



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**Tab 2**

## **Audit & Finance Committee**

### **Report to Convocation**

November 27, 2020

#### **Committee Members:**

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

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## FOR DECISION

### 2021 LIRN Inc. Budget

#### **Motion**

**That Convocation approve the LIRN Inc. budget for 2021, incorporating Law Society of Ontario (Law Society) funding of \$7,217,194.**

The Law Society collects funds for county and district law library purposes and transfers these funds to LIRN. Convocation internally restricts these funds for use by LIRN and the county and district law libraries to carry out their annual operations and any special projects approved by Convocation.

LIRN, a wholly-owned, not-for-profit subsidiary of the Law Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Law Society. The Law Society holds all of the 100 common shares of LIRN. Of the 100 special shares, 25 are held by the Toronto Lawyers Association (TLA) and 75 are held by the Federation of Ontario Law Associations (FOLA).

LIRN's budget, approved by the LIRN Board, incorporates a ten percent reduction in funding from the Law Society. The current draft of the Law Society's 2021 budget sets the County Libraries Fund component of the fee, which funds LIRN, at \$159 per full fee paying equivalent lawyer, down from \$182 in 2020. As in previous years, any difference between the amount collected from lawyers and remitted to LIRN would be maintained in the County Libraries Fund for the future funding of the county libraries system.

#### **2021 Budget Development**

The budget has been drafted as the transition from LibraryCo to LIRN continues. This budget should be considered transitional and will allow the LIRN Board to sustain the operations of the county law library system while it undertakes the work of modernizing the delivery of legal information services. A letter from Johanne Blenkin, the Chair of LIRN, to the Audit & Finance Committee is at [Appendix A](#).

## Memorandum

To: LSO Finance & Audit Committee  
From: Johanne Blenkin  
Chair, LIRN Board of Directors  
Date: November 2, 2020  
  
**Re: LIRN 2021 budget**

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I am writing to you on behalf of the LIRN board to provide context for the attached budget.

Our Unanimous Shareholder Agreement mandates an evidence-based approach to decision-making.

As you are aware, the LIRN board is new and still in the process of setting up the organization. We have recently hired a Managing Director, Theresa Leitch, who started in August, 2020. The Board and Theresa have been reviewing LibraryCo documents, speaking to shareholders and contacting the library staff to build a solid understanding of the needs of licensees and stakeholders.

We are also dealing with a pandemic and, while the county courthouse library staff have made great efforts to ensure continuation of their services, there are inevitable impacts to services that are linked to any physical space such as libraries.

This process of collecting the data required to make evidence-based decisions is still in progress.

The Board held many discussions about how to use the information we do have to achieve budget reductions that do not disproportionately affect any of the libraries. We took the time we needed to work through a variety of options. The common thread in all our discussions was to achieve a result that was fair across the system.

LIRN would not be as well placed as we are to have these discussions and provide this budget without the support of LSO senior staff: Diana Miles, Jim Varro, Brenda Albuquerque-Boutilier, and Andrew Cawse. They have all been exceedingly professional and generous with their time, expertise, and patience with our many questions.

Despite reducing the overall budget by 10% and reduced grants on a graduated basis, with larger libraries facing larger cuts and smaller libraries facing smaller cuts, the Board has retained reserves in the amount of \$500,000. We are particularly concerned about the impact on smaller locations that are working with smaller budgets and appear to be lacking a solid

technology infrastructure. These reductions will not be easy for libraries to implement within this time frame, and LIRN will do its best to support them throughout this challenging process.

Yours truly,

A handwritten signature in blue ink, appearing to read "Johanne Blenkin".

Johanne Blenkin, Chair, LIRN

# **LIRN INC. 2021 BUDGET**

**Available upon request**

**FOR DECISION**

**Law Society of Ontario 2021 Budget**

**This document is available upon request**

**Law Society of Ontario**  
**2021 Draft Budget Presentation**

**Available upon request**



## FOR INFORMATION

### Law Society of Ontario Financial Statements for the Nine Months ended September 30, 2020

**The Audit & Finance Committee recommends the financial statements of the Law Society for the first nine months of 2020 be received by Convocation for information.**

This is part of the quarterly financial reporting schedule to Convocation. These interim statements convey the performance of the Law Society before the end of the year. Unlike annual statements, interim statements are not audited.

These financial statements present the financial position and operations of the Society and include the General Funds (or operating funds) and a number of special purpose or restricted funds.

