

Regulatory Sandbox for Innovative Technological Legal Services (ITLS) Frequently Asked Questions

Rationale for regulatory sandbox

1. Why is the Law Society of Ontario (LSO) planning to launch a regulatory sandbox?

The sandbox will help to fulfill the LSO's mandate and responsibilities as a public interest regulator in three ways. The sandbox will: 1) facilitate access to justice by removing barriers to the development of ITLS that could reach new consumers in new ways, especially in areas of unmet needs; 2) protect the public by providing ITLS consumers with the same type of safeguards available to clients of lawyers and paralegals (competent and ethical services, recourse when required, and the provision of relevant details enabling informed choices to be made about the providers of the services); and 3) inform the LSO's longer term decision-making about ITLS regulation.

Sandbox operations

2. How does the sandbox operate?

Eligible individuals and entities apply. Applications are reviewed to ensure various approval criteria are met, such as viability, consumer benefit, quality assurance and appropriate insurance coverage. The sandbox manager decides whether to approve, reject, or return an application after reviewing the recommendation of an advisory council of external experts. A written decision for each completed application is published. The sandbox manager reports to the LSO Executive Director, Policy Division, and Executive Director, Professional Development & Competence.

Approved applicants are given an individualized operating period in the sandbox (generally two years). Participants then enter into a participation agreement with the LSO that covers data collection, communication of information to users, complaint resolution, reporting and auditing requirements, etc. Participants report regularly to LSO sandbox staff on various metrics, such as consumer demographics, performance outcomes, pricing information, complaint resolution outcomes and service feedback. Sandbox staff will record and analyze this data and report regularly to Convocation, the meeting of the board of directors of the LSO. This data will inform the LSO's policy-making regarding ITLS.

If serious problems arise during the operating period, the applicant's participation in the sandbox may be suspended or revoked.

Eligibility for sandbox

3. Are there any requirements regarding the composition of sandbox participants? Does a licensee have to be involved?

The sandbox is intended to be exploratory and innovative. For this reason, eligibility at the initial application stage will be open to the widest possible range of ITLS. Any legal function could be involved and any entity could apply – licensee, non-licensee, not-for-profit or for-profit corporation. Applicants' tools or programs must have as a central feature the innovative delivery of legal services via technology.

Sandbox outcomes

4. What happens after a participant has completed its term in the sandbox?

A participant may be granted a permit to continue operating in Ontario after completing its individualized period in the sandbox. The LSO will determine whether, and under what conditions, participants will be allowed to continue providing their ITLS after their participation in the sandbox has ended. Further, data from the sandbox could lead to changes to the LSO regulatory regime that would permit certain ITLS to operate.

LSO approval of sandbox participants

5. Is the LSO essentially giving a stamp of approval to sandbox participants?

A participant's approval to participate in the sandbox means that they can operate their ITLS for a limited period of time in the sandbox with strict monitoring and reporting requirements. To gain approval, the participant must meet certain requirements related to viability and consumer protection (see Q 2). It is likely that both consumers and participants will see sandbox participation as an indication that the ITLS provides competent and ethical service.

Tech entrepreneur interest in sandbox

6. Why would tech entrepreneurs want to participate in the sandbox?

Ontario is a hotbed of legal tech development and LSO staff have reached out to a number of tech entrepreneurs who have expressed interest in participating in the sandbox. There are two advantages that sandbox participation can offer: 1) it implies a level of quality assurance that entrepreneurs could use to attract consumers; 2) it eliminates concerns that the enterprise could be shut down by the regulator, which is important to investors.

Sandboxes in other jurisdictions, such as British Columbia and Utah, have attracted a large number of applicants. Utah's sandbox had 16 completed applications within two weeks of announcing the launch and British Columbia had 25 applications in its first two months of operation.

Insurance

7. Will sandbox participants be required to have insurance?

Application approval decisions will be made with reference to a detailed set of approval criteria, one of which is whether the applicant carries appropriate insurance commensurate to the risks involved in the delivery of its services, such as errors and omissions insurance, product liability insurance, general commercial liability insurance, and/or cyber insurance. The approval criteria are designed to be flexible and certain tools, for example a tool operated by government, may have protections that are equivalent to insurance.

Review of approval decisions

8. What if a provider does not receive approval to participate in the sandbox? Is there an appeal mechanism?

Applicants may request a review of a decision to reject an application, or of conditions imposed in the approval of an application. Review decisions will be made by the LSO Executive Director Policy Division, or the Executive Director, Professional Development & Competence.

Proprietary elements / intellectual property (IP) of ITLS in sandbox

9. Information about who is participating in the sandbox will be public and sandbox participants will be required to provide data regarding their ITLS to the LSO. How will the LSO help ensure that participants' IP or the proprietary elements of their ITLS are not taken by someone else, particularly a larger player with more resources?

Reporting will be in the aggregate and the proprietary elements of an ITLS will not be reported or publicly disclosed. The LSO will develop robust protocols for data collection and data governance. Sensitive or confidential information will be addressed in a manner similar to how the LSO deals with sensitive licensee data.

Complaint resolution

10. What mechanisms will a consumer have to complain about an ITLS provider?

Each sandbox participant will be required to maintain and operate its own complaint resolution process. The LSO will evaluate each participant's process to ensure that it properly addresses any issues that may arise.

11. Consumers will want the ability to approach the LSO with any complaints. It sounds like sandbox participants will essentially be self-governing. How do you address the concern that participants will have too much autonomy and not enough oversight, particularly with respect to complaint resolution?

Sandbox participants are subject to a thorough approval process, active monitoring by the LSO and regular reporting requirements. In addition, the LSO always has the authority to suspend or revoke a provider's approval to participate in the sandbox (for example, if the provider receives a significant number of complaints).

Financing the sandbox

12. How will the sandbox be funded?

Initially, the sandbox will be funded from the LSO general fund. The 2021 budget has already provided for an initial investment in start-up costs. The LSO is also exploring a number of external funding sources. We have had productive conversations with the federal and provincial governments and other funding sources. External funding is tentative at this point, as we need Convocation's approval of the sandbox before we can secure any external funding.

We are also considering participant fees but are mindful that unduly high fees could deter applicants, especially those with limited access to capital, thereby undermining the sandbox's overall potential. Tiered fee structures may be implemented, including separate fee categories for not-for-profit providers and small or early-stage companies.

Alternative business structures (ABS)

13. Will this project open the door to ABS?

No. While the sandbox will permit legal services to be delivered through corporations and non-licensees, the permits would be granted in a controlled setting, and only to specific entities for specific ITLS. The sandbox will not permit licensees to provide traditional services through ABS. In any event, the provision of legal services by ABS would not be allowed as a general rule without Convocation approval.

Job security for licensees

14. Will ITLS further commoditize lawyers, create services that compete with lawyers and paralegals and take jobs away from licensees?

We anticipate that many ITLS will serve consumers who traditionally do not seek out a legal professional to assist with their issue. For these consumers, ITLS are an efficient, cost-effective way to address their legal matter. For those who do seek out a legal professional, the need for lawyers and paralegals is not going away, although technology is changing how lawyers and paralegals practice, just as it is changing how other professions practice. In fact, technology will likely create new opportunities for lawyers and paralegals. It will alert consumers to legal issues and accessible legal representation from licensees, allow licensees to connect with more potential clients more efficiently and create new legal tasks and processes where sophisticated assistance is required. Ultimately, many legal issues spring from complex personal issues and consumers want more than a tool if they can afford it - they want a personal connection and assistance.

LSO's jurisdiction to regulate legal services providers

15. Does the LSO have the jurisdiction to operate a regulatory sandbox?

The LSO's Technology Task Force carefully considered the issue of jurisdiction and sought legal advice. The Task Force is confident that the operation of the regulatory sandbox is within the authority of the *Law Society Act*.

LSO liability

16. Is the LSO at risk of claims where an approved ITLS turns out to be negligently designed or delivered?

The LSO's Technology Task Force carefully considered the issue of the LSO's liability. The LSO has statutory protection for the good faith exercise of its duties and powers (s. 9 of the *Law Society Act*) and there is no known precedent for successful claims in comparable situations, just as the LSO has not been found liable for the negligence of licensed lawyers and paralegals.

Discussions with other jurisdictions

17. British Columbia (BC) has already established a regulatory sandbox. Have you had any discussions with BC or other jurisdictions?

The BC sandbox differs from the LSO sandbox in that it is intended to address legal services provided by individuals. However, the LSO has been speaking to BC and sharing information with them and will continue to do so. Further, as a coordinating body, the Federation of Law Societies of Canada is not directly involved in administering any sandbox, but it is interested in our pilot and willing to assist wherever possible.