

TAB 2
Report to Convocation
November 30, 2023

Access to Justice Committee

Committee Members:
Cheryl Siran, Co-Chair
Doug Wellman, Co-Chair
Robert Adourian
Paula Callaghan
Neha Chugh
Jennifer Gold
Mitchell Kitagawa
Shalini Konanur
Joelle Malette
Deborah Moriah
Jonathan Rosenthal
Stephen Rotstein

Purpose of Report: Decision

Prepared by the Policy Division
Patti Latimer (platimer@lso.ca)

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Law Society
of Ontario

Barreau
de l'Ontario

Tab 2.1

Access to Justice Committee

For Decision

Response to the motion carried at the 2023 Annual General Meeting

November 30, 2023

Committee Members:

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Prepared by the Policy Division:

Patti Latimer, Strategic Policy Counsel
platimer@lso.ca

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Motion

The Access to Justice Committee (the “Committee”) brings the following motion:

THAT Convocation approve the following recommendations in response to the motion made at the Law Society of Ontario’s Annual General Meeting (the “AGM”) on May 10, 2023, in accordance with s. 42(1)(b) of By-Law 2:

- 1. The Committee will oversee research into what constitutes communities that are under-served in terms of legal services; and**
- 2. The Committee will consult with the Federation of Ontario Law Associations (“FOLA”) and other stakeholders as needed, in relation to developing strategies in response to the motion; and**
- 3. After further consideration of the motion, the Committee will recommend strategies to address the motion to Convocation for decision.**

Background

The Law Society held its AGM on May 10, 2023, by webcast. A motion was filed on behalf of FOLA, with the Secretary and, as amended at the meeting, was carried at the meeting. The complete motion can be found at TAB 2.1.

The motion called for the following:

1. That the Law Society develop and implement financial and non-financial strategies and incentives for the purpose of encouraging lawyer and paralegal licensing candidates and recently-called lawyers and recently-licensed paralegals to locate their practices in under-served communities;
2. That the strategies and incentives to be developed may include any or all of preferential licensing program fees or rebates, preferred rates for annual fees, and small firm and sole practitioner succession planning supports;
3. That the strategies and incentives under consideration be brought to Convocation for decision;
4. That the Law Society consult closely with county and district law associations, paralegal associations, FOLA, Ontario’s paralegal college program coordinators, and Ontario’s law school deans in relation to this motion.

The motion is not binding on Convocation as provided in s. 42(2) of [By-Law 2](#).

Section 42 of the by-law requires that the motion be communicated to Convocation at its first regular meeting after the AGM¹ and that the motion be considered by Convocation within six months of the meeting, which will be the meeting scheduled for November 30, 2023.

Following the AGM, the Treasurer referred the motion to the Committee for review. The Committee recommends that it further consider the motion.

Discussion

The motion asserts that many communities in Ontario are experiencing a shortage of lawyers, particularly rural and northern communities. These communities struggle to attract and retain junior lawyers and licensing candidates to join or start practices. This is exacerbated by the “greying of the bar”, which can leave populations under-served as lawyers retire or leave practice.

In addition to some communities experiencing a general shortage of lawyers, there is a shortage of lawyers in key areas of private practice, particularly areas of law for which Legal Aid Ontario issues certificates.

Despite advancements in communications technology, FOLA takes the position that access to justice continues to require access to locally based lawyers who can provide in-person services, particularly to assist persons from low-income, vulnerable and marginalized communities.

In support of the motion, FOLA refers to the Law Society’s duties to the public under the *Law Society Act*, including the duty to “act so as to facilitate access to justice for the people of Ontario” and “protect the public interest”.²

FOLA also refers to the following as relevant considerations for the motion:

- the Law Society is currently developing policy on requirements for succession planning,
- the Competence Task Force recently received feedback from the bar on the need to improve mentorship in the profession, and
- Law Society fees could be prorated to encourage licensees to practice in under-served communities or areas of law.

The Committee met for the first time after the AGM on October 18, 2023. The Committee invited Douglas Judson, Chair of FOLA, to attend the meeting to speak to the motion. Mr. Judson provided a letter to the Committee in advance of the meeting and engaged in a dynamic discussion with the members of the Committee. A copy of Mr. Judson’s letter can be found at Tab 2.3.

The consensus of the Committee members was that the motion should be considered further. As a first step, research is required into what areas are under-served, both geographically and areas of law.

¹ See: Secretary’s Report: Report on the Annual General Meeting, dated May 25, 2023, Tab 4 of May 2023 Convocation materials.

² *Law Society Act*, R.S.O. 1990, c. L.8, ss. 4.2(2).



Law Society
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Secretary's Report

Law Society of Ontario Annual General Meeting

May 25, 2023

Authored By:

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

jvarro@lso.ca

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Report for Information 2

Report for Information

The Law Society of Ontario held its Annual General Meeting on May 10, 2023 by webcast. Eighty-nine licensees participated. The following motion filed with the Secretary and as amended at the meeting was carried at the meeting:

WHEREAS the Law Society of Ontario ["Law Society"] has duties to the public under the *Law Society Act*, including a duty "to act so as to facilitate access to justice for the people of Ontario";

AND WHEREAS several regions and communities in Ontario are experiencing a long-standing "greying of the bar" and struggling to attract and retain licensing candidates and new lawyers to join or start practices, leaving under-served populations as lawyers retire or leave practice;

AND WHEREAS many communities in Ontario are experiencing a shortage of lawyers in key areas of private practice, particularly areas of law for which Legal Aid Ontario issues certificates;

AND WHEREAS Ontario's rural and northern communities, in particular, are struggling to attract and retain junior lawyers and licensing candidates;

AND WHEREAS despite advancements in communications technology, access to justice continues to require access to locally-based lawyers and face-to-face interaction with clients, particularly to assist persons from low-income, vulnerable, and marginalized communities;

AND WHEREAS the Law Society is currently in the process of developing policy on requirements for succession planning for sole practitioners and small firms;

AND WHEREAS the Law Society's recent Competence Task Force received feedback from the bar on the need to improve mentorship in the profession, as an element of competency;

AND WHEREAS the Law Society currently maintains uniform licensing program fees and annual fees that are not adjusted for market needs, the economics of different practice environments, or to encourage lawyers to practice in under-served communities or areas of law;

NOW THEREFORE the members hereby direct:

1. That the Law Society shall develop and implement financial and non-financial strategies and incentives for the purpose of encouraging lawyer and paralegal licensing candidates and recently-called lawyers and recently-licensed paralegals to locate their practices in under-served communities;

Report on the Annual General Meeting

2. That the strategies and incentives to be developed may include any or all of preferential licensing program fees or rebates, preferred rates for annual fees, and small firm and sole practitioner succession planning supports;
3. That the strategies and incentives under consideration shall be brought to Convocation for decision;
4. That the Law Society shall consult closely with county and district law associations, paralegal associations, the Federation of Ontario Law Associations, Ontario's paralegal college program coordinators, and Ontario's law school deans in relation to this motion.

Section 42 of By-Law 2 requires that the motion be communicated to Convocation at its first regular meeting after the Annual General Meeting and that the motion be considered by Convocation within six months of the meeting.

The motion is not binding on Convocation as provided in s. 42(2) of By-Law 2.



September 24, 2023

Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

Attention: Access to Justice Committee

Dear Committee Members:

Re: Follow Up to Motion Adopted at the Law Society's Annual Meeting

Thank you for the opportunity to provide comments to your committee as you begin your review of the motion moved by representatives of the Federation of Ontario Law Associations (FOLA) and adopted at the May 2023 annual meeting of the Law Society of Ontario (LSO).

In general, this motion called for the following measures:

1. That the Law Society develop and implement financial and non-financial strategies and incentives for the purpose of encouraging lawyer and paralegal licensing candidates and recently-called lawyers and recently-licensed paralegals to locate their practices in under-served communities;
2. That the strategies and incentives to be developed may include any or all of preferential licensing program fees or rebates, preferred rates for annual fees, and small firm and sole practitioner succession planning supports ...

At this early stage of the motion's consideration by Convocation, FOLA has comments about the thrust of the policy design, about research or data that may be necessary to guide effective policy development in this area, and about the type of policy options that ought to be on the table for consideration. We will address each in turn and look forward to further consultation and dialogue as this process moves forward.

This is Fundamentally About Access to Justice

First, the LSO's policy development process in this area should be informed and guided by its statutory mandate so that there is clear understanding that this initiative is germane to the core functions of the regulator and the service it is intended to provide to Ontarians. We suggest that your committee make this explicit.

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731 9th Street West,
Owen Sound, ON
N4K 3P5

(519) 270-4001

www.fola.ca

Of immediate relevance, the *Law Society Act* imposes governing principles on the LSO “to act as to facilitate access to justice for the people of Ontario”, “to protect the public interest”, and “to maintain and advance the cause of justice and the rule of law”.¹

In our view, the words “*the people of Ontario*” and “*public interest*” refer to the responsibility to meet these goals in *all* communities of the province and *all* parts of the public across Ontario. Consequently, these statutory commitments and the legal professions’ effectiveness at meeting them should be examined from a regional lens and one which considers the actual legal service needs of Ontarians on that basis.

It must also be explicitly understood that while “access to legal services” is not front and centre among these principles in *Law Society Act*, access to justice, as a concept, has been broadly and consistently understood to *include* access to legal services. As stated by the B.C. Court of Appeal:

[Access to justice means] ... reasonable and effective access to courts of law and the opportunity to obtain legal services from qualified professionals, that are related to the determination and interpretation of legal rights and obligations by courts of law or other independent tribunals.²

The Supreme Court of Canada has also recognized, in the context of LSO policy, that “[a]ccess to justice is facilitated where clients seeking legal services are able to access a legal profession that is reflective of a diverse population and responsive to its diverse needs”.³ Implicitly, lawyers and paralegals that are located in the client’s community will have a better understanding of their needs and circumstances. This is especially true for northern, rural, and Indigenous communities.

Finally, while our courts and the way we practice has moved “online” in many respects since the COVID-19 pandemic, the ability to meet with clients in-person often enhances the licensee’s ability to effectively represent them, to build trust with the client, and to better understand the client’s needs and circumstances. We are of the view that the availability of this type of lawyer-client interaction (without incurring significant travel expense) is also connected to meaningful access to justice.

As such, at the outset of this process, we commend the committee to articulate its understanding of access to justice and the alignment of that commitment with the public’s proximity to legal service providers who can assist them with everyday legal needs. Lawyers who bring lived experience and local knowledge to the service of their clients will provide better service. The LSO should acknowledge this by embracing place-based policies within the regulatory scheme of its statute.⁴

Defining the Concept of “Under-Served”

Second, the motion turns on the concept of an “under-served community”, referring to legal services. This concept requires definition if the LSO’s response to the motion is to have any actionable meaning.

¹ *Law Society Act*, R.S.O. 1990, c. L.8 at s. 4.2.

² *Christie v. British Columbia*, 2005 BCCA 631 at para. 30.

³ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para. 23.

⁴ In general, place-based policies refer to government efforts to enhance the economic performance of an area within its jurisdiction.

In the lead up to the annual meeting in May, FOLA heard from legal organizations and individual lawyers and paralegals across the province about the challenges attracting licensing candidates and new licensees to their community. The feedback we received reflected 3 circumstances:

- Communities where there are simply not enough lawyers and paralegals to support its legal needs;
- Communities where there has been a retraction in the number of lawyers offering services in key areas, such as criminal defence, family law, and child protection law, particularly for those seeking lawyers that will accept Legal Aid certificates; and
- Communities where the bar is greying and there are licensees (mainly lawyers) with no viable succession plan for their practice or where a senior licensee is unable to “slow down” or withdraw from practice without creating a significant service gap in the local justice system.

All of these are relevant circumstances for the LSO’s attention. In our view, in establishing “financial and non-financial strategies and incentives”, it is incumbent on the LSO to establish what communities qualify as “under-served”. This could form the basis of incentives or for any special policies to apply on a regionalized basis.

While the LSO is better positioned than FOLA to determine what data sources could be useful for this purpose, we highlight that county and district law associations have a wealth of local knowledge on the needs of their community and the areas of practice where new lawyers and paralegals are most in demand.

It is also likely that the list of communities “under-served” (however defined) is likely to change over time. We encourage the LSO to require ongoing dialogue with county and district law associations, Ontario’s law schools, and other stakeholders as part of the iterative process to identify under-served communities and under-served legal needs within those communities.

Strategies, Incentives, and Other Policy Considerations

Third, at this early stage of this process, we encourage the LSO not to limit itself as to what financial or non-financial approaches could be used to address these growing legal service gaps. The motion itself suggests an open list of strategies, which FOLA submits are worthy of consideration. Expanding from this list, one could imagine the following:

- Licensing program fee waivers, rebates, or discounts for candidates completing articling or practice placements in under-served communities and remain for a fixed period of time;
- Varying annual fees by some combination of practice type and community; and
- Waiving licensing program fees and/or annual fees for new licensees that join existing sole practices and small firms in under-served communities.

Obviously, there are numerous “pocketbook” incentives for both the licensing candidate or new call or their principal/employer that could be implemented; however, these should be complemented by strategies which impact and draw from other areas of LSO policies and objectives. For instance:

- We suggest that the LSO work with law schools and local law associations to give more primacy to student employment, articling, and practice placement opportunities outside of larger centres. The formalized recruitment process in the larger legal markets serves an important process, but the byproduct of it is that other opportunities are viewed as secondary and opportunities are more difficult to locate without pre-existing networks. FOLA is organized on a regional basis and is well situated to provide support to this effort.
- We suggest that this policy can serve as an answer to some of the concerns at the heart of the recent consultation on succession planning for sole practitioners and those practicing in small firms. We encourage the LSO to consider formalizing a process and appropriate incentives to facilitate succession matching.
- We suggest that the LSO consider the role of mentorship in the profession and to how it can celebrate and foster a culture of mentorship among smaller bars in the province. As noted in the final report of the LSO's Competence Task Force in 2022, mentorship is invaluable for mentors and mentees alike and access to mentors is important for the licensee's development as a professional. We submit that drawing licensees to underserved communities will create challenges without appropriate mentorship relationships in their midst, particularly where they may be practicing on their own or with just one other licensee.
- We suggest that the LSO consider how its strategies will respond to the unique challenges facing racialized licensees and licensees from other equity-seeking groups that may consider opportunities outside of larger centres.

Conclusion

Please accept our thanks for your consideration of these issues. FOLA remains available to provide formal and informal feedback as the work of your committee and Convocation progresses. We would also gladly make time available at our spring 2024 plenary if it would assist the LSO to liaise with the law association presidents directly on this important topic.

Should you wish to speak with me further, I can be reached at 807-861-3684 or info@douglasjudson.ca.

Sincerely,



Douglas W. Judson
Chair

C. FOLA Board and County and District Law Association Presidents, *Via Email*