrinterrogatoire.

Motion sur consentement ou motion non contestée

8.3 Dans le cas d'une motion sur consentement ou non contestée :

a) les mémoires et les recueils des textes à l'appui ne sont pas requis à moins que le Tribunal ne l'ordonne ;

b) l'auteur de la motion doit déposer un projet de l'ordonnance demandée et tout consentement.

RÈGLE 9 : COMPARUTIONS

Mode de comparution

9.1 (1) Selon les directives du Tribunal, une comparution se fait par téléphone, par vidéoconférence, par écrit ou en personne.

(2) Lorsqu'il détermine le mode de comparution, le Tribunal tient compte de l'objet de la Règle 1.1, du fait que les demandes présentées au Tribunal concernent des parties, des témoins et des membres qui peuvent être éloignés du Tribunal ainsi que des couts et des avantages associés aux audiences en personne.

Assister à une comparution en personne par voie électronique

9.2 (1) Sous réserve du paragraphe (2), une partie ou son représentant peut, sur demande, assister à une comparution en personne par téléphone ou par vidéoconférence.

(2) Le témoin qui fournit une preuve orale et le représentant ou la partie non représentée qui interroge le témoin lors d'une comparution en personne doivent comparaitre en personne, à moins que l'autre partie consente à ce qu'il assiste par voie électronique ou que le Tribunal l'y autorise.

(3) Sous réserve de la directive de la formation, un membre de la formation peut assister à une comparution en personne par vidéoconférence.

Conversion du mode de comparution

9.3 La formation qui préside une comparution peut en convertir le mode, soit par téléphone, par vidéoconférence, par écrit ou en personne, sauf indication contraire.

Langue

9.4 (1) Une instance est instruite en anglais, en français, ou dans les deux langues, au choix du titulaire de permis ou du demandeur de permis.

(2) Un titulaire de permis ou un demandeur de permis qui demande un changement de langue en cours d'instance doit déposer sa demande dans les 30 jours qui suivent la signification de l'acte introductif d'instance.

(3) Les documents déposés dans une langue autre que l'anglais ou le français doivent être accompagnés d'une traduction dans la langue de l'instance réalisée par un traducteur compétent, ainsi que d'un certificat du traducteur indiquant qu'il s'agit d'une traduction certifiée conforme et exacte au mieux de ses connaissances.

(4) Une partie qui entend convoquer un témoin nécessitant une interprétation, en avise le Tribunal le plus tôt possible, et ce au moins sept jours avant l'audience à laquelle l'interrogatoire du témoin est prévu.

Lieu

9.5 (1) Sous réserve des paragraphes (2) et (3), une audience en personne se tient au Tribunal du Barreau à Toronto.

(2) Si toutes les parties consentent à ce qu'une audience se tienne à l'extérieur de Toronto, mais dans la Province de l'Ontario, l'audience se tient à l'endroit convenu.

(3) Le Tribunal peut ordonner qu'une audience se tienne dans un autre endroit.

Réunion ou instruction consécutive d'instances

9.6 (1) Le Tribunal peut ordonner qu'au moins deux instances soient, en tout ou en partie, instruites en même temps ou immédiatement l'une après l'autre si, selon le cas :

(a) elles ont en commun une question de droit ou de fait ou les deux ;

(b) elles mettent en cause les mêmes parties ;

(c) elles naissent de la même opération ou du même évènement ou de la même série d'opérations ou d'évènements ;

(d) il est pour toute autre raison approprié de rendre une ordonnance en application de la présente règle.

(2) Si une ordonnance est rendue en vertu du paragraphe (1), le Tribunal détermine l'effet de procéder à l'instruction simultanée ou consécutive des instances sur le fond et peut donner des directives à l'égard de cet effet.

Consentement à l'instruction de l'instance par un seul membre du Tribunal

9.7 Les parties à une instance portant sur la conduite peuvent consentir à ce que la requête soit entendue par un seul membre du Tribunal en vertu du paragraphe 2 (1) du Règl. de l'Ont. 167/07 en déposant leur consentement (formulaire 31) auprès du Tribunal.

Transcriptions

9.8 (1) La personne qui désire obtenir la transcription d'une comparution publique doit la commander, à ses frais, auprès du service de sténographie qui a enregistré l'audience.

(2) La première partie qui obtient la transcription d'une comparution publique est responsable du cout des copies électroniques et papier destinées au Tribunal, lesquelles seront déposées directement auprès du Tribunal par le service de sténographie.

Images et enregistrements

9.9 Sous réserve de la règle 9.10, nul ne peut, outre le service de sténographie judiciaire, sans autorisation,

(a) prendre des photos, ou faire des enregistrements vidéos ou audios sur les lieux du Tribunal ou pendant l'audience ;

(b) faire une capture d'écran ou faire des enregistrements vidéos ou audios d'une comparution.

9.10 Sous réserve d’un préavis écrit au Tribunal, un représentant, une partie agissant en personne ou un journaliste peut réaliser discrètement un enregistrement audio lors d’une comparution dans le seul but de compléter ou de remplacer les notes prises pendant la comparution.

RÈGLE 10 : DIVULGATION ET PRODUCTION

Obligation du Barreau de divulguer

10.1 Le Barreau doit divulguer au titulaire de permis ou au demandeur de permis, dans un délai raisonnable après le dépôt de la requête, tous les documents en sa possession potentiellement pertinents et qui ne sont pas protégés par un quelconque privilège. Les documents protégés par un privilège doivent être indiqués à l’autre partie.

Production par le Barreau

10.2 Le titulaire de permis ou le demandeur de permis qui présente une motion de production supplémentaire de la part du Barreau doit inclure dans son dossier de motion la correspondance antérieure avec le représentant du Barreau dans laquelle il demande ces documents, et la réponse du représentant du Barreau.

Motions pour suspension ou restriction interlocutoire

10.3 Les règles 10.1 et 10.2 ne s’appliquent pas aux motions pour suspension ou restriction interlocutoire, ce qui n’empêche pas une formation de rendre des ordonnances de divulgation dans le cadre de telles instances.

Production par des tierces parties

10.4 Si une partie demande la production de documents à une tierce partie, la partie qui fait la demande doit obtenir une date de motion et signifier à la tierce partie une assignation à comparaitre exigeant que la tierce partie se présente à la date de la motion, l’indemnité de présence et un avis de motion. L’avis de motion doit indiquer la pertinence des documents dont la production est demandée à la tierce partie.

Déclarations des témoins et recueils de documents

10.5 (1) Chaque partie doit remettre aux autres parties :

(a) un recueil de documents contenant tous les éléments de preuve documentaire que la partie prévoit de présenter à l’audience ;

(b) une liste des témoins que la partie entend convoquer ;

(c) un affidavit, une déclaration de témoin signée ou un résumé des éléments de

preuve orale prévus pour chaque témoin, ainsi que les coordonnées du témoin ou les coordonnées d'une personne par l'intermédiaire de laquelle il est possible de contacter ce dernier.

(2) Le Barreau doit se conformer à la présente règle au moins 14 jours avant une audience sommaire et au moins 20 jours avant toute autre audience sur le fond. Un titulaire de permis ou un demandeur de permis doit se conformer à la présente règle au moins sept jours avant une audience sommaire et au moins 10 jours avant toute autre audience sur le fond.

Rapports d'experts

10.6 (1) Chaque partie doit fournir aux autres parties, au plus tard 60 jours avant une audience, une copie de l'affidavit ou du rapport écrit de chaque témoin expert que la partie entend convoquer.

(2) Un affidavit ou un rapport d'expert doit comprendre une reconnaissance du devoir de l'expert (formulaire 33).

Conséquences du défaut de divulguer

10.7 Les éléments de preuve qui ne sont pas divulgués ou produits comme l'exige la présente règle sont inadmissibles, sauf avec l'autorisation du Tribunal.

RÈGLE 11 : PREUVE

Accord sur les faits

11.1 La formation peut recevoir les faits sur lesquels les parties se sont mises d'accord sans autre preuve, et s'appuyer sur eux.

Preuve par affidavit

11.2 (1) L'interrogatoire principal d'un témoin peut être mené au moyen d'un affidavit, sauf ordonnance contraire du Tribunal.

(2) Tout contrinterrogatoire sur affidavit se déroule devant la formation d'audience, à moins que les parties acceptent, ou que le Tribunal ordonne, qu'il se déroule devant un auditeur officiel.

(3) La partie qui convoque le témoin doit s'assurer de la présence du témoin au contrinterrogatoire.

Aveux réputés

11.3 (1) Une partie peut demander à une autre partie de reconnaitre, aux fins de l'instance

uniquement, la véracité d'un fait ou l'authenticité d'un document. La demande doit être rédigée selon le formulaire 29 et signifiée à l'autre partie. La demande d'aveux doit comprendre une copie de tout document mentionné dans la demande à moins que l'autre partie ne l'ait déjà en sa possession. Une demande d'aveux doit être signifiée au plus tard :

(a) 30 jours avant l'audience si elle contient au plus 75 paragraphes ;

(b) 50 jours avant l'audience si elle contient 76 à 200 paragraphes ;

(c) 70 jours avant l'audience si elle contient plus de 200 paragraphes.

(2) La partie à qui la demande d'aveux est signifiée doit signifier une réponse au plus tard ;

(a) 20 jours après la date de signification si la demande contient au plus 75 paragraphes ;

(b) 40 jours après la date de signification si la demande contient 76 à 200 paragraphes ;

(c) 60 jours après la date de signification si la demande contient plus de 200 paragraphes.

(3) La réponse doit être rédigée selon le formulaire 30 et doit, par rapport à chaque fait et document mentionné dans la demande, selon le cas :

(a) reconnaitre la véracité du fait ou l'authenticité du document ;

(b) nier expressément la véracité du fait ou l'authenticité du document et donner les motifs de la dénégation ;

(c) refuser de reconnaitre la véracité du fait ou l'authenticité du document et donner les motifs du refus.

(4) Si une partie fait défaut de répondre à une demande d'aveux ou de répondre d'une manière conforme à la présente règle, cette partie sera réputée reconnaitre, aux fins de l'instance uniquement, la véracité des faits ou l'authenticité des documents mentionnés dans la demande d'aveux.

(5) Si une partie à qui une demande d'aveux a été signifiée ne se présente pas ou ne participe pas à l'audience sur le fond de l'instance, que la partie ait signifié une réponse ou non, la partie sera réputée reconnaitre, aux fins de l'instance uniquement, la véracité des faits ou l'authenticité des documents mentionnés dans la demande d'aveux.

(6) Si une partie nie ou refuse de reconnaitre la véracité d'un fait ou l'authenticité d'un document après avoir reçu une demande d'aveux, et si par la suite la véracité du fait ou

du document est établie, le Tribunal prend la dénégation ou le refus en considération dans l'exercice de son pouvoir discrétionnaire d'adjudication des dépens.

(7) Le Tribunal peut rendre une ordonnance pour rétracter les aveux réputés d'une partie.

Dépôt de documents avant l'audience

11.4 Une partie peut déposer un exposé conjoint des faits, une demande d'aveux réputée reconnue, un affidavit ou un recueil de documents aux fins d'examen par la formation avant l'audience. Le dépôt de ces documents n'empêche pas une autre partie de s'opposer à leur admissibilité à l'audience. Les parties peuvent demander que les documents ne soient pas rendus publics jusqu'à l'audience.

Assignation

11.5 (1) Le Tribunal peut assigner une personne à comparaitre pour témoigner sous serment ou par affirmation solennelle à une audience ou pour produire en preuve des documents ou des objets précisés.

(2) L'assignation est rédigée selon le formulaire 32, et peut être signée par le greffier ou un membre du Tribunal.

(3) Sur demande d'une partie, à moins qu'une formation n'instruise autrement, le greffe du Tribunal peut lui délivrer une assignation en blanc.

(4) La partie qui obtient une assignation doit la signifier au témoin, et verser l'indemnité de présence au témoin conformément au tarif A des *Règles de procédure civile*.

Exclusion de témoins

11.6 (1) Sous réserve du paragraphe (2), le Tribunal peut exiger l'exclusion d'un témoin de l'audience jusqu'à ce qu'il soit appelé à témoigner.

(2) Une partie ou une personne qui instruit le représentant d'une partie ne peut être exclue, mais une ordonnance peut être rendue pour que cette personne soit appelée à témoigner avant les autres témoins de la partie.

(3) Sauf ordonnance contraire du Tribunal, nul ne peut communiquer à un témoin exclu le contenu des témoignages entendus pendant son absence avant que ce témoin ait lui-même témoigné.

Admission en preuve

11.7 (1) Les règles de preuve applicables aux instances civiles s'appliquent aux instances du Tribunal, sauf si ces règles n'en disposent autrement.

(2) Les paragraphes 15 (4) et 16 de la *Loi sur l'exercice des compétences légales*, L.R.O. 1990, chapitre S. 22 s'appliquent à l'admission de la preuve dans les instances du Tribunal.

(3) Les paragraphes 15 (1) et (2) de la Loi sur l'exercice des compétences légales s'appliquent à l'admission de la preuve dans les motions pour suspension ou restriction interlocutoire.

(4) Toute preuve qui doit être présentée ou toute exigence qui doit être satisfaite avant qu'un registre bancaire ou commercial ne soit reçu ou admis en preuve en vertu de toute règle de common law ou d'un texte législatif peut être présentée ou satisfaite par le témoignage oral ou par affidavit d'une personne donné au mieux de sa connaissance et de sa croyance.

Preuve déjà admise

11.8 La preuve déjà admise peut être admise si les parties à l'instance y consentent, ou si toutes les conditions suivantes sont réunies :

(a) la partie contre qui l'admission de la preuve est recherchée était ou est une partie à l'autre instance ;

(b) la partie contre qui l'admission de la preuve est recherchée a donné le témoignage en question ou a eu la possibilité de contrinterroger le témoin à l'autre instance ;

(c) une question en litige dans l'autre instance est sensiblement semblable à une question en litige dans l'instance en cours

Limites de l'interrogatoire ou du contrinterrogatoire

11.9 (1). Une formation ne permet pas un contrinterrogatoire répétitif, abusif ou autrement inapproprié.

(2) Une formation peut imposer des limites raisonnables à la poursuite de l'interrogatoire ou du contrinterrogatoire d'un témoin si elle est convaincue que l'interrogatoire ou le contrinterrogatoire a déjà fait toute la lumière sur tout ce qui touche aux questions en litige dans le cadre de l'instance.

Information obtenue par le conseiller ou la conseillère juridique en matière de discrimination et de harcèlement

11.10 Nonobstant toute autre règle, les renseignements obtenus par le conseiller ou la conseillère juridique en matière de discrimination et de harcèlement dans l'exercice de ses fonctions en application de l'alinéa 19 (1) a) du Règlement administratif n° 11 ne doivent pas être utilisés au cours d'une audience, et y sont inadmissibles.

RÈGLE 12 : MOTIONS POUR SUSPENSION OU RESTRICTION INTERLOCUTOIRE

Pouvoir

12.1 (1) Sur motion du Barreau, le Tribunal peut rendre une ordonnance interlocutoire ayant pour effet de suspendre un permis, d'imposer des conditions ou de restreindre la manière dont un titulaire de permis peut pratiquer le droit ou fournir des services juridiques.

(2) Sur motion d'un titulaire de permis ou du Barreau, le Tribunal peut modifier ou annuler une ordonnance interlocutoire prise en application de la présente règle.

Application de la règle sur les motions

12.2 La règle 8 s'applique, sauf si elle diffère de la présente règle, aux motions pour suspension ou restriction interlocutoire.

Autorisation nécessaire

12.3 Si la motion se rapporte à une instance où la Section de première instance n'a pas commencé l'audience sur le fond, le Barreau doit obtenir l'autorisation du Comité d'autorisation des instances pour présenter une motion pour suspension ou restriction interlocutoire.

Signification et documents

12.4 (1) Dans une motion pour suspension ou restriction interlocutoire, le Barreau doit signifier et déposer un avis de motion, une fiche d'information, un dossier de motion, un mémoire et un recueil des textes à l'appui au moins trois jours avant l'audience sur la motion, sauf si la motion est entendue sur préavis d'au moins 10 jours, dans quel cas ceux-ci doivent être déposés au moins 10 jours avant l'audience, ou sauf ordonnance contraire du Tribunal.

(2) Le Tribunal peut ordonner que la signification n'est pas nécessaire dans un ou l'autre des cas suivants :

(a) si elle n'est pas pratique ;

(b) si le délai qu'elle entrainerait risque d'avoir des conséquences graves.

(3) Le titulaire de permis doit signifier et déposer un dossier de motion, un mémoire et un recueil des textes à l'appui, le cas échéant, au plus tard à 14 h la veille de l'audience sur la motion, à moins que la motion soit entendue sur préavis de 10 jours ou plus, dans quel cas le titulaire de permis doit les déposer au moins trois jours avant l'audience.

Suspension ou restriction interlocutoire intérimaire

12.5 Sauf ordonnance contraire, une ordonnance de suspension ou restriction interlocutoire intérimaire demeure en vigueur jusqu'à ce que la motion pour suspension ou restriction interlocutoire soit tranchée.

Durée de la suspension ou restriction interlocutoire

12.6 Sauf ordonnance contraire, une ordonnance de suspension ou restriction interlocutoire demeure en vigueur jusqu'à ce qu'une ordonnance définitive soit rendue dans l'instance sur la conduite à laquelle se rapporte la motion, ou que le Tribunal modifie ou annule l'ordonnance.

Raisons pour modifier ou annuler

12.7 Une ordonnance de suspension ou restriction interlocutoire peut être modifiée ou annulée pour tenir compte d'une nouvelle preuve ou d'un changement de circonstances important.

Motion en modification ou en annulation

12.8 Pour faire une demande de modification ou d'annulation d'une ordonnance de suspension ou restriction interlocutoire, une partie doit signifier et déposer une motion en modification ou en annulation de suspension ou restriction interlocutoire (formulaire 8 ou 9) et une fiche d'information (formulaire 21 ou 22).

RÈGLE 13 : DOSSIER DE L'INSTANCE ET TRANSPARENCE

Dossier de l'instance

13.1 (1) Le dossier de l'instance comprend ce qui suit :

(a) tous les documents déposés auprès du Tribunal, à moins que celui-ci ne les refuse en ce qu'ils ne sont pas conformes aux présentes règles, à une ordonnance ou à une directive ;

(b) toutes les pièces, y compris celles qui sont cotées à des fins d'identification ;

(c) tous les autres documents et correspondances d'une partie ou d'un autre participant examinés par une formation, sauf ceux déposés aux fins d'une conférence préparatoire à l'audience ;

(d) tous les avis d'audience ;

(e) toutes les inscriptions ;

(f) toutes les ordonnances rendues par le Tribunal ;

(g) tous les motifs rendus par le Tribunal ;

(h) toutes les transcriptions déposées auprès du Tribunal.

(2) Les éléments énumérés aux règles 13.1 a) à 13.1 h) qui ont été intégrés au dossier de l'instance après le [date à déterminer] sont conservés sous forme électronique, sauf si le Tribunal en décide autrement.

Publicité des débats

13.2 (1) Le contenu du dossier de l'instance et toutes les comparutions, à l'exception des conférences préparatoires à l'audience, sont publics, sauf ordonnance contraire du Tribunal ou d'un tribunal judiciaire.

(2) Toute personne peut assister à une comparution publique sauf ordonnance contraire du Tribunal ou d'un tribunal judiciaire.

Dérogation au principe de publicité

13.3 (1) Le Tribunal peut rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication seulement dans les cas suivants :

(a) l'ordonnance est nécessaire pour écarter un risque sérieux pour la bonne administration de la justice, vu l'absence d'autres mesures raisonnables pouvant écarter ce risque ;

(b) les effets bénéfiques de l'ordonnance sont plus importants que ses effets préjudiciables sur le droit à la libre expression et sur la transparence de l'administration de la justice.

(2) Si une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication est nécessaire, le Tribunal rend l'ordonnance qui affecte le moins le principe de publicité tout en atteignant son objectif.

Instances sur la capacité

13.4 Lorsqu'elle applique la règle 13.3 à une demande d'ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication dans une instance relative à la capacité, la formation tient compte de ce qui suit :

(a) le fait qu'une question centrale de l'instance sur la capacité est la santé du titulaire de permis ;

(b) la nature et les répercussions sur le public de toute action du titulaire de permis ayant mené à l'instance ;

(c) toute stigmatisation liée à la nature des problèmes de santé du titulaire de permis ;

(d) les répercussions possibles de la divulgation sur la santé du titulaire de permis ou d'autrui ;

(e) tout autre facteur pertinent.

Enfants et plaignants victimes d'inconduite sexuelle

13.5 Une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication est rendue pour éviter que l'identité des enfants et des personnes qui allèguent une agression ou une inconduite sexuelle ne soit rendue publique, sauf demande contraire d'un adulte qui allègue une agression ou une inconduite sexuelle.

Privilège

13.6 À moins d'avoir le consentement du détenteur du privilège, le Tribunal ordonne que les documents privilégiés ou potentiellement privilégiés de même que la preuve concernant les documents et les communications privilégiés ou potentiellement privilégiés ne soient pas rendus publics.

Effets d'une ordonnance interdisant l'accès au public

13.7 (1) Lorsqu'une comparution n'est pas publique, nul ne peut y assister sauf le titulaire de permis ou le demandeur de permis, les représentants des parties, les témoins et quiconque y étant admis par la formation.

(2) Lorsqu'une comparution n'est pas publique, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut recevoir ou voir la transcription, mais les témoins peuvent voir la transcription de leur propre témoignage.

(3) Quand un document n'est pas public, il ne doit pas être remis à une personne autre que les parties, leurs représentants ou une personne qui témoigne au sujet du dit document.

(4) Nul ne peut divulguer ce qui s'est passé pendant une comparution non publique sauf aux parties ou à leurs représentants. Nulle personne qui a pris connaissance d'un document non public dans le cadre d'une instance ne peut divulguer son contenu à des

personnes autres que les parties ou leurs représentants.

Effets d’une ordonnance de non-divulgation

13.8 (1) Lorsqu’une ordonnance de non-divulgation a été rendue, nul autre que le titulaire de permis ou le demandeur de permis et les représentants des parties ne peut recevoir ou voir la transcription, mais les témoins peuvent voir la transcription de leur propre témoignage.

(2) Nul ne peut divulguer ce qui s’est passé pendant une comparution faisant l’objet d’une ordonnance de non-divulgation sauf aux parties ou à leurs représentants. Nulle personne qui a pris connaissance d’un document non public dans le cadre d’une comparution ne peut divulguer son contenu à des personnes autres que les parties ou leurs représentants.

Effets d’une interdiction de publication

13.9 (1) En cas d’interdiction de publication, l’audience et le dossier du Tribunal demeurent ouverts au public.

(2) Nul ne peut publier un document ou diffuser ou transmettre de quelque façon que ce soit des renseignements ou des documents qui font l’objet d’une interdiction de publication.

(3) Le Tribunal et le service de sténographie judiciaire qui transcrit l’instance incluent un avis écrit de toute interdiction de publication sur les documents et les transcriptions visés.

Effets d’une ordonnance

13.10 Aucune ordonnance visée par la présente règle n’empêche le personnel du Tribunal ou les membres d’une formation d’avoir accès aux documents qui se trouvent dans les dossiers du Tribunal ou d’assister à une comparution.

RÈGLE 14 : ORDONNANCES ET MOTIFS

Ordonnances

14.1 Sauf disposition contraire, une ordonnance ou une directive prend effet à compter de la date à laquelle elle est rendue, que ce soit oralement, dans une inscription, dans des motifs ou dans une ordonnance officielle, et qu’une inscription ou une ordonnance officielle ait été rendue ou non.

Pouvoir de rendre des ordonnances

14.2 Il est interdit à une formation composée d'un seul membre du Tribunal affecté à une audience sommaire de rendre une ordonnance révoquant le permis d'un titulaire de permis ou permettant à un titulaire de permis de rendre un permis.

Aborder les questions de capacité dans les requêtes relatives à la conduite

14.3 Avec le consentement des parties, une formation de trois membres affectée à une requête relative à la conduite en vertu de l'art. 34 de la Loi peut traiter de questions qui devraient autrement faire l'objet d'une requête en incapacité prévue à l'article 38 de la Loi, et peut rendre toute ordonnance visée à l'article 40 de la Loi.

Ordonnance officielle

14.4 (1) Une des parties peut préparer le projet d'ordonnance officielle.

(2) Une ordonnance officielle est rédigée selon les formulaires 34-38 appropriés.

(3) La partie qui a préparé le projet d'ordonnance officielle peut le soumettre au Tribunal, avant ou après que la formation ait pris une décision.

(4) Le projet d'ordonnance est traité comme une observation et la formation peut modifier l'ordonnance.

(5) Si l'une des parties ne prépare pas une ordonnance officielle, le greffe du Tribunal s'en chargera.

(6) N'importe quel membre d'une formation peut signer l'ordonnance officielle ou les motifs.

Motifs

14.5 La formation doit rendre des motifs pour toute ordonnance définitive rendue dans une instance relative à la capacité ou dans un appel. Pour toute autre instance, la formation est tenue de rendre des motifs seulement si une partie en fait la demande dans un délai de 30 jours après la prise de l'ordonnance.

Correction d'erreurs

14.6 Le greffier, une personne désignée par le greffier ou un membre de la formation qui a rédigé l'inscription, l'ordonnance ou les motifs, peuvent corriger une erreur typographique, une erreur de calcul ou une erreur mineure semblable.

RÈGLE 15 : DÉPENS

Pouvoir d'adjudication des dépens

15.1 (1) Le Barreau ne peut être condamné aux dépens que dans l'un ou l'autre des cas suivants :

(a) dans une instance portant sur la délivrance d'un permis, la conduite, la capacité, la compétence professionnelle ou l'inobservation, si l'instance était injustifiée ou si le Barreau a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute ;

(b) dans une instance non visée à l'alinéa, a) si le Barreau a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

(2) Le titulaire de permis ou le demandeur de permis peut être condamné aux dépens dans l'un ou l'autre des cas suivants :

(a) si la décision rendue lui est défavorable ;

(b) s'il a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

(3) Un intervenant ou un tiers peut être condamné aux dépens s'il a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, par négligence ou par toute autre faute.

Tarif

15.2 Lorsqu'une formation adjuge des dépens, elle tient compte du tarif des honoraires relatifs aux services, sans toutefois être liée par celui-ci (annexe A).

Cautionnement pour dépens

15.3 (1) Le Barreau peut demander un cautionnement pour dépens dans une instance portant sur la délivrance d'un permis, si le requérant a déjà été titulaire d'un permis du Barreau en Ontario ; dans une instance portant sur la remise en vigueur ; dans une instance portant sur le rétablissement ; dans une instance portant sur un différend concernant des conditions.

(2) Sur motion du Barreau, la formation peut rendre une ordonnance de cautionnement pour dépens équitables s'il est établi que :

(a) le requérant fait l'objet d'une ordonnance de condamnation aux dépens dans la même instance ou dans une autre instance en application de la Loi et que ceux-ci n'ont pas encore été acquittés, en totalité ou en partie ;

(b) dans le cas d'une instance portant sur le rétablissement ou un différend

concernant des conditions, il existe de bonnes raisons de croire que l'instance est injustifiée et que le requérant n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné ;

(c) dans le cas d'une instance portant sur la délivrance ou la remise en vigueur d'un permis, il existe de bonnes raisons de croire que le requérant n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné.

(3) Sauf ordonnance contraire du Tribunal, le requérant contre qui est rendue une ordonnance de cautionnement pour dépens ne peut prendre aucune mesure dans l'instance tant que le cautionnement n'a pas été versé.

(4) Si le requérant ne verse pas le cautionnement imposé par l'ordonnance de cautionnement pour dépens, la formation peut, sur motion du Barreau, ordonner le rejet de l'instance.

RÈGLE 16 **:** RÉPRIMANDES

Administration des réprimandes

16.1 (1) Une réprimande est administrée soit oralement lors d'une audience ouverte au public, soit par écrit.

(2) Une réprimande écrite fait partie intégrante du dossier de l'instance.

(3) Une réprimande peut être administrée par n'importe quel membre de la formation qui l'a ordonnée.

Appels et réprimandes

16.2 L'administration d'une réprimande n'affecte pas le droit d'interjeter appel de l'ordonnance ni n'affecte les arguments qui peuvent être soulevés en appel.

RÈGLE 17 : APPELS

Ordonnances susceptibles d'appel

17.1 (1) Les articles 49.32 et 49.33 de la Loi régissent le recours en appel d'une ordonnance définitive.

(2) Une ordonnance intérimaire ou interlocutoire de la Section de première instance est sans appel, sauf si l'ordonnance tranche de façon définitive une motion de suspension interlocutoire, auxquels cas elle peut être portée en appel par une des parties.

Délai pour l’introduction de l’appel

17.2 (1) Pour introduire un appel, l’appelant doit déposer un avis d’appel (formulaire 14 ou 15) et une fiche d’information (formulaire 24 ou 25) dans les 30 jours après la date de l’ordonnance définitive de la Section de première instance rendue dans le cadre l’instance faisant l’objet de l’appel. Après ce délai, un appel peut être introduit seulement avec le consentement écrit de l’intimé ou avec autorisation du Tribunal.

(2) Le dossier de motion pour prolonger le délai de recours en appel doit comprendre un projet d’avis d’appel.

(3) Au plus tard 10 jours après avoir déposé l’avis d’appel, l’appelant doit signifier et déposer une confirmation écrite du service de sténographie judiciaire indiquant que toutes les transcriptions de l’instance interjetée en appel qui n’ont pas déjà été déposées auprès de la Section de première instance, ont été commandées.

(4) S’il a le droit d’appeler, l’intimé peut introduire un appel incident en signifiant et en déposant un avis d’appel incident (formulaire 17) au plus tard 15 jours après avoir reçu signification de l’avis d’appel. Aucune fiche d’information n’est requise pour un avis d’appel incident.

Mise en état de l’appel

17.3 L’appelant doit mettre l’appel en état dans les 60 jours suivant le dépôt de l’avis d’appel ou dans les 60 jours suivant la date à laquelle la formation a rendu ses motifs de l’ordonnance définitive, selon la dernière de ces dates. Un appel est mis en état en signifiant et en déposant son recueil d’appel, son mémoire, son recueil des textes à l’appui et toutes transcriptions non déposées dans le cadre de l’instance devant la Section de première instance.

Rejet pour cause de retard et retrait réputé

17.4 (1) Si un appel n’est pas mis en état dans le délai imparti, l’intimé peut présenter une motion de rejet de l’appel pour cause de retard.

(2) Si l’appel n’a pas été mis en état dans un délai de trois mois à partir de la date limite, le greffier informe les parties que l’appel sera réputé retiré s’il n’est pas mis en état dans les 30 jours après la date de l’avis du greffier.

(3) Si l’appelant d’un appel incident désire poursuivre l’appel incident même si l’appel est réputé retiré, l’intimé doit informer le Tribunal dans les 14 jours après la date de l’avis du greffier selon le paragraphe 2 de la présente règle.

(4) Si l’appel n’a pas été mis en état dans les 30 jours après la date de l’avis du greffier selon le paragraphe 2 de la présente règle, le greffier déclare l’appel comme retiré. Si l’appelant d’un appel incident avait indiqué vouloir poursuivre l’appel incident, une

conférence de gestion de l'instance est fixée pour établir les délais pour l'audition de l'appel incident.

(5) Le Tribunal peut rétablir un appel ou un appel incident qui a été réputé retiré.

Date de dépôt de la documentation de l'intimé s'il n'y a pas d'appel incident

17.5 Si l'intimé n'a pas déposé d'appel incident, il doit signifier et déposer son recueil d'appel, son mémoire et son recueil des textes à l'appui au plus tard 14 jours avant l'audition de l'appel.

Date de dépôt de la documentation de l'intimé s'il y a appel incident

17.6 Si l'intimé a déposé un appel incident, il doit signifier et déposer son recueil d'appel, son mémoire et son recueil des textes à l'appui au plus tard 30 jours après la mise en état de l'appel. L'intimé doit déposer un mémoire et un recueil d'appel qui portent à la fois sur l'appel et l'appel incident.

Documentation de l'intimé à l'appel incident

17.7 Si l'intimé a introduit un appel incident, l'appelant doit déposer un mémoire en tant qu'intimé de l'appel incident et peut déposer un recueil d'appel supplémentaire et un recueil des textes à l'appui supplémentaire au plus tard 14 jours avant l'audition de l'appel.

Recueil condensé

17.8 Au plus tard cinq jours avant l'audition de l'appel, chaque partie doit déposer un recueil condensé qui contient les documents qui seront invoqués dans sa plaidoirie.

RÈGLE 18 : NOUVELLE PREUVE EN APPEL

Motion pour présenter de nouvelles preuves

18.1 Sauf si l'intimé y consent, l'appelant qui désire présenter à l'audition de l'appel une preuve qui n'a pas été entendue par la Section de première instance doit, au moyen d'un avis de motion, présenter une motion à la Section d'appel pour ce faire.

Nouvelles preuves proposées

18.2 L'appelant qui présente une motion sur la nouvelle preuve doit déposer, avec le dossier de motion, une copie électronique des nouvelles preuves identifiées comme nouvelles preuves, qui ne seront pas rendues publiques jusqu'à ce que la décision sur la motion soit tranchée.

Audition de la motion sur la nouvelle preuve

18.3 Une motion déposée en vertu de la présente règle sera entendue au début de l'audition de l'appel.

Audition de l'appel quelle que soit l'issue

18.4 Les parties doivent être prêtes à procéder à l'audition de l'appel à la date fixée, quelle que soit la décision rendue sur la motion en vertu de la présente règle.

Consentement de l'intimé

18.5 Si l'intimé consent à la présentation d'une nouvelle preuve, la preuve peut être incluse dans les documents des parties et invoquée dans ceux-ci, tant qu'il est clairement indiqué qu'il s'agit d'une nouvelle preuve qui n'a pas été entendue par la Section de première instance.

Moment de la motion pour présenter de nouvelles preuves

18.6 Une motion pour présenter de nouvelles preuves est signifiée et déposée au même moment où l'appel est mis en état, à moins que les autres éléments de preuve ne soient découverts par la suite.

RÈGLE 19 : DOCUMENTATION D'APPEL

Recueil d'appel

19.1 (1) Le recueil d'appel de l'appelant doit contenir, dans des pages consécutivement numérotées avec des onglets numérotés :

(a) une table des matières énumérant chaque document inclus dans le recueil d'appel et décrivant chaque document en indiquant sa nature et sa date ;

(b) une copie de l'avis d'appel et de tout avis d'appel incident, tel que modifié ;

(c) une copie de l'ordonnance ou des ordonnances faisant l'objet du recours en appel ;

(d) une copie de toutes les inscriptions et de tous les motifs de la Section de première instance rendus dans la cadre de l'instance ;

(e) une copie de l'acte introductif d'instance déposé auprès de la Section de première instance ;

(f) une copie de toutes pièces auxquelles il est fait référence dans le mémoire de l'appelant ;

(g) une copie de tout document déposé auprès de la Section de première instance qui est pertinent à l'appel et auquel il est fait référence dans le mémoire de l'appelant ;

(h) une copie de toute directive donnée lors d'une conférence de gestion de l'instance dans l'appel ;

(i) une copie de toute inscription faite ou de toute ordonnance et de tout motif rendu par la Section d'appel dans l'appel ;

(j) si des documents font l'objet d'une ordonnance interdisant l'accès au public, une copie de cette ordonnance.

(2) Le recueil d'appel de l'intimé doit contenir, dans des pages consécutivement numérotées avec des onglets numérotés :

(a) une table des matières énumérant chaque document inclus dans le recueil d'appel et décrivant chaque document en indiquant sa nature et sa date ;

(b) une copie des pièces auxquelles il est fait référence dans le mémoire de l'intimé et qui ne sont pas dans le recueil d'appel de l'appelant ;

(c) une copie des autres documents déposés auprès de la Section de première instance qui sont pertinents à l'appel et auxquels il est fait référence dans le mémoire de l'intimé et qui ne sont pas dans le recueil d'appel de l'appelant.

(3) Tout document faisant l'objet d'une ordonnance interdisant l'accès au public, d'une ordonnance de non-divulgation ou d'une interdiction de publication doit être inclus dans un recueil d'appel séparé.

Mémoires d'appel

19.2 Dans un mémoire d'appel, les renvois à la transcription de l'instance devant la Section de première instance doivent indiquer la date, le numéro de page et de ligne, et les renvois aux pièces doivent indiquer l'onglet et le numéro de page du recueil d'appel pertinent.

RÈGLE 20 : APPELS D'ORDONNANCES DE SUSPENSION ADMINISTRATIVE

Introduction d'un appel d'ordonnance de suspension administrative

20.1 (1) L'appelant peut introduire un appel d'ordonnance de suspension administrative en signifiant au Barreau et en déposant auprès du Tribunal un avis d'appel d'ordonnance de suspension administrative (formulaire 16) et une fiche d'information (formulaire 25)

dans les 30 jours suivant la date à laquelle l'ordonnance de suspension administrative est réputée avoir été reçue par l'appelant.

(2) Un appel d'une ordonnance de suspension administrative peut être introduit après ce délai avec le consentement du Barreau ou l'autorisation du Tribunal.

Appels d'ordonnance de suspension administrative sur consentement

20.2 L'appel d'ordonnance de suspension administrative sur consentement est entendu par écrit. Le consentement écrit des parties et un projet d'ordonnance doivent être déposés auprès du Tribunal au moment du dépôt de l'avis d'appel d'ordonnance de suspension administrative ou dès que possible après le dépôt. Il n'est pas nécessaire de déposer d'autre document sauf si le Tribunal l'exige.

Dépôts d'affidavits et audience

20.3 (1) Le Barreau doit déposer un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'ordonnance de suspension administrative au plus tard 30 jours après le dépôt de l'avis d'appel d'ordonnance de suspension administrative.

(2) L'appelant doit déposer un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'appel au plus tard 45 jours après le dépôt de l'avis d'appel d'ordonnance de suspension administrative.

(3) Les contrinterrogatoires des déposants et toute contrepreuve seront entendus oralement lors de l'audience de l'appel, sauf ordonnance contraire.

(4) Aucun mémoire ne doit être déposé avant l'audience, sauf ordonnance contraire.

Conférence préparatoire à l'audience

20.4 Le greffe du Tribunal fixe une conférence préparatoire à l'audience pour chaque appel d'ordonnance de suspension administrative après le dépôt des affidavits.

ANNEXE A – Tarif des honoraires relatifs aux services

Tarifs	
Avocat(e) (20 ans et plus de pratique)	Jusqu'à concurrence de 350 $ l'heure
Avocat(e) (12 à 20 ans)	Jusqu'à concurrence de 325 $ l'heure
Avocat(e) (11 à 12 ans)	Jusqu'à concurrence de 315 $ l'heure
Avocat(e) (10 à 11 ans)	Jusqu'à concurrence de 300 $ l'heure
Avocat(e) (9 à 10 ans)	Jusqu'à concurrence de 285 $ l'heure
Avocat(e) (8 à 9 ans)	Jusqu'à concurrence de 270 $ l'heure
Avocat(e) (7 à 8 ans)	Jusqu'à concurrence de 255 $ l'heure
Avocat(e) (6 à 7 ans)	Jusqu'à concurrence de 240 $ l'heure
Avocat(e) (5 à 6 ans)	Jusqu'à concurrence de 225 $ l'heure
Avocat(e) (4 à 5 ans)	Jusqu'à concurrence de 215 $ l'heure
Avocat(e) (3 à 4 ans)	Jusqu'à concurrence de 205 $ l'heure
Avocat(e) (2 à 3 ans)	Jusqu'à concurrence de 195 $ l'heure
Avocat(e) (1 à 2 ans)	Jusqu'à concurrence de 180 $ l'heure
Avocat(e) (moins de 1 an)	Jusqu'à concurrence de 165 $ l'heure
Avocat(e) employé(e) du Barreau de l'Ontario, autre que les avocats du Service de discipline	Jusqu'à concurrence de 190 $ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (au moins 10 ans d'expérience de parajuriste)	Jusqu'à concurrence de 150 $ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (5 à 10 ans d'expérience de parajuriste)	Jusqu'à concurrence de 120 $ l'heure
Parajuriste titulaire de permis et parajuriste employé(e) du Barreau de l'Ontario (1 à 5 ans d'expérience de parajuriste)	Jusqu'à concurrence de 90 $ l'heure
Étudiant(e)	Jusqu'à concurrence de 90 $ l'heure

Adjoint(e) juridique	Jusqu’à concurrence de 90 $ l’heure
Vérificateur(trice) judiciaire employé(e) du Barreau de l’Ontario	Jusqu’à concurrence de 190 $ l’heure
Enquêteur(euse) ou agent(e) des plaintes et de la résolution employé(e) du Barreau de l’Ontario	Jusqu’à concurrence de 90 $ l’heure

Law Society of Ontario | Barreau de l'Ontario

Tab 5

HUMAN RIGHTS MONITORING GROUP

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

June 23, 2021

Authored By:

Jason Pichelli

JPichell@lso.ca

TAB 5

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION

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

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 case:

a. there are no concerns about the quality of sources used for this report; and

b. the letter and public statement regarding the arrests of lawyers Thein Hlaing Tun and Ayeyar Lin Htut fall within the mandate of the Monitoring Group.

KEY BACKGROUND

MYANMAR – ARRESTS OF THEIN HLAING TUN AND AYEYAR LIN HTUT

Sources of Information

The background information for this report was retrieved from the following sources:

a. Human Rights Watch[1],[2],[3]
b. Assistance Association for Political Prisoners[4],[5]
c. United Nations Human Rights Council[6]
d. Eleven News[7]
e. International Association of People's Lawyers[8]
f. New York Times[9]

Background

On February 1, 2021, the Myanmar military arrested the elected civilian leaders of the national and state governments and announced the start of year-long state of emergency. The state of emergency is intended to be in place until a new round of elections could be held. The military arrested leader Aung San Suu Kyi, President Win Myint, and several dozen other senior officials in early morning raids in the capital, Naypyidaw. The officials were in Naypyidaw for the lower house of parliament to convene after the November 2020 national elections, which were won decisively by the National League for Democracy (NLD). The military also detained NLD officials and civil society activists in other parts of Myanmar, and cut telecommunications and the internet so that citizens and journalists within the country could not publicly report on the military's actions.

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[1] Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch (hrw.org)
[2] Human Rights Watch. "Myanmar: End Crackdown on Media, Communications" Press release. February 5, 2021. Online: Myanmar: End Crackdown on Media, Communications | Human Rights Watch (hrw.org)
[3] Human Rights Watch. "Myanmar: Post-Coup Legal Changes Erode Human Rights". Press release. March 2, 2021. Online: Myanmar: Post-Coup Legal Changes Erode Human Rights | Human Rights Watch (hrw.org)
[4] Assistance Association for Political Prisoners. "Daily Briefing in Relation to the Military Coup". May 29, 2021. Online: AAPP | Assistance Association for Political Prisoners » Blog Archive » Daily Briefing in Relation to the Military Coup (aappb.org)
[5] Assistance Association for Political Prisoners. "Daily Briefing in Relation to the Military Coup". June 3, 2021. Online: AAPP | Assistance Association for Political Prisoners » Blog Archive » Daily Briefing in Relation to the Military Coup (aappb.org)
[6] Andrews, Thomas H. "Report of the Special Rapporteur on the situation of human rights in Myanmar". United Nations Human Rights Council. March 4, 2021. Online: Report of the Special Rapporteur on the situation of human rights in Myanmar (ohchr.org)
[7] Nay Yaing and Aung Min Thein. "Lawyer for Dr. Myo Aung arrested after Nay Pyi Taw court proceedings" Eleven News. May 25, 2021. Online: Lawyer for Dr Myo Aung arrested after Nay Pyi Taw court proceedings | Eleven Media Group Co., Ltd (elevenmyanmar.com)
[8] International Association of People's Lawyers. "Burma: Lawyer U Thein Hlaing Tun arrested". May 25, 2021. Online: Burma: Lawyer U Thein Hlaing Tun arrested | IAPL Monitoring Committee on Attacks on Lawyers (wordpress.com)
[9] Hannah Beech. "Aung San Suu Kyi Makes First Court Appearance Since Coup". New York Times. May 25, 2021. Online: Aung San Suu Kyi Makes First Court Appearance Since Coup - The New York Times (nytimes.com)

Additionally, the military's commander-in-chief Senior General Min Aung Hlaing has been credibly implicated in crimes against humanity on several occasions, most recently for his role in the military's actions against Rohingya Muslims in 2017. Similar reports have also been made regarding several other members of the military-installed government.

According to the International Commission of Jurists, since the February 1 coup the military has made changes to several laws that have eliminated many human rights for citizens. For example, laws against arbitrary detention have been suspended and the penal code has been amended to create the offence of speaking critically of the military.

Current Status

Since the February 1 coup by the military, Myanmar citizens have been protesting in increasingly large numbers. Unfortunately, the arrest, detention, and death numbers continue to steadily grow as well, according to reports by the Assistance Association for Political Prisoners. As of June 17, 2021, 6134 people have been arrested, charged, or sentenced; 4962 continue to be detained; and 865 people have been killed.

The targeting of lawyers, along with civil servants, doctors, and healthcare workers, has been documented by the United Nations (UN). In the past week, the junta has begun to arrest lawyers for defending their clients in court. On May 24, lawyer Thein Hlaing Tum was arrested while exiting the courthouse after representing his client Dr. Myo Aung, the elected chairman of the Nay Pyi Taw regional council, in a proceeding. Dr. Myo Aung was one of several politicians who were arrested by the junta on Feb 1. On May 27, lawyer Ayeyar Lin Htut was arrested at the Hinthada District Court. In both cases the lawyers were charged under section 505 of the penal code, one of the new sections added by the junta. This section of the code makes it an offense to cause fear, spread false news or agitate crimes against the junta. This includes making statements that call the junta, or the coup that led to the junta seizing power, illegitimate. No further details on either case, including possible court dates, or details of the alleged offenses have been released.

Human rights activists see these actions as part of the junta's increasingly intolerant stance against dissent. While the junta has begun to take action against lawyers defending clients arrested by the junta, a report from the New York Times indicates that junta-installed election officials are investigating the National League for Democracy with the goal of dissolving the party.

The LSO has sent intervention letters to Myanmar on seven separate occasions, most recently in March 2021 when reports began surfacing of the junta deliberately targeting lawyers for arrest. This intervention can be found at **Tab 5.2**.

June 23, 2021

General Min Aung Hlaing
Chairman, State Administrative Council
Naypyiddaw
Myanmar

c/o Ambassador U Kyaw Myo Htut
Embassy of the Republic of the Union of Myanmar
336 Island Park Dr.
Ottawa, ON
Canada, K1Y 0A7

General Min Aung Hlaing:

Re: Arrest and detention of lawyers Thein Hlaing Tun and Ayeyar Lin Htut in Myanmar

I write on behalf of the Law Society of Ontario to voice our grave concern over the recent reports regarding the arrest and detention of lawyers Thein Hlaing Tun and Ayeyar Lin Htut. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

The Law Society of Ontario continues to be deeply troubled by the numerous reports regarding the arrest and detention of lawyers and law students that have taken place since the military junta overrode the November 2020 election results and assumed power following a widely reported coup on February 1, 2021. Ever since the Myanmar military illegally seized power from all three branches of government, there have been protests and unrest throughout the country. In response, the military junta has reacted with violence against Myanmar citizens, resulting in the deaths of 845 people. Over 4500 people continue to be detained.

In our previous letter, dated March 18, 2021, we referenced several troubling legislative changes made by the junta that violate the United Nations' *Universal Declaration of Human Rights.* It now appears those amendments are being used to target lawyers and prevent them from defending their clients. On May 24, lawyer Thein Hlaing Tum was arrested while exiting the courthouse after representing his client Dr. Myo Aung, the chairman of the Nay Pyi Taw council, in a proceeding. On May 27, lawyer Ayeyar Lin Htut was arrested at the Hinthada District Court. In both cases the lawyers were charged under section 505 of the penal code, one of the new sections added by the junta. This section of the code makes it an offense to speak out against the junta, or call the coup that led to the junta seizing power illegitimate. By directly targeting lawyers, and arresting them immediately after representing their clients in court, the junta is making a direct attack on rule of law and violating several United Nations articles on the role of lawyers.

In light of these circumstances, the Law Society urges you to demand that the military junta comply with Myanmar's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 16 of *The Basic Principles of 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 18 states:

> Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Article 20 states:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Furthermore, 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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

The Law Society urges Myanmar's military junta to:

a. immediately and unconditionally release Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;

b. immediately and unconditionally withdraw all charges against Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;

c. put an end to all acts of harassment against all lawyers, paralegals, judges, law students and human rights defenders in Myanmar;

d. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Myanmar can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and

e. 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 profession in the public interest, and the Law Society has a duty to advance the cause of justice and the rule of law.

cc:

The Honourable Marc Garneau, Minister of Foreign Affairs

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 Myanmar

The Law Society of Ontario calls for the immediate release of lawyers Thein Hlaing Tun and Ayeyar Lin Htut

Toronto, ON — The Law Society of Ontario is calling for the immediate release of lawyers Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021. When reports of serious issues of injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society of Ontario continues to be deeply troubled by the numerous reports regarding the arrest and detention of lawyers and law students that have taken place since the military junta overrode the November 2020 election results and assumed power following a widely reported coup on February 1, 2021. Ever since the Myanmar military illegally seized power from all three branches of government, there have been protests and unrest throughout the country. In response, the military junta has reacted with violence against Myanmar citizens, resulting in the deaths of 845 people. Over 4500 people continue to be detained.

In a previous letter, dated March 18, 2021, the Law Society referenced several troubling legislative changes made by the junta that violate the United Nations' *Universal Declaration of Human Rights.* It now appears those amendments are being used to target lawyers and prevent them from defending their clients.

On May 24, lawyer Thein Hlaing Tum was arrested while exiting the courthouse after representing his client Dr. Myo Aung, the chairman of the Nay Pyi Taw council, in a proceeding. On May 27, lawyer Ayeyar Lin Htut was arrested at the Hinthada District Court. In both cases the lawyers were charged under section 505 of the penal code, one of the new sections added by the junta. This section of the code makes it an offense to speak out against the junta, or call the coup that led to the junta seizing power illegitimate. By directly targeting lawyers, and arresting them immediately after representing their clients in court, the junta is making a direct attack on rule of law and violating several United Nations articles on the role of lawyers.

In light of these circumstances, the Law Society urges you to demand that the military junta comply with Myanmar's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 16 of *The Basic Principles of 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 18 states:

> Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Article 20 states:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Furthermore, 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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

The Law Society urges Myanmar's military junta to:

a. immediately and unconditionally release Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;

b. immediately and unconditionally withdraw all charges against Thein Hlaing Tun and Ayeyar Lin Htut, as well as all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;

c. put an end to all acts of harassment against all lawyers, paralegals, judges, law students and human rights defenders in Myanmar;

d. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Myanmar can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and

e. 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 | Barreau de l'Ontario

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Treasurer's Office
416-947-3300
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March 18, 2021

General Min Aung Hlaing
Chairman, State Administrative Council
Naypyiddaw
Myanmar

c/o Ambassador U Kyaw Myo Htut
Embassy of the Republic of the Union of Myanmar
336 Island Park Dr.
Ottawa, ON
Canada, K1Y 0A7

General Min Aung Hlaing:

Re: Arrest and detention of lawyers and law students in Myanmar

I write on behalf of the Law Society of Ontario to voice our grave concern over the numerous reports regarding the arrest and detention of lawyers and law students that have taken place since the military junta overrode the November 2020 election results and assumed power following a widely reported coup on February 1, 2021. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

Ever since the Myanmar military illegally seized power from all three branches of government, there have been protests and unrest throughout the country. The arrests of the legitimately elected civilian leaders of the national and state governments, including National League for Democracy leader Aung San Suu Kyi and President Win Myint, have sparked the outrage of Myanmar's citizens and the international community. Myanmar's citizens took to the streets and began peacefully protesting the military's actions and demanded the restoration of their democracy. In response to those peaceful protests, the military junta have arrested and detained citizens who participated in these protests or spoke out against military actions. In addition, there are reported amendments to several pieces of legislation contrary to the United Nations' *Universal Declaration of Human Rights.* For example, amendments to the Penal Code 1860 (s124A) criminalize anti-government protests with a maximum penalty of 20 years in jail. Additionally, the suspension of certain sections of the Law Protecting the Privacy and Security of Citizens (2017) has eliminated the obligation for state authorities to bring detainees before a court within 24 hours. The junta have also used live ammunition on its own citizens, killing at least 149 to date according to the UN High Commissioner for Human Rights.

At least 45 lawyers and 15 law students are among those who have been arrested and detained without charges. These are only a few of the many examples of the human rights violations currently being undertaken by the military against its own citizens including lawyers and law students:

- Lawyer Khin Maung Zaw was threatened for defending Aung San Suu Kyi. His family has also been threatened.
- U Nyan Win, another lawyer for Aung San Suu Kyi, was detained, and his whereabouts remain unknown.
- Over 40 lawyers were arrested for peacefully protesting the military coup, and remain in custody without charges.
- 15 law students were arrested and continue to be detained without charges, also for protesting peacefully.

Considering these circumstances, the Law Society urges you to demand that the military junta comply with Myanmar's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 5 of *The Universal Declaration of Human Rights* states:

> No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Article 9 states:

> No one shall be subjected to arbitrary arrest, detention, or exile.

Article 19 states:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 states:

> Everyone has the right to freedom of peaceful assembly and association.

Article 8 of the *Basic Principles on the Role of Lawyers* states:

> All arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time, and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception, or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Article 16 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, economics 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 18 states:

> Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, 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 urges Myanmar's military junta to:

a. immediately and unconditionally release all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;

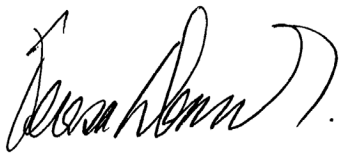
b. immediately and unconditionally withdraw all charges against all lawyers, paralegals, judges, law students and human rights defenders who have been detained for peacefully protesting and exercising their professional duties since the coup on February 1, 2021;

c. put an end to all acts of harassment against all lawyers, paralegals, judges, law students and human rights defenders in Myanmar;

d. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Myanmar can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and

e. 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 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 Marc Garneau, Minister of Foreign Affairs

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

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Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

Law Society of Ontario | Barreau de l'Ontario

Tab 8

Equity and Indigenous Affairs Committee

Recommendations of the Equity Partners Working Group on the Role of the Equity Partners within EIAC

June 23, 2021

Working Group Members:
Dianne Corbiere (Chair)
Atrisha Lewis
Jorge Pineda
Robert Burd
Julian Falconer

Committee Members:
Dianne Corbiere (Chair)
Atrisha Lewis (Vice-Chair)
Jorge Pineda (Vice-Chair)
Rob Burd
Etienne Esquega
John Fagan
Julian Falconer
Murray Klippenstein
Nancy Lockhart
Megan Shortreed
Alexander Wilkes
Cathy Banning

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1. Purpose

This report will provide Convocation with information and an update on the status of the recommendations of the Equity Partners Working Group ("Working Group"). The Working Group was tasked with bringing forward recommendations to the Equity and Indigenous Affairs Committee ("EIAC" or the "Committee") regarding the role of the equity partners of the Law Society of Ontario ("Law Society"). Historically, the equity partners have supported the work and mandate of EIAC as set out in the Section 122 of By-law 3.[1]

2. Executive Summary

The Equity Partners Working Group was formed in response to a 2020 Bencher motion seeking a study of the participation of non-Benchers at EIAC meetings. The Working Group was composed of EIAC members and examined the role of the equity partners, Indigenous Advisory Group ("IAG"), the Equity Advisory Group ("EAG") and L'Association des juristes d'expression française de l'Ontario ("AJEFO"). The Working Group brought forward two sets of recommendations for EIAC's consideration on May 13, 2021. One set of recommendations represented the views of the majority of the Working Group and the other represented the minority's position. On June 10, 2021, the Committee voted on the recommendations of the Working Group.

The recommendations of the majority of the Working Group were:

- That the equity partners continue to send representatives to participate in discussions at Committee meetings, except for *in camera* matters; and

- That each equity partner be given the option to send up to two representatives to Committee meetings.

The minority of the Working Group recommended expanding EIAC's regular consultations to groups beyond the IAG, EAG, and AJEFO. The minority also recommended that the IAG, EAG and AJEFO no longer be referred to as equity "partners" and that they no longer have decision-making roles at EIAC.

A majority of Committee voted in favour of the recommendations from the majority of the Working Group to maintain the status quo regarding the equity partner's participation at EIAC. A minority of the Committee was supportive of the recommendations from the minority of the Working Group.

[1] Law Society of Ontario, By-Law 3 (amendments current to 27 May 2021), online: <https://lso.ca/about-lso/legislation-rules/by-laws/by-law-3>.

3. Context

A. Background

On February 27, 2020, Bencher John Fagan filed a motion at Convocation, which was seconded by Bencher Jared Brown, to:

- allow all Benchers to attend and participate in Equity and Indigenous Affairs Committee meetings;[2]

- appoint a committee of Benchers to study the participation of non-Benchers at Committee meetings and the advisability of creating and maintaining a standing group of unelected advisors at the Law Society;[3] and

- exclude non-Benchers from Committee meetings until the study was completed.[4]

Bencher Fagan's motion was tabled by Convocation's approval of a motion to table made by Dianne Corbiere, Chair of EIAC, and seconded by Bencher Rob Burd.

In response to the motion, Chair Dianne Corbiere committed to forming a working group to examine the role of the equity partners within EIAC. The Chair noted the importance of taking a principled and structured approach to understanding the Committee's concerns and coming up with solutions that ensure that the Law Society continues to meet its duty to protect and advance equity and diversity in the legal profession and operate in the public interest.

On September 10, 2020[5], Chair Corbiere formed the Equity Partners Working Group (the "Working Group"), a Bencher group composed of EIAC members. The Working Group was tasked

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[2] EIAC is hereby directed to recognize the right of all Benchers to attend, to participate and to speak at EIAC committee meetings and other EIAC events, subject only
i. to the exclusive right of the appointed Bencher members of such committee to vote on all matters coming before the committee, and
ii. the right of the chair of such meeting or event to give precedence to the appointed Bencher members of such committee, and to manage the meeting having regard to time constraints and other factors as seem relevant to the chair;

[3] Pending the report of the committee of Benchers referred to in paragraph (c) below, EIAC shall conduct its meetings without the regular attendance and participation of non-benchers, except for the purpose of allowing such persons to submit reports requested by the EIAC or make submissions to the EIAC, as permitted by the EIAC.

[4] A committee of Benchers be appointed by Convocation at its next regular meeting to
i. study the question of the advisability of according to non-benchers the privilege of regular attendance and participation at meetings and other events of the Committees of Convocation.
ii. Study the advisability of creating and maintaining a standing group of unelected advisors such as the EAG.

[5] April, May and June 2020 EIAC meetings were cancelled due to the COVID-19 pandemic.

with examining the role of the equity partners[6] within EIAC, including participation at Committee meetings and ways to improve the relationship between EIAC and the equity partners to advance the Committee's mandate. The five members of the Working Group were Benchers Dianne Corbiere, Atrisha Lewis, Jorge Pineda, Rob Burd, and Julian Falconer.

B. Objectives of the Working Group

The objectives of the Working Group, as set out in its terms of reference[7], were to:

1. Examine the historic and current role of the equity partners in supporting EIAC in the development of policy options for the promotion of equity and diversity in the legal professions.

2. Assess options regarding the equity partners' continued participation in EIAC meetings.

3. Recommend changes to the governance structure of EIAC, if required, to increase information sharing between EIAC and the equity partners and to enhance the decision-making process at EIAC.

4. Consult with the equity partners in developing recommendations to EIAC.

5. Bring recommendations back to EIAC in the spring of 2021 for consideration.

3. History and Background

A. History of the Equity and Indigenous Affairs Committee

In 1997, the Law Society adopted the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the "Bicentennial Report"). The Bicentennial Report reviewed the initiatives the Law Society had undertaken to address the barriers faced by racialized, Indigenous, Francophones, LGBTQ2S+, and people with disabilities. The report made sixteen recommendations that have since guided the Law Society's work in advancing equality, diversity and inclusion within the legal professions.

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[6] The Law Society's three equity partners are the Indigenous Advisory Group, the Equity Advisory Group and the L'Association des juristes d'expression française de l'Ontario. In accordance with its mandate set out in s. 122 of By-law 3, EIAC consults with the equity partners in developing policy options for the promotion of equity and diversity in the legal professions.
[7] See Appendix "A", attached.

In the mid-1990s, the Law Society created the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee), as a standing committee of Convocation to advance equity and diversity in the legal professions.

Section 122 of By-law 3 sets out the mandate for EIAC:

> (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples; and
>
> (b) to consult with Indigenous, Francophone and other equality-seeking communities in the development of such policy options.

EIAC's engagement with its equity partners, including participation in Committee meetings, has enabled EIAC to fulfill its mandate to consult with Indigenous, Francophone and equality-seeking communities to develop policy options for the promotion of equity and diversity in the legal professions.

B. Overview of the Law Society's Equity Partners

EIAC and the Law Society have relied on input and open dialogue with its three equity partners, the Indigenous Advisory Group, the Equity Advisory Group and L'Association des juristes d'expression française de l'Ontario, in setting the Committee's strategic priorities and to guide its decision-making. The equity partners are composed of volunteer lawyers, paralegals, licensing candidates, law students, and others with expertise or lived experience related to the areas of equity, diversity, and inclusion.

The equity partners assist EIAC in the development of policy options for the promotion of equity and diversity in the legal profession by:

- Identifying and advising the Committee on issues affecting equity-seeking communities, both within the legal professions and relevant to those seeking access to the professions;
- Providing input to the Committee on the development of policies and practices related to equity, both within the Law Society and the professions; and,
- Commenting to the Committee on Law Society reports and studies related to equity issues within the professions.

Representatives from the IAG, EAG, and AJEFO regularly attend Committee meetings at the invitation of the Chair of EIAC.[8] Each representative provides updates on the work of their respective group, participates in discussions to keep the Committee informed on issues affecting equity-seeking communities, and provides input on the development of policies related to equity and diversity.

The representatives do not officially vote in EIAC meetings as only members of a standing committee are permitted to vote at committee meetings.[9] However, the Chair will ask for their views on matters. All deliberations and discussions at standing committee meetings are confidential.[10]

i. The Indigenous Advisory Group (IAG)

In November 2004, the then-chair of EIAC, Joanne St. Lewis, established the Aboriginal Working Group (the "AWG") to act as a resource to EIAC on issues impacting the Indigenous bar and Indigenous peoples in Ontario. Over the years, the AWG has provided feedback to EIAC through an Indigenous lens, including the Aboriginal Bar Consultation Project, the Articling Task Force's Consultation Report, and the proposal for a certified specialist designation in Indigenous legal issues.

Following the release of the 94 Calls to Action from the Truth and Reconciliation Commission (the "TRC"), the Law Society expressed its desire to formally re-establish and strengthen its relationship with Indigenous peoples on justice issues. In 2016, the Law Society partnered with representatives from First Nations, Inuit and Métis communities to establish the Indigenous Advisory Group consisting of Indigenous legal professionals and Elders.

The members of the IAG serve three-year terms. Members are confirmed for appointment by consensus of the existing membership. The current membership of the IAG is composed of 11 members, including three members of the Elders' Council.[11]

The mandate of the IAG is to promote the implementation of the TRC Calls to Action, advise on the unique issues faced by Indigenous licensees and communities in Ontario, and encourage the development of relationships between Indigenous peoples and Canadian legal structures and

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[8] Law Society By-Law 3, s. 115(2) states that persons other than Benchers and Law Society staff can attend a meeting of a standing committee with the permission of the chair of the committee.
[9] Law Society By-Law 3, s. 116.
[10] Law Society By-Law 3, s. 115.1(2) states that no person shall disclose any information that would reveal the deliberations of a standing committee, except in certain circumstances set out in s. 115.1(3).
[11] The current members of the IAG are Audrey Huntley (Co-Chair), Catherine Rhinelander (Co-Chair), Elder Myeengun Henry, Elder Larry McDermott, Elder Tauni Sheldon, Caitlin Tolley, Danielle Lussier-Meek, Randall Kahgee, Sheila Warner, Tamara Moore, and Marcel Larouche.

institutions in a manner that respects Indigenous values, beliefs and legal systems.[12]

The IAG has collaborated with EIAC on a wide range of initiatives and has provided the Law Society with advice and guidance with respect to various policy and operational issues. Since late 2016, members of IAG's Elders' Council have attended EIAC meetings to educate the Committee on Indigenous teachings and values. In 2017, EIAC partnered with the IAG to develop an Indigenous Framework to provide perspective and guiding principles to the Law Society in its approach to reconciliation. Convocation approved the Indigenous Framework in June 2017.[13]

In 2018, the IAG worked with the Law Society to revise and update the 15 guidelines for lawyers who represent Indigenous clients, and resources and information about the Sixties Scoop Settlement for licensees, Indigenous claimants, and the public. The same year, the IAG also partnered with the Law Society, the Advocates' Society and the Indigenous Bar Association to develop the Guide for Lawyers Working with Indigenous Peoples, a resource developed to help licensees learn about Indigenous cultures and understand the interplay between Indigenous legal orders and the Canadian legal system.

In 2019, the Professional Regulation Committee, in collaboration with the IAG, initiated a review of the Law Society's good character process to ensure that it is transparent, provides candidates with certainty, and does not create discriminatory barriers to entry. Most recently, the Law Society consulted with the IAG on the proposed Family Legal Services Provider (FLSP) license. Members of the IAG provided input on the licence from an Indigenous perspective, advised on competencies related to unique Indigenous issues in family law, and provided Indigenous institutional and community contacts for further outreach.

ii. The Equity Advisory Group (EAG)

The Equity Advisory Group represents the diverse interests of lawyers, paralegals and students who identify as members of one or more equity-seeking groups that have historically been under-represented at Convocation. EAG's mandate is to assist EIAC in the development of policy options for the promotion of equity and diversity in the legal profession. The Law Society has consulted with EAG for over 17 years.

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[12] The IAG's full mandate can be found in the IAG's terms of reference (pages 21 to 25).
[13] Law Society of Ontario, "Equity and Indigenous Affairs Committee, Report to Convocation" (29 June 2017), online (pdf): *Law Society of Ontario* <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-june2017-equity-indigenous-affairs-committee-report.pdf>

EAG is composed of volunteers who serve three-year terms. EAG's membership consists of 12 organizational members[14] and 12 individual members[15] as per its terms of reference. EIAC appointed the current membership following an open invitation by the Law Society in 2018.[16] EAG is currently in the process of recruiting members for the 2021 to 2024 membership term.

Over the years, EAG has provided feedback and written submissions on various Law Society reports and recommendations, including but not limited to:

- the Articling Task Force's Consultation Report,
- the Linguistic and Rural Access to Justice Project,
- the Alternative Business Structures Working Group,
- the Challenges Faced by Racialized Licensees Working Group,
- the Access to Justice Call for Comments,
- the Governance Task Force,
- the Dialogue on Licensing
- the changes to the Law Society Tribunal Rules of Practice

EIAC, under the advice of the EAG, has developed several guidelines and model policies for the legal profession. Most recently, EAG and AJEFO provided guidance on updating the Law Society's French-language materials, including the French Language Rights Guide for Lawyers and Paralegals. The Law Society also consulted with EAG on the proposed Family Legal Services Provider (FLSP) license. Members of EAG provided submissions on the license from an equity perspective.

iii. L'Association des juristes d'expression française de l'Ontario (AJEFO)

AJEFO is a non-profit organization composed of legal professionals who promote access to justice in French in Ontario.[17] AJEFO represents the interests of over 1,300 lawyers, judges, translators, interpreters, civil servants, law professors, law students and members of the public.

