



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

# Law Society of Upper Canada Indigenous Framework

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**Prepared by the Policy Secretariat  
and the Indigenous Advisory Group**

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<sup>1</sup>These Terms of Reference are subject to amendment as of June 5th

## BACKGROUND

1. The Law Society of Upper Canada (Law Society), as a regulator of all lawyers and licensed paralegals in the province of Ontario, pursuant to its legislative mandate under the *Law Society Act R.S.O. 1990, Chapter L.8* (the *Act*) must have regard to the following duties:
  - To maintain and advance the cause of justice and the rule of law;
  - To act so as to facilitate access to justice for the people of Ontario;
  - To protect the public interest;
  - To act in a timely, open and efficient manner; and
  - Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized
2. In 2000, consistent with the duties encoded in the *Act*, the Law Society established a standing committee of Convocation called the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee or EIAC)<sup>2</sup>, to develop policies, programs and initiatives to best serve and promote an inclusive profession. Subject to Convocation's approval, the EIAC's mandate is to develop policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples. As a best practice, the EIAC consults with Indigenous peoples, Francophone citizens and other communities in the development of such policy options.
3. As part of the Law Society's efforts over the years to consult with Indigenous peoples, a number of working groups and strategies have been established including Rotiio>taties<sup>3</sup> in 1998.
4. Rotiio>taties was an independent board of Elders, Indigenous lawyers<sup>4</sup>, community representatives and law students who advised various bodies, including the Law Society, on Indigenous issues arising in law and the legal profession. The membership of Rotiio>taties changed over the years until its eventual transition to an Aboriginal Working Group.

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<sup>2</sup> By motion of February 9, 2017, EAIC amended its name to the Equity and Indigenous Affairs Committee.

<sup>3</sup> Meaning "continuously working" in the Mohawk language.

<sup>4</sup> At the time Rotiio>taties was created, paralegals were not yet licensees within the profession.

5. In 2009 Convocation approved the *Final Report of the Indigenous Bar Consultation* which identified a number of recommended actions the Law Society could undertake. These recommendations included:
  - Expanding the Members' Annual Report Practice Categories to include Aboriginal Law (to determine how many lawyers in Ontario self-identify as practicing Aboriginal law)
  - Mentoring and Networking Program
  - Continuing Legal Education Course in Aboriginal Law and Issues
  - Certified Specialist Program in Aboriginal Law<sup>5</sup>
6. In 2014, Convocation affirmed its commitment to place emphasis, through the EIAC, on Indigenous issues. In June 2016, the Indigenous Advisory Group<sup>6</sup> (IAG) was established as an independent body to advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
7. In September 2016, the EIAC and the IAG committed to work collaboratively in the development of the Law Society's Indigenous Framework and on November 5, 2016, the EIAC and the IAG held a joint meeting to begin the development of this Indigenous Framework.

## INTRODUCTION

8. The Indigenous Framework has been developed in accord with the priorities identified in three key Law Society documents:
  - Convocation's 2015-2019 Strategic Plan, as relevant to the EIAC's mandate;
  - Treasurer's Memorandum to the Equity and Aboriginal Issues Committee (September 22, 2016); and
  - Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada (TRC) Final Report (Sept. 2, 2016).<sup>7</sup>

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<sup>5</sup> 2009 *Final Report of the Indigenous Bar Consultation*, pp. 32-35.

<sup>6</sup> The Indigenous Advisory Group's Terms of Reference are attached as Appendix A. For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, non-Status, Inuit and Métis peoples.

<sup>7</sup> Each of these key documents has been reproduced in Appendix B.

9. The priorities identified in the above documents often intersect and coalesce, helping to shape this Framework into the following Four Pillars:
- Creating and Enhancing Cultural Competency
  - Achieving and Improving Access to Justice
  - Promoting and Supporting Knowledge of Indigenous Legal Systems
  - Taking Action on Reconciliation
10. The development of every initiative by the Law Society within any one of these Four Framework Pillars must be guided through an “Indigenous lens” in order to fully meet the objective of this Framework. The Treasurer, through his Memorandum to the Equity and Aboriginal Issues Committee, directed the EIAC to develop policies that will ensure an Indigenous lens to all the Law Society does.
11. The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws ; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimagatuqangit guiding principles.<sup>8</sup> Such principles are:
- **Love:** To know love is to know peace.
  - **Respect:** To honour all Creation is to have respect
  - **Courage:** To face life with courage is to know bravery
  - **Honesty:** To walk through life with integrity is to know honesty
  - **Humility:** To accept yourself as a sacred part of Creation is to know humility
  - **Wisdom:** To cherish knowledge is to know wisdom
  - **Truth:** To know of these things is to know truth

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<sup>8</sup> Inuuqatigiitsiarniq- Respecting others, relationships and caring for people.

Tunnganarniq- Fostering good spirit by being open, welcoming and inclusive.

Pijitsirniq- Serving and providing for family and/or community. Aajiiqatigiinni- Decision making through discussion and consensus. Pilimmaksarniq- Development of skills through practice, effort and action.

Piliriqatigiinni/Ikajuqtigiingni- Working together for a common cause.

Qanuqtuurniq- Being innovative and resourceful

Avatittinnik Kamatsiarniq- Respect and care for the land, animals and the environment. (Source:Tungasuvvingat Inuit Restorative Justice Initiative)

# THE FOUR FRAMEWORK PILLARS

## CREATING AND ENHANCING CULTURAL COMPETENCY<sup>9</sup>

12. The Law Society will work in partnership with the IAG to create and enhance cultural competency recognizing the continued need for licensees to be equipped with the cultural, historical and legal knowledge that will enable the provision of legal services in a manner that supports Indigenous peoples in addressing their unique interests, issues and challenges.
13. The Law Society prioritizes life-long competence for lawyers and paralegals. The Treasurer's Memorandum to the Equity and Aboriginal Issues Committee further contextualizes this priority, and directs the EIAC to develop programs that will enhance cultural competence internally to the Law Society (staff, Benchers) and the profession (licensees) in dealings with Indigenous peoples.<sup>10</sup>
14. Specific proposed approaches towards supporting cultural competency are detailed in the Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada Final Report and include knowledge enhancements, working with the Federation of Law Societies of Canada and developing skills-based training and other supports.

### ***1. Creating and Enhancing Knowledge***

- a. Ensure Law Society ***staff and Benchers*** have the opportunity to access cultural competency training within the Law Society that includes unconscious bias, the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, Aboriginal-Crown relations and basic cultural protocols.
- b. Ensure ***licensees*** have the opportunity to access cultural competency training that includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.
- c. Ensure ***licensees that are required by their employment*** to engage directly with the Indigenous people of Ontario, undertake cultural competency training

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<sup>9</sup> To be clear, the language of inter-cultural "competency" comes from the Truth and Reconciliation Calls to Action. In applying the term within this Framework, the IAG is not asking everyone to adopt the cultural practices that are unique to the Indigenous peoples of Ontario, rather, to gain knowledge of and respect for each Indigenous person's right to maintain justice in their own way. The IAG will further develop what is the intended meaning within this Framework and include examination of systemic barriers and anti-racism measures.

<sup>10</sup> Convocation's 2015-2019 Strategic Plan prioritizes life-long competence for lawyers and paralegals. Priorities include enhancing licensing standards, improving and increasing practice supports and considering education beyond traditional Continuing Professional Development formats (e.g. possible multiple-day courses including practical application of knowledge and skills), and working with the professions to develop initiatives that institutionalize mentoring, advisory services and other types of support.

which includes the history of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.

- d. Work with **Deans, law faculty and students** of Ontario Law Schools and colleges (paralegal education) to enhance their knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- e. Develop and offer **Continuing Professional Development (CPD)** programs and legal education sessions independently and in collaboration with partners to illustrate the relevance of the *United Nations Declaration on the Rights of Indigenous Peoples* in Ontario and its relevance to various practice areas.

## **II. Working with Partners**

- a. Participate with **other Law Societies in Canada and the Federation of Law Societies** in examining whether changes can be made to the *National Standards* and other licensing requirements to enhance knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- b. In partnership with the **Indigenous Bar Association**, examine the codes of professional conduct and the commentaries as well as the Federation Model Code to explore changes, where necessary, to promote reconciliation and culturally competent provision of legal services.
- c. Engage with **other legal associations, advocates and professional entities** in Ontario to further educate, consult and inform.

## **III. Developing Skills-Based Training and Other Supports**

- a. Support, develop and offer independently and/or in partnership with other providers, skills-based training and practice supports in inter-cultural competency, conflict resolution, human rights and anti-racism.
- b. Support Deans, law faculty and students of Law Schools and Colleges in Ontario regarding how skills-based training in inter-cultural competency, conflict resolution, human rights, and anti-racism can be introduced into experiential learning in Law Schools and Colleges.
- c. Support the Law Society's Equity Legal Education programs—developed, as appropriate, in partnership with Deans, faculty and students of Law Schools as well as Indigenous knowledge keepers, practitioners, organizations and others—to address the legacy of the Indian Residential School experience and Canada's colonialist law and policy, Treaty and Aboriginal Rights, the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples* and current initiatives of First Nations, Métis and Inuit peoples.

## ACHIEVING AND IMPROVING ACCESS TO JUSTICE

15. The Law Society will work with the IAG recognizing that achieving and enhancing Access to Justice across Ontario is a key priority of the Law Society. It identifies strategic goals towards increasing collaboration with access to justice partners and other stakeholders as well as developing and implementing a more concrete access to justice action plan.
16. Additional priorities in the Strategic Plan, including engaging stakeholders and the public with responsive communications and increasing organizational effectiveness, will also support enhancing access to justice.
17. An important element of achieving and improving access to justice will be the review and improvement of the Mentoring and Networking Program to ensure it continues to deliver the objectives called for in 2009 by the Final Report of the Indigenous Bar Consultation.
18. The Treasurer's Memo provides further direction on specific priorities in relation to improving access to justice for Indigenous peoples, including improving access to the complaints process for Indigenous communities.
19. Improve the Law Society's hearing and regulatory process, including the Tribunal, in every interaction with Indigenous people.
20. Engage with the Law Society's Legal Aid Working Group to examine and improve the delivery of legal aid to Indigenous people community and address the financial barriers that prohibit meaningful access to justice.
21. Provide support for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), including:
  - a. Further support for Inquiry processes
  - b. Develop communication materials to promote awareness and access to justice, published in English, French and Indigenous languages.
  - c. Commit to address Inquiry recommendations.
22. Contribute to the elimination of the overrepresentation of Indigenous people in legal proceedings, care and incarceration through a number of channels:
  - a. Supporting the implementation of the recommendations of the Debwewin Implementation Committee's Final Report and Feathers of Hope.
  - b. Considering the results of TAG's cluster on "the Seventh Generation – the Crisis of Aboriginal Children and Youth in Care".
  - c. Considering, as a justice system stakeholder, actions the Law Society can take and what collaborative opportunities exist with other stakeholders to promote alternatives to community sanctions, mandatory minimum sentences, bail procedurals and supporting culturally appropriate services to reduce domestic

violence, dispute resolution mechanisms, Aboriginal healing lodges and halfway homes.

- d. Undertaking a study on barriers to access to justice in Northern Ontario, including the efficacy and standardization of the preparation of Gladue Reports (across all of Ontario).
- e. Expanding the Guidelines for Lawyers Representing Residential School Claimants to other areas within the Law Society's regulatory scope.

## PROMOTING AND SUPPORTING KNOWLEDGE OF INDIGENOUS LEGAL SYSTEMS

23. The Law Society will work with the IAG recognizing that knowledge of Indigenous legal systems is an essential as part of the Law Society's commitment to prioritizing life-long competence and enhancing access to justice for Indigenous peoples. The promotion and support of knowledge of Indigenous legal systems can include:

- a. In response to Call to Action 50, support "the establishment of Indigenous Law institutes for the development, use and understanding of Indigenous laws and access to justice in accordance with the unique characteristics of Aboriginal peoples in Canada."
- b. Develop and offer Continuing Professional Development (CPD) programs and legal education sessions independently and with partners to support understanding, respect for and application of Indigenous legal systems in Ontario.
- c. Develop and enhance services available to licensees, including practice supports and learning resources that could provide guidance on Indigenous justice issues, including but not limited to the application of the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, and the MMIWG.
- d. Enhance the Law Society's Lawyer Referral Program and Mentorship to provide support and guidance on Indigenous justice issues.
- e. Enhance the Member Assistance Program to provide for the well-being of Indigenous licensees in ways that promote and support Indigenous, traditional healing methods.
- f. Enhance supports for small and solo firm practices within the Indigenous community (i.e. mentoring).

## TAKING ACTION ON RECONCILIATION

24. The Law Society recognizes that it will work in partnership with the IAG and be guided by Indigenous knowledge keepers, leaders and citizens, Indigenous practitioners and others, in the development of the Law Society's responses to the Final Report of the Truth and Reconciliation's Calls to Action.
25. The Law Society's priority to engage with stakeholders and the public with responsive communications will support strengthened relationships with Indigenous and non-Indigenous licensees and members of the public, as well as build greater awareness of the Law Society's role in the reconciliation process.
26. Specific proposed actions related to reconciliation are outlined in the TRC Responses document and include:
  - a. A statement of support for the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation.
  - b. A commitment to actively consider opportunities to collaborate with partners, including legal and professional entities in Ontario to extend the impact of the responses the Law Society undertakes and explore how the Law Society can support the work of partners in advancing reconciliation.
  - c. Examine, in partnership with the Indigenous Bar Association, the codes of professional conduct and the commentaries as well as the Federation Model Code to consider changes to promote reconciliation and culturally competent service delivery.

## **List of References**

**1982**

- [\*The Constitution Act, 1982\*](#)

**1996**

- [Report of the Royal Commission on Aboriginal Peoples](#)

**1999**

- [\*R v. Gladue, \[1999\] 1 S.C.R. 688\*](#)

**2005**

- [The Kelowna Accord](#)

**2007**

- [The Ipperwash Inquiry - Final Report](#)

**2008**

- [United Nations Declaration on the Rights of Indigenous Peoples](#)

**2012**

- [Forsaken: The Report of the missing Women Commission of Inquiry \(The BC Missing Women Commission of Inquiry\)](#)

**2013**

- [The Iacobucci Report – First Nations Representation on Ontario Juries](#)
- [Feathers of Hope: A First Nations Youth Action Plan](#)
- [Feathers of Hope: Justice and Juries](#)

**2015**

- [The Truth and Reconciliation of Canada Final Report](#)
- [Concluding observations on the sixth periodic report of Canada, United Nations Human Rights Committee](#)