- The Compensation Funds are restricted by the Law Society Act
- The Errors and Omissions Insurance Fund (E&O Fund), the Capital Allocation Fund, the Invested in Capital and Intangible Assets Fund, the County Libraries Fund and the “Other Restricted Funds” (Repayable Allowance Fund, Special Projects Fund and Parental Leave Assistance Fund) are restricted by Convocation.

Information on General Funds and restricted funds is provided in [Appendix A](#).

The Financial Statements for the nine months ended September 30, 2020 comprise the following statements:

- Balance Sheet for the Law Society entity
- Statement of Revenues and Expenses and Change in Fund Balances, detailing results of operations for lawyers and paralegals
- Schedule of Restricted Funds
- Supplemental schedules include Schedules of Revenues and Expenses for the Combined General Funds, Lawyer and Paralegal General Funds, the Compensation Funds and the Errors and Omissions Insurance Fund
- Balance Sheet for the Compensation Fund and Errors & Omissions Insurance Fund.

Supplementary information on financial reporting is provided in [Appendix B](#).

## Financial Statement Highlights

The Law Society continued to be in a solid financial position as at September 30, 2020, despite the impacts of the COVID-19 pandemic on some of its revenue sources. In addition to circumstantial savings realized due to COVID-19, management has also taken deliberate measures to contain costs. Key financial statement highlights include:

- a) The consolidated excess of revenues over expenses was \$6.8 million for the nine months ended September 30, 2020. While this is less than the \$10.8 million for the same period in 2019, the 2020 results are favorable compared to the budgeted excess of expenses over revenue of \$8.2 million for the nine months ended September 30, 2020. The favorable variance to budget of \$15 million is the result of:
  - i. Favourable variance of \$12.7 million in General Fund expenses;
  - ii. Favourable variance in Compensation Fund expenses of \$7.4 million as a result of the \$5 million budgeted provision for the replenishment of the fund balance of the Compensation Fund, with no actual expense, and grants claims experience being \$2.4 million lower than budget; and offset by
  - iii. Unfavourable revenue variances of \$5.1 million across all funds due to unrealized investment losses and lower non-annual fee revenues.
- b) Total revenues of \$165 million in the current year were lower than the \$178 million for the same period in 2019 and all major revenue categories were under budget.
- c) Total expenses of \$158 million in the current year were lower than the \$167 million for the same period in 2019 and all major expense categories were under budget.

The above is analyzed in the balance of this report.

## Statement of Revenues and Expenses and Change in Fund Balances

### Lawyer General Fund

The Lawyer General Fund reported an excess of revenues over expenses of \$597,000 for the nine months ended September 30, 2020 (2019: excess of revenues over expenses of \$6.3 million). The 2020 annual budget planned for expenditures to exceed revenues with the use of \$5.1 million from the fund balance and the allocation of \$1.2 million from the accumulated surplus investment income in the Errors & Omissions Fund

(E&O Fund) to fund operations. The Lawyer General Fund balance of \$26.8 million at September 30, 2020, is down from \$32.6 million at the same time last year, but is within the range of \$17 million to \$26 million set out in the Law Society's Fund Balance Management Policy.

### **Paralegal General Fund**

The Paralegal General Fund reported an excess of revenues over expenses of \$101,000 for the nine months ended September 30, 2020 (2019: excess of expenses over revenue of \$95,000). The 2020 annual budget planned for expenditures to exceed revenues with the use of \$2.4 million from the fund balance. The Paralegal General Fund balance was \$1.9 million at September 30, 2020 compared to \$3 million at September 30, 2019.

### **Restricted Funds**

The Law Society's restricted funds reported an excess of revenues over expenses of \$6.1 million in the first nine months of the year compared to \$4.6 million in the same period last year. The key components were:

- a. Excess of revenues over expenses of \$6.4 million (2019 – excess of revenues over expenses of \$5.7 million) in the Compensation Fund (further explained below); and
- b. Excess of expenses over revenues of \$450,000 (2019 – excess of revenues over expenses of \$869,000) in the E&O Fund due primarily to unrealized losses (gains) on long-term investments.

### **Compensation Fund**

The lawyer pool of the Compensation Fund had a fund balance of \$28.3 million as at September 30, 2020 compared to the \$17.2 million balance at the same time last year. After a period of unusually high claims experience in the years prior to 2017, through the 2018 budget, the Society implemented a three-year plan to replenish the lawyer pool of the Compensation Fund by including an annual \$5 million provision above the amount for routine claims to restore the Fund's financial stability. In addition to this deliberate provision intended to restore the fund balance with a budgeted excess of revenues over expenses of \$5 million in 2020, the budget included a provision for claims (unpaid grants) of \$4.8 million for the year. This compares to the actual expense to the end of September of \$31,000, a much smaller amount driven by the closure of claims that resulted in payments less than claimed or no payment at all. This was offset by unrealized losses on investments totaling \$1.2 million to date.

