



Tab 6

**Report to Convocation
February 23, 2017**

Professional Development & Competence Committee

COMMITTEE MEMBERS

Peter Wardle (Chair)
Jacqueline Horvat (Vice-Chair)
Joanne St. Lewis (Vice-Chair)
Jack Braithwaite
Dianne Corbiere
Teresa Donnelly
Joseph Groia
Michelle Haigh
Barbara Murchie
Sandra Nishikawa
Andrew Spurgeon
Catherine Strosberg
Sidney Troister
Anne Vespry

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Professional Development & Competence Committee met on February 9, 2017. Committee members Peter Wardle (Chair), Jacqueline Horvat (Vice-Chair), Jack Braithwaite, Dianne Corbiere, Teresa Donnelly, Joseph Groia, Michelle Haigh, Barbara Murchie, Sandra Nishikawa, Andrew Spurgeon, Catherine Strosberg, and Anne Vespry attended. Bencher Chris Bredt also attended. Staff members Priya Bhatia, Diana Miles and Ekua Quansah were present.

FOR DECISION

AMENDMENTS TO BY-LAW 7.1 AND BY-LAW 4**Motion**

2. That Convocation approve amendments to By-Law 4 and By-law 7.1 in accordance with the bilingual motions set out at [TAB 6.1.1: Motion to Amend By-law 4](#) and [TAB 6.1.2: Motion to Amend By-law 7.1](#).

Rationale

3. In May 2015, Convocation approved the amendment of relevant Law Society by-laws to ensure that they enable law student experiential learning, provided law students are adequately supervised. In June 2015, amendments were made to By-laws 4 and 7.1 to implement Convocation's policy. The amendments were focused primarily on Student Legal Aid Society programs and those of PBSC.
4. Immediately prior to May 2015 Convocation, a number of law schools raised concern that the amendments would not cover experiential programs operating under the auspices of law schools themselves. Rather than delaying the amendments already proposed, it was agreed that subsequent discussions of the issues would take place to address additional issues.
5. With the benefit of input from LAO, PBSC and law schools, the Committee has determined that there should be additional amendments to By-law 7.1. The Committee has also determined that there should be amendments to By-law 7.1 to permit Ontario educational institutions that offer a legal services program to provide paralegal students with experiential learning opportunities.

Key Considerations

6. The Law Society's strategic plan for 2011-2015 included, as one of the priority areas, the following:

Competency and Professional Standards:

The work plan includes "considering developments at the front end of legal education to enhance competence," and "focussing on competency in specific practice areas, including exploration of practice standards in those areas."

7. The 2015-2019 strategic plan includes prioritizing life-long competence for lawyers and paralegals by evaluating and enhancing current admissions standards and licensing requirements and their assessment.
8. The importance of experiential learning for law students as an early means of developing competence is recognized and has become a priority for law schools, law societies and

law firms that hire newly-called lawyers. Experiential learning has the ability to inculcate important skills and values that will assist in competent and ethical post-call behaviours. Those who hire newly-called lawyers have often identified the need for more of such training to be undertaken in law schools. To be effective, such learning must also be properly supervised with licensee accountability for student activities and supervision.

9. Ontario educational institutions that offer a legal services program are currently considering the benefits of experiential training. The Committee believes that experiential learning opportunities will assist paralegal students in developing essential skills for competent post-licensing provision of legal services. Consequently, although Ontario education institutions have not approached the Law Society to permit experiential learning opportunities for paralegals students, as a matter of policy, the Law Society believes it is important to be proactive.
10. The proposed approach focuses on the points of regulatory concern, namely the requirement for supervision by a lawyer or paralegal licensed in Ontario on any activities in which law students represent clients or provide legal advice or paralegal students provide legal services. With sufficient safeguards in place to ensure competent and supervised student representation of clients in appropriate matters, such initiatives may further the public interest.
11. By-law 7.1 is amended to clearly articulate that those licensed in Ontario must have responsibility for supervision of law students and paralegal students in experiential programs who represent clients or provide legal advice or legal services. Given the new approach to the issues, it is unnecessary for By-law 4 to be engaged at all.

The Committee's Deliberations

12. The Committee has engaged in substantial consultation with law school Deans, LAO, Student Legal Aid Service Societies and PBSC.
13. The key for law faculties, educational institutions that offer a legal services program, LAO and PBSC will be to ensure that students are appropriately supervised in accordance with the By-law in any situations in which students represent clients or provide legal advice or services. At the same time, this does not affect the Courts' right to refuse rights of appearance to law students.
14. The By-Law's focus in this area is on licensees' supervisory responsibilities within the specified settings in which the licensee practices law or provides legal services, rather than on specific programs. This avoids the difficulty of having to specify individual programs in the by-law.

Proposed By-Law Amendments

15. The proposed amendments to By-Law 4 are as follows:
 - a. Remove references to law student experiential learning from the exemption provisions.

16. The proposed amendments to By-Law 7.1 are as follows:
 - a. remove law students from the definition of “non-licensees” and to create specific categories and provisions for “Canadian law students”, “Ontario law students,” and “Ontario paralegal student” as defined in the By-law;
 - b. include a definition of a “clinical education course or program” to mean “a course, program, project, placement or partnership” which provides Ontario law students or paralegal students with “an opportunity to gain practical and applied legal experience” that is organized or accepted by an Ontario law school, or an Ontario educational institution that offers a legal services program respectively;
 - c. sets out the provisions for: “the assignment of tasks, functions” for Canadian law student, Ontario law students and Ontario paralegal student and the settings within which assignment is permitted;
 - d. sets out the requirements of supervision of a student by a licensee.
17. The By-Law’s focus is on licensees’ supervisory responsibilities within the specified settings in which the licensee practices law or provides legal services, rather than on specific programs.
18. A “redline” version of the amendments to by-law 7.1 considered by the Committee can be found at [Tab 6.1.3](#). A “clean” version of the proposed amendments to By-law 7.1 can be found at [Tab 6.1.4](#). A “redline” version of the amendments to By-law 4 can be found at [Tab 6.1.5](#).

