



Law Society
of Ontario

Barreau
de l'Ontario

Tab 3

Priority Planning Committee

For Decision

August 6, 2020

Committee Members:

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

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For Decision

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Tab 3.1

Priority Planning Committee Report

Amendments to By-Law 3 Respecting Inter-Jurisdictional Mobility

August 6, 2020

Authored By:

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

jvarro@lso.ca



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Motion

That Convocation on the recommendation of the Priority Planning Committee make amendments to By-Law 3 to revoke the mandate of the Inter-Jurisdictional Mobility Committee (IJMC) and add the function of the IJMC to the mandate of the Professional Development & Competence Committee as set out the motion at Tab 3.1.1.

A. Executive Summary

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

Background

A. Timing of Consideration of Issue

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

B. Creation of the IJMC

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



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

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

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

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

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

The Recommendation

A. Key Issues

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



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

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

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

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

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

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

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

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

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

BY-LAW 3
[BENCHERS, CONVOCATION AND COMMITTEES]

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

MOVED BY

SECONDED BY

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

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



Tab 3.2

Priority Planning Committee

Recommendations for Strategic Change: Report to Convocation

August 6, 2020

Committee Members:

Teresa Donnelly (Chair)

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

Authored By:

Matthew Wylie
mwylie@lso.ca

Hugo Leal-Neri
hlealner@lso.ca

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Motion

The Priority Planning Committee recommends that Convocation adopt the following motions:

1. That amendments in principle to By-Law 8 be approved to require licensees to submit their reporting of trust account information electronically through the Law Society Portal, namely trust account opening and closing information throughout the year as applicable, and the detailed trust account information currently reported through the Annual Report, by March 31; and that the Law Society automate the reporting of trust account information by licensees.
2. That amendments in principle to By-Laws 5, 6.1 and 8 be approved to:
 - a. provide for a single standardized due date of March 31 for paying the Annual Fee, completing and reporting the Continuing Professional Development (“CPD”) requirements, and completing the Annual Report, beginning in 2021;
 - b. eliminate all late fees for non-compliance with the requirements in 2.a, above; and
 - c. reduce the default periods for the requirements in 2.a, above, to 30 days for 2021 and 2022 and to 15 days for 2023, so that the Law Society may promptly begin the suspension process of a licensee who fails to comply with the requirements by the due date.
3. That amendments in principle to By-Law 5 be approved to remove the exemption from the requirement to pay the Annual Fee for licensees who are over 65 years of age and who do not practise law or provide legal services, beginning in 2021 and for subsequent years.
4. That amendments in principle to By-Law 5 be approved to remove the exemption from the requirement to pay the Annual Fee for licensees who have practised law in Ontario for a period of 50 years, beginning in 2021 and for subsequent years.
5. That the Law Society exercise its authority in subsection 48(1) of the *Law Society Act* to revoke a licensee’s licence if the licence has been administratively suspended for more than 12 months, beginning in 2021.

Introduction

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

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

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

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

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

Strategic Change Items

1. Trust Account Information Reporting in Portal

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

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

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

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

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

a) Recommendation

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

b) Rationale/Risks

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

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

Moving trust account reporting to the Portal would:

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

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

c) Implementation

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

2. Automatic Administrative Suspensions

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

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

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

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

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

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

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

Annual Fee and Annual Report Filing Compliance

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

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

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

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

CPD Compliance

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

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

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

Suspension Process

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

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

Reminders Leading Up to the Nominal Due Date

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

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

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

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

Notices Leading Up to the Actual Due Date

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

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

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

Late Fee Applied

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

Summary Suspension

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

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

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

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

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

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

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

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

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

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

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

Reinstatement Process

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

Annual Report

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

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

Annual Fee

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

Continuing Professional Development

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

a) Recommendation

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

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

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

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

b) Rationale/Risks

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

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

c) Implementation

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

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

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

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

3. Exempted over 65

Applicable By-Laws

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

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

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

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

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

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

Over-65 Profile

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

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

Approximately 6,000 licensees have been granted exemptions. From existing Law Society records, it appears that the vast majority (in excess of 95%) of these licensees are not engaged in any remunerative work and would therefore be required to pay fees at the 25% rate, with an Annual Fee payment of \$516.50 (plus HST) for 2020.⁹

Licensee retirements

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

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

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

a) Recommendation

The CEO recommends the removal of the exemption from the requirement to pay the Annual Fee for licensees who are over 65 years of age and who do not practise law or provide legal services beginning in 2021 and for following years.

b) Rationale/Risks

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

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

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

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

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

c) Implementation

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

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

4. Exempted Life Members

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

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

a) Recommendation

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

b) Rationale/Risks

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

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

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

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

c) Implementation

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

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

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

5. Revocation after Administrative Suspension of one year or more

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

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

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

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

a) Recommendation

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

b) Rationale/Risks

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

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

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

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

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

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

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

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

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

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

c) Implementation

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

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

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

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

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

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

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

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