The lawyer pool of the Compensation Fund ended the quarter with a fund balance of \$28.3 million which is above the minimum benchmark under the Fund Balance Management Policy approved by Convocation in June of \$19.6 million.

The paralegal pool of the Compensation Fund balance was \$922,000 as at September 30, 2020 compared to \$855,000 at the end of the third quarter in 2019. With a grant claim limit of \$10,000 and based on historical claims experience, the fund balance is well funded to deal with an adverse claim event.

## **E&O Fund**

The fund balance of the E&O Fund decreased to \$54 million (2019 - \$54.2 million) due primarily to unrealized capital investment losses of \$831,000. The use of \$1.2 million transferred from the E&O Fund to the General Fund is budgeted to fund operations in 2020 and has not been made yet. The timing of the transfer is dependent on available funds and if funding is required. This will be assessed at the end of November based on the Law Society's financial results and the performance of the financial markets.

## **Revenues**

### **Annual Fees**

Annual fees recognized to the end of September of \$71.3 million have decreased by \$3 million from 2019 and are in line with budget. The 2020 budget incorporated an annual fee reduction for lawyers and paralegals of \$135 and \$109, respectively, and was partially offset by an increase of 1,400 in the number of full-fee equivalent paying lawyers and an increase of 100 in the number of full-fee equivalent paying paralegals. Annual fee revenue is recognized on a monthly basis.

### **Insurance Premium and Levies**

Insurance premiums and levies in the first nine months are \$74.4 million and lower than the \$76.1 million in same period in 2019. Insurance premiums have increased from \$56.8 million for the nine months in 2019 to \$58.2 million for the nine months in 2020 as the number of insured lawyers increased. This increase was offset by a decline in transaction levies as volumes have decreased due to COVID-19. Total transaction levies for the nine months ended September 30, 2020 are \$16.2 million which is down from the \$19.4 million for the same period in 2019.

## Professional Development and Competence Revenue

Professional development and competence revenues comprise income from the licensing process and Continuing Professional Development (CPD). Total year to date revenues of \$13.6 million are below last year's actuals of \$16.9 million and the current year-to-date budget of \$16 million.

Lawyer licensing process revenues of \$9.6 million are nominally below budget and less than the \$10.5 million recorded last year at the end of the third quarter. The total Licensing Process fee, including the fees for the initial application and the Barrister and Solicitor Licensing Examinations of \$4,460, remains unchanged from last year. The lower revenue compared to the prior year is attributable to:

- 2019 having slightly more applicants than typical in the first part of the year and the staggering of payment deadlines in the current year to coincide with the timing of activities (e.g. examinations) in response to COVID-19; and
- the Call to the Bar fee was reduced in 2020 from \$250 to \$165. With COVID-19 group gathering restrictions, the Law Society held administrative Calls to the Bar beginning in May 2020 and will continue to do so for the rest of the year. Call to the Bar revenues are projected to be approximately \$180,000 lower than budget to the end of the year.

Paralegal licensing process revenues of \$1.9 million exceeded budget of \$1.6 million and were similar to 2019 levels.

CPD revenue totaled \$2.2 million at the end of September 2020 which is \$2.5 million below the budget of \$4.7 million and lower than last year's actual revenue of \$4.4 million to the end of the third quarter. Due to the restrictions on large group gatherings, CPD had to cancel its larger in-person programs. In addition, COVID-related policy decisions of Convocation to provide free programming for licensees and remove the 6-hour interactive requirement has further contributed to the reduced revenues in the current year.

The CPD team continues to mitigate losses from these restrictions and policy decisions by modifying its program formats and content to address emerging topics and participant preferences. In particular, flagship "summit" programs that were cancelled in the spring have been rescheduled in the fall and offered in a more condensed format.

As a result, registrations for fall programs are starting to return to more normal levels. However, even with these efforts, it is projected that revenues for 2020 will be significantly lower than both budget and prior year actuals.

## **Change in Fair Value of Investments**

The change in fair value of investments shows total unrealized losses of \$2.6 million compared to gains of \$2.2 million in the same period in 2019, mirroring market conditions due to increased economic uncertainty as a result of COVID-19. While the unrealized losses are significant, it should be noted that this represents an improvement over the end of the first quarter of the year where unrealized losses were \$5.6 million. The change in fair value is not budgeted. Investment income (dividends and interest) of \$1.7 million is comparable to last year and close to budget.

## **Other Revenues**

Other revenues totaling \$5.8 million in the General Funds is less than budget (\$6.2 million) and lower than 2019 (\$6.9 million). The notable components of other income are late fees, ordered costs, Ontario Report revenue, pre-authorized payment plan fees and catering sales. Revenue related to ordered costs varies from year to year and in 2020 are less than budget and lower than 2019 actual results. In addition, catering and event operations have been closed since March 2020. The latter revenue decline has been offset by reductions in staffing and other costs, but is contributing to a decline in revenue against prior year and budget.

## **Expenses**

### **Professional Regulation, Tribunals and Compliance Expenses**

Professional Regulation, Tribunals and Compliance expenses totaling \$23 million were higher in comparison to 2019 (\$22.1 million) due to the filling of previously vacant staff positions but are less than budget by \$2.5 million due to residual vacancies particularly in Case Management and Litigation Services along with reduced travel and office costs. Expenditures for outside counsel fees are \$900,000 overbudget, offsetting some of the underspending in other areas.

### **Professional Development and Competence Expenses**

Professional Development and Competence expenses totaling \$20.2 million are less than the 2019 amount of \$22.8 million and budget of \$24.4 million. The underspending is based on a few factors. With reduced CPD revenues due to the cancellation of all in-person events and moving all programming online, there were savings in venue rentals, audio visual expenses, catering, and material production costs. Similarly, with the cancellation of all in-person licensing exams for the remainder of the year and the move to online examinations, licensing process costs

are significantly less than budget as a result of savings on venue and accommodation costs.

There are positive variances from budget across all other departments, with larger variances related to limited staff and travel costs across the division and material purchasing in the Great Library.

### **Corporate Services Expenses**

Total Corporate Services expenses of \$20.8 million were slightly more than the 2019 amount of \$19.9 million and less than budget (\$21.8 million). The key drivers for the difference between budget and actual are reduced spending on recruitment, building maintenance, and consulting fees. Increased severance, software maintenance and cloud service costs are offsetting some of these savings.

### **Convocation, Policy and Outreach Expenses**

Convocation, Policy and Outreach expenses of \$4.4 million are less than the 2019 amount of \$6.7 million and are less than budget (\$8.5 million). The underlying variances from budget relate to lower benchers remuneration and expenses with all meetings held virtually since March and Convocation's decision to not claim remuneration for governance work occurring from April 9, 2020 to June 30, 2020. Other items contributing to the variance are the unused \$1 million contingency, and underspending related to policy, media relations and communications. The latter is attributable to some staffing vacancies, and the impact of COVID-19 on the timing of expenditures related to stakeholder engagement and other program expenses.

### **Services to Members and Public Expenses**

Services to members and public expenses of \$4.9 million are less than the 2019 amount of \$5.2 million and lower than budget (\$5.8 million). The largest variance relates to catering costs being less than budget with the closure of all catering operations effective March 17, 2020.

### **Balance Sheet**

A stand-alone balance sheet for the Compensation Fund is provided as supplementary information. The comments below are based on the Balance Sheet for the Law Society corporate entity including all Law Society restricted funds.

## **Cash and Short-Term Investments**

The total of cash and short-term investments at September 30 is \$64 million (2019 - \$69 million). Of this amount, \$19.2 million (2019 - \$12.8 million) pertains to the Compensation Fund and \$720,000 (2019 – \$1.4 million) pertains to the E&O Fund and is held in separate accounts.

## **Accounts Receivable**

At the end of September, the accounts receivable balance was \$38.5 million compared to \$30 million at the same time last year. The increase is attributable to measures taken to assist licensees, insureds and candidates to deal with the impact of COVID-19. As an example, licensee instalments due under the Pre-Authorized Payment Plan were deferred to later in the year and suspensions for non-payment of annual fees was also delayed until after August 15<sup>th</sup> resulting in the aging of the receivable balances.

## **Prepaid Expenses**

Prepaid expenses of \$30.2 million were at a similar level to 2019 and mostly comprise annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.

## **Portfolio Investments**

Portfolio investments are shown at fair value of \$65 million (2019 - \$63.1 million) and reflect unrealized losses of \$2.6 million in the first nine months of 2020 related to current economic uncertainty (improved from \$5.6 million unrealized loss at the end of the first quarter). Of the total portfolio investments at the end of September, \$17.1 million pertains to the General Fund, \$28.5 million to the Compensation Fund and \$19.4 million to the E&O Fund. Under the Investment Policy, the benchmark Canadian equity component is 30% and the fixed income component is 70%.

## **Investment Loan**

The investment loan of \$1.4 million (2019 - \$1.2 million) represents the Law Society's contribution to a subordinated syndicated loan with all the other Canadian law societies as part of the funding of CanLII's acquisition of Lexum in 2018. The interest rate is 4.74%. The term of the loan is 5 years. Pursuant to the loan agreement, the Law Society is committed to pay \$280,000 annually for three years, with next year being the last of the remaining annual balance of sale payments.



## **Deferred Revenue**

Deferred revenue is made up of annual fees, licensing process fees and insurance premiums, which are recognized over the full year. The balance at the end of September 2020 is \$50.3 million and in line with the prior year balance at the same time (2019 - \$50.9 million).

## **Provision for Unpaid Grants/Claims**

The provision for unpaid grants represents the estimate for unpaid grants and inquiries against the Compensation Fund, supplemented by the costs for processing these grants. The current balance of \$15.7 million has decreased from \$19.7 million in 2019 as the Fund continues to process claims related to some large defalcations. The paralegal Compensation Fund provision for unpaid grants comprises \$185,000 of the total Compensation Fund provision for unpaid grants.

**Law Society of Ontario**  
**Third Quarter Financial Statements for 2020**

**Available upon request**

## Appendix A

### General Fund & Restricted Fund

#### General Fund

The General Fund accounts for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers and paralegals. This fund reports unrestricted resources.

The Society's policy is to maintain the General Fund fund balance at no less than two and no more than three months of General Fund budgeted expenses.

If the General Fund fund balance exceeds three months of budgeted General Fund expenses, Convocation shall utilize the excess for one or more of the following:

- Mitigate the General Fund fee for the next fiscal year;
- Transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

If the General Fund fund balance is less than two months of budgeted General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the General Fund fund balance is more than two months of budgeted General Fund expenses and less than three months of budgeted General Fund expenses, Convocation may appropriate funds from the General Fund fund balance for one or more of the following:

- Mitigate the General Fund fee for the next fiscal year;
- Transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

#### Restricted Funds

##### **Compensation Fund**

The Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a licensee, in connection with the licensee's professional

business or in connection with any trust of which the licensee was a trustee. The Compensation Fund is restricted in use by the Law Society Act.

Pursuant to the Law Society Act, the Compensation Fund is supported by licensee annual fees, investment income and recoveries. The Compensation Fund accounts for program delivery, administration and payment of grants and has separate fund balances for lawyer licensees and paralegal licensees.

The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.

If the Lawyer Compensation Fund balance exceeds four one-in-one hundred-year events, Convocation shall utilize some or all of the excess for the following:

Mitigation of the Lawyer Compensation Fund fee for the next fiscal year; or  
Annual mitigation of the Lawyer Compensation Fund fee shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.

If the Lawyer Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the Lawyer Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:

Mitigate the Lawyer Compensation Fund levy for the next fiscal year;  
Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;  
Leave the fund balance at its current balance for the upcoming fiscal year.

### **Errors and Omissions Insurance Fund**

The Errors and Omissions Insurance Fund ("E&O Fund") accounts for insurance-related transactions between LAWPRO, the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers, reported as revenues, and remits these amounts to LAWPRO, reported as expenses.

Pursuant to section 61 of the Law Society Act, the Society arranges mandatory professional liability insurance for practising lawyers with LAWPRO, and through the E&O Fund, levies the insured lawyers. Each year, the premium for the insurance program is established through a process whereby LAWPRO provides an offer for review and acceptance by Convocation. The offer provides details on the components of the insurance program, including anticipated base premiums, claims history levies, transaction-based levies and amounts to be drawn from the E&O Fund fund balance.

### **Capital Allocation Fund**

The Capital Allocation Fund is maintained to provide a source of funds for the acquisition and maintenance of the Society's capital and intangible assets which comprise buildings and major equipment including computers and software. Amounts of assets capitalized, according to the Society's capital asset policy, are transferred to the Invested in Capital and Intangible Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund.

### **Invested in Capital and Intangible Assets Fund**

The Invested in Capital and Intangible Assets Fund records transactions related to the Society's capital assets and intangible assets, specifically acquisitions, amortization and disposals.

### **County Libraries Fund**

The County Libraries Fund records transactions related to the Society's support of county law libraries. As approved by Convocation, the fund accumulates funds for county library purposes, which are remitted to LIRN.

### **Other Restricted Funds**

The Repayable Allowance Fund provides loans for tuition and living expenses to candidates in the lawyer licensing process.

The Special Projects Fund is maintained to ensure that financing is available for ongoing special projects approved by Convocation.

The Parental Leave Assistance Fund accounts for the delivery of the Parental Leave Assistance Program ("PLAP") and is funded by lawyers' fees. PLAP provides financial assistance to lawyers in firms of five lawyers or fewer who have a net annual practice

income of less than \$50,000 and who do not have access to any other parental leave financial benefits. Under PLAP, the Society provides a fixed sum of \$750 a week to eligible applicants for up to 12 weeks to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave.

## Appendix B

### Supplementary Information on Financial Reporting

#### Basis of Presentation

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations set out in Part III of the Chartered Professional Accountants of Canada Handbook – Accounting.

#### Portfolio Investments

Portfolio investments are recorded at fair value. The fair value of portfolio investments is determined by reference to transactional net asset values for the fixed income and Canadian equity pooled funds. Transaction costs are expensed as incurred.

The Society manages financial risk associated with portfolio investments in accordance with its investment policy. The primary objective of the investment policy is to preserve and enhance the real capital base. The secondary objective is to generate investment returns to assist the Society in funding its programs. Convocation monitors compliance with the investment policy and regularly reviews the policy.

#### Revenue Recognition

Annual member fees, insurance premiums and levies are set annually by Convocation and are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Insurance premiums related to the unexpired term of coverage at the balance sheet date are reported as deferred revenue.

Professional development and competence revenues are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Other revenues and realized investment income/losses are recognized when

receivable if the amount can be reasonably estimated. Unrealized investment gains/losses are recognized with changes in the fair value of financial instruments.

Fees, insurance premiums and other revenues receivable are recorded as accounts receivable on the balance sheet, net of any required provision for doubtful amounts



## **FOR INFORMATION**

### **Investment Compliance Reports for the Quarter ended September 30, 2020**

**Convocation is requested to receive the Investment Compliance Reports for the quarter ended September 30, 2020 for information.**

Under the Law Society Investment Policy, Law Society management shall report quarterly on compliance with the Policy.

The Law Society, and its investment manager, has complied with the Investment Policy for the quarter ending September 30, 2020.

**Law Society of Ontario**  
**Investment Compliance Reports**

**Available upon request**

## FOR DECISION

### COVID Response Program

#### Motion

That Convocation approve a COVID Response program that allows eligible licensees to defer their 2021 annual fees to March 31, 2022 and be available upon application to any licensee where the licensee's annual fees are paid directly by the licensee or are paid on the licensee's behalf by a small legal or paralegal firm (constituted by 5 licensees or less) and

- a) For those licensees in sole practices licensed in 2018 or earlier,
  - i. gross revenue for 2020 from the practice of law or the provision of legal services has declined by more than 50% in comparison to that of the 2019 calendar year, and
  - ii. the licensee's gross revenue from the practice of law or provision of legal services in the 2020 calendar year is less than \$50,000.
- b) For those licensees licensed in 2018 or earlier, practising in firms of two to five licensees,
  - i. gross revenue for 2020 from the firm's practice of law or the provision of legal services has declined by more than 50% in comparison to that of the 2019 calendar year, and
  - ii. the firm's gross revenue from the practice of law or provision of legal services in the 2020 calendar year is less than \$50,000 times the number of licensees in the firm.
- c) For those licensees first licensed in the years from 2019 to 2021, the licensee's gross income from all sources in 2020 is less than \$50,000.

#### Overview

There is a general desire among benchers to consider measures to assist licensees facing financial hardship as a result of the COVID-19 pandemic. The most practical option available to the Law Society is some form of temporary fee support program to assist licensees who have been negatively impacted by the pandemic. While a fee support program will not, in and of itself, relieve the financial stress licensees may be facing, it will mitigate the cost of maintaining their ability to practice or provide legal services and avoid administrative suspension for non-payment of the annual fee in 2021.