TAB 6.1.1

THE LAW SOCIETY OF UPPER CANADA
**BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

**BY-LAW 4
[LICENSING]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY 23, 2017

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010, October 28, 2010, April 28, 2011, June 23, 2011, September 22, 2011, November 24, 2011, October 25, 2012, February 27, 2014, March 4, 2014, January 29, 2015, June 25, 2015 and April 28, 2016 be further amended as follows:

1. Section 29 of the English version of the By-Law is amended by adding the following definition:

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society.

2. Section 29 of the French version of the By-Law is amended by adding the following definition:

« étudiant parajuriste en Ontario » s’entend d’une personne inscrite à un programme d’enseignement de services juridiques en Ontario, approuvé par le ministère de la Formation et des Collèges et Universités et agréé par le Barreau.

3. The introductory part of paragraph 1 of section 30 of the English version of the By-Law is deleted and the following substituted:

An individual, other than a Canadian law student or an Ontario paralegal student, who,

- 4. The introductory part of paragraph 1 of section 30 of the French version of the By-Law is deleted and the following substituted:**

Une personne, autre qu'un étudiant canadien en droit ou un étudiant parajuriste de l'Ontario, qui :

- 5. The introductory part of paragraph 2 of section 30 of the English version of the By-Law is deleted and the following substituted:**

An individual, other than a Canadian law student or an Ontario paralegal student, who,

- 6. The introductory part of paragraph 2 of section 30 of the French version of the By-Law is deleted and the following substituted:**

Une personne, autre qu'un étudiant canadien en droit ou un étudiant parajuriste de l'Ontario, qui :

- 7. Section 34 of the By-Law is revoked.**
- 8. Section 34.1 of the By-Law is renumbered as section 34.**
- 9. Sections 34.2 to 34.4 of the By-Law are revoked.**

TAB 6.1.2

THE LAW SOCIETY OF UPPER CANADA

**BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

**BY-LAW 7.1
[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON FEBRUARY
23, 2017

MOVED BY

SECONDED BY

THAT By-Law 7.1 [Operational Obligations and Responsibilities], made by Convocation on October 25, 2007 and amended by Convocation on November 22, 2007, January 24, 2008, April 24, 2008, June 26, 2008, October 30, 2008, January 29, 2009, October 28, 2010, September 25, 2013 and June 25, 2015 be further amended as follows:

- 1. Section 1 of the English version of the By-Law is amended by,**
 - a. deleting the definition of “law firm”;**
 - b. deleting the definition of “non-licensee” and substituting the following:**

“non-licensee” means an individual who,

- (a) is not a Canadian law student, an Ontario law student or an Ontario paralegal student,
- (b) is engaged by a licensee to provide her or his services to the licensee,
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee, and
- (d) in the case of the assignment of tasks and functions by a person licensed to practise law in Ontario as a barrister and solicitor, is not a person licensed to practise law in Ontario as a barrister and solicitor and, in the case of the assignment of tasks and functions by a person licensed to provide legal services in Ontario, is neither a person licensed to practise law in Ontario as a

barrister and solicitor nor a person licensed to provide legal services in Ontario;

and

c. adding the following definitions:

“Canadian Law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“clinical education course or program” means

- (a) a course, program, project, placement or partnership that is organized or accepted by an Ontario law school and that provides Ontario law students with an opportunity to gain practical and applied legal experience, or
- (b) a course, program, project, placement or partnership that is organized or accepted by an Ontario educational institution that offers a legal services program and that provides Ontario paralegal students with an opportunity to gain practical and applied legal experience;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation established under the *Law Society Act*;

“Ontario law student” means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society;

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

“*Statutory Accident Benefits Schedule*” means the *Statutory Accident Benefits Schedule* within the meaning of the *Insurance Act*.

2. Section 1 of the French version of the By-Law is amended by,

- a. deleting the definition of “cabinet d’avocats”;**
- b. deleting the definition of “non-titulaire de permis” and substituting the following:**

« non-titulaire de permis » S’entend d’une personne qui :

- (e) n’est pas un étudiant canadien en droit, un étudiant en droit en Ontario ou un étudiant parajuriste en Ontario,

- (f) est embauchée par un titulaire de permis pour lui fournir des services
 - (g) convient formellement avec le titulaire de permis que celui-ci aura le contrôle effectif sur les services que la personne lui rend,
 - (h) dans le cas de l'assignation de tâches et de fonctions par une personne pourvue d'un permis l'autorisant à exercer le droit en Ontario à titre d'avocat, n'est pas une personne pourvue d'un tel permis et, dans le cas de l'assignation de tâches et de fonctions par une personne pourvue d'un permis l'autorisant à offrir des services juridiques en Ontario, n'est pas un titulaire de permis d'exercer le droit en Ontario ni un titulaire autorisé à fournir des services juridiques en Ontario.
- and

c. adding the following definitions:

« étudiant canadien en droit » S'entend d'une personne inscrite à une faculté de droit canadienne agréée par le Barreau ;

« cours ou programme d'éducation clinique » Désigne

- (c) un cours, programme, projet, stage ou partenariat organisé ou accepté par une faculté de droit de l'Ontario et qui fournit aux étudiants en droit en Ontario une occasion d'acquérir une expérience juridique pratique et appliquée,
- (d) un cours, programme, projet, stage ou partenariat organisé ou accepté par un établissement d'enseignement de l'Ontario qui offre un programme de services juridiques et qui fournit aux étudiants parajuristes en Ontario une occasion d'acquérir une expérience juridique pratique et appliquée ;

« cabinet de titulaires de permis » S'entend d'une société de personnes ou d'un autre type d'association de titulaires de permis, d'une société de personnes ou d'une association visée à la partie III du Règlement administratif n° 7 [Entreprises] ou d'une société professionnelle établie en vertu de la *Loi sur le Barreau* ;

« étudiant en droit en Ontario » S'entend d'une personne inscrite à une faculté de droit en Ontario agréée par le Barreau ;

« étudiant parajuriste en Ontario » s'entend d'une personne inscrite à un programme d'enseignement de services juridiques en Ontario, approuvé par le ministère de la Formation et des Collèges et Universités et agréé par le Barreau ;

« *Annexe sur les indemnités d'accidents légaux* » Désigne l'*Annexe sur les indemnités d'accidents légaux* au sens de la *Loi sur les assurances*.

