

TAB 2
Reports to Convocation
April 25, 2024

Professional Development and Competence Committee

Committee Members:

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Law Society
of Ontario

Barreau
de l'Ontario

Tab 2.1

Implementation of the Practice Essentials Course

Professional Development and Competence Committee

April 25th, 2024

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Motion

That Convocation approve the following policy decisions in respect of the Practice Essentials Course:

1. Licensees who fail to complete the course within the required time period will be subject to administrative suspension;
2. Licensees will be permitted to report hours completing the course toward their annual requirement for continuing professional development in two calendar years: the year in which they begin the course and the year after;
3. A requirement for licensees who declare as sole practitioners for the first time in 2025 to complete the course by December 31, 2026; and
4. Ongoing requirements for 2026 and beyond:
 - a. Licensees who declare as sole practitioners for the first time on or before May 31 of each calendar year will have until December 31 of that same calendar year to complete the course.
 - b. Licensees who declare as sole practitioners for the first time on or after June 1 of each calendar year will have until December 31 of the following calendar year to complete the course.

Context

A. The Competence Task Force

In 2021 the Law Society established the Competence Task Force to examine regulatory approaches to ensuring and improving career-long licensee competence. The objective of the Task Force was to review the Law Society's existing competency programming, and recommend an effective, proportionate, and balanced regulatory framework for addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs.

B. The Task Force Report

The Task Force presented its [report to Convocation on May 26, 2022](#). It made five core recommendations that were, with minor modifications, adopted by Convocation. This included a recommendation that sole practitioners be required to take a practice essentials course (PEC) composed of foundational topics and delivered by the Law Society.

The foundational topics to be covered by the PEC were defined as the areas of practice that result in the highest incidence of complaints, negligence claims and identified practice deficiencies. These include, broadly, client service and communication, financial and practice management, the business of running a law practice and professional responsibility in practice.

By ensuring that licensees opening sole practices receive structured training on the foundational issues related to client communication and practice management, the Law Society is seizing a unique opportunity to mitigate risks. The PEC could have a measurable positive impact on licensee competence and provide added public protection, which in turn should result in fewer LawPRO claims and Law Society complaints. Finally, the more licensees that are set up for success at the commencement of their sole practice careers, the less likely it is that the Law Society will need to address issues later on in their careers through the regulatory stream. While sole practitioners make up about one third of lawyers in private practice and slightly over half of paralegals in private practice, they are the subject of 75% and 82%, respectively, of the most serious complaints (i.e., complaints that result in discipline proceedings) and the subject of 49% and 70%, respectively, of the complaints received in Professional Regulation.¹

The Task Force concluded that legal education and experiential training placements for new licensees do not consistently provide all the necessary skills and knowledge to understand and mitigate these risks and run effective legal practices. In addition, experienced licensees transitioning to sole practices need to develop the skills, structures and systems to mitigate the risks associated with practising as a sole practitioner. As such, a mandatory practice essentials course was seen by the Task Force as a significant risk management achievement for the Law Society that would likely have a measurable impact on licensee competence and public protection.

¹ [Stats are from 2022, as reported by the Law Society's Professional Regulation Division.](#)

C. The Practice Essentials Course

The PEC will be delivered online through self-paced modules totalling approximately 30 hours. It will be offered as an executive-style course providing significant points of interaction, practical training and evaluative components. This structure will create flexibility for participants, which was an important consideration for licensees in the process of setting up a new sole practice.

Licensees who take the course will also be provided with supplementary materials. These will include supports that serve as both a workbook and a post-course reference tool for participants, consisting of practice guides, precedents, scenarios, and checklists.

The course will be titled the Foundations of Sole Practice. The Law Society will develop a communications plan to raise awareness amongst licensees about the Foundations of Sole Practice. It is anticipated the pre-launch communications will commence in late summer 2024.

The course is currently in the content development phase with narration, audio visual elements, assessments and interactive elements being designed and completed. Beta testing and final revisions will occur during the fall and winter of 2024. The course will go live in January 2025.