The payment of annual fees to the Law Society by licensees allows them to practice as lawyers and paralegals. Circumstances arising due to the COVID-19 pandemic, such as physical distancing requirements, and significantly limited court and tribunal hearings and appearances, have made it very difficult for certain licensees to practice or provide legal services and/or earn income. In response to the COVID-19 pandemic, the Law Society has supported its licensees with annual fee payment deferrals and other extensions in 2020.

Lawyers and paralegals have been affected in various ways. Some licensees continue to experience notable declines in income or may be more financially vulnerable, while others were either temporarily impacted or generally unaffected.

At this time, it is unknown how many lawyers and paralegals may be experiencing financial challenges. The Law Society is not seeing an increase in lawyers or paralegals changing their status to non-practising or leaving the professions. Based on a review of licensee changes to non-practising status to the end of October, the percentage change for lawyers is within a 1% range of the 3-year historical average. The percentage for paralegals is about 3.5% lower than the 3 historical year average, although this trend may not be specific to COVID-19 as there has been slowing growth in the number of paralegals over the last few years. This is further supported given that the Law Society's annual fee revenue is tracking almost exactly to budget.

To gauge what the impact may be on full fee equivalent lawyers and paralegals for budget purposes, management and the Treasurer exchange information regularly with the other Canadian law societies, who at this point are not seeing notable changes. Research of other regulatory and professional bodies, in and outside of Canada, shows that virtually all of them are exhibiting similar resilient trends. What is known is there are lawyers and paralegals facing financial challenges, with the extent of the impact unknown. The details of two COVID-19 response programs from two other relevant organizations, the Law Society of British Columbia and the Nova Scotia Barristers Society are attached as [Appendix A](#).

## Guiding Principles

Consideration of a fee response program was guided by the need to provide assistance to licensees who were notably impacted by the pandemic and were most in need. The program was not seen as one of general relief to all licensees. With that in mind, options were considered that would:

- assist practising lawyers and paralegals who are in sole practices or in small firms who may have had their practice interrupted due to the pandemic (e.g. court closures)

- assist licensees who have seen a significant reduction in year over year revenue
- assist newly licensed licensees to move into private practice in support of access to legal services
- impose minimal burden on licensees to apply
- be financially viable, recognizing the financial impact of COVID-19 on the Law Society's 2021 operations is currently unknown.

## **COVID-19 Response Program Models Considered**

The Committee considered three options for a response program. The first option was a one-time fee reduction for 2021. The across the board reduction for all licensees was considered, however a more targeted approach applicable to licensees in private practice either as sole practitioners or in small firms and newer licensees was preferred by the Audit & Finance Committee.

In considering a more targeted approach, two options were discussed by the Audit & Committee:

- 1) an annual fee reduction model, which would provide relief from the payment of a portion of the 2021 annual fee for licensees who met certain eligibility criteria
- 2) an annual fee deferral model that allows qualified applicants to temporarily defer payment of their 2021 annual fees to a future date.

The second option, and ultimately the preferred option was a one-time fee deferral plan to support those most impacted by the pandemic. Similar to the fee reduction option, consideration was given to both a general approach applicable to all licensees and a more targeted approach intended to assist those most impacted by COVID-19. Ultimately, a targeted approach was deemed to be the appropriate response.

## **Recommended Model - Annual Fee Deferral**

Under this option, it is recommended that the deferral of 2021 annual fees be for the entire 2021 fee and the duration of the deferral be to the payment deadline for paying the 2022 annual fees (anticipated to be March 31, 2022). Licensees, qualifying for fee deferral would be expected to pay the full amount of their 2021 and 2022 annual fees following the usual timetable in 2022. Should licensees not pay the deferred 2021 annual fee in 2022, they will be subject to suspension for non-payment of their annual

fees. In the event licensees opting for the deferral program in 2021 are unable to make full payment of their 2021 and 2022 annual fees by March 2022 deadline, they would be allowed to enrol in the monthly Pre-authorized Payment plan (PAP) and smooth the payment of the 2021 and 2022 annual fees over the full year.

Partial fee deferral is not recommended due to complicating factors related to administrative suspension for non-payment of the annual fee and information system limitations with the pre-authorized payment plan. Significant system modifications would be required and time constraints for implementation make these modifications impractical.

With adherence to the guiding principles, it is recommended that the deferral of annual fees be restricted to those considered to be most impacted by the pandemic. While it is not possible to clearly identify all who have been impacted, parameters for access to the fee deferral program have been developed with the intent of capturing those most likely at risk.

Licensees considered most at risk are those practicing as sole practitioners or members of a firm of five licensees or less, and those newly licensed in the last two years (2019 onwards). In addition, the loss of income due to COVID-19 is also a significant contributor to licensee's need for fee deferral.

With these considerations, the following criteria are recommended for licensees to access the program.

- a) Licensees annual fees are paid directly by the licensee or are paid on the licensees' behalf by a small legal or paralegal firm (constituted of 5 licensees or less),
- b) For those licensees in sole practices licensed in 2018 or earlier,
  - i. gross revenue for 2020 from the practice of law or the provision of legal services has declined by more than 50% in comparison to that of the 2019 calendar year, and
  - ii. the licensee's gross revenue from the practice of law or provision of legal services in the 2020 calendar year is less than \$50,000.
- c) For those licensees licensed in 2018 or earlier, practising in firms of two to five licensees,
  - i. gross revenue for 2020 from the firm's practice of law or the provision of legal services has declined by more than 50% in comparison to that of the 2019 calendar year, and

ii. the firm's gross revenue from the practice of law or provision of legal services in the 2020 calendar year is less than \$50,000 times the number of licensees in the firm.

d) For those licensees first licensed in the years from 2019 to 2021, the licensee's gross income from all sources in 2020 is less than \$50,000.

For the purposes of point b) and c), gross revenue is defined as billings plus the value of work in progress, whether billed or not.

Eligible licensees will apply to the Law Society by completing an application requesting the deferral of their 2021 annual fee, agreeing to the terms and conditions of the program and attesting to their meeting the criteria for eligibility. The application for deferral will be available on the Law Society's website as soon as practical.

There will be no requirement for the submission of supporting documentation such as income tax returns, financial statements or other material to support the request for an annual fee deferral. The attestation of the licensee will be considered as sufficient to support the application. The application will be reviewed by the Law Society for accuracy and completeness. Applicants will be notified upon acceptance or rejection of their application by the Law Society.

Licensees not meeting the criteria, but seeking some form of assistance, may opt for the monthly PAP plan to smooth the payment of annual fees over the year. In addition, those licensees who are not working or on parental leave should report their change in status in order to be eligible to pay annual fees at the 25% fee category.

## **Financial Implications**

The contemplated program will have cash flow and expense implications. These are challenging to quantify as it is difficult to project what take-up rates will be. The expense implications will take the form of licensees' failure to pay their annual fee at the end of the deferral period and being suspended from the practice of law or the provision of legal services for failure to pay the annual fee. In accordance with accounting principles, an assessment of the deferred annual fees outstanding at the end of 2021 may be necessary and a provision made for some portion likely to be uncollectable. When the full amount of unpaid fees is known in fiscal 2022, the balance of the bad debt would be written off and require funding.

It is reasonable to assume that some percentage of those who opt to defer their 2021 annual fee will elect to leave the professions without payment of their 2021 annual fee prior to repayment. The Society has no history with such a program and no data to draw on to support any estimate of how many applicants will ultimately not be in position to pay their 2021 deferred annual fee when it becomes due.

In assessing cash flow implications, the Law Society has sufficient cash, short-term and long-term investments to accommodate reasonable take-up rates. It is envisioned that the application period for the deferral of the 2021 annual fee, for licensees other than those licensed in 2021, would have a deadline of a date in early March 2021. At that time, the Law Society will be in a better position to assess what impact there may be on the cash flow.

Part of the cost of this program will be foregone investment income and, as previously mentioned any bad debts associated with eventual non-payment of annual fees in 2022. A further cost may be the crystallization of unrealized losses on long-term investments. As the deferral program will result in less annual fees collected in 2021 and affect cash inflow, if liquidation of securities with market values currently below their cost is required to fund operations, there could be the realization of investment losses. While the Law Society has not borrowed money in recent history, it could consider seeking external funding (e.g. through a credit facility) to mitigate the realization of investment losses.

If approved by Convocation, it is expected that the cost of the program, both forgone investment income and bad debt expense, would be absorbed by the fund balances of the Law Society. If the costs are above nominal levels and recognizing the Law Society's Fund Balance Management Policy, if the fund balances are outside policy approved minimum threshold levels and/or are exhausted due to other financial pressures on the Law Society such as the pandemic, it is envisaged that additional funding for the program would be from the existing unrestricted fund balance of \$15 million within the Errors & Omission (E&O) Fund. With the uncertainty related to the impact of COVID-19 on the Law Society's finances for 2021, a backstop equivalent to the annual fees deferred under the program would be established within the E&O Fund and remain until the end of the program.



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IN CAMERA MATERIAL*