3. Section 2 of the English version of the By-Law is revoked and the following substituted:

2. This Part does not apply to the provision of legal services by a student under the direct supervision of a licensee pursuant to section 34 of By-Law 4.

4. Section 2 of the French version of the By-Law is revoked and the following substituted:

2. La présente partie ne s'applique pas à la prestation de services juridiques par un étudiant placé sous la surveillance directe d'un titulaire de permis conformément à l'article 34 du Règlement administratif n° 4.

5. The English version of the By-Law is amended by adding the following section:

Assignment of tasks, functions: Canadian law student or Ontario paralegal student

2.1 (1) A licensee who practices law or provides legal services within any of the following settings in Ontario may assign to a Canadian law student or an Ontario paralegal student tasks and functions in connection with the licensee's practice of law or provision of legal services within that setting:

1. The licensee's professional business.
2. A licensee firm.
3. The Government of Canada.
4. The Government of Ontario.
5. A municipal government.
6. A First Nation, Métis or Inuit government.
7. A clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario.
8. Legal Aid Ontario, pursuant to Part III of the *Legal Aid Services Act, 1998*.
9. A program established by Pro Bono Students Canada.
10. An in-house legal department.

Assignment of tasks, functions: Ontario law student or Ontario paralegal student

(2) A licensee who practises law or provides legal services within any of the following settings in Ontario may assign to an Ontario law student or an Ontario paralegal student tasks and functions in connection with the licensee's practice of law or provision of legal services within that setting:

1. A student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*.
2. A clinical education course or program.

Assignment of tasks, functions: direct supervision required

(3) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services and shall directly supervise any Canadian law student, Ontario law student or Ontario paralegal student to whom the licensee assigns tasks and functions under this section.

- (4) Without limiting the generality of subsection (3),
 - (a) the licensee shall assign only tasks and functions that the assignee is competent to perform;
 - (b) the licensee shall ensure that the assignee does not act without the licensee's instruction;
 - (c) the licensee shall give the assignee express authorization and instruction prior to permitting the assignee to act on behalf of a person in a proceeding before an adjudicative body;
 - (d) the licensee shall review the assignee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (e) the licensee shall ensure that the tasks and functions assigned to the assignee are performed properly and in a timely manner; and
 - (f) the licensee shall assume responsibility for all tasks and functions performed by the assignee, including all documents prepared by the assignee.

Non-application of sections to assignment of tasks and functions under this section

(5) For greater clarity, sections 3, 4, 5 and 5.1 and subsection 6 (1) do not apply with respect to a licensee assigning tasks and functions under this section.

Application of sections to assignment of tasks and functions under this section

(6) Subsection 6 (2) and section 7, with necessary modifications, apply with respect to a licensee assigning tasks and functions under this section.

6. The French version of the By-Law is amended by adding the following section:

Assignment de tâches et de fonctions : étudiant canadien en droit ou étudiant parajuriste en Ontario

2.1 (1) Un titulaire de permis qui exerce le droit ou qui fournit des services juridiques dans un des cadres suivants en Ontario peut assigner des tâches et des fonctions à un étudiant canadien en droit ou étudiant parajuriste en Ontario relativement à sa pratique du droit ou à sa prestation de services juridiques dans ce cadre :

1. Société professionnelle du titulaire de permis.
2. Cabinet de titulaires de permis.
3. Gouvernement du Canada.
4. Gouvernement de l'Ontario.
5. Administration municipale.
6. Gouvernement des Premières Nations, métis ou inuit.
7. Clinique, au sens de la *Loi de 1998 sur les services d'aide juridique*, financée par Aide juridique Ontario.
8. Aide juridique Ontario, conformément à la partie III de la *Loi de 1998 sur les services d'aide juridique*.
9. Programme créé par *Pro Bono Students Canada*.
10. Services juridiques internes.

Assignment de tâches et de fonctions : étudiant canadien en Ontario ou étudiant parajuriste en Ontario

(2) Un titulaire de permis qui exerce le droit ou qui fournit des services juridiques dans un des cadres suivants en Ontario peut assigner des tâches et des fonctions à un étudiant canadien en droit ou étudiant parajuriste en Ontario relativement à sa pratique du droit ou à sa prestation de services juridiques dans ce cadre :

1. Société étudiante d'aide juridique, au sens de la *Loi de 1998 sur les services d'aide juridique*.
2. Cours ou programme d'éducation clinique.

Assignment de tâches et de fonctions : surveillance directe requise

(3) Un titulaire de permis assume l'entière responsabilité professionnelle de sa pratique du droit ou de prestation de services juridiques et surveille directement tout étudiant canadien en droit, étudiant en droit en Ontario ou étudiant parajuriste en Ontario à qui il assigne des tâches et des fonctions en vertu du présent article.

- (4) Sans que soit limitée la portée générale du paragraphe (3),
 - a) le titulaire de permis n'assigne que les tâches et fonctions que le délégué est capable de faire ;
 - b) le titulaire de permis s'assure que le délégué n'agit pas sans les directives du titulaire de permis ;
 - c) le titulaire de permis donne au délégué son autorisation expresse et des directives avant de lui permettre d'agir au nom d'une personne dans une instance devant un organisme d'arbitrage ;
 - d) le titulaire de permis passe en revue les tâches et les fonctions exécutées par le délégué à intervalles fréquents ;
 - e) le titulaire de permis veille à ce que les tâches et les fonctions assignées au délégué soient exécutées convenablement et en temps utile ;
 - f) le titulaire de permis assume la responsabilité des tâches et des fonctions exécutées par le délégué, y compris tous les documents préparés par ce dernier.

Non-application d'articles portant sur l'assignation de tâches et de fonctions en vertu du présent article

(5) Par souci de clarté, les articles 3, 4, 5 et 5.1 et le paragraphe 6 (1) ne s'appliquent pas au titulaire de permis qui assigne des tâches et des fonctions en vertu du présent article.

Application d'articles portant sur l'assignation de tâches et de fonctions en vertu du présent article

(6) Le paragraphe 6 (2) et l'article 7, avec les modifications nécessaires, s'appliquent au titulaire de permis qui assigne des tâches et des fonctions en vertu du présent article.

7. Subsection 3 (1) of the English version of the By-Law is amended by deleting “, in accordance with this Part,”.

8. Subsection 3 (1) of the French version of the By-Law is amended by deleting “, aux fins de la présente partie,”.

9. Subsection 3 (2) of the English version of the By-Law is amended by deleting “, in accordance with this Part,”.

10. Subsection 3 (2) of the French version of the By-Law is amended by deleting “, aux fins de la présente partie,”.

11. Subsection 5.1 (1) of the English version of the By-Law is amended by deleted “law firm” and substituting “licensee firm”.

12. Subsection 5.1 (1) of the French version of the By-Law is amended by deleted “cabinet d'avocats” and substituting “cabinet de titulaires de permis”.

BY-LAW 7.1

Made: October 25, 2007
Amended: November 22, 2007
January 24, 2008
April 24, 2008
June 26, 2008
October 30, 2008
January 29, 2009
January 29, 2009 (editorial changes)
March 20, 2009 (editorial changes)
October 28, 2010
November 10, 2010 (editorial changes)
September 25, 2013
June 25, 2015

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Interpretation

1. (1) In this Part,

“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“catastrophic impairment” means a catastrophic impairment within the meaning of the *Statutory Accident Benefits Schedule*;

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*;

“clinical education course or program” means

(a) a course, program, project, placement or partnership that is organized or accepted by an Ontario law school and that provides Ontario law students with an opportunity to gain practical and applied legal experience, or

(b) a course, program, project, placement or partnership that is organized or accepted by an Ontario educational institution that offers a legal services program and that provides Ontario paralegal students with an opportunity to gain practical and applied legal experience;

“impairment” means an impairment within the meaning of the *Statutory Accident Benefits Schedule*;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation established under the *Law Society Act*;

~~“law firm means;~~

- ~~(a) — a partnership or other association of licensees each of whom holds a Class L1 licence;~~
- ~~(b) — a professional corporation described in clause 61.0.1 (a) or (c) of the Act, or~~
- ~~(c) — a multi-discipline practice or partnership described in section 17 of By Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence; “Statutory Accident Benefits Schedule” means the *Statutory Accident Benefits Schedule* within the meaning of the *Insurance Act*;~~

“non-licensee” means an individual who,

- (a) is not a Canadian law student, an Ontario law student or an Ontario paralegal student in the case of the assignment of tasks and functions by a person licensed to practise law in Ontario as a barrister and solicitor, is not a person licensed to practise law in Ontario as a barrister and solicitor and, in the case of the assignment of tasks and functions by a person licensed to provide legal services in Ontario, is not a licensee,
- (b) is engaged by a licensee to provide her or his services to the licensee, ~~and~~
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee, and
- (d) in the case of the assignment of tasks and functions by a person licensed to practise law in Ontario as a barrister and solicitor, is not a person licensed to practise law in Ontario as a barrister and solicitor and, in the case of the assignment of tasks and functions by a person licensed to provide legal services in Ontario, is neither a person licensed to practise law in Ontario as a barrister and solicitor nor a person licensed to provide legal services in Ontario;

“Ontario law student” means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society;

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

“Statutory Accident Benefits Schedule” means the Statutory Accident Benefits Schedule within the meaning of the Insurance Act.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

Application: provision of legal services by student

2. ~~(1)~~—This Part does not apply to the provision of legal services by a student under the direct supervision of a licensee pursuant to section ~~34.134~~ of By-Law 4.

~~**Application: provision of legal services under direct supervision of licensee pursuant to By-Law 4**~~

~~—(2)—This Part applies to the following, subject to the modifications set out in subsection (3) and any other necessary modifications:~~

- ~~1.—The provision of legal services by an Ontario law student under the direct supervision of a licensee pursuant to section 34.3 of By-Law 4.~~
- ~~2.—The provision of legal services by a Canadian law student under the direct supervision of a licensee pursuant to section 34.2 of By-Law 4.~~

Same

~~—(3)—The following modifications of this Part apply with respect to the direct supervision by a licensee of the provision of legal services by a non-licensee mentioned in subsection (2):~~

- ~~1.—Section 1 does not apply.~~
- ~~2.—“Non licensee” means an individual who, in the case of the provision of legal services under the direct supervision of a licensee pursuant to section 34.2 of By-Law 4, is a Canadian law student and, in the case of the provision of legal services under the direct supervision of a licensee pursuant to section 34.3 of By-Law 4, is an Ontario law student.~~

3. ~~“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society.~~
4. ~~“Ontario law student” means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society.~~
5. ~~Subsection 3 (2) does not apply.~~
6. ~~Clause 4 (2) (h) does not apply.~~
7. ~~Section 5.1 does not apply.~~
8. ~~The licensee shall give the non licensee express instruction and authorization prior to permitting the non licensee to act on behalf of a person in a proceeding before an adjudicative body.~~

Assignment of tasks, functions: Canadian law student or Ontario paralegal student

2.1 (1) A licensee who practises law or provides legal services within any of the following settings in Ontario may assign to a Canadian law student or an Ontario paralegal student tasks and functions in connection with the licensee’s practice of law or provision of legal services within that setting:

1. The licensee’s professional business.
2. A licensee firm.
3. The Government of Canada.
4. The Government of Ontario.
5. A municipal government.
6. A First Nation, Métis or Inuit government.
7. A clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario.
8. Legal Aid Ontario, pursuant to Part III of the *Legal Aid Services Act, 1998*.
9. A program established by Pro Bono Students Canada.
10. An in-house legal department.

Assignment of tasks, functions: Ontario law student or Ontario paralegal student

(2) A licensee who practises law or provides legal services within any of the following settings in Ontario may assign to an Ontario law student or an Ontario paralegal student tasks and functions in connection with the licensee's practice of law or provision of legal services within that setting:

1. A student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*.
2. A clinical education course or program.

Assignment of tasks, functions: direct supervision required

(3) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services and shall directly supervise any Canadian law student, Ontario law student or Ontario paralegal student to whom the licensee assigns tasks and functions under this section.

- (4) Without limiting the generality of subsection (3),
- (a) the licensee shall assign only tasks and functions that the assignee is competent to perform;
 - (b) the licensee shall ensure that the assignee does not act without the licensee's instruction;
 - (c) the licensee shall give the assignee express authorization and instruction prior to permitting the assignee to act on behalf of a person in a proceeding before an adjudicative body;
 - (d) the licensee shall review the assignee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (e) the licensee shall ensure that the tasks and functions assigned to the assignee are performed properly and in a timely manner; and
 - (f) the licensee shall assume responsibility for all tasks and functions performed by the assignee, including all documents prepared by the assignee.

Non-application of sections to assignment of tasks and functions under this section

(5) For greater clarity, sections 3, 4, 5 and 5.1 and subsection 6 (1) do not apply with respect to a licensee assigning tasks and functions under this section.

Application of sections to assignment of tasks and functions under this section

(6) Subsection 6 (2) and section 7, with necessary modifications, apply with respect to a licensee assigning tasks and functions under this section.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, ~~in accordance with this Part,~~ assign to a non-licensee tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, ~~in accordance with this Part,~~ assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of each client.

- (2) Without limiting the generality of subsection (1),
 - (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
 - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
 - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
 - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
 - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
 - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and

- (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,
- (a) to give or accept an undertaking on behalf of the licensee;
 - (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
 - (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

- (2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Assignment of tasks, functions: mediation of ancillary issues relating to catastrophic impairment claims

- 5.1 (1) Despite clause 6 (1) (c), a licensee who holds a Class L1 licence may permit a non-licensee who holds a Class P1 licence to participate in mediation of ancillary issues relating to a claim of an individual who has or appears to have a catastrophic impairment, but only if the non-licensee is employed by the licensee or by the law-licensee firm of which the licensee is a member.

- (2) For the purposes of subsection (1), ancillary issues do not include issues relating to the determination of whether an impairment is a catastrophic impairment.

Tasks and functions that may not be assigned: general

6. (1) A licensee shall not permit a non-licensee,
- (a) to give the licensee's client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);

- (d) to sign correspondence, other than correspondence of a routine administrative nature; or
- (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee.

Tasks and functions that may not be assigned by Class L1 licensee

(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
- (a) the letter is in relation to the affairs of the licensee's client;
 - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
 - (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
 - (d) the letter is on the licensee's business letterhead; and
 - (e) the letter is signed by the licensee.

Tab 6.1.4

BY-LAW 7.1

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OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Interpretation

1. (1) In this Part,

“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“catastrophic impairment” means a catastrophic impairment within the meaning of the *Statutory Accident Benefits Schedule*;

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*;

“clinical education course or program” means

- (a) a course, program, project, placement or partnership that is organized or accepted by an Ontario law school and that provides Ontario law students with an opportunity to gain practical and applied legal experience, or
- (b) a course, program, project, placement or partnership that is organized or accepted by an Ontario educational institution that offers a legal services program and that

provides Ontario paralegal students with an opportunity to gain practical and applied legal experience;

“impairment” means an impairment within the meaning of the *Statutory Accident Benefits Schedule*;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation established under the *Law Society Act*;

“non-licensee” means an individual who,

- (a) is not a Canadian law student, an Ontario law student or an Ontario paralegal student,
- (b) is engaged by a licensee to provide her or his services to the licensee,
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee, and
- (d) in the case of the assignment of tasks and functions by a person licensed to practise law in Ontario as a barrister and solicitor, is not a person licensed to practise law in Ontario as a barrister and solicitor and, in the case of the assignment of tasks and functions by a person licensed to provide legal services in Ontario, is neither a person licensed to practise law in Ontario as a barrister and solicitor nor a person licensed to provide legal services in Ontario;

“Ontario law student” means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society;

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

“*Statutory Accident Benefits Schedule*” means the *Statutory Accident Benefits Schedule* within the meaning of the *Insurance Act*.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

Application: provision of legal services by student

2. This Part does not apply to the provision of legal services by a student under the direct supervision of a licensee pursuant to section 34 of By-Law 4.

Assignment of tasks, functions: Canadian law student or Ontario paralegal student

2.1 (1) A licensee who practises law or provides legal services within any of the following settings in Ontario may assign to a Canadian law student or an Ontario paralegal student tasks and functions in connection with the licensee's practice of law or provision of legal services within that setting:

1. The licensee's professional business.
2. A licensee firm.
3. The Government of Canada.
4. The Government of Ontario.
5. A municipal government.
6. A First Nation, Métis or Inuit government.
7. A clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario.
8. Legal Aid Ontario, pursuant to Part III of the *Legal Aid Services Act, 1998*.
9. A program established by Pro Bono Students Canada.
10. An in-house legal department.

Assignment of tasks, functions: Ontario law student or Ontario paralegal student

(2) A licensee who practises law or provides legal services within any of the following settings in Ontario may assign to an Ontario law student or an Ontario paralegal student tasks and functions in connection with the licensee's practice of law or provision of legal services within that setting:

1. A student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*.
2. A clinical education course or program.

Assignment of tasks, functions: direct supervision required

(3) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services and shall directly supervise any Canadian law student, Ontario law student or Ontario paralegal student to whom the licensee assigns tasks and functions under this section.

- (4) Without limiting the generality of subsection (3),
 - (a) the licensee shall assign only tasks and functions that the assignee is competent to perform;
 - (b) the licensee shall ensure that the assignee does not act without the licensee's instruction;
 - (c) the licensee shall give the assignee express authorization and instruction prior to permitting the assignee to act on behalf of a person in a proceeding before an adjudicative body;
 - (d) the licensee shall review the assignee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (e) the licensee shall ensure that the tasks and functions assigned to the assignee are performed properly and in a timely manner; and
 - (f) the licensee shall assume responsibility for all tasks and functions performed by the assignee, including all documents prepared by the assignee.

Non-application of sections to assignment of tasks and functions under this section

(5) For greater clarity, sections 3, 4, 5 and 5.1 and subsection 6 (1) do not apply with respect to a licensee assigning tasks and functions under this section.

Application of sections to assignment of tasks and functions under this section

(6) Subsection 6 (2) and section 7, with necessary modifications, apply with respect to a licensee assigning tasks and functions under this section.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may assign to a non-licensee tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of each client.

- (2) Without limiting the generality of subsection (1),
 - (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
 - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
 - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
 - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
 - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
 - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
 - (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,

- (a) to give or accept an undertaking on behalf of the licensee;

- (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
- (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Assignment of tasks, functions: mediation of ancillary issues relating to catastrophic impairment claims

5.1 (1) Despite clause 6 (1) (c), a licensee who holds a Class L1 licence may permit a non-licensee who holds a Class P1 licence to participate in mediation of ancillary issues relating to a claim of an individual who has or appears to have a catastrophic impairment, but only if the non-licensee is employed by the licensee or by the licensee firm of which the licensee is a member.

(2) For the purposes of subsection (1), ancillary issues do not include issues relating to the determination of whether an impairment is a catastrophic impairment.

Tasks and functions that may not be assigned: general

6. (1) A licensee shall not permit a non-licensee,
- (a) to give the licensee's client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
 - (d) to sign correspondence, other than correspondence of a routine administrative nature; or
 - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee.

Tasks and functions that may not be assigned by Class L1 licensee

(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
 - (a) the letter is in relation to the affairs of the licensee's client;
 - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
 - (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
 - (d) the letter is on the licensee's business letterhead; and
 - (e) the letter is signed by the licensee.

BY-LAW 4

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LICENSING

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PART V

PROVIDING LEGAL SERVICES WITHOUT A LICENCE

Interpretation

29. In section 30,

“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation;

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society.

Providing Class P1 legal services without a licence

30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

In-house legal services provider

1. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a single employer that is not a licensee or a licensee firm,
 - ii. provides the legal services only for and on behalf of the employer, and
 - iii. does not provide any legal services to any person other than the employer.

Legal clinics

2. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,
 - ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

- iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Not-for-profit organizations

- 3. An individual who,
 - i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,
 - ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Acting for friend or neighbour

- 4. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a friend or a neighbour,
 - iii. who provides the legal services in respect of not more than three matters per year, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

- 5. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

- ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and
- iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Member of Provincial Parliament

- 6. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who is a member of Provincial Parliament or his or her designated staff, and
 - iii. who provides the legal services for and on behalf of a constituent of the member.

Other profession or occupation

- 7. An individual,
 - i. whose profession or occupation is not the provision of legal services or the practice of law,
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
 - iv. who is a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category.

Interpretation

31. (1) In this section,

“employer” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“injured workers’ group” means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

“public servant” has the meaning given it in the *Public Service of Ontario Act, 2006*;
“survivor” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“worker” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

Office of the Worker Adviser

(2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:

1. Advise a worker, who is not a member of a trade union, or the worker’s survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker, who is not a member of a trade union, or the worker’s survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Office of the Employer Adviser

(3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:

1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Injured workers’ groups

(4) An individual who volunteers in an injured workers’ group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Interpretation

32. (1) In this section,

“dependants” means each of the following persons who were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member’s death or who, but for the member’s incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild;

“survivor” means a spouse, child or dependant of a deceased member of a trade union;

“workplace” means,

- (a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and
- (b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

Trade unions

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.
2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.
3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.

33. [Revoked.]

Interpretation

~~34. In this section and in sections 34.1 to 34.4,~~

~~“accredited program” means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;~~

~~“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;~~

~~“law firm” means,~~

- ~~(a) a partnership or other association of licensees each of whom holds a Class L1 licence;~~
- ~~(b) a professional corporation described in clause 61.0.1 (a) of the Act, or~~
- ~~(c) a multi-discipline practice or partnership described in section 17 of By Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;~~

~~“legal services firm” means,~~

- ~~(a) a partnership or other association of licensees each of whom holds a Class P1 licence;~~
- ~~(b) a professional corporation described in clause 61.0.1 (b) of the Act, or~~
- ~~(c) a multi-discipline practice or partnership described in section 17 of By Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence;~~

~~“Ontario law student” means an individual who is enrolled in a degree program at a law school in Ontario that is accredited by the Society.~~

Provision of legal services by student

~~34.1 A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society while,~~

- ~~(a) in service under articles of clerkship; or~~
- ~~(b) completing a work placement in the law practice program.~~

Provision of legal services by Canadian law student

~~34.2 (1) A Canadian law student may, without a licence, provide legal services in Ontario if the Canadian law student,~~

- ~~(a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;~~
- ~~(b) provides the legal services;~~
 - ~~(i) where the Canadian law student is employed by a licensee, through the licensee's professional business;~~
 - ~~(ii) where the Canadian law student is employed by a law firm, through the law firm;~~
 - ~~(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or~~
 - ~~(iv) where the Canadian law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and~~
- ~~(c) provides the legal services;~~
 - ~~(i) where the Canadian law student is employed by a licensee, under the direct supervision of the licensee;~~
 - ~~(ii) where the Canadian law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm;~~
 - ~~(iii) where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or~~
 - ~~(iv) where the Canadian law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.~~

Same

~~(2) — A Canadian law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the Canadian law student,~~

~~(a) — is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;~~

~~(b) — provides the legal services,~~

~~(i) — where the Canadian law student is employed by a licensee, through the licensee’s professional business,~~

~~(ii) — where the Canadian law student is employed by a legal services firm, through the legal services firm, or~~

~~(iii) — where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and~~

~~— (c) — provides the legal services,~~

~~(i) — where the Canadian law student is employed by a licensee, under the direct supervision of the licensee,~~

~~(ii) — where the Canadian law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or~~

~~(iii) — where the Canadian law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of;~~

~~(A) — a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or~~

~~(B) — a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.~~

Provision of legal services by Ontario law student: experiential settings

Student legal aid services societies

34.3 — (1) — An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,

- ~~(a) — volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the Legal Aid Services Act, 1998;~~
- ~~(b) — provides the legal services through the student legal aid services society to the community that the society serves and does not otherwise provide legal services; and~~
- ~~(c) — provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.~~

Legal clinics

~~————(2) — An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,~~

- ~~(a) — volunteers in, is employed by or is completing a clinical education course at a clinic, within the meaning of the Legal Aid Services Act, 1998, that is funded by Legal Aid Ontario;~~
- ~~(b) — provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services; and~~
- ~~(c) — provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the clinic.~~

Student pro bono programs

~~————(3) — An Ontario law student may, without a licence, provide legal services in Ontario if the Ontario law student,~~

- ~~(a) — provides the legal services through a program established by Pro Bono Students Canada; and~~
- ~~(b) — provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.~~

Provision of legal services by paralegal student completing a field placement

~~34.4 — A student enrolled in an accredited program and completing a field placement approved by the educational institution offering the program may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the student,~~

- ~~(a) — is completing the field placement with a licensee who holds a Class P1 licence or a Class L1 licence, a legal services firm, a law firm, a professional corporation described in clause 61.0.1 (1) (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;~~
- ~~(b) — provides the legal services,
 - ~~(i) — where the student is employed by a licensee, through the licensee's professional business;~~
 - ~~(ii) — where the student is employed by a legal services firm or a law firm, through the legal services firm or the law firm;~~
 - ~~(iii) — where the student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation, or~~
 - ~~(iv) — where the student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and~~~~
- ~~(c) — provides the legal services,
 - ~~(i) — where the field placement is with a licensee, under the direct supervision of the licensee;~~
 - ~~(ii) — where the field placement is with a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm;~~
 - ~~(iii) — where the field placement is with a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm;~~
 - ~~(iv) — where the field placement is with a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,
 - ~~(A) — a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or~~
 - ~~(B) — a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or~~~~
 - ~~(v) — where the field placement is with the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence or a Class P1~~~~

~~licence and who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.~~

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BY-LAW 4

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October 19, 2015 (editorial changes)
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LICENSING

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PART V

PROVIDING LEGAL SERVICES WITHOUT A LICENCE

Interpretation

29. In section 30,

“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation;

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society.

Providing Class P1 legal services without a licence

30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

In-house legal services provider

1. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a single employer that is not a licensee or a licensee firm,
 - ii. provides the legal services only for and on behalf of the employer, and
 - iii. does not provide any legal services to any person other than the employer.

Legal clinics

2. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,
 - ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

- iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Not-for-profit organizations

- 3. An individual who,
 - i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,
 - ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Acting for friend or neighbour

- 4. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a friend or a neighbour,
 - iii. who provides the legal services in respect of not more than three matters per year, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

- 5. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

- ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act (Canada)*, and
- iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Member of Provincial Parliament

- 6. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who is a member of Provincial Parliament or his or her designated staff, and
 - iii. who provides the legal services for and on behalf of a constituent of the member.

Other profession or occupation

- 7. An individual,
 - i. whose profession or occupation is not the provision of legal services or the practice of law,
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
 - iv. who is a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category.

Interpretation

31. (1) In this section,

“employer” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“injured workers’ group” means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

“public servant” has the meaning given it in the *Public Service of Ontario Act, 2006*;
“survivor” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“worker” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

Office of the Worker Adviser

(2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:

1. Advise a worker, who is not a member of a trade union, or the worker’s survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker, who is not a member of a trade union, or the worker’s survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Office of the Employer Adviser

(3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:

1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Injured workers’ groups

(4) An individual who volunteers in an injured workers’ group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Interpretation

32. (1) In this section,

“dependants” means each of the following persons who were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member’s death or who, but for the member’s incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild;

“survivor” means a spouse, child or dependant of a deceased member of a trade union;

“workplace” means,

- (a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and
- (b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

Trade unions

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.
2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.
3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.

33. [Revoked.]

Provision of legal services by student

34 A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society while,

- (a) in service under articles of clerkship; or
- (b) completing a work placement in the law practice program.

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FOR INFORMATION

**LICENSING PROCESS ANALYSIS: DIALOGUE ON
LICENSING ENGAGEMENT PROTOCOL**

19. The Law Society's Strategic Priority #1 focuses on enhancing licensing standards and requirements and their assessment with a focus on competence. In November 2016, Convocation approved the [PD&C Committee's recommendations](#) respecting the licensing process following an evaluation of the Pathways Pilot Project and input from the public and the professions regarding the licensing process.
20. Among the recommendations, Convocation approved the following:
5. *That Convocation direct that an analysis of the licensing process be undertaken for the purpose of making long-term recommendations for an appropriate, sustainable Law Society licensing process.*
 6. *That in the first quarter of 2017, the PD&C Committee provide Convocation with,*
 - a. *a report identifying the issues that should be the focus of the analysis and a proposed plan to address them;*
 - b. *a proposal for an engagement strategy that will involve relevant stakeholders throughout the process; and*
 - c. *a budget that will address resource requirements, including staffing and research resources.*
21. In coming to these recommendations the majority of the Committee recognized the need for a review and analysis of all aspects of the licensing process, as did Convocation, and a realistic consideration to develop a sustainable process. The decision to conduct the reviews is coherent with the Law Society's Strategic Priority #1 on enhancing licensing standards and requirements and their assessment with a focus on competence.
22. At its February 2017 meeting, the Committee approved a plan for the licensing process review. The plan is set out at [TAB 6.2.1: Licensing Process Analysis - Dialogue on Licensing Engagement Protocol](#) for Convocation's information. Costs of the engagement strategy set out in the attached proposal were anticipated and budgeted for 2017.



Licensing Process Analysis

Toward a Sustainable System

Prepared for:
Professional Development and Competence Committee

Prepared by:
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Organizational Strategy and Professional Competence
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February 2017

Dialogue on Licensing Engagement Protocol

Objective

To undertake an analysis of the licensing process for the purpose of making long term recommendations for an appropriate, sustainable Law Society licensing process for lawyers¹.

Licensing Process Review Protocol and Schedule

The process of developing the framework for a valid and sustainable licensing process will include a multifaceted approach that will result in the creation of a long term vision for Ontario's lawyer licensure system. This will include:

- A process of researching, gathering and sharing key information and data about Ontario's lawyer licensing system and systems outside of Ontario
- Engaging extensively with stakeholders to support a greater understanding of licensing challenges and opportunities
- Considering available, appropriate and sustainable licensure protocols and options for addressing those challenges

There will be seven (7) stages of development in this licensing process review:

1. Research, analysis and synthesis of key information and data that will be used to inform discussions and deliberations - February to April 2017
2. The "Dialogue on Licensing" stakeholder engagement strategy (outlined below), focused on an extensive interaction with members and groups within the lawyer profession to exchange information and receive input on the current and future challenges and opportunities for licensing of lawyers in the public interest - April to September 2017
3. Information gathered in the research and engagement phases set out above will be provided to the PD&C Committee, along with additional research and documentation as required, to support decision-making on the development of a sustainable licensing process solution - September to December 2017
4. Preparation of recommendations for next steps in the development of a sustainable licensing process, including: purpose of any changes, goals and objectives in implementing change, anticipated outcomes, anticipated implementation steps and schedules, and change management and/or cost impacts. The report will be presented at Convocation seeking approval to distribute publicly - presented to Convocation January 2018

¹ PD&C Committee Report to Convocation, November 2016.

5. Seek additional stakeholder input on the recommendations - February and March 2018
6. Committee consideration of input, reflection on input, and preparation of final recommendations to Convocation for approval of a plan - April 2018
7. Implementation of the plan including the establishment of scheduling, project management, and ongoing evaluation activities – commencing May 2018.

Engagement Strategy: The Dialogue on Licensing

The “Dialogue on Licensing” will support a series of facilitated stakeholder engagement meetings to promote the discussion of options for the development of a sustainable licensing process.

The engagement strategy will seek input on potential solutions, practical impacts and acceptability of potential change. The effort has dual objectives:

1. It will be a knowledge transfer activity – a means of providing the profession with information that they require to understand the current licensing system and environment, and provide informed input on potential future licensing requirements;

and
2. It will be the Law Society’s opportunity to receive input from interested members on a variety of discrete issues with the benefit of a platform that allows two-way communication and, if necessary, correction of misconceptions or erroneous perceptions about today’s licensing realities.

The effort will focus on having a holistic dialogue about the continuum of lawyer training and competence development, how the lawyer licensing process fits into that continuum, and what that process is meant to achieve. This approach has been designed to avoid having the licensing process discussion in a vacuum, or have it move immediately and only to the issue of transitional training (articling or its alternatives). For the past many years the issue of articling has overwhelmed most other discussions about licensing and has focused the debate on the regulator’s pre-licensing requirements (between law school and call to the bar) only. This has led to sub-optimal, or at times incomplete, analysis.

Unlike previous licensing discussions, the current proposal is meant to engage stakeholders in advance of the PD&C Committee and Convocation deliberations on and recommendations for change.

Entering into this process, the major themes/challenges to be emphasized and addressed through the dialogue and then through the decision making process of the Law Society thereafter, are:

- The need for a sustainable licensing process that appropriately and reliably assesses core competencies of new lawyers, in the public interest
- The impact of and how to manage the steady increase in the number of entrants into the licensing system and the ensuing pressures on the sustainability of the system
- Continuing and increasing dissatisfaction amongst licensing candidates and the profession regarding the traditional licensing model
- Current and ongoing changes in the future of the provision of lawyer services and expectations of consumers and the need for the licensing process to assess competencies that will support that future provision
- Assuring fairness of the licensing process components in a changing professional environment while balancing that with an understanding that not everyone who wants to be a practising lawyer is capable of being one.

Methodology

Discussion Framework

Each discussion item(s) will be the subject of at least one, or more, in-person meetings. A variety of stakeholders will be invited to participate in each dialogue session. They will include participants from all stages of the continuum of lawyer training and competence development. These stakeholders will present a range of backgrounds, legal training and employment, including law school students, practising lawyers from a variety of practice areas and geographies, non-private practising lawyers, law school faculty, law associations, legal diversity groups and others involved in the continuum of legal training and ongoing development.

The benefit of varied participants in all of the sessions is the opportunity to have them hear the views of others, balancing the tendency to personalize or restrict perspectives only to individual experiences. The dialogue sessions would essentially act as focus groups, to provide information about, educate on and define the issues.

The involvement in the in-person meetings will be a combination of volunteers (responding to a call for interest put out by the Law Society) and invited participants (the Law Society formally requests representatives from certain groups to join the dialogue to ensure that a specific perspective is brought forward).

The meetings will take place in a variety of locations across the province. RSVPs for participants at all in-person meetings will be required. Unless there is a sufficient number of RSVPs, the session will not be held. The lack of willingness to participate may, in and of itself, be a message of the lack of interest that the profession has in some or all of the particulars of the dialogue sessions.

In addition to the in-person dialogue sessions, there will be an online method of seeking input from participants who would like to be included but were unable to attend an in-person

meeting. This may be as simple as a web page where the discussion items and background information are posted, requesting input via email or other engagement platform.

Contemporaneously with the dialogue sessions, various Law Society representatives including the Treasurer, Chair and Vice-Chairs of the PD&C Committee, and other board members will be participating in ongoing outreach activities with the legal community and will bring these important issues to the attention of all groups and seek input throughout the process. This will include regularly scheduled outreach meetings, events held by legal associations and organizations, and other opportunities.

Outcomes

- Following a series of in-person meetings with groups of diverse participants, there will be a clearer indication of the profession's appetite for change in the licensing process
- The dialogue will assist to validate potential future changes that are specific, realistically achievable, and acceptable and support the regulatory mandate of assuring a competent lawyer profession in the public interest
- The dialogue outcomes will inform Committee and Convocation decision-making.

Schedule

- Between February and April 2017:
 - Finalize the issues list for the in-person sessions
 - Choose dates and book spaces for dialogue sessions
 - Prepare supporting materials for each dialogue theme and its issues and the communications platform for posting the information
 - Post notifications/market and communicate the dialogue series, seeking participant RSVPs
 - Confirm dialogue groups based on expressions of interest and directed invitations
 - Develop the discussion plan for each session
- Law Society representatives (Treasurer and others), when meeting with stakeholders between now and the end of the dialogue sessions, will outline the issues and explain objectives in moving forward – soliciting participation in the sessions or provision of written input
- Commence Dialogue on Licensing in April 2017, continuing through to September 2017
- Approximately 10-15 predetermined in-person interactions across the province; if insufficient RSVPs (less than 25), the in-person session will be cancelled

The Dialogue

Management of Dialogue Sessions

Each session will be led by an independent facilitator retained by the Law Society to manage the dialogue. The engagement activities will also be supported by project coordinators to ensure timely completion of tasks.

The facilitator and coordinators will be responsible for:

- Assisting to manage expectations during each session
- Controlling the interactions of participants to ensure that all who wish to comment are provided the opportunity to do so
- