

Competence Task Force Submissions: Lawyers

1. Adourain, Robert
2. Ballagh, Michele
3. Bharati, Raj
4. Brannagan, Craig
5. Canto Thaler, Alexandria
6. Cherrnin, Tali
7. Davis, Margo
8. Debs, Jad
9. Ennor, Sarah
10. Fagan, John
11. Farrell, Lou-Anne
12. Graham, Chris
13. Graham, Sean
14. Hull, Ian
15. Klippenstein, Murray
16. Lamb, Michael
17. Laski, Wayne
18. Laufer, Sam
19. Ledgey, Cynthia
20. Leering, Michele
21. Lenhardt, Wayne
22. Lesage, Michael
23. Levine, Raquel
24. Maki, Johanna
25. McClellan, Kelly
26. Milburn, Agnes
27. Morris, Wade
28. Moscoe, Tamara
29. Munn, Pamela
30. Najem, Sam
31. Paul, Devon
32. Primeau, Jodie
33. Reesink, Martin
34. Rochette, Annie
35. Rogerson, Andrew
36. Simon, Daphne
37. Soni, Sam
38. Sweatman, Marion
39. Wiener, Kevin
40. Wilkinson, Claire
41. Wilson, Matthew

42. Zardo, Eric

Please enter your first and last name	Robert Adourian
Email Address	robert.adourian@devrylaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Medium firm (6-199 licensees)
Practice area focus:	- Real Estate Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
Yes. I would add management skills. Managing time, support staff and client expectations are essential skills for a competent practitioner.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

I agree with the principles. I would place emphasis on (b) Flexible and (c) Feasible. Practitioners have limited time and in some cases limited financial resources. The purpose of an effective competence program should be to reduce stress for the practitioner, not create it. I would also be cautious about (e) Client-centred. We do not want licensees to be intimidated to such an extent that they are reluctant to provide legal services to poor and racialized communities.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

CPD - see below

Practice Management Helpline - a valuable service which should remain available

Coach and Advisor Network - see below

Practice Assessment Programs - see below

Certified Specialist Programs - see below

Great Library and LiRN - these are essential resources, particularly for sole practitioners and small firms.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) **As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

CPD is an essential requirement for competence and should be enhanced to address changes in technology. It should be completed annually unless there is a compelling reason for an individual to complete it over two years. Such reasons might be maternity leave, illness, or a sabbatical. Self-assessment tools can be helpful to identify learning and training needs, but should not be a substitute for completing the current CPD requirements.

Basic CPD programs should be available free or for a minimal charge in order for the programs to be accessible to those who practice part-time or in areas of practice where the remuneration is modest.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) **Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

Training in the business of law, law firm management, financial record-keeping, and client interaction should be mandatory for new licensees, and be available for all licensees at low cost. Such courses could also be required for those subject to discipline for matters relating to record-keeping or client interaction issues.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) **Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?**

The Society should encourage licensees to enter into mentoring arrangements, and should require sole practitioners to have a "buddy" who can assist in the case of an unexpected practice interruption due to illness or family emergency. The LSO should arrange for insurance coverage to be available through LawPRO at no additional premium for licensees who act as a buddy.

I have not participated in the Coach and Advisor Network. I believe that it should remain as is.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) **Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?**
- n) **Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?**
- o) **Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?**

Spot audits should be limited to a review of financial record-keeping and nothing else. They are currently much more than that, and their mandate seems to continue to expand. For a sole practitioner a Spot Audit is a significant disruption. It can easily take the practitioner 40 hours (the equivalent of a full week) to prepare for the audit, be available to deal with the auditor, and complete the follow-up matters. There should be an option for lawyers and firms to have their books and records reviewed by a qualified accountant.

Practice assessments should be used as part of the discipline process, or when a practitioner has had a history of insurance claims.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I respect any practitioner who has been designated as a Certified Specialist, and I believe that this program should be promoted by the LSO in order to encourage more applications.

There should be an obligation on a Certified Specialists to demonstrate leadership in the legal community by promoting awareness of changes in their practice areas and by participating in CPD presentations.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

The recent graduates are tech savvy, and we have all heard stories of older practitioners who know the law and have exceptional people skills but do not know how to use a computer.

For those in between, the Society should include tech skills as a core competency when developing CPD programs.

Legal software providers should be invited to participate in such courses. This would be free advertising for the provider and a value added for the licensees.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

This is a great idea. Excellence in law has been recognized for litigators far more than for those in any other practice area.

The Certified Specialist program is one way for the LSO to recognize excellence. Another would be to recognize those who develop and teach CPD programs, those who teach in law schools and community colleges, and those who have been outstanding articling principals.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

The Society should try to co-ordinate and work with other providers of CPD. Bar Associations, County Law Associations, Title Insurers and LawPRO all produce valuable programs. We should share with them the goals and priorities of our competence framework and enlist their assistance to achieve them.

Please enter your first and last name	Michele Ballagh
Email Address	michele.ballagh@ballagheadward.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Intellectual Property Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
 don't know what it is

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
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- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

Yes

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
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- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Yes

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
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- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

The ethics/practice management component should be reduced to 2 hours per year.

CPD requirements should be reduced as years of practice increase, especially the ethics/practice management component.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

Making such support available would be beneficial to some sole and small firms, but I don't think it should be mandatory since some have previous life/work experience that they can rely on. However, after conducting an audit, the law society should be empowered to make it mandatory for certain licensees where warranted.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I've participated in the C and A Network on several occasions. I think its useful for young practitioners who can't otherwise find a mentor. I'm not sure that it requires much structure other than connecting mentees with willing mentors. It may be useful to give the mentors and mentees an opportunity to evaluate each other at the end of the engagement - this may provide some useful insight to the Law Society for improvements and what works/does not work.

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Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Yes, I've been audited twice and, on both occasions, found it helpful.

I don't think the frequency needs to be increased. Focus on new practitioners.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

Aware of it, but have not participated because seems too bureaucratic/time-consuming to take advantage of with little benefit.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Basic awareness of how technology works and best practices should be part of bar admission course like accounting.

Law society should also be using local law associations to deploy training on technology to existing licensees.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

See above.

Additional aspects of competence regime

Please enter your first and last name	Raj Bharati
Email Address	rbharati@tssa.org
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Government or public agency
Practice area focus:	- Administrative Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

Principles for an effective competence regime

Components of continuing competence framework

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

My only comment in this process is that think the mandatory CPD obligation should be eliminated. CPD programs are certainly benefit practitioners in many ways but I'm not convinced it is necessary for ensuring competence. There are many ways to maintain competence, and it is very easy to satisfy CPD requirements without improving competence. CPD programs should be encouraged as part of a "competence menu" rather than be mandatory. Mandatory CPD had become a business development feature for program-providers rather than a competence tool.

As professionals, lawyers and paralegals should be obliged and trusted to be responsible for maintaining their competence.

Any replacement regime should be evidence-based. If the program does not measurably increase competence (perhaps in a trial program) then it should not be adopted.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

(g) Yes, good idea.

(h) Yes, for all licensees for communications; for all sole practitioners for practice management.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?
 - (i) Yes, good program.
 - (j) Seems difficult to implement
 - (k) Yes. No. N/A.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

(m) my practice assessment when I was a new lawyer was somewhat beneficial. I'd support its continuation and enhancement.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I think it's primarily a marketing tool. Not sure if the law society should be administering it.

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Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

No, leave it up to practitioners.

Additional aspects of competence regime

Please enter your first and last name	Craig Brannagan
Email Address	BrannaganLaw@gmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Crown's Office
Practice area focus:	- Criminal/Quasi Criminal Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

"Competence is composed of knowledge, skills, abilities, behaviours, judgement and values. Competent performance requires the habitual and simultaneous application of many of these attributes."

I agree with this working definition.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
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- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

I agree with the utility of these five principles in forming the basis for an effective competence regime.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Other than CPD, which is provided by my Employer (MAG-CLD) and the OCAA, I have no experience with or practical knowledge of the subsequent four components.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
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- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

(a) I think the more practical (i.e., practice-focused) CPD programs are, the more useful they are in helping to develop our professional competencies. When I was a young criminal defence lawyer, these types of CPD programs were always very helpful (e.g., how to prepare for CPTs, JPTs, etc.).

(b) All three.

(c) Annually seems fine.

(d) Interactive, at least with the opportunity to ask questions of presenters, is helpful.

(e) I believe it remains useful and should continue to be part of our regulation.

(f) MAG-CLD employees already do this in annual performance reviews with our Managers.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

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- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,**
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 - iv. licensees transitioning to sole practice?**

(g) The more resources, the better.

(h) Law school does not teach us how to actually practice law, so a practical training course for new lawyers could have some utility, particularly for those in sole or small firm practices.

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- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?**
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?**
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?**

(i) Mentorship plays an invaluable role in Criminal Law, and I would imagine that it does in all other areas of practice, as well. The MAG-CLD has (optional) programs in place. I think requiring this may be too demanding, but certainly offering mentoring programs should be encouraged.

(j) This could be a slippery-slope proposition, with too much room for personalities to be criticized. On the other hand, it could encourage enhanced professionalism and civility.

(k) No, and no.

(l) N/A

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n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

(m) Yes, and no.

(n) N/A

(o) N/A

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Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

(p) Yes, and no.

(q) Unfamiliar with the requirements for a lawyer to become a "Certified Specialist".

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Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

(r) Given how the Pandemic has changed the practice of Criminal Law in Ontario -- with virtual hearings now being the norm -- all lawyers should understand the fundamentals of computing skills.

(s) Technological competence is an obvious and growing area in our profession, and all lawyers should have the opportunity to take courses to enhance their technological competency.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

(t) Yes. Peer review/nominations are important.

Additional aspects of competence regime

Please enter your first and last name	Alexandrina Canto Thaler
Email Address	canto@cantohtaler.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Employment/Labour Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I disagree with the statement that, "The manner in which clients experience legal services provided by a lawyer or paralegal is a critical dimension of competence. The notion of competence is informed by a consumer perspective."

This statement seems to suggest that the client is qualified to assess the knowledge, skills, abilities, behaviours, judgement and values of her legal counsel.

I fail to understand how anyone who is not, herself, a competent member of the profession, is capable of evaluating legal knowledge, skills, abilities, behaviours, judgement and values, and/or the habitual and simultaneous application of these attributes.

Competence is a quality that should be susceptible of objective assessment. I recommend that any reference to the client's subjective experience be omitted.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.

b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.

c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.

d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.

e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

Principles b, c, and e.

b. Flexible, and

c. Feasible

I'm concerned that giving undue weight to such considerations as "contextual factors that [affect] the professional circumstances of lawyers," and/or to the cost effectiveness of competence requirements may erode the standards of the profession.

In my opinion, Principles "b. Flexible," and "c. Feasible" should be omitted, or amended to reflect lawyers' obligation to meet meaningful standards of competence.

e. Client-centred - Competence requirements should consider the client's . . . perspective on what constitutes the competent provision of legal services.

According to the Rules of Professional Conduct:

A competent lawyer is one who "has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client . . ."

A lawyer must not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client.

A client is entitled to assume that when a lawyer does undertake any matter, that lawyer has the ability and capacity to deal adequately with all legal matters to be addressed on the client's behalf.

Beyond these essentials set out in the Rules, I'm unable to appreciate the relevance of a client's "perspective on what constitutes the competent provision of legal services." Clients who retain legal counsel have a right to competent legal representation, not to a fulfilment of expectations shaped by a consumerist culture of "the customer's always right."

I recommend that Principle "e. Client-centred" be amended to exclude any reference to the client's "perspective."

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

a) CPD requirement and programs

b) The Practice Management Helpline

c) Coach and Advisor Network

d) Practice assessment programs (practice reviews, spot audits, and practice audits)

e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

Those components with which I have personal experience do, in my opinion, adequately adhere to the Five Principles.

* Practice Advisory is an excellent and invaluable service.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?

b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?

c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?

e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?

f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

e. The CPD requirement should remain as it is. However,

b. The CPD requirement for "substantive" professional development should be tied to a licensee's practice area(s), experience level, and identified areas of risk.

d. Engagement and interaction are critical for learning. Despite covid-19, lawyers are able to engage in a variety of professional activities that do not require in-person contact. The LSO should restore the requirement that members either

- attend – if not literally “in person” – at least online or by telephone, at live CPD programs and courses that provide an opportunity to interact with colleagues and/or instructors and to ask questions, directly or indirectly, e.g., by emailing a question to the content provider during the online presentation;
- view or listen to recorded or archived CPD programs and courses with at least one colleague;
- participate in an interactive online course, including a program offered to registrants by a college, university or designated institution through distance education;
- mentor, coach or advise colleagues by phone or video;
- participate in a study group by phone or video;
- teach a CPD program virtually; or
- participate in the educational component of a bar or law association meeting by phone or video.

If permitted at all, viewing or listening to archived or recorded CPD programs or courses without a colleague should be limited to a maximum of 4 hours per year.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

Enhanced practice support and training

g) The Law Society should provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping.

h) Some licensees should be required to complete a training course related to a set of core competencies, such as practice management or client communications. The training course should be mandatory for:

- new licensees,
- licensees in sole or small firm practice for less than five years,
- licensees transitioning to sole practice.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

l) The Law Society should require each new licensee to enter into a mentoring relationship as a mentee. The Law Society should encourage licensees who have practised for at least ten years to mentor members new to the profession. Mentors who wish to claim CPD credit for hours spent mentoring should be required - before entering a mentoring relationship - to complete a training course and/or assessment to certify that they are qualified to mentor.

j) The Law Society should consider introducing peer assessments as a mechanism for improving competence. Any Peer Assessment Mechanism should be developed in consultation with members of the profession.

I suggest that a Peer Assessment Mechanism could provide for the systematic collection of data about a new licensee's competence during her/his first five years of practice. For example, by identifying senior lawyers (of 7-10 years experience) who interact professionally with the new licensee during that five-year period, and requiring each senior lawyer to complete a survey. If survey results indicate persistent deficiencies, the Peer Assessment program could offer support before problems occur. Information gathered through the surveys must be kept strictly confidential. Surveys could not be submitted anonymously to the Peer Assessment program; however, details identifying the individual providing feedback would never be disclosed to the licensee being assessed.

I envision a process designed not to be disciplinary or punitive in any way, but designed to promote growth and professional development. Optimally, it would be managed by lawyers or by LawPro as a formal and systematic process structured in such a way as to involve the wider legal community in the mentorship of new licensees.

k) I am aware of the Coach and Advisor Network. However, I've not participated in it and have nothing useful to contribute to a discussion of the program.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

No comment.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

No comment.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Licensees must be encouraged to take courses to enhance their technological competence.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Individual lawyers who devote time, effort and energy to mentoring, coaching and/or training colleagues - or otherwise promoting competence in the legal profession - benefit the entire legal community, and certainly deserve to be recognised and rewarded.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

No comment.

Please enter your first and last name	Ken Chasse
Email Address	kchasse@fixy.org
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
Practice area focus:	- Electronic records management law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I would add a technological competence requirement in regard to the use of electronically-produced evidence as is explained in the text attached to my response which contains my 8-page comment.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- Competence in dealing with electronically-produced evidence for legal services as well as legal proceedings is essential for all lawyers, particularly so due to the fact that most client's cannot afford to pay for the services of an expert who can advise a client's lawyer. Because our lives are now so completely dependent upon the functioning of many kinds of electronic systems and devices, such competence is necessary when serving all clients, rich or poor. Consider, what is that you do that isn't dependent upon some electronic system or device? Just about nothing. Law being a reflection of the way we live, such electronic sources will produce the majority of the evidence and information used for legal services as well as for legal proceedings.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Support services are needed. As explained in the memo attached to this response, CPD requirements cannot satisfy the need for competence as to electronically-produced evidence. It is too complex and rapidly changing a subject to expect to find the necessary information in conference and seminar presentations and materials. For example do you know how to cross-examine a records manager as to compliance with the requirements of good records management? Did you know of the existence of Canada's national standard for electronic records management? It is entitled, "Electronic Records as Documentary Evidence" CAN/CGSB-72.34-2017. Records are now the most frequently used kind of evidence for legal proceedings and legal services. There is a need for a support service to provide such information as to how to cross-examine a records manager as to the degree of compliance of his/her records system with this national standard.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

It might help.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

Instead, sponsor the creation of a permanent support service--make the such services available at cost. My attached memo deals with this subject.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I've never used such a coach. But I do rely upon the experts in electronic records management systems that I work with for technical information in my field of practice. But issues as to the reliability of various types of electronic systems and devices that produce commonly used evidence for legal services as well as for legal proceedings is much broader than that. So broad and complex that a support service is needed.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I can't say. I'd need more detailed information as to how they operate and the depth and detail dealt with in such assessments.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

There is a need for a certified legal research specialist. The volume of law, its growing complexity, speed of change, and increasing dependence upon technology of various types has made necessary legal research specialists available as a support service (at cost). It is made more necessary by the fact that most of the evidence used for legal services as well as legal proceedings comes from complex electronic systems and devices. "Electronic" means software, which is full of errors in its source code. The technical literature warns repeatedly that we trust such systems and devices too easily as though they were infallible. They are in fact far from that. Such a research specialist would have such knowledge as part of his/her stock-in-trade, so to speak/ My attached memo deals with this subject..

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Courses, yes. But a lot of technical information that lawyers will need will be necessary to the financial viability of their practice of law. However, I do think a support service that provides information as to the availability of various computer programs, "apps" for enhancing law office cost-efficiency is necessary. Such a support service would help lawyers learn how to use them efficiently. Such information and training should be part of the Law Practice Program.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Cost-efficiency is a component of competence. In order for practitioners, especially general practitioners, to remain financially viable, the law society should be working at transitioning the legal profession from its present "cottage industry method" of producing legal services to a "support services method." That is how medical services are provided, because of the much greater cost-efficiency and economies-of-scale made available by support services methods of production. It is the law society itself that has to facilitate greater cost-efficiency and not just by imposing obligations on individual lawyers to use more computer technology. But this subject would take about a 20-page memo to explain.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Establish a support service to facilitate technological competence. With time, it will develop more functions as electronic technology makes ever-increasing demands upon the lives of everyone. Law being a reflection of the way we live, the greater will be the volume, complexity, and speed of change of law and the technology that it depends upon. As a result, the greater will be the need for support services. More is required than merely imposing more obligations upon lawyers to maintain competence of various types. The law society itself has to see the profession as a system by which a service is provided, and not simply as a task-master requiring lawyers to take responsibility for maintaining the cost-efficiency of the profession as a whole. However, this is a complex subject, including the fact that law societies need a civil service to implement these ideas--one national civil service for all of Canada's law societies, because their major problems, such as the cost-efficiency of the practice of law, are national ones.

Please enter your first and last name	Tali Chernin
Email Address	youvereachedtali@gmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Government or public agency
Practice area focus:	- Aboriginal Law - Administrative Law - Environmental Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	LSO Competence Task Force Response.docx
Working definition of competence	
Principles for an effective competence regime	
Components of continuing competence framework	
Renewing the Law Society's continuing competence framework	
Additional aspects of competence regime	

1. Working definition of competence. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

This is a good working definition. The only caveat I would add is that while competence can be “informed by a consumer perspective”, it should not be driven by it. Part of a competent lawyer’s role is to educate their client about their role, which includes the stark differences between what people have seen of American legal shows and the reality of practicing in Canada. All too often, lawyers will “perform” in court to satisfy their clients in a way that both acts as an eventual disservice to those clients’ needs and to the execution of justice in court.

2. Principles for an effective competence regime Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

These are excellent principles.

3. Do the components of the Law Society’s current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

I have not yet made use of many of these services as I am very early on in my practice and have the full resources of the Ministry of the Attorney General, but I can say that that CPD programs are extremely expensive for anyone who is not practicing at a major Bay street firm which pays for their CPD. In government, we avoid the issue entirely by creating internal programs that satisfy CPD requirements, but for sole and small firm practitioners, they can easily spend several thousand dollars satisfying the CPD requirements in addition to the thousands already spent on licensing and insurance fees. This adds to an already immense overhead, forcing the prices of legal services so high most lawyers cannot comfortably afford their own services. This further compounds access to justice issues.

4. Renewing the Law Society’s continuing competence framework. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:
 - a. CPD
 - i. Should the CPD requirement be changed to target the development and maintenance of certain competencies?

Given that most lawyers are presumably practicing every day, it seems to me that a good direction for CPD training to hone in on are aspects of the practice that are not an every day occurrence. Developments in case law, basics of an area of law for lawyers not practicing in the field but interested in transitioning or who are working in a related area of law, the business facets of practice which are never taught in law school.

I think that a person transitioning from one legal field to another should be required to prove some level of competence before being able to strike out on their own. It is obscene that a criminal lawyer of 20 years can suddenly pivot and open a real estate practice or a specialist in regulatory work pivoting to criminal law (as a sole practitioner, since they'd probably struggle to find positions within established firms) without any checks to ensure they are capable of the work except that 20 years ago they'd written the bar, and since then they've kept up in the field of law they're no longer practicing.

Perhaps even networking events ought to count as CPD, as meeting other lawyers is an essential tool in the toolkit of any lawyer (and no doubt a contributing factor for why so many complaints are against sole practitioners who have no other lawyers to run ideas by).

- ii. Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?

That's a great idea if the LSO can actually manage to enforce it. There is nothing worse than a regulatory system that isn't used. At that point, you might as well have nothing. No doubt as a recent call I would benefit from developing skills my more experienced colleagues can do in their sleep, while they might require assistance with some skills that either I have a natural advantage in (e.g. technology) or that come with seniority (e.g. mentoring and management skills).

That said, I think people generally choose CPD which is somehow relevant to them anyway, so this change may not significantly affect how CPD is used while increasing the cost and effort of regulating it.

- iii. Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

Yes.

- iv. Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?

Yes. A short quiz at the end of the session that the participant must score at least, say, 70% on to claim the time would be good. I know a lot of lawyers that turn on a CPD video or attend a CPD session but use the time to work on other files. With the added flexibility of having 2 years to complete it, that should be less of an excuse.

- v. Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?

I think CPD is vital. The law is changing constantly. If someone has been practicing, say, criminal law, and stopped reading case law ten years ago, they have missed enough that they may be less competent to represent a client than the client on their own with access to Canlii.

This is especially true since we take the bar once at the start of our career and are then technically qualified to practice *any* area of law for the remainder of our careers, even if the only knowledge of the area we have is what we studied for the bar. Considering how poor a test of competence the bar is in the first place, CPD and client complaints are really the only 2 real benchmarks we have for competence and we should be very careful about reducing their scope.

- vi. As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan? Enhanced practice support and training?

That could work as well. Presumably there would need to be parameters to these development plans (e.g. set number of hours,

set number of commitments, etc) to make these a viable replacement. There would need to be a way of verifying this to ensure people are actually doing it. Invariably the lawyers most in need of development will be the least likely to make real use of such a program.

What might be a better way to do this would be to require that a more senior lawyer or manager sign off on this. For example, in government we have professional development plans (I'm sure this is done in the private sector as well). These must be developed by the lawyer but approved by their deputy or legal director and are assessed as compared to that plan at the end of the year. Submitting such an approved plan (and it's final outcome) seems to be a fairly strong indicator that other lawyers responsible for the competence of their staff feel confident that this licensee is capable of the work they are doing.

Perhaps for sole practitioners, they would have to instead submit a piece of work (say a filed statement of claim) and have an LSO lawyer evaluate it. It's more work, but it would be substantive proof of someone's abilities and could be done fairly efficiently if all the reviewing lawyer is looking for is substantive gaps in the understanding of the law.

- vii. Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

Yes. Of course yes. They make up half of the complaints against lawyers in the province. Big firms have their own internal supports and specialists, as do government lawyers. Small businesses need real help to succeed and their success is vital to the profession's success.

- viii. Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 1. all licensees,
 2. ii. new licensees,
 3. iii. licensees in sole or small firm practice,

4. iv. licensees transitioning to sole practice?

I think having some baseline would be valuable both for people that are in sole/small practice or transitioning into it for the first time.

I don't think government or large firms would benefit from this at all as we have set out policies for how client interaction and practice management is to be done.

b. Peer-based initiatives

- i. Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

Yes. It has tremendous value for both. Maybe count it towards both licensee's CPD to encourage it in the same way that teaching a class can count towards CPD. In that case, I would suggest a check where if licensees are submitting mentorship time as CPD time, they provide details of what was discussed (e.g. recent case law, client management skills, etc).

- ii. Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

I love this idea. If we're asking X number of hours of CPD, this is another way someone might be able to meet those requirements without spending thousands of dollars. I would encourage you to include an application process for this though, as you want to make sure the peers reviewing it are in fact competent themselves first.

- iii. Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

I have not. I prefer longer term mentorship relationships and have developed those with seasoned colleagues. I don't know how much value the network has in developing long term competence. When I was a CHRP, I found longer term mentorship relationships also more helpful, particularly at times in my career when I was actively looking for work and needed advice from seasoned professionals on what skills were sought after, what workplaces to pursue, and other intangibles. That kind of mentorship would likely be vital for licensees early in their career or those transitioning from one type of work to another.

c. Practice assessments

- i. Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

I have not.

- ii. Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

- iii. Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Enhanced. There are so many wildly incompetent lawyers still practicing.

d. Certified Specialist Program

- i. Are you aware of the Certified Specialist Program?

Yes.

- ii. Have you participated in it and if so, did you find it useful?

No, I'm too early in my career. I would consider it though.

- iii. Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

It would be great if there was some specific benefit attached to it, like reduced insurance costs associated with practicing in the field you are a certified specialist in.

e. Technological competence

- i. Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

Moderate levels of Microsoft Word skills are essential. Licensees should know how to format a document, especially given the specific templates required in various areas of practice.

All licensees should know how to do case law research. This means knowing, at minimum, basic Boolean searching, regardless of year of call.

This should go without saying, but licensees need to know how to use web searching. There is sometimes essential information publicly available that isn't used because older licensees don't think to just check the web. It seems like just explaining what kind of information they might find would be of use would be of enormous benefit to them.

- ii. In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Absolutely, but obviously not all licensees have a natural inclination towards technology and beyond the basic skills I've listed above, I think it should remain an encouragement only. If a licensee isn't interested in advancements in AI or the dark web or black hat hacking, unless their area of law will be directly impacted by it, I see no reason to force more tech than is necessary on people.

- iii. Should the Law Society incentivize licensees to strive for excellence? If so, how?

I suppose the real question is that as long as there are incompetent people that the LSO fails to adequately sanction, what value is there in focusing on already competent people who might work harder if there is a LSO award in it for them? Those people likely already work for institutions that have their own means of rewarding excellence.

Certainly if we have any hope of avoiding public demands for government oversight to replace self-regulation, we need to demonstrate that we are capable of regulating ourselves. We can start by not failing to penalize licensees that are found guilty of

breaching our code of conduct. I was in the extremely awkward position in law school of having to deal with a “mentor” lawyer who was supposed to advise my moot team about an ethics case who had been found guilty of breaching multiple codes of conduct including engaging in an intimate relationship with a vulnerable client, lending her money and threatening her with breaching solicitor-client privilege if she did not pay it back fast enough. Despite showing no remorse or even understanding that what he did was wrong, he received a 10-week suspension. That the most significant consequence of this came from his employer (dismissal) and not his regulator is a dark stain on our ability to self regulate that an award for excellence will not help address.

5. Additional aspects of competence regime Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

A couple of final thoughts.

First, I think as we move forward to reconsider the framework, there should be an effort to make the process of reporting to the LSO more efficient. This means creating a website with a modern user interface. I have been using computers heavily since 1995 and have even built a website, and I find the LSO portal to be nearly impossible to navigate. I expect this is even more true for people without the same exposure to system back ends. Making it easier to comply with regulations will no doubt increase licensee’s understanding of what is required of them and how to satisfy those requirements.

Second, I think part and parcel with however we determine competence is a public communications piece where we explain this framework in laymen’s terms to the public so that they can properly understand what a competent lawyer is. It wouldn’t surprise me if at least some of the complaints filed against lawyers are in bad faith or because the client did not receive the outcome they wanted (as I know of several incidents like this), rather than because the licensee was incompetent in delivering the service. Doing more public education might therefore also affect the number of complaints filed.

Please enter your first and last name	Margot Davis
Email Address	mrgtdavis@gmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Other
Practice area focus:	- Not practising-writing textbooks
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
Yes.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- Yes.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
 - b) The Practice Management Helpline
 - c) Coach and Advisor Network
 - d) Practice assessment programs (practice reviews, spot audits, and practice audits)
 - e) Certified Specialist Program
 - f) Legal information and research supports (Great Library and LIRN)
- Yes.

Renewing the Law Society's continuing competence framework

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

The LSO says lawyers must remain current. One thing that should be required to achieve this goal is to mandate that a practicing lawyer do a 2hour "Current Events in Law" CPD each year. It would cover all the major changes in law at both the federal level (e.g. a new treaty comes into effect) and in Ontario.

Additionally, fraud is a growing threat. Practicing lawyers should be required to take an anti fraud CPD hour each year.

Please enter your first and last name	Jad Debs
Email Address	jad@debslaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Corporate Commercial Law - Immigration Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

Yes

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
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- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

Yes, no change required

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Yes, they do, however practice assessment programs should be less emphasized and less onerous.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target 2 (i.e. the development and maintenance of certain competencies)?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

No, this would create significant additional burden which would lead to higher rates for services and negatively impact the public.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

No, and the focus on sole and small firm practice is more than a little patronizing. I have worked at international and national law firms and I have been in a small firm for 6 years. Small firm lawyers are not less capable or competent and should not be singled out. We already charge less and make less than our big firm colleagues, and we are obviously less represented by our law society, but we are the ones actually serving the general public. Don't make life more difficult for us than it already is.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

- i) yes
- j) no
- k) yes I am aware. I requested a coach (or perhaps an advisor) at one point to help me set up a real estate practice and it was not a particularly helpful experience. certainly no hard feelings on my part, but perhaps an honest assessment of whether this program is having a positive effect would be warranted.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

m) yes, our firm has had an audit and another review geared towards young lawyers or new practices (I don't recall). we found it very onerous and time-consuming, however we found the staff to be very kind and professional. it was not helpful as we were already doing well with our practice management, so it simply took up a lot of time. it would have been just as or more helpful to provide a self-assessment and some good practical resources. modernizing the trust reporting requirements is a good idea as well, though that may be unrelated here.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

- p) yes, aware, but no, have not participated in it.
- q) you may want to consider reducing or eliminating the application and/or renewal fees. as it stands, the program is very much geared to lawyers in large firms and the costs would be either prohibitive or the benefit would be minimal to lawyers in smaller firms or sole practice.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

- r) I believe the market will handle this on its own and the law society does not need to be involved.
- s) no, this would be over-reaching.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

providing the certified specialist designation at no or greatly reduced cost would encourage lawyers to strive for excellence. bringing back the QC or similar designation may be an option as well. reducing licensing or insurance fees for lawyers that have not experienced complaints or claims is another option.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

I would simply suggest that adding additional burden on already burdened lawyers who are dealing with (in some cases) student debt, commercial lease and other expenses, and market pressure from unlicensed providers, would not be the way to go. support and encourage lawyers, don't overburden them with overreaching "initiatives".

Please enter your first and last name	Sarah Ennor
Email Address	Sarah@growthcounsel.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Sole practice
Practice area focus:	- Corporate Commercial Law - Employment/Labour Law - Securities Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Technically in nipissing but south of most of that area. Between ottawa and muskoka

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I largely agree. Two comments:

- competence is not comprised of values. The word values should be replaced with ethics. Tying it to values is very subjective, while ethics is a concept that has some degree of clarity instilled in all lawyers from the beginning.
- while I agree the client experience of services is relevant, I don't believe this should necessarily apply on a client by client basis to assess competence in a given case. Many clients are difficult. Competence should be assessed both on the individual client experience (eg if a lawyer has been unethical or racist) but also in the context of that lawyer's overall history of client satisfaction.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- I agree but, as above, suggest care should be taken around the client perspective. It is key they they lawyer understand the client's needs and perspectives, but the law society should not be judging competence based on the client's opinion of competence. They are not in the best place to judge and will often equate competence with the achievement of the desired result, no matter how unreasonable. This should be weighted less heavily than the other factors. Again, inappropriate behaviour like racism and classism go to ethics and should certainly be addressed if present.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

CPD requirement- lacks the forward-looking component. The biggest gap is in specific practice management requirements. The professionalism portion is too broad and ought to include at least 1 annual hour of practice management, particularly for soles and smalls. This takes away from flexibility but I think is important.

Reviews and audits- these are not risk based or client focussed. I have not experienced all types but when I was audited it was a tick box exercise that seemed not to be aimed at assisting or educating me. The report was unwieldy and unhelpful. A more targeted, personalized report would be more helpful and an in-person debrief would make the program more valuable.

Practice management helpline- I have not had great success with this. I only contact for unusual situations where I cannot identify the solution without guidance. Responses seem to be wishy-washy at best rather than true helpful guidance on these complex matters.

TLA research supports have been incredibly valuable to me. This should be promoted and fully staffed as it is of great value to soles and smalls.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?**
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?**
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?**
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

As noted above, cpd requirements should include at least 1 practice management hour per year. Professionalism component is too broad and can easily be satisfied by courses on different personality types etc. while helpful, more targeted requirements for practice management and ethics would be helpful. A great course this year was on the new anti-money laundering requirements. Such Changes should be highlighted and included in the year's mandatory learning.

No need to tie to practice area. Lawyers tend to self-regulate on this. It would be difficult for soles and smalls to narrow down and demonstrate a connection to practice area if a general practice. Also believe lawyers will self-regulate re engagement and interactivity. Keep it flexible and feasible. I believe the annual requirement is working based on high compliance rates. If anything, I would shift to shorter timeframes so lawyers aren't spending December cramming learning in. Quarterly or semi-annual would be ok. Self-assessments and learning plans move away from flexible and feasible. I think this would be over-burdensome.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?**
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,**
 - ii. new licensees,**
 - iii. licensees in sole or small firm practice,**
 - iv. licensees transitioning to sole practice?**

Yes, yes, yes. All licensees should be encompassed by practice management learning annually. This is an area where the law society could prescribe the annual requirements and tailor them to type of firm/company and years of call, as well as annual changes. This is an area where we tend to cease learning after bar ads.

Lso courses on these topics should be free to prevent access barriers.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?**
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?**
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?**

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Mentorship relationships are critical and should be encouraged or mandatory. I have it participated in the coach and advisor network but have considered it. More robust info about how it works and it's value should be provided. Maybe including a list of hot topics that may be discussed would help guide the conversations and increase participation. Of course, other things could also be discussed but it might attract otherwise uncertain participants (like new calls)

Peer assessments will tend to be a tick box exercise at year end if done among known peers within firms etc. Consider treating peer assessments like jury duty where strangers assess each other and provide feedback. This cannot be done with any other aim than to help the lawyers being assessed and should be reported solely as "completed" or not. I'm not sure how to address issues of competence in this case, however, as the program will fail if lawyers feel they will need to report other lawyers for incompetence. This is difficult at the best of times.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?**
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?**
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?**

See comments above. Mine was less helpful/educational than it could be. Tailored reports and personal debriefs preferred. Knowledgeable assessors would be nice.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

Aware of this but unfamiliar with the details of the program.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Tech competence is difficult to teach and mandate. Incentivizing paperlessness would be a good thing. Lawyers will generally seek the help they need. Add a tech support function to practice management. Maybe partner with tech support businesses to provide affordable support, esp to soles and smalls. Tech mentor program could be helpful too, like coach/advisor network.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

I think lawyers strive for excellence in their own ways and don't think it is the place of the law society to add to the competitive nature of law. I assume the certified specialist program does this in any event?

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

You mentioned practice support materials in the paper. This is the single most helpful thing the LSO could do to support competence. Enhancing the availability of clear guides on basic services (eg incorporation) similar to what is available from the BC society would greatly assist in learning and staying up to date. Having a starting point for many regular transactions and some resources listed on where to go next would be used daily for sure. This would be especially helpful for soles and smalls who do not have peers or mentors they can access easily and quickly.

Please enter your first and last name	John Fagan
Email Address	johnffagan@gmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Other
Practice area focus:	- Civil Litigation – Defendant - Civil Litigation – Plaintiff - Criminal/Quasi Criminal Law - Family /Matrimonial Law - Ontario Court of Justice - Provincial Offences Act matters - Real Estate Law - de facto retired; practice areas mentioned relate to my former active practice career
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I generally agree, although considerations of "consumer perspective" and "technological competence" should clearly get less emphasis than do the other considerations.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
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- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
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- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
I generally agree, but "Client-centred" should receive less emphasis than do the other principles.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

a) CPD requirement and programs

b) The Practice Management Helpline

c) Coach and Advisor Network

d) Practice assessment programs (practice reviews, spot audits, and practice audits)

e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

a) CPD programs should be non-compulsory (save for Tribunal orders, where relevant to specific individual lawyers or paralegals who have been brought before the Tribunal); I am aware of no evidence that compulsory CPD programs achieve anything of value. To the extent possible, CPD programs should be left to the various voluntary Law Associations, and, to a lesser extent, to the OBA, all of which should make their programs available to licensed paralegals.

b) and c) Practice Management Helpline, and Coach and Advisor Network: How much do these programs cost the LSO, including paid LSO staff time? I imagine that these programs are helpful, but that the work they accomplish could better be done by the various voluntary local Law Associations, and, to a lesser extent, by the OBA, if all their membership bases were larger, and included licensed paralegals. Reduce LSO annual fees, to allow the local Law Associations to increase theirs. "Licensees" will be more willing to admit weaknesses to non-LSO-led advisors.

d) Practice assessment programs: Apart from spot audits, how do these work? How much do they all cost the LSO, including paid LSO staff time? They seem superficially like good ideas, as long as they are not overly intrusive or nitpicking, but I am concerned with tipping the scales too far in the direction of "compliance-based," rather than "complaint-based."

e) Certified Specialist Program: Cancel outright, including retroactively. (Whether to refund amounts paid for past years' "Certified Specialist" status is, I admit, a separate question.) Prohibit the use of the self-assigned status of "specialist." Permit "practice emphasizing," if true. I am not satisfied that the "Certified Specialist" program assists the general public.

f) Great Library and LIRN: Reduce LSO fees to low enough levels to permit the Toronto Lawyers' Association and FOLA, with LFO assistance in each case, to run and pay for all the libraries (including the Great Library) currently paid for or subsidized by the the LSO and/or LIRN. Require all law associations with libraries eligible for LFO subsidization to admit licensed paralegals. The stronger the local law associations, the stronger the legal and paralegal professions, including especially re competence (which of course includes non-burnout, non-isolation, and non-depression.)

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?

b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?

c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?

e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?

f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

The CPD requirement should be cancelled in its entirety, and not be replaced by any alternative with respect to which the LSO is involved. Lawyers and licensed paralegals should be able to seek good advice and guidance from non-LSO sources, such as their local law associations, and (to a lesser extent) the OBA, to all of which licensed paralegals should of course be admitted. Lawyers and licensed paralegals are more likely to admit weaknesses to advisors outside the official LSO framework. The local law associations need more "fee room" to accomplish the tasks which they could so well achieve, with more membership income. Reduce LSO fees to accommodate.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

i. all licensees,

ii. new licensees,

iii. licensees in sole or small firm practice,

iv. licensees transitioning to sole practice?

There should be no new or additional LSO-administered courses of any kind. Reduce LSO fees so that the local Law Associations, and (to a lesser extent) the OBA, can take care of these things on a non-compulsory basis. Lawyers and paralegals can go to non-LSO sources of guidance without having to admit any weaknesses to the LSO. If lawyers or licensed paralegals refrain from taking advantage of non-threatening guidance, and then "goof up," the LSO can then move in on them, including by forcing them finally to take the (non-LSO-administered) courses they should have taken before. Lawyers and paralegals unfortunately do not, for the most part, regard the LSO as their "friend."

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Encourage mentoring relationships, certainly, as long as there is no official LSO involvement in setting up or supervising the relationships. The structure could be managed by the Toronto Lawyers' Association and FOLA (and, to a lesser extent, by the OBA), as long as paralegals were included, and as long as the necessary "fee room" were made available to the Toronto Lawyers' Association and FOLA, by the reduction of LSO fees. No new LSO requirements of any kind. As far as the Coach and Advisor Network is concerned, I have not participated in it (I've been in de facto retirement from the active practice of law for more than ten years now). It sounds like a good idea; better if it were managed by the Toronto Lawyers' Association and FOLA.

Please also see my answers to the previous questions herein.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I moved from private general practice to working for one client, the Attorney General of Ontario, about thirty years ago. I've been in de facto retirement now, from any legal practice, for more than ten years. When in private general practice, I was not heavily into real estate or mortgages; I imagine that was why I was the subject of only one or two spot audits. They were a nuisance, but, having nothing to hide, I just non-sweated through them. I recall one arcane financial-record-keeping rule being explained to me, which was indeed useful. I am not familiar with practice assessments, as distinct from spot audits. In general, I have a hunch that practice assessments might tip too far toward "compliance-based," rather than "complaint-based," but, if that's not the case, I'd have an open mind toward them, as long as they're not too intrusive or nit-picking.

Please also see my answers to the previous questions herein.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

Please see my answers to the previous questions herein, including with respect to the Certified Specialist Program, which I think should be eliminated altogether. (By the way, when the Certified Specialist Program was inaugurated many years ago, I considered seeking certification in one or two of the areas of law my practice then emphasized, but then I thought, no, word will get around; being able to put something on my letterhead won't do very much for me.)

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

The LSO should generally stay out of the "technological competence" area, as part of any enforced competence regime, beyond loudly advertising to lawyers and paralegals:

a) anyone who thinks one can successfully engage in legal or paralegal practice these days without good technological competence, is in for a rude awakening;

b) no lawyer or licensed paralegal will be able to claim "technological incompetence" as any defence or excuse with respect to any Tribunal proceedings, including considerations on penalty.

Now, on the other hand, LawPRO might consider technological competence, in setting its annual premium levels...

Please see also, my answers to previous questions herein.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

The LSO's Degrees, Honours and Awards Program should be eliminated in its entirety. I doubt very much whether it at all incentivizes lawyers and licensed paralegals to strive for excellence. During my 36 years of active practice (1975-2011), I strove for excellence to serve my clients, and to satisfy myself; I imagine most lawyers and licensed paralegals do the same thing. (In contrast, the lazy, who don't care about excellence, already know that they won't be winning any awards for same.) Then, too, and very importantly, I must imagine that administering this program must be very expensive for the LSO, including the costs of paid LSO staff and Benchers time. (Just how much does it cost the LSO to administer this program, including such paid LSO staff and Benchers time?) The judges and other dignitaries whom we invite to address Calls to the Bar don't need new degrees; I'm quite sure that they're quite pleased to have the opportunity to speak to, and perhaps influence, auditoria full of fresh-faced new lawyers, and then to have the chance to mingle with the Benchers over a good lunch at LSO expense. (Wouldn't you be?)

Please see also, my answers to previous questions herein.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Lawyers and licensed paralegals will take fuller advantage of CPD courses, opportunities for peer advice, etc., when such courses and opportunities are made available through non-LSO channels, and when they are non-compulsory. Unfortunately, we are stuck with the fact that lawyers and licensed paralegals will always regard the LSO as an entity which does things "to" them, rather than "for" them. The LSO should be reducing annual fees, to leave the local law associations, and (to a lesser extent) the OBA (all of which should admit licensed paralegals), the necessary "fee room" to be able to do more re ongoing lawyer and paralegal competence.

An entirely separate question is PRE-bar-admission, PRE-receipt-of-paralegal-license, competence, on which, I think Benchers work is also needed. I raise this, knowing that it is outside the scope of the current Competence Task Force's work, because I know that those on the current Task Force are also all each concerned with the TOTAL lawyer/licensed paralegal competence package.

Many thanks to all,

John F. Fagan
LSO Benchers, Toronto
Cellphone 647-525-3186

Please enter your first and last name	Lou-Anne Farrell
Email Address	lou-anne@fplaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Southwest, including Huron (Goderich), Perth (Stratford), Oxford (Woodstock), Middlesex (London), Lambton (Sarnia), Elgin (St. Thomas), Kent (Chatham), Essex (Windsor)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
agree

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
yes, although I think awareness of equity and diversity is more about respect than competence

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Not everyone responds well to "tests" and I'm worried that part d could end up being draconian. Anecdotally I've heard stories of very aggressive spot auditors who expect perfect adherence to a very long list of best practices that may not be economically achievable for small and solo firms. There needs to be a recognition that "competent" is not the same as "perfect".

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) **As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

The CPD program is generally working well and strikes a good balance between keeping people current and not being overly onerous (at a time when the demands on lawyers' time are increasing exponentially). There do seem to be pretty fluffy CPD programs out there that are surprisingly accredited as substantive as opposed to practice. Maybe that needs to be tightened up a bit, but not to the point of making the whole thing so onerous that it overwhelms people. For example, the suggestion in f sounds like a make work project.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
 - h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?
- no. overreaching.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) **Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?**
provide resources but don't require participation. most mentoring occurs organically and different models work for different people. the onus should be on someone who wants more support to reach out for it.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) **Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?**
- n) **Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?**
- o) **Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?**
see comments above.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

- p) **Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?**
- q) **Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?**
It's fine as is.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

I would be leery of marginalizing older licensees.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

I do think carrots are better than sticks, but don't have any concrete suggestions at the moment.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Be careful that any sort of peer recognition or assessment doesn't turn into the questionable endorsement process that some for-profit accreditations have become (Best Lawyer, Martindale-Hubbell, etc). Big firms nominate and endorse their own in a way that others can't compete with, and the rankings become very unreliable.

Please enter your first and last name	Chris Graham
Email Address	cgraham@grahamel.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Civil Litigation – Defendant - Civil Litigation – Plaintiff - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
YES

Principles for an effective competence regime

Components of continuing competence framework

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
 - b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
 - c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
 - d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
 - e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
 - f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?
- b) Keep it general if you must keep it at all. The only useful CPD I have done is outside my area of focus (estates & trust litigation).
e) CPD should be eliminated. The requirements are onerous and expensive. CanLII renders CPD an expensive waste of time. I can read 20 cases online in the time it takes to listen to lawyers talk about 1.
f) No. CPD is an elaborate waste of time and money to create a talking point to the public, who does not care, that there is ongoing Official Professional Development. Any reasonably informed person would know lawyers naturally do that every day by reading cases relevant to their files. CPD is a defence to a claim no one is making.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

No. These are all subjective concepts which are incapable of universal, fixed standard operating procedures. Please do not waste my time with this. As to client communications, this is now technology-driven. No one can standardize the ability to adapt to rapidly-evolving technologies. By the time the regulator has figured out a new technology, had its meetings and written its guidelines, the technology is obsolete so at the practice level, any "course" developed by a regulator is long obsolete and therefore an expensive distraction. To a lesser extent, this can be said for practice management.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

i) No. While the practice of law is mentor-based, this is not something that can be regulated. So don't try.

j) No. Peer assessments would enable rivals to carry out grudges indirectly. This smacks of naivete. This would also introduce conflicts on every file. It is a foolish idea aimed at a problem that doesn't exist.

k) Never heard of it. Sounds like a good idea for young lawyers who don't have anyone else to call. As long as I don't pay for it through fees.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I found the spot-financial audit process very helpful when I started my firm. The auditor was professional, identified several areas of concern. We snipped a potential concern in the bud. It was a positive experience. I felt my fees were well-spent.

A practice review would be useless for litigation files. These files are subjective, circumstance-driven and highly idiosyncratic by nature. How would one assess proportionality, for example, in a modest lawsuit? Aside from missing deadlines and under-advising clients on risk/benefits of courses of action, for which LawPRO exists, a practice review would be nothing more than an unpaid course in how I run a lawsuit, taught by me to the "auditor".

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

The Certified Specialist Program is a popularity contest. It should be eliminated.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Technology changes too fast for effective regulation. Leave it to the market to weed out lawyers unwilling or unable to adapt. Do you know the difference between sms, whatsapp and signal from a practice perspective? If you can't answer immediately, the point is made.

Yes, at the law school level, it should be made clear to students that they should independently learn to use new applications and flexibility and willingness to adapt are prerequisites to professional success.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Terminate it. Make adaptation to technology a principle in the Rules of Professional Conduct. Everyone - even the very senior lawyers - is doing this anyway. The lockdown has led to the rise of Zoom has led to even the most stubborn lawyers allowing technology to simplify their practices and improve their lives. Regulation is useless since we will ignore obsolete regulations anyway.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Terminate it. The biggest risk right now is information overload. It is hard enough to make a good living without these superfluous rules. The worst things lawyers can do is steal from the trust fund. The second worst thing is act in a conflict of interest to the client's detriment. Then failure to advise, then miss a deadline, then fail to report or act without instructions. The CPD & competency stuff is a waste of effort. Whatever the LSO needs to say, put it into the Rules of Professional Conduct so we can't ignore it or pay lip service.

Please enter your first and last name	SEAN GRAHAM
Email Address	sgraham@grahamel.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Civil Litigation – Defendant - Civil Litigation – Plaintiff - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

No I don't agree with the working definition below.

It's weighted away from objective competence and towards subjective metrics designed to allow the LSO to impose political priorities on lawyers. For instance "contextual factors": what context, what factors, what does this even mean?

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.

b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.

c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.

d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.

e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

These categories are so broad and amorphous as to allow the LSO to interpret them into meaning anything it wants. This will almost certainly end in a glorified but very serious popularity contest where the popular are deemed 'competent' and the unpopular 'incompetent'.

Coded dog whistle-type words have been snuck in to allow the LSO to interfere in legal practice by imposing what the LSO feels are fashionable political views. "Differences in backgrounds", "cultures", and so on.

One concern might be that the Law Society is eager to push the 'Statement of Principles' issue all over again, this time using 'competence' as a new, improved more subtle means. Repackaging a terrible idea doesn't make it a good idea.

LSO should stay away from trying to impose fashionable political views and behaviour on its member lawyers while disguising the exercise as a 'competence' measure.

I have had a lifetime of exposure to different countries, ideas, history and political systems, up close and personal. I deal with clients from a huge variety of all manner of characteristics, backgrounds, political views and so on. All without any trouble.

I have also been the target of awful religious persecution in a totalitarian country. I don't need the Law Society's political guidance. In fact I find the idea that I do to be deeply offensive.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

a) CPD requirement and programs

b) The Practice Management Helpline

c) Coach and Advisor Network

d) Practice assessment programs (practice reviews, spot audits, and practice audits)

e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

(a) CPD requirement should be done away with. It does not help lawyers learn from what I've seen.

(e) Certified Specialist Program should be done away with. All lawyers should be treated as equal.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
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- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

a) CPD requirement should be done away with entirely.

b) No. This just means listening to the same favoured speakers discuss the same topics using marginally updated versions of the same paper, year after year.

c) Whether a bad system is completed annually or bi-annually makes no difference.

d) No. If this means what I think it means, it's deeply insulting. Licensees are not children and should not be treated as such.

e) Eliminated altogether.

f) No. Self-assessment is something every lawyer does anyway, through interactions with the public, clients, the courts, and others. For my part, virtually every day I'm thinking about how to get better. It's actually one of the pleasant challenges of practice - getting better. Regulating this can't realistically improve on things, but will likely make them worse.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

g) "Enhanced support" is likely to mean, in practice, time-soaking red tape and making it much harder to serve clients. No.

h) No. If it does go ahead, nothing after the 2nd or 3rd year of practice. And it must be for ALL lawyers, not just 'sole' or 'small' firms.

Otherwise larger firms (who are no better at these things and often worse in my experience than smaller firms) get an LSO-driven, unfair and unmerited competitive advantage. The suggestion that small firms need more help in practice management or client communications than larger firms do is inconsistent with what I've seen in over 20 years of practice. A lawyer at a small firm tends to know very quickly indeed when something's wrong - fewer accounts get paid. Problematic larger firm lawyers can hide in the forest of their colleagues for years on end, at least based on what I've seen from the outside.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

i) "Require"? Never. "Encourage"? Maybe, but only in a general sense. Also, once a mentor-mentee relationship is established, stay away and leave it alone. You can't regulate such things effectively.

j) No. This invites score-settling by lawyers against competitors, would be a popularity contest, and would end in disaster for non-institutional middle-class and poorer clients, for whom the more fashionable lawyers tend never to act.

Practically speaking, antagonistic peers tend to know what each thinks of the other anyway, and friendly peers volunteer pointers to each other all the time. I certainly do.

k) Not aware of it, but as long as it's not something licensees pay for directly or indirectly, it may be fine.

l) I've not participated, so I don't have an informed view. So long as it's voluntary.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

m) Yes I did receive a spot audit, years ago. I welcomed it as we'd just started our new firm. As I recall it was helpful in the sense that the auditor made several constructive suggestions, which we implemented. I found her practical, friendly, competent and helpful. If things are the same now as they were then, I expect it's a very good program.

n) I can only speak for myself. I doubt it would help me at this point, but it did help me earlier in my career.

o) See m) and n) above.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

p) Yes I'm aware of the program. I've never applied but I would qualify on any merit-based assessment. I think it's wrong in principle to have different classes of lawyer and do not currently intend to apply.

q) Eliminate it altogether. It serves no useful purpose and may do harm. If the public thinks a CS accreditation denotes a better lawyer, the public will be actively misled in many cases.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

r) No the LSO should stay out of this. It's definitely an issue in day-to-day practice, but the market will regulate this much better and quicker than the LSO can do, at zero cost. It's not broken, but it will become so if the LSO tries to fix it.

s) See r) above. By the time the LSO figures out what's needed and is ready to educate the profession, what's needed will have changed. It's moving quickly, licensees know it, we have no choice but to adapt quickly, and the best thing the LSO can do is nothing.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

No. Excellence is its own reward and is different for everyone. Some value excellence in CLE speaking and writing engagements. Others see excellence in mediating, others in winning a trial after the mediation fails. Some see it in pro bono work. Still others might define excellence as implementing race-based quotas and gender-pronoun politics into a law firm.

Excellence cannot, and should not, be quantified for the profession as a whole. We can all find our own way. Lawyers in Ontario are too diverse for cookie cutter definitions of excellence. In this context, diversity is a strength; let it flourish and keep it that way.

The reality is that, however excellence is defined, proper legal practice all comes down to serving clients. It is the clients who decide whether they've been well-served, they are remarkably adept at getting that decision right, and there's nothing so gratifying in practice as to be told by a client they have an excellent lawyer.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

This should be ended altogether.



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October 27, 2021

Sent via E-mail

Priya Bhatia
Executive Director Professional Development and Competence
pbhatia@lso.ca

Tasmin Waley
Strategic Policy Counsel, Policy Division
twaley@lso.ca

Dear Ms. Bhatia and Ms. Waley:

Re: Competence Task Force

I write to take this opportunity to provide my personal input on the Law Society of Ontario (the "LSO") Competence Task Force.

At the outset, I wish to commend the Law Society for creating this important task force and I am pleased with the aims and goals that are being sought by the members.

I wish to speak specifically to what is in my view, an important aspect of the LSO's core mandate.

Item number one of the key themes set out in the task force's summary of themes is the peer support and assessment.

I have personally been involved with the Coach and Advisory Network since relatively early in my career when it was run out of the practice advisory group at the LSO.

The Coach and Advisory Network ("CAN") is of course relatively new as it was launched in 2016.

I have been working with CAN since its inception and I am regularly dealing with CAN inquiries (one every four to six weeks). These inquiries are usually being brought to me through CAN directly; however, over the years, I have developed relationships with some of the CAN - based practitioners and they contact me directly as well.

The work I do with CAN is all about the relationships that arise out of the important contact I have with lawyers across the province. It certainly enriches my practice as it is rewarding and always enjoyable to speak to practitioners. Furthermore, often the inquiries are difficult and require some real thought as to how to work through the unique problem with the practitioner.

Connecting through peer to peer support is, in my view, a vital part of the practice of law and, certainly, the Law Society needs to continue to support this program in my opinion.

I am often dealing with questions from practitioners in the GTA and across the province and, as a result, I get very different perspectives on problems that they have come across and for which they are seeking my assistance.

I can say that the personal fulfilment of assisting with this program is tremendously enjoyable to me; however, I also appreciate the fact that I am able to create new referral connections and new relationships with practitioners that I otherwise would not have had an opportunity to support. As a specialist in the area, I rely on this type of referral network and, to be entirely honest, connecting with practitioners in this way assists both myself and the practitioner from a financial and competence standpoint.

In conclusion, I wish to wholeheartedly support the efforts of the task force in their review of competence generally and, most importantly, I wish to make it clear that the Law Society should continue to support in every way it can the program as it is a vital part of the practice of law and a vital part of the necessity for all lawyers to both give and receive.

Yours truly,

A handwritten signature in black ink, appearing to read "Ian M. Hull", written in a cursive style.

Ian M. Hull
IMH/jls

From: Murray Klippenstein <murray.klippenstein@klippensteins.ca>

Sent: November 30, 2021 4:22 PM

To: Sidney H. Troister, LSM <stroister@torkinmanes.com>; Scott Marshall <marshall@tnt21.com>; Ryan Alford <ryan.p.alford@gmail.com>; Joseph Chiumminto <joseph@chiumminto.com>; Dianne Corbiere (dgcorbiere@nncfirm.ca) <dgcorbiere@nncfirm.ca>; Cathy Corsetti (cathy@corsetti.ca) <cathy@corsetti.ca>; Cheryl Lean <cheryllelanlaw@gmail.com>; Lewis, Atrisha S <alewis@mccarthy.ca>; Barbara Murchie <barbara@murchielaw.ca>; Genevieve Painchaud <genevievpainchaud@hotmail.com>; Jorge E. P. <j.pineda84@gmail.com>; Megan Shortreed (Megan.Shortreed@paliareroland.com) <Megan.Shortreed@paliareroland.com>; Andrew Spurgeon (aspurgeon@rossmcbride.com) <aspurgeon@rossmcbride.com>; Claire Wilkinson (Claire.Wilkinson@mhalaw.ca) <Claire.Wilkinson@mhalaw.ca>; Alexander Wilkes <alexander@wilkeslaw.ca>; Priya Bhatia <PBhatia@lso.ca>; Tasmin Waley <twaley@lso.ca>

Subject: Thoughts on the Competence Task Force Report dated June 23, 2021

CAUTION: This email originated from outside the LSO. Exercise caution before clicking links, opening attachments, or responding.

Colleagues,

I am writing to submit my thoughts on the Competence Task Force report dated June 23, 2021, in accordance with the invitation for input.

As a skilled and experienced litigator, I have paid close attention to the deadline of November 30, and, in accordance with normal litigation practice, I am submitting my thoughts at almost the last minute. However, I would note that "just under the wire, is still under the wire". I would also observe that the report on p. 21 acknowledges the concept of "just-in-time".

1. Overall, I would express my very great appreciation to the Task Force Co-chairs Troister and Marshall, members of the Task Force, and authors Ms. Bhatia and Ms. Waley for what I think is quite simply an astonishingly good report in terms of its scope, comprehensiveness, capture of so many topics and important different points in very concise form, and its general precision (I could be wrong, but I've seen this writing before, and I have a hunch that a lot of it is Priya's, I say with great appreciation). I found the report very illuminating, bordering on inspiring, to read.
2. I especially appreciated that at several points there was recognition of the idea that the Law Society might want to give some additional weight to the idea of "excellence" in our professions, that is, something beyond and of quite a different nature than just "baseline competence" (eg. p. 3 "there may be value in having mechanisms ... for achieving and recognizing standards of excellence", and p. 23, under the heading "Baseline Competence and Beyond").
3. I appreciated the recognition of the special role and situation and challenges of soles and smalls.
4. I note the oft-repeated observation that a large number of complaints and claims by clients arise from a "failure of communication". No doubt that is true, but I believe that there is much to be said about that topic "under-the-surface", and that it would benefit closer examination. In the real world of practice, one could spend 90% of one's workday engaging in excellent "client communication" - of which only two hours would be billable and collectible, which would mean going out of business after one

year. In other words, it seems to me that there are many subissues to that point, which I think could be very usefully unpacked in more detail.

5. There remain to be discussed, it seems to me, a number of issues related to the sprawling empire of CPD, including whether all that work constitutes members' money well-spent, but this report provides a very good outline of the issues, and a good basis for discussion.

Finally, I had occasion a while ago to dig up the original statute of the Assembly of the Province of Upper Canada from 1797 which authorized the creation of a law society, and noted that it stated that such organization was "for the purpose of securing to the province and the profession a learned and honourable body to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the said province." I attach a copy for your amusement. I daresay this report does seem to be mainly pretty much on track with that two-and-a-quarter century old goal.

Overall, I think, a superb bit of work, I say with appreciation.

Murray Klippenstein

55

C H A P. XIII.

An ACT for the better regulating the Practice of the Law.

Preamble.

BE it enacted by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled "an act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled "An act for making more effectual provision for the government of the province of Quebec in North-America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, it shall and may be lawful for the persons now admitted to practise in the law, and practising at the bar of any of his Majesty's courts of this province, to form themselves into a society, to be called the Law Society of Upper-Canada, as well for the establishing of order amongst themselves as for the purpose of securing to the province and the profession a learned and honorable body, to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the said province.

Present practitioners incorporated into a law society.

The society to form rules.

II. *And be it further enacted by the authority aforesaid,* That the said society shall, and is hereby authorized to form a body of rules and regulations for its own government, under the inspection of the judges of the province for the time being, as visitors of the said society, and to appoint the six senior members, or more, of the present practitioners, and the six senior members, or more, for the time being, in all times to come (whereof his Majesty's attorney-general, and solicitor-general for the time being, shall be, and be considered to be two) as governors or benchers of the said society, and also to appoint a librarian and a treasurer.

Place and time for the first meeting for adopting rules.

III. *And be it further enacted,* That it shall and may be lawful for the said practitioners, or as many as can be called together (whereof his Majesty's attorney-general, and solicitor-general shall be two) to assemble at the town of Newark in the county of Lincoln on the seventeenth day of July next ensuing the passing of this act, for the purpose of framing and adopting such rules and regulations as may be necessary for the immediate establishment of the said society, and its future welfare; and such rules and regulations as shall then and there be adopted, shall be openly read and entered in a book to be for that purpose provided, and having received the approbation of the said judges as visitors as aforesaid, shall be, and be considered to be the constitution of the said society, and binding upon all its members:—*Provided always,* That it shall and may be lawful in time to come, to add such other rules and regulations, with the approbation of the judges as aforesaid, as may then and there be necessary,

Present practitioners may take one pupil.

IV. *And be it further enacted,* That it shall and may be lawful to, and for any person now practising at the bar of any of his Majesty's courts, to take one pupil or clerk, for the purpose of instructing him in the knowledge of the laws, any law or ordinance to the contrary notwithstanding.

Please enter your first and last name	Michael Lamb
Email Address	Michael@mikelamblaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Sole practice
Practice area focus:	- Real Estate Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Southwest, including Huron (Goderich), Perth (Stratford), Oxford (Woodstock), Middlesex (London), Lambton (Sarnia), Elgin (St. Thomas), Kent (Chatham), Essex (Windsor)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
No

Principles for an effective competence regime

Components of continuing competence framework

Renewing the Law Society's continuing competence framework

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

I have no comment on any of the above issues. My only concern is that the Bar Admission Course was abandoned years ago. In my view (and of other lawyers I have talked with over the years) is that the course was an invaluable foundation for new lawyers to see how different areas of the law play out in real practice. Physicians are not allowed to graduate and then start practicing brain surgery so I don't see why newly admitted lawyers can just start handling divorces involving children and perhaps millions of dollars with little to no training. Likewise, with real estate. Members of the public today are paying close to or more than a million dollars for a home and yet we have lawyers who "play" at real estate thinking it is easy. Thank you.

WAYNE S. LASKI

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July, 8, 2021

Dear Mr. Troister

Bencher, Chair of Competence Task Force

I read with interest of your consultation on competency in the legal profession. I certainly wish you luck.

I am by no means an expert on the subject. I thought I would pass along some observations of the profession over the last four decades.

By way of introduction, I have just retired from the practice of law after 40 years, mostly as a sole practitioner. When I was called you could hang out a shingle and be a generalist. I eventually settled down to do corporate work and litigation. A suggestion passed on as advice to me by JJ Robinette. I dropped out of the practice of criminal law after a 10-year stint. It certainly was an education. You were in the trenches every day. You got to see and deal with the ugly underbelly of life. It was invaluable when I focused on civil litigation. Most civil lawyers did not have anywhere near the experience I had gained by being in court every day. Conducting jury trials was also a benefit. When you are dealing with someone's life or liberty competency is a must.

I was mostly a sole practitioner. I worked at home for the last 30 years unless I was required in a meeting, or in court. My staff worked in a commercial building nearby. My assistant worked for me for 33 years. She was incomparably competent. More in fact, than most lawyers. Her skills made me more competent. The fact that I could rely on her to get it right was invaluable.

I mentioned this because in one of the earlier offices where I first worked, I was fortunate enough to again be mentored, this time by a wise and seasoned secretary. This was also part of the advice that was shared with me by JJ

What you Robinette. I think it is as true today as it was then. Competence would be improved, by starting out with someone who knows what they are doing.

When I was called to the bar in 1979, I was the 18,498th lawyer since Confederation. I was also told that there were about 5000 lawyers in the province of Ontario at that time. I am now told there are between 60-65000 lawyers in the province.

What was once a profession is now, a business. As a result, the profession, which never was appreciated by the public, is tarnished by a growing bar that puts business before professionalism. This is not a professional choice. It is a practical choice.

When I joined the bar, there was a collegiality. There was mentoring. I can not over emphasize the importance of mentoring in understanding how to apply the law, how to represent a client and most importantly how and what it meant to be a lawyer. I could, and did, walk-in to Eddie Greenspan office, Austin Cooper's office, without ever having known them, and the occasional chat at Woodbine racetrack on Thursday afternoons with Mr. Justice Arthur Martin, gaining valuable and guidance on my cases as well as insight into the law and what it meant, and how to practice it as a profession.

It has been my sad experience that in general most lawyers who have been called to the bar in the last 20 years lacked the competence to represent their clients in a professional manner. This did not stop at a poor knowledge of the law, procedure, and its application in the circumstances. It also manifested itself in the lawyer putting themselves before the client rather than the other way around which was how I was taught.

I remember many times sitting in my office telling the client that he was perfectly correct. He had been robbed of \$60,000 by his partner. He was entitled to every penny. Then I would tell him to give me \$100,000 and I would go and get it for him. The point was the client's interest before the lawyer's interest.

Now it is a business. Lawyers will take on almost anything because they must pay the bills and hopefully make some money. That often leads to the cutting of corners, that clogs the court system and makes dealing with lawyers who do not understand the law, the obligation, and the profession, difficult and expensive.

One of the other unfortunate by-products of the increase in lawyers in Ontario, and for that matter similarly throughout the world, is a watering down of the competence of the profession. Other counsel do not know as much or, often

demand as much as the circumstance and Law require. Their lack of knowledge of the law and procedures make the practice more difficult and expensive. Many cannot get employment of any kind or sufficient employment within the legal system to make a living.

One of the biggest problems that the legal system now faces is the fact that these incompetent lawyers are now becoming incompetent judges. I have, with many members of the bench, experienced the same professional frustration that one does with incompetent lawyers.

The real problem, of which competency of Counsel is one component is the system itself. It has become outdated, archaic, overly complex, exorbitantly, and inordinately expensive at all levels, except for the extraordinarily rich and large corporations. It comes nowhere close to serving those who need access to justice. To enter this incompetent system with an incompetent lawyer is a recipe for disaster. I have unfortunately seen judges who are subject to outside influences as opposed to restricting themselves to the evidence before them, delivering judgements that make no sense.

Waste and redundancy are expensive and make the system top-heavy. When I think of the number of bound documents I prepared and for which my clients had to pay, which were never read by those for whom they were intended it is easy to realize why the system is so inefficient and top-heavy.

These are experiences I did not have when I first began practice. Then I was able to watch some of the best lawyers argue and some of the best judges adjudicate. It certainly was different then. You knew that the judges had read everything. Their understanding of the situation was far beyond what I have found in today's court.

As I mentioned before it is a perquisite of mentoring, you were all able to discuss those cases with counsel and occasionally the judges.

Counsel generally had integrity. And those who did not were well known. I must say that I have had the sad experience of being shocked at a few lawyers of high standing put false evidence before the court and suppress the truth for the sake of winning. As Lombardi said, "winning isn't everything it's the only thing". This seems to have become the battle cry and modus operandi of counsel and the system. It is not that someone likes to lose. If by maintaining the rules and principles which are the bedrock of the system, one is to lose, it certainly is better than winning by cheating.

Competence without integrity is a place I do not wish to see the profession and the legal system land.

The world has changed significantly since I began practice. I am old enough to remember a life without fax, photocopiers, word processors, and the Internet. I grew up with cut and paste. Then the few days wait for the mail to arrive. I can even remember when you had to answer the phone to know who was calling.

One of course, must consider and adapt to the changing conditions and transitions from one era to another. One must be careful to ensure that the compromises made do not diminish the value of the product. That we introduce the best of us and not the worst of us to the equation and the new frontiers are challenges we cannot fail.

Today the Internet has and is revolutionizing the way we access information in the way we do business. We see this in ridesharing, food delivery, and almost every aspect of life where one brings together the customer and the service provider.

One sector that, as always historically, has been slow to adopt new technology and processes. When one talks about law with lawyers it is usually about lawyers providing service using only a small part of the technology available.

Information that was once the province of the lawyers, doctors, priests and other gatekeepers of the information and the service we wanted.

Today that information is readily available. Unfortunately, lawyers must learn that they are not worth what they have been worth. Who is going to pay a lawyer \$500 an hour for a document they can download from the Internet for \$50? Granted it may not be as good or thorough, but in many cases it will suffice.

Lawyer' s fees are based on tradition, not how things are today. As a case in point, I recall visiting my daughter a couple of years ago in Ottawa. She was studying Poly Sci. She lived a block away from the law school I had attended. I decided to pay a visit. The place looked the same as it had 40 years ago in some areas that had been freshened up. Then I went up to the library. I felt very odd. I walked around and saw students sitting at the tables with their laptops working away and socializing as we had done in our days. Then I realized what was bothering me. There were no books on the tables. I went into the stacks and found that most of them were dust covered. What would have taken us dozens of books and multiple hours for research can now be done in a matter of minutes.

The pandemic has taught us many things. The ability to work remotely has come earlier than I expected. Communication is one area where lawyers and the system have not yet, but are beginning to, catch up.

A.I. and robotics will drastically change the employment landscape.

In the last few years of my practice, I used Court Call a US company then contracted to the Ontario courts to provide video attendance. More recently Zoom has shown us the value of using video and the travelling time saved. This is something that the legal profession must move ahead on quickly to save the overwhelmingly wasteful costs of attendances.

There are far too many unrepresented litigants around the world who are denied access to justice. Even if they were to get access to justice, given the archaic, inefficient, and lack of predictability of the application of rules, laws, and procedures.

These people will not hire lawyers. Most probably because they cannot afford to, or as most people have had bad experiences with incompetent lawyers and judges.

That has been my focus inside retired. I have developed a program to provide unbundled services at law fees for unrepresented litigants.

It will involve lawyers and legal professionals. There would be competence testing, supervision, and mentoring. There are a lot of underemployed or unemployed lawyers around the world who would be glad to fill this need.

People will have access to lawyers. The lawyers will not represent them in court. Instead, they will provide advice such as filling out forms, memos on the law, memos on how to proceed.

The Internet will become a new delivery system for legal advice. This will be the cutting edge. At this moment there are number of nonlawyers offering documents or their connection to a lawyer at regular fees.

I am not interested in a referral system. This project will be focused on providing proper advice at a reasonable cost. Competency tests will be provided and reviewed prior to hiring.

I find that generally what was once a Justice System is now a Legal System which is archaic, expensive, generally inefficient, and far more complex than it must be. This relates directly to cost and competence.

I find that most of the profession and governing bodies are scurrying around rearranging the deck chairs on the Titanic. To provide competent service in the present and future economy and in the present and future system is a challenge.

I recognize that a lot of my comments do not relate directly to competence and in fact raise more questions than they answer. I just felt that I would share some of my observations over the last 40 years. These however are all issues which ultimately affect competence in our profession.

Wayne Laski

From: Sam Laufer <samlaufer@icloud.com>
Sent: 06/30/2021 11:19 AM
To: Sidney H. Troister, LSM <stroister@torkinmanes.com>
Subject: Re: Input from the profession re licensee competence

This is an external email.

Hi Sid,

Some thoughts on the licensing.

This business of the LSO not being able to supervise, regulate or “take charge” of the law schools I believe is a dereliction of responsibility. The LSO can say both to the Ontario Government and to the law schools we have a problem. While a quota system may be illegal or unenforceable bar exams can be reinstated, a bar course, a real one reinstated. Or the last year of law school or the last six months can be a hands on practical training experience. (These younger lawyers don’t have the same opportunity to make a living as we did.) (Lisa, my step daughter graduated from the UoT Law School. They did not have a wills and estate’s course. When the class asked Osgoode Law School to assist, the UoT suddenly found a practitioner to teach the course. I see something wrong here.)

In any event, anyone coming to Ontario to practise has to spend at least 6 months taking: civil procedure, wills and estates, real-estate, commercial, torts and contracts with at least two options- labour, administrative, criminal courses etc. One of my articling students was a British Barrister. 35 years ago. Articling for him was mandatory. He also, if memory serves, and at my age. V who knows, he had to take some courses. He did not mind.

Prior to the child lawyer I mentioned in my last email, there was another one. About 5 years ago in a multi-million dollar action against my two clients and a third defendant. The other defendant retained a well known litigation firm. We reviewed the statement of claim and it was a “cut and paste” job. Nothing made sense. Demands for Particulars went unanswered and to save time and money we simply pleaded that the Statement of Claim disclosed "god alone knows what"? After a year or so it settled with a dismissal.

In summary: make out of Province law graduates take courses before they are licensed.

Some thoughts about CPD requirements.

1) Don’t over-charge. Does the LSO pay the non-judicial presenter? I have never asked but expect the answer is no. The costs are the room, the electronic equipment and some support staff. If I am correct \$75.00-\$100.00 plus HST per course is more than fair. Why \$225.00 plus HST?

2) One size does not fit all. I thought since we don’t have any real bar course and articling seems to allow various options then any call years 1-5 requires 10 programs per year.

3) Years 6-10, if no claims, 5 programs.

4) Years 10-15, 2-3 programs.

5) Plus 15 years 1-2 programs in the area that the lawyer practices in.

6) Any claims and especially any claims paid out regardless of the year of call, 2 mandatory programs in that area in addition to the above.

7) The programs to be no-more than 3 hours and cost no more than \$100.00 plus HST. (They are electronically recorded and the costs to access are minimal.)

Comments: -I have taken the wills' and estate's programs and they are the same year by year. (Pre-covid).

-The litigation programs the i.e. 10 most important cases that year. It takes about 2-3 minutes to get the case on any standard search. Why do I need someone telling what I can read for myself.

-If the data shows the same number of claims with or without the program being taken then the problem, in my opinion, is the lawyer being sued. If that its correct why do I have to pay for program that I don't need? Take a good hard look at who is being sued, the why and how often.

I just successfully sued a real estate lawyer and got some money from LawPro. Luckily there was another fund that paid the bulk of the damages and costs, along with a reasonable client. The client was 80 years old, no English and his son took the paperwork out of the lawyer's office to have the parents execute. The lawyer and the client had different versions but there was nothing in the lawyers files to support the lawyer's position; just the opposite. This was what we used call a "real estate factory". Get them in, out and bill. Will a program help this lawyer...he is our age...probably not...perhaps a "talking to" by the LSO might work.

Thanks for allowing me to give you some thoughts. Stay Safe. All the best.

Regards,

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Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I keep stopping at this part of the survey because I don't know the working definition of competence we are referring to here. I don't have a copy or when I get here I don't know where to find a copy but I want to complete the survey so I will just say that I don't know. Thank you.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

I agree with these five principles. I think cost and time are key considerations for all law firms but a forward thinking and flexible competence program is essential to providing current services and care for serving the public. I agree with a) to e) above and I would encourage focus on all of the aspects identified in the wording provided especially achievability, feasibility, addressing areas of greatest risk, and not imposing undue burdens. Keeping all parties informed and educated on the requirements in a timely manner is always needed as well.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

I am a big fan of all of these items a) to f) - with the exception of c) which I don't think I have much experience with, if at all. I have relied on all of the rest of them during my practice of law in Ontario. I would hate to lose any of them.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) **As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

I like the idea of CPD covering a few competencies and not just one. I like the annual requirement and would not want to see it extended to two years unless it is something new for which few courses are available. I like managing everything on an annual basis. The CPD that I participate in is in my opinion sufficiently stringent and sufficiently interactive to help ensure that licensees are engaged in learning. That has been my experience in my firm whether I am a sole practitioner as currently or working in an association or training and providing articling placements. I find the CPD requirements have been very helpful in keeping me aware of several competencies and not just in my area of specialization but in areas of ethics and diversity and legal practice.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) **Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

I do not think licensees should be required to complete a training course but if one was offered it definitely should be mandatory for all licensees. Licensees at all levels need this refreshment perhaps and also can ask questions for matters or practice management. It would ensure that opportunity. I would not want to see it limited to just sole practice or small firm practice. I have often seen issues with competencies in larger firms. It should apply to every licensee although I don't know if a course is really necessary.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) **Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?**

I have participated in mentor and mentee relationships but matching that relationship for the specific needs of each person has never been fully satisfactory. Helpful perhaps but it can also be unnecessarily onerous if each person is not getting something beneficial to the practice of law from the relationship. So this raises the question of timing, how long? when? I did once request a mentor assistance - not sure if this was through the Coach and Advisor network. I don't have any specific comments on the network as I may not have participated in it. Not sure what I relied on for that advice when I requested it a few years ago. I don't have any further comments on the network except I would hope it is able to match the needs and the advice well.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) **Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?**

Yes I have received practice reviews/audits and spot audits. I found all of them helpful as there is helpful advice provided. I don't have any specific comments on practice assessments or reviews other than they are beneficial when provided. There should be an opportunity for us to give feedback on the process as well and the method of that feedback is difficult as it is generally the case to simply be glad it is completed. There are times that I think there should be a place for feedback on this process from practitioners.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I am aware of the Certified specialist Program. I have never applied to be a specialist myself although I qualify to do so. Just takes time I don't have as sole or very small firm practitioner. I think there is a place for the program as it recognizes that individuals have met certain competencies in their profession.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

I feel the current professional practice guidelines address many of the required competencies. Perhaps providing sources of information or CPD requirements on the field of technology would be quite helpful with a focus on meeting these evolving standards.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Licensees should always be encouraged to strive for excellence in all aspects of practice. I does come down to the definition of excellence.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

I have nothing further to add.

Please enter your first and last name	Michele Leering
Email Address	michele.leering@queensu.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Legal Clinic
Practice area focus:	- Administrative Law - Landlord and Tenant Law - Poverty Law - Small Claims Court matters - Tribunals - Worker's Compensation - Workplace Safety and Insurance Law - PhD candidate on legal education reform
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)

Upload a File [LSO Consultation on Continuing Competence Framework.Final.07November2021.docx](#)
[Rich, J. \(2019\). Professional Representations of Entry-to-Practice Competence.pdf](#)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
 See submission for details of possible changes.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
 Risk-based is not enough. The pro-active specification of professional competencies is more in keeping with a self-governing profession. Certainly attention must be paid to high-risk areas of practice, or high-risk characteristics of legal professionals. But the LSO needs to be more aspirational seeking to encourage the professionalism of and respect for legal professionals. More visionary leadership must be shown - we need to be upfront on new professional standards in keeping with Charter principles and to manifest our responsibility for access to justice.

Components of continuing competence framework

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
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- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?
 I will only comment on f - this would appear to be a best or promising practice across other professions but it cannot be just a "tick box" exercise. Self-assessment and professional development planning is only the lowest baseline of reflective practice.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Practice assessments may not be necessary in some areas of practice. Ontario's community legal clinics, for example, offer supervision, mentorship, and poverty-law and community lawyering specific training on a continual basis, and staff participate in communities of practice and study groups on an ongoing basis.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

You need to develop a real competency framework so that we can also benchmark excellence. See my submission.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

See my submission

November 7, 2021

Submission to the Law Society of Ontario Competence Task Force

Thank you for the opportunity to provide feedback on this important issue, and for the work you have undertaken to date in this multi-phased process. I appreciate the opportunity to provide feedback as a member of the LSO for more than three decades, as a doctoral researcher on professional legal education reform, as an adult educator, and as an Executive Director with a community-based legal clinic.

The LSO plays a crucial leadership role in defining the necessary professional competencies for the practice of law. The competency framework for lawyers needs to be strengthened as part of the current process, however, this does not yet appear to be under serious discussion. Oddly, the present “continuing competency framework” is not based on a foundational *competency* framework for post-licensure professionals. As a self-governing profession, we need to become more professional and robust about articulating reasonable expectations for legal competence that is based on critical roles and responsibilities for 21st century legal professionals. (Even, the Federation of Law Societies framework doesn’t go far enough.) The current entry-level competencies are not an adequate representation of the knowledge, skills, values, and attitudes required even at licensure, and certainly insufficient for new or experienced lawyers. This inadequacy becomes even more problematic as we shift, as other professionals have, to a model of reflective self-assessment and professional development planning to improve competence and develop professional knowledge and expertise.

The need to articulate and expand the competency framework in the public interest

A post-licensure competency framework should be clear, and periodically reviewed to ensure that it stays abreast of the expectations of the public and other stakeholders for legal professionalism, expertise, and performance. We must ensure that these competencies are aspirational and evidence-based, informed by undertaking new and reviewing existing empirical research and grounded in an understanding of theories of professional learning and how professional expertise is developed. The LSO is in a powerful position to require that post-qualification legal professionals become more self-directed, resilient, effective, efficient, creative, and innovative “whole” lawyers—which will help ensure more engaged and responsive legal professionals, committed to the public interest and facilitating access to people-centred justice.

A more expansive view of legal professional competency is emerging in other jurisdictions, as well as from other disciplines - including medicine (30 years ago). If it has not already been reviewed, we would recommend “[Getting the Point](#)”, a recent report recommending changes to the CPD requirements of lawyers in the Australian state of Victoria, as well as the submission by the Australian Professional Standards Council (including their research library on modern professionalism). We would also encourage a review of the Canadian Bar Association’s (CBA) “[Futures: Transforming the Delivery of Legal Services in Canada](#)” Report (2014), and “Attitude, Skills, Knowledge: Recommendations for Changes to Legal Education to Assist in Implementing Multi-option Civil Justice Systems in the 21st Century” (2000), and related reports, as well as articles in the 2017 *Canadian Bar Review* related to professional competence by [Marsden & Buhler](#), and [Ostaficzuk & Gagnon](#).

Also influential (although not sufficient) would be research undertaken by the American IAALS (2016, "[Foundations for Practice: The Whole Lawyer and the Character Quotient](#)") and Shultz & Zedeck (2011, "[Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions](#)") on the effectiveness factors for lawyers. The IAALS study recommended a broader professional competency framework. I commend to you the critical review of these reports and others in the Queen's University LLM thesis "[What We Talk About When We Talk About Skills: Toward a Taxonomy of Legal Skills for Teaching and Learning in Ontario](#)" by Adjunct Professor Christa Bracci.

A competency framework must include both essential roles, responsibilities, and competencies to satisfy the LSO's obligations to govern the profession in the public interest and to promote access to justice. A suitable comparator would be the medical profession with the results captured by the [CANMEDS framework](#). We could learn a great deal from the significant work undertaken over the past 30 years by the Canadian medical profession (regulator and the professional schools). Decision-making on the required competencies should flow from empirical evidence of the *professional roles* that clients, the public, and society will need us to fill in the future. This requires evidence beyond the views of law firms, and should go beyond *functional* competencies to include *core* competencies, to meet our shared objective of improving professional practice by requiring us to function as legal professionals rather than legal technicians. Furthermore, the legal profession's critical role in fostering access to justice must also be reflected in an updated competency framework.

In the next phase of LSO's work, I hope a true competency framework will be developed that is clear and aspirational as befits our profession. A professional competency profile would better and more efficiently capture the expectations and responsibilities than those that are implied by the Code of Professional Conduct. Greater transparency is needed on what the standards are. The public would be shocked to learn that the LSO does not have a competency framework post-licensure and that our governing legislation defines professional competence by what it is *not*.

Furthermore, evidence that the legal profession (and the justice system) do not meet the needs of the public was documented in two national reports published in 2007 (Canadian Bar Association's *Equal Justice* & the national Action Committee's *Roadmap for Change*) and by a plethora of national legal needs studies. We must ensure future lawyers are equipped to meet these needs. I commend to you the critical review of competency standards across to professions undertaken by Rich (2020) that I have attached. We need to be a competency-based profession, and currently lack a "relational infrastructure", in addition to lacking standards in key areas of competence (see Table 3 in Rich's article).

Expanding our understanding of what competence means

Professionals must exhibit both *core* and *functional* competencies: core competencies are essential (knowledge, capacity, values, and attributes) whereas functional or technical competencies alone (the tasks) are no longer sufficient. A competency definition like various iterations proposed for medical and other professionals, suitably amended for law, would be more fit for purpose than how competence has been narrowly defined for legal professionals. It was encouraging to read the expanded definition of competence arrived at by the Task Force (pp. 8 – 9) as it reflects a broader understanding of what competence is than prior iterations, although could still be expanded to include some of the insights in the next paragraph.

In the context of medical education, Epstein & Hundert defined competence as “the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and the community being served” (2002, *Defining and Assessing Professional Competence*), which could be suitably adapted for law. Cheetham & Chivers, after a theoretical and then empirical study across 20 different professions, included four areas for professional competence assessment: knowledge/cognitive, functional, personal or behavioural, and values/ethical to arrive at a more holistic model that includes meta- and trans-competencies with the capacity for reflection being an integral component, highly influenced by Schön’s seminal model of the reflective practitioner (1998, *The reflective (and competent) practitioner: a model of professional competence which seeks to harmonise the reflective practitioner and competence-based approaches*). Gonzci has advocated for a more integrated and holistic approach to assessing competency than the behaviourist or general attributes approaches and included the need for reflective practice (1994, *Performance-based assessment and the NSW Law Society Specialist Accreditation Program.*)

Considering this expanded notion of competency, what can we learn from the findings of the comprehensive empirical study that led to creating the [CANMEDS framework](#)? This framework has now influenced how medical professionals are educated and licensed around the world. To quote the Royal College of Physicians & Surgeons, “CanMEDS is a framework that identifies and describes the abilities physicians require to effectively meet the health care needs of the people they serve.” The CANMEDS framework focusses on professional roles first, and then maps out the competencies that align with those roles. Would the requisite competencies for lawyers change if we adapted CANMEDS’ seven thematic professional roles to anticipated public expectations for legal professionals? By analogy, these roles would then include legal expert, professional, communicator, collaborator, leader, justice advocate, and scholar. Their process of developing competencies has been an iterative, aspirational, collaborative and evidence-based process that continues to enliven and enrich medical education and to help their profession evolve to meet changing societal developments and expectations. Working towards a common vision of the roles that medical professionals must play in the future and then implementing this framework to guide their professional education has helped bridge the divide between the regulator, the profession, and the universities. The comprehensive exercise was documented in Neufeld et al. (1998) [Educating Future Family Physicians for Ontario](#) and many subsequent articles.

Should we take a closer empirical look at how lawyers can more effectively meet the *legal care* and *legal health* needs of the people they serve? It is clear the Task Force is committed to considering the notion of competence is informed by a consumer perspective, and the experience that clients have of their licensed professional. Is it time to undertake a study to identify our core thematic professional roles, and the requisite competencies in the light of the currently evolving and future public interest? For example, the ever-evolving role of “health advocate” for medical professionals requires a commitment to health equity principles and advocacy on the social determinants of health to support better patient outcomes. Similarly, at the very least, the legal profession’s “justice advocate” role could include a commitment to fostering access to justice (and the rule of law) and give rise to an enriched set of competencies.

My perspective is informed by my doctoral research at Queen’s University Faculty of Law focused on professional legal educational reform. I am exploring specifically how *integrated reflective practice* might benefit the education and life-long learning of legal professionals. My research has been cross-jurisdictional as well as cross-disciplinary: I examined other professions looking for promising

practices for improving competence. I have also worked for more than three decades as a lawyer and Executive Director of a non-profit community-based legal clinic that specializes in community lawyering. Like many other legal employers, CALC has developed a competency framework for our staff.

A competency-based model requires a strong reflective component: this component is described in other professions as “reflective practice” or “reflective inquiry”, and is a core requirement. Reflective professionalism would include at minimum: fostering self-assessment, increasing self-direction, promoting self-regulation, increasing the capacity for work-based learning, and explicit attention to developing professional identity, judgement, expertise, and knowledge. A disciplined reflective practice assists the professional to learn from experience by a process of continually evaluating performance and improving technical skills, competence, and knowledge. I would be happy to provide more detail on the crucial role reflective practice plays in developing legal professionalism and expertise, which is also the subject of my 2017 article in the [Canadian Bar Review](#) (“Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism”). I explore this further for practicing legal professionals in a 2017 article in the [Windsor Yearbook of Access to Justice](#) (“Enhancing the Legal Profession’s Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice”).

Thank you for your leadership on this essential re-examination of professional competency requirements post-licensing. The multi-faceted CPD approach is a good one, as is the larger notion of what competency entails – it just lacks the rigour of a competency framework against which to benchmark. I hope the Task Force will recommend a comprehensive exercise to develop a competency framework that befits a self-governing profession charged with such important responsibilities. We would benefit from a rigorous assessment of what clients, the public, key stakeholders, and society require from us now and into the future.

All best wishes, yours truly,



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Encl. Rich (2020)

November 2019

Do Professions Represent Competence for Entry-to-Practice in Similar Ways? An Exploration of Competence Frameworks through Document Analysis

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Do Professions Represent Competence for Entry-to-Practice in Similar Ways? An Exploration of Competence Frameworks through Document Analysis

Abstract

Professional accrediting and regulating bodies are increasingly trying to delineate the knowledge and skills needed for entry-to-practice for quality assurance and international labor mobility. The purpose of this study was to compare how professions describe and represent competence. Current, publicly accessible Canadian entry-to-practice competence frameworks for ten professions (Medicine, Nursing, Occupational Therapy, Pharmacy, Psychology, Social Work, Teaching, Engineering, Law, and Planning) were analyzed through content and inductive thematic analysis. Findings revealed that although professions describe similar core competencies across technical and intrinsic domains, systematic differences exist in the architectures of the frameworks. Professions with 'meta-competencies' describe competence as being more integrated/holistic. Whereas professions without meta-competencies describe competence as either behavioral-/performance-like lists of 'attributes' or groups of knowledge, skills, and ethical/professional values. How competence is represented within frameworks has implications for how professional education programs conceptualize competence and subsequently design and enact curricula, teaching and learning opportunities, and systems of assessment.

Keywords

competence, competency-based education, competence frameworks, professional education, entry-to-practice, document analysis

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Cover Page Footnote

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Do Professions Represent Competence for Entry-to-Practice in Similar Ways? An Exploration of Competence Frameworks through Document Analysis

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Professional accrediting and regulating bodies are increasingly trying to delineate the knowledge and skills needed for entry-to-practice for quality assurance and international labor mobility. The purpose of this study was to compare how professions describe and represent competence. Current, publicly accessible Canadian entry-to-practice competence frameworks for ten professions (Medicine, Nursing, Occupational Therapy, Pharmacy, Psychology, Social Work, Teaching, Engineering, Law, and Planning) were analyzed through content and inductive thematic analysis. Findings revealed that although professions describe similar core competencies across technical and intrinsic domains, systematic differences exist in the architectures of the frameworks. Professions with 'meta-competencies' describe competence as being more integrated/holistic. Whereas professions without meta-competencies describe competence as either behavioral-/performance-like lists of 'attributes' or groups of knowledge, skills, and ethical/professional values. How competence is represented within frameworks has implications for how professional education programs conceptualize competence and subsequently design and enact curricula, teaching and learning opportunities, and systems of assessment.

INTRODUCTION

When we go to see a professional for a service, what are we looking for? In most cases, we are seeking specialized care that we cannot provide ourselves or trust just about anybody to provide. And in going to see a professional, we assume that they know what they are doing and have our best interests at heart. We implicitly expect professionals to be competent in the services they provide to society. But is it naïve for society to assume that professionals are competent?

In theory, professionals are distinguished from non-professionals by the ability to provide an essential social function; the achievement of a certain standard of specialized knowledge and skills, which can be used to address complex problems; a commitment to professional ethics, developed through a period of professional socialization; freedom of judgment to make professional decisions and recommendations in practice; and high prestige and financial compensation (Hoyle & John, 1995). Even though professions can be distinguished by scope of practice and pathway(s) to licensure, a common requirement unifying professional practice is the successful completion of a professional education program at a higher/tertiary education institution.

Within professional education, there has been increasing international recognition of the importance of educational outcomes specifying the capacities and abilities we can expect from graduates who are ready to begin professional practice (Shaw, Cassel, Black & Levinson, 2009). These outcomes have been broadly referred to as "competencies" and include the knowledge, skills, and attitudes needed for licensure and registration within a given profession and practice jurisdiction. Entry-level competencies are thought to serve multiple purposes: (1) Public protection, through explicit description of the requirements for registration and licensure to practice; (2) Professional protection, through a more explicit awareness of the expectations for safe and effective practice throughout a professional's career; (3) Professional mobility, through assisting regulators in clarifying and harmonizing standards of professional practice across provincial and international borders; and (4) Educational accountability, through the deliv-

ery of government-funded professional education that prepares graduates to successfully achieve professional practice standards upon entry-to-practice (Tuxworth, 1989). As professional accrediting and regulating bodies adopt, adapt, and develop their entry-to-practice competence frameworks, higher/tertiary education programs are expected to transform their educational programs to become increasingly competency-based.

Competency-based approaches to education differ from traditional higher education program models concerning structure, pedagogy, assessment and evaluation, faculty role and student interaction (Carraccio, Wolfsthal, Englander, Ferentz & Martin, 2002; Pichette & Watkins, 2018). In traditional structure-/process-based programs, instructors often lead students through an established curriculum over a pre-determined period of time and provide opportunities for feedback on structured learning experiences (e.g., labs, discussions, assignments, etc.). Periodically, students undergo evaluation (i.e., tests and exams) to determine and report on the acquisition of specific knowledge and skills. In competency-based programs, faculty have an important role to play in co-regulating learners' development of competence. They do this over variable periods of time, through ongoing formative assessment of performance, which is directly observed within authentic practice contexts (i.e., work-integrated learning opportunities, simulation, case studies, etc.) (Competency-Based Education Network, 2017; Rich, 2017). For many faculty, ongoing formative assessment—involving dialogic feedback and competency-focused instruction—represents a significant paradigm shift in their approach to teaching and learning. Faculty development has been identified as an important, yet often "missing link" in operationalizing competency-based education (Holmboe et al., 2011).

To guide pedagogical decision-making and scholarship within competency-based programs, it is important for faculty to have a foundational understanding of competence as a construct. However, in looking at the published literature for guidance, readers may be confused by longstanding tensions within competence as a concept. These tensions are worth reviewing, briefly, before explicitly stating the problem to be investigated in this research.

Conceptions of Competence

In the 1980s and 90s, amid the downturn of the Competency-Based Teacher Education (CBTE) movement in the United States, Short (1984), Eraut (1994 and 1998), and Gonczi (1994) attempted to resolve tensions between two competing conceptions of competence: ‘the ability to perform a set of behaviors’ and ‘a way of being’. They argue that the first conception has a very limited range of usefulness and applicability because competence is thought of as a thing or a set of acts that can be accomplished satisfactorily without any purpose, intent, thinking, or decision-making. Competence as a state of being is more holistic. According to this second conception, a person is either competent or incompetent. Either s/he/they have the integral, integrated dimensions of competence (including behaviors, performance, knowledge, skills, levels of sufficiency, intents, motives, attitudes, qualities, or states of being) or not. While this all-or-nothing conception of competence can also be thought of as reductionist, in that it ignores the issue of transfer of performance across practice contexts, it does represent the high-stakes licensing decisions made by professional regulating bodies.

Evaluations of competence often consider—and in some cases, attempt to resolve tensions between—evidence of observed performance in authentic practice contexts and more holistic judgments about personal attributes (e.g., that they take initiative, work well with others, etc.) (Hauer et al., 2015). Eraut (1998, p. 134) suggests referring to personal attributes as “evidence of capability” rather than competence to acknowledge that a person may possess the capability to do more than they are deemed competent to perform through direct observation of workplace performance (Eraut, 1998). According to Gonczi (1994), competence is “conceived of as complex structuring of attributes needed for intelligent performance in specific situations” (p. 29). Professional judgment is essential to decide which combination of knowledge, skills, and abilities are needed for certain tasks to be performed in particular situations. The strength of Gonczi’s (1994) conceptualization of competence is that it allows for the possibility that there may be more than one way of practicing competently in a particular context, and that ethics, values, and reflective practice are important considerations when making judgments about performance.

A popular contemporary definition of competence is the one advanced by Epstein and Hundert (2002): “The habitual and judicious use of communication, knowledge, technical skills, reasoning, emotions, values, and reflection in daily practice for the benefits of the individual and community being served” (p. 226-227). According to Epstein and Hundert (2002), competent professionals must have the acumen to initiate interventions appropriately and at the right time to help dependents (i.e., clients, children, patients) reach their goals. This definition has value in that it accounts for competence being linked to actual performance outcomes.

THE RESEARCH PROBLEM

Competence has long been described as a nebulous concept (Eraut, 1994; 1998; Short, 1984; Westera, 2001) and to this day, some confusion still exists over the fluid use of competence and its derivatives (competent, competency, and competencies), as well as what the standard of competence means (i.e., minimum proficiency or excellence) within and across professional education discourse, policy, and practice (Boyd et al., 2018; Pijl-Zieber et al., 2014). For these reasons, competence has been contested

as a viable construct for professional education (e.g., Norman, Norcini, & Bordage, 2014). However, competency-based education is increasingly being referred to as a ‘global education policy’ (Tromp, 2018). Internationally, professions are various stages of implementing entry-to-practice competence frameworks (e.g., Arakawa, Yamamura, Duggan & Bates, 2019; Patel, Tonni, Gadbury-Amyot, van der Vleuten & Escudier, 2018). Given the important nuances in the above conceptions of competence, it is possible to see how diverse professions—with diverse ways of thinking and approaches to solving complex problems—might begin to talk about this construct in different ways as they undergo educational reform. How professions conceptualize competence has implications for how competency-based education is operationalized within professional education programs at higher/tertiary institutions (Hager & Butler, 1996).

The purpose of this study was to examine similarities and differences in how professional bodies conceptualize, describe, and represent competence within a sample of entry-to-practice competence frameworks. Specifically, this study seeks to answer the following research questions:

1. How similar/different are professions, concerning:

- a. how their core competencies are described; and
- b. how their core competencies are related to one another (i.e., structurally organized)?

2. To what extent are tensions between competing conceptions of competence conveyed within and across entry-to-practice competence frameworks?

METHODS

Competence frameworks are documents produced by regulating and accrediting bodies to create a shared mental model of performance standards at particular milestones along the professional career continuum (e.g., at entry-to-practice). Document analysis is the systematic procedure of finding, selecting, reviewing, and interpreting documents to uncover meaning and discover insights that are relevant to the research problem. The textual and graphic information contained within documents can provide context and understanding as to how particular groups of people think about particular phenomena and concepts, such as competence (Bowen, 2009).

The Research Context

This research was conducted within Ontario, Canada—the author’s province and country of residence. In Canada, each province and territory maintains control over the licensing and regulation of professionals through their respective colleges (e.g., the Ontario College of Teachers, the Ontario Nurses Association, etc.). Similar to other developed countries, Canada has a national labor mobility agreement (i.e., the *Agreement on Internal Trade*): a federal policy, which is intended to support professionals and skilled workers with moving and practicing across national and

international borders. Since this policy came into effect in the 1990s, professional competence frameworks have risen in popularity. They provide a means for multiple stakeholders involved in professional education and licensure to communicate and coordinate their quality assurance efforts more effectively (Kellermans, Floyd, Pearson, & Spencer, 2008; Wu, Martin, & Ni, 2017).

Within professions, however, inconsistencies can still exist between provinces/territories with regards to the adoption of specific competence frameworks. This complicates professional program accreditation, as some academic programs in professional fields are subject to accreditation by professional bodies at the provincial, national, and even international levels (Universities Canada, n.d.). For some professional programs, this means ensuring that their curriculum, learning opportunities, and assessment plan align with multiple entry-to-practice competence frameworks. Having to contend with multiple conceptions of competence can be confusing and time-consuming—not only for educators but also for their students (Pijl-Zieber et al., 2014).

Even though this research was chosen to be conducted in a Canadian context, the findings have relevance for anyone from any professional program, discipline, or field, who is engaged in competency-based teaching and learning. How competence is conceptualized and represented has implications for the design of curriculum, instruction, and assessment (Hager & Butler, 1996). An understanding of how diverse professions describe and represent competence can inform future practice and scholarship aiming to enhance student learning within professional programs at higher/tertiary education.

Finding and Selecting the Documents for Analysis

Current, publicly accessible entry-to-practice competence frameworks for ten diverse regulated professional disciplines were purposefully sampled, including Engineering, Law, Medicine, Nursing, Occupational Therapy, Pharmacy, Planning, Psychology, Social Work and Teaching (Table 1). These professions were intentionally chosen for three reasons: (1) They are familiar to the general public, (2) They represent professions from diverse disciplines and professional sectors, and (3), They are professions requiring completion of a university degree before applying for registration/licensure. Given the tendency for professions to ‘look in the mirror’ (e.g., Forzani, 2014; Pijl-Zieber et al., 2014) or compare themselves only to like professions within their sector (i.e., comparing across health professions) (e.g., Wu, Martin, & Ni, 2017), it was important to include a variety of frameworks from diverse disciplines within the sample for document analysis.

Data collection began by searching the Internet for entry-to-practice competence frameworks prepared and used by national or provincial accrediting professional bodies. To do this, the search string “competenc* AND [profession] AND Canada” was used. Upon finding an entry-to-practice competence framework, the accrediting body’s website was searched to locate the most up-to-date accreditation information and resources. For professions with provincial accreditation, the provincial college’s website was also searched to cross-reference the use/adherence to the same competence framework. The Ministère de l’Éducation, Gouvernement du Québec (MEQ) professional competence framework for teacher education was included in the sample because of its explicit reference to competencies for initial teacher educators. The Ontario College of Teachers’ ‘Standards of Practice’ were excluded from the sample, as the framework is not based on

competencies. Rather, the standards are stated as goals and aspirations guiding members of the teaching profession.

Reviewing and Interpreting the Documents

The language within these ten documents was analyzed through an iterative process using both content and inductive thematic analysis (Bowen, 2009). Content analysis is the process of identifying meaningful and relevant passages of text and organizing the information into categories that help to answer the research questions. Inductive thematic analysis is the process of looking for reoccurring ideas that emerge from the relevant text. All documents were imported into and coded using a qualitative data management/coding software (NVivo for Mac, version 11.4.3). Analysis of each document involved successive rounds of skimming, reading, and meaning-making; progressively moving from more superficial examination to close reading of the text and word choice (Bowen, 2009).

Content analysis

The first round of analysis involved reading each document and identifying/flagging relevant passages of text. Using an excel spreadsheet, relevant information about each profession and their national or provincial entry-to-practice competence framework was extracted and recorded. Profession information included the name of the regulated profession, the name of the professional accrediting body, the university-based program(s) accredited (i.e., Bachelor, Professional, Masters, Doctorate), and important requirements for professional certification. The information recorded about the entry-to-practice competence framework included the title of the entry-to-practice framework, key language used to describe how competencies are organized within the document, and inclusion of core competencies related to disciplinary expertise, communication, interpersonal collaboration, scholarship, life-long learning, professionalism, leadership, management, and advocacy. Core competencies were organized according to these nine categories because they are domains often described as being important elements of professional practice. When any of the above information was missing from a framework/document, the word ‘none’ was inserted as a placeholder.

Inductive thematic analysis

Documents underwent a second round of more focused reading of the relevant content. During this phase, documents were reviewed by line, phrase, sentence, and paragraph segments, paying close attention to subtle cues in the language used to describe competence throughout each document. Research questions, as well as knowledge of the tensions between behavioral and integrated conceptions of competence (i.e., the conceptual framework), were used to identify units of meaning within the text. Important ideas emerging from the text became the initial set of codes. Coding was a back-and-forth interplay with the data, checking codes and concepts between documents (Bowen, 2009). Like Bowen (2009), codes were compared by posing two questions: (1) “How is this similar to or different from what is described in X document?” and (2) “What ideas are mentioned across all documents?” (p. 37). This approach of looking for similarities, differences, and general patterns within and across data sources is consistent with the Constant Comparative Method used in grounded theory research (Glaser & Strauss, 1967). That said, the intention of this study was not to use insights from the data to start to build theory. Rather, the aim was to better under-

stand similarities and differences in the ways different professions conceptualize, describe, and represent professional competence as a foundation for future research.

FINDINGS

Eight of the ten professions in the sample followed entry-to-practice competence profiles prepared by national associations or federations (Table 1) and two were prepared by provincial regulating bodies (i.e., a professional college and a provincial government). Provincial-level accreditation suggests potential disagreement about what constitutes competence across provinces and/or concerns regarding the adoption of a competency-based approach to professional education within the profession.

Table 1. Entry-to-practice competence frameworks prepared by national or provincial professional bodies

Profession	National or provincial Professional Body	Entry-to-Practice Competence Profile
Engineering	Engineers Canada	Graduate Attributes (2017)
Law	Federation of Law Societies of Canada	National Competency Requirements (2018)
Medicine	Royal College of Physicians and Surgeons of Canada (RCPS)	CanMEDS 2015 Physician Competency Framework
Nursing	College of Nurses of Ontario (CNO)	Competencies for Entry-Level Registered Nurse Practice (2014)
Occupational Therapy	Canadian Association of Occupational Therapists (CAOT)	Profile of Practice of Occupational Therapists in Canada (2012)
Pharmacy	Association of Faculties of Pharmacy of Canada (AFPC)	AFPC Educational Outcomes for First Professional Degree Programs in Pharmacy in Canada (2017)
Planning	Canadian Institute of Planners (CIP)	Competency Standards for the Planning Profession in Canada (2010)
Psychology	Canadian Psychological Association (CPA)	Mutual Recognition Agreement (2004) specifying Core Competencies for the Practice of Psychology in Canada
Social Work	Canadian Council of Social Work Regulators (CCSWR) Canadian Association for Social Work Education (CASWE)	Entry-Level Competency Profile for the Social Work Profession in Canada (2012) Standards for Accreditation (2014) specifying Core Learning Objectives
Teaching	Gouvernement du Québec, Ministère de l'Éducation	Reference Framework for Professional Competencies in the Teaching Profession (2001)

A summary of each profession's entry-to-practice profile is provided as a supplementary appendix. These summaries highlight how each professional body conceptualizes competence through the types of language/terms used to articulate the scope of practice and the standard expected at entry-to-practice. A comparison of conceptions across professions' entry-to-practice frameworks is presented. Illustrative examples, comparing conceptions of competence, and language communicating a tension between two opposing conceptions, are provided. Finally, similarities and differences in the presence/absence of core competencies are identified and discussed.

Comparing Conceptions of Competence Across Professions' Entry-to-Practice Frameworks

As illustrated in Table 2, the language used to describe competence and the standard of competence across professional entry-to-practice frameworks is inconsistent. While all professions agree that competence includes a set of specific knowledge/understandings and skills/abilities, four of the professions also include attitudes/values (i.e., Medicine, Planning, Social Work, and Teaching) and one profession explicitly includes judgment (i.e., Nursing). Further, in describing the standard of competent performance, seven of the professions describe a "minimum expectation" of "safe and effective practice," which includes being 'ethical' and 'efficient' (i.e., Nursing, Occupational Therapy, Pharmacy, Planning, Psychology, Social Work, and Teaching). Whereas Medicine, Nursing, and Teaching use language suggesting criterion-referenced standards, Engineering explicitly describes a norm-referenced standard: "to a degree that would be acceptable by professional engineers who are familiar with undergraduate engineering education in Canada (Engineers Canada, 2017, p.79). Law is the only profession that does not articulate a standard of competence as part of their entry-to-practice requirements.

Perhaps the most interesting finding was that six of the ten professions describe a relational architecture between meta-competencies (i.e., roles, competency categories, competency blocks) and component key and enabling competencies. And, of these six professions, Occupational Therapy and Pharmacy have modeled their architecture off of the CanMEDS 2005 or 2015 Physician Competency Framework (i.e., Medicine). Nursing, Social Work, and Teaching have their architectural frameworks depicting an ongoing cycle of services, a layered pyramid, and a layered diamond of competencies, respectively. These architectures—overlapping petals (i.e., CanMEDS), cycles (i.e., Nursing), pyramids (i.e., Social Work), and diamonds (i.e., Teacher Education in Quebec)—reveal the extent to which competencies are perceived to be interrelated. Engineering, Law, Planning, Psychology—the four professions without any relational architecture—demonstrate a more reductionist conception, in which competence is described within lists of knowledge/understandings and skills/abilities and attitudes with little to no explicit relationship with one another. This is except for Psychology, which describes 'Interpersonal Relationships' as being the foundational or "basic competency [which] forms part of all the other competencies" (MRA, 2004, p. 8).

Comparative examples illustrating differences in professional conceptions of competence.

As an illustrative example, it is useful to compare how competence is described in Nursing and Engineering. According to the CNO (2014), "Safe and ethical registered nursing practice requires the assessment, integration, and performance of many competencies at the same time. It is also dependent on the specific practice context and client needs for which the competencies are to be applied" (p. 4) A Registered Nurse is said to use their "knowledge, skill, judgment, attitudes, values and beliefs to perform in a given role, situation and practice setting" (p. 11). Conversely, Engineering Canada (2017) requires graduates of a professional engineering program to "possess attributes under 12 headings: (1) A knowledge base for engineering; (2) Problem analysis; (3) Investigation; (4) Design; (5) Use of engineering tools; (6) Individual and teamwork; (7) Communication skills; (8) Professionalism; (9) Impact

Table 2. Comparison of the language and relational architecture used to describe competence

Profession	Descriptive Language		Relational Architecture
	Competence	Standard	
Engineering	Graduate Attributes Knowledge/Understanding and Abilities	“To a degree that would be acceptable by professional engineers who are familiar with undergraduate engineering education in Canada” (Engineers Canada, 2017, p.79)	None
Law	Competency Requirements Knowledge/Understanding and Abilities	None	None
Medicine (Specialty)	Roles, key competencies, enabling competencies Knowledge, skills, and attitudes	Entrustment of professional activities through milestones, describing “the expected ability of a healthcare professional at a stage of expertise” (CanMEDS 2015, p. 7)	CanMEDS 2015 Framework: the central role of Medical Expert; supported by 6 intrinsic roles: Communicator, Collaborator, Leader, Health Advocate, Scholar and Professional
Nursing	Broad competency categories Knowledge, skills, ability, and judgment	“The demonstration of integrated knowledge, skills, abilities, and judgment required to practice nursing safely and ethically” (CNO, 2014, p.11)	Ongoing cycle of 5 broad Competency Categories with the client/recipient of nursing services at the center of the circle
Occupational Therapy	Roles, key competencies, enabling competencies Knowledge, skills, and abilities	“Meet or exceed minimal performance expectation for safe and effective occupational therapy practice” (Canadian Association of Occupational Therapists, 2012, p. 15)	Adapted CanMEDS 2005 Framework: the central role of the OT as an expert in enabling occupation, surrounded by 6 supporting roles: Communicator, Collaborator, Practice Manager*, Change Agent*, Scholarly Practitioner* and Professional
Pharmacy	Educational Outcomes: Roles, key competencies, enabling competencies Knowledge and skills	“To provide safe, effective, efficient health care” (Association of Faculties of Pharmacy of Canada, 2017, p. 12)	Adapted CanMEDS 2015 Framework: the central role/identity of Care Provider; supported by 6 intrinsic roles: Communicator, Collaborator, Leader-Manager,* Health Advocate, Scholar and Professional
Planning	Realms of competence: Functional and Enabling Competencies; each with sub-domains Knowledge, skills, and attitudes	“the capacities required of a planner to practice effectively, professionally, and ethically” (Canadian Institute of Planners, 2010, p. 6)	None
Psychology	Core Competencies Knowledge and skills	None	None
Social Work	Competency blocks; each with families of key global competencies and sub-competencies Knowledge, skills, and abilities Core learning objectives Values, knowledge, and skills	“the competencies required to engage in safe and effective practice” (Canadian Council of Social Work Regulators, 2012, p. 6)	A pyramid with personal competencies (empathy, integrity, etc.) at the base upon which one builds general competencies (literacy, critical thinking, etc.), and entry-level professional competencies (organized into competency blocks).
Teaching	Categories of core professional competencies; each with a set of features and mastery criteria Knowledge, skills, attitudes	“a professional competency involves a successful, effective, efficient, recurrent ability to act” (MEQ, 2001, p.43) “The level of mastery refers to what can reasonably be expected of a newly graduated teacher (MEQ, 2001, p. 53)	Diamond with 3 levels: Foundations informing Teaching Act and Social and Educational Context, which inform Professional Identity

Note. * denotes adaptation from the CanMEDS Physician Competency Framework.

of engineering on society and the environment; (10) Ethics and equity; (11) Economics and project management; and (12) Lifelong learning. Knowledge/understanding and skills/abilities are listed as separate items to be assessed “using assessment tools that are appropriate to the attribute” (p. 15) and competence is “a specified set of skills, values, and competencies (attributes) to each and every graduating class” (Engineers Canada, 2017, p. 79). Whereas in Nursing, competence is described as having the attributes needed for intelligent performance in specific situations and is attributed to *individual performance*. Using professional judgment, Nurses decide which combination of knowledge, skills, and abilities are needed for certain tasks to be performed safely and effectively in particular situations.

Likewise, in the context of Teaching, the MEQ (2001) explains that:

Competent people, in the heat of the action, must be able to recognize the demands and constraints of the situation, identify the available resources and take action by incorporating, combining, and orchestrating those resources in a way that is relevant to and effective for the situation at hand. Competence, therefore, lies in the ability to [...] read a situation in

a certain way, give it meaning and, where necessary, adapt, invent or improvise to deal with it (p. 49).

But, even within those professions that appear to hold a more holistic conception of competence, and emphasize the role of professional judgment in knowing when to draw upon certain values, knowledge, and skills, there is still evidence of reductionist thinking. Consider Medicine as an illustrative example.

According to *CanMEDS 2015*, as Medical Experts, physicians “integrate all of the CanMEDS Roles, applying medical knowledge, clinical skills, and professional values in their provision of high-quality and safe patient-centered care. Medical Expert is the central physician Role in the CanMEDS Framework and defines the physician’s clinical scope of practice” (p. 14). However, in describing the revisions made from 2005 to the 2015 edition of the CanMEDS Framework, Frank et al. (2015) explain that “Concepts that are relevant to multiple roles will be articulated in the role where they are the most prominent. Although redundancy and overlap are accepted and even expected, the framework itself will avoid repetition while ensuring the appropriate integration of roles” (p. 6). Frank et al. (2015) went on to explain how “areas of overlap between roles are minimized, resulting in a 3.5% decrease in the

number of key competencies and a 29.4% decrease in the number of enabling competencies; although aspects of a shared plan of care may pertain to more than one role, the competencies of a given role are written specifically for that role alone” (p. 10). This was in response to physician stakeholders who, during focus group consultations, “urge[d] [authors] to try and organize issues in one category only, to avoid duplication and repetition [because] this will assist with applying this framework, e.g. tracking data, creating templates, providing feedback, creating practice improvement plans, and [facilitating] Continuing Professional Development” (p. 11). This quote suggests that even when “competencies are integrated into a seamless whole and reflect the daily activities of the [professional]” (CanMEDS 2015, p. 28), reductionism inevitably comes with trying to accurately and reliably assess the capacity of the ‘whole’ professional to perform across contexts.

Comparing Professions Based on their Inclusion of Core Competencies

As illustrated in Table 3, each of the ten professions explicitly describes core competencies related to disciplinary expertise and ethics and professionalism. Except for Law and Psychology, professions describe communication, collaboration, lifelong learning and management competencies—some more explicitly than others. It is the inclusion of scholarship, leadership, and advocacy which seems to differentiate these professions. Medicine and Pharmacy, Engineering and Teaching, and Social Work and Nursing describe competencies within similar domains. Law stands out as having the fewest number of domains.

Table 3. Explicit reference to domains of competence

	Discipline expertise	Communication	Collaboration	Scholarship	Lifelong Learning	Ethics & Professionalism	Leadership	Management	Advocacy
Engineering	X	X	X		X	X		X	
Law	X	X				X			
Medicine	X	X	X	X	X	X	X	X	X
Nursing	X	*	*		X	X	*	*	X
Occupational Therapy	X	X	X		X	X		X	X
Pharmacy	X	X	X	X	X	X	X	X	X
Planning	X	X	X		X	X	X	X	
Psychology	X	*	X	X		X		*	
Social Work	X	*	*		X	X	*	*	X
Teaching	X	X	X		X	X		X	

Note. * denotes an embedded reference within a competency description

Within competence domains, professions describe common competencies (Table 4). When professions describe disciplinary expertise, they are referring to the application of knowledge and skills to be able to assess clients, identify problems, recognize the limits of their scope of practice, establish an intervention/management plan for their client, perform procedures/deliver services, and attention to continuous quality improvement. Similarly, across professions, competencies related to ethics and professionalism include the knowledge, skills, and attitudes needed to adhere to standards of practice/rules of conduct, be aware of social inequities and power differentials, make ethical decisions, demonstrate responsibility to clients, and contribute to professional regulation. Medicine, Pharmacy, and Psychology emphasize the competencies related to advancing knowledge through the engagement in,

and dissemination of, research. Except for Psychology, the health professions describe competencies related to advocating for individual clients and the needs of communities and populations. In professions that articulate leadership as a separate domain (i.e., Medicine, Pharmacy and Planning), competencies describe leading a team. Conversely, in professions that embed leadership under alternative domains (e.g., Nursing and Social Work) competencies describe coordinating services and supporting a team.

Summary

The review of the 10 competence frameworks revealed that although professions describe similar core competencies, which can be organized across ‘expert’ and supporting/intrinsic domains (including communication; interpersonal collaboration; lifelong learning; ethics and professionalism; and management), differences exist in the extent to which different professions include leadership, advocacy, or scholarship competencies. Systematic differences also exist in the organization of the entry-to-practice competence frameworks. Professions that organized core competencies according to ‘roles’ or ‘meta-competencies’ (i.e., Medicine, Nursing, Occupational Therapy, Pharmacy, Social Work and Teaching) describe competence as being more integrated, holistic, and equal to *more than* the sum of its components. Whereas the professions without this organizing structure of integrated meta-competencies (i.e., Engineering, Law, Planning and Clinical Psychology) describe competence as being equal to the sum of its components: either behavioral/performance-like lists of attributes, or groups of knowledge, skills, and ethical/professional values.

Table 4. Common competencies included within each domain

Competence Domains	Common Competencies
Discipline expertise	Assessment/problem identification and analysis; scope of practice/limits; establishing an intervention/ management plan; performing procedures/delivering services; and continuous improvement of quality
Communication	Written and electronic documentation; reading/visual interpretation; oral speaking; listening and dialogue; interpersonal relationships
Collaboration	Intra-professional; inter-professional; conflict management; handover of care; and trust
Scholarship	Advance knowledge/engage in research and dissemination
Lifelong Learning	Maintain and enhance competence/reflective practice; professional development; facilitate learning of others
Ethics & Professionalism	Adherence to standards of practice/rules of conduct; awareness of inequity and power differentials; ethical decision-making; responsibility to clients and society; contribution to professional regulation
Leadership	Contribute to system improvement of service delivery; vision; responsiveness and influence
Management	Manage daily professional practice (i.e., business and finances, project management, management of others; stewardship of resources; career planning
Advocacy	Advocate for individual clients; advocate for the needs of communities and populations

DISCUSSION

This examination of entry-to-practice competence frameworks across ten diverse professions offers important insights into our understanding of competence as a construct, which can inform pedagogical decision-making and scholarship on teaching and learning. There are two important findings of this research. First, this study suggests that even though professions are unique in their technical knowledge and skills, they are quite similar in

the supporting/intrinsic domains that enable technical performance (i.e., communication; interpersonal collaboration; ethics and professionalism; lifelong learning; and management). Competencies within these domains, which are often described as being ‘professional skills’ or ‘soft-skills,’ are not to be taken lightly, as they are what enable professionals to provide human-elements to technical performance (e.g., Davies, McMeel & Wilkinson, 2015; Fransson, Gallant, & Shanks, 2018).

While there is merit to distinguishing professions based on their unique technical abilities for addressing different societal problems (i.e., education, urban and regional planning, social assistance, medical care, etc.) and for delineating scope of practice, there is also value in recognizing how professions are similar and interconnected (Susskind & Susskind, 2015). Knowing that competence integrates discipline-specific technical knowledge and skills with shared intrinsic/supporting competencies may help persuade professions—who often educate in silos—to look outside of their discipline when considering approaches to instruction and assessment. For example, professional programs may consider forming intra-institutional partnerships and research collaborations to investigate approaches to common challenges with assessing competence. It is important to recognize that these suggestions for collaboration are important yet controversial, given the long-standing conflicts and contests amongst the professional groups for status, power, and remuneration—ultimately contributing to hierarchical relationships amongst the different disciplines within higher education institutions (Bucher, Chreim, Langley & Reay, 2016).

As a second key finding, this research also suggests that tensions between conceptions of competence within the professional literature (Eraut, 1994, 1998; Gonczi, 1994; Short, 1984) manifest as architectural differences amongst the entry-to-practice competence frameworks. Professions organizing competencies according to ‘meta-competency’ domains describe competence as being more integrated within a central expert role. More integrated architectures (e.g., overlapping petals [representing intrinsic/supporting domains] of the CanMEDS [2015] flower, which enable medical expert performance; CCSWR’s [2012] layered pyramid of personal, general, entry-level and advanced practice competencies; etc.) reflect a system in which competence is represented as being *more than* the sum of its component competencies. Whereas professions conceptualizing competence as being *equal to* the sum of its components represent competence as a collective list of competencies organized according to categories of knowledge, skills, and ethical/professional values. In these professions, the lack of relational architecture suggests a more fragmented conception of competence.

Hager and Gonczi (1996) suggest that how competence is conceptualized has implications for how competence standards are used and assessed in practice. This research goes one step further in suggesting that how competence is described and architecturally represented has implications for the ways in which entry-to-practice competence frameworks are operationalized by professional education programs on the ground; including the organization of curriculum, offering of teaching and learning opportunities, as well as the approach to the assessment and evaluation of competence. However, in looking at prior literature to inform these hypotheses, there is a lack of research investigating the relationship between conceptions, representations (frameworks), and operationalizations of entry-to-practice competence.

This is not surprising given that competency-based professional education is an emerging field of educational research. Therefore, the findings from this initial document analysis of entry-to-practice competence frameworks provide a critical starting point to inform future scholarship exploring the approaches diverse professional education programs are using to operationalize entry-to-competence frameworks across professional contexts.

Extrapolating Approaches to Operationalization

When competence is conceptualized as an integrated and holistic construct, competence should be represented as a “complex structuring of attributes needed for intelligent performance in specific situations” (Gonczi, 1994, p. 29) for reasons of constructive alignment (Biggs, 1996). The related and supporting meta-competencies should work together to enable competent technical performance within and across practice contexts. It follows that the architecture of the entry-to-practice competence framework should reflect a relational system in which competence is more than the sum of its components. In operationalizing such a framework in practice, one would imagine a program with an integrated curriculum and authentic teaching and learning opportunities where professional candidates can practice using their professional judgment in context(s) and apply relevant meta-competencies in concert to enable competent performance. Examples of authentic competency-based teaching and learning opportunities may include active participation in case studies, simulations, and work-integrated learning (e.g., co-op placements, practicums, or internships), in which candidates are directly observed and assessed based on their demonstration of performance (Koenen, Dochy & Berghmans, 2015). High-stakes decisions about the achievement of competence would be made based on patterns of performance over time, as documented by multiple assessors through multiple low-stakes assessments conducted across practice contexts (Gruppen et al., 2018).

In contrast, when competence is conceptualized as being equal to the sum of its components, competence is likely represented as collective lists of knowledge, skills, and ethical/professional values. In operationalizing such a framework, one would expect that individual knowledge, skills, and ethical/professional values would be mapped to individual courses, which focus on topics or groups of related knowledge and their practical applications. Complementary to these more theoretical/knowledge-based courses may be supervised work-integrated learning courses (e.g., labs, co-op placements, practicums), which focus on the development and assessment of more technical skills. Assessment tasks and tools would be designed to measure performance on a discrete set of competencies tagged to each specific course. High-stakes decisions about the achievement of competence would be based on whether or not each student has passed all of the required courses for program completion.

These examples serve to highlight differences in the two extremes. In reality, most professional programs are likely a hybrid of integrated/holistic and component approaches to operationalization, combining courses and dedicated opportunities for more authentic learning opportunities and assessment in the field (i.e., field placements, internships, etc.) (Koenen et al., 2015). A combined approach likely reflects programs’ practical need to abide by the credit hour and service requirements set by accreditation and university policies. The credit hour is well known to be a barrier to innovation and change in higher education; including

implementation of competency-based approaches to teaching and learning (e.g., Armstrong, 2016; Lacey & Murray, 2015; Pichette & Watkins, 2018)

When Moving Forward, Remembering Not to Lose Sight of the Past

As we have learned from prior competency-based initiatives, most notably the failure of the Competency-Based Teacher Education movement in the United States, reducing a profession, and thus, a professional program, to seemingly endless lists of 'component' knowledge and skills—simply because the behavioral indicators are more specific, observable, and measurable—is problematic (Gitlin, 1981; Piper & Houston, 1980). Not only is it challenging from a feasibility perspective to assess and monitor the development of so many individual behaviors, but the validity of what is being assessed is also called into question. Individual competencies measured in isolation do not guarantee that a professional candidate can integrate the competencies that are needed to deliver safe and effective services consistently across practice contexts. For this reason, some professional programs are looking to develop learning outcomes in the form of Entrustable Professional Activities (EPAs), which represent what professionals do in practice and require the integration of multiple competencies (e.g., Chesbro, Jensen, & Boissonnault, 2017; ten Cate, 2013).

CONCLUSION: LIMITATIONS AND CONTRIBUTIONS

In summary, entry-to-practice competence profiles are documents produced internationally by professional organizations to communicate a shared vision of the knowledge/understanding, skills/abilities, values, and judgments expected of graduates who have been granted the privilege of transitioning to more independent professional practice. The language and architecture used to represent entry-to-practice competence are important for creating a shared mental model of performance standards to be used by professional education stakeholders (i.e., students, educators, workplace supervisors, interprofessional colleagues, and clients) when making decisions about education, service provision, and client safety (Wu, Martin & Ni, 2017). The current work is limited by its focus on a small, purposeful sample of documents, which continue to evolve and be revised as professions' conceptions of competence continue to take shape. Nevertheless, this study highlights tensions in conceptualizing and representing competence as an integrated whole or summation of component knowledge, skills, and ethical/professional values. This work provides a critical starting point upon which to launch future research investigating how professional conceptions of competence and entry-to-practice competence frameworks are informing programmatic decision-making within professional education programs at higher education/tertiary institutions internationally.

Acknowledgements

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Email Address	walenhardt@protonmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Sole practice
Practice area focus:	<ul style="list-style-type: none"> - Civil Litigation – Defendant - Civil Litigation – Plaintiff - Construction Law - Corporate Commercial Law - Franchise Law - Landlord and Tenant Law - Real Estate Law - Small Claims Court matters - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	cochrane alberta, semi-retired

Working definition of competence

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.**
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.**
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.**
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.**
- e) Client-centred - Competence requirements should consider the client’s needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.**
agreed.

Components of continuing competence framework

Renewing the Law Society’s continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
- b) Should the CPD requirement be tied to the licensee’s practice area(s), experience level, or identified areas of risk?**
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?**
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?**
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

So long as some arm of the law society puts on courses that update developments in given areas of the law, (where the fees are not exorbitant, and I cant think of any that were in the past) I for one would do what I need to do to keep current with areas of law relevant to my practise. I dont need to spend time drafting a plan and etc. in order to do this.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

If anything, it might be useful to have someone in-house or a consultant who can come in and do a "quick and dirty" look at the profitability of a firm, and some possible remedies (for cases where those problems exist and the lawyer(s) don't realize it, but it is affecting the work and the quality). The solutions can be as varied as closing down the operation and the lawyer(s) going to work for other lawyers or firms.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I think it will be difficult to manage peer assessments. Peer interactions are valuable and anyone who is being positive in asking for that venue, will benefit from it.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

see questions g) and h) above. Integrate these with those.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I am not sure whether there is any useful purpose being served by the certified specialist program, but don't know enough about it to usefully comment.

4.6. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

make these available on a voluntary basis. there are pros and cons to all of the present technology. A smaller firm won't have an IT specialist onboard.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Tough to do. depends on your own goals and your client base. Sometimes "excellence" is not required, nor will the client pay for it. I for one will strive for excellence when it is required--I will recommend it to clients and charge a reasonable fee for supplying it. That said there is a lower threshold below which I won't go, and why this is so will be explained to the client--who can go elsewhere if he doesn't agree.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

A lot of practise relates to specific tactical situations that will "come with experience". There are also some ethical gray areas. The best thing for the Law Society will be to encourage mentoring, general ethical behaviour, and collegiality among the bar as well as reaching out to colleagues in discussion when one of these situations comes along (and they will given time).

Please enter your first and last name	Michael Lesage
Email Address	michael@michaelsfirm.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Civil Litigation – Plaintiff
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)

Upload a File [Competence Submission.pdf](#)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
 No. A better, more concise definition is ""comprised of knowledge, ability and the proper application thereof ."

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client’s needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- No, except as set forth in submission.

Components of continuing competence framework

3. Do the components of the Law Society’s current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
 - b) The Practice Management Helpline
 - c) Coach and Advisor Network
 - d) Practice assessment programs (practice reviews, spot audits, and practice audits)
 - e) Certified Specialist Program
 - f) Legal information and research supports (Great Library and LIRN)
- No. see submission.

Renewing the Law Society’s continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

- CPD**
- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
 - b) Should the CPD requirement be tied to the licensee’s practice area(s), experience level, or identified areas of risk?
 - c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
 - d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
 - e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
 - f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?
- CPD requirement should be eliminated, but see submission.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

No.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Making 'friends' should not be mandatory, but if the LSO wants to encourage it, without spending money to do so, I'm fine with that.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

See submission, but should offer solutions, and take better account of commercial realities.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

See submission.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Should be tested on the bar exam.

Additional aspects of competence regime



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October 29, 2021

Competence Task Force
Law Society of Ontario
Osgoode Hall
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Toronto, ON
MH 2N6

Re: Renewing the Law Society's Continuing Competence Framework

Dear Committee Members:

Initially, I disagree with the Task Force's definition of competence. Competence is better (and more concisely) defined as

“comprised of knowledge, ability and the proper application thereof.”

Specifically, I disagree that competence includes “values.” Is it a “value” to say that we have a common law court system, when it functions more as an attrition-based court system? Perhaps it should be a value to recognize that our court system is far inferior to the British or American legal system, since objectively speaking, our court system has much worse performance over a wide range of measured metrics (i.e. times to trial across different areas of law). Likewise, is it a ‘value’ to follow the directions of court staff, when doing so leads to malpractice claims, or instead to push back against them? *See i.e. Patkaciunas v. Economical Mutual Insurance*, 2021 ONSC 5945. Perhaps with a new bench it will be a value that the LSO's budget should be cut? Ultimately, who dictates what values must be held to be deemed competent?

Next, I am in agreement that practice reviews and audits are helpful, but those must be better informed by commercial realities. For instance, rather than saying ‘trust accounting can be done manually or via a software provider,’ it's better to say “here is a **short** YouTube video that will walk you each step of doing your firm's monthly trust accounting, or you can choose a software provider. Many licensees (or, the most popular programs among members are) use Practice Pro (\$100 per month – or whatever the actual price is), Ulaw (\$44 per month) etc.” Rather than simply brining problems to be addressed, the Law Society should provide potential, and workable solutions.

With regard to the Certified Specialist program, we (LSO) started it and made some licensees jump through the hoops to get it, so provided those certified specialists fully cover all costs (including overhead) related to the program, see little reason to change it, and eliminating it will engender significant bitterness from some of our most committed Members.

With regard to the CPD, and as someone who has taught various CPD courses, it should be strictly voluntary. Were it a panacea (or effective), then over the last 10 years (since it was made mandatory), claims would have decreased in a statistically meaningful way, and yet there is no such data. Worse, at 12 hours annually, it stretches over 2 work days, imposing further cost on Licensees in terms of lost revenues. If it's high quality, people will come whether mandatory or not. Personally, I take whatever basket weaving courses are available that allow me to most easily hit the 12 hour requirement at the lowest cost to me. Ideally, the requirement will be eliminated entirely. Next best would be to reduce it so that it can be completed entirely in one day (i.e. 6 or 7 hours). It should in no way be expanded or made more restrictive.

Moving on, I am in favor of support for soles and small firms, in the form of LIRN and a template library, which we should, but do not yet have. Likewise, it would be helpful to provide more guidance to Licensees as to software that is helpful to accomplish routine tasks in practice, with instructions on how to do so, *see i.e.* my below page for an example of this. Any help pages should be **brief**, unlike most things related to or published by the LSO.....

<https://www.michaelsfirm.ca/how-to-prepare-an-electronic-civil-motion-record-with-exhibits-bookmarks-intra-document-hyperlinks-in-pdf-format/>

To be clear, I do not support imposing further burdens upon Licensees. In many cases, our Licensees earn less than 2nd grade teachers, yet are regulated much more extensively. So, if the Task Force's solution, at the end of the day means "the lawyer will have to spend X many extra minutes/hours per year, along with an extra Y dollars" I suspect I will be vocal in my opposition. I would support things like voluntary enhanced courses and training. Every extra burden takes away from time that the licensee can provide legal services, and results in higher rates for all other services provided (assuming the licensee won't simply be content to earn less money for the same number of hours worked).

In terms of technological competence, let's call a Spade a Spade, and admit we have failed terribly. We have also done nothing to ensure new lawyers are prepared for the world of big data, essentially meaning we are licensing the soon to be illiterate. Our bar exam, to the extent it can be called that (a similar exercise could be performed with a phone book, and I suspect that many engineers could also pass with minimal additional studying) should test basic computer science concepts, along with basic statistics. Had we been testing on that (as opposed to whether someone could appropriately turn to a page from an index), our court system may not have utterly collapsed last year and may not have been centuries

October 29, 2021
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behind the times (as has been recognized by numerous Judges and the AG). That failure is in large part realistically ours (as we (the LSO) license all who come into the system), and we should own it and strive to do much better going forward.

Sincerely,

/s Michael Lesage

Please enter your first and last name	Raquel Levine
Email Address	rlevine@wolfson.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Corporate Commercial Law - Real Estate Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
I don't think remedial training should have equal weight. That is rear-looking competence.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

The list should include knowledge of, and access to, developments in the particular practice area.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

CPD requirements are primarily targeted at getting your hours in on the cheapest basis possible.

The EDI requirement is a waste of time.

Practice assessments are too frequently geared at smaller firms (on a repeat basis) and do not appreciate controls put in place by the firm.

LSO should be more pro-active in publishing materials, rubrics, etc that help practitioners with frequent practice management issues.

LSO should increase liaisons between government and licensees. For instance when the provincial government recently introduced its new Ontario Business Registry, it was news to many practitioners and we could not get reliable information in advance on the changes. There are other areas such as Real estate (land registry) and courts (litigation, simple estates matters) where there should be more communication between the bar and the relevant ministries to assist licensees in fulfilling their duties.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?**
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?**
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?**
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

An expanded version of the LSO "6 minute series", which contains key developments, would be useful in providing licensees with uniform access to new developments.

Length of CPD cycle is not relevant.

CPD courses should be more engaging, not more interactive. When the speakers read from their paper, listeners are going to tune out. It is incumbent on the presenters to make the material interesting.

The CPD requirement is an exercise in getting your hours done with as cheaply as possible, for those of us in smaller firms. When it comes out of your pocket, you want to be careful how the money is spent. You need to take free courses to make sure you get the hours, then fill in the few courses you are actually interested in.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?**
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,**
 - ii. new licensees,**
 - iii. licensees in sole or small firm practice,**
 - iv. licensees transitioning to sole practice?**

Based on previous courses attended, the material is presented in a dry and non-real world way. The courses are good because they are free but the content is usually drab.

Please stop picking on small firms.

The business of law is not an LSO matter. You need business people to give those courses. LPP provides a good program that requires the students to prepare a business plan, and coached them through it. One business course is not going to help new licensees be business people - it is a process.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?**
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?**
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?**
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?**

Peer assessments are a drain on time. Most practitioners have colleagues they can call on to discuss practice issues. For those who don't there is the practice management helpline and the coaching network. Mandating mentorship is a mistake. Not everyone is interesting in being a mentor, and not everyone has the capacity to be a mentor.

I am aware of the CAN and used it once to help on a difficult file. It was very helpful.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Yes our small firm has had many spot audits. They are difficult and take up a lot of time. Seems disproportionate. The process feels adversarial and does not allow a space for practitioners to ask honest questions or come up with processes that work for their firm. You must fit in a box. For example, we do not allow clerks to access the bank accounts or prepare cheques. Only a lawyer may do this. Despite this, we were faulted for not signing a form 9A three times for authorizing, keying in and approving a transfer. Come on. I know sole practitioners who have had the same feedback. Some smarts have to be applied to this process if it is to remain. Expanding this process without reformation seems to be a mistake.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I am aware of the program but I do not see a tangible benefit other than putting it on my business card. It seems like more of a liability because I would be held to some higher standard for the same work.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Teraview for real estate lawyers is essential. Only the LPP program provides any training on the program. Otherwise users are left to teach themselves through a static training environment.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

That goal is too vague to be attainable. Licensees are a diverse group of people practicing in a range of geographic areas, in a multitude of practice areas. How does a lawyer working at Legal Aid Ontario strive for excellence compared to a corporate partner at Torys? These are organizational issues, not LSO issues.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Lawpro does a great job at trying to stop negligence by using a practice-first approach. "What tools do lawyers need in their every day practice that will help them avoid mistakes? " Is any work being done with them on this competence re-work?

Please enter your first and last name	Johanna Maki
Email Address	jmaki@makilaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Sole practice
Practice area focus:	- Corporate Commercial Law - Real Estate Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Northwest, including Kenora (Kenora), Thunder Bay (Thunder Bay), Rainy River (Fort Frances)
Upload a File	Johanna Maki Submissions Call for Comment.pdf
Working definition of competence	
Principles for an effective competence regime	
Components of continuing competence framework	
Renewing the Law Society's continuing competence framework	
Additional aspects of competence regime	

MAKI LAW

November 29, 2021

TO: LAW SOCIETY OF ONTARIO - COMPETENCE TASK FORCE

RE: CALL FOR COMMENT

I submit my remarks on the Call for Comment by letter, as my professional history has provided insights that cannot be adequately reflected in the questionnaire online.

I was called in Alberta in 2000, then Ontario in 2003. I joined a mid-size firm (for the town) in Thunder Bay, Ontario as an associate in 2003, and became a partner in 2008. From 2011-2020, I practically ran the firm, though management was theoretically done by consensus of the 3-4 partners.

During my time as partner, the firm fluctuated in size from approximately 25-60 people including lawyers and staff. For Thunder Bay, we fluctuated over the years with a certain handful of other firms as the largest firm in town, then intentionally contracted in 2017 to a maximum of 25 people including 10 lawyers.

I sold out my interest in the firm and left the partnership at the end of 2020 at the age of 46. After a few months of sabbatical, I decided to do something I never thought I would ever do - establish a practice as a sole practitioner.

My practice areas of expertise are wills and estates, and real estate. I also competently practice in corporate commercial but do not consider it my specialty area. During my practice, I created and taught the third-year inaugural wills/estates course at Bora Laskin

Faculty of Law for 4 terms. By teaching law, I had the pleasure and frustration of learning how to teach so that people learned and retained the information, and could apply it in practice.

As a partner, I invested a lot of time and effort in learning and understanding bookkeeping and the accounting program, and by the time of my exit from the firm, believed that I had a detailed financial knowledge of the PCLaw bookkeeping system, financial statements, bookkeeping requirements, and double-entry accounting generally. However, doing the day-to-day accounting is a different beast than understanding how it should work and being able to read reports.

Specific Lessons Learned as Partner turned Sole Practitioner

I have learned some lessons very quickly from my transition from firm to sole practice that are relevant to the Competent Task Force.

1. The substantive law resources available to practitioners who are not within an established firm environment are difficult to find and costly.
 - a. *Local law library and online Great Law Library are critical to maintain, and to maintain online where available.* I never needed these resources in the firm as we had resources shared across many lawyers which reduced the per capita cost, including CLE. Now, they are critical and need to be accessible online. I have used the local law library in-person and our librarian is very helpful; but I have no need to attend at the courthouse in practice and so it is a special trip to the courthouse to access the law library resources.
 - b. *Commercially produced loose-leaf precedent materials are largely out of date and cost-prohibitive, they cannot be relied on as a source of competency for practitioners.* I had already noticed this at the firm but had a much larger wake-up call when I tried to find precedent materials outside the firm. The local law library cannot afford many subscriptions anymore. I was approached by one large company to update their terribly dated materials in real estate, but the payment they proposed was so small it would have been foolish to accept the offer. Strangely, I have found myself finding precedents through Google and refining them based on legal knowledge and research.

- c. *Bar admission course materials are not available but should be.* Lawyers used to be able to access the bar admission course materials, which presumably represents the base level of competency expected of practitioners. Competency of senior lawyers within a law firm environment varies widely and junior/mid-level lawyers need access to “safe” legal resources to know what the expectations of substantive competency are. Even now, I would like to occasionally consult the bar admission course materials in certain areas to cross-check my knowledge.
2. *Precedents and checklists that reflect standard expectations of competency are disappearing or are not centrally located.* The LSO used to have more robust sections in practice resources, with precedents and checklists, that no longer exist. Some checklists can be found through LawPro, the odd one through LSO, and some in CLE materials if you know where to look/how to search. I know what I’m looking for after so many years of practice, but still, it is harder and harder to locate.

How does a practitioner know what the standards of competency are if the governing body does not communicate them clearly and in a central location? Improved communications of standards and tools of competency are needed.

3. *Bookkeeping resources are woefully inadequate.* This is the biggest danger zone I have discovered since becoming a sole practitioner, and I thought I knew a lot going into it. Lawyers need better and ongoing training in the financial requirements; I would reduce the substantive law CLE hours and add bookkeeping competency hours. The lessons I’ve learned are:
 - a. *Don’t count on commercial legal accounting programs.* Firms rely on accounting programs directed to law firms (i.e. PCLaw) without understanding why things are done a certain way (i.e. the various rules and by-laws) and relying too much on the commercial product provider. But PCLaw is woefully out of date, unstable, and cost-prohibitive, and there are unsatisfactory alternative accounting programs for lawyers. At the firm, we lost hundreds of hours of productive work in the last few years because PCLaw is falling apart, and their service techs are now located overseas.

Lawyers cannot count on PCLaw or its competitors to run a program that is Law Society compliant.

In sole practice, I ended up learning Sage and modified it, and use Excel spreadsheets, to meet LSO requirements. This method does not work if I expand to hire people. But because Sage has a larger market than merely law firms, it appears to be more stable and modern than PCLaw ever was.

- b. *Too much reliance in law firms on past practice in bookkeeping without understanding.* Internal training in bookkeeping departments in law firms consists of existing law firm bookkeepers training the next people who come along. Many law firm bookkeepers never worked in established accounting firms. Who knows what the origin of the training ever was in the firm, and why the policies were established? Based on my experience, the majority of lawyers and partners do not understand bookkeeping and accounting, making them incredibly vulnerable to fraud at the worst, or unintentional non-compliance at best. The lawyers are responsible for the financial matters but do not understand their exposure and do not have access to training for it. The Bookkeeping Guide is not enough; it's a useful resource to consult, but not comprehensive.
- c. *Lack of accounting resources.* Specific information about detailed accounting requirements is very difficult to find. For example, these common bookkeeping tasks in real estate were not in the Bookkeeping Guide:
 - i. Billing the transaction levy - this information was available through LawPro
 - ii. Land transfer tax reimbursement from mixed trust to general - I finally found an example and explanation in a 2014 article written by Candance Cooper of Daoust Vukovich LLP, which article was available online. I couldn't believe that this was not readily available.
 - iii. General bookkeeping requirements/examples i.e. HST applicability to disbursements. The Law Society of BC has some useful materials here but again, they are not thorough. The CRA memos are too general to be of much value when you actually have to assess the specific type of disbursements incurred in practice.

General Comments

Regarding competency training and some of the questions in the online questionnaire:

1. *Ineffective style of CLE programs* The CLE style of programs of talking heads and being forced to sit for hours and “learn” through oral instruction are ineffective and outdated. Many people - perhaps most - do not learn and retain information that way. The style of programming has never changed in the 18 years since I’ve been licensed in Ontario. We are buying our mandatory hours; maybe we pick up an odd lesson here and there by accident and in the CLE written materials.

The lawyers who don’t care about competency will buy the program and let it run without watching it. The lawyers who do care about competency are learning more effectively through other means and buying the programs to get their hours and to get the resource materials.

“Masterclass” is a wonderful example of how on-line learning videos can be done effectively and efficiently. However, I assume this type of option would be cost-prohibitive for the small market, and frankly lawyers aren’t that interesting to listen to or watch.

Produce the CLE materials and sell them at a cheaper price. Don’t force the ineffective video/in-person learning.

2. *Eliminate the mandatory CLE Hours* Hours of CLE shouldn’t be the measure of competency. Are there studies confirming a causal connection between required CLE hours and competency or lack of competency?

Surely, the majority of lawyers are self-motivated by their personality types to do well without being hand-held. Have lawyers write some version of the bar exam every 3-5 years in their areas of practice.

3. *Educated consumers* Educate the public about what a competent lawyer looks like and behaves like. Educated consumers will start to weed out the incompetent lawyers.

4. *Technology Training* The tech companies are far more positioned to do effective and efficient training in technology. That training is readily available if you have the product, and there are endless general online resources. The Law Society should not try to wade into this field, it does not have the resources or expertise. Let the commercial marketplace weed out the lawyers who can't be bothered to learn Adobe Acrobat or Teraview. Lawyers have been coddled for too long from market forces.
5. *Encourage reporting of incompetency by other lawyers* Lawyers get to know who is incompetent in their field of practice, in their towns. We see negligent Wills. We see lawyers who have abdicated their real estate practices to their under-trained legal assistants. We see this when we acquire new clients. We see it when we have to deal with other lawyers and the firms they are at. We hear the talk on the town and know who to be careful about dealing with on trust funds.

But lawyers tend to only report the most egregious misconduct, if they even do that. Perhaps there is a general human reluctance to get involved. We don't report incompetency unless a client retains us to make a complaint for negligence.

I realize that this is easier said than done. But believe it, we know who is not competent in our practice areas in our towns.

6. *Excellence cannot be the standard* The marketplace cannot bear the cost of excellency. Just as in all products, there are a range of suppliers of products that run from adequate to bespoke luxury. The legal marketplace should be no different. Lawyers are not all created equal; some are only capable of providing adequate legal services, and some only desire to provide that kind. Have a minimum standard and let the lawyers produce a legal product that fits the segment of the market to which they are selling.

There is already an underlying, long-standing problem with the perceived expectation of perfection in practice, reinforced by LSO and LawPro, that drives burnout and ill-health in lawyers, further fueling errors in practice. Perfection is impossible. Is the standard now to be "excellently perfect"?

There is an abyss between how a mega-law firm can operate, and a sole/small/medium firm. The competency standards cannot be set by the resources available to mega-firms. The mega-firms can and do sell a different legal product to an entirely different type of consumer. There are many of us who are highly competent, providing legal services tailored to the practical reality of what consumers in our markets need and can afford. That's where the standards of competency need to be set. Mega-firms can sell the Rolls-Royces of legal product to an elite few; the rest of us need to be able to sell legal services to the much larger remainder of the marketplace.

7. *Certified Specialist Program* I do not see any value in the certified specialist program as it appears to be simply something a wealthy lawyer can buy after a certain period of time in practice, and it means nothing to most clients in an age where all manner of "specialties" and "accreditations" can be bought online.

However, the underlying criteria used to establish the standard for high competency in the program has value, especially in conjunction with the standards for baseline competency. Again, there is an overarching need for the Law Society to communicate its standards of competency to lawyers.

8. *Competency is not causally related to whether one is a sole practitioner or in a firm.* When the Call for Comment first went out, there was concern expressed through our local law association that soles and smalls were being targeted for incompetency and ran the risk of being driven out of practice by cost-prohibitive requirements.

Perhaps lawyers with issues in practice, whether competency or financial, drift to sole or small practice to avoid oversight. But it cannot be the case that all sole practitioners or those in small firms have competency or financial issues. In my transition from firm to solo practice, I see an absence of reliable and centrally-located resources that would support competency. And I also see, in hindsight, how a firm's relentless engine of established procedure masks lack of knowledge that makes the firm and its lawyers vulnerable.

Thank you for the opportunity to provide comment on this issue. The style of the CLE programming and the requirement for mandatory hours has been troublesome to me for

some time as being a tool unsuitable for its goal of attaining competency. With great frustration, I've watched the standard of practice deteriorate around me as the years progress. And now, with the shift from being a partner to a sole practitioner, gaps in the resources for competency have been rendered much more apparent.

Yours truly,

JOHANNA L. MAKI PROFESSIONAL CORPORATION

Per: Johanna Maki

A handwritten signature in black ink, appearing to be 'JL.' with a stylized flourish.

Please enter your first and last name	Kelly McClellan
Email Address	kelly.mcclellan@gmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Government or public agency
Practice area focus:	- Administrative Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I agree with the working definition of competence. I would make the following suggestions to consider including in the definition of competence, namely, to include a bullet on suggestions of how lawyers can develop their competence and where lawyers can turn to for defining their own competence requirements, and competence content to develop. For example, "lawyers seeking to develop a competence plan can consider discussing with colleagues, referring to the law society practice guidelines, or seeking mentorship from the Coch Advisor Network".

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- Yes

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

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 - c) Coach and Advisor Network
 - d) Practice assessment programs (practice reviews, spot audits, and practice audits)
 - e) Certified Specialist Program
 - f) Legal information and research supports (Great Library and LIRN)
- Yes

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?**
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?**
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?**
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?

Yes I agree with targeting developing and maintenance of certain core competencies. Some competencies are common across the legal profession and require continuous development throughout the career. Suggestions for core competence development that I think could be helpful to include across the profession could include (i) determining one's competence for legal work, (ii) determining individual or firm capacity for legal work, and (iii) strategies for communicating and negotiating with the client to provide excellent and competent service.

b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?

Some competencies could be adapted to area of risk and practice area (transaction, advisory and litigation). Others like client communication and capacity can be common competencies to continuously develop through one's career.

c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

Annual is good.

d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?

I am neutral on this requirement. As professionals, our livelihood is tied to CPD, in some respects, so lawyers who select a given CPD have likely determined the topic has professional value. This said, increased interactivity in "virtual" CDP sessions that could help licensees meet and interact professionally with other licensees, on issues of substance, could help licensees increase their networks of professional colleagues. This, in my view would be welcome and helpful.

e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?

I think it should remain as it is, or be enhanced to require licenses to develop a competence plan, and demonstrate existence and maintenance of a professional network of colleagues because the legal profession is a profession of colleagues.

f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

I think this could be a helpful requirement as part of the CPD requirement and not as an alternative to the existing CPD requirement because it would give licensees some direction on suggestions for areas of improvement.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?**
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,**
 - ii. new licensees,**
 - iii. licensees in sole or small firm practice,**
 - iv. licensees transitioning to sole practice?**

g) I'm not a sole practitioner so can't advise on the need for sole practitioners.

h) A course on client communication should be mandatory for all licensees

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

Yes. I think the legal profession as an advice giving, service providing, and representation profession would benefit from promoting increased interaction among licensees to discuss inevitable questions that arise.

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
Peer discussions or anonymous peer review could be helpful additions.

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
I am aware in the program and have participated in it. I did find the program helpful.

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I think it should be maintained as a resource, if possible, for those that need it and find themselves with few alternatives, and as an opportunity for those that enjoy mentoring.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
I am aware of these.

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

If any increase to the number of assessments, is needed, I think could be in the form of voluntary or mandatory self assessments that identify and provide suggestions for areas for improvement.

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I think tools for self assessment of practice assessment, and advertisement of those tools to licensees would be helpful for those that want to assess their own practice, and obtain tips on areas for improvement in their own practice, in advance of any hypothetical or actual practice audit. This could be in the form of a "Did you know you can assess your own practice" announcement in an email that allows users to complete a survey of sorts to assess their own practice.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

p) Are you aware of the Certified Specialist Program? Have you participated in it? And if so, did you find it useful?

I've heard of the Certified Specialist Program, but I have not participated in it.

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I think the program is helpful.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

Technological competence expectations, for all lawyers irrespective of practice setting could be offered or suggested by the law society in the areas that apply minimally to all lawyers such as electronic record keeping, and maintaining confidentiality or obtaining consent in different electronic settings are some suggestions.

Verification could be part of annual CPD requirements to disclose courses taken related to technology.

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Yes, providing a list of suggested course topics for technological competence could be helpful to those with few alternatives who are seeking to return to practice.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Before encouraging and incentivizing excellence, one suggestion would be to define what practice or service excellence is and how it can differ by area. Awards that recognize client practice and client service excellence could be helpful incentives.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

I appreciate the opportunity to comment. I would repeat that including suggestions for CPD, and providing tools or courses on points to consider for licensees in (i) determining lawyer competence, (ii) determining lawyer capacity, and (iii) communicating and negotiating with the client would be helpful additions to the law society CPD offerings, and if appropriate licensee requirements.

Please enter your first and last name	Agnes Milburn
Email Address	jmilburn@milburnlaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
Practice area focus:	- Employment/Labour Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
Fine

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- Fine

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
 - b) The Practice Management Helpline
 - c) Coach and Advisor Network
 - d) Practice assessment programs (practice reviews, spot audits, and practice audits)
 - e) Certified Specialist Program
 - f) Legal information and research supports (Great Library and LIRN)
- I think the vast majority of people turn on a webcast and tune out and that current cpd accomplishes very little
I find the EDI requirement condescending and highly political as it assumes everyone needs this training. When I've had gay and lesbian friends for 30 years do I really have to listed to a program to sensitize me to issues of concern to certain groups?

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
 - b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
 - c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
 - d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
 - e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
 - f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?
- I'd say yes to a and b and probably reduce the cpd hours and require some to be done in person so it actually results in some learning. Instead of edi and professionalism, focus more on risk management like when you should get off the record, when you have a conflict with dual representation and substance tailored to practice area

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

The LSO continues to expand its mandate and enhances the burden and costs to small firms with the contingency reforms the latest example. You need to stop adding to the burden of running a business, managing staff as well as client files. I'm in favour of anything that reduces the scope/burden of the LSO. We aren't all Tories with endless numbers of admin staff

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

none of this should be required

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

eliminate. clients will complain if there are problems, the LSO doesn't need to go looking for them
I had a spot audit all was fine, just an added cost to have my bookkeeper put in extra hours

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

eliminate.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

NO

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Stop burdening small firms with endless new requirements

Please enter your first and last name	Wade Morris
Email Address	wmorris@litgac.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Civil Litigation – Defendant - Civil Litigation – Plaintiff
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	LSO.Ltr.2021-11-29.pdf
Working definition of competence	
Principles for an effective competence regime	
Components of continuing competence framework	
Renewing the Law Society’s continuing competence framework	
Additional aspects of competence regime	



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29 November 2021

Competence Task Force
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Task Force Members:

Re: Competence Framework – Call for Comment

I am pleased to take this opportunity to respond to the Law Society's invitation for submissions in respect of the Competence Task Force Report (the “**Task Force Report**”).

By way of background, I have been practicing civil litigation since 2007 in the Toronto area. I have practised both in small law firms and, since 2009, as a sole practitioner and small firm. Our firm is also a Law Society accredited CPD provider, which provides some unique insight. I am also a proud Law Society mentor which has informed my views of enhancing competence among members of the Bar.

The Task Force Report addresses a myriad of important topics relating to competence. However for the sake of brevity, I intend to focus my commentary on the areas that I submit would most materially enhance a revised competence framework:

1. An enhanced focus on mentorship;
2. Focusing risk-based initiatives on the traditional solicitor areas of legal practice; and
3. A de-emphasization of mandatory CPD.

The case for enhancing the focus on mentorship

The eminent US Supreme Court Justice Oliver Wendell Holmes Jr. remarked that the life of the law has not been logic: it has been experience (*The Common Law* (1881)). This aphorism applies with as much force now as it did when originally written over a hundred years ago. Our legal system and the processes within it are shaped by human experience. It would be naive to conjecture that law can be properly learned and practiced through the study of books alone.

In my view, the best way to achieve meaningful competence is through mentorship, whether formally or informally established. One must bear in mind that publications to the profession are necessarily of a general character. As the Task Force Report confirms, the nature and scope of lawyers' practices varies widely in this province. The Task Force Report also confirms that communication deficiencies are a significant source of errors and complaints. While these

subjects may seem disparate, they are actually functions of individualized needs and circumstances, both from the client perspective and the lawyer perspective. Individualized needs call out for individualized remedies. In my view, the very best remedial measure to address individualized needs is mentorship.

A mentor, acting effectively, is an anchor and a friend. A mentor can guide a mentee through a situation that demands an answer not to “how to deal with a problem”, but how to deal with *this* problem. I would also add that a dedicated mentor transcends the professional sphere and can also assist the mentee through challenging personal circumstances which can impact effective legal practice. There is no book or webcast that can do likewise.

Focusing risk-based initiatives in select practice areas

Reviews of law practices, whether done in the form of a practice review or spot audit, are useful tools for monitoring competence among practitioners. However, I strongly believe that their effectiveness could be enhanced by focusing these initiatives on traditional solicitor practice areas. For the sake of convenience, I will refer to traditional solicitor practice areas as those which include real estate, wills, and estates. One may also include corporate law under this rubric. I will also refer to practitioners of such areas to be solicitors.

Solicitors, unlike barristers, are the unsung facilitators of access to the legal system. They are the most public-facing members of our profession, as they service those areas of practice which tend to be more retail-oriented. At the same time, solicitor practices present a particular risk profile which is unlike the risk profile in a barrister practice.

Solicitors are entrusted with meeting a client’s legal needs without the supervisory jurisdiction of a court or tribunal. Their work product is not subject to inspection by a third party. Solicitors work under pressing demands and in some practice configurations, must complete significant volumes of real estate transactions to successfully operate. All of these factors enhance the risk profile for solicitors.

By contrast, barrister practices do not tend to suffer from these risk factors. Barrister work by its nature tends to be subject to review by the court and tribunal (and critiqued by opposing counsel). Most barristers operate using billing models tailored to the practice area or client; they do not suffer from the competitive pricing challenges faced by many solicitors. Barristers have substantive and reputational reasons to maintain a high standard of work product. In stating this, I do not intend to suggest that there is any purity among the litigation bar or that barristers have any immunity to ethical or substantive lapses. Rather, I only intend to point out that for structural reasons, barrister practices do not entail the same forms of client-oriented risks as solicitor practices.

In light of the enhanced client-oriented risk factors present in solicitor practises, in my view, the Law Society’s practice management interventions should be focused principally on solicitor practices. To do so would provide an improved client-oriented risk mitigation strategy and an effective way to monitor solicitor competence.

De-emphasizing mandatory CPD

As an accredited Law Society CPD provider, our firm is proud to offer our programs free-of-charge to practitioners. Our programs cultivate knowledge and provide a safe space for fellow practitioners to ask questions relevant to their practice.

Unfortunately, my experience is that most practitioners view mandatory CPD as something to “get it over with”. While the views of those individuals might be subject to criticism, they are not baseless, either.

In my experience, prior to the inception of mandatory CPD, responsible practitioners were already enhancing their learning through many of the fine programs offered through organizations such as the Ontario Bar Association. I pause to note here that competence is, of course, a professional obligation. One should feel compelled to take CPD to augment their skills and knowledge.

The Law Society’s quota-driven CPD model is, in my view, not the correct paradigm for enhancing competence. To begin with, any quota-driven model places the primary objective on fulfilling the quota instead of the merits of the exercise. It is therefore unsurprising that my anecdotal experience would suggest that practitioners are less attentive to the program merits than with ensuring they meet their required quota for CPD programming. It may be reasonably argued that without a quota, there is no metric to ensure practitioners obtain adequate CPD programming in a calendar year. This argument, however, assumes that adequate CPD programming necessarily leads to better practice management outcomes - a premise which is unsupported by the evidence in the Task Force Report.

The Task Force Report noted, with respect to CPD, at page 22:

[...] [N]otwithstanding the widespread adoption of a continuous learning requirement across professions and geographic regions, there is little hard evidence to support the practice or any correlation to positive, practice-related outcomes.

This result is unsurprising. One must remember that many CPD programs are delivered and received passively. Although there must be systems in place for interaction, there is no requirement for interaction among participants in most CPD programs. The nature of human development is that a person must be motivated to learn. Requiring a person to attend a certain number of CPD hours does not guarantee that the participant will actually learn the subject matter. One may fairly ask: what then, is the answer to the quota-driven CPD model?

In my view, the answer is provided earlier on in this submission: enhance the focus on mentorship. Unlike passive learning, mentorship is engaging. It is not constrained by subject area or authorship. It is dynamic and adaptable. It is responsive to individualized needs, instead of generalized consumption. As a result, I would suggest that mentorship is much more likely to produce positive, practice-related outcomes.

Conclusion

The recommendations that I have offered above are based on my own experiences and interactions with program attendees and mentees. I would be pleased to discuss these recommendations with the Task Force at any time. I would humbly request that these submissions be given your consideration in the development of the competence framework.

Yours truly,
WADE MORRIS
Litigation Counsel
Professional Corporation

Wade Morris
(digitally signed)
Wade Morris

Please enter your first and last name	Tamara Moscoe
Email Address	tami.d.moscoe@ontario.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Government or public agency
Practice area focus:	- Family /Matrimonial Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
no concerns

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

yes I agree

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

CPD should be more affordable. The one thing that is missing is real mentorship which is really important especially for soles and smalls. Perhaps it could be connected to (d) where competency issues arise.CPD

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

CPD is incredibly important and should NOT have alternatives. It is the people who need it most who will create a different plan and that would be awful. Keep CPD as is but make it more affordable, with more discounts for sole and small firm practices and newer calls.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

Re: H, please exempt government employees from any such requirements as the context of our work is entirely different. And we already have to do whatever the mandatory training of the year is from the Ministry (workplace safety and harassment, accessibility, etc.) in our role as government employees.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

i) 100% re: mentorship. New calls in sole shops are really NOT being mentored in the way we were 20 years ago. I see HUGE value here.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

N/A

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

For family, it is incredibly litigation focused and does not recognize the fact that we have leaders who have focused on ADR for their whole careers or a significant portion of them. Perhaps you could have a family/ADR subclassification so those lawyers are not excluded from the recognition that they deserve even though they don't actively litigate.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Perhaps, but realistically the pre-retirement crowd doesn't need this as long as they have the supports in place to make up for their deficiencies. So to me individual capacity is not as important as firm capacity on this issue.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Maybe adopt an awards system by area that recognizes a leader in each field, like the OBA does (but only for their members).

Additional aspects of competence regime

PAMELA J. MUNN LAW PROFESSIONAL CORPORATION

402-148 Fullarton Street, London, Ontario, N6A 5P3 | 226-448-9951 |
pamelajmun@gmail.com

November 29, 2021

Treasurer
Law Society of Ontario

Dear Madam Treasurer:

I am writing this letter in support of the Law Society Coach and Advisor program. I have been a CAN member since April 2017 in the role of Advisor. In that time, I have had the opportunity to assist criminal lawyers with urgent inquiries. The questions I have dealt with typically arise in the course of a trial or when faced with questioning from the bench. I have been able to not only assist substantively in response to the question(s) but also to provide support and alleviate some of the stress experienced by the Advisee.

The Coach and Advisor Network is a needed resource for the lawyers of Ontario, many of whom are facing isolation and lack of available mentorship. Programs like CAN ought to be promoted so more licensees can connect. This is particularly needed in times of COVID where isolation is heightened.

Sincerely,



Pamela J. Munn Law Professional Corporation

Please enter your first and last name	Sam Najem
Email Address	sam.najem@tdinsurance.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	In-house counsel or paralegal for a private corporation
Practice area focus:	- Civil Litigation – Defendant
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
 Yes I agree. There is nothing I would recommend for change.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client’s needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- I agree with the five principles. No changes.

Components of continuing competence framework

3. Do the components of the Law Society’s current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Yes, I believe they do.

Renewing the Law Society’s continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee’s practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

At this time, I don't see a need for the CPD requirements to be modified.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

I don't advise there be mandatory training, but a well organized enhanced training option should be made available to any licensees that are willing to take it. This can be provided by law schools under contract, or through the LSO directly.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I was not aware of the Coach and Advisor Network and would advise that this initiative should be publicized better, especially for new licensees.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

No change.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

The certified specialist program should be modified. The 7 years of practice requirement seems dated. This should be substituted with more rigorous courses or examinations that any licensee is willing to partake in.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

No change.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

Licensee should strive to be more collegial to one another. Arrogance, bad faith, or other behavioral issues (within the organization or by opposing counsel) that border on, but not necessarily violate the rules of professional conduct should be avoided. I believe the law society should provide sensitivity training as a part of CPD in this area. Technically it would be a part of Professional Responsibility and Ethics, but I feel that some members of the profession who are lacking in higher levels of excellence, would benefit greatly from it.

Additional aspects of competence regime

Please enter your first and last name	Devon Paul
Email Address	dpaul@cupe.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	In-house counsel or paralegal for a private corporation
Practice area focus:	- Administrative Law - Employment/Labour Law - Human Rights/Social Justice Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

The Working Definition would benefit from more emphasis on the recognition that competence can be challenged by providing services in an unfamiliar practice area. Labour law (which is the majority of my practice) is a relatively specialized area but it is not unusual that generalists or specialists from other practice areas will attempt to practice in it, often with less than favourable outcomes for their clients due to competence that is, at best, marginal. While this is covered by the point regarding self-awareness and self-reflection, I feel that it would benefit from being drawn out more fully.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

The principles appear to be appropriate.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

Practice assessment programs, particularly practice reviews, regularly fail to understand the reality of work in the labour law practice area, and as a result fail to reflect the principle of flexibility. Labour lawyers, particularly union-side labour lawyers, wind up held to inapplicable standards without any understanding by practice reviewers of why they are inapplicable. If flexibility is truly to be a principle of the competence regime, it requires a greater understanding by the Law Society of the realities of certain practice areas that may simply not be amenable to practice standards that apply in other practice areas.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

The CPD requirement is effective as is. Spreading the requirement over two years would simply encourage back- or front-loading of CPD, which does not meet the objective of professional development that is continuous. Requiring the creation of individual professional development plans would be an onerous new obligation.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

While I have never been a sole practitioner, or a partner in a small firm, I have felt reluctance to consider proceeding down that route because of my own lack of knowledge regarding the business of law, law firm management, and financial record keeping. Supports in that regard would be a helpful and useful resource to make the prospect less intimidating. It would be appropriate to mandate such a training course for licensees transitioning to sole OR small firm practice (as a partner).

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I have benefited from mentorship by senior licensees in an informal capacity. The Law Society should build structural capacity to offer such mentoring to licensees, particularly those who come from marginalized backgrounds who may not have access to networks providing mentoring support. I was not, however, aware of the Coach and Advisor Network. I cannot comment on it specifically beyond noting that the Law Society should take action to make sure it comes to the attention of licensees.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Please see my above comments regarding practice assessments.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

The certified specialist program does not appear to be useful. Certainly it does not appear to serve a purpose in the labour law practice area.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

It would be useful for the Law Society to encourage training to enhance technological competence, particularly for more senior licensees.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

It is far from clear to me what this means. I believe the Law Society would be better to focus on ensuring baseline competence as opposed to a more nebulous concept of excellence.

Additional aspects of competence regime

Please enter your first and last name	Jodie Primeau
Email Address	jodie@deepriverlawyer.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Criminal/Quasi Criminal Law - Family /Matrimonial Law - Real Estate Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I don't have an opinion on this

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
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- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

Yes

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Yes

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
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- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?**
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

CPD should cost less to attend virtually

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?**
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
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 - ii. new licensees,**
 - iii. licensees in sole or small firm practice,**
 - iv. licensees transitioning to sole practice?**

Yes absolutely on the business of law. With a particular emphasis on trust accounting and with examples with necessary and integrated software (eg. Unity)

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Here is my suggestion for rural articles:

I am writing to the Benchers who seem to be out of the GTA and potentially in more rural settings. I am writing as a rural practitioner myself.

I own a firm in Deep River, Ontario (2 hours from Ottawa and 2 hours from North Bay on Highway 17). As a rural practitioners, my colleagues and I struggle to find lawyers who are willing and ready to work in rural areas. I recognize that I am not the most rural by any stretch in Ontario, however, as they say, "the struggle is real".

This is particularly frustrating when I am well-aware that there are numerous law students graduating who have not found articles. I am regularly asked if I would be able to accept an articling student. After having accepted a very junior lawyer into my practice, my answer is now (regrettably) no.

The problem for rural practitioners with (as we often are) small firms or solo practices, is the cumulative effect of these three issues:

- 1) articling students require heavy mentorship in their first year
- 2) hiring an articling student (even with modest compensation) is a heavy financial burden and time investment
- 3) in small or solo practices, one lawyer accepts all of the financial and time burden of the articling student and
- 4) after the articling/junioring year is over, the students tend to leave to return back to the city
- 5) The hiring rural firm returns to having a staffing shortage, has lost money and is in a difficult position.

I don't begrudge articling students this choice. Of course, life is about more than experience. But, from my perspective, this makes hiring or even having a practice program student, financially ill-advised, and absolutely unfeasible to do more than once in rural areas. In the articling/first year junioring, we lose money on students. In the second year, we might break even, and in a third year, they may be profitable/helpful in the firm. Students leaving in the first year is a huge problem.

"Reverse" Articling Program for Rural Areas

Thinking about this problem, I am proposing a work-around which might afford law students articling positions and allow rural practitioners the ability to assist in a way that does not amount to a financial/time mistake. My suggestion is that experienced counsel in rural areas (areas a certain distance from a large city centre, perhaps, or as designated/not exempted by regulation) have the option to offer a Reverse Articling Program that might resemble a model like this:

- The term of employment is a minimum of 3 years and must be fully remunerated employment
- After the first 8 months of 'reverse' articles, the candidate is granted the ability to practice as a lawyer, contingent on the supervision of the lawyer in the firm.
- At the completion of 3 years of the reverse articling process, the principal signs-off on articles

I recognize that this is a long term, however, it would succeed in allowing young lawyers to gain valuable, remunerated experience from lawyers in the early stages of their careers while assisting in providing rural areas with lawyers who are trained and remaining long enough to provide assistance to these areas.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I found the spot audit quite lengthy. I don't have suggestions for improvement.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I'm not aware

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

-

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

-

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

-

Please enter your first and last name	Martin Reesink
Email Address	lawyer@vianet.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Criminal/Quasi Criminal Law - Family /Matrimonial Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

Must include a client management, time management, mental health aspect. Mental health as in client mental health assessment and lawyer mental health.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.

b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.

c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.

d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.

e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

Mental health must be a component here, in section (e) client-centred - like doctors, we lawyers perhaps ought to start the relationship with the client with a preventive approach, and have something to the effect that we shall first do no harm, i.e. not further reduce or impair our client's rights and freedoms.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

a) CPD requirement and programs

b) The Practice Management Helpline

c) Coach and Advisor Network

d) Practice assessment programs (practice reviews, spot audits, and practice audits)

e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

yes.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?
 - b) - yes.
 - d) - interactive in the sense that a senior lawyer is linked to a recent call so that the ethical, rules of prof conduct, and other judgement-based concepts are not reduced to multiple questions type--tests; the 3 articling student I have helped, I found, were restricted, or limited by a very technical, computerized system; things done well take time.
 - f) this is attractive

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?
- (g) absolutely Yes, 100%
- (h) yes.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?
 - (m) audits x 2 helpful yes

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

- p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?
- q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?
 - (p) Yes.
 - (q) keep it - I think it's a good marker of competence both for lawyers among ourselves, and for the public.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

- r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?
- s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?
 - Yup.
 - Zoom training, and email restraint for example.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

excellence - is a fungible -

excellence in appellate factum writing or client management ?

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Yes,

Mental health (incl addiction), racism, biases, prejudices, Gladue training, must be mandatory training - If we are going keep pushing the rhetoric of helping the other, then I think we have to walk to the walk - and to do that, we need to be trained, at least yearly.

Law Society of Ontario

Competence Task Force Report

Comments submitted by : Dr. Annie Rochette

Thank you for the opportunity to provide comments on the Competence Task Force Report to Convocation and the way forward in regulating continuing competence for Ontario legal professionals.

My comments have two main objectives. First, I would like to make suggestions for additional elements to the definition of competence and to suggest adopting a more holistic and integrated definition of competence that would guide the revision of the LSO's regulatory framework around continuing competence. Secondly, I would like to encourage the LSO to take an educational, more specifically learning, approach to thinking about competence and in designing a regulatory framework around continuing competence. What is competence? How is it acquired/learned? How is it maintained? What kinds of educational opportunities foster its development and maintenance?

Competence – a complex concept to define

One thing the literature on professional competence agrees on is that competence is difficult to define. Part of the difficulty is that in understanding competence and how it is acquired and maintained, we must examine tacit knowledge and tacit processes, understand how we learn from workplace and life experiences and how our environment or context (e.g. society, clients, employers) perceives competence and competent service.

Different law societies in Canada have defined competence in their respective legislation, most provinces adopting the Federation's Model Code of Professional Conduct's definition. The Law Society of Ontario Rules of Professional Conduct define a "competent lawyer" as one who "...has and applies relevant knowledge, skills and attributes *in a manner appropriate to each matter undertaken on behalf of a client*, including..." (then follows a list of specific knowledge competencies including procedural and substantive law, legal skills such as legal research, legal analysis, writing, drafting, problem-solving, communication, practice management and ethics). Pursuing professional development is also included in the definition of a "competent lawyer". Competence is thus defined solely in the context of a legal professional's service with a client.

Further, the *Law Society Act* defines the *standard* of professional competence by referring to the failure to meet that standard. Again, this definition is limited to the quality of service to the client.

The Task Force Report suggests a more complete definition of competence (see pp.8-9), which includes the following elements.

First, the Report states that competence “is composed of knowledge, skills, abilities, behaviours, judgement and values. Competent performance requires the habitual and simultaneous application of many of these attributes.”

The Report also recognizes that competence is developmental, dynamic and adaptive, as well as context-dependent. According to the Report, the context includes factors and circumstances such as the nature and complexity of one’s work, the client’s needs and circumstances, one’s practice circumstances and the legal landscape, thus broadening the concept beyond the client-legal professional relationship. The Report also states that competence requires self-awareness, self-reflection, and a growth mindset.

These new elements are essential to the definition of competence. This definition thus shows a positive evolution of the LSO’s thinking on competence that recognizes its complexity. Based on the professional competence literature, I would propose adding a few elements or dimensions to this working definition of competence.

First, competence is context-dependent, but context should be interpreted broadly to include a legal professional’s different roles, functions, tasks and responsibilities. Competence notes a relationship between abilities and tasks, but within the context of the broader profession, the legal system, and society in general. Eraut (1998) also notes that what constitutes competence is socially situated and therefore negotiated among stakeholders. In the case of legal professionals, these include clients, but also the court system, legal system, employers, community and society (the public).

Competence is also much more than the ability to carry out tasks or the application of knowledge and skills. The notion of **integration** is central to the definition of competence, as we can see from this definition:

“[Competence] is the (individual) ability to make deliberate choices from a repertoire of behaviours for handling situations and tasks in specific **contexts** of professional **practice**,

by using and **integrating knowledge, skills, judgement, attitudes and personal values**, in accordance with professional **role and responsibilities**.” (Govaerts, 2008, p.235; emphasis mine)

As the above definitions suggest, competence refers to a set of competencies (knowledge, skills, attitudes). In my opinion, we must define competence in relation to a *competency framework* (or alternatively domains of competence), which includes individual competencies but also frames how they relate to one another and how they are integrated. This competency framework should include specific competencies, for example specific knowledge competencies and skills, as well as meta-competencies which cut across all the other ones, such as self-reflection, lifelong learning and professional identity formation. For example, Cheetham and Chivers suggest four domains of competence: cognitive competence, functional competence, personal/behavioural competence and values/ethical competence (Cheetham and Chivers, 1996). In relation to pharmacy, Torr suggests these five domains: cognitive, technical/functional, interpersonal/intrapersonal, organisational and legal/ethical (Torr, 2008). It is beyond the scope of these comments to suggest a competency framework, nor would it be appropriate to do so, as this should be done in consultation with stakeholders. As noted in the Report in relation to a regulatory framework for continuing competence, the competency framework should be adapted to a post-pandemic world and legal system and be future-oriented.

Going back to the notion of integration, moving from novice to expert as a legal professional means that the *level* of integration of all the domains of competence increases. This concept is helpful in thinking about what educational requirements and opportunities are necessary at different points in a legal professional’s career, starting in law school, for the purpose of admission, and into one’s continuing and changing career. In the context of continuing professional competence, it is therefore helpful to distinguish between *expertise* and *specialisation*. Gaining expertise requires an increasing level of integration in *all* domains of competence whereas specialisation means deepening understanding in *one* domain of competence. This distinction is crucial in designing appropriate educational programs for professional development. Most CPD programs encourage specialisation and not expertise, and most often in the knowledge or skills domains of competence.

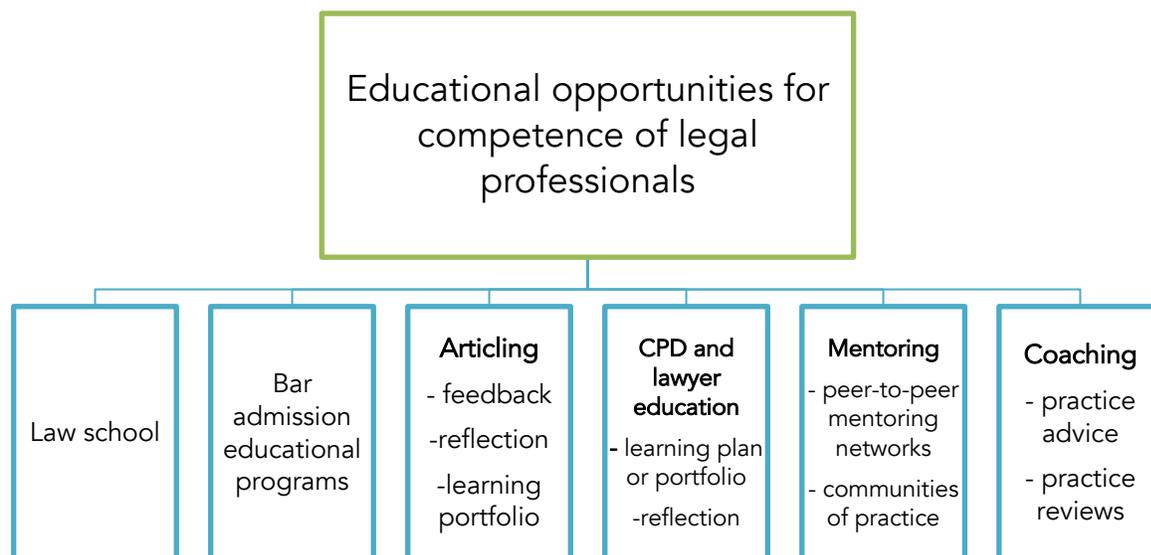
If competence is context-dependent and continuously evolving, then self-awareness and self-reflection (more precisely, developing a reflective practice) are essential elements of competence and continuing competence. Reflective practice is also necessary to learn from practice experience and move from novice to expert. Legal professionals must also learn to be

self-directed learners, choosing their own continuing professional development path according to their strengths and opportunities for growth, and their changing context. Lifelong learning thus also requires reflective practice. Ensuring continuing competence, then, should focus on the changes in the legal professional's practice environment and the steps taken to maintain competence through these changes. (Torr, 2008).

Education and learning as driving principles in the regulatory framework

How we define competence will also have an influence on how we teach and assess it, how it is learned and maintained throughout one's career and therefore the ways in which the regulator can ensure that all legal professionals are competent when they are called to the bar and that they remain competent throughout their career.

The Task Force Report states the guiding principles in the development of a regulatory framework: risk-based, flexible, feasible, forward-looking and client-centered. In order to be *effective*, the regulatory framework around continuing competence should also be *learning-centered* and be designed with an educational perspective in mind. From an educational perspective, the different elements of the regulatory framework are then seen as different *educational opportunities* to ensure continuing competence, as shown in the following diagram.



Integrating a learning perspective in the regulatory framework will thus ensure that its elements are *effective* for fostering continuing competence. Effectiveness should then also be a guiding principle in the revised regulatory framework!

Reflective practice and lifelong learning, which as we saw are meta-competencies essential for continuing competence, can be taught and learned. Tools to support this learning would include courses, learning portfolios or learning plans, coaching and mentoring in reflective practice, as well as communities of practice. Practice advice and practice reviews could include this proactive aspect.

Learning plans are an effective tool to foster reflective practice and lifelong learning. Alberta took this approach to regulating continuing competence, with an annual CPD plan (or learning plan) instead of mandated hours of CPD educational programs. This approach has been challenged and Alberta has now suspended mandatory CPD while rethinking its approach to competence. An important question to ask and consider before dismissing this approach to continuing competence is whether Alberta lawyers were *educated* in reflective practice and lifelong learning so that they would make an appropriate use of the learning plan to ensure their continued competence (rather than a checkbox approach). Another question would be to see if this learning plan was based on the changing context of practice or focused mainly on the knowledge and skills domains of competence. Using an integrated and holistic definition of competence in the design of the regulatory framework may improve the effectiveness of the learning plan approach.

It is also important to note that competence cannot be assessed directly, but that it can be inferred from performance. At the bar entry level, we can teach and assess performance in relation to a threshold standard in the different competencies, which has been the model of assessment of competence for Canadian regulators. An integrated concept of competence requires multiple forms of assessment that measure integration and that would ideally be in the context of the workplace or, alternatively, in simulated environments. In some health professions, Entrustable Professional Activities are used to assess competence in a more integrated way. The assessment of competence is subject to a huge body of literature in different disciplines. Since the purpose of this submission is to comment on continuing competence and not qualification for admission, I limit my comments to stating that it is possible to assess competence, even if the integrated vision of competence is adopted.

Conclusion

The purpose of my comments was twofold. First, although I am enthusiastic about the evolution of the notion of competence included in the Task Force Report, I encourage the LSO to go even further and adopt an integrated and holistic definition of competence, which would

include among other elements a competency framework comprised of competencies and meta-competencies. Although I have made a few suggestions on how this could be achieved, the implementation of this definition of competence into a regulatory framework was not the main purpose of these comments.

Secondly, I encourage the LSO to include two more guiding principles in revising its regulatory framework of continuing competence: effective and learning-centered. I also encourage the LSO to integrate an educational perspective to its design of a regulatory framework around competence. Learning theories can help to uncover the tacit processes of how competence is acquired and maintained and can thus help in ensuring that the educational opportunities in the framework are effective. Reflective practice and lifelong learning, two essential elements of continuing competence, can be taught and learned but they require appropriate educational tools. Paying attention to the learning dimension of continuing competence is key in ensuring that the regulatory framework is effective.

About Annie Rochette

My perspective on competence and competencies for legal professionals is informed by my scholarship and experiences as a legal academic and as the director of a bar admission program. I have always been passionate about the “education” or pedagogical aspect of legal education. I have been researching and writing about legal education for over twenty years, most significantly with my doctoral research project, which empirically examined teaching and learning in law faculties across Canada. I have been a leader in legal education for over twenty years, organizing and facilitating workshops on teaching and curriculum design, and co-founding a journal on legal education in Canada. I take a scholarly and interdisciplinary approach to issues in legal education, prioritizing empirical methods and looking at other professional disciplines.

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From: Andrew Rogerson <andrew@rogersonlaw.com>
Sent: November 22, 2021 11:07 AM
To: Sheena Weir - Law Society of Ontario <sheenaweir@lso.ca>
Cc: Lisa Crocker <clientcare@rogersonlaw.com>
Subject: RE: Invitation from Law Society to participate in online Focus Group

CAUTION: This email originated from outside the LSO. Exercise caution before clicking links, opening attachments, or responding.

Delighted to help Sheena - I am happy to tell you that the cpd's run by LSO and others leave much to be desired - a lot of presenters want the publicity but dont want to write the material and get it in on time - also I feel its wrong that they use their firm logo on everything - the problem with cpd in general is that most lawyers see it as a burden that creates jobs for others - some estate lawyers sign up for say criminal law, just to get the hours in - something to be done, not something they wish to do - I have no solutions even though I can see the problem

ANDREW ROGERSON

t +1 416-504-2259

e andrew@rogersonlaw.com



Please enter your first and last name	Daphne Simon
Email Address	Daphne_simon@outlook.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Working definition of competence	
Principles for an effective competence regime	
Components of continuing competence framework	
Renewing the Law Society's continuing competence framework	
Additional aspects of competence regime	

Please enter your first and last name	Sam Soni
Email Address	s-soni@rogers.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	In-house counsel or paralegal for a private corporation
Practice area focus:	- Corporate Commercial Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Outside of Canada

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I have read through the working definition of competence in the Task Force report and it seems appropriate to me.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- These seem fine to me.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
 - b) The Practice Management Helpline
 - c) Coach and Advisor Network
 - d) Practice assessment programs (practice reviews, spot audits, and practice audits)
 - e) Certified Specialist Program
 - f) Legal information and research supports (Great Library and LIRN)
- These also seem fine to me.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

I am in favour of an opt-in format for CPD, where various sessions are planned by the LSO or third parties (who obtain accreditation).

Practitioners can then choose which (if any) programs they attend, and can benefit from being able to advise clients of their skills being up-to-date (similar to a specialist designation).

I am not in favour of mandatory CPD. A non-mandatory self-assessment also works for me.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

These can be provided but, given the wide variety of practice types, should again be optional.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Again, I am fine with all of these, so long as they are optional.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I am not aware of the practice assessment regime.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

- p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?
- q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I somewhat aware of the Certified Specialist Program. My understanding is that it was meant to be a replacement for the QC designation. I think there could be value in such a program but this would warrant further study in terms of whether clients are aware of and benefit from being aware of such designations.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Again, I am fine with all of these, so long as they are optional.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

I have no input on this topic.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

I thank the Task Force for their efforts in this area and it is reassuring to see that the issues of ensuring ongoing competence are being looked at carefully.

My main reason for writing is to request in advance that the results of this Task Force's work not end up becoming another "Statement of Principles" type scenario. The promotion of the SOP by the LSO surprised me and I am now quite sensitive to this being introduced by stealth (see e.g. the reference to "values" in the working definition of competence).

Please note that I am a "racialized" person, and was raised by a single immigrant parent. English is not my first language. I mention this only to ensure that no one thinks that I am racist. Incredibly, it seems this is the only way to protect one's self in society today.

As an aside, I applied to join the LSO equity advisory group but did not hear back. I have ignored the LSO since my call in 2001 but now I am keen to help out and ensure that we can push back against any authoritarian tendencies at the LSO. Please let me know if I can assist. Thank you.

Please enter your first and last name	Marion Sweatman
Email Address	slf@sweatmanlaw.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Real Estate Law - Wills, Estates, Trusts Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central West, including Bruce (Walkerton), Grey (Owen Sound), Dufferin (Orangeville), Wellington (Guelph), Peel (Brampton), Halton (Milton)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
Yes. No.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
 - b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
 - c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
 - d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
 - e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.
- Agree with the 5 competencies.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

Yes

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

The current regime is likely satisfactory for the majority of licensees. The issue from my perspective is that if not kept broad then it limits the interest of taking CPD in other or related areas especially if you are a licensees with significant experience and or tend to be the one delivering the CPD.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

Yes it should be mandatory for all licensees especially new ones. I would not isolate the focus of these issue on the sole or small firm practice.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Yes absolutely. The greatest issue I am seeing especially with the work from home model is that there is no mentoring of the younger licensee. I am not aware of the Coach and Advisor Network but if effective it should be given more attention and increased awareness.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Yes I aware. Yes I have and so have 2 of my associates. Yes it was helpful - but 3 reviews for a small firm was too much. More coordination to keep this in mind when selecting who to review. I don't know how the law society determines who to review or that there is fixed number. My understanding was that all new lawyers receive a review within the first 7 years of their practice. This seems like a worthwhile goal (and reduce the years to 5). It is a good program but should be modified where the licensee being reviewed is an associate who is not involved in the firm management including trust account - in this case the review is too broad as it captures the principle who is when they are not the ones being reviewed.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

Yes I'm aware and yes I participate. If eliminated the current specialist should be grandfathered as it is useful.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Whether certain technological competencies should be mandatory depends on what will be imposed; but if imposed, should not be in addition to the current number of hours or the basics be a one time requirement.

Yes it should be encouraged.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

This should be self-evidence and seems silly - is this not what we should all be doing automatically?

Additional aspects of competence regime

Please enter your first and last name	Kevin Wiener
Email Address	kevin@wienerlaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Tribunal
Practice area focus:	- Immigration Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

The problem with the working definition of competence is that it does not meaningfully define what competence is. It may well be that legal practice is too broad to have one working definition of competence that applies to all areas of legal work. Perhaps rather than one overly vague definition, it might make more sense to have two or more definitions for general areas of practice (for example a definition of competence for barrister work and solicitor work). On the advocacy side, a definition of competence should include things like:

- the ability to collect relevant information and evidence from a client
- the ability to identify what evidence needs to be collected and instruct client accordingly
- an understanding of the legal regime that applies to your area of practice
- familiarity with the governing statutes, forms, deadlines, rules and major jurisprudential cases that apply to any courts/tribunals you appear before or to your practice area
- the ability to spot legal issues that apply to a client's situation
- the ability to conduct timely legal research to answer legal questions you do not know the answer to
- the ability to ask relevant questions to witnesses that will assist your client's case
- the ability to communicate coherently both orally and in writing in the official language of your practice
- the ability to draft/provide pleadings and oral and written representations to a court/tribunal that are broadly responsive to the evidence and issues raised in the proceeding and that references and relies on current and relevant law and jurisprudence

I'm sure a lawyer who does solicitor work could similarly put out, without much thought, a similar list of attributes that could form a working definition of competence for solicitor work. But at least there would be some objective standards that could be applied to lawyers rather than a working definition that, in a great deal of words, boils down to a statement that competence requires lawyers to be competent.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.**
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.**
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.**
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.**
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.**

I don't disagree with any of these statements, but it should also be a pillar that the competence regime proactively ensures lawyer competence rather than solely responding to complaints. Moreover it's not just perspectives on competence that can differ based on background, income levels, etc.

The extent to which clients will complain about a lawyer or sue them also depends heavily on those factors. An equitable competence regime should ensure that its proactive programs are particularly focused on ensuring competent representation to vulnerable groups who are unlikely to file complaints or sue their lawyers, rather than the current system which seems more focused on reducing complaints from the types of clients who are already inclined to bring incompetent representation to the Law Society's attention.

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

a) CPD requirement and programs

b) The Practice Management Helpline

c) Coach and Advisor Network

d) Practice assessment programs (practice reviews, spot audits, and practice audits)

e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

I don't know to what extent the current regime abides by the five pillars identified, but I can tell you from experience that they are grossly inadequate at ensuring competence in the bar. When I worked in private refugee practice, I frequently encountered work product from other lawyers that fell well below the threshold of ethical and competent advocacy. It was almost impossible to get clients to file complaints about it unless the incompetence was so bad that the only way to remedy the situation was by making an ineffective assistance of counsel complaint against previous counsel before an appellate body.

Competence issues in the refugee bar got so bad that Legal Aid Ontario had to create panel standards and a peer review program to allow lawyers to accept legal aid certificates for immigration and refugee matters. Surely the LSO should be asking itself why it is necessary for a legal aid body to be ensuring basic levels of competence in the bar? If a lawyer cannot satisfy the panel standards to accept a legal aid certificate, why are they permitted to practice the same area of law for cash without any additional LSO oversight? The fact that the LSO has been content, for years, to let LAO do its job should be considered an embarrassment to the Law Society and the legal profession as a whole. In my area of law, incompetent legal representation can lead to people being imprisoned, tortured or killed. It is wholly unacceptable that the LSO has no real regime in place to ensure that incompetent practice is stopped until licensees become competent short of a client or tribunal complaint (which is incredibly rare and covers only a tiny fraction of the most egregious competence issues).

I would also say, generally, that the LSO often seems to conflate practice management competence with subject-matter competence, and only really spends much time on the former. The practice management helpline and assessment programs do nothing to assist with subject-matter competence. The lawyers with competence issues don't seem to be making much use of coach and adviser systems, and while I assume they're taking CPD, CPD is much more useful at helping competent lawyers keep up with developments in the profession rather than ensuring that incompetent lawyers understand the basics.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?

b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?

c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?

e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?

f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

I don't actually think the CPD system does anything to assist with lawyer competence. Competent lawyers don't need a certain number of hours of a certain type of education to be competent. If you know what you're doing, you can easily keep abreast of the law and important developments entirely through self-study.

On the other hands, lawyers who don't hit basic competence thresholds often don't understand their deficiencies or what they need to learn to become competent. In private practice, it was not uncommon for me to see lawyers (sometimes with many years of experience) asking practice questions that could easily be answered by simply reading the tribunal rules (the IRB's rules are not at all long or complex). Someone's failure to familiarize themselves with the rules of court/tribunal or even the governing statute of their practice area is not something CPD programs will fix. It can only be fixed by these lawyers understanding that this level of self-study is an absolute requirement to competently practice their profession, and a further understanding that a failure to do so while representing clients will lead to disciplinary sanction.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?

h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:

- i. all licensees,**
- ii. new licensees,**
- iii. licensees in sole or small firm practice,**
- iv. licensees transitioning to sole practice?**

I don't think the extra support can hurt.

I also agree that training requirements should be cognizant of the fact that you are more likely to have practice management and competence issues where people are supervising themselves rather than in larger firms where, ideally, there is some level of supervision by more senior lawyers until a lawyer fully understands what they're doing.

At the same time, I think these types of courses (generally delivered online) are frequently completed by people only half paying attention while doing something else (as much online CPD, to be frank, is). I think the LSO needs to seriously consider whether if a course is important enough to make entirely mandatory, whether it should be delivered in person to ensure people are actually paying attention.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?

j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?

k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?

l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

I think some form of peer assessment is integral for ensuring competence for people practicing outside large firms with significant internal accountability structures. The reality, however, is you need to ensure the people giving feedback are themselves competent. From what I can tell, many of the lawyers with severe competence issues are frequently working either solo or with other lawyers who have similar competence issues, and therefore frequently lack the ability to get constructive feedback from more skilled lawyers who can help point out deficiencies and ways to improve.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?

n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?

o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Referencing back to my earlier point about the difference between practice management competence and subject-matter competence, the problem with practice assessments is they solely focus on practice management. I understand that subject-matter differs from practice area to practice area, but you collect that information through annual reports.

According to your own data, practice review frequently spot areas that require correction, but if these licensees have deficiencies in their ability to comply with LSO practice management requirements, why would you not think that there may be similar problems with their subject-matter understanding and abilities in their area of practice? But while they will get feedback and follow up on their practice management, there will be literally zero assessment of their subject-matter competence unless a client complains. This is a serious problem.

The LSO needs to expand the practice review program to include some level of review of the actual work product of the licensee. Pull a few files at random and have someone who understands that area of law take a look and determine whether the licensee knows what they're doing. I can tell you from experience that incompetence is very, very evident from an even cursory look at an incompetent lawyer's written advocacy.

Whether this is part of the practice review program or some new program, it is a major blind spot in the LSO's regulation. Everyone in the immigration and refugee bar knows that there is a major problem with incompetent licensees that nobody can do anything about because clients never complain. Even if you want to just pilot it in one practice area, that would be worth doing just to see to what extent a proactive subject-matter competence approach is able to identify and correct serious competence issues from licensees who have never been subjects of LSO complaints. That may help create the momentum for a broader program. But if the LSO continues to have no practice mechanism to assess subject-matter competence then many clients will continue to be severely disserved.

I would also consider setting up relationships with courts and tribunals to see if they can identify problem licensees for LSO follow up. Courts and tribunals tend to be reluctant to trigger the formal complaint process unless there's egregious misconduct evident from the record. But on being exposed to the same licensees over and over, they can frequently tell which licensees appear to have competence issues. Even without identifying specific cases, it may be beneficial to set up a relationship where they can identify licensees who appear to have potential competence issues and that can trigger some sort of LSO review of the licensees subject-matter competence without needing to go right to the complaints resolution process.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

When I was in private practice, it was not at all uncommon for certified specialists to use our listserv to ask basic questions that a first year call should easily have been able to figure out the answer to themselves. This did not give me much faith in the CS program as being a very useful marker of actual excellence.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

This certainly doesn't seem like it would hurt.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

No one is going to pursue excellence because their professional regulator tells them to. People either want to achieve excellence (whether for reputational or personal achievement reasons) or they don't. You're certainly not going to change their mind. Focus on making sure incompetent lawyers don't accidentally get their clients deported or imprisoned. Once the LSO has actually dealt with the bar's massive incompetent licensee problem, then sure you can spend time on things that don't matter too.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

I would just like to reiterate that you are doing a very bad job at ensuring licensee competence and you should be approaching this problem as the ongoing crisis it is rather than patting yourselves on the back and perhaps making some minor tweaks.

For goodness sakes, you only make your complaint forms available in English and French. How do you expect an impoverished refugee claimant who is facing deportation because of their incompetent lawyer to make a complaint to the Law Society? Hire an interpreter for it? Your entire regime is totally out of touch with the lived reality of the people most likely to be harmed by an incompetent or unethical lawyer.

Please enter your first and last name	claire wilkinson
Email Address	claire.wilkinson@mhalaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Medium firm (6-199 licensees)
Practice area focus:	- Civil Litigation - Plaintiff
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central West, including Bruce (Walkerton), Grey (Owen Sound), Dufferin (Orangeville), Wellington (Guelph), Peel (Brampton), Halton (Milton)
Upload a File	Competence Task Force Submission.docx
Working definition of competence	
Principles for an effective competence regime	
Components of continuing competence framework	
Renewing the Law Society's continuing competence framework	
Additional aspects of competence regime	

Competence Task Force Submission:

Although I am a member of the Competence Task Force, I have chosen to also submit my comments for further consideration from the task force. In short, I would like to see a shift to change the culture of the legal profession to include a focus on “well being”.

When considering the very large question as to how the LSO can ensure that its licensees are competent, I was very influenced by the Law pro presentation, and the reality that the majority of our newer calls are NOT the subject of Lawpro claims. Further, we learned from Professional Regulation that newer calls do not comprise the majority of complaints that go through investigation.

Our licensees appear to be most at risk at about the 10 year mark post call, and perhaps that makes sense. If the majority of licensees graduated from law school still in their 20s, after about 10 years there are likely marriage/long term relationship issues, child issues, aging parent issues, work/life balance issues, and job stress that comes with increased responsibility as people progress through their careers. It is also worth considering that many of our licensees who find themselves in front of the Tribunal are there for multiple different complaints, and often substance abuse issues are involved also.

I believe strongly in a proactive approach to competence. I would like to see the LSO conduct more spot audits commencing at approximately 10 years post call. These spot audits could also include what I like to call a “wellness check in”, to determine if the licensee identifies any issue coping with the pressures of practising law combined with the pressures of life! Despite all of our efforts to educate our licensees about MAP, many still don’t know it exists. The spot audit/wellness check in could help direct licensees who are interested and receptive to MAP, and perhaps assist people before a situation or difficulties escalate to the point that investigation has to get involved.

I also believe that wellness check ins should be conducted during the articling year, to ensure that our students are thriving in their articling placements, and again, to ensure that they are directed to MAP or other resources if they are struggling for any reason. Better to identify the individuals who need help and get them the help they need, than to constantly be reacting to problems that have already developed.

I remain of the view that articling is a very important aspect of legal training and competence, but challenges remain with the program as not all articling principals are created equal. The LSO should make efforts to identify the principals who are bad actors and weed them out. This statement sounds so basic, and yet it is not clear to me if the principals who have created negative experiences for students are in any way reprimanded or educated as to why their conduct is unacceptable. I appreciate that with the articling enhancements that were just passed by Convocation, that there will now be more follow up by the LSO when articling placements end prematurely, but with some 20% (if I am remembering the statistic correctly) of students reporting that they were subjected to some form of harassment during their articles, it is clear to me that we still have work to do in trying to improve the articling experience, so that our students are not traumatized or distracted by lawyers with poor

behaviour. At this point I don't have concrete suggestions as to how these bad actor principals can be identified if the student doesn't make a report, but the detailed questionnaire that the LSO requires principals to complete should tell a story if the principal is inadequate. Are the questionnaires that lack detail or sufficient information flagged and investigated? If not, they should be.

I would also support an expansion of the Coaching Advisor Network to provide more assistance/training to lawyers who require more guidance and education in specific areas of the law. The LSO might also need to set aside more funds to further promote the existence of CAN, so that all licensees know the full extent of services available at no charge to assist them with their practices.

I am generally in favour of CPD, although I appreciate that there is no data that specifically suggests that law pro claims or complaints have been reduced with the introduction of mandatory CPD. I believe in life long learning, and that none of us is so experienced that we cannot continue to learn, grow, and improve. In particular, before a licensee is permitted to begin private practice, perhaps we should consider an additional one or two week mandatory intensive course on the business of law, including such topics as:

- How do business credit lines work?
- What types of expenses need to be considered when calculating the cost of "overhead"?
- What office equipment is required?
- How do trust and general accounts operate?
- What type of insurance coverage should lawyers obtain (eg disability and business interruption insurance)?

No doubt these topics and many more are already addressed in the Bridge to Practice program, but perhaps some specific elements from that program should be mandatory for those opening up their own practices.

Another key lesson that we have learned from Law pro and the LSO complaints department is that many of the problems arise as a result of communication issues between the licensee and their clients. Perhaps a half day course on "Communication Fundamentals" or something like that should also be mandatory for new calls, and then a refresher mandatory course on "communication fundamentals" every ten years? This course could include technology updates in enhancing communication to clients, which could also help tackle the problem of lawyers who struggle with modernization in the provision of legal services.

There are just a few ideas that I would like to further consider. I make all of these suggestions, of course, as if the LSO had access to a limitless supply of money with which it could provide all of these services. But I am approaching this exercise from an aspirational perspective, so I will put the financial reality and the concerns about funding restraints aside for now.

I look forward to reading the results of this consultation, and hope that our licensees have shared their ideas and vision with us, so that our Task Force can commence our discussions with fresh and exciting ideas brought forward by the professions.

Please enter your first and last name	Matthew Wilson
Email Address	matthew.wilson@siskinds.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Medium firm (6-199 licensees)
Practice area focus:	- Real Estate Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Southwest, including Huron (Goderich), Perth (Stratford), Oxford (Woodstock), Middlesex (London), Lambton (Sarnia), Elgin (St. Thomas), Kent (Chatham), Essex (Windsor)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

I fully support the working definition of competence.

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

While I agree with the five principles, I wish to provide the following comments:

- 1) With regards to risk-based, risk must factor in both likelihood of the risk occurring (and the ability to prevent the risk from occurring), and the exposure to the client should the risk materialize.
- 2) It is my view that certain areas of law, in particular real estate, are overly of focus for the law society, because of the unethical behaviours of a few lawyers. Simply reviewing the questions on the Annual Report reflects this reality. If unethical behaviour occurs it must be dealt with appropriately by the Law Society, however the approach of doing so must be considered (and ideally designed in conversation with practitioners in each area of law)

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

I believe they do, yes, although some changes to the CPD requirements could be considered.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

It remains curious that, to complete CPD requirements, a lawyer can attend CPD courses having nothing to do with her or his practice. While I appreciate that some CPD outside of core practice areas should be encouraged (as a real estate lawyer, I should have some knowledge of other areas of law as many areas of law intersect), the majority of the hours should be met through CPD that is relevant to the practice of the lawyer in question (noting that some programs broadly apply no matter the area of practice). Experience level of the lawyer should not factor in, as even "entry-level" courses can be good refreshers to experienced lawyers (or a good introduction to new best practices). I am content with annual cycles, but I would not make any changes to CPD programming with regards to questions (d), (e) or (f).

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

Additional CPD on the "business of law" should be offered, but should not be mandatory, nor should there be required training courses.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Peer mentoring should continue to be encouraged, and perhaps could clearly count towards CPD requirements to a certain limit, however otherwise I do not believe there should be changes here.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

I went through one of the practice reviews for new(ish) calls, however as a lawyer at a large firm much of the process was not suited for lawyers practicing as associates in that environment. That being said, I did find the process interesting and even helpful. I cannot speak to the other practice assessments.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

- p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?

- q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

I am aware of the Certified Specialist Program, being certified as a specialist in real estate law. I found the process very useful, and the bar for entry set reasonably high. While as a Certified Specialist I appreciate I'm biased, I strongly encourage retaining the CS program, whether as is or in an enhanced form. Lawyers should be encouraged to participate, and the CS designation should be seen in the market (and the bar) as a respected designation, in line perhaps with those named QC before Ontario appointments ceased (not necessarily my suggestion, but a comment made to me by a QC).

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Technological competence is key, however I do not know how it could be required other than making it even clearer that technological competence is an expected competence of any lawyer.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

See comments with regards to the CS program (since we're not bringing back QC appointments any time soon I imagine). Perhaps also expanding the number of LSMs and other awards given out each year, specifically geared towards recognizing excellence.

Additional aspects of competence regime

5. Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

Congratulations on completing a thorough, interesting, and well drafted report. I am excited to see what comes out of this process.

Please enter your first and last name	Eric Zadro
Email Address	ericzadro@gmail.com
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	In-house counsel or paralegal for a private corporation
Practice area focus:	- Civil Litigation – Defendant - Civil Litigation – Plaintiff - Insurance law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Working definition of competence

1. Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?
No change

Principles for an effective competence regime

2. Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) Risk-based - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) Flexible - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- c) Feasible - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) Forward-looking - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) Client-centred - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

Yes

Components of continuing competence framework

3. Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program

f) Legal information and research supports (Great Library and LIRN)

I do not find the CPD requirement at all useful, in proportion to its time and economic cost. With respect to the substantive requirement in particular, I work in a niche area of law. There is one relevant CPD program per year, and any practitioner involved in this area of work is typically already familiar with the discussions in this program.

The practice assessment programs are useful and provide a genuine opportunity to improve.

I have always found information and research supports very helpful in my practice area.

Renewing the Law Society's continuing competence framework

4.1. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?**
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?**
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?**
- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?**
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?**
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?**

I believe the CPD program should be eliminated altogether and greater supports should be available to develop professionalism in key areas such as time management and organization.

4.2. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?**
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:**
 - i. all licensees,**
 - ii. new licensees,**
 - iii. licensees in sole or small firm practice,**
 - iv. licensees transitioning to sole practice?**

Core competency training might be useful, particularly for new licensees.

4.3. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?**
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?**
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?**
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?**

I have always found informal mentorship relationships very fruitful. I'm not aware of the Coach and advisor network.

4.4. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?**
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?**
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?**

As is or enhanced. It should not be eliminated.

4.5. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Certified Specialist Program

- p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?**
- q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?**

Not aware of how it works.

4.6 Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Technological competence

r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?

s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

I don't think there is a one-size fits all approach to technological skills. This is something that should be demand driven, and is difficult to address through centralized training.

4.7. Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how? Some examples are:

Encouraging excellence

t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

A few "Bad apples" affect the entire profession's reputation. The LSO should primarily focus its efforts on identifying these people and preventing further abuses.

Additional aspects of competence regime
