

TAB 4
Report to Convocation
October 26, 2023

Professional Regulation Committee

Committee Members

Megan Shortreed (Chair)

William McDowell (Vice-Chair)

Pam Hrick

Michelle Lomazzo

Cathi Mietkiewicz

Sonia Ouellet

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Purpose of Report: Decision

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Law Society
of Ontario

Barreau
de l'Ontario

Tab 4.1

Service of Notice of Summary Orders

Amendments to the *Rules of Procedure for Summary Orders*

October 26, 2023

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Motion

That Convocation adopt amendments to the *Rules of Procedure for Summary Orders* (the “Rules”) as detailed in this report and redlined at Tab 4.1.1.

Context

The proposed amendments at Tab 4.1.1:

- Allow for notices of summary orders to be served through LSO Connects, the Law Society’s new enhanced portal; and
- Make minor editorial changes to standardize formatting and more accurately reflect how the Law Society and licensees communicate in the internet age.

Background

Over the last 18 months, the Law Society has been engaged in a business and technology transformation initiative to replace a number of old, legacy systems, including the core databases and case management systems that support Professional Regulation, Licensing and Accreditation, Membership Services, and Finance. Part of this project has involved modernizing interactions and information sharing, to move from traditional phone/in-person interactions to electronic touchpoints, 24/7 convenience, self-service and centralized data and document availability.

Convocation recognized this shift in June 2020, when the following motion was approved:

That all licensees be required to use the Portal to complete standard interactions with the Law Society unless the Society has a duty to provide alternative methods of interaction pursuant to its duty to accommodate persons as prescribed in the Ontario *Human Rights Code*.

In July 2023, the Law Society launched a new Customer Relationship Management platform, which includes the public face of the system, LSO Connects. LSO Connects is now in use for case management functions related to Professional Regulation (i.e., complaints and discipline processes). The second release, scheduled for summer 2024, will include functionality related to licensee databases, including those used in the administrative suspension process.¹ At the completion of release 2, LSO Connects will fully replace the Law Society’s current Portal.

¹ Licensees are administratively suspended for failure to meet standard requirements such as paying annual licensing fees, completing 12 hours of CPD per year, and completing their annual report.

The summary suspension process is a largely manual process, expending significant Law Society time and resources. While licensees can be administratively suspended at any time, there is a large suspension following the March 31 deadline for the primary administrative obligations, which often involves hundreds of licensees. Prior to being suspended, licensees are reminded of their outstanding obligations and the possibility of suspension, by reminders uploaded in the current Portal or sent by mass email. Once a suspension order has been made, a notice of the summary order is printed and individually mailed to each licensee.²

The design and development of release 2 of the Law Society's business transformation project is intended to include a shift to serving notices of suspension orders through LSO Connects (as well as any reminders preceding the order). Notices will be delivered electronically to the licensee's secure account, with an accompanying notification automatically generated and emailed to the licensee to advise that the specific document has been uploaded with a link to access it. Licensees who require accommodation under the *Ontario Human Rights Code* and are unable to effectively send and receive information through LSO Connects will be accommodated by the Law Society.

The proposed amendments to the Rules allow this design and development to proceed with certainty. Any changes to the method of delivering suspension notices would not be operationalized until after release 2, since most licensees not involved in the regulatory process will not have access to LSO Connects until that time.

Rationale

To fully implement the Law Society's business transformation project and to allow for certainty as the organization develops and designs the suspension process in release 2, this report recommends amendments to the Rules to allow for the delivery of notices of suspension orders through LSO Connects, the Law Society's new enhanced portal. Additional amendments standardize formatting and more accurately reflect how the Law Society and licensees interact and communicate.

These proposed amendments align with Convocation's policy decision to require that licensees use the Portal to complete standard interactions with the Law Society, as well as with the Law Society's ongoing business and technology transformation initiative. That initiative includes an operational shift to better facilitate communication with licensees through LSO Connects.

The new system will allow for the secure delivery of messages and information, directly and confidentially to the recipient's password protected platform account, with an accompanying notice delivered to their email. Communications from the Law Society will

² The summary suspension process at other regulatory bodies varies significantly, with some regulators following processes similar to the Law Society's current process and others, like the Nova Scotia Barristers' Society and the Law Society of Alberta suspending licensees immediately following failure to comply.

come from a single source, in a standard format, which will simplify interactions for licensees. Unlike regular mail or email, where there is no means by which to determine whether a notice has been received by the intended recipient, the new system will provide a clear audit trail of all communications, notifications, and information sent and received through the platform.

Each licensee's username for LSO Connects will be their email address. Since 1999, the Law Society has required licensee email addresses as part of the contact information collected on the Annual Report. That information is collected once a year and is only current as of December 31 in the applicable year. Therefore, in 2008, By-Law 8 was amended to require that licensees provide detailed contact information to the Law Society (including personal and business email addresses) and report changes in that information as they occur.

As part of the implementation of release 2, the Law Society will communicate with licensees about the new enhanced portal, including the need to maintain an up-to-date email address.

The proposed amendments detailed in this report and redlined at Tab 4.1.1 are recommended for the reasons outlined below.

- **Efficiency and Efficacy**

- Provide certainty as the Law Society moves toward release 2 and designs and develops the suspension process functionality.
- Allow for increased efficiencies by streamlining, automating, and enhancing workflows in the summary suspension process, which is largely manual and heavily resource dependent.
- Increase confidentiality and protect privacy in the suspension process by uploading the notice of suspension to the licensees' secure LSO Connects account as opposed to sending a paper copy to their last known business address.
- Ensure the best possible tracking and exchange of documents. LSO Connects will provide the Law Society with an audit trail that shows documents have been delivered to the licensee's account and opened, as opposed to regular mail or email where it is not possible to confirm with certainty that a licensee has received the correspondence.

- **Better Communication**

- More accurately reflect how the Law Society typically communicates with licensees and complainants, and how licensees and complainants

increasingly interact with similar institutions and organizations.

- Streamline communications and interactions between the Law Society and licensees through a single source and standard format.
- Standardize the lay out and language used in the Rules so that they are easier to interpret for licensees and the Law Society.
- **Costs**
 - Reduce costs in the summary suspension process by moving to electronic as opposed to printed notices and away from regular mail as the means by which licensees are notified of a suspension order.
 - Increase automation of Law Society processes to allow for the refocusing and reallocation of resources.

Proposed Amendments

Licensees may be administratively suspended for failing to comply with the following obligations by the required March 31, due date:

- Payment of the Annual Fee
- Completion of the Annual Report
- Completion and reporting of Continuing Professional Development requirements.

In addition, at any time, licensees may also be suspended for failure to pay their LawPRO premium or their deductible in the event of a claim. Licensees who fail to comply with any of these administrative requirements may be suspended by an order of a person appointed by Convocation.

Prior to a summary suspension order being made, a significant number of reminders are sent to those licensees who have not yet complied. Those reminders are either posted to the licensee's Portal account or less often, sent by mass email reminders to a mass distribution group.

Once the due date has passed the summary suspension process begins. Lists of non-compliant licensees are compiled and suspension orders are then drafted for presentation to the summary order Bencher (i.e., the person appointed by Convocation).

The administrative suspension process is governed by the *Rules of Procedure for Summary Orders*, which provide that notice to a licensee of a summary order having been made may be served by:

- (a) Hand delivery to the person being served;

- (b) Regular mail, registered mail or courier; or
- (c) Any other method agreed to by the person being served.³

Typically, notices of summary orders are served by regular mail. This process is largely manual, expending considerable time and resources across multiple Law Society departments.

The proposed amendments to the Rules add email and LSO Connects as methods by which notice of a suspension order may be served, with service through LSO Connects requiring the licensee being informed by email that the notice has been uploaded to their account.

The proposed amendments more accurately reflect how licensees and the Law Society communicate and is consistent with how notices of pending suspensions are delivered to licensees (i.e., in the Portal and by email). The proposed amendments also include editorial changes throughout the Rules to standardize formatting in line with the [Law Society Tribunal Rules of Practice and Procedure](#).

³ In instances where the Law Society has served notice pursuant to the rules governing the suspension process, it has been held that service is properly affected even if the person being served does not receive or accept the notice ([Re French and Law Society of Upper Canada \(No. 4\) \(1976\), 12 O.R. \(2d\) 361](#)). See also *Deokaran v. Law Society of Upper Canada*, 2014 ONLSTA 28, and *Law Society of Upper Canada v. Edmund Peterson*, 2010 ONLSP 0188.

LAW SOCIETY OF ONTARIO: RULES OF PROCEDURE FOR SUMMARY ORDERS

RULE 1: INTERPRETATION

Application

1.01 Commencing January 1, 2019, these ~~r~~Rules apply to orders under sections 46, 47, 47.1, 48, ~~and~~ 49 ~~and 49.31(3)~~ of the Act.

Definitions

1.02 (1) In these ~~r~~Rules, unless the context requires otherwise,

“Act” means the Law Society Act;

~~“business day” means any day that is not a holiday;~~

~~“summary disposition benchler” means an elected benchler appointed by Convocation pursuant to sections 46, 47, 47.1, 48, 49 and 49.31(3) of the Act, to make summary orders;~~

~~“holiday” means any Saturday, Sunday, or other day on which the Society is closed;~~

~~“licensee’s email address” means the email address provided by the licensee as their contact email in the portal described in clause 2.1 (d);~~

~~“summary order” means an order made under sections, 46, 47, 47.1, 48, or 49 of the Act;~~

~~“summary order appeal” means an appeal under s. 49.32(3) of the Act.;~~

(2) If a word or phrase is defined in the Act, it has the same meaning in these rules.

RULE 2: SERVICE

Service of ~~Notice-notice~~ of ~~Summary-summary~~ ~~Ordersorder~~

2.01 ~~(1)~~ Notice to a licensee ~~or former licensee~~ of a summary order having been made shall be ~~addressed to the person’s last known residence or office address as shown by the records of the Society~~ ~~and~~ served by:

(a) hand delivery ~~to the person being served;~~

(b) regular mail, registered mail or courier ~~sent to the licensee’s latest home or business address appearing on the records of the Society;~~ ~~or~~

~~(c) email sent to the latest personal or business email address of the licensee appearing on the records of the Society;~~

(d) uploading to an electronic portal made available by the Society to which the licensee has been given access and informing the licensee by email sent to the licensee's email address that the notice was so uploaded; or

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

Effective date of service

2.2(2) Service of nThe Notice of a summary order having been made is deemed to be ~~served and effective;~~

(a) if the document is served, other than by mail or courier, hand-delivered or delivered by courier before 5 p.m. on a business day, on that day;

(b) if the document is served, other than by mail or courier, on a holiday or hand-delivered or delivered by courier after 5 p.m. on a business day, on the next business day;

(c) if the document is hand-delivered or delivered by courier on a weekend or holiday, on the next business day; or

(d) if the document is mailed or sent by courier, on the fifth business day after mailing, unless that day is a holiday, in which case service is deemed to be effective on the next day that is not a holiday.

RULE 3: SUMMARY ORDER APPEAL

Summary ~~Order-order Appeal~~appeal

3.01 A summary order appeal on any question of fact or law shall be made in accordance with Rule ~~17~~ 20 of the Law Society Tribunal ~~Appeal Division~~ Rules of Practice and Procedure.

BARREAU DE L'ONTARIO : RÈGLES DE PROCÉDURE POUR LES ORDONNANCES SOMMAIRES

RÈGLE 1 : INTERPRÉTATION

Application

1.01 À compter du 1^{er} janvier 2019, les présentes règles s'appliquent aux ordonnances visées par les articles 46, 47, 47.1, 48 et 49 ~~et 49.31(3)~~ de la Loi.

Définitions

1.02 (1) Dans les présentes règles, sauf si le contexte exige une interprétation différente :

« Loi » S'entend de la *Loi sur le Barreau* ;

« jour ouvrable » S'entend de tout jour qui n'est pas férié ;

« jour férié » S'entend de tout samedi, dimanche ou de toute autre journée de fermeture du Barreau ;

« adresse courriel du titulaire de permis » S'entend de l'adresse courriel fournie par le titulaire de permis comme coordonnées dans le portail décrit à la clause 2.1 d) ;

~~« ordonnance sommaire rendue par un membre du Conseil » S'entend d'une ordonnance sommaire rendue par une personne nommée par le Conseil en application des articles 46, 47, 47.1, 48 et 49 et 49.31(3) de la Loi ;~~

« ordonnance sommaire » S'entend d'une ordonnance rendue en application des articles 46, 47, 47.1, 48 ou 49 de la Loi.

« appel de l'ordonnance sommaire » S'entend d'un appel en vertu du par. 49.32 (3) de la Loi ;

(2) Les expressions ou les mots définis dans la Loi s'entendent au sens des présentes règles.

RÈGLE 2 : SIGNIFICATION

Mode de signification de l'ordonnance sommaire

2.01 ~~(1)~~ L'avis d'une ordonnance sommaire à un titulaire de permis ~~ou à un ancien titulaire de permis~~ peut être ~~adressée à sa dernière adresse domiciliaire ou professionnelle connue figurant dans les dossiers du Barreau,~~ ou signifié selon l'un ou l'autre des modes suivants :

a) en main propre ~~à la personne~~ ;

b) par la poste, par courrier recommandé ou par messagerie ~~à la dernière adresse domiciliaire ou professionnelle du titulaire de permis figurant dans les dossiers du Barreau~~ ;

c) par courriel à la dernière adresse courriel personnelle ou professionnelle du titulaire de permis figurant dans les dossiers du Barreau ;

d) en téléversant un document sur le portail électronique du Barreau auquel le titulaire de permis a reçu l'accès et en informant ce dernier par courriel que l'avis a été téléversé ;

e) par tout autre mode accepté par la personne qui reçoit la signification.

Date de validité de la signification

2.2(2) La signification d'un avis d'ordonnance sommaire est réputée valide :

a) le jour même, si le document est signifié, autrement que par la poste ou par messagerie, ~~remis en main propre ou par messagerie~~ avant 17 h un jour ouvrable ;

b) le jour ouvrable suivant, si le document est signifié, autrement que par la poste ou par messagerie, ~~remis en main propre ou par messagerie~~ avant 17 h un jour ouvrable ;

c) le cinquième jour ouvrable après l'envoi, si le document est ~~remis en main propre ou par messagerie pendant la fin de semaine ou un jour férié~~ ;

~~d) si le document est~~ transmis par la poste ou par messagerie, sauf si ce jour est férié, auquel cas, la signification est réputée valide le premier jour non férié suivant.

RÈGLE 3 : APPEL D'UNE ORDONNANCE SOMMAIRE

Appel d'une ordonnance sommaire

3.01 Un appel d'ordonnance sommaire visant toute question de fait ou de droit est interjeté conformément à la règle ~~1720~~ des *Règles de pratique et de procédure de la Section d'appel* du Tribunal du Barreau.