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[14] The 12 organizational members of EAG are the Arab Canadian Lawyers' Association (ACLA), L'Association des juristes d'expression française de l'Ontario (AJEFO), ARCH Disability Law Centre, Canadian Association of Black Lawyers (CABL), Canadian Association of Somali Lawyers (CASL), Canadian Hispanic Bar Association (CHBA), Canadian Muslim Lawyers Association (CMLA), Federation of Asian Canadian Lawyers (FACL), Law Students' Society of Ontario (LSSO), Ontario Paralegal Association (OPA), Roundtable of Diversity Associations (RODA), and the South Asian Bar Association (SABA).

[15] The 12 individual members of EAG are Nima Hojjati (Chair), Jacqueline Beckles (Vice-Chair), Jonathan Davey (Vice-Chair), Jeffrey Adams, Krishna Badrinarayan, Lisa Borsook, Leonard Kim, Sudevi Mukherjee-Gothi, Beatriz Corona, Shibil Siddiqi, Moya Teklu, and Brenda Young.

[16] More information about EAG and its mandate can be found on Law Society's website: https://lso.ca/lawyers/practice-supports-resources/equity-supports-resources/equity-advisory-group

[17] More information about AJEFO and its mandate can be found on the organization's website: https://www.ajefo.ca/

The Law Society has consulted with AJEFO for over 17 years.

Unlike the IAG and EAG, which were created for the purpose of advising the Law Society, AJEFO is an independent organization with a mandate to promote the use of both official languages within Ontario's legal system. AJEFO achieves its mandate by educating and informing lawyers and the general public about the rights of French-speaking litigants. AJEFO is also engaged in various legal initiatives, including developing French CPD programs, online resources for legal professionals and the public, and promoting diversity and inclusion in the legal professions.

AJEFO's Board of Directors meet on a monthly basis; these meetings are attended by a staff member of the Law Society.[18] Law Society staff also participate in the AJEFO's subcommittees.

Over the years, AJEFO has partnered with the Law Society to promote French-language services and rights in Ontario, including adopting the Law Society's French Language Services Policy and the French Language Services Regulation in 2015. AJEFO has worked closely with the Law Society to develop French language CPD programming and to make these programs available virtually during the COVID-19 pandemic. Most recently, the Law Society consulted with AJEFO on the proposed Family Legal Services Provider (FLSP) license to receive input from a Francophone perspective.

4. Input from the Equity Partners

In keeping with the Working Group's objective to consult with the equity partners in developing the recommendations, meetings were requested with representatives from the IAG, EAG and AJEFO. The Working Group met with representatives from each equity partner between January and April 2021.

A. Attendance at Committee Meetings

All three equity partners have historically sent and continue to send one or two representatives to attend EIAC meetings. The representatives are bound by the confidentiality clause set out in s. 115.1(2) of By-law 3[19], and only share general information about the topics of discussion at EIAC meetings with their respective groups. Representatives also periodically receive correspondence from the Law Society highlighting their confidentiality obligations. Representatives received such correspondence on November 16, 2021 and acknowledged receipt of the correspondence shortly thereafter.

[18] The current Law Society representative to AJEFO is Jason Pichelli.
[19] 115.1(2) No person shall disclose any information that would reveal the deliberations of a standing committee.

An Elder from the IAG's Elders' Council is also invited to open Committee meetings with an Indigenous prayer or ceremony to educate the Committee on Indigenous teachings and values.

All three equity partners expressed desire for continued engagement with EIAC through consultations and attendance at EIAC meetings. However, they expressed hesitation in participating in Committee discussions, in part due to the level of disagreement among the Benchers on both procedural and substantive issues. EIAC's virtual meeting format, which was implemented in response to the COVID-19 pandemic, also further limited opportunities to engage in informal discussions with Committee members, before or after each meeting, as with in-person Committee meetings.

The equity partners underscored the importance of diverse voices and perspectives from Francophone, Indigenous, racialized and other equity-seeking groups to further EIAC's work in developing policies to promote equity and diversity in the legal professions. In particular, they highlighted the importance of the unique lived experiences of the members of the IAG, EAG and AJEFO and how these experiences spoke directly to the impact of the Law Society's policies and decisions on their personal and professional lives.

B. Recommendations for Engagement with EIAC

In order to facilitate effective consultation with Indigenous, Francophone and other equity-seeking communities, the equity partners made the following recommendations to EIAC for the Working Group's consideration:

- Continue to build and maintain a strong relationship with the IAG, EAG and AJEFO. A strong relationship with the equity partners will allow EIAC and Convocation to cultivate a more inclusive legal profession while effectively serving the needs of an increasingly diverse Ontario public.

- Frequently engage with the equity partners and other equity-seeking groups, both formally and informally, in the development of policy that directly impacts these communities.

- Allow more representatives from the equity partners, in addition to the Chairs or Vice-Chairs, to attend Committee meeting and engage directly with the Benchers. This will also ensure continuity in the work of the equity partners and prevent the loss of institutional knowledge.

- Engage in open and respectful dialogue at Committee meetings, even in the face of disagreements. Equity partners must feel comfortable participating in substantive discussions or raising issues at Committee meetings for effective consultation and engagement on issues related to equity and diversity in the legal professions.

- Provide an opportunity for post-Committee discussions with the equity partners before recommendations are brought forward to Convocation, particularly on issues that directly impact Indigenous, Francophone and racialized licensees and other equity-seeking groups.

- Provide further clarity about the involvement of equity partners in EIAC's work, including their role and expected level of participation at Committee meetings.

Finally, the IAG stressed the importance of continuing efforts to engage all Law Society staff and Benchers in Indigenous cultural awareness and sensitivity training, particularly for those directly engaged with Indigenous peoples and communities or involved in making decisions that may impact Indigenous licensees, peoples and communities. The IAG also encouraged the Law Society to continue the work to further its commitment to implement the TRC Report Call to Actions in all its decision and policy-making processes.

5. Recommendations of the Working Group

The Working Group considered several options regarding the role of equity partners within EIAC, including the following:

Option 1 – Maintain the Status Quo

- Equity partners continue to send representatives to participate in all discussions at Committee meetings, except for *in camera* matters; and,
- Equity partners participate in Committee discussions at their discretion.

Option 2 – Increased Engagement at EIAC Meetings

- Equity partners continue to send representatives to participate in all discussions at Committee meetings, except for *in camera* matters; and
- The Chair allows equity partners an opportunity to share their input at the end of the Committee's discussion on each policy item, but before the Committee makes a final decision or votes on the item.

Option 3 – Written Submissions

- Equity partners send representatives to EIAC meetings, except for *in camera* matters; and,
- Equity partners have the option to provide written submissions on policy items for decision or discussion at the Committee meeting, either before or after the meeting. The written submissions would be provided to the Committee as they are received.

Option 4 – Limited Engagement at EIAC meeting

- Equity partners only send representatives to EIAC meetings, where their specific advice is required.

Outlined below are the majority and minority positions from the Working Group and recommendations to manage the relationship and interactions between EIAC and its equity partners.

A. The Majority Position

The majority of the Working Group took the view that the equity partners have historically played, and continue to play, an integral role in assisting the Committee to fulfill its mandate to Convocation. EIAC's consultation process with the equity partners enables the Committee to incorporate the views and perspectives of those who have been underrepresented at Convocation and the Law Society. The majority recognized the importance of continued engagement with the equity partners in a respectful, productive, and efficient manner while also being mindful of the concerns raised by the equity partners in developing recommendations to EIAC.

The majority supported the continued attendance and participation of the equity partners at EIAC meetings. Although the majority saw benefits with Option 2, because it would enable the equity partners to address specific policy items as they came up for discussion, there was a concern that the equity partners did not currently feel comfortable participating in discussions at that level.

The majority rejected Option 3 due to concerns that additional time to draft and review written submissions from the equity partners could cause further delays to the Committee's decision-making function and create additional work for the equity partners, who are primarily volunteers. The majority rejected Option 4 on the basis it was contrary to EIAC's mandate.

Finally, the majority acknowledged the importance of Indigenous cultural awareness and sensitivity training for Benchers and Law Society staff[20]. In their discussion with the Working Group, the IAG highlighted the significance of integrating Indigenous perspectives into all EIAC's work and the importance of Indigenous cultural awareness and sensitivity for all those who are engaged in this process. Furthermore, recommendations for increased Indigenous cultural competency within the Law Society and the legal professions have previously been made in the Law Society's Indigenous Framework[21], the Review Panel on Regulatory and Hearing Processes

[20] Cultural competency training which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations.

[21] Creating and enhancing cultural competency in the Law Society for staff and Benchers and within the legal profession is recognized as one of the Four Core Pillars of the Law Society's Indigenous Framework.
Law Society of Ontario, "Indigenous Advisory Group Established at the Law Society" (12 July 2016), online: *Law Society of Ontario* <https://lso.ca/news-events/latest-news/latest-news-2016/indigenous-advisory-group-established-at-the-law-society>

Affecting Indigenous peoples[22], the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession[23], the TRC Calls to Action[24], and the Federation of Law Societies of Canada Report of the Truth and Reconciliation Calls to Action Advisory Committee[25]. The majority felt that it was important to recognize and support the implementation of the recommendations calling for increased cultural awareness and sensitivity training for staff and Benchers in consultation with the IAG.

RECOMMENDATIONS

The majority of the Working Group makes the following recommendations to the Committee:

- That equity partners continue to send representatives to participate in discussions at Committee meetings, with the exception of *in camera* matters (Option 1).
- That Option 2 be considered at a later date upon the conclusion of the review of the Bencher Code of Conduct. The majority recommends that the Law Society develop rules of engagement and decorum for standing committees to facilitate respectful and productive discussions.
- That the IAG, EAG, and AJEFO have the option to send up to two representatives to Committee meetings to ensure continuity and allow equity partners to maintain institutional knowledge of their work with the Committee. In addition, allowing additional representatives gives the equity partners the ability to have more of its members engage with EIAC and its work.

---

[22] Recommendation 5 and 8 of the Review Panel Report.
Law Society of Ontario, "Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples" (24 May 2018), online (pdf): Law Society of Ontario https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation/convocation-l/convocation-law-society-review-panel-report.pdf

[23] Recommendation 10 of the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession.
Law Society of Ontario, "Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession" (November 2016), online (pdf): Law Society of Ontario <http://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>

[24] The Truth and Reconciliation Commission Calls to Action 27 and 28.
Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action" (June 2015), online (pdf): Truth and Reconciliation Commission of Canada <http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf>

[25] Recommendations 4 and 7 of the Federation of Law Societies of Canada's Report of the Truth and Reconciliation Calls to Action Advisory Committee.
Federation of Law Societies of Canada, "Report of the Truth and Reconciliation Calls to Action Advisory Committee" (June 2020), online: *Federation of Law Societies of Canada* <https://flsc.ca/wp-content/uploads/2020/08/Advisory-Committee-Report-2020.pdf>

B. The Minority Position

A minority of the Working Group took the position that EIAC's consultation processes with its consultants should be reformed to better serve the Committee's mandate.

First, with respect to non-Indigenous and non-Francophone equality-seeking communities, the minority took the position that EIAC should consult more broadly and flexibly in its regular consultations. Currently, EIAC only regularly consulted with EAG with respect to equality-seeking communities other than the Indigenous and Francophone groups. The minority felt that although EAG brought a valuable perspective to EIAC, it was a singular, Toronto-centric advocacy organization with a particular perspective and mission, but which has become entrenched as "the voice" of equality-seeking communities at EIAC. The minority raised concern that EAG presented its own barriers to inclusion for equality-seeking communities and individual representatives. For example, EAG placed arbitrary limitations on the number of its members and it included political and ideological criteria in its membership selection process. EIAC is mandated to consult with equality-seeking communities and should ensure that no voices or perspectives are excluded from its consultations and that new and diverse perspectives are welcomed. The minority felt that EIAC's consultations should be broad, inclusive of multiple and competing perspectives on important issues; they should include groups and communities outside of Toronto and without political or ideological criteria.

Second, clearer expectations should be established for EIAC's consultants. The minority took the view that some opinions and perspectives of EIAC's consultants were more readily received by previous Benchers and this appears to have become a source of dissatisfaction among the long-standing consultants. The minority felt that a clear division between the decision-making role of EIAC on the one hand, and the advisory role of consultants on the other hand, should be considered in order to avoid the confusion and frustration that appears to exist among long-standing consultants. Consultants, particularly representatives from EAG and IAG, expressed negative feelings with respect to recent changes at the Law Society, particularly with respect to the perspectives of new Benchers. Some consultants claimed that since the last election of Benchers, certain consultants no longer felt "safe" at EIAC. In the minority's view, this was a problem that should not be left unaddressed. EIAC should consider adopting best practices with respect to the consultation process, setting clearer and specific expectations of its current and future consultants, and should also ensure a healthy distance between EIAC and consultants. The minority also felt that the term "partner" for example, is not helpful, nor accurate, and should be abandoned. The majority also recommended that EIAC should also consider limiting consultations to meetings for which particular expertise is specifically required, it should abandon the model of having consultants as a permanent fixture at its confidential meetings, and should remove consultants from decision-making roles such as the Committee for the DHC.

Finally, the minority raised that the confidentiality agreements between the Law Society and the advisory groups have not been produced despite the lengthy and involved working group's

process. Any representative of an advisory group present at EIAC should be able to produce a confidentiality agreement prior to attending any meeting.

RECOMMENDATIONS

The minority of the Working Group makes the following recommendations to the Committee:

- That EIAC's regular consultations with equality-seeking communities no longer be limited to EAG, the IAG and AJEFO, and that consultations be broader and more inclusive of other individuals, groups, and perspectives.
- That the term "partner" no longer be used when referring to consultant groups or individuals.
- That EIAC adopt best practices when soliciting advice from consultants (IAG, EAG and AJEFO).
- That consultants (IAG, EAG, and AJEFO) be included in meetings where their specific advice is required and not as a permanent fixture in all EIAC meetings, and
- That consultants (IAG, EAG, and AJEFO) not be placed in decision-making roles at EIAC; and
- That all IAG, EAG, and AJEFO representatives attending confidential meetings execute confidentiality agreements with the Law Society and that such agreements be made available to EIAC members.

Law Society of Ontario | Barreau de l'Ontario

Tab 6

Access to Justice

An Abiding Interest: Implementation Update

June 23, 2021

Committee Members:

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

Prepared By:

External Relations and Communications

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Executive Summary

Legal aid has long been a priority for the Law Society of Ontario and remains so in light of the Law Society's statutory obligation to facilitate access to justice.

In 2018, Convocation approved the Abiding Interest Report to reinforce and reinvigorate the Law Society's involvement in legal aid.

Since then, the Law Society has continued to:

- engage in dialogue with Legal Aid Ontario
- facilitate the Association for Sustainable Legal Aid
- champion a robust system of legal aid in Ontario
- recommend appointments to the LAO board.

In addition, the Action Group on Access to Justice (TAG), established by the Law Society, promotes discussion, research and data collection regarding access to justice for low-income Ontarians.

Further updates will be provided to Convocation to help maintain a vigilant focus on the Law Society's involvement in legal aid.

Purpose

This report provides an update on the Law Society of Ontario's involvement in legal aid after Convocation adopted the 2018 Report of the Legal Aid Working Group: An Abiding Interest (Abiding Interest Report).

An Abiding Interest

In November 2016, the Law Society established the Legal Aid Working Group, chaired by bencher John Callaghan. The working group was comprised of benchers with a range of knowledge and expertise, including experience as legal aid service providers in the private bar and community legal clinic system.

The working group met with more than forty legal stakeholders from over twenty organizations before developing its report to Convocation. On January 25, 2018, Convocation approved the report, setting the stage for a reinvigorated focus on the Law Society's involvement in legal aid.

The report was called *An Abiding Interest* in recognition of the Law Society's longstanding interest in helping to ensure robust, transparent, and sustainable legal aid services for low-income Ontarians. Key points of the report include

a. The Law Society was one of the initial architects of our modern legal aid system and the initial administrator of legal aid in Ontario.

b. The Law Society has a statutory obligation to facilitate access to justice. Legal aid is a key pillar of access to justice due to its life-altering impact on low-income people in criminal, family, refugee, civil, and clinic law.

c. The Law Society's licensees provide the bulk of legal aid services.

d. Stakeholders from the legal community welcome active involvement by the Law Society in ways that complement the work of Legal Aid Ontario.

An Abiding Interest recommended ways to strengthen the Law Society's relationship with Legal Aid Ontario (LAO), foster improved relationships between LAO and legal stakeholders, champion the need for robust legal aid, and promote discussion, research and data collection to support improvements and innovation.

Having completed its task with the submission of its report, the Legal Aid Working Group recommended that various structures within the Law Society contribute to implementing the report, with leadership from the Access to Justice Committee.

A list of the recommendations from the Abiding Interest Report appears in **Appendix 1**.

Activities

A. Engagement with Legal Aid Ontario

Since 2018, the Law Society has engaged in informal and formal communications with Legal Aid Ontario. For example, in a letter dated May 20, 2021, the Law Society commented on proposed draft rules to support the implementation of the *Legal Aid Services Act, 2020* (*LASA, 2000*). The letter makes constructive suggestions about expediting the development of a consultation policy as mandated by section 33 of *LASA, 2020*; working collaboratively with the Law Society on quality assurance standards and protocols; and strengthening the protection of solicitor-client privilege for legal aid clients. The Law Society's letter is attached as **Appendix 2**.

In addition, the Law Society has initiated regularly scheduled meetings on an ongoing basis between senior members of the Law Society (including Treasurer Donnelly and the Executive Director of External Relations and Communications) and Legal Aid Ontario (including the Chair, President and CEO, and Vice President of Strategy and Public Affairs). These meetings have been helpful to discuss issues as they arise and provide for more proactive engagement, collaboration, and information sharing.

B. Involvement with Legal Stakeholders

The Law Society plays a role helping legal stakeholders to have an effective voice, individually and collectively, in their interactions with Legal Aid Ontario. Much of this work has been done through the Law Society's work in facilitating and supporting the work of the Alliance for Sustainable Legal Aid (ASLA).

For more than two decades, the Law Society has been a driving partner in the work of ASLA, a group that includes leaders from the Law Society and a range of legal service provider organizations. Law Society members include the Treasurer, two benchers[1] from the Access to Justice Committee, and senior staff. The table below indicates the stakeholder organizations that are members of ASLA.

[1] Jonathan Rosenthal and Dr. Benson Lau.

ALLIANCE FOR SUSTAINABLE LEGAL AID
Association of Community Legal Clinics of Ontario
Criminal Lawyers' Association
Family Lawyers Association
Federation of Ontario Law Associations
Law Society of Ontario
Mental Health Legal Committee
Ontario Bar Association
Refugee Lawyers Association
The Advocates' Society

ASLA has held 24 formal meetings since *An Abiding Interest* was approved by Convocation on Jan 25, 2018.This is in addition to informal interactions among ASLA members and ongoing discussions between the ASLA chair and the Law Society's Executive Director of External Relations and Communications. It has been a busy year for ASLA with frequent meetings to respond to changes flowing from the implementation of *LASA 2020.*

The meetings have worked well to ensure that service providers are aware of ongoing developments and to achieve synergies that come from having a spectrum of criminal, family, refugee, civil and community legal clinic voices around the table. ASLA continues to make best efforts to increase trust, partnership, and cooperation between legal service providers and LAO. ASLA often invites LAO representatives to ASLA meetings to facilitate dialogue on shared issues.

Recently, the Law Society played a facilitating role in the creation of ASLA's submission to LAO in relation to the draft rules. Individual ASLA member organizations prepared their own submissions which elaborated on issues of particular interest to them. The Law Society's submission, referred to above, appears in Appendix 2. Submissions from the Federation of Ontario Law Associations, Ontario Bar Association, and The Advocates' Society can be found on these organizations' websites. The ASLA submission is attached as **Appendix 3.**

C. Policy Discussions, Research and Data Collection

The Law Society established The Action Group on Access to Justice (TAG) in 2015 to facilitate coordination and collaboration across the justice sector. With ongoing

leadership and support from the Law Society, TAG works with justice stakeholders to develop meaningful, public-centred solutions that advance systemic change.

TAG has been instrumental in generating policy discussions and sharing information on access to justice issues. Access to Justice Week, launched by TAG in 2016, is a key vehicle for achieving this. Many Access to Justice Week events address issues and innovations aimed at improving access to justice for the benefit of low-income persons who require legal assistance. The events are attended by a broad range of lawyers, paralegals, the general public, students, academics, community organizations, and subject-matter experts.

Sample topics covered in Access to Justice Week events since 2018, including events planned for 2021	
Research and data	• Research on Ontario's vulnerable communities (2018) • Leveraging data for a better justice system (2019)
Specific populations	• Indigenous justice (2018, 2019, 2020, 2021) • Access to justice and systemic racism (2020)
Areas of law	• Access to justice in family law (2018, 2020, 2021)
Community support	• Updates and action for community workers (2020) • Public legal education (2021)

TAG also launched a Research Community of Practice in 2020 to facilitate collaborative research, knowledge and data sharing within the justice sector. Members include a variety of access to justice partners, including Legal Aid Ontario.

D. Championing Legal Aid

The Law Society is a champion for a robust and sustainable system of legal aid in its own capacity and as a member of ASLA. A large part of this role involves engaging in advocacy with the provincial and federal governments. This is done through letter-writing, appearances at standing committees, and meetings or conversations with senior government officials. The Treasurer has personally raised the importance of legal aid funding with provincial and federal Attorneys General Downey and Lametti.

The Law Society and its ASLA partners successfully lobbied for improvements to the eligibility thresholds for both LAO's certificate program and clinic law services that resulted in the thresholds increasing by over 30% over five years (2014-2019).

The Law Society also spoke out against the provincial government's 2019 33% reduction in their funding transfer to Legal Aid Ontario. Fortunately, many of the impacts of that reduction were cushioned somewhat by an unprecedented transfer from the Law Foundation of Ontario, and the impacts of the pandemic, which had temporarily reduced the demand for Legal Aid's services. The 2019 announcement had envisioned a second round of cuts in 2020, but strong advocacy from the Law Society and ASLA helped to

convince the Ontario government not to proceed with any further reductions. However, the full impact of the reduced funding is not known.

The Law Society and ASLA have also urged the federal government to meet their obligations with regard to legal aid funding generally and more specifically to increase their commitment to immigration and refugee funding. A federal contribution of $42.6 million was critical in managing the gap created by Ontario's elimination of funding for refugee legal services in 2019. This contribution ensured the continued provision of essential legal services to vulnerable refugees and immigrants.

On June 10, 2020, then Treasurer Mercer and the Executive Director of External Relations and Communications appeared before the provincial Standing Committee on Justice Policy to comment on the *Smarter and Stronger Justice Act, 2020, Bill 161*. During their presentation, they advised the committee about the Law Society's abiding interest and ongoing commitment to legal aid. They indicated that the Law Society:

- engages in robust dialogue with the provincial and federal governments to ensure the sustainability and health of legal aid;
- has always taken opportunities to meet with Attorneys General of the day, both federally and provincially; and
- plays a facilitative role with ASLA which has as its sole priority speaking out about legal aid issues.[2]

E. Appointments to the Legal Aid Ontario Board

In 2020, the Law Society made recommendations to the Attorney General for appointees to the LAO Board of Directors.

Under the *Legal Aid Services Act*, *2020*, the Law Society provides recommendations for the appointment of five people to the LAO Board. Typically, the Law Society provides three names for each of the five appointments. The Law Society takes this role seriously. Recommending strong candidates underscores the importance the Law Society places on the vital role of LAO in ensuring equitable access to justice.

Treasurer Donnelly, with the assistance of the Treasurer's Appointments Advisory Group, composed of benchers, oversaw the 2020 application process. To ensure a broad range of applications, the opportunity was advertised through all Law Society member communication channels (e-newsletters, Ontario Reports, website, social media). To further attract a diverse range of applicants, the Treasurer engaged in outreach with lawyer and paralegal associations.

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[2] Legislative Assembly of Ontario, Official Report of Debates (Hansard), JP-17, Standing Committee on Justice Policy, Smarter and Stronger Justice Act, 2020, 1st Session, 42nd Parliament, Wednesday 10 June 2020.

In keeping with *An Abiding Interest*, the individuals recommended to the Attorney General included licensees with a range of legal aid experience, including in private bar and clinic settings. Equity, diversity and inclusion principles and other factors were also applied to ensure a variety of relevant knowledge, expertise and experience.

This process resulted in the appointment of five outstanding LAO board members:

- Jennifer Gold (Dec 2020 - Dec 2022) is a partner in a small firm that focuses on family law, mediation and wills. She is a mentor to other lawyers in the family law bar and an advocate for diversity and inclusion in the legal profession. She is the current president of the Women's Law Association.

- Bryn Gray (Jan 2021 - Jan 2023) has expertise in Aboriginal law and relationship-building with Indigenous groups. He is a member of his law firm's Pro Bono Committee and a regional lead for the firm's Pride Action Group.

- Deborah Moriah (Jan 2021 - Jan 2023) has experience as a paralegal in immigration and social justice tribunals that address human rights, social benefits and criminal injuries compensation. She is also a founding member of the Ontario Association of Black Paralegals.

- John Callaghan (Jan 2021 - Jan 2023) practises in the areas of civil and commercial litigation and regulatory offences. During his eight years as a bencher, he chaired the Legal Aid Task Force and authored *An Abiding Interest* as chair of the Legal Aid Working Group. He is also a former member of ASLA.

- Chris Uwagboe (April 2021 - April 2023) is a sole practitioner practising in the areas of criminal defence, real estate, immigration, and small claims. He is experienced in serving communities with the assistance of legal aid.

Now that this latest round of appointments has been made, the Law Society will consider the development of protocols for communicating with the LAO board members it recommended, taking care not to create a conflict with their fiduciary obligations.

Conclusion

Approval of *An Abiding Interest* was an important milestone and indication of the Law Society's commitment to legal aid and continuing work in this area as part of its access to justice mandate.

During debate on the report in 2018, a number of benchers stressed the importance of updates to inform Convocation of progress made to implement the report's recommendations. This was seen as essential for maintaining a vigilant focus on the Law Society's involvement in legal aid. As progress continues to be made, Convocation will receive further updates on this crucial access to justice issue.

Appendices

Appendix 1: Working Group recommendations 2018

RECOMMENDATIONS: INVOLVEMENT IN LEGAL AID

It is recommended that the Law Society:

(a) Work with Legal Aid Ontario to develop a structured and ongoing process for dialogue with the LAO board and senior management to discuss matters of mutual importance in improving access to justice in Ontario.

(b) Play a role with legal stakeholders and LAO to build stronger relationships and more open dialogue.

(c) Convene public symposia on legal aid policy issues, involving a range of stakeholders, experts and sectors to explore innovative approaches and to discuss and address concerns and improvements respecting the legal aid system.

(d) Champion the need for robust legal aid and share the Law Society's insights and concerns regarding legal aid with the federal and provincial levels of government, as part of the Law Society's government relations activities.

(e) Continue to facilitate and support the work of the Alliance for Sustainable Legal Aid.

(f) Ensure that its recommendations for appointment to the LAO board include nominees who are experienced in the legal aid system, including the clinic system and the private legal aid bar.

(g) Develop a protocol for LAO board members who are recommended by the Law Society to play a role in keeping communications flowing between the two organizations to strengthen the capacity to address legal aid issues, in a way that does not conflict with the board members' fiduciary obligations.

(h) Encourage the collection of data, including disaggregated demographic data, to ensure greater transparency in legal aid, and to promote more evidence-based research and policy development.

RECOMMENDATIONS: IMPLEMENTATION ROLES

It is further recommended that:

(a) The Access to Justice Committee assume responsibility for implementing the above recommendations and for maintaining a vigilant role in ensuring effective legal aid strategies for the Law Society.

(b) The Government and Public Affairs Committee work with the Access to Justice Committee on implementation of the recommendations, with special attention to government relations, stakeholder relations, and the continuing role of the Law Society in legal aid.

(c) The Access to Justice and Government and Public Affairs Committees work closely with the Law Society's Indigenous Advisory Group in ensuring that Indigenous voices are heard on issues relating to legal aid services.

(d) The Treasurer's Appointments Advisory Group take the lead in implementing recommendations regarding the Law Society's role in recommending appointees to the LAO board.

(e) The Access to Justice Committee identify the impact on resources of implementing the recommendations, in consultation with the Audit and Finance Committee.

Appendix 2: Law Society letter on draft legal aid rules 2021

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May 20, 2021

Mr. Charles Harnick
Chair, Board of Directors

Mr. David Field
President and CEO

Legal Aid Ontario
Atrium on Bay
40 Dundas Street West, Suite 200
Toronto, ON
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2021rulespublicfeedback@lao.on.ca

Dear Mr. Harnick and Mr. Field:

Re: Proposed draft rules to support the implementation of the *Legal Aid Services Act, 2020*

Introduction

The Law Society of Ontario ("LSO") appreciates the opportunity to comment on Legal Aid Ontario's proposed draft rules, which have been released to support the implementation of the *Legal Aid Services Act, 2020.* The Law Society is hopeful that the implementation of the new *Act* and rules will lead to improvements and a modernization of Ontario's legal aid system, and looks forward to working with Legal Aid Ontario in ensuring that the system continues to provide high quality legal aid services to low-income clients.

As a member of the Alliance for Sustainable Legal Aid (ASLA), the Law Society has played a facilitating role in the creation of ASLA's submission and fully supports the submission's recommendations.

With this letter, the LSO would like to provide its own submission, which outlines three areas of immediate concern to the Law Society and recommends solutions in each case. The comments included in this submission are intended to be constructive, and the Law Society welcomes further meetings on any of these areas should there be interest within Legal Aid Ontario.

The Law Society's goal in providing this feedback is to ensure that the rules support the long-term sustainability of legal aid, while maximizing the quality of service available to clients.

Consultation

The 2020 update to the *Legal Aid Services Act* was the biggest change in the legal aid system since the introduction of the original bill in 1998. The Law Society was pleased to engage with the Ministry of the Attorney General and Legal Aid Ontario in the creation of the new *Act* and to offer feedback on how to improve the functionality of the legal aid system. A significant component of that feedback was the need for a comprehensive consultation policy, and the LSO was pleased to see that included in S.33 of the *Legal Aid Services Act, 2020* ("LASA, 2020"). It was the LSO's hope that the inclusion of this language would lead to improved dialogue, and better collaboration between all partners in the legal aid community. As you know, in 2018, the LSO released a report entitled "An abiding interest". In it, the LSO articulated its commitment to consultation and stakeholder engagement, which the LSO considers hallmarks essential to modern, transparent, accountable, and effective public policy development and service delivery.

Unfortunately, the benefits of a fulsome consultation were not realized in the comment period for the proposed draft rules. The posting of the rules, and the process used to create them, was in keeping with the letter of the law, it was not in keeping with its spirit.

By tabling the rules without any opportunity for meaningful engagement beforehand, LAO has put the legal aid community in the position of responding to LAO's rules, rather than collaboratively working together towards a shared vision. A collaborative approach would have enabled LAO to tap into the extensive experience of front-line service providers and officials at the LSO, and could have produced suggestions that would have led to improvements for clients, and the system as a whole. Instead, over 100 pages of technical material was placed in front of stakeholders as a final product with only 30 days to digest, analyse, and respond.

While the LSO appreciates the many opportunities LAO has provided to ask questions and learn about the rules since their initial posting on April 21, it would have been

preferable for these opportunities to have occurred earlier so that the elements outlined in this letter could have been addressed before the rules were posted.

The LSO strongly urges LAO to expedite the development of the required consultation policy so that meaningful dialogue can occur ahead of the next round of potential updates to the rules. Early feedback and an exchange of ideas ensures better products and outcomes. It's also good public policy.

Quality Assurance

The schedule that accompanies the rules for Roster Management includes a section on quality assessments. It reads as follows:

> **Quality assessments**
>
> **4** (1) The Corporation may assess the quality of legal services provided by a roster member.
>
> (2) In assessing a roster member's quality of service, the Corporation may take any relevant information into account and consider any relevant factor, including the following:
>
> (a) the roster member's record of compliance with the Corporation's rules, procedures, billing and account submission rules or administrative requirements;
>
> (b) information about the roster member's conduct towards legally aided clients, including as evidenced by the results of any client satisfaction surveys and reviews;
>
> (c) any decision or documents from a court or tribunal;
>
> (d) information received from other lawyers (whether or not they are a roster member), from their legally aided clients and from judges.

As you know, as recently as 2017, the LSO and LAO have been engaged in discussions to explore whether LSO's Practice Review Program could be used to conduct quality assurance reviews of LAO referred members. Unfortunately, these discussions never reached a successful conclusion. While similar language was found in section 92 of the *Legal Aid Services Act, 1998*, this section of the *Act* was not carried through in the 2020 update. Instead, as mentioned above, the language covering quality assessments is now found exclusively in the rules.

While the LSO doesn't necessarily disagree with this approach in principle, it must be noted that section 46 of the *Legal Aid Services Act, 2020* provides very broad rule

making power to the LAO board. The Law Society would like to request that if any changes to the quality assurance rule are under consideration by LAO, that there be proactive dialogue and consultation to ensure that there is no unnecessary duplication, or any appearance of regulatory overlap between LAO and the LSO. It is important that licensees have clarity on the standards that are being used to evaluate their performance, and there is a concern that a siloed approach or a lack of specificity could lead to future challenges in this area. For example, the successful implementation of a quality assurance program requires the development of standards, policies and procedures. None of which have been included in the release of these rules. The Law Society is concerned that, until these new standards, policies and procedures are released, there will be an information gap whereby licensees will not have clarity around the specific standards that will be enforced, or the process to enforce them.

To be clear, the LSO supports the general idea of LAO setting their own standards and conducting their own quality assurance activities to meet their needs and objectives as outlined in the *Act* and the rules. The LSO also supports LAO's ability to manage their rosters by putting reasonable conditions on roster members, or to ultimately remove someone from the roster if LAO believes it is appropriate. The LSO believes that roster management tools are a necessary requirement for the successful functioning of the roster.

However, the Law Society believes there should be information sharing as part of this process, to ensure that the LSO is notified in cases where serious competence, conduct, or capacity issues are suspected by LAO. Under the current draft rules, LAO has a wide discretion in deciding when to notify the LSO on these matters. The rules[3] merely state that LAO "may" notify the LSO of any conduct issues. At a minimum, LAO should be reporting anything that falls under the duty to report in Rule 7.1-3 of the Law Society's *Rules of Professional Conduct*.

In order to ensure that matters that could represent a risk to the public are appropriately investigated, the Law Society requests that a discussion between the LAO and LSO investigations departments occur to ensure that that a policy outlining the proper thresholds for reporting is put in place. This policy would allow the LSO the opportunity to investigate matters that could represent a risk to the public, while not bringing an additional administrative burden to LAO.

Solicitor-Client Privilege

The proposed draft rules address solicitor-client privilege in three separate Rules: Rule 1: Roster Management subrule R7(3); Rule 4: Eligibility for Legal Aid Services, subrule EL8; and Rule 6: Entity Service Providers, subrule ESP7(2). While the purpose of each

[3] R10(4), R16(2a)

rule is different, the LSO asserts that in each case the proposed rule represents an infringement of solicitor-client privilege.

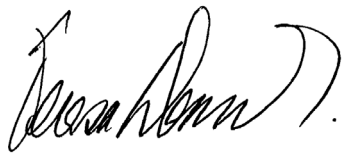
Roster Management rule R7(3), and Entity Service Provider rule ESP7(2) both state that LAO has the power to request any information or document from a roster lawyer or clinic, including privileged documents. These proposed rules also require the disclosure of privileged information without the client's consent or knowledge.

Furthermore, Eligibility rule EL8 states that clients must agree to waive solicitor-client privilege in order to be eligible to receive legal aid. This rule is a significant invasion of a client's right to solicitor-client privilege. It puts potential legal aid clients in the difficult position of choosing between their right to legal representation, and their right to solicitor-client privilege. In either scenario, the client will have a fundamental right violated. Privilege allows for open and candid discussions between a client and their legal advisor, which in turn also promotes access to justice. As currently drafted, this proposed rule could have a chilling effect on the relationship between lawyers and legal aid clients by eroding the comfort and willingness of clients to openly disclose important information to their legal advisors.

As written these rules will erode the fundamental right of legal aid clients to have privileged communications with their legal advisers. If implemented these rules could fundamentally impair the solicitor-client relationship thereby depriving access to justice for some of Ontario's most vulnerable clients. Any rule that could reduce access to justice is unacceptable to the LSO. Therefore, for the reasons outlined above, the LSO believes that all references to requests for privileged documents be removed from rules R7(3), EL8 (1), and ESP7(2) to ensure that legal aid clients aren't forced to choose between their right to solicitor-client privilege and access to justice.

Thank you for considering the Law Society's comments. If you have any questions regarding this matter, please do not hesitate to contact me.

Yours truly,



Teresa Donnelly
Treasurer

Appendix 3: ASLA submission on draft legal aid rules 2021

SUBMISSION TO LEGAL AID ONTARIO ON DRAFT RULES UNDER *LASA, 2020*

FROM THE ALLIANCE FOR SUSTAINABLE LEGAL AID

MAY 19, 2021

Contents

Letter of Transmittal

ALLIANCE FOR SUSTAINABLE LEGAL AID

AN ALLIANCE OF ♦TAS ♦ACLCO♦CLA♦FLA♦LSO ♦OBA♦RLA♦FOLA♦MHLC

May 19, 2021

Charles Harnick, Chair
David Field, President and CEO
Legal Aid Ontario

Dear Mr. Harnick and Mr. Field,

I am pleased to submit perspectives from the Association for Sustainable Legal Aid (ASLA) on key themes pertaining to the draft rules prepared by Legal Aid Ontario under *LASA, 2020*. This submission reinforces and expands upon points that ASLA members raised during the feedback session convened by Legal Aid Ontario on April 29, 2021.

Please note that individual ASLA member organizations are preparing their own submissions to address aspects of the rules that are of particular relevance to them.

Regards,

Lenny Abramowicz
Chair of ASLA
Executive Director of the Association of Community Legal Clinics of Ontario

c.c. Doug Downey, Attorney General of Ontario
Patrick Schertzer, Senior Advisor, Policy and Legal Affairs, Office of the Hon. Doug Downey, Attorney General of Ontario

Introduction

The Alliance for Sustainable Legal Aid (ASLA) is pleased to have an opportunity to provide feedback on the draft rules that Legal Aid Ontario (LAO) has prepared pursuant to *LASA, 2020.* You will be hearing separately from individual member organizations with more detailed comments.

Our submission covers eight overarching themes that ASLA has identified. We have provided our comments theme-by-theme rather than rule-by-rule since the themes cut across multiple areas.

THEMES ADDRESSED IN THIS SUBMISSION
• Consultation • Relationship with LAO • Commitment to certificate and clinic systems • LAO's discretion • Quality assurance • Equity • Solicitor-client privilege • Fairness and simplicity of accounts

Our comments are intended to be constructive. We have tried to flag elements that could compromise client needs or deter experienced and committed service providers from participating in legal aid.

Overall, ASLA is concerned that the draft rules make fundamental changes to LAO's relationship with the private bar and clinics through a substantial increase in LAO's powers and discretion, and the inclusion of provisions that appear to be overly broad, vague or administratively onerous. Other provisions, such as the assignment by LAO of counsel to clients, and the ability to contract with a variety of corporate entities, could lead to a lessening of the commitment to community clinics and certificate counsel of choice, two mainstays of legal aid services in Ontario. We also have suggestions about approaches to equity, quality assurance, and solicitor- client privilege. And we remain concerned that LAO has not developed a consultation strategy as mandated in section 33 of the legislation.

The rules are a matter of fundamental importance for legal aid in Ontario. We hope there will be opportunities for dialogue with LAO before they are finalized.

About ASLA

The Alliance for Sustainable Legal Aid is comprised of leaders from nine organizations with expertise and experience with legal aid in Ontario. As part of the Law Society's involvement in legal aid, the Law Society has been a driving partner in the important work of ASLA for many years. The Law Society plays a facilitative and support role for ASLA in addition to serving as a member.

Originally established twenty years ago as a Coalition on Tariff Reform, ASLA has evolved into an organization that looks at legal aid more broadly in the pursuit of access to justice for low-income people, founded in our shared and strongly held commitment to a sustainable legal aid system. Our work includes government relations, information exchange, and communication with Legal Aid Ontario and other justice sector bodies. Over the years, ASLA has met with representatives of LAO and the Ministry of the Attorney General on a regular basis to engage in constructive dialogue.

ALLIANCE FOR SUSTAINABLE LEGAL AID
The Advocates' Society
Criminal Lawyers' Association
Family Lawyers Association
Refugee Lawyers Association
Association of Community Legal Clinics of Ontario
Federation of Ontario Law Associations
Law Society of Ontario
Ontario Bar Association
Mental Health Legal Committee

Theme 1: Consultation

ASLA strongly encourages LAO to engage in constructive dialogue and joint problem-solving with us on areas of concern in the draft rules. This would be better than adhering to traditional methods of consultation in which we provide comments that LAO takes into account without any opportunity for meaningful engagement. The synergies of a more interactive approach would enable LAO to tap into our breadth of experience for the benefit of clients, communities and the legal aid system as a whole.

The draft rules are extensive (over 100 pages) and technical, written in formal statutory language. Even for ASLA members who are legally trained, it has been a challenge to go through all the material and quickly formulate our response. It must have been an even

greater challenge for non-legally trained members of the public, including clients, to digest the information and provide meaningful feedback, especially with a 30-day time limit.

It was also a challenge to review the draft rules without having received an indication from LAO about what elements are a codification of the current state and what is new or different. We hope that LAO has carefully considered existing policies before deciding to include them and is open to comments about them in addition to new elements that have been added.

The 30-day posting provision under s.46 of *LASA, 2020* does not prevent LAO from engaging with stakeholders earlier in a collaborative way rather than presenting what appears to be essentially a final product. During a technical briefing on April 20, 2021, LAO advised that the draft rules had been developed over a lengthy period of time, with full board involvement and vetting by the operations committee. ASLA is not aware of any opportunities for stakeholder dialogue during that period.

The impression left by LAO is that they are open to some tweaking of the rules but not much more at this point. This impression was confirmed by LAO's closing remarks at the ASLA feedback session on April 29. In those remarks, ASLA's offer to work collaboratively in finding workable solutions on some of the issues was politely and firmly declined.

We appreciate the opportunity LAO provided for a technical briefing, feedback session, and submissions. However, we would have preferred more meaningful engagement on rules that will have a major impact on legal aid in Ontario for years to come.

In ASLA's view, this process reinforces the urgency for LAO to produce a public consultation policy, to be approved by the Minister, as mandated by section 33 of *LASA, 2020*. That section specifically requires the policy to describe how consultation with the public will be undertaken when changes are being considered to the rules. It would have been preferable for the public consultation policy to be in place in time for consultation on the draft rules. We strongly urge LAO to expedite the development of the policy, building in principles for respectful and meaningful engagement. In any event, ASLA's offer to engage in dialogue and joint problem-solving to resolve issues relating to the draft rules remains on the table.

Theme 2: Relationships

Ontario has a world-class legal aid system and ASLA members are proud to work within it. We are concerned, however, that the approach taken in the draft rules has strayed from funder/service provider partnerships that made the system work so successfully over the last 20 years. While *LASA, 2020* envisions a vital partnership between LAO and service

providers, the draft rules shift to a top-down, largely one-sided relationship where service providers are given a limited stake in the system beyond contract-for-hire.

Relationship with the Private Bar

The draft rules create onerous administrative requirements and confer broad powers on LAO to remove roster members. We agree with removing lawyers who abuse the system, but there needs to be a better balance to encourage and enable private bar lawyers to participate. Some provisions risk sweeping in high functioning practitioners and clinics in an attempt to weed out the small minority that may be problematic. The net effect is that such rules may discourage a diverse array of qualified lawyers from entering or remaining in the certificate world.

It is somewhat ironic that the draft rules impose an undue administrative burden on roster lawyers while including a Schedule devoted to preventing roster members from being an administrative burden on LAO. We need lawyers at an early stage of their career to enter the system and go through a learning curve which requires more interaction and support initially with LAO staff. We urge LAO to reconsider the Administrative Burden Schedule. At a minimum, we urge LAO to remove or clarify the section of the Schedule relating to excessive reliance on LAO staff, which could have a have a disproportionate impact on junior members of the bar.[4]

Relationship with Community Legal Clinics

Rule 6 (Entity Service Providers) fundamentally changes the relationship between LAO and the clinics and between clinics and their communities. It makes clinics less stable and more precariously funded, jeopardizing their operations and legal supports for marginalized and vulnerable people.

For some time, Ontario's community legal clinics have enjoyed a reasonable amount of security. Unless a clinic breached its obligations or there was a drastic change in funding, the community could rely on its local clinic to be there to help them by providing quality service. Under Rule 6, it is completely within the power of LAO to stop funding a longstanding clinic at the end of its term, without recourse or the possibility for the decision to be reviewed.

The draft rules give LAO unfettered discretion to renew a term and to decide whether the term will be three years or less. It is also problematic that Rule 6 departs from five-year agreements that remain in place until renewed. Instead, the maximum term will be three

[4] Administrative Burden Schedule, s.1(2)(e)

years for clinics deemed to be low risk, and even shorter terms for other clinics.[5] This creates instability for the clinics, their communities and the low-income clients who need clinic services.

ASLA is also concerned that the draft rules do not refer to the full array of community clinic issues, including work on systemic issues and law reform that helps more disadvantaged people than individual casework.

Theme 3: Commitment to Certificate and Clinic systems

ASLA is concerned that some of the new features in the draft rules may signal or make it possible to depart from the fundamental role of certificates and community clinics as mainstays of legal aid services for the benefit of clients. Two notable examples are provisions relating to the assignment of counsel and the recognition of corporations as entity service providers.

Assignment of Counsel

ASLA understands and agrees that the rules need to protect the most vulnerable clients. We also agree that LAO may need the ability to assign counsel in exceptional circumstances. It is unclear, however, why an assignment could go to a salaried staff lawyer instead of a roster member and whether this signals a greater reliance on staff lawyers going forward. Staff lawyers would, in a sense, have the inside track, putting them in competition with certificate lawyers. The private bar is dedicated to clients, including hard-to-serve clients, and should remain the primary service provider. Unless there is a demonstrated gap, it would be unnecessary and duplicative to assign cases to staff lawyers. We also have some concern that the rules will make it onerous for counsel to resign from an assigned proceeding, even in cases where the lawyer has been fired or permitted to withdraw by the court.[6]

New Entity Service Providers

Under Rule 6, LAO can recognize broadly defined for-profit corporations as entity service providers. These corporations need only have one licensed lawyer or paralegal and do not have to be part of a roster or subject to roster quality standards. [7] This has the potential to undermine the certificate and clinic systems to the detriment of clients. Corporations could

[5] ESP3(6) and ESP5.
[6] C4(2) and (4)
[7] ESP2(3)(a)-(c)

underbid or undercut experienced, trusted service providers, leaving clients with diminished services from entities that are primarily focused on making a profit.

Theme 4: LAO's Discretion

It is concerning to see provisions in the draft rules that that would give LAO almost untrammeled discretion. Many are overbroad and lacking in specificity, allowing LAO to request any information or documents, consider any factors, or apply any conditions, etc. Examples are provided below in relation to legal aid eligibility, roster members, payment, and entity service providers.

Eligibility

The draft rules give LAO the power to refuse to consider an application for legal aid when the applicant (or a person applying for legal aid on their behalf) has provided incomplete information in the past or has been uncooperative or disruptive.[8] This is both vague and harsh. It could exclude the most vulnerable applicants, including people with mental health challenges who may appear uncooperative or disruptive or may lack the capacity to provide complete information.

Roster

Overly broad provisions include the ability to refuse an application for roster enrolment for any reason,[9] to impose any conditions or requirements on a roster member's authorization,[10] to remove a roster member for any reason,[11] and to assess the quality of roster member services based on any factor that LAO considers relevant.[12]

Other provisions lack specificity. For example, a roster member can be removed for sexual misconduct but the rules do not indicate how LAO would ascertain that such misconduct had occurred.[13] This also raises issues of due process for the roster member.

The provision enabling LAO to require someone who has retired from the roster to continue providing services under acknowledged certificates is both overly broad and unfair. This can interfere with a lawyer's ability to arrange for orderly succession planning

[8] EL5(1)(a)-(c)
[9] R3(7)
[10] R4(2)
[11] R15(3)
[12] Quality Services Schedule, s.4(2)
[13] R15(1)(c)

and could adversely impact clients should the retiring lawyer become unable to work due to illness.[14]

LAO's discretion to require roster members to provide any information or documents specified by LAO for an examination, audit, or investigation of an account is both overly broad and onerous.[15]

Payment

The "reasonable privately paying client of modest means" standard for defining the scope of what LAO will pay for is an example of codifying something that is no longer viewed as appropriate. For one thing, no person of modest means can afford to pay legal fees for a complex matter. The standard should be what a reasonable and competent lawyer would do to advance their client's interest. [16]

Entity Service Providers

Overly broad provisions include LAO's ability to determine an entity's risk level on the basis of any factors that LAO considers relevant[17] or to form an opinion without limitation that an entity service provider is failing to comply.[18] Provisions that are vague or lack specificity include LAO's ability to renew or decline to renew a service agreement solely on the basis of whether LAO wishes to do so[19], and to decide whether to provide support services to clinics and Indigenous legal services organization.[20]

Theme 5: Quality Assurance

Harmonization with the Law Society

ASLA recognizes that LAO should have standards and enforcement mechanisms to assure the quality of services provided. Its clients deserve no less. At the same time, LAO's rules must be harmonized with the Law Society's regulatory framework to avoid duplication or conflict between the two regimes and to ensure that nothing undermines the Law Society's excusive jurisdiction. Protocols are essential to ensure that the Law Society is advised when LAO discovers a breach that may require disciplinary action.

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[14] R17(4)
[15] P15(3)
[16] P2(1)(d), P5(2)(a), P6(3)(a), P14(4)b
[17] ESP3(3)(e) & (4)
[18] ESP19(1)(a)
[19] ESP5
[20] ESP15

Specific Provisions in the Draft Rules

The requirement for roster members to report breaches of vague professionalism standards – such as not being respectful and civil or communicating in a tone that is inconsistent with professional communication – is controversial and requires further consultation with the Law Society and the bar.[21] We also question whether it is appropriate to require lawyers to seek costs at their private retainer rate even though they are being paid less than that[22]. This would force lawyers to seek an amount that no court would award in light of the scales the courts use in awarding costs. Further, we are unsure what quality standards or performance indicators will be used to analyse and measure clinics' performance.

Theme 6: Equity

ASLA would like to see a strong statement about justice for racialized and other equity-seeking groups. There should be a clear expectation that LAO and its service providers will be proactive in that regard. This should be expressed as a fundamental principle that is front-and-centre in the rules.

We also note that the draft rules do not mention LAO's residual discretion to find an applicant eligible despite incomplete information. This can be necessary when a person is involuntarily hospitalized and completing an application for Legal Aid with the assistance of a rights adviser. Such discretion has been exercised historically as an accommodation of the disability of applicants and in recognition of the speed at which Consent and Capacity Board hearings are scheduled.[23]

Theme 7: Solicitor-Client Privilege

Under the draft rules, legal aid applicants must consent to the release of privileged information.[24] Further, roster members and entity service providers cannot refuse to provide privileged information if requested.[25] ASLA is concerned that these broad provisions could create potential vulnerabilities for clients and undermine the solicitor-client relationship, for example by creating a conflict between roster members and their clients.

In the case of clinics, LAO currently can only ask for information about clients when it is relevant to determining eligibility for legal aid. Clinics have accepted this as a reasonable

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[21] Professionalism Standards Schedule, s.2 & 3
[22] RC6(1)b
[23] EL3(2)
[24] EL8
[25] R7(3) and ESP7(2)

limit on confidentiality. The power for LAO to request information that may be privileged, without limiting the purposes or circumstance for making such requests, is another example of overbreadth and unfettered discretion.

Theme 8: Fairness and Simplicity of Accounts

ASLA members had hoped that the new rules would streamline billing processes and remove red tape. Unfortunately, the draft rules make things worse. We recognize LAO needs to have financial tools in place but they should not be so administratively onerous as to deter lawyers from taking on certificates.

The rules also need to be fair. As currently drafted, lawyers cannot bill for the entire time they are required to attend a hearing due to restrictions regarding waiting time and adjournments.[26] Further, the ability to bill for waiting time depends on arbitrary distinctions between different types of LAO-funded proceedings. Compare, for example, provisions regarding Indictable 2 offences[27] and Immigration and Refugee Matters[28].

It is also a concern that there will no longer be access to an assessment officer for the review of accounts. This means that LAO will have the final say on all accounts. Even if it was rarely used, the assessment remedy was a fair process that created an incentive for reasonableness and compromise.[29]

We are troubled by the numerous references to LAO's power to request any information or documents at its sole discretion.[30] Certain requested documents, such as court or tribunal records, may require time or expense for the lawyer to obtain.[31] The requirement of "proof and justification" of dockets for services provided is over-broad, and imposes an impossible onus on the lawyer. It is unclear how a lawyer could provide proof and justification for routinely required tasks such as conducting research; reviewing documents; preparing for client interviews; conducting client interviews; responding to telephone calls, or much of the work lawyers are required to do.[32] There is also a lack of clarity about what an examination, audit or investigation of accounts will entail.[33]

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[26] Fees and Disbursements Schedule, Part 1, s.6(a) and (b)
[27] Fees and Disbursements Schedule, Part 2, Table 3, Indictable 2 Offences.
[28] Fees and Disbursements Schedule, Part 3, Table 8, Civil Matters, Immigration and Refugee Matters.
[29] P17
[30] P2((1)(c)(iii), P5(2)(e), P5(3)(c), P5(5), P6(3)(d), P6(4)(c), P6(6), P7(1)(a)(vi), P7(2)(a)(iii), P8(3), P9(2), P11(4), P14(3)(d), P15(3), P15(5)(a) and (b), P17(5) and (7)
[31] P2(3), P7(1)(b), P15(1)(b), P15(3)(b)
[32] P2(3), P7(1)(d) and P15(3)(a)
[33] P15

We urge LAO to limit its billing, accounts and audit provisions to what is actually required for LAO to be accountable for the proper stewardship of its funding without imposing unfair requirements or undue red tape.

Conclusion

Since 1998, Ontario's legal aid model has been recognized by jurisdictions around the world as one of the best. ASLA is dedicated to doing our part to keep the system vital and sustainable. From various vantage points, ASLA members know the impact that legal aid has on clients in need of legal assistance. The rules are fundamentally important, and we would welcome the opportunity to engage in dialogue about them with Legal Aid Ontario.

Law Society of Ontario | Barreau de l'Ontario

Tab 7

Competence Task Force

Renewing the Law Society's Continuing Competence Framework

June 23, 2021

Committee Members

Sidney Troister (Chair)
C. Scott Marshall (Vice-Chair)
Ryan Alford
Joseph Chiummiento
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Executive Summary

The Law Society of Ontario's (the "Law Society's") Competence Task Force (the "Task Force") was established to examine regulatory approaches aimed at ensuring and enhancing the post-licensure competence of lawyers and paralegals. The objective of the Task Force is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs.

The work plan of the Task Force includes four phases: discovery, development, design, and implementation. The Task Force has completed the discovery phase and is currently in the development phase of its work. This has included the creation of a working definition of competence and the identification of themes and principles to inform the design and implementation phases.

It has been 20 years since the Law Society engaged in a comprehensive consideration of its core mandate to regulate the competence of lawyers and paralegals. The 2001 Professional Development Model of Competence (the "2001 Competence Model") established a foundation for the Law Society's contemporary approach to regulating post-licensure competence. Many of the components and building blocks of the 2001 Competence Model have evolved to keep pace with regulatory best practices and remain in place today. In addition, the introduction of mandatory continuing professional development ("CPD"), a comprehensive practice management review program, and increased attention around the importance of mentoring and coaching have all been notable developments in the competence landscape.

Currently, the Law Society's Professional Development and Competence division administers a suite of proactive, remedial programs that collectively support continuing competence. The Law Society continues to employ both quality improvement and quality assurance measures which collectively address competence through universal requirements and programs focussed on areas of risk. These measures include: the CPD requirement and programs; the Practice Management Helpline; the Coach and Advisor Network; practice assessment programs (practice reviews, spot audits, and practice audits); the Certified Specialist Program; and legal information and research supports.

The Task Force seeks to renew the Law Society's continuing competence framework for lawyers and paralegals and has identified the following principles to guide the development and design phases of its work:

- **Risk-based** – regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- **Flexible** – obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- **Feasible** – competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- **Forward-looking** – the competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.

- **Client-centred** – competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

In addition, the Task Force has identified a number of key themes that may inform new approaches to competence programs and requirements:

1. **Peer Support and Assessment** – Strong peer relationships that provide informal opportunities for learning and problem solving are integral to competence and ought to be nurtured through continued emphasis on mentoring and coaching. There may be value in exploring peer assessments as a mechanism for facilitating a supportive approach to assisting licensees with their practice management challenges.

2. **Adjustments to CPD Requirement** – The Law Society may wish to consider a reduced emphasis on mandatory CPD, or alternatively, more focussed requirements tied to licensee practice areas, experience levels, or identified areas of regulatory risk. While lawyer and paralegal compliance with the CPD requirement has been high since inception, there may be a need to consider the type and content of program that will be the most impactful in maintaining and enhancing competence.

3. **Guided Learning and Development** – Licensee recognition of and commitment to the need for ongoing professional development could be enhanced by learning roadmaps or curricula that lead to credentialing or a concrete achievement. While many practitioners can navigate their professional development on their own, some direction on required competencies for particular areas or stage of practice could further incentivize progression over the course of one's legal career.

4. **Baseline Competence and Beyond** – While the Law Society has a statutory duty to ensure baseline competence of lawyers and paralegals in the public interest, there may be value in having mechanisms to promote ongoing learning and for achieving and recognizing standards of excellence.

5. **Importance of Practice Reviews** – Practice reviews are a critical quality assurance tool for supporting licensee competence and addressing areas of regulatory risk. The Law Society may wish to increase the number of practice reviews conducted and to include practitioners who are more senior and may be more likely to exhibit competence deficiencies. In addition, licensees should be encouraged to reflect on their critical practice management obligations regularly.

6. **Enhanced Support for Soles and Smalls** – Sole practitioners and small firms play a vital access to justice function in Ontario, as they primarily serve individuals, families, and small businesses. Soles and smalls also face a higher risk of complaints and may have fewer resources. Lawyers and paralegals practising as soles or in small firms may benefit from focussed support and training. The Law Society would benefit from input as to what support would best ensure continuing and increasing competence.

7. **Technological Competence** – Advances in technology are transforming the way in which legal services are performed and delivered. As illustrated by the COVID-19 pandemic, licensees need to have basic competence in technology to meet the needs of

their clients and to function effectively. The Task Force considered how the Law Society can help prepare licensees for the rapidly changing future and discussed whether technological competence and security should be encouraged or mandated.

The input of the legal professions and other stakeholders is integral to the work of the Task Force at this juncture and will assist the Law Society in renewing its continuing competence framework to ensure that it is both meaningful and sustainable. A number of questions are included at the end of this document that might assist you in your consideration of the issues and in providing your input. The Law Society encourages lawyers, paralegals, legal organizations, members of the public and others to share their concerns, experiences, and ideas, including those that may not have been addressed in this report, in order to ensure that the Task Force has the benefit of a full range of options and approaches to supporting post-licensure competence. Feedback is requested by **November 30, 2021.**

1. Introduction

The Task Force is seeking feedback from lawyers, paralegals, legal organizations, and the public on regulatory approaches to ensuring lawyer and paralegal post-licensure competence. The input of the legal professions and other stakeholders is integral to the work of the Task Force and will assist the Law Society in renewing its continuing competence framework to ensure that it is both meaningful and sustainable.

A number of questions are included at the end of this document that might assist you in your consideration of the issues and in providing your input. Please provide your feedback by **November 30, 2021**.

2. Competence Task Force Mandate, Objectives and Work Plan

The Task Force was established to examine approaches aimed at ensuring and enhancing the post-licensure competence of lawyers and paralegals. The objective of the Task Force is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs. While licensee competence is intertwined with many aspects of Law Society regulation, the Task Force's mandate is focused on competence programs. For example, the Task Force's work excluded consideration of the definition of competence in the professional conduct rules and the requirement that each licensee complete one professionalism hour annually on matters of equality, diversity and inclusion.

The work plan of the Task Force includes four phases: discovery, development, design, and implementation. During the discovery phase, the Task Force engaged in exploratory discussions about present and future needs for a regulatory framework for continuing competence. Key activities have included:

- reviewing the Law Society's legislative authority for regulating competence of lawyers and paralegals;
- considering principles and rationales for regulating post-licensure competence;
- examining post-licensure competence programs and procedures currently operated or supported by the Law Society;
- studying literature and best practices regarding regulating competence;
- examining approaches to post-licensure competence by law societies in other jurisdictions and by other professional regulators; and
- considering outcomes of the Law Society's quality assurance and complaints processes and claims processed by the malpractice claims insurer for lawyers, Lawyers' Professional Indemnity Company ("LawPRO").

The Task Force is currently in the development phase of its work. This phase has included the creation of a working definition of competence and the identification of themes and principles to inform the design and implementation phases.

In the design phase, the Task Force will assess the effectiveness of the existing Law Society competence programs, consider which programs should continue, be modified or concluded, and evaluate alternative competence programs that would better achieve the regulatory objectives articulated. In particular, the Task Force will assess:

- the validity of the program's policy objectives;
- the effectiveness of the program in meeting its objectives;
- the efficiency of the program in delivering its outcomes;
- the cost-effectiveness of the program's structure for its purpose;
- the proportionality of the program's operations and regulatory obligations in relation to its purpose and objectives; and
- whether the Law Society is or continues to be the appropriate body to support the program.

As part of this work, the Task Force will identify any policy issues arising from these determinations that require review by a standing or other committee, including those related to equality, diversity and inclusion that would require consideration by the Equity and Indigenous Affairs Committee, and budgetary implications that would require consideration by the Audit and Finance Committee. Finally, in the implementation phase, the Task Force will finalize recommendations to Convocation and identify measures for ongoing monitoring and evaluation of the competence framework.

3. Legislative Authority for the Law Society's Competence Mandate

The Law Society's principal legislative mandate is to regulate the practice of law and the provision of legal services in Ontario by licensed lawyers and paralegals. It carries out this mandate by establishing standards and requirements for the competence and conduct of lawyers and paralegals, in the public interest.

The Law Society's mandate and foundational principles related to the regulation of competence are set out in ss. 4.1 and 4.2 of the *Law Society Act* (the "Act").[1]

> Function of the Society
>
> 4.1 It is a function of the Society to ensure that,
>
> (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
>
> (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.
>
> Principles to be applied by the Society
>
> 4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
> . . .

[1] *Law Society Act*, R.S.O. 1990, c. L.8.

5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

The concepts of universality and proportionality are embedded in the description of the Law Society's oversight functions in the Act: both lawyers and paralegals are to be subject to standards of professional competence and conduct, and the standards are to be reflective of the Law Society's regulatory goals. Other core principles that inform the Law Society's exercise of its competence mandate are the duty to facilitate access to justice for the people of Ontario, and the duty to protect the public interest, both of which are set out in the Act.

The Act also prescribes a standard of professional competence by defining what constitutes a failure to meet that standard:

> Interpretation – standards of professional competence
>
> 41 A licensee fails to meet standards of professional competence for the purposes of this Act if,
>
> (a) there are deficiencies in,
>
> (i) the licensee's knowledge, skill or judgement,
>
> (ii) the licensee's attention to the interests of clients,
>
> (iii) the records, systems or procedures of the licensee's professional business, or
>
> (iv) other aspects of the licensee's professional business; and
>
> (b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

This statutory definition is the basis for the Law Society's authority to conduct practice management reviews (practice reviews) of licensees, and to commence regulatory and disciplinary proceedings based on a failure to meet standards of professional competence, which are also authorized by the Act. The criteria, process, and outcomes for practice management reviews are further defined in the Law Society's by-laws, along with other parameters and processes related to the regulation of licensee professional conduct and competence obligations generally.

4. Duty of Competence

A commitment to ongoing learning and professional development is one of the hallmarks of a self-regulating profession. Most Canadian law societies introduced the concept of competence into their codes of professional conduct in the 1970s, when legislative amendments were first being introduced to explicitly recognize law society jurisdiction over the post-entry competence

of members.[2] Both the lawyers' Rules of Professional Conduct (at s. 3.1)[3] and the Paralegal Rules of Conduct (at s. 3.01)[4] (collectively, the "Rules") codify a duty of competence. The Rules require licensees to perform any legal services undertaken on a client's behalf to the standard of a competent lawyer or paralegal, placing responsibility on licensees to maintain and enhance their professional knowledge, skills, and judgement. The Rules also require licensees to not undertake any matter or task for a client without being competent to handle it. The ability to accurately self-assess one's knowledge, skills, and judgement at a point in time is a dimension of professional competence. The duty of competence is supported by extensive commentary that addresses how to make this assessment and provides guidance on effective client service and communication in a variety of contexts.

5. Working Definition of Competence

The Task Force's discussions during the discovery phase have generated many ideas about the core attributes of competence for licensees. Articulating what competence means for lawyers and paralegals, and the public they serve both today and, in the future, was one of the first key steps in the Task Force's process. The Task Force has developed the following working definition of competence:

- Competence is composed of knowledge, skills, abilities, behaviours, judgement and values. Competent performance requires the habitual and simultaneous application of many of these attributes.
- Competence, and the attributes that comprise it, is developmental. Methods of acquisition include:
    - education,
    - training,
    - practical experience,
    - remedial training prompted by the regulator or insurer,
    - peer observation and evaluation, and
    - mentorship and coaching.
- The practices and habits that define competence should be instilled at the beginning of one's career and must be continually maintained and improved throughout one's career.
- Competence requires self-awareness, self-reflection, and a growth mindset.
- Competence is dynamic and adaptive. It varies and evolves according to factors such as:
    - one's level of experience,

[2] Amy Salyzyn, "From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence" (2017), The Canadian Bar Review, Vol. 95 at 497, online: https://cbr.cba.org/index.php/cbr/article/view/4417/4408.
[3] https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-3
[4] https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct

- the nature and complexity of one's work, including one's level of specialization,
- one's practice circumstances,
- one's clients' needs and circumstances, and
- changes in the legal landscape.

- The manner in which clients experience legal services provided by a lawyer or paralegal is a critical dimension of competence. The notion of competence is informed by a consumer perspective.[5]

- Recognizing that competence is dynamic and context-dependent, any lawyer or paralegal will experience varying levels of competence according to the particular circumstances, and may find their professional knowledge, skills, and/or judgement challenged in some situations. Transitions to a new practice area, a long absence from practice, or working on unfamiliar issues or with an unfamiliar client are examples of such situations.

- Concepts of competence evolve with societal changes. For example, the pandemic has emphasized a facility with technology as a key element of competence.

6. Evolution of the Law Society's Continuing Competence Framework

a. Professional Development Model of Competence

While the Law Society has been regulating the legal profession for close to 225 years, its approach to ensuring the post-licensure, continuing competence of lawyers and paralegals has evolved through a series of policy decisions spanning the last 50 years or so. It was at this time, beginning in the 1980s, that law societies began to shift away from a "policing" model of regulating competence, which employs traditional disciplinary measures to address lawyer misconduct in response to client complaints, to a "coaching" model, which actively promotes competence using a range of preventative tools such as CPD, mentoring, and personal assistance services.[6] The policing model has been criticized because it is reactive in nature and focuses on adherence to minimum standards and on individual behaviour rather than institutional practices that may more effectively address deficiencies before they result in harm to clients.[7] In contrast, the coaching model offers a continuous, holistic, and tailored approach to licensee development and competence.[8]

Most notably, the Law Society undertook a comprehensive consultation on the implementation of its expanded competence mandate[9] in 2000-2001. In March 2001, Convocation adopted the 2001 Competence Model,[10] consisting of the following five components and building blocks:

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[5] Logan Cornett, "Think Like a Client" (2019), Institute for the Advancement of the American Legal System at 17, online: https://iaals.du.edu/sites/default/files/documents/publications/think_like_a_client.pdf.
[6] A. Salyzyn, *supra* note 2, at 497.
[7] *Ibid*.
[8] *Ibid*. at 508.
[9] In 1999, the Act was amended to give the Law Society authority to conduct practice reviews and conduct competence hearings.
[10] Professional Development and Competence Committee ("PD&C Committee"), March 22, 2001 Report to Convocation.

Components	Building Blocks
Practice Guidelines	Specific in nature, flexible in application; from “acceptable performance” to “best practices”; initial focus on practice management, technology, and client service issues then subsequently on substantive law; broad consultation in developing; widely published; continuously reviewed and updated.
Practice Enhancement	*Voluntary Self-Assessment Program* Self-evaluation guide to practice management approaches, including use of technology and client service issues; utilizes existing tools; available electronically and on paper; links to assistance where sought. *Voluntary Peer Assessment Pilot Project* Minimum two-year term; development of a voluntary office visit system to foster quality practice.
Continuing Legal Education (“CLE”)	*Post-Call Minimum Educational Expectations* Articulation of what amount of CLE lawyers are expected to undertake annually; reporting of annual CLE; accreditation of CLE programs. *Requirements for Requalification* Enhanced program; required number of mandatory CLE credits as constituent element of program.
Reformulated Specialist Designation	Combined developmental and experience recognition program; expanded areas of specialization including possible “generalist” designation; staged levels of specialization; mandatory educational component with enhanced province-wide accessibility.
Remedial Components Mandated by Statutes	Focused practice reviews; competence hearings.

The 2001 Competence Model established a foundation for the Law Society’s contemporary approach to regulating post-licensure competence. It consisted of programs and activities that were primarily voluntary in nature and reflected many of the attributes of a largely supportive, coaching model. The 2001 Competence Model also integrated both quality assurance and quality improvement measures. Quality assurance measures are focussed on ensuring compliance with established standards and include programs such as practice reviews and spot audits. Quality improvement measures address both compliance with established standards and involve tools designed to facilitate improved practices and professional development. CLE and the certified specialist designation are examples of quality improvement measures. It was recognized that both quality assurance and quality improvement measures are required to ensure that minimum standards and best practices are integrated into the regulation of competence.

While many of the components and building blocks of the 2001 Competence Model have evolved to keep pace with regulatory best practices and are in place today, some have been

discontinued due to lack of feasibility or the introduction of other initiatives. Selected subsequent policy developments related to competence are described below.

b. Practice Management Review Program

As noted above, practice reviews and competence hearings were introduced in the 2001 Competence Model as a result of the expansion of the Law Society's authority to regulate competence under the Act. This expanded authority was initially applied in cases where there were reasonable grounds to believe a lawyer was failing to meet standards of professional competence. The Law Society's quality assurance program began with focussed practice reviews prompted by serious client complaints, an order from the Law Society Tribunal, or other indications of significant competence deficiencies. While responsive to risk, this early version of the program was reactive and therefore subject to many of the limitations of the policing model.

In June 2006, the Law Society broadened its use of quality assurance measures with the introduction of an integrated practice review program that included both focussed practice reviews of licensees with demonstrated competence deficiencies and preventative practice reviews of licensees in their early, formative years of private practice. The preventative component was designed to identify practice management issues, which, if neglected, could have an adverse effect on the quality of legal services offered to the public. The program was structured to leverage the strengths of the Law Society's Spot Audit program, offering licensees guidance and information to fulfill their regulatory obligations and effectively manage their practices.

c. Regulation of Paralegals

On May 1st, 2007, the Law Society became responsible for regulating the paralegal profession as a result of amendments to the Act brought about by Bill 14, the *Access to Justice Act, 2006*.[11] The *Access to Justice Act* and the regulations made under it authorize the Law Society to educate and license paralegals and regulate their conduct. As a result of these developments, paralegals were brought into the Law Society's competence framework and are subject to the same professional obligations as lawyers.

d. Mandatory Continuing Professional Development

In 2011, the Law Society transitioned from the minimum expectation of CLE hours set out in the 2001 Competence Model to a requirement that all lawyers and paralegals who are practising law or providing legal services engage in CPD on an annual basis. In principle, the introduction of mandatory CPD was grounded in the view that it would provide licensees with a critical opportunity to reflect and act upon their professional development needs, leading to improved service to the public.[12] The Law Society's introduction of mandatory CPD had been on the horizon for several years and crystallized shortly after similar policies began to emerge in other Canadian law societies. These policies reflected the prevailing view that law societies have an interest in articulating a requirement for ongoing education and training, evidencing a regulatory commitment to the sustained competence of lawyers and paralegals. In addition, there was a

[11] *Access to Justice Act, 2006*, S.O. 2006, c. 21.
[12] PD&C Committee and Paralegal Standing Committee, February 25, 2010 Joint Report to Convocation at 10.

recognition that law societies were lagging in this area given that mandatory CPD was well established for lawyers in most of the US states and in many regulated professions in Canada.[13]

The concept of CPD is broader than CLE, encompassing traditional legal education and training programs as well as other developmental activities that enhance skills and knowledge in a professional context as practitioners mature. For example, teaching, writing, and mentoring are all eligible for CPD hours in Ontario. More information about the CPD requirement is provided in the section below.

7. The Law Society's Current Continuing Competence Framework

The Law Society's current approach to regulating the competence of lawyers and paralegals after licensure can be characterized as a hybrid of the coaching and policing models. The Law Society's Professional Development and Competence division administers a suite of proactive, remedial programs that collectively support continuing competence, while the Professional Regulation division investigates and prosecutes significant breaches of professional standards and licensee misconduct.

The main components of the Law Society's current competence framework are similar to those employed by Canadian law societies and other regulated professions[14] and build on the view informing the 2001 Competence Model, which is that most lawyers and paralegals are intrinsically committed to career-long professional development and learning. The competence framework aims to encourage lawyers and paralegals to proactively manage their competence as well as to address and prevent competence issues that lead to complaints and malpractice claims. The Law Society acknowledges that no single program or requirement can ensure the competence of lawyers and paralegals, which is both an ongoing, individual professional responsibility, and a significant regulatory endeavour. Like many other professional regulators, the Law Society continues to employ both quality improvement and quality assurance measures which function collectively to mandate and foster continuing competence through universal requirements and programs focussed on areas of licensee need and regulatory risk. Below is an overview of each of the programs in the Law Society's current continuing competence framework.

a. CPD Requirement

CPD is defined as the maintenance and enhancement of a licensee's professional knowledge, skills, attitudes, and professionalism throughout their career. The Law Society requires licensees who are practising law or providing legal services to complete 12 CPD hours each

[13] PD&C Committee and Paralegal Standing Committee, October 29, 2009 Joint Report to Convocation at 6.

[14] Zubin Austin and Paul A.M. Gregory, "Quality Assurance and Maintenance of Competence Assessment Mechanisms in the Professions: A Multi-Jurisdictional, Multi-Professional Review" (2017), Journal of Medical Regulation Vol. 103, No. 2, online: https://meridian.allenpress.com/jmr/article/103/2/22/80878/Quality-Assurance-and-Maintenance-of-Competence. The authors reviewed the competence-related policies and practices of regulatory bodies in the health and non-health professions in Ontario and other jurisdictions. Of the 91 regulatory bodies reviewed for the study, 42 were from Ontario. The other jurisdictions were British Columbia, Massachusetts, California, England, Qatar (Australia), and New Zealand. The study included professions such as law, dentistry, optometry, nursing, engineering, accounting and aviation. Many of the regulators employed similar tools to enhance competence, such as CPD requirements, self-assessments, and practice-based assessments and/or peer assessments.

year, including at least three professionalism hours and up to nine substantive hours. Professionalism CPD must be related to professional responsibility, ethics, or practice management.[15] As of 2021, at least one professionalism hour each year must relate to equality, diversity, and inclusion topics.[16]

The Law Society employs a partial accreditation model – only CPD programming that is eligible for professionalism hours must be accredited by the Law Society, while substantive CPD is not subject to accreditation. An accredited provider model was introduced in 2013 to allow providers who fulfill certain criteria to self-accredit their professionalism content.[17] Substantive CPD may address substantive or procedural law topics and/or related skills. Non-legal subjects may also be eligible for substantive hours if they are relevant to the licensee's practice and professional development.

From the outset of the introduction of mandatory CPD, the Law Society has taken a flexible approach to eligible activities, recognizing that learning preferences and practice circumstances vary for individual lawyers and paralegals. CPD hours can be obtained through a range of permissible activities and formats, many of which do not involve direct costs to licensees:[18]

- Participating in CPD programs or courses, either through live attendance, online completion, or reviewing archived programs;
- Participating in a college, university or other designated educational institution program, including LL.M. programs;
- Teaching law-related content (on a volunteer or part-time basis);
- Acting as a judge or coach in a mooting competition;
- Writing or editing law-related books or articles;
- Mentoring, being mentored, providing coach or advisor support, participating in a coach or advisor program, acting as an articling principal, or supervising a Law Practice Program work placement or paralegal field placement;
- Participating in study groups of two or more colleagues; or
- Participating in legal association meetings that involve both business related to the association and an educational session dealing with substantive, procedural or professionalism content.

Compliance with the CPD requirement has been very high since inception of the program. Over the past 10 years, approximately 99% of practising lawyers and 94% of practising paralegals fulfill the requirement on an annual basis. The majority of licensees participate in CPD programs to fulfill their annual requirements, with only a small percentage of other eligible learning

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[15] In the first two years of mandatory CPD, a separate "new licensee CPD requirement" applied to lawyers and paralegals in their first two years of practising law or provision of legal services. Under this requirement, new licensees had to take CPD which was specifically accredited for the early years of practice and integrated 25% professionalism content. This separate requirement was discontinued in 2013 in favour of a consistent approach for all licensees.

[16] Challenges Faced by Racialized Licensees Working Group, December 2, 2016 Report to Convocation, online: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions.

[17] As of May 19, 2021, there are 92 accredited providers.

[18] Activities such as teaching, writing, and the review of archived CPD programs are capped at 6 hours per year. These limits have been temporarily waived for 2020 and 2021 as an acknowledgement of the impacts of the pandemic on licensees' practices and schedules.

activities being reported. Licensees who do not complete annual CPD requirements are subject to administrative suspension.

b. Law Society CPD Programming

The Law Society has been providing professional development sessions and content since the 1940s in accordance with its longstanding mandate to ensure that lawyers (and more recently, paralegals) have access to quality educational offerings.[19] Over the years, the Law Society's CPD programming function has progressed to become a modern provider that incorporates adult education best practices, a competency-based approach, and digital platforms in virtually all aspects of its business. Since the introduction of mandatory CPD, the Law Society has designed its programs to support licensees in meeting the requirement by integrating relevant professionalism and substantive content. The Law Society has developed a catalogue of programs aimed at different sectors of the professions and in a variety of accessible formats that include comprehensive, multi-day summits in core practice areas as well as shorter, webcast only sessions that concentrate on emerging issues. The Law Society's CPD programs promote interactive learning through question and answer sessions, roundtable discussions, reflective exercises, and polling techniques.

In 2020, the Law Society delivered approximately 138 programs (78 live offerings and 60 live replays) to licensees on topics of substantive and procedural law, and professionalism, ethics, and practice management. An additional 142 free, archived programs were offered to support licensees in addressing the impacts of the COVID-19 pandemic. In 2020, there was a record attendance of 119,269 registrations across all Law Society CPD programs, including approximately 70,000 registrations for free offerings. Feedback from attendees at Law Society CPD programs indicates that lawyers and paralegals value the calibre of chairs and presenters, the relevance of program topics, and the convenient formats offered, including online programs of a variety of lengths that can be viewed live or on demand.

High quality CPD programming is also the domain of a number of legal associations, law firms, government and non-profit organizations, and for-profit legal education providers. Examples of these organizations include the Ontario Bar Association, the Canadian Bar Association, The Advocates' Society, the Federation of Ontario Law Associations, the Women's Law Association of Ontario, the Canadian Association of Black Lawyers, the Indigenous Bar Association, the Federation of Asian Canadian Lawyers, the South Asian Bar Association, and the Ontario Paralegal Association. There are many others. Together, through regional and national programs and learning events, these providers facilitate the maintenance of lawyers' and paralegals' knowledge and skills across a variety of practice areas.

c. Practice Management Helpline and Practice Resources

Established in 1978, the Practice Management Helpline ("Helpline") is a confidential telephone service that responds to inquiries from licensees about the Rules and other professionalism and practice management topics. The Helpline provides "just in time" guidance to enable licensees to make informed decisions, often at a critical juncture in a file or in their practices. The Helpline identifies key issues and principles to assist lawyers and paralegals in making decisions and finding solutions but does not provide advice or legal opinions. Helpline staff also develop and

[19] The Law Society department responsible for accrediting professionalism CPD programming operates independently of the Law Society department that develops and delivers CPD programming.

maintain professional responsibility and practice management resources that support licensees. The Law Society currently provides over 130 resources, in the forms of practice management guidelines, practice area resources, FAQs, checklists, articles, and other tools. These resources are published on the Law Society's website.

In 2020, the Helpline assisted with 9,887 inquiries from licensees – 80% of calls were from lawyers and 13% were from paralegals.[20] Approximately 70% of all Helpline inquiries come from sole practitioners or lawyers and paralegals working in small firms. In 2020, the Helpline created over 70 new resources specifically in response to COVID-19 to assist licensees with navigating the pandemic, attracting approximately 168,000 page views last year. Generally, feedback from licensees on the services and supports provided by the Helpline is very positive, particularly in light of the shift to more practically oriented resources and FAQs in recent years.

d. Coach and Advisor Network

The Coach and Advisor Network ("CAN") is the newest of the Law Society's competence programs. CAN was launched in 2016 after several years of consideration by a dedicated task force whose mandate was to explore the benefits of creating mentoring initiatives in the legal professions.[21] The goal of CAN has been to promote and facilitate a systematic approach to enhancement of lawyer and paralegal competence through peer connection and support, particularly for those in sole and small practices and new licensees who may not have ready access to colleagues and senior practitioners. [22]

CAN expands upon the traditional concept of mentoring through a more structured and focussed process. The program provides lawyers and paralegals with access to short-term, outcome-oriented relationships with volunteer coaches and advisors drawn from the professions. Advisors provide limited scope assistance with substantive and procedural law inquiries on client files and are typically 30 minutes in length. Coaches assist with longer term objectives involving the implementation of best practices over a 3-month period.

CAN is now in its fourth full year of operation. In 2020, CAN's roster of volunteer coaches and advisors grew to 389 licensees and facilitated a total of 654 engagements—509 advisor matches and 145 coaching matches. Ninety-two percent of licensees seeking coaching or advising services work in sole practitioner or small firm environments. Satisfaction ratings for both coaching and advising engagements have been consistently very high – in the 96-100% range.

e. Practice Assessments Programs

The Law Society's practice assessments programs are quality assurance tools focussed on proactively ensuring licensee compliance with established standards. They aim to promote competent service and to address risk within the professions. The Law Society operates three such programs: practice reviews (for lawyers), spot audits (for law firms), and practice audits (for paralegals).

The three programs involve a similar model: licensees are selected for a review and provided with information about the criteria and process that will be followed; a Law Society reviewer or

[20] The remaining 7% of Helpline calls were from non-licensees.
[21] Mentoring and Advisory Services Proposal Task Force, January 28, 2016, Final Report to Convocation.
[22] Sole practitioner and small firms are defined as those with 5 or fewer licensees.

auditor attends at the licensee's business to meet with the licensee, observe the licensee's practice arrangements, and review documentation; and the reviewer or auditor subsequently prepares a summary of findings and recommendations for consideration by the licensee. The vast majority of reviews and audits are remedial in nature and reveal minor deficiencies that can be addressed by the lawyer or paralegal through improved practices and procedures. A small percentage of review and audits disclose serious deficiencies and require escalation to the enforcement arm of the Law Society.

Licensee feedback on the programs has been consistently positive in recent years, with most lawyers and paralegals indicating that they found the process to be constructive and a beneficial tool for improving their practices. In addition, Law Society data indicates that practice reviews and spot audits may have a positive impact on the longevity of sole practices. Sole practices that have undergone practice reviews and spot audits are approximately 20% more likely to remain sole practices five years later, compared to soles who did not undergo a practice review or spot audit.

i. Practice Reviews

Practice reviews address an individual lawyer's practice management activities. Practice reviewers provide concrete suggestions on how to maintain a practice at optimal levels, with the objective of increasing efficiencies, ensuring high quality service, and improving lawyer and client satisfaction. Areas of review are set out in the Lawyer Basic Management Checklist and include: time management (e.g., recording/docketing of time, calendar control system); file management / client service (e.g., opening/closing file procedure, conflicts check, handling client complaints); financial management (e.g., fees and billings, trust accounts); communications (e.g., following client instructions, keeping client reasonably informed); technology and equipment (e.g., document templates, library and research resources); and professional management (e.g., training and support, managing articling students and support staff).

Since 2009, the program has been comprised of three main streams:

- random reviews of lawyers who were licensed within the past eight years,
- focussed reviews of lawyers selected for a review due to cause, and
- re-entry reviews of lawyers re-entering private practice as a sole practitioner or in a small firm after five years.

The majority of the Law Society's practice reviews are random. Random practice reviews are focussed on newly licensed lawyers working as sole practitioners and in small law firms, based on risk indicia informed by Law Society conduct proceedings and LawPRO malpractice outcomes.[23] The Law Society conducted 473 lawyer practice reviews in 2019;[24] 66% of initial reviews met the professional competence standards and 34% required a follow-up review. After follow-up reviews, 99% of practices met required standards. Over time, the percentage of lawyers exhibiting practice management deficiencies in most key areas has declined.

ii. Spot Audits

[23] Professional Development, Competence and Admissions Committee, June 22, 2006, Report to Convocation.

[24] As the number of practice reviews, spot audits, and practice audits in 2020 was significantly impacted by restrictions imposed by the COVID-19 pandemic, 2019 figures have been provided.

The spot audit program was established in 1998 to support the Law Society's adoption of a self-reporting model for trust accounting compliance. Designed as a proactive compliance and trust safety tool, spot audits measure the integrity of law firm financial filing, assess ongoing compliance with the Law Society's financial record-keeping requirements as defined in the by-laws and Rules, and identify serious misconduct related to financial matters. In particular, spot audits aim to help law firms correct minor deficiencies with their record-keeping practices before they lead to serious non-compliance or misconduct issues. Law Society auditors support law firms by reviewing and auditing financial records, answering questions, and providing guidance.

The spot audit program includes both random and focussed audits. The majority of spot audits are random and based on approved risk criteria, including firm size, area of practice, newly formed practices, and other factors. Unlike practice reviews and practice audits, spot audits are intended to reoccur on a cyclical basis. Based on these risk criteria, sole practitioners and two-lawyer firms with a real estate practice are audited every five years, other sole practitioners and small firms are audited every seven years, and mid-sized and large-sized firms are audited every 10 years.

Although a significant number of spot audits are selected at random based on the above criteria, there are other circumstances which may also trigger a focussed audit, including:

- Failure to file the Lawyer Annual Report with the Law Society;
- New formation of a law firm, to ensure the establishment and maintenance of appropriate practices and procedures;
- Identification of inadequacies during a previous spot audit;
- Information on the Lawyer Annual Report which suggests non-compliance with record-keeping requirements; and
- Referral of lawyers or law firms from another Law Society department.

In 2019, the Law Society conducted 1,309 spot audits.[25] Fifty-four per cent of law firms had either minor or no books and records deficiencies and 32% of law firms had deficiencies that were remediated to the Law Society's satisfaction. The remaining 14% of law firms had serious books and records deficiencies and required further monitoring and regulatory action.

iii. Practice Audits

Practice audits are combined financial audit and practice management reviews conducted on paralegal practices. Conducted randomly, they are proactive and preventative, combining the practice management elements of the lawyer practice review with the financial record-keeping auditing elements of the lawyer spot audit. Areas covered in a practice audit are set out in the Paralegal Basic Management Checklist and include the same practice management areas as the Lawyer Basic Management Checklist.

The Law Society conducted 195 paralegal practice audits in 2019;[26] 49% of initial audits met the professional competence standards and 51% required a follow-up audit. After follow-up audits, 97% of practices met these standards. Similar to lawyers above, the percentage of practice management deficiencies in most key areas has declined over time for paralegals.

[25] *Ibid*.
[26] *Ibid*.

f. Certified Specialist Program

The Certified Specialist program ("CSP") is a quality improvement program that recognizes lawyers who have met established standards of experience and knowledge requirements in one or more designated areas of law and have maintained exemplary standards of professional practice. The CSP also assists members of the public identify lawyers who can meet their needs for specialist legal assistance. The Law Society does not offer a CSP for paralegals.

Established in 1986, the program has had several governance and qualification models over the years.[27] The CSP is currently governed by a Certified Specialist Board, comprised of both Certified Specialists and benchers. There are 17 areas of specialization,[28] each extensively developed with support by lawyers recognized as exemplars within their practice areas. Areas of specialization that have been added in recent years include Indigenous legal issues and taxation law. Lawyers seeking a Certified Specialist designation must submit a detailed application, references, and other supporting documentation to demonstrate their eligibility. The designation requires a lawyer to have practised for a minimum of seven years, been substantially involved in their specialty area during five of the seven years (i.e. mastery of substantive law, practices, and procedures, and concentration of their practice in the specialty area), and to have complied with all professional standards. Applications for certification are assessed internally by the Law Society and, where criteria are met, presented to the Board for approval. Once certified, lawyers must complete an annual reporting and declaration process. Certified Specialists have the same annual CPD requirement as lawyers and paralegals. The CSP is not a limited licence program and does not restrict a lawyer's area of practice: Certified Specialists may practice in other areas of law and, conversely, lawyers who are not Certified Specialists may practice in any area that is covered by the program.

Certified Specialists are permitted to use "C.S." as a post-nominal designation. The C.S. designation is an indication to the public and to colleagues that the specialist has demonstrated elevated standards of competence in their area of practice. As of 2020, 784 lawyers were designated as Certified Specialists, representing approximately 2% of practising lawyers. The relatively low percentage of lawyers designated as specialists has been consistent for several years. The program has undergone at least two significant revisions since its inception to increase the level of participation, but this has not had a marked impact on enrollment. Despite the small number of Certified Specialists in the province, those that have committed the time and effort to become certified value being recognized in their field and the ability to distinguish themselves from others in their practice area. There is no data readily available about whether the public relies on the C.S designation in selecting legal counsel.

g. Great Library and Legal Information and Resource Network

The competent provision of legal services requires access to legal information. There are two aspects to the Law Society's legal information supports: the Great Library and the Legal

[27] Special Committee on Specialization, May 1985 Report to Convocation at 3.
[28] The 17 areas of specialization are: Bankruptcy and Insolvency Law; Citizenship and Immigration Law; (Immigration/Refugee Protection); Civil Litigation; Construction Law; Corporate and Commercial Law; Criminal Law; Environmental Law; Estates and Trusts Law; Family Law; Health Law; Indigenous Legal Issues (Rights and Governance/Litigation and Advocacy/Corporate and Commercial); Intellectual Property Law (Trademark/Patent/Copyright); Labour and Employment Law; Municipal Law; Taxation Law; Real Estate Law; and Workplace Safety and Insurance Law.

Information and Resource Network ("LIRN"). Qualitative data gathered in 2015 as part of a needs assessment on library system use and future need indicated that library users attach tremendous value to legal information and library services.[29] Legal information services play a key role in the development, maintenance and enhancement of licensee competence.

The Great Library has operated out of Osgoode Hall for over 160 years. It is open to the public, but funded by licensees, who are also its primary users. The library also serves licensing candidates, summer students, law clerks, law librarians, and others who are working for licensees. The Great Library supports the legal research and information needs of licensees by facilitating access to an extensive collection of print and electronic resources and by providing legal research assistance and instruction.

The Great Library's services are increasingly designed to leverage technology tools and platforms to make legal information accessible to licensees more broadly. Lawyers and paralegals across the province can use the Great Library's services in person and remotely, through online access as well as a mobile app. Lawyers who belong to local law associations can also access services through their county law libraries.

The Great Library provides 40 hours of reference support per week (via in person, telephone, email, or chat). In 2019, the Great Library's reference team answered 23,355 legal research questions and provided 32,560 pages of electronic research material to licensees.[30] In addition, there were over 120,000 visits to the AccessCLE database of free Law Society CPD program materials.

The second aspect of the Law Society's legal information supports is LIRN. LIRN, formerly known as LibraryCo, is a not-for-profit corporation responsible for centrally managing and coordinating the county law library system, comprised of 48 law libraries across Ontario. LIRN's mandate is ensuring that the Ontario county law library system's services and programs meet the evolving needs of licensees and the public. LIRN is guided in its work by the principles established by its shareholders: the Law Society, the Federation of Ontario Law Associations and the Toronto Lawyers Association. LIRN is funded by the Law Society fees collected from lawyers. LIRN is responsible for managing these funds through allocating finances and resources to individual libraries.

8. Regulatory Outcomes Informing the Continuing Competence Framework

As a modern regulator, the Law Society must strive to achieve a balanced and proportionate approach to ensuring that lawyers and paralegals maintain their professional knowledge, skills, and judgement over the course of their careers. To achieve this objective, the Law Society's renewal of its continuing competence framework should be evidence-based and informed by regulatory outcomes. Trends arising from the Law Society's competence and conduct streams, as well as from LawPRO,[31] provide valuable insight into areas of risk that should drive the design

[29] Transition from LibraryCo to LIRN Inc. (Legal Information and Resource Network), PD&C Committee Report, November 29, 2019 at 3.
[30] As use of the Great Library's services in 2020 was significantly impacted by the closure necessitated by the COVID-19 pandemic, 2019 figures have been provided.
[31] The Law Society does not have access to data about the malpractice claims experience for paralegals.

and implementation of effective competence regulation strategies.[32] Some key trends are outlined below.

a. Client Service and Practice Management Issues

Law Society data indicates that a significant portion of complaints against lawyers and paralegals raise client service issues such as a failure to communicate, failure to account, and failure to properly serve one's client. In 2019 and 2020, approximately 50% of complaints against licensees were related to service issues.[33] Similarly, between 1997 and 2007, malpractice claims against lawyers relating to communication deficiencies were among the most prevalent, constituting over one third of LawPRO claims, compared to inadequate investigation, errors of law, or clerical errors.[34] The trends observed during this period have continued: lawyer and client communication problems remain a key cause of malpractice claims across all practice areas.[35] Common communication errors include failure to follow client instructions, failure to properly inform the client about implications of actions, and poor communication with clients leading to confusion around roles and next steps.

Missed deadlines and time management-related errors are the second biggest cause of LawPRO claims at all sizes of firms.[36] Correspondingly, the proper use of written retainers and time dockets and the effective management of prospective clients are common areas of deficiency observed during Law Society practice reviews and practice audits.

b. Years Licensed

Law Society data indicates that newly licensed lawyers and paralegals have a lower risk of complaints and claims than other groups. Lawyers and paralegals who have been in private practice for five years or less received a proportionately lower percentage of complaints compared to those who have been licensed for more than five years. The risk of complaints increases for licensees who have been licensed for 10 or more years:[37]

- In 2020, 22% of lawyers in private practice were in their first five years of practice, and 16% of complaints against lawyers were made against this group. Similarly, in 2020, 11% of paralegals in private practice were in their first five years of providing legal services, and 6% of complaints against paralegals were made against this group.

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[32] For data on the most common causes of malpractice claims for major areas of practice, see the LawPRO fact sheets available at https://www.practicepro.ca/practice-aids/claims-fact-sheets/.
[33] Professional Regulation Division End of Year Report at 18.
[34] Between 1997 and 2007, close to 7,200 LawPRO claims involving communication errors totalled almost $22 million. See LawPRO, "practicePRO: Helping Lawyers for 10 Years" (2008), LawPRO Magazine, Vol. 7, no. 2 at 17, online: https://www.practicepro.ca/wp-content/uploads/2017/09/2008-08-lawpro-magazine7_2_aug2008.pdf.
[35] 2019 LawPRO Annual Report at 7, online: https://www.lawpro.ca/wp-content/uploads/2020/04/2019-Annual-Report.pdf and 2020 LawPRO Annual Report at 8, online: https://www.lawpro.ca/wp-content/uploads/2021/04/FINAL-AODA-2020-Annual-Report-WEB.pdf. Communication errors were the most common cause of claims in 2019. In 2020, communications errors and inadequate investigation tied for the cause of the highest number of claims.
[36] Between 1997 and 2007, missed deadlines and time management related errors represented 17.3 per cent of claims by count (3,566 claims) and 14.2 per cent of claims costs ($8.8 million). See LawPRO, *supra* note 34, at 18. In 2020, time management problems were the second most common cause of claims. See 2020 LawPRO Annual Report, *supra* note 35, at 8.
[37] 2020 Operations Report to Convocation, February 2021 at 60.

- In 2020, 23% of practising lawyers had been licensed for 11-20 years and represented 24% of complaints made against lawyers. Similarly, in 2020, 16% of paralegals in private practice had been licensed for 8-10 years and represented 19% of complaints made against paralegals.

The risk of complaints also increases with age. Lawyers and paralegals aged 50-64 experience a higher percentage and at a higher proportion of complaints compared to other groups. LawPRO trends align with Law Society complaints data, indicating that the risk of malpractice claims peaks when lawyers are 10-20 years out from licensure.

Notwithstanding this data, there are anecdotal indicators that some newly licensed lawyers and paralegals do not feel adequately prepared for the challenges of practising law and providing legal services, particularly in the context of running their own law firms. On average, approximately 12% of newly licensed lawyers and 20% of newly licensed paralegals enter into sole practice within 3 years of being licensed.

c. Sole Practitioners and Small Firms

The majority of law firms in Ontario are sole practices and small firms of five or fewer licensees. As of December 31, 2020, 94% of law firms and 99% of paralegal firms are comprised of five or fewer licensees. It is not surprising, then, that a significant portion of the Law Society's regulatory activity relates to lawyers and paralegals practising in these settings. However, licensees in small firm and sole practitioner settings are the subject of complaints at a higher proportion than licensees in other contexts.[38]

Lawyers and paralegals in these firms are engaging with many of the Law Society's competence supports and services at a higher rate than other practitioners, which is an indicator of need as well as motivation to comply with regulatory requirements and improve competence. As noted above, 74% of inquiries to the Helpline were from sole practitioners and small firms and 94% of participants in CAN are sole practitioners and licensees from small firms.

9. Renewing the Law Society's Continuing Competence Framework – Key Themes

In its exploratory discussions during the discovery phase, the Task Force reviewed regulatory outcomes and best practices for risks and opportunities that should be considered in the renewal of the Law Society's continuing competence framework. Through this review, the Task Force generated several important themes that may inform new approaches to competence programs and requirements.

a. Peer Support

The Task Force observed that strong relationships with colleagues and peers are a mainstay of competence for many practitioners. These informal work-related interactions, such as discussing strategy on a file with a trusted colleague, can facilitate just-in-time learning. The Task Force discussed the value of the supportive, collegial environment in local law associations where licensees – particularly those working in sole or small firm settings -- have a built-in network with whom they can exchange ideas and expand their knowledge. Networking and peer guidance provide vital "teachable moments" and should be encouraged and nurtured.

[38] *Ibid.* at 59.

The Task Force also highlighted mentoring as important in building competence. Traditional mentoring involves a relationship between a more seasoned practitioner who provides advice, information, and support to a less experienced mentee. CAN, which is facilitated by the Law Society, provides a version of mentoring that is oriented around shorter term coaching. Licensee uptake of coaching through CAN is progressing, but more slowly than originally envisioned. The Task Force queried how the Law Society might further bolster mentoring and coaching in the legal professions, both through law associations and its own services.

b. Peer Assessment

The 2001 Competence Model recommended the establishment of a formal, voluntary peer assessment pilot project that would include both practice management and substantive law issues.[39] A peer assessment is an assessment of a licensee's practice and work setting by another licensee. Volunteer lawyers were to be sought in different geographic locations, work and practice settings, and circumstances to form a roster of lawyers prepared to conduct, on a *pro bono* basis, confidential peer assessments and prepared to have their practices or work settings assessed. Peer assessment was viewed as a mechanism through which lawyers without demonstrated competence-related deficiencies could seek to validate the standards of their practice and benefit from suggestions for improvement from other lawyers. This proposal drew heavily from initiatives that were in place at the time in the regulated health professions. Convocation opted to defer development of the peer assessment pilot project until the plan for a voluntary self-assessment program, which was also one of the PD&C Committee's recommendations in the 2001 Competence Model, could be implemented and evaluated. Ultimately, the peer assessment program was not launched.

The Task Force expressed interest in once again exploring the viability of peer assessments as a mechanism for improving competence. Peer assessments are unique in that they leverage the supportive aspects of coaching and mentoring while capitalizing on the expertise of lawyers and paralegals to assist other licensees with their legal and practice management challenges.

c. Adjustments to the CPD Requirement

The Task Force considered whether the CPD requirement in its current, broad form meaningfully supports competence. High levels of licensee compliance and positive engagement in programs provided by the Law Society and a range of legal associations and education providers suggests that CPD is valued by lawyers and paralegals both as a means to improve their legal knowledge and as an important networking opportunity. Likewise, a recent study of quality assurance and competence assessment mechanisms across various professions and jurisdictions found that in all jurisdictions and professions examined, continuing education or CPD were explicitly identified as critical to the maintenance of professional competence.[40] All 91 regulatory bodies reviewed for the study required practitioners to complete some form of life-long learning to be eligible for annual renewal of registration.[41] However, the study also noted that notwithstanding the widespread adoption of a continuous learning requirement across professions and geographic regions, there is little hard evidence to support the practice or any correlation to positive, practice-related outcomes.[42] Given this, and the fact

[39] PD&C Committee March 22, 2001 Report, *supra* note 10, at 37-38.
[40] Z. Austin and P. Gregory, *supra* note 14, at 25.
[41] *Ibid*.
[42] *Ibid*. at 26.

that mandatory CPD has been in place for 10 years in largely the same format, the Task Force queried whether a reduced emphasis on mandatory CPD or a change in format should be considered. The Task Force also contemplated whether there should be more focussed CPD requirements such as those tied to practice area, experience levels, or identified areas of risk. More specific CPD requirements could serve to shift the focus from mere compliance with minimum CPD hours to a requirement that is connected to the licensee's practice and therefore more impactful on competence.

d. Guided Learning and Development

Another key theme was that licensees should be guided in their professional development. Learning roadmaps or curricula that lead to credentialing or a concrete achievement could help to incentivize practitioners to enhance their learning. While many practitioners can navigate their own professional development and do not require regulatory intervention, others would benefit from assistance. Direction on the required competencies or the creation of practice standards according to stage and area of practice could ensure lawyers and paralegals are actively improving their competence in a manner that reduces the risk of errors or deficiencies while they progress in their careers.

e. Baseline Competence and Beyond

The Law Society has a statutory duty to ensure baseline competence of lawyers and paralegals in the public interest. Given that our governing legislation recognizes that standards of learning and competence are related to the legal services provided, the Law Society recognizes that as licensees take on increasingly complex retainers, their competence will need to be enhanced. Related to guided learning and development was the question of whether there should be a mechanism for achieving and recognizing standards of excellence. On the one hand, it was argued that a focus only on baseline standards would fail to incentivize practitioners to achieve higher levels of competence. On the other hand, it was maintained that a minimum level of competence needs to be achieved first and should be the initial goal for all practitioners. Notably, the CSP is aimed at recognizing the excellence of lawyers in certain areas of law but has consistently had low participation rates. The Task Force acknowledged that both baseline competence and excellence are important and may form elements of a continuing competence framework.

f. Importance of Practice Reviews

Practice reviews are a critical quality assurance tool for supporting licensee competence. Practice reviews address an individual lawyer or paralegal's practice management activities and are focussed on the areas of risk that most frequently lead to complaints, discipline and negligence. The Task Force was of the view that the Law Society should consider increasing the number of practice reviews it performs to ensure that more licensees benefit from this supportive intervention. The Task Force also queried whether practice reviews should be conducted on lawyers and paralegals who are more senior, rather than in their early years of practice, because this is when the risk of competence deficiencies begins to manifest. In addition, whether a practice review is conducted or not, licensees should be encouraged to reflect on their regulatory requirements on an annual basis and there should be self-assessment tools that facilitate this reflective practice.

g. Enhanced Support for Sole Practitioners, Small Firms and Individuals Transitioning to Independent Practice

As sole practitioners and small firms provide the overwhelming majority of legal services to individuals, families, and very small businesses, these practices are crucial in providing access to justice[43] and their viability should be a priority for the Law Society. Sole practitioners and those in small firms face a higher risk of complaints and may have fewer resources and more limited access to training and assistance. Lawyers and paralegals practising as sole practitioners or in small firms and individuals transitioning to independent practices may benefit from additional support to help meet their regulatory requirements and to address topics that are not currently the focus of law school or paralegal education and traditional CPD programming, such as the business of law. Special investments in sole practitioners and small firms that do not create additional regulatory burdens may be warranted.[44] The Task Force considered whether new licensees who are entering sole practice or joining a small firm, or licensees who are transitioning to independent practice, should be encouraged or required to take CPD specifically designed to address their unique needs.

h. Technological Competence

Advances in technology are transforming the way in which legal services are performed and delivered. Now more than ever, licensees need to have basic competence in technology to meet the needs of their clients and to function effectively. The COVID-19 pandemic has illustrated the importance of basic technological skills to communicate effectively with clients, create practice efficiencies, and participate in court and tribunal proceedings as they modernize their platforms.

The Task Force considered how the Law Society can help prepare licensees for the rapidly changing future and discussed whether technological competence should be encouraged or mandated. It was noted that the level of tech competence required to effectively serve clients may depend on the practice area, with certain practice areas and contexts relying more heavily on technology. Likewise, licensee facility with technologies is not uniform and varies significantly. The Law Society offers some resources in this area, including Technology Practice Tips, a series of podcasts that provide a convenient way to learn about the latest technology issues, and a technology guideline that sets out professional responsibility considerations when using technology, but more attention should be paid to this area. Regardless of whether technological competence is mandated or encouraged, the Task Force was of the view that timely and responsive supports relating to tech competence will continue to be critical, and that lawyers and paralegals would be best served by practical training and resources that facilitate compliance with best practices.[45]

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[43] Jordan Furlong, "Lawyer Licensing and Competence in Alberta" (2020) at 60, online: https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf

[44] *Ibid.*

[45] The Technology Task Force was formed in 2018 to consider the role of technologies in the delivery of legal services, examine the Law Society's role as a regulator in a changing, tech-enabled environment, and explore how the Law Society can encourage innovation in the professions through the use of tech to better deliver legal services. The Technology Task Force's proposal for a five-year regulatory sandbox pilot project for innovative technological legal services ("ITLS") was approved by Convocation in April 2021. The sandbox will allow ITLS benefitting the public to be test run in a safe, controlled environment without incurring regulatory consequences. The sandbox is expected to inform Convocation about the market interest in ITLS, how they are serving clients and their impact on client expectations of service. This evidence will aid future policy development, including policies relating to technological competence.

10. Principles for an Effective Continuing Competence Framework

Given the outcomes and themes described above, the Law Society seeks to renew its continuing competence framework to address the learning and professional development needs of lawyers and paralegals over the next decade. Based on the work done thus far, the Task Force identified the following principles to guide the development and design phases of its work:

- **Risk-based** – Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- **Flexible** – Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- **Feasible** – Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- **Forward-looking** – The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- **Client-centred** – Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences (including differences in backgrounds, education, income levels, abilities and cultures) that may impact communications with clients and the way in which legal advice and services are provided.

11. Questions

The Task Force is seeking input on the following questions by **November 30, 2021**. The input of the legal professions and other stakeholders is critical in helping the Law Society to renew its continuing competence framework. The Law Society has not made any decisions about the structure or content of the updated competence regime. We are open to the suggestions and feedback of all interested parties and we encourage and appreciate your input. Stakeholders may respond to some or all of the questions.

1. **Working definition of competence**

   Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

2. **Principles for an effective competence regime**

   Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

   a) *Risk-based* - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.

   b) *Flexible* - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.

c) *Feasible* - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.

d) *Forward-looking* - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.

e) *Client-centred* - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

3. Components of continuing competence framework

Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

a) CPD requirement and programs

b) The Practice Management Helpline

c) Coach and Advisor Network

d) Practice assessment programs (practice reviews, spot audits, and practice audits)

e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

4. **Renewing the Law Society's continuing competence framework**

Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how?

Some examples are:

<u>CPD</u>

a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?

b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?

c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?

e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?

f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

   i. all licensees,
   ii. new licensees,
   iii. licensees in sole or small firm practice,
   iv. licensees transitioning to sole practice?

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

5. Additional aspects of competence regime

Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Law Society of Ontario | Barreau de l'Ontario

Onglet 9

Groupe d'étude sur la compétence

Renouveler le cadre de compétence continue du Barreau

Le 23 juin 2021

Membres du Comité

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C. Scott Marshall (vice-président)
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Résumé

Le Groupe d'étude sur la compétence (ci-après « groupe de travail ») du Barreau de l'Ontario (ci-après « Barreau ») a été créé pour passer en revue les approches règlementaires adoptées pour assurer le maintien et l'amélioration de la compétence des avocates, avocats et parajuristes après l'obtention du permis d'exercice. L'objectif du Groupe d'étude est de recommander un cadre règlementaire efficace, proportionné et équilibré pour assurer la compétence continue tout au long de la carrière en droit, et ce, afin de protéger l'intérêt public et de répondre aux besoins juridiques du public.

Le plan de travail du Groupe d'étude comprend quatre phases : découverte, développement, élaboration et mise en œuvre. Le Groupe d'étude a terminé la phase de découverte et en est présentement à la phase de développement. Dans le cadre de cette phase, nous avons établi une définition pratique de la compétence et déterminé les thèmes et les principes qui orienteront les phases d'élaboration et de mise en œuvre.

Il y a 20 ans, le Barreau a entrepris une réflexion approfondie sur son mandat principal, soit la règlementation de la compétence des avocates, avocats et parajuristes. Le modèle de compétence de 2001 pour le perfectionnement professionnel (ci-après « modèle de compétence de 2001 ») a jeté les bases de l'approche contemporaine adoptée par le Barreau pour règlementer la compétence après l'obtention du permis d'exercice. Bon nombre des composantes et des éléments constitutifs du modèle de compétence de 2001 ont évolué pour refléter les pratiques règlementaires reconnues comme exemplaires et sont encore utilisés aujourd'hui. En outre, la mise en place d'un programme de formation professionnelle continue (FPC) obligatoire et d'un programme complet d'inspection professionnelle, et l'amélioration des occasions de mentorat et d'encadrement ont suscité des avancées notables dans le paysage de la compétence.

À l'heure actuelle, la Direction du perfectionnement professionnel du Barreau administre toute une gamme de programmes proactifs et correctifs qui, ensemble, cherchent à favoriser la compétence continue. Le Barreau continue d'appliquer des mesures d'amélioration et d'assurance de la qualité qui, collectivement, assurent la compétence continue. Pour ce faire, le Barreau mise entre autres sur des exigences universelles et des programmes adaptés aux risques cernés. Ces mesures comprennent : la FPC obligatoire et les programmes de FPC ; la Ligne d'aide à la gestion de la pratique ; le Réseau d'encadrement de la pratique ; les programmes d'évaluation de la pratique (inspections professionnelles, vérifications ponctuelles et vérifications des pratiques) ; le Programme d'agrément des spécialistes ; et les ressources d'information et de recherche juridiques.

Le Groupe d'étude vise à renouveler le cadre de compétence continue du Barreau. Il a établi les principes suivants pour guider ses travaux pendant les phases de développement et d'élaboration. Le cadre de compétence actualisé doit être :

- **Fondé sur les risques** — Les activités règlementaires devraient idéalement se concentrer sur les domaines qui présentent les plus grands risques pour le public, en se fondant sur des données probantes.
- **Flexible** — Les obligations doivent tenir compte de toute l'étendue des domaines de pratique, des contextes de pratique, des zones géographiques, des stades de pratique

et des autres facteurs contextuels qui ont une incidence sur la situation professionnelle des avocates, avocats et parajuristes.

- **Réalisable** — Les exigences de compétence doivent être efficaces par rapport au cout et doivent être réalisables tant pour l'autorité de règlementation que pour les titulaires de permis. Elles ne doivent pas non plus imposer des fardeaux déraisonnables.

- **Tourné vers l'avenir** — Le cadre de compétences doit être tourné vers l'avenir afin qu'il puisse s'adapter aux grands changements qui vont continuer de s'opérer dans le marché des services juridiques.

- **Axé sur le client** — Les exigences de compétence doivent tenir compte des besoins, des objectifs et des points de vue des clients quant à ce qui constitue une prestation compétente des services juridiques. Il faut garder à l'esprit les différences de parcours, les différences culturelles et les différences sur le plan du revenu et des capacités qui peuvent avoir une incidence sur la communication avec les clients et sur la façon de fournir des conseils et des services juridiques.

Le groupe d'étude a également recensé quelques grands thèmes qui pourraient inspirer de nouvelles approches pour les exigences et programmes relatifs à la compétence :

1. **Soutien et évaluation par les pairs** — Les relations fructueuses avec les pairs offrent des occasions informelles d'apprentissage et de résolution de problèmes, et font partie intégrante de la compétence. Ces relations devraient être encouragées en mettant l'accent sur le mentorat et l'encadrement. Il pourrait être utile d'explorer la possibilité de recourir aux évaluations par les pairs pour aider les titulaires de permis à relever les défis associés à la gestion de la pratique.

2. **Ajustements aux exigences de FPC** — Le Barreau pourrait envisager de réduire l'importance accordée à la FPC obligatoire ou bien d'imposer des exigences plus ciblées selon les domaines de pratique, l'expérience des titulaires ou les domaines qui présentent des risques règlementaires. Bien que les avocates, avocats et parajuristes affichent depuis le début un degré élevé de conformité à l'exigence de FPC, il serait peut-être utile de réfléchir à la question de savoir quel type de programme serait le plus efficace pour maintenir et améliorer les compétences, et quel devrait en être le contenu.

3. **Apprentissage et perfectionnement dirigés** — Le Barreau pourrait peut-être renforcer l'importance que les titulaires de permis accordent au perfectionnement professionnel continu et leur intérêt à cet égard en établissant des feuilles de route ou des programmes de formation menant à l'obtention de titres ou d'attestations ou à une réalisation concrète. Bien que de nombreux praticiens se chargent très bien de leur propre perfectionnement professionnel, il serait peut-être intéressant d'encourager une certaine progression de la compétence tout au long de la carrière en droit en fournissant des orientations sur les compétences requises pour certains domaines ou à certains stades de pratique.

4. **Compétences de base et au-delà** — Bien que, afin de protéger l'intérêt public, le Barreau ait l'obligation légale de veiller à ce que les avocates, avocats et parajuristes aient les compétences de base requises, il pourrait être utile de se doter de certains mécanismes pour encourager l'apprentissage continu, pour assurer l'atteinte de certaines normes d'excellence et pour reconnaitre l'atteinte de ces normes.

5. **Importance des inspections professionnelles** — Les inspections professionnelles sont un outil d'assurance de la qualité qui joue un rôle primordial en permettant de vérifier la compétence des titulaires de permis et d'agir sur les domaines qui présentent des risques règlementaires. Le Barreau pourrait avoir intérêt à augmenter le nombre d'inspections professionnelles effectuées et à porter une attention accrue aux praticiens plus expérimentés qui pourraient être plus susceptibles d'afficher des lacunes en matière de compétence. De plus, le Barreau devrait encourager les titulaires de permis à vérifier régulièrement que leur pratique respecte leurs obligations critiques.

6. **Soutien accru pour les praticiens exerçant seuls et en petit cabinet** — Les praticiens exerçant seuls et en petit cabinet jouent un rôle essentiel dans l'accès à la justice en Ontario, car ils servent principalement les particuliers, les familles et les petites entreprises. Les praticiens exerçant seuls et en petit cabinet sont également plus susceptibles de faire l'objet de plaintes et ont souvent moins de ressources. Les avocates, avocats et parajuristes qui exercent seuls ou en petit cabinet pourraient bénéficier d'un soutien et d'une formation adaptés à leurs besoins particuliers. Le Barreau souhaite obtenir des commentaires sur la question de savoir quels soutiens seraient les plus efficaces pour maintenir et développer les compétences.

7. **Compétence technologique** — Les avancées technologiques sont en train de transformer la prestation des services juridiques et la façon dont les praticiens effectuent leur travail juridique. Comme l'a démontré la pandémie de COVID-19, les titulaires de permis doivent posséder certaines compétences technologiques de base pour répondre aux besoins de leurs clients et pour fonctionner efficacement. Le groupe d'étude a réfléchi à la façon dont le Barreau pourrait aider les titulaires de permis à faire face aux changements rapides qui se profilent à l'horizon et à la question de savoir si la compétence technologique et les connaissances relatives à la sécurité doivent être encouragées ou imposées.

Les commentaires des membres des professions juridiques et des autres parties intéressées sont d'une importance capitale pour les travaux du groupe d'étude à ce stade et aideront le Barreau à renouveler son cadre de compétence continue et à s'assurer qu'il soit à la fois utile et durable. À la fin du présent document, vous trouverez une série de questions pour orienter votre réflexion sur les questions à l'étude et vous aider à formuler vos commentaires. Le Barreau encourage les avocates, avocats, parajuristes, organisations du secteur juridique, membres du public et autres parties intéressées à lui faire part de leurs commentaires, de leurs expériences et de leurs idées, y compris celles qui n'ont pas été mentionnées dans le présent rapport, afin que le groupe d'étude ait le plus d'information possible pour réfléchir aux options et approches qui permettraient de favoriser la compétence continue après l'obtention du permis d'exercice. Nous vous prions d'envoyer vos commentaires **d'ici le 30 novembre 2021.**

1. Introduction

Le groupe d'étude souhaite obtenir les commentaires des avocates, des avocats, des parajuristes, des organisations du secteur juridique et du public sur les approches règlementaires qui permettraient d'assurer la compétence continue des avocates, avocats et parajuristes après l'obtention du permis d'exercice. Les commentaires des membres des professions juridiques et des autres parties intéressées sont d'une importance capitale pour la suite des travaux du groupe d'étude et aideront le Barreau à renouveler son cadre de compétence continue et à s'assurer qu'il soit à la fois utile et durable.

Vous trouverez à la fin du présent document une série de questions pour orienter votre réflexion sur les questions à l'étude et vous aider à formuler vos commentaires. Prière d'envoyer vos commentaires **d'ici le 30 novembre 2021.**

2. Mandat, objectifs et plan de travail du Groupe d'étude sur la compétence

Le groupe d'étude a été formé pour passer en revue les approches règlementaires adoptées pour assurer le maintien et l'amélioration de la compétence des avocats et parajuristes après l'obtention du permis d'exercice. L'objectif du groupe d'étude est de recommander un cadre règlementaire efficace, proportionné et équilibré pour assurer la compétence continue tout au long de la carrière en droit, et ce, afin de protéger l'intérêt public et de répondre aux besoins juridiques du public. Bien que la compétence des titulaires de permis soit encadrée par de nombreux règlements du Barreau, le mandat du groupe d'étude porte surtout sur les programmes de compétence. Par exemple, le groupe d'étude ne s'est pas penché sur la définition donnée à la compétence dans les codes de déontologie ni sur l'heure de professionnalisme sur l'équité, la diversité et l'inclusion devant être effectuée chaque année.

Le plan de travail du groupe d'étude comprend quatre phases : découverte, développement, élaboration et mise en œuvre. Durant la phase de découverte, le groupe d'étude a eu des discussions exploratoires sur les besoins actuels et futurs en ce qui concerne le cadre règlementaire sur la compétence continue. Voici les principales activités réalisées par le groupe d'étude :

- Se pencher sur le pouvoir législatif du Barreau en ce qui concerne la règlementation de la compétence des avocats et parajuristes.
- Examiner les principes associés à la règlementation de la compétence après l'obtention du permis et les raisons justifiant la règlementation de la compétence.
- Passer en revue les programmes et les procédures liés à la compétence post-permis présentement administrés ou soutenus par le Barreau.
- Étudier la littérature et les pratiques exemplaires sur la règlementation de la compétence.
- Examiner les approches adoptées par d'autres barreaux et organismes de règlementation professionnelle en ce qui concerne la compétence post-permis.
- Analyser les résultats des processus du Barreau en matière d'assurance de la qualité et de traitement des plaintes, et les réclamations soumises à la Compagnie d'assurance responsabilité civile professionnelle des avocats (« LAWPRO »), la compagnie d'assurance qui traite les réclamations pour faute professionnelle.

Le groupe d'étude en est présentement à la phase de développement. Dans le cadre de cette phase, nous avons établi une définition pratique de la compétence et déterminé les thèmes et les principes qui orienteront les phases d'élaboration et de mise en œuvre.

Pendant la phase d'élaboration, le groupe d'étude examinera l'efficacité des programmes de compétence actuels du Barreau, se penchera sur la question de savoir quels programmes devraient être maintenus, modifiés ou abandonnés, et évaluera d'autres programmes de compétence qui permettraient de mieux atteindre les objectifs règlementaires. Plus précisément, le groupe d'étude évaluera, pour chaque programme :

- si les objectifs poursuivis par les politiques de programme sont valides ;
- si le programme atteint ses objectifs efficacement ;
- si le programme produit les résultats voulus ;
- si la structure du programme est rentable vis-à-vis des objectifs ;
- si les activités de programme et les obligations règlementaires sont proportionnelles à l'objet et aux objectifs du programme ;
- si le Barreau est toujours l'organisme approprié pour administrer le programme.

Dans le cadre de cette analyse, le groupe d'étude recensera les questions de politique qui émaneront de ces déterminations et qui devront être soumises à un comité, permanent ou autre, y compris les questions de politique liées à l'égalité, à la diversité et à l'inclusion qui devraient être soumises au Comité sur l'équité et les affaires autochtones, et les répercussions budgétaires qui devraient être soumises au Comité d'audit et de finance. Enfin, lors de la phase de mise en œuvre, le groupe d'étude finalisera ses recommandations à l'intention du Conseil et recommandera des mesures pour la surveillance et l'évaluation continues du cadre de compétence.

3. Autorité législative conférant au Barreau le mandat de règlementer la compétence

Le mandat législatif principal du Barreau est de règlementer la pratique du droit et la prestation de services juridiques en Ontario par les avocats et parajuristes titulaires de permis. Le Barreau s'acquitte de ce mandat en établissant des normes et des exigences qui régissent la compétence et la conduite des titulaires de permis afin de protéger l'intérêt public.

Le mandat du Barreau et les principes fondamentaux liés à la règlementation de la compétence sont énoncés aux articles 4.1 et 4.2 de la *Loi sur le Barreau* (ci-après « la Loi »)[1].

> **Fonction du Barreau**
>
> 4.1 L'une des fonctions du Barreau est de veiller à ce que :
>
> a) d'une part, toutes les personnes qui pratiquent le droit en Ontario ou fournissent des services juridiques en Ontario respectent les normes de formation, de compétence professionnelle et de déontologie qui sont appropriées dans le cas des services juridiques qu'elles fournissent ;
>
> b) d'autre part, les normes de formation, de compétence professionnelle et de déontologie relatives à la prestation d'un service juridique particulier dans un

[1] *Loi sur le Barreau*, L.R.O. 1990, chap. L.8.

domaine particulier du droit s'appliquent également aux personnes qui pratiquent le droit en Ontario et à celles qui fournissent des services juridiques en Ontario.

Principes applicables au Barreau

4.2 Lorsqu'il exerce ses fonctions, obligations et pouvoirs en application de la présente loi, le Barreau tient compte des principes suivants :
...

5. Les normes de formation, de compétence professionnelle et de déontologie applicables aux titulaires de permis ainsi que les restrictions quant aux personnes qui peuvent fournir des services juridiques donnés devraient être fonction de l'importance des objectifs règlementaires visés.

Les concepts d'universalité et de proportionnalité font partie intégrante des fonctions de surveillance du Barreau telles qu'elles sont décrites dans la Loi : les avocats et les parajuristes sont soumis à des normes de compétence professionnelle et de déontologie, et ces normes doivent refléter les objectifs règlementaires du Barreau. Les autres principes fondamentaux énoncés dans la Loi qui guident le Barreau dans l'exercice de son mandat de compétence sont le devoir de faciliter l'accès à la justice pour la population de l'Ontario et le devoir de protéger l'intérêt public.

La Loi prescrit également une norme de compétence professionnelle en définissant ce qui constitue un manquement à cette norme :

Interprétation — normes de compétence professionnelle

41 Un titulaire de permis ne respecte pas les normes de compétence professionnelle pour l'application de la présente loi si les conditions suivantes sont réunies :

a) d'une part, il existe des lacunes sur l'un ou l'autre des plans suivants :

(i) ses connaissances, ses habiletés ou son jugement,

(ii) l'attention qu'il porte aux intérêts de ses clients,

(iii) les dossiers, les systèmes ou les méthodes qu'il utilise pour ses activités professionnelles,

(iv) d'autres aspects de ses activités professionnelles ;

b) d'autre part, ces lacunes soulèvent des inquiétudes raisonnables sur la qualité du service qu'il offre à ses clients.

Cette définition donnée dans la Loi est ce qui confère au Barreau le pouvoir de procéder à des inspections de la gestion de la pratique (inspections professionnelles) et de prendre des mesures règlementaires et disciplinaires si un titulaire de permis ne respecte pas les normes de compétence professionnelle. Les critères, le processus et les résultats des inspections de la gestion de la pratique sont plus amplement définis dans les règlements administratifs du Barreau, de même que les autres paramètres et processus liés à la règlementation des

obligations des titulaires de permis en matière déontologie et de compétence professionnelle en général.

4. Devoir de compétence

L'importance accordée à l'apprentissage continu et au perfectionnement professionnel est l'une des grandes caractéristiques des professions autorèglementées. Le concept de compétence a fait son apparition dans les codes de déontologie de la plupart des barreaux au Canada dans les années 1970, époque où l'on a commencé à apporter des modifications législatives reconnaissant explicitement qu'il revenait aux barreaux de règlementer la compétence des membres après leur admission au barreau[2]. Le Code de déontologie des avocats (à l'art. 3.1)[3] et le Code de déontologie des parajuristes (à l'art. 3.01)[4] (ci-après « codes de déontologie ») prévoient tous les deux un devoir de compétence. Les codes de déontologie exigent que les titulaires de permis fournissent des services juridiques selon les normes de compétence établies, leur imposant donc la responsabilité de maintenir et d'améliorer leurs connaissances, leurs habiletés et leur jugement professionnels. Les codes de déontologie prévoient également que les titulaires de permis ne doivent pas prendre en charge des affaires ou des tâches s'ils n'ont pas la compétence requise pour les mener à bien. La capacité d'autoévaluer avec précision ses connaissances, ses habiletés et son jugement à un moment donné est l'une des dimensions de la compétence professionnelle. Par ailleurs, les codes de déontologie comprennent des commentaires détaillés sur la marche à suivre pour évaluer la compétence. Les commentaires fournissent même des conseils sur le service à la clientèle et la communication efficaces dans divers contextes.

5. Définition pratique de la compétence

Les discussions du groupe d'étude pendant la phase de découverte ont généré de nombreuses idées sur les attributs fondamentaux de la compétence chez les titulaires de permis. Définir ce que signifie la compétence pour les avocats et parajuristes, et pour le public qu'ils servent aujourd'hui et serviront demain, a été l'une des premières grandes étapes de ce travail de réflexion. Voici la définition pratique de la compétence établie par le groupe d'étude :

- La compétence se compose de connaissances, d'habiletés, de capacités, de comportements, de valeurs et du jugement. Pour effectuer son travail de façon compétente, il faut appliquer plusieurs de ces attributs de façon régulière et simultanée.
- La compétence, et les attributs qui la composent, est une chose qui se développe. Les méthodes d'acquisition de la compétence comprennent :
    - les études ;
    - la formation ;

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[2] Amy Salyzyn, « From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence » (2017), Revue du Barreau canadien, Vol. 95, p. 497, en ligne : https://cbr.cba.org/index.php/cbr/article/view/4417/4408.

[3] https://lso.ca/a-propos-du-barreau/lois-et-codes/code-de-deontologie/chapitre-3-les-rapports-avec-les-clients

[4] https://lso.ca/a-propos-du-barreau/lois-et-codes/code-de-deontologie-des-parajuristes/code-de-deontologie-des-parajuristes

- l'expérience pratique ;
- la formation corrective exigée par l'organisme de règlementation ou l'assureur ;
- l'observation des pairs et l'évaluation par les pairs ;
- le mentorat et l'encadrement.

- Les pratiques et les habitudes qui définissent la compétence doivent être inculquées au début de la carrière et doivent être continuellement cultivées et améliorées tout au long de la carrière.
- La compétence exige la conscience de soi, des capacités d'autoréflexion et un esprit de croissance.
- La compétence est dynamique et adaptative. La compétence d'une personne varie et évolue en fonction de facteurs tels que :
  - son expérience ;
  - la nature et la complexité de son travail, y compris son niveau de spécialisation ;
  - les circonstances entourant sa pratique ;
  - les besoins et la situation de ses clients ;
  - les changements dans le paysage juridique.
- L'expérience des clients qui obtiennent des services juridiques auprès d'un avocat ou d'un parajuriste est une dimension essentielle de la compétence. La notion de compétence repose également sur le point de vue du consommateur[5].
- Si l'on reconnait que la compétence est dynamique et qu'elle dépend du contexte, le degré de compétence d'un titulaire de permis variera selon les circonstances, et ses connaissances professionnelles, ses habiletés ou son jugement pourraient être mis à l'épreuve dans certaines situations, comme lors d'une transition vers un nouveau domaine de pratique, lorsqu'un titulaire revient après une longue absence, ou lorsqu'un titulaire doit travailler sur des questions ou avec un client avec lesquels il est peu familier.
- Les changements sociétaux ont une incidence sur les concepts relatifs à la compétence. Par exemple, la pandémie a fait ressortir que la compétence technologique est l'un des éléments clés de la compétence.

6. Évolution du cadre de compétence continue du Barreau

a. Modèle de compétence adopté pour encadrer le perfectionnement professionnel

[5] Logan Cornett, « Think Like a Client » (2019), Institute for the Advancement of the American Legal System, p. 17, en ligne : https://iaals.du.edu/sites/default/files/documents/publications/think_like_a_client.pdf.

Bien que le Barreau règlemente la profession juridique depuis près de 225 ans, l'approche adoptée pour règlementer la compétence continue des avocats et des parajuristes après l'obtention du permis a évolué au fil d'une série de décisions stratégiques prises au cours des 50 dernières années. En effet, c'est à partir des années 1980 que les barreaux ont commencé à s'éloigner du modèle « policier », lequel se fondait sur des mesures disciplinaires traditionnelles pour donner suite aux plaintes d'inconduite formulées par des clients, et ont adopté un modèle axé sur « l'encadrement », lequel encourage activement la compétence en misant sur un éventail d'outils préventifs, comme la FPC, le mentorat et les services d'assistance personnelle[6]. Le modèle « policier » a fait l'objet de critiques, car il est de nature réactive et se fonde surtout sur le respect de normes minimales et sur la conduite individuelle pour règlementer la compétence plutôt que sur des pratiques institutionnelles qui pourraient s'avérer plus efficaces pour remédier aux lacunes avant qu'elles causent du tort aux clients[7]. Le modèle axé sur l'encadrement mise plutôt sur une approche continue, globale et adaptée à la situation de chacun pour encourager le perfectionnement et la compétence des titulaires de permis[8].

Plus particulièrement, en 2000-2001, le Barreau a entrepris une consultation exhaustive sur la mise en œuvre de son mandat élargi[9] de règlementation de la compétence. En mars 2001, le Conseil a adopté le modèle de compétence de 2001[10], lequel comprend les cinq composantes et éléments constitutifs suivants :

Composantes	Éléments constitutifs
Lignes directrices sur la pratique	De nature spécifique, d'application flexible ; de « rendement acceptable » à « pratiques exemplaires » ; accent initial sur les questions relatives à la gestion de la pratique, à la technologie et au service à la clientèle, puis sur le droit substantiel ; vastes consultations au moment de l'élaboration ; diffusion à grande échelle ; révision et mise à jour continues.
Amélioration de la pratique	*Programme d'autoévaluation volontaire* Guide d'autoévaluation des approches pour gérer la pratique, y compris l'utilisation de la technologie et le service à la clientèle ; mise sur les outils existants ; offert sous forme électronique et papier ; liens vers des sources d'aide, au besoin. *Projet pilote d'évaluation volontaire par les pairs* Engagement d'au moins deux ans ; établissement d'un programme de visites volontaires sur le lieu de travail pour favoriser la bonne gestion de la pratique.
Formation juridique continue (FJC)	*Exigences minimales de formation après l'admission au Barreau*

[6] A. Salyzyn, *supra* note 2, p. 497.
[7] *Ibid*.
[8] *Ibid*., p. 508.
[9] En 1999, la Loi a été modifiée pour conférer au Barreau le pouvoir de procéder à des inspections professionnelles et de tenir des audiences relatives à la compétence.
[10] Comité sur le perfectionnement professionnel, Rapport au Conseil du 22 mars 2001.

Composantes	Éléments constitutifs
	Établissement du nombre d'heures de FJC que les avocats doivent effectuer chaque année ; déclaration annuelle des cours de FJC suivis ; agrément des programmes de FJC. *Exigences pour le renouvèlement de l'admission* Programme amélioré ; nombre de crédits de FJC obligatoires comme élément constitutif du programme.
Désignation de spécialiste revue	Programme combiné de reconnaissance du développement et de l'expérience ; domaines de spécialisation élargis, y compris la possibilité d'obtenir une désignation de « généraliste » ; niveaux de spécialisation échelonnés ; composante éducative obligatoire avec accessibilité accrue à l'échelle de la province.
Composantes correctives prescrites par la loi	Inspections professionnelles ciblées ; audiences relatives à la compétence.

Le modèle de compétence de 2001 a jeté les bases de l'approche contemporaine adoptée par le Barreau pour règlementer la compétence après l'obtention du permis d'exercice. Il se composait de programmes et d'activités qui étaient principalement volontaires et qui reflétaient bon nombre des attributs d'un modèle fondé sur le soutien et l'encadrement. Le modèle de compétence de 2001 prévoyait également des mesures d'assurance et d'amélioration de la qualité. Les mesures d'assurance de la qualité visent à assurer le respect des normes établies et comprennent des programmes tels que les inspections professionnelles et les vérifications ponctuelles. Les mesures d'amélioration de la qualité visent quant à elles le respect des normes établies et comprennent des outils conçus pour améliorer la pratique et encourager le perfectionnement professionnel. La FJC et le titre de spécialiste agréé sont des exemples de mesures d'amélioration de la qualité. Les mesures d'assurance de la qualité et les mesures d'amélioration de la qualité sont toutes deux nécessaires pour assurer une règlementation de la compétence comportant à la fois des normes minimales et des pratiques exemplaires.

Si bon nombre des composantes et des éléments constitutifs du modèle de compétence de 2001 ont évolué pour refléter les pratiques règlementaires reconnues comme exemplaires et sont encore en place aujourd'hui, certains ont été mis au rancart, car ils étaient difficiles à mettre en œuvre ou d'autres initiatives ont été privilégiées. Certains changements apportés ultérieurement aux politiques relatives à la compétence sont décrits ci-dessous.

b. Programme d'inspection de la gestion de la pratique

Comme indiqué ci-dessus, les inspections professionnelles et les audiences relatives à la compétence ont été introduites dans le modèle de compétence de 2001 à la suite de modifications législatives élargissant le pouvoir de règlementation de la compétence conféré au Barreau. Ce pouvoir élargi a initialement été appliqué dans les cas où il y avait des motifs raisonnables de croire qu'un avocat ne respectait pas les normes de compétence professionnelle. Au départ, le programme d'assurance de la qualité du Barreau a pris la forme d'inspections professionnelles ciblées déclenchées par des plaintes graves formulées par des clients, par une ordonnance du Tribunal du Barreau ou par d'autres indications laissant présager des lacunes importantes en matière de compétence. Si cette première version du programme tenait compte des risques dans une certaine mesure, elle se fondait sur une

approche réactive et était donc sujette à de nombreuses limites caractérisant le modèle « policier ».

En juin 2006, le Barreau a élargi les mesures d'assurance de la qualité en instaurant un programme intégré d'inspection professionnelle comprenant à la fois des inspections professionnelles ciblées à l'égard de titulaires de permis chez qui des lacunes de compétence avaient été cernées et des inspections professionnelles préventives à l'égard de nouveaux titulaires de permis en pratique privée. Le volet préventif a été conçu pour cerner les problèmes de gestion de la pratique qui, si négligés, pourraient avoir des conséquences délétères sur la qualité des services juridiques offerts au public. Le programme a été structuré de façon à tirer parti des forces du programme de vérifications ponctuelles du Barreau, en offrant aux titulaires de permis des conseils et de l'information pour les aider à respecter leurs obligations règlementaires et à gérer efficacement leur pratique.

c. Règlementation des parajuristes

Le 1er mai 2007, à la suite de modifications apportées à la Loi par le projet de loi 14, la *Loi de 2006 sur l'accès à la justice*, la profession de parajuriste est tombée sous la houlette du Barreau[11]. La *Loi sur l'accès à la justice* et ses règlements d'application autorisent le Barreau à former les parajuristes, à leur délivrer des permis et à règlementer leur conduite. Depuis lors, les parajuristes sont soumis au cadre de compétence du Barreau et aux mêmes obligations professionnelles que les avocats.

d. Formation professionnelle continue obligatoire

En 2011, le Barreau est passé du nombre minimal d'heures de FJC prévu dans le modèle de compétence de 2001 à une exigence voulant que tous les avocats et parajuristes qui exercent le droit ou fournissent des services juridiques fassent des heures de FPC tous les ans. En principe, la FPC obligatoire se fondait sur l'idée que cette obligation inciterait les titulaires de permis à réfléchir à leurs besoins de perfectionnement professionnel et à prendre les mesures requises, ce qui conduirait à la prestation de meilleurs services au public[12]. L'instauration de la FPC obligatoire était dans les cartons depuis plusieurs années et s'est concrétisée peu après l'adoption de politiques similaires dans d'autres barreaux au Canada. Ces politiques reflétaient l'opinion dominante selon laquelle les barreaux avaient tout intérêt à instaurer une exigence de formation et de perfectionnement continus pour donner corps à leur mandat de règlementation de la compétence continue des avocats et des parajuristes. On avait par ailleurs reconnu que les barreaux étaient à la traine dans ce domaine, puisque la FPC obligatoire pour les avocats était une exigence bien établie dans la plupart des États américains et que les membres de nombreuses professions règlementées au Canada étaient déjà assujettis à de telles obligations[13].

La FPC est plus large que la FJC. Elle englobe les programmes traditionnels de formation et de perfectionnement juridiques et d'autres activités de perfectionnement qui améliorent les compétences et les connaissances dans un contexte professionnel au fur et à mesure que les praticiens progressent dans leur carrière. Par exemple, l'enseignement, la rédaction et le

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[11] *Loi de 2006 sur l'accès à la justice,* L.O. 2006, chap. 21.
[12] Comité sur le perfectionnement professionnel et Comité permanent des parajuristes, Rapport conjoint au Conseil, 25 février 2010, p. 10.
[13] Comité sur le perfectionnement professionnel et Comité permanent des parajuristes, Rapport conjoint au Conseil du 29 octobre 2009, p. 6.

mentorat sont toutes des activités reconnues pour les heures de FPC en Ontario. Nous fournirons de plus amples renseignements sur l'exigence de FPC dans la prochaine section.

7. L'actuel cadre de compétence continue du Barreau

L'approche actuelle du Barreau pour la règlementation de la compétence des avocats et des parajuristes après l'obtention du permis peut être caractérisée comme une approche hybride comportant des aspects du modèle « policier » et du modèle axé sur l'encadrement. La Direction du perfectionnement professionnel du Barreau administre toute une gamme de programmes proactifs et correctifs qui, collectivement, favorisent la compétence continue, alors que la Division de la règlementation de la profession mène des enquêtes et des actions en justice en cas de violation importante des normes professionnelles et d'inconduite grave.

Les grandes composantes de l'actuel cadre de compétence du Barreau s'apparentent à celles des autres barreaux au Canada et des autres professions règlementées[14], et s'appuient sur l'idée qui a inspiré le modèle de compétence de 2001, soit que la plupart des avocats et parajuristes croient intrinsèquement en l'importance du perfectionnement professionnel et de l'apprentissage continu tout au long de la carrière. Le cadre de compétence vise à encourager les avocats et les parajuristes à adopter une approche proactive pour gérer leur compétence, et à régler et prévenir les lacunes de compétence qui mènent à des plaintes et à des réclamations pour faute professionnelle. Le Barreau reconnait qu'aucune exigence ni aucun programme ne peut, à lui seul, garantir la compétence des avocats et des parajuristes, et que la compétence relève à la fois d'une responsabilité professionnelle individuelle et continue, et d'un important travail de règlementation. Comme bien d'autres organismes de règlementation des professions, le Barreau continue de recourir à des mesures d'amélioration de la qualité et d'assurance de la qualité qui, collectivement, imposent des exigences de compétence et encouragent la compétence, au moyen d'exigences universelles et de programmes adaptés aux besoins des titulaires de permis et aux risques cernés. Vous trouverez ci-dessous un aperçu de chacun des programmes qui fait présentement partie du cadre de compétence continue du Barreau.

a. FPC obligatoire

Par FPC, on entend le maintien et l'amélioration des connaissances professionnelles, des habiletés, des attitudes et du professionnalisme des titulaires de permis tout au long de leur carrière. Le Barreau exige que les titulaires de permis qui pratiquent le droit ou fournissent des services juridiques effectuent 12 heures de FPC chaque année, ce qui doit comprendre au moins trois heures de formation sur le professionnalisme et jusqu'à neuf heures de formation

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[14] Zubin Austin et Paul A.M. Gregory, « Quality Assurance and Maintenance of Competence Assessment Mechanisms in the Professions: A Multi-Jurisdictional, Multi-Professional Review » (2017), Journal of Medical Regulation Vol. 103, nº 2, en ligne : https://meridian.allenpress.com/jmr/article/103/2/22/80878/Quality-Assurance-and-Maintenance-of-Competence. Les auteurs se sont penchés sur les politiques et les pratiques relatives à la compétence adoptées par les organismes de règlementation des professions de la santé et d'autres professions, en Ontario et ailleurs. Parmi les 91 organismes de règlementation examinés dans le cadre de l'étude, 42 étaient en Ontario. Les auteurs se sont aussi penchés sur les pratiques et politiques de divers organismes de la Colombie-Britannique, du Massachusetts, de la Californie, de l'Angleterre, du Qatar (Australie) et de la Nouvelle-Zélande. L'étude s'est intéressée à des professions telles que le droit, la dentisterie, l'optométrie, les soins infirmiers, l'ingénierie, la comptabilité et l'aviation. De nombreux organismes de règlementation utilisaient des outils similaires pour améliorer la compétence, notamment la FPC obligatoire, les autoévaluations, les évaluations fondées sur la pratique ou les évaluations par les pairs.

liées au droit substantiel. Les heures de professionnalisme effectuées dans le cadre de la FPC doivent porter sur la responsabilité professionnelle, l'éthique ou la gestion de la pratique[15]. À compter de 2021, au moins une heure de professionnalisme par année devra porter sur l'égalité, la diversité et l'inclusion[16].

Le Barreau utilise un modèle d'agrément partiel — les programmes et activités de FPC donnant droit à des heures de professionnalisme doivent être agréés par le Barreau, tandis que les programmes et activités de FPC liés au droit substantiel ne sont pas soumis à l'agrément. Un modèle de fournisseur agréé a été mis en œuvre en 2013 pour permettre aux fournisseurs qui répondent à certains critères d'autoagréer leur contenu professionnel[17]. La FPC liée au droit substantiel peut porter sur le droit substantiel ou le droit procédural ou sur des compétences connexes. Les sujets non juridiques peuvent également compter pour les heures de formation liées au droit substantiel, s'ils sont pertinents pour la pratique du titulaire de permis et son perfectionnement professionnel.

Dès le début de l'exigence de FPC, le Barreau a adopté une approche flexible quant aux activités jugées admissibles, reconnaissant que les préférences d'apprentissage et les circonstances de pratique varient d'un titulaire de permis à l'autre. Il est possible d'obtenir des heures de FPC en participant à un éventail d'activités autorisées, sous divers formats, et dont beaucoup n'engendrent pas de couts directs pour les titulaires de permis[18] :

- Participer à des programmes ou à des cours de FPC, que ce soit en suivant des cours en personne ou en ligne, ou en visionnant des programmes archivés.
- Participer à un programme offert par un collège, une université ou un autre établissement d'enseignement agréé, y compris les programmes de maitrise en droit.
- Enseigner un contenu lié au droit (à titre bénévole ou à temps partiel).
- Jouer le rôle de juge ou de mentor dans un concours de plaidoirie.
- Rédiger ou éditer des livres ou des articles liés au droit.
- Faire du mentorat, se faire mentorer, fournir du soutien en tant que formateur ou conseiller, participer à un programme de mentorat ou d'encadrement, jouer le rôle de maitre de stage, superviser un placement professionnel ou un stage pratique dans le cadre de Programme de pratique du droit.
- Participer à des groupes d'étude composés de deux collègues ou plus.

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[15] Pendant les deux premières années de FPC obligatoire, une exigence distincte « de FPC pour les nouveaux titulaires de permis » s'appliquait aux avocats et parajuristes qui en étaient à leurs deux premières années d'exercice du droit ou de prestation de services juridiques. Dans le cadre de cette exigence, les nouveaux titulaires de permis devaient suivre des FPC qui étaient agréées pour les premières années d'exercice et dont 25 % du contenu se rapportait au professionnalisme. Cette exigence a été abandonnée en 2013 et remplacée par une approche universelle pour tous les titulaires de permis.

[16] Groupe de travail sur les défis des titulaires de permis racialisés, Rapport au Conseil, 2 décembre 2016, en ligne : Le moment est propice au changement : Stratégies de lutte contre le racisme systémique dans les professions juridiques.

[17] Au 19 mai 2021, il y avait 92 fournisseurs agréés.

[18] Les activités telles que l'enseignement, la rédaction de contenu et le visionnement de programmes de FPC archivés sont plafonnées à six heures par année. Ces limites ont été temporairement levées pour les années 2020 et 2021 afin de tenir compte des répercussions de la pandémie sur les pratiques et l'emploi du temps des titulaires de permis.

- Participer à des réunions d'associations juridiques qui se rapportent aux activités de l'association ou à des séances de formation sur le droit substantiel, le droit procédural ou le professionnalisme offertes par l'association.

Depuis la mise en œuvre du programme, le respect de l'exigence de FPC est très élevé. Au cours des 10 dernières années, environ 99 % des avocats en exercice et 94 % des parajuristes en exercice ont respecté cette exigence annuelle. La majorité des titulaires de permis participent à des programmes de FPC pour respecter leurs obligations annuelles et peu d'entre eux participent aux autres types d'activités d'apprentissage admissibles, d'après ce qu'ils déclarent. Les titulaires de permis qui ne respectent pas les exigences annuelles de FPC peuvent faire l'objet d'une suspension administrative.

b. Les programmes de FPC du Barreau

Depuis les années 1940, le Barreau offre des séances et du contenu de perfectionnement professionnel puisque cela s'inscrit dans son mandat de veiller à ce que les avocats (et plus récemment, les parajuristes) aient accès à des ressources éducatives de qualité[19]. Au fil des ans, le Barreau est devenu un fournisseur moderne de FPC qui applique les pratiques exemplaires en matière d'éducation des adultes et qui mise sur une approche fondée sur les compétences et sur des plateformes numériques dans presque tous les aspects de ses activités. Depuis l'entrée en vigueur de l'exigence de FPC, le Barreau élabore des programmes pour aider les titulaires de permis à respecter cette exigence en offrant un contenu pertinent sur le professionnalisme et le droit substantiel. Le Barreau offre un catalogue de programmes destinés à différents secteurs des professions, dans plusieurs formats accessibles, notamment des congrès de plusieurs jours où l'on explore en profondeur les principaux domaines de pratique ainsi que des séances plus courtes, diffusées uniquement sur le Web, qui se concentrent sur les questions émergentes. Les programmes de FPC du Barreau privilégient l'interaction, que ce soit au moyen de séances de questions et réponses, de tables rondes, d'exercices de réflexion et de techniques de sondage.

En 2020, le Barreau a offert environ 138 programmes (78 en direct et 60 en rediffusion) sur divers sujets liés au droit substantiel et au droit procédural, ainsi que sur le professionnalisme, l'éthique et la gestion de la pratique. De plus, les titulaires de permis ont accès à 142 programmes gratuits et archivés pour les aider à composer avec les répercussions de la COVID-19. En 2020, le Barreau a connu une participation record de 119 269 inscriptions à ses programmes de FPC, ce qui comprenait environ 70 000 inscriptions à des offres gratuites. D'après les commentaires des titulaires de permis qui ont participé aux programmes de FPC du Barreau, ils apprécient le calibre des personnes qui président les tables rondes et qui donnent des conférences, la pertinence des sujets abordés dans les programmes et les formats offerts, y compris les programmes en ligne de différentes durées qui peuvent être visionnés en direct ou sur demande.

Un certain nombre d'associations juridiques, de cabinets d'avocats, d'organisations gouvernementales et à but non lucratif, et de fournisseurs de formation juridique à but lucratif offrent également des programmes de FPC de haute qualité. Parmi ces organisations, citons l'Association du Barreau de l'Ontario, l'Association du Barreau canadien, la Société des

[19] Le service du Barreau qui est responsable de l'agrément des programmes de FPC liés au professionnalisme fonctionne indépendamment du service du Barreau qui élabore et offre les programmes de FPC.

plaideurs, la Fédération des associations du barreau de l'Ontario, la Women's Law Association of Ontario, l'Association des avocats noirs du Canada, l'Association du Barreau autochtone, la Federation of Asian Canadian Lawyers, la South Asian Bar Association et l'Ontario Paralegal Association, et il y en a beaucoup d'autres. Ces fournisseurs aident les avocats et les parajuristes à améliorer leurs connaissances et leurs compétences dans une panoplie de domaines de pratique en offrant des programmes régionaux et nationaux, et en organisant des évènements d'apprentissage.

c. Ligne d'aide à la gestion de la pratique et ressources de soutien à la pratique

Créée en 1978, la Ligne d'aide à la gestion de la pratique (ci-après « Ligne d'aide ») est un service téléphonique confidentiel qui répond aux demandes de renseignements des titulaires de permis concernant les codes de déontologie et d'autres sujets liés au professionnalisme et à la gestion de la pratique. Le personnel de la Ligne d'aide fournit des conseils « juste à temps » pour aider les titulaires de permis à prendre des décisions éclairées, souvent à un moment crucial dans une affaire ou dans leur pratique. La Ligne d'aide les aide à cerner les questions et les principes clés afin qu'ils puissent prendre des décisions et trouver des solutions, mais elle ne fournit pas de conseils ou d'avis juridiques. De plus, le personnel de la Ligne d'aide élabore et tient à jour diverses ressources sur la responsabilité professionnelle et la gestion de la pratique. Sur son site Web, le Barreau offre présentement plus de 130 ressources sous différentes formes, comme des lignes directrices sur la gestion d'un cabinet juridique, des ressources sur les domaines de pratique, des FAQ, des listes de vérification, des articles et d'autres outils.

En 2020, la Ligne d'aide a répondu à 9 887 demandes de renseignements de titulaires de permis — 80 % des appels provenaient d'avocats et 13 % de parajuristes[20]. Environ 70 % des demandes à la Ligne d'aide proviennent de praticiens exerçant seuls ou en petit cabinet. En 2020, la Ligne d'aide a élaboré plus de 70 nouvelles ressources liées spécifiquement à la COVID-19 pour aider les titulaires de permis à composer avec les répercussions de la pandémie, ce qui a mené à environ 168 000 pages consultées l'année dernière. En général, les titulaires de permis se disent très satisfaits des services et des soutiens fournis par la Ligne d'aide, ce qui est d'autant plus vrai depuis que la Ligne d'aide a commencé à offrir davantage de ressources et de FAQ plus praticopratiques au cours des dernières années.

d. Réseau d'encadrement de la pratique

Le Réseau d'encadrement de la pratique (REP) est le plus récent programme de compétence du Barreau. Le REP a été lancé en 2016 après plusieurs années de réflexion par un groupe d'étude dont le mandat était d'explorer s'il serait avantageux d'offrir des initiatives de mentorat aux membres des professions juridiques[21]. L'objectif du REP est de favoriser et de faciliter une approche systématique pour améliorer les compétences des avocats et des parajuristes en offrant des occasions de mise en relation avec des pairs et de soutien par les pairs, particulièrement aux titulaires de permis exerçant seuls ou en petit cabinet et aux nouveaux titulaires de permis qui n'ont pas toujours accès à des collègues et à des praticiens chevronnés[22].

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[20] Les 7 % restants des appels à la Ligne d'aide provenaient de non-titulaires de permis.
[21] Groupe de travail sur les services consultatifs et le mentorat, Rapport au Conseil — Rapport final, 28 janvier 2016.
[22] Par praticiens exerçant seuls et en petit cabinet, on entend ceux qui comptent cinq titulaires de permis ou moins.

Le REP va au-delà du concept traditionnel du mentorat. Il offre un processus plus structuré et plus ciblé. Le programme fournit aux avocats et aux parajuristes un accès à des relations de courte durée axées sur les résultats avec des membres qui agissent bénévolement à titre de formateurs et de conseillers. Les conseillers fournissent une assistance de portée limitée sur le droit substantiel et le droit procédural dans des dossiers de clients. La durée d'un engagement est généralement de 30 minutes. Les formateurs, quant à eux, aident les titulaires de permis à atteindre des objectifs à plus long terme qui nécessitent l'application de pratiques exemplaires. La durée de l'engagement est de trois mois.

Le REP en est maintenant à sa quatrième année complète de fonctionnement. En 2020, la liste de formateurs et conseillers bénévoles du REP est passée à 389 titulaires de permis. Au total, 654 engagements ont été conclus en 2020 : 509 jumelages avec des conseillers et 145 jumelages avec des formateurs. Quatre-vingt-douze pour cent des titulaires de permis qui demandent des services d'encadrement exercent seuls ou en petit cabinet. Les taux de satisfaction pour les engagements d'encadrement sont toujours très élevés, allant de 96 % à 100 %.

e. Programmes d'inspection professionnelle

Les programmes d'inspection professionnelle du Barreau sont des outils d'assurance de la qualité qui visent à s'assurer de façon proactive que les titulaires de permis respectent les normes établies. Ils visent à favoriser un service compétent et à gérer les risques au sein des professions. Le Barreau administre trois programmes de ce type : les inspections professionnelles (pour les avocats), les vérifications ponctuelles (pour les cabinets d'avocats) et les vérifications des pratiques (pour les parajuristes).

Les trois programmes reposent sur un modèle similaire : les titulaires de permis sont sélectionnés pour une inspection et le Barreau leur envoie des renseignements sur les aspects qui seront vérifiés et sur le processus ; un inspecteur ou un vérificateur du Barreau se rend dans les locaux du titulaire de permis pour le rencontrer, observer sa pratique et examiner ses dossiers ; l'inspecteur ou le vérificateur prépare ensuite un résumé des conclusions et des recommandations à l'intention du titulaire de permis. La grande majorité des inspections et des vérifications sont de nature corrective et révèlent des lacunes mineures que le titulaire peut corriger en améliorant ses pratiques et procédures. Un petit pourcentage d'inspections et de vérifications révèlent de graves lacunes et donnent lieu à une intervention du service d'exécution du Barreau.

Dans les dernières années, les titulaires de permis se sont dits très satisfaits de ces programmes, et la plupart ont indiqué que le processus avait été constructif et les avait aidés à améliorer leurs pratiques. De plus, les données du Barreau semblent indiquer que les inspections professionnelles et vérifications ponctuelles aident à favoriser la longévité de la pratique des titulaires exerçant seuls. Les praticiens exerçant seuls qui ont fait l'objet d'une inspection professionnelle et d'une vérification ponctuelle sont environ 20 % plus susceptibles d'exercer encore à titre individuel cinq ans plus tard, comparativement à ceux qui n'ont pas fait l'objet d'une inspection professionnelle ou d'une vérification ponctuelle.

i. Inspections professionnelles

Les inspections professionnelles portent sur les activités de gestion de la pratique des avocats individuels. Les inspecteurs fournissent des suggestions concrètes pour aider les avocats à

maintenir une pratique optimale, dans le but d'accroitre l'efficacité, de garantir un service de haute qualité et d'améliorer la satisfaction des avocats et des clients. Les aspects vérifiés sont indiqués dans la Liste de contrôle administratif de base pour les avocats. On y trouve notamment les aspects suivants : gestion du temps (fiches de temps pour consigner et déclarer les heures, système de gestion du calendrier) ; gestion des dossiers et service à la clientèle (procédure pour l'ouverture et la fermeture des dossiers, vérification de la présence de conflits d'intérêts, procédure de traitement des plaintes des clients) ; gestion financière (honoraires et facturation, comptes en fiducie) ; communications (suivre les instructions du client, tenir le client raisonnablement informé) ; technologie et équipement (modèles de documents, bibliothèque et ressources de recherche) ; et gestion professionnelle (formation et soutien, gestion des stagiaires et du personnel de soutien).

Depuis 2009, le programme se compose de trois grands volets :

- inspections aléatoires visant les avocats qui ont obtenu un permis au cours des huit dernières années ;
- inspections ciblées d'avocats sélectionnés pour certains motifs ;
- inspections de retour à la pratique pour les avocats qui reviennent à la pratique privée en tant que praticiens exerçant seuls ou en petit cabinet après une absence au cours des cinq années précédentes.

La majorité des inspections professionnelles du Barreau sont aléatoires. Les inspections professionnelles aléatoires se concentrent sur les avocats nouvellement autorisés à exercer en tant que praticiens exerçant seuls et en petit cabinet, sur la base d'indices de risque découlant des instances du Barreau relatives à la conduite et de l'issue des réclamations soumises à LAWPRO pour faute professionnelle[23]. En 2019, le Barreau a effectué 473 inspections professionnelles auprès d'avocats[24] ; 66 % des inspections initiales ont révélé que la pratique satisfaisait aux normes de compétence professionnelle et 34 % ont nécessité une inspection de suivi. Après les inspections de suivi, 99 % des pratiques satisfaisaient aux normes établies. Au fil du temps, le pourcentage d'avocats affichant des lacunes dans la plupart des aspects clés de la pratique a diminué.

ii. Vérifications ponctuelles

Le programme de vérifications ponctuelles a été établi en 1998 pour soutenir le modèle d'autodéclaration nouvellement adopté par le Barreau pour assurer la conformité de la comptabilité des fiducies. Se voulant un outil proactif pour assurer la conformité et la sécurité des fiducies, les vérifications ponctuelles évaluent l'intégrité des dossiers financiers des cabinets d'avocats et le respect continu des exigences du Barreau quant à la tenue de registres (ces exigences sont énoncées dans les règlements administratifs et les codes de déontologie). Elles visent aussi à détecter les inconduites graves sur le plan financier. Plus particulièrement, les vérifications ponctuelles visent à aider les cabinets d'avocats à corriger les lacunes mineures dans leurs pratiques de tenue de registres avant que ces lacunes mènent à de graves problèmes de non-conformité ou d'inconduite. Les vérificateurs du Barreau apportent un soutien

[23] Perfectionnement professionnel, Comité de la compétence et des admissions, Rapport au Conseil, 22 juin 2006.
[24] Puisque la COVID-19 et les restrictions qui en ont découlé ont eu une incidence importante sur le nombre d'inspections professionnelles, de vérifications ponctuelles et de vérifications des pratiques menées en 2020, nous utilisons les chiffres de 2019.

aux cabinets d'avocats en examinant et en vérifiant les registres financiers, en répondant aux questions et en fournissant des conseils.

Le programme de vérifications ponctuelles comprend à la fois des vérifications aléatoires et des vérifications ciblées. La majorité des vérifications ponctuelles sont aléatoires et se fondent sur les critères de risque établis, notamment la taille du cabinet, le domaine de pratique, le caractère nouveau de la pratique et d'autres facteurs. Contrairement aux inspections professionnelles et aux vérifications des pratiques, les vérifications ponctuelles sont censées avoir lieu périodiquement. Selon les critères de risque établis, les praticiens exerçant seuls et les cabinets composés de deux avocats qui pratiquent le droit immobilier font l'objet d'une vérification tous les cinq ans, les autres praticiens exerçant seuls et en petit cabinet font l'objet d'une vérification tous les sept ans, et les cabinets de taille moyenne et de grande taille font l'objet d'une vérification tous les 10 ans.

Bien qu'un grand nombre de vérifications ponctuelles aient lieu de façon aléatoire en se fondant sur les critères susmentionnés, certaines circonstances peuvent déclencher une vérification ponctuelle, notamment :

- le défaut de soumettre la Déclaration annuelle des avocat(e)s au Barreau ;
- la création d'un nouveau cabinet d'avocats, afin de garantir l'établissement et le maintien de pratiques et de procédures adéquates ;
- des lacunes cernées lors d'une vérification ponctuelle précédente ;
- certains renseignements dans la Déclaration annuelle des avocat(e)s qui soulèvent des doutes quant au respect des exigences de tenue de registres ;
- un autre service du Barreau a fait un renvoi au sujet de l'avocat ou du cabinet d'avocats.

En 2019, le Barreau a effectué 1 309 vérifications ponctuelles[25]. Cinquante-quatre pour cent des cabinets d'avocats n'affichaient soit aucune lacune, soit des lacunes mineures relativement à la tenue de livres et de registres et 32 % des cabinets d'avocats affichaient des lacunes qui ont été corrigées à la satisfaction du Barreau. Quant au 14 % restants, ces cabinets affichaient de graves lacunes en matière de livres comptables et de registres et le Barreau a dû assurer une surveillance supplémentaire et prendre des mesures règlementaires.

iii. Vérifications des pratiques

Les vérifications des pratiques sont des vérifications combinées de la gestion financière et des pratiques des parajuristes. Elles sont menées de façon aléatoire et se veulent proactives et préventives. Dans le cadre de ces vérifications, le Barreau vérifie à la fois les aspects relatifs à la gestion de la pratique qui font partie des inspections professionnelles des avocats et les aspects liés à la tenue de registres financiers qui sont examinés lors des vérifications ponctuelles des avocats. La Liste de contrôle administratif de base pour les parajuristes indique les aspects qui sont examinés lors d'une vérification des pratiques. Les grandes catégories sont les mêmes que celles établies pour les avocats.

En 2019, le Barreau a effectué 195 vérifications des pratiques auprès de parajuristes[26] ; 49 % des vérifications initiales ont révélé que le titulaire respectait les normes de compétence professionnelle et 51 % ont nécessité une vérification de suivi. Après les vérifications de suivi,

[25] *Ibid*.
[26] *Ibid*.

97 % des pratiques satisfaisaient aux normes établies. Tout comme c'était le cas pour les avocats, au fil du temps, le pourcentage de parajuristes affichant des lacunes dans la plupart des aspects clés de la gestion de la pratique a diminué.

f. Programme d'agrément des spécialistes

Le Programme d'agrément des spécialistes (PAS) est un programme d'amélioration de la qualité qui reconnait la compétence des avocats qui ont satisfait à certaines normes en matière d'expérience et de connaissances dans un ou plusieurs domaines du droit désignés et qui répondent à des normes exemplaires de pratique professionnelle depuis une certaine période. Le PAS aide également les membres du public à trouver des avocats qui peuvent leur fournir des services juridiques spécialisés. Le PAS n'est pas offert pour les parajuristes.

Créé en 1986, le programme a connu plusieurs modèles de gouvernance et de qualification au fil des ans[27]. Le PAS est présentement régi par un Conseil d'agrément des spécialistes, composé de spécialistes agréés et de conseillers. Il y a 17 domaines de spécialisation[28] et chacun d'eux a été développé en profondeur avec le soutien d'avocats reconnus comme étant des modèles dans leur domaine de pratique. Au cours des dernières années, des domaines de spécialisation ont été ajoutés, notamment les enjeux juridiques autochtones et le droit fiscal. Les avocats qui souhaitent obtenir le titre de spécialiste agréé doivent soumettre une demande détaillée, des lettres de recommandation et d'autres documents justificatifs. Pour obtenir ce titre, un avocat doit pratiquer le droit depuis au moins sept ans, il doit s'être principalement consacré à son domaine de spécialisation pendant cinq de ces sept années (c.-à-d., l'avocat doit maitriser le droit substantiel, les pratiques et les procédures, et se concentrer surtout sur son domaine de spécialité), et il doit avoir respecté toutes les normes professionnelles. Le Barreau évalue les demandes d'agrément à l'interne et, si tous les critères sont satisfaits, il les soumet au Conseil. Une fois agréés, les avocats doivent produire une déclaration annuelle et présenter un rapport tous les ans. Les spécialistes agréés doivent eux aussi respecter l'exigence annuelle de FPC, tout comme les avocats et les parajuristes. Le PAS n'est pas un programme de permis limité et ne restreint pas le domaine de pratique des avocats — les spécialistes agréés peuvent pratiquer dans d'autres domaines du droit et, inversement, les avocats qui ne sont pas des spécialistes agréés peuvent pratiquer dans les domaines visés par le programme.

Les spécialistes agréés sont autorisés à utiliser la mention « s.a. » après leur nom. Le titre s.a. indique aux membres du public et aux autres professionnels que le spécialiste a atteint des normes de compétence élevées dans son domaine de pratique. En 2020, 784 avocats avaient obtenu le titre de spécialistes agréés, ce qui représente environ 2 % des avocats en exercice. Ce pourcentage relativement faible n'a pas beaucoup changé depuis plusieurs années. Le programme a subi au moins deux grandes refontes depuis sa création afin d'augmenter la

[27] Comité spécial sur la spécialisation, Rapport au Conseil, mai 1985, p. 3.
[28] Les 17 domaines de spécialisation sont les suivants : droit de la faillite et de l'insolvabilité ; droit de la citoyenneté et de l'immigration (protection des immigrants et des réfugiés) ; litiges civils ; droit de la construction ; droit des sociétés et droit commercial ; droit criminel ; droit de l'environnement ; droit des successions et des fiducies ; droit de la famille ; droit de la santé ; enjeux juridiques autochtones (droits et gouvernance, litiges et représentation, sociétés et commerce) ; droit de la propriété intellectuelle (marques de commerce, brevets, droits d'auteur) ; droit du travail et de l'emploi ; droit municipal ; droit fiscal ; droit immobilier ; et droit de la sécurité professionnelle et de l'assurance contre les accidents de travail.

participation, mais cela n'a pas eu beaucoup d'incidence sur les demandes d'agrément. Malgré le petit nombre de spécialistes agréés dans la province, ceux qui ont investi du temps et des efforts pour obtenir l'agrément sont heureux d'être reconnus dans leur domaine et de se distinguer des autres dans leur domaine de pratique. Il n'existe pas de données permettant aisément d'évaluer si le public s'appuie sur la désignation s.a. pour choisir un conseiller juridique.

g. Grande bibliothèque et Réseau de renseignements et de ressources juridiques

L'accès à de l'information juridique est une condition sine qua non de la prestation compétente de services juridiques. Le Barreau offre deux grandes ressources d'information juridique : la Grande Bibliothèque et le Réseau de renseignements et de ressources juridiques (RRRJ). Les données qualitatives recueillies en 2015 dans le cadre d'une évaluation des besoins actuels et futurs concernant le réseau de bibliothèques ont révélé que les utilisateurs attachent une grande importance à l'information juridique et aux services bibliothèque[29]. Les services d'information juridique jouent un rôle essentiel dans le développement, le maintien et l'amélioration des compétences des titulaires de permis.

La Grande Bibliothèque est hébergée à Osgoode Hall depuis plus de 160 ans. Elle est ouverte au public, mais financée par les titulaires de permis, qui en sont aussi les principaux utilisateurs. La bibliothèque sert également les candidats à la profession, les étudiants d'été, les auxiliaires juridiques, les bibliothécaires de droit et d'autres personnes qui travaillent pour les titulaires de permis. La Grande Bibliothèque offre une vaste collection de ressources en format papier et électronique aux titulaires de permis afin de répondre à leurs besoins en matière de recherche et d'information juridiques. Elle fournit également une aide à la recherche juridique et des formations à ce sujet.

Les services de la Grande Bibliothèque tirent de plus en plus parti des outils et des plateformes technologiques afin de faciliter l'accès à l'information juridique pour les titulaires de permis. Les avocats et les parajuristes de toute la province peuvent utiliser les services de la Grande Bibliothèque en personne et à distance, grâce à un accès en ligne et à une application mobile. Les avocats qui sont membres d'associations juridiques locales peuvent également accéder aux services des bibliothèques de droit de leur comté.

La Grande Bibliothèque offre 40 heures de services de référence chaque semaine (en personne, par téléphone, par courriel ou par clavardage). En 2019, l'équipe de référence de la Grande Bibliothèque a répondu à 23 355 questions de recherche juridique et a fourni 32 560 pages de recherche électronique aux titulaires de permis[30]. De surcroit, la base de données AccessCLE, qui contient les ressources de FPC gratuites du Barreau, a été consultée plus de 120 000 fois.

L'autre pendant des ressources d'information juridique du Barreau est le RRRJ. Le RRRJ, anciennement connu sous le nom de LibraryCo, est une société à but non lucratif chargée de gérer et de coordonner de manière centralisée le réseau de bibliothèques de droit des comtés, lequel se compose de 48 bibliothèques de droit en Ontario. Le RRRJ a pour mandat de s'assurer que les services et programmes du réseau de bibliothèques de droit des comtés de

[29] Transition de LibraryCo à RRRJ inc. (Réseau de renseignements et de ressources juridiques), Rapport du Comité sur le perfectionnement professionnel, 29 novembre 2019, p. 3.
[30] Puisque la COVID-19 et la fermeture de la Grande Bibliothèque en raison de la COVID-19 ont eu une incidence importante sur les chiffres de l'année 2020, nous utilisons les chiffres de 2019.

l'Ontario continuent de répondre aux besoins des titulaires de permis et du public. Le RRRJ s'acquitte de ses fonctions en se fondant sur les principes établis par ses actionnaires, soit le Barreau, la Fédération des associations du barreau de l'Ontario et la Toronto Lawyers Association. Le RRRJ est financé au moyen des cotisations des avocats au Barreau. Le RRRJ est chargé de gérer ces fonds en affectant des fonds et des ressources à chaque bibliothèque.

8. Les résultats de la règlementation et le cadre de compétence continue

En tant qu'organisme de règlementation moderne, le Barreau doit s'efforcer d'adopter une approche équilibrée et proportionnée pour encourager les avocats et les parajuristes à cultiver leurs connaissances, leurs habiletés et leur jugement professionnels tout au long de leur carrière. Pour atteindre cet objectif, le renouvèlement du cadre de compétence continue du Barreau doit se fonder sur des données probantes et les résultats des mesures règlementaires. Les tendances qui se dégagent des volets compétences et conduite du Barreau, et de LAWPRO[31], fournissent des indications précieuses sur les domaines de risque qui devraient guider l'élaboration et la mise en œuvre de stratégies efficaces pour règlementer les compétences[32]. Certaines grandes tendances sont présentées ci-dessous.

a. Problèmes de service à la clientèle et de gestion de la pratique

Les données du Barreau indiquent qu'une part importante des plaintes déposées contre les avocats et les parajuristes ont trait à des problèmes de service à la clientèle, notamment le défaut de communiquer, le défaut de rendre compte et le défaut de servir adéquatement les clients. En 2019 et en 2020, environ 50 % des plaintes déposées contre des titulaires de permis avaient trait à des problèmes de service[33]. Dans le même ordre d'idées, de 1997 à 2007, les réclamations pour faute professionnelle les plus courantes, à l'égard d'avocats, avaient trait à des problèmes de communication. Elles représentaient plus d'un tiers des réclamations soumises à LAWPRO, comparativement aux plaintes formulées pour enquête inadéquate, erreur de droit ou erreur d'écriture[34]. Les tendances observées durant cette période se sont maintenues : les problèmes de communication entre avocats et clients demeurent l'une des principales causes de réclamation pour faute professionnelle, tous domaines de pratique confondus[35]. Les erreurs de communication les plus courantes comprennent : ne pas suivre les instructions du client, ne pas l'informer correctement des conséquences de ses actions, et une

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[31] Le Barreau n'a pas accès à des données sur les réclamations pour faute professionnelle visant des parajuristes.

[32] Pour obtenir des données sur les causes les plus courantes des réclamations pour faute professionnelle dans les principaux domaines de pratique, consultez les fiches d'information de LAWPRO à https://www.practicepro.ca/practice-aids/claims-fact-sheets/.

[33] Rapport de fin d'année de la Division de la règlementation de la profession, p. 18.

[34] De 1997 à 2007, près de 7 200 réclamations ont été soumises à LAWPRO pour des erreurs de communication. Ces réclamations ont représenté près de 22 millions de dollars. Voir LAWPRO, « practicePRO : Helping Lawyers for 10 Years » (2008), LAWPRO Magazine, Vol. 7, no 2, p. 17, en ligne : https://www.practicepro.ca/wp-content/uploads/2017/09/2008-08-lawpro-magazine7_2_aug2008.pdf.

[35] Rapport annuel 2019 de LAWPRO, p. 7, en ligne : https://www.lawpro.ca/wp-content/uploads/2020/04/2019-Annual-Report.pdf et Rapport annuel 2020 de LAWPRO, p. 8, en ligne : https://www.lawpro.ca/wp-content/uploads/2021/04/FINAL-AODA-2020-Annual-Report-WEB.pdf. Les erreurs de communication sont à l'origine de la majorité des réclamations soumises en 2019. En 2020, les erreurs de communication et les enquêtes inadéquates étaient responsables à parts égales de la majorité des réclamations.

piètre communication avec le client menant à une confusion sur les rôles et les prochaines étapes.

Les délais non respectés et les erreurs de gestion du temps sont la deuxième cause des réclamations soumises à LAWPRO contre des cabinets d'avocats, peu importe leur taille[36]. Par conséquent, il n'est pas rare que les inspections professionnelles et les vérifications des pratiques menées par le Barreau révèlent des lacunes en ce qui concerne l'établissement de bons mandats de représentation écrits, la bonne consignation des heures dans les fiches de temps et la gestion efficace des clients potentiels.

b. Nombre d'années depuis l'obtention du permis

Les données du Barreau indiquent que les avocats et les parajuristes qui viennent d'obtenir leur permis présentent un risque de plaintes et de réclamation moins élevé que les autres groupes. Les titulaires qui exercent en pratique privée depuis cinq ans ou moins représentent un pourcentage de plaintes proportionnellement plus faible comparativement aux titulaires de permis qui exercent le droit depuis plus de cinq ans. Le risque de plainte augmente lorsque les titulaires de permis exercent depuis 10 ans ou plus[37] :

- En 2020, 22 % des avocats exerçant le droit en cabinet privé en étaient à leurs cinq premières années d'exercice, et 16 % des plaintes formulées contre des avocats concernaient ce groupe. De même, en 2020, 11 % des parajuristes exerçant en cabinet privé en étaient à leurs cinq premières années de prestation de services juridiques, et 6 % des plaintes contre les parajuristes concernaient ce groupe.

- En 2020, 23 % des avocats en exercice étaient titulaires de permis depuis 11 à 20 ans et ont fait l'objet de 24 % des plaintes formulées contre des avocats. De même, en 2020, 16 % des parajuristes exerçant en cabinet privé étaient titulaires de permis depuis 8 à 10 ans et ont fait l'objet de 19 % des plaintes formulées contre des parajuristes.

Le risque de plainte augmente également avec l'âge. Les avocats et les parajuristes âgés de 50 à 64 ans représentent un pourcentage et une proportion plus élevés de plaintes comparativement aux autres groupes. Les tendances constatées par LawPRO concordent avec les données du Barreau en ce qui concerne les plaintes, ce qui indique que le risque de réclamation pour faute professionnelle est à son plus haut chez les avocats qui sont titulaires de permis depuis 10 à 20 ans.

En dépit de ces données, certains indicateurs anecdotiques révèlent que certains avocats et parajuristes nouvellement titulaires de permis ne se sentent pas suffisamment préparés pour faire face aux défis de la pratique du droit et de la prestation de services juridiques, particulièrement ceux qui exercent de façon autonome. En moyenne, environ 12 % des avocats et 20 % des parajuristes nouvellement titulaires de permis se lancent dans la pratique autonome dans les trois ans suivant l'obtention de leur permis.

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[36] De 1997 à 2007, les délais non respectés et les erreurs liées à la gestion du temps étaient responsables de 17,3 % des réclamations soumises (3 566 réclamations) et de 14,2 % des couts associés aux réclamations (8,8 millions de dollars). Voir LAWPRO, *supra* note 34, p. 18. En 2020, les problèmes de gestion du temps représentaient la deuxième plus importante cause de réclamation. Voir le Rapport annuel 2020 de LAWPRO, *supra* note 35, p. 8.

[37] 2020 Operations Report to Convocation, février 2021, p. 60.

c. Praticiens exerçant seuls et petit cabinet

La majorité des cabinets d'avocats en Ontario sont des praticiens exerçant seuls et de petit cabinet de cinq titulaires de permis ou moins. Au 31 décembre 2020, 94 % des cabinets d'avocats et 99 % des cabinets de parajuristes comptaient cinq titulaires de permis ou moins. Il n'est donc pas surprenant qu'une part importante de l'activité règlementaire du Barreau concerne les avocats et parajuristes qui exercent dans de tels cabinets. Cependant, les titulaires de permis qui exercent seuls ou en petit cabinet font, toutes proportions gardées, davantage l'objet de plaintes que les titulaires de permis qui exercent dans d'autres contextes[38].

Les avocats et parajuristes de ces cabinets recourent davantage aux nombreux services de soutien à la compétence offerts par le Barreau que les autres praticiens, ce qui indique qu'ils ont des besoins et qu'ils sont motivés à respecter les exigences règlementaires et à améliorer leur compétence. Comme mentionné ci-dessus, 74 % des appels à la Ligne d'aide provenaient de praticiens exerçant seuls et en petit cabinet, et 94 % des participants au REP sont des praticiens exerçant seuls et en petit cabinet.

9. Renouvèlement du cadre de compétence continue du Barreau — grands thèmes

Lors des discussions exploratoires pendant la phase de découverte, le groupe d'étude s'est penché sur les résultats de la règlementation et sur les pratiques exemplaires en matière de risques et d'occasions qui devraient être pris en compte pour renouveler le cadre de compétence continue du Barreau. Le groupe d'étude a recensé plusieurs grands thèmes qui pourraient inspirer de nouvelles approches pour les exigences et les programmes de compétence.

a. Soutien par les pairs

Le groupe d'étude a observé que, pour de nombreux praticiens, le fait de cultiver de bonnes relations avec leurs collègues et leurs pairs contribue beaucoup à la compétence. Ces interactions de travail informelles (p. ex., discuter de la stratégie dans un dossier avec un collègue de confiance) soutiennent l'apprentissage juste à temps. Le groupe d'étude a discuté de l'importance de l'environnement collégial et coopératif qu'offrent les associations juridiques locales où les titulaires de permis — particulièrement ceux qui exercent seuls ou en petit cabinet — ont accès à un réseau avec lequel ils peuvent échanger sur des idées et élargir leurs connaissances. Le réseautage avec des pairs et les conseils fournis par des pairs sont de précieuses occasions d'apprentissage qui doivent être encouragées et facilitées.

Le groupe d'étude a également constaté l'importance du mentorat pour renforcer les compétences. Le mentorat traditionnel se fonde sur une relation entre un praticien plus chevronné qui fournit des conseils, de l'information et un soutien à une personne moins expérimentée. Le REP du Barreau offre des occasions de mentorat axées sur un encadrement à plus court terme, et les titulaires de permis s'y intéressent de plus en plus, quoique plus lentement que prévu. Le groupe d'étude s'est demandé comment le Barreau pourrait inciter les membres des professions juridiques à se prévaloir davantage des programmes de mentorat et d'encadrement, tant ceux offerts par les associations juridiques que ceux offerts par le Barreau.

b. Évaluation par les pairs

[38] *Ibid.*, p. 59.

Le modèle de compétence de 2001 recommandait la mise en place d'un projet pilote officiel d'évaluation volontaire par les pairs portant à la fois sur les questions relatives à la gestion de la pratique et sur les questions relatives au droit substantiel[39]. Une évaluation par les pairs est une évaluation de la pratique et du cadre de travail d'un titulaire de permis par un autre titulaire de permis. L'idée était de trouver des avocats bénévoles exerçant dans différentes régions et dans différents contextes de travail et de pratique afin de constituer une liste d'avocats prêts à effectuer des évaluations confidentielles et à faire évaluer leurs propres pratiques ou cadres de travail. De telles évaluations auraient permis aux avocats qui n'avaient pas de lacunes de compétence avérées de confirmer qu'ils respectent bien les normes et d'obtenir des suggestions d'amélioration de la part de leurs semblables. Cette proposition s'inspirait fortement d'initiatives similaires dans les professions de la santé règlementées à ce moment-là.

Le Conseil a choisi d'attendre que le programme d'autoévaluation volontaire (une autre des recommandations du Comité sur le perfectionnement professionnel dans le modèle de compétence de 2001) ait été mis en œuvre et qu'on en ait évalué les résultats avant d'aller de l'avant avec le projet pilote d'évaluation par les pairs. En bout de compte, le programme d'évaluation par les pairs n'a jamais vu le jour.

Le groupe d'étude estime qu'il serait intéressant de revisiter la question pour déterminer si un programme d'évaluation par les pairs serait un mécanisme viable d'amélioration des compétences. Les évaluations par les pairs sont uniques, car elles tirent parti des aspects coopératifs de l'encadrement et du mentorat tout en mettant à profit l'expertise des avocats et des parajuristes pour aider d'autres titulaires de permis à surmonter les défis auxquels ils font face, que ce soit en lien avec le droit ou la gestion de la pratique.

c. Ajustements à l'exigence de FPC

Le groupe d'étude a réfléchi à la question de savoir si l'exigence de FPC, dans sa forme actuelle et générale, permet réellement de renforcer la compétence. Les niveaux élevés de conformité à l'exigence de FPC et la participation positive aux programmes du Barreau, des différentes associations juridiques et de divers fournisseurs de formations semblent indiquer que les titulaires voient la FPC à la fois comme une façon d'améliorer leurs connaissances juridiques et comme une précieuse occasion de réseautage. D'ailleurs, une récente étude sur les mécanismes d'assurance de la qualité et d'évaluation des compétences utilisés dans diverses professions ici et ailleurs a révélé que, à tous les endroits et dans toutes les professions sur lesquels l'étude s'est penchée, la FPC était explicitement considérée comme essentielle pour le maintien de la compétence professionnelle[40]. Les 91 organismes de règlementation auxquels l'étude s'est intéressée exigeaient que les praticiens suivent une forme quelconque de formation tout au long de leur carrière pour être admissibles au renouvèlement annuel de leur inscription[41]. Cependant, l'étude a également révélé que, malgré l'adoption généralisée d'une exigence de formation continue parmi les différentes professions et régions géographiques, il existe peu de preuves tangibles du lien entre la FPC et l'obtention de résultats positifs dans la pratique[42]. Pour ces motifs, et puisque la FPC est obligatoire depuis 10 ans et que le format n'a pas vraiment changé depuis son adoption, le groupe d'étude s'est demandé si le Barreau devrait envisager de réduire l'importance accordée à la FPC obligatoire ou

[39] Comité sur le perfectionnement professionnel, Rapport au Conseil, 22 mars 2001, *supra* note 10, p. 37-38.
[40] Z. Austin et P. Gregory, *supra* note 14, p. 25.
[41] *Ibid*.
[42] *Ibid*., p. 26.

d'apporter des modifications au format. Le groupe d'étude s'est également penché sur la question de savoir si le Barreau devrait établir des exigences de FPC plus ciblées, par exemple des exigences liées au domaine de pratique, à l'expérience ou aux risques cernés. Des exigences de FPC plus précises pourraient permettre de passer du simple respect de l'exigence de FPC (nombre d'heures minimales) à une exigence plus pertinente pour la pratique du titulaire de permis, ce qui aurait donc une incidence plus importante sur la compétence.

d. Apprentissage et perfectionnement dirigés

Un autre grand thème était que les titulaires de permis devraient être guidés dans leur perfectionnement professionnel. Les feuilles de route pour l'apprentissage ou les programmes d'études qui mènent à un titre, une attestation ou une réalisation concrète pourraient inciter les praticiens à développer davantage leur compétence. Si de nombreux praticiens savent bien gérer leur propre perfectionnement professionnel et ne nécessitent pas d'intervention règlementaire, d'autres bénéficieraient d'une assistance. Il pourrait être utile de fournir des orientations sur les compétences requises ou d'établir des normes de pratique pour les différents stades de pratique et domaines de pratique pour s'assurer que les titulaires améliorent activement leurs compétences d'une façon qui permettra de réduire le risque d'erreurs ou de lacunes au fur et à mesure qu'ils progressent dans leur carrière.

e. Compétences de base et au-delà

Le Barreau a l'obligation légale, pour protéger l'intérêt public, de veiller à ce que les avocats et parajuristes aient les compétences de base requises. Puisque la loi qui régit nos professions reconnait que les normes d'apprentissage et de compétence ont une incidence sur les services juridiques fournis, le Barreau reconnait que, à mesure que les titulaires de permis acceptent des mandats de plus en plus complexes, il leur faudra également développer leur compétence. La question de l'apprentissage et du perfectionnement dirigés a aussi amené le groupe d'étude à se demander s'il serait utile d'établir un mécanisme pour assurer l'atteinte de certaines normes d'excellence et pour reconnaitre l'atteinte de ces normes. Certains ont fait valoir qu'en se concentrant uniquement sur les normes de base, les praticiens n'auraient pas d'incitatif pour atteindre des niveaux de compétence plus élevés, alors que d'autres croient que les praticiens doivent tout d'abord atteindre un niveau minimal de compétence et que cela devrait être le premier objectif pour tous les praticiens. Cependant, bien que le PAS a pour objet de reconnaitre l'excellence dans certains domaines du droit, les taux de participation ont toujours été faibles. Le groupe d'étude a reconnu que la compétence de base et l'excellence sont toutes deux importantes et peuvent toutes deux faire partie de cadre de compétence continue.

f. Importance des inspections professionnelles

Les inspections professionnelles sont un outil d'assurance de la qualité qui joue un rôle crucial pour assurer la compétence des titulaires de permis. Les inspections professionnelles se penchent sur les activités de gestion de la pratique des avocats ou des parajuristes individuels et sont axées sur les domaines de risque qui mènent le plus souvent à des plaintes, à des mesures disciplinaires et à des problèmes de négligence. Le groupe d'étude est d'avis que le Barreau devrait envisager d'augmenter le nombre d'inspections professionnelles effectuées afin qu'un plus grand nombre de titulaires bénéficient de cette intervention utile. Le groupe d'étude s'est également demandé si le Barreau devrait se concentrer sur les inspections professionnelles visant les avocats et les parajuristes qui ont plus d'ancienneté, plutôt que ceux qui en sont à leurs premières années de pratique, car c'est à ce moment-là que les lacunes de compétence possibles commencent à se manifester. De plus, qu'une inspection professionnelle

soit effectuée ou non, le Barreau devrait encourager les titulaires de permis à procéder à une autoévaluation annuelle pour s'assurer qu'ils respectent toutes les exigences règlementaires et le Barreau devrait fournir des outils d'autoévaluation.

g. Soutien accru pour les avocats exerçant seuls et en petit cabinet et pour les titulaires qui font la transition vers la pratique autonome

Puisque les praticiens exerçant seuls et en petit cabinet fournissent la grande majorité des services juridiques aux particuliers, aux familles et aux microentreprises, ils jouent un rôle crucial dans l'accès à la justice[43] et la viabilité de leurs pratiques devrait être une priorité pour le Barreau. Les praticiens exerçant seuls et en petit cabinet sont également plus susceptibles de faire l'objet de plaintes. Ils n'ont pas non plus autant de ressources et autant accès à des occasions de formation et à de l'aide. Les avocats et les parajuristes qui exercent seuls ou en petit cabinet et les titulaires qui ont décidé de se lancer dans la pratique autonome pourraient bénéficier d'un soutien supplémentaire pour les aider à répondre aux exigences règlementaires et à se familiariser avec des questions qui n'occupent pas présentement une grande place dans les programmes des facultés de droit, les programmes d'études parajuridiques et les programmes traditionnels de FPC, comme l'exploitation d'un cabinet. Il pourrait être justifié d'investir dans de tels programmes pour épauler les praticiens exerçant seuls et en petit cabinet tout en prenant soin d'éviter d'alourdir le fardeau règlementaire[44]. Le groupe d'étude s'est penché sur la question de savoir si le Barreau devrait exiger ou recommander que les nouveaux titulaires de permis qui se lancent dans la pratique autonome ou se joignent à un petit cabinet, ou les titulaires de permis qui ont décidé de faire la transition vers la pratique autonome, suivent une FPC spécialement conçue pour répondre à leurs besoins particuliers.

h. Compétence technologique

Les avancées technologiques sont en train de transformer non seulement la prestation de services juridiques, mais également la façon dont les praticiens effectuent leur travail juridique. Plus que jamais, les titulaires de permis doivent posséder des compétences technologiques de base pour répondre aux besoins de leurs clients et fonctionner efficacement. La pandémie de COVID-19 a illustré à quel point les compétences technologiques de base sont nécessaires pour communiquer efficacement avec les clients, pour accroitre l'efficacité et pour participer aux instances des cours et tribunaux, lesquels sont en pleine modernisation de leurs plateformes.

Le groupe d'étude a réfléchi à la façon dont le Barreau pourrait aider les titulaires de permis à faire face aux changements rapides qui se profilent à l'horizon et à la question de savoir si la compétence technologique doit être encouragée ou exigée. Certains ont fait remarquer que le domaine de pratique peut avoir une incidence sur le niveau de compétence technologique requis pour servir efficacement les clients, car certains domaines et contextes de pratique s'appuient davantage sur la technologie. Or, le savoir-faire technologique varie considérablement d'un titulaire de permis à l'autre. Le Barreau offre bien certaines ressources dans ce domaine, notamment les ressources « La technologie en pratique », une série de balados pratiques qui abordent les questions technologiques de l'heure, et une ligne directrice sur la technologie qui clarifie les responsabilités professionnelles à garder à l'esprit lorsque les titulaires utilisent des solutions technologiques, mais le Barreau devrait accorder plus d'attention

[43] Jordan Furlong, « Lawyer Licensing and Competence in Alberta » (2020), p. 60, en ligne : https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf
[44] *Ibid.*

à cette question. Que la compétence technologique soit exigée ou encouragée, le groupe d'étude est d'avis qu'il continuera d'être essentiel de fournir des soutiens adaptés aux besoins en temps utile, et qu'il serait utile pour les avocats et parajuristes d'avoir accès à davantage de formations et de ressources pratiques pour les aider à appliquer les pratiques exemplaires dans ce domaine[45].

10. Principes pour un cadre de compétence continue efficace

Compte tenu des résultats obtenus et des thèmes décrits ci-dessus, le Barreau cherche à renouveler son cadre de compétence continue afin de répondre aux besoins d'apprentissage et de perfectionnement professionnel des avocats et des parajuristes au cours de la prochaine décennie. En se fondant sur le travail effectué jusqu'à maintenant, le groupe d'étude a établi les principes suivants pour guider les phases de développement et d'élaboration. Le cadre de compétence actualisé doit être :

- **Fondé sur les risques** — Les activités règlementaires devraient idéalement se concentrer sur les domaines qui présentent les plus grands risques pour le public, en se fondant sur des données probantes.
- **Flexible** — Les obligations doivent tenir compte de toute l'étendue des domaines de pratique, des contextes de pratique, des zones géographiques, des stades de pratique et des autres facteurs contextuels qui ont une incidence sur la situation professionnelle des avocates, avocats et parajuristes.
- **Réalisable** — Les exigences de compétence doivent être efficaces par rapport au cout et doivent être réalisables tant pour l'autorité de règlementation que pour les titulaires de permis. Elles ne doivent pas non plus imposer des fardeaux déraisonnables.
- **Tourné vers l'avenir** — Le cadre de compétences doit être tourné vers l'avenir afin qu'il puisse s'adapter aux grands changements qui vont continuer de s'opérer dans le marché des services juridiques.
- **Axé sur le client** — Les exigences de compétence doivent tenir compte des besoins, des objectifs et des points de vue des clients quant à ce qui constitue une prestation compétente des services juridiques. Il faut garder à l'esprit les différences de parcours, les différences culturelles et les différences sur le plan du revenu et des capacités qui

[45]Le Groupe d'étude sur la technologie a été mis sur pied en 2018 et a pour mandat d'examiner le rôle des technologies dans la prestation des services juridiques et le rôle du Barreau à titre d'organisme de règlementation dans cet environnement en constante évolution qui repose fortement sur la technologie. Le Groupe d'étude a également pour mandat d'encourager l'innovation au sein des professions en favorisant l'utilisation de la technologie pour offrir de meilleurs services juridiques. En avril 2021, le Conseil a approuvé le projet pilote proposé par le Groupe d'étude sur la technologie, soit la mise en place d'un bac à sable règlementaire pour services juridiques technologiques novateurs (SJTN) pendant une période de cinq ans. Le bac à sable permettra de mettre à l'essai les SJTN qui pourraient s'avérer utiles pour le public tout en le faisant dans un environnement sûr et contrôlé et sans s'exposer à des conséquences règlementaires. Le bac à sable permettra au Conseil de sonder l'intérêt du marché pour les SJTN et de recueillir des renseignements sur la façon dont les SJTN répondent aux besoins des clients et sur l'incidence des SJTN sur les attentes des clients en matière de service. Ces renseignements aideront à élaborer les futures politiques, y compris les politiques sur la compétence technologique.

peuvent avoir une incidence sur la communication avec les clients et sur la façon de fournir des conseils et des services juridiques.

11. Questions

Le groupe d'étude souhaite obtenir des commentaires sur les questions suivantes d'ici le **30 novembre 2021**. Il est essentiel pour le Barreau d'obtenir les commentaires des membres des professions juridiques et des autres parties intéressées afin qu'il puisse renouveler son cadre de compétence continue. Le Barreau n'a pris aucune décision concernant la structure ou le contenu du programme de compétence actualisé. Les suggestions et les commentaires de toutes les parties intéressées sont les bienvenus. Nous encourageons votre contribution et nous vous en remercions. N'hésitez pas à répondre à toutes les questions ou à une partie des questions seulement.

1. **Définition pratique de la compétence**

   Êtes-vous d'accord avec la définition pratique de la compétence que nous proposons? Changeriez-vous certains aspects de la définition?

2. **Principes pour un cadre de compétence efficace**

   Êtes-vous d'accord avec les cinq principes d'un cadre de compétences efficace énoncés ci-dessous? Y a-t-il des principes qui devraient être ajoutés ou retirés?

   a) *Fondé sur les risques* — Les activités règlementaires devraient idéalement se concentrer sur les domaines qui présentent les plus grands risques pour le public, en se fondant sur des données probantes.

   b) *Flexible* — Les obligations doivent tenir compte de toute l'étendue des domaines de pratique, des contextes de pratique, des zones géographiques, des stades de pratique et des autres facteurs contextuels qui ont une incidence sur la situation professionnelle des avocates, avocats et parajuristes.

   c) *Réalisable* — Les exigences de compétence doivent être efficaces par rapport au cout et doivent être réalisables tant pour l'autorité de règlementation que pour les titulaires de permis. Elles ne doivent pas non plus imposer des fardeaux déraisonnables.

   d) *Tourné vers l'avenir* — Le cadre de compétences doit être tourné vers l'avenir afin qu'il puisse s'adapter aux grands changements qui vont continuer de s'opérer dans le marché des services juridiques.

   e) *Axé sur le client* — Les exigences de compétence doivent tenir compte des besoins, des objectifs et des points de vue des clients quant à ce qui constitue une prestation compétente des services juridiques. Il faut garder à l'esprit les différences de parcours, les différences culturelles et les différences sur le plan du revenu et des capacités qui peuvent avoir une incidence sur la communication avec les clients et sur la façon de fournir des conseils et des services juridiques.

3. Composantes du cadre de compétence continue

Les composantes de l'actuel cadre de compétence continue du Barreau énumérées ci-dessous respectent-elles les cinq principes d'un cadre de compétence efficace énoncés à la question 2 (fondé sur le risque, flexible, réalisable, tourné vers l'avenir et axé sur le client)? Si ce n'est pas le cas, pourquoi?

a) FPC obligatoire et programmes de FPC

b) Ligne d'aide à la gestion de la pratique

c) Réseau d'encadrement de la pratique

d) Programmes d'évaluation de la pratique (inspections professionnelles, vérifications ponctuelles et vérifications des pratiques)

e) Programme d'agrément des spécialistes

f) Soutiens pour la recherche et l'information juridiques (Grande Bibliothèque et RRRJ)

4. **Renouvèlement du cadre de compétence continue du Barreau**

Devrait-on modifier, restructurer ou supprimer une partie ou l'ensemble des composantes clés du cadre de compétence énumérées à la question 3? Si oui, comment?

Voici quelques exemples :

<u>FPC</u>

a) L'exigence de FPC devrait-elle être modifiée pour cibler le développement et le maintien de certaines compétences?

b) L'exigence de FPC devrait-elle être liée au(x) domaine(s) de pratique du titulaire de permis, à son niveau d'expérience ou aux domaines de risque cernés?

c) La FPC obligatoire devrait-elle être une exigence à respecter au cours d'une période de deux années civiles plutôt qu'annuellement, comme c'est le cas actuellement?

d) Les programmes de FPC doivent-ils être plus rigoureux ou plus interactifs pour s'assurer que les titulaires de permis y participent activement et font des apprentissages?

e) Devrait-on maintenir l'exigence de FPC telle quelle, l'améliorer ou la supprimer?

f) Au lieu de l'exigence de FPC, devrait-on exiger que les titulaires de permis effectuent une autoévaluation pour déterminer leurs besoins d'apprentissage et

de formation, puis élaborent et exécutent leur propre plan de perfectionnement professionnel?

Amélioration de la formation sur la pratique et du soutien à la pratique

g) Le Barreau devrait-il fournir un soutien accru aux praticiens exerçant seuls et en petit cabinet, comme des cours sur l'exploitation et la gestion d'un cabinet, et sur la tenue de registres financiers?

h) Devrait-on exiger que les titulaires de permis suivent un cours de formation portant sur une gamme de compétences de base, comme la gestion de la pratique ou la communication avec les clients? Si oui, le cours devrait-il être obligatoire pour :

   i. tous les titulaires de permis ;
   ii. les nouveaux titulaires de permis ;
   iii. les titulaires de permis exerçant seuls ou en petit cabinet ;
   iv. les titulaires de permis qui ont décidé de se lancer dans la pratique autonome?

Initiatives fondées sur les pairs

i) Le Barreau devrait-il exiger que les titulaires de permis s'engagent dans une relation de mentorat ou les encourager à le faire, que ce soit à titre de mentor ou de mentoré?

j) Le Barreau devrait-il mettre en œuvre un programme d'évaluations par les pairs à titre de mécanisme d'amélioration des compétences? Si oui, comment devrait-on structurer le programme?

k) Connaissez-vous le Réseau d'encadrement de la pratique? Y avez-vous participé et, si oui, l'avez-vous trouvé utile?

l) Le Barreau devrait-il maintenir le Réseau d'encadrement de la pratique tel qu'il est, l'améliorer ou le supprimer?

Évaluation de la pratique

m) Connaissez-vous les programmes d'évaluation de la pratique (inspections professionnelles, vérifications ponctuelles et vérifications des pratiques)? En avez-vous déjà fait l'objet et, si oui, le processus vous a-t-il été utile?

n) Le Barreau devrait-il augmenter le nombre d'évaluations de la pratique effectuées? Si oui, qui devrait-on cibler pour ces évaluations supplémentaires?

o) Le Barreau devrait-il maintenir le programme d'évaluation de la pratique tel qu'il est, l'améliorer ou le supprimer?

Programme d'agrément des spécialistes

p) Connaissez-vous le Programme d'agrément des spécialistes? Y avez-vous déjà participé et, si oui, l'avez-vous trouvé utile?

q) Le Barreau devrait-il maintenir le Programme d'agrément des spécialistes tel qu'il est, le modifier ou le supprimer?

Compétence technologique

r) Le Barreau devrait-il exiger que tous les titulaires de permis aient certaines compétences technologiques de base? Si oui, quelles sont ces compétences et comment le Barreau devrait-il vérifier ou s'assurer que les titulaires de permis les possèdent?

s) Afin de préparer les titulaires de permis à l'évolution rapide des choses sur le plan technologique, le Barreau devrait-il exiger que les titulaires de permis suivent des cours pour améliorer leur compétence technologique ou les encourager à le faire?

Favoriser l'excellence

t) Le Barreau devrait-il encourager les titulaires de permis à viser l'excellence? Si oui, comment?

5. Autres aspects du programme de compétence

Y a-t-il d'autres composantes qui devraient faire partie du cadre de compétences ou d'autres commentaires dont vous aimeriez nous faire part au sujet de la compétence continue des titulaires de permis?