D. Licensees Who Will Be Taking the PEC

The PEC will apply to a wide range of lawyers and paralegals. Approximately 700 lawyers and 200 paralegals choose sole owner status each year. They come from varied backgrounds with different levels of experience and at different points in their lives and careers. Some of the relevant statistics of licensees making this choice are set out below:²

- The single largest group of lawyers choosing sole ownership is new licensees (46% with less than one year of practice); 33% have 1-10 years of practice experience and 21% have 11+ years of practice experience. 55% of paralegals have less than one year of practice experience while 40% have 1-10 years practice experience and 5% have 11+ years of practice experience.
- Approximately 18% of lawyers choosing sole practice are associates in private practice; 7% are partners; 5% are in-house counsel; 6% are employees (working in law) and 4% are otherwise employed.

² Note, these are averaged over the past five years (2019-2023).

Discussion

Current Status and Outstanding Issues

While the Competence Task Force report set out a framework for the PEC, certain issues remain that require the approval of Convocation prior to the implementation of the PEC. Those issues are:

- A. The appropriate compliance mechanism;
- B. The appropriate completion period; and
- C. The application of PEC hours toward the Continuing Professional Development (CPD) requirement.

A. Appropriate Compliance Mechanism

An appropriate compliance mechanism is required to ensure licensees designating as sole owners complete the PEC within the required timeline. In determining the appropriate enforcement mechanism, the Professional Development and Competence Committee (the Committee) applied the following principles:

- It should be an effective deterrent to non-completion;
- Administrative efficiency should be considered; and
- The disciplinary measure should be proportionate to the transgression.

Recommendation

With these principles in mind, the Committee recommends an administrative suspension be used to enforce compliance of the PEC completion requirement. If licensees who are required to complete the PEC do not complete it within the requisite time period, they will receive administrative suspensions. The suspension would be lifted upon completion of the PEC. This will require a By-Law amendment.

Administrative suspensions have been an effective deterrent for non-completion of the CPD requirement, demonstrating widespread understanding among licensees. Administrative suspension will also be easiest for the Law Society to communicate as it is consistent with enforcement mechanisms for completion of the CPD requirement, the Annual Report and payment of annual fees.

B. Appropriate Completion Period

The Competence Task Force recommended that all licensees be required to complete the PEC within one year of registering with the Law Society as a sole practitioner. In determining how to best implement this objective, the Committee prioritized the following principles:

- The completion timeline should support the risk mitigation goals of the PEC;
- The completion date should be simple to communicate;
- Licensee perception should be considered;
- Deadlines should, as much as possible, be consistent with other Law Society requirements; and
- Administrative efficiency.

In addition to these principles, the Committee also noted that the Law Society is considering a few other policy changes that, if enacted, will introduce new obligations on licensees in the near future, particularly sole practitioners. In addition to the PEC, which will be mandatory starting January 1, 2025, there may also be additional requirements in the future:

- Client Contingency Planning. If approved by Convocation³, a new requirement for licensees in private practice to maintain a client contingency plan for their professional business would come into force on January 1, 2025;
- Additional 10 hours of CPD for Certified Specialists, starting January 1, 2025; and
- Indigenous Cultural training. The LSO is currently developing the training program, in response to the Truth and Reconciliation Commission's Call to Action 27.

Recommendation

Considering these principles, as well as these other potential obligations, the Committee recommends an extended implementation period for licensees who declare as sole practitioners⁴ in 2025, followed by a bifurcated completion period in subsequent years, as follows:

1. As a transitional measure, licensees who declare as sole practitioners at any point in 2025 will have until December 31, 2026, to complete the course;
2. Effective January 1, 2026, licensees who declare as sole practitioners up to May 31st will have until the end of the calendar year to complete the course, while

³ If Client Contingency Planning is approved by Convocation, the PEC will integrate appropriate content to assist newly formed soles in fulfilling this requirement.

⁴ The PEC requirement applies to licensees who declare as sole practitioners for the first time, starting January 1, 2025.

licensees who declare on June 1st or later will have until December 31st of the following calendar year to complete the course.

The Committee recommends an extended implementation for the first year of the PEC to ensure that licensees have sufficient time to learn about this obligation before the Law Society begins taking enforcement action. In particular, the Committee was concerned that new calls, who represent the single largest group of lawyers choosing sole practice in any given year, might be challenged to successfully complete the course in the first year due to insufficient notice. During the consultations, some stakeholders stressed the importance of flexibility for licensees. The transition from a large firm environment to sole practice is a significant change, and for some licensees, can be accompanied by a significant life change as well. For example, one stakeholder group noted that women sometimes decide to move from a large firm to sole practice after they have children. For these licensees, starting a firm while also providing childcare may impair their ability to complete the course in an expedient manner, underlining the importance of flexibility in the PEC's modality and completion period.

Since the PEC is a new course that will be launched on a new learning management platform, an additional period of transition will be of assistance in the event of any technical challenges during the initial launch. Delaying the initial compliance period would allow time for this new requirement to be better understood by the professions before the Law Society begins taking compliance action, and will also ensure that licensees are not penalized should technical difficulties occur.

After January 1, 2026, the Law Society would begin a standardized completion period. The June 1st cut-off was recommended to allow for the largest cohort of new calls (i.e. those who are licensed after June 1) to have at least a calendar year to complete the PEC. This recommendation was in line with the feedback received from stakeholder groups, and was viewed by the Committee as a balance between the Law Society's regulatory goals and fairness to licensees.

Finally, the Committee recommends a December 31st completion date, as this is consistent with other LSO programs. For example, the Continuing Professional Development (CPD) requirement, licensing exams, and the licensee's annual report, where licensees are required to report on compliance by a certain date. These programs are well understood by licensees and have high compliance rates.

Further, a single completion date for all licensees presents the most straightforward administrative option. It would avoid continual, rolling completion dates throughout the year for staff to administer, which would require ongoing reminders to the relevant licensees and remedial measures for licensees who are not compliant.

C. The Application of PEC hours toward the Continuing Professional Development (CPD) Requirement

In its report, the Competence Task Force asked that the Law Society consider allowing licensees to carry forward a certain amount of CPD hours earned while completing the PEC to the following calendar year. Since the PEC will take 30 hours to complete, permitting a licensee to carry forward CPD hours earned while completing the course would allow a licensee to fulfill their CPD requirement over two calendar years without taking any additional CPD. The course is also anticipated to satisfy the CPD's professionalism and Equity, Diversity and Inclusion requirements.

Recommendation

The Committee recommends allowing licensees who designate as sole practitioners to carry forward CPD hours earned while taking the PEC, so that licensees can fulfill their CPD requirement over two calendar years through the completion of the PEC. Licensees will be permitted to report hours completing the course toward their annual requirement for continuing professional development in two calendar years: the year in which they begin the course and the year after. This would recognize the significant time investment being made by these licensees, who are also facing significant pressures in setting up their practice. Permitting licensees to carry forward CPD hours should also help to incentivize licensees to complete the course quickly, because it would allow licensees who complete the PEC in the first calendar year to meet the Law Society's CPD requirement in the second year without the need to take additional CPD. Allowing the carry forward of CPD hours for licensees who are required to complete the PEC will require a By-Law amendment.

D. Consultations

The Law Society held consultation meetings with a number of key stakeholders to obtain feedback on these issues. The Committee's recommendations are consistent with feedback received from stakeholders. The organizations that provided input included:

- The Advocates' Society;
- L'Association des juristes d'expression française de l'Ontario (AJEFO);
- the Federation of Ontario Law Associations FOLA);
- the Law Society's Equity Advisory Group (EAG);
- the Law Society's Indigenous Advisory Group (IAG);
- the Ontario Bar Association;
- the Ontario Paralegal Association; and
- the Roundtable of Diversity Associations (RODA).

The consulted organizations were broadly supportive of the PEC. Overall, it was felt that the course will be useful, a benefit to individual licensees, the professions, and the public. The consulted organizations indicated a desire to be involved in the PEC development and its roll out.

During its consultations, the Law Society consistently heard that an administrative suspension would be understood by licensees, and as long as there is sufficient notice given to course participants, would also be a proportionate compliance mechanism. Further, there was general agreement that administering the suspensions in the same manner as CPD would allow for rectification of non-compliance. Stakeholders noted that licensees open sole practices at varied points in their careers and with varied workloads, however one year was felt to be sufficient time to complete the course in a manner that encourages learning. Further, it was recommended that adequate notice be given to participants in advance of the course deadline to encourage completion and avoid non-compliance. Finally, most stakeholders expressed support for the carryover of CPD, but cautioned that such a plan should be limited to two calendar years as CPD is an important tool in the Law Society's Competence Framework.

Next Steps

A subsequent Report will be prepared that will include the necessary By-Law amendments to enact Convocation's decisions.



Tab 2.2

Bencher Appointments to the Certified Specialist Board

Professional Development and Competence Committee

For Information

April 25th, 2024

Committee Members:

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Purpose

The purpose of this report is to inform Convocation that the Professional Development and Competence Committee (the Committee) has appointed Benchers Doug Wellman and Matthew Wilson, and reappointed Bencher Tanya Walker to the Certified Specialist Board.

Context

The Certified Specialist Program recognizes members of the Law Society who have met established standards of experience and knowledge requirements in one or more designated areas of law and have maintained exemplary standards of professional practice. The 17 speciality areas in the program are listed on the Law Society website.¹

The Certified Specialist Board (the Board) is established under Law Society By-Law 15. Section 5 of By-Law 15 describes the function of the Board. The primary functions of the Board are to:

- establish standards for the certification of licensees as specialists;
- determine the areas of law in which licensees may be certified as specialists; and
- certify licensees as specialists.

The current members of the Certified Specialist Board are:

- May Cheng, C.S., Chair (Intellectual Property Law, Toronto)
- David Bannon, C.S. (Labour Law, Toronto)
- Edward Olkovich, C.S. (Estates and Trusts Law, Toronto)
- Tanya Walker, C.S. (Civil Litigation, Toronto)

Subsection 3(2) of By-Law 15 governs the composition of the Board, and provides that it is to consist of no fewer than eight and not more than twelve persons appointed by the Committee, as follows:

- two benchers who are certified specialists;
- one lay bencher; and
- not fewer than five and not more than nine persons who are certified specialists who are not benchers.²

¹ This list may be accessed on the Law Society website at <http://www1.lso.ca/specialist/jsp/directory1.jsp>.

² By-Law 15, online at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/by-law-15-certified-specialist-program-09-24-09.pdf>.

Discussion

At its meeting on April 9, 2024, the Committee approved the appointments of the following individuals to the Certified Specialist Board:

- Bencher Tanya Walker;
- Bencher Matthew Wilson; and
- Lay Bencher Doug Wellman.

Bencher Tanya Walker was previously a member of the Board having been appointed initially in 2019. Benchers Wilson and Wellman have been appointed for the first time. Appointments to the Board are at the sole discretion of the Committee, and do not require Convocation approval.

The current By-Law does not permit the appointment of paralegals to the Certified Specialist Board. As noted at end of page 2, subsection 3(2) requires that members of the board be either a Bencher, or a Certified Specialist. Going forward, as the Committee is considering options for expanding the Certified Specialist Program, it is likely that the implementation of these options will require amendments to the board composition language in By-Law 15.

The approval of these appointments will allow the Board to meet the minimum quorum requirement of 5 members, as set out in section 6 of By-Law 15. However, the Board will still be below the minimum threshold of eight members set out in the By-Law.

The additional vacancies will need to be filled in order to meet the minimum composition requirements set out in 3(2) of By-Law 15. The Law Society has sought to fill the vacant Bencher positions as a first priority, and will move to recruit for the remaining vacancies once the Bencher positions are filled. Proceeding in the manner with allow the appointed Benchers to participate in the process of recommending appointments to fill the remaining vacancies.

Next Steps

Now that these three appointments have been made, the Law Society will begin the process of filling the remaining Board vacancies, which must be filled by licensees who are Certified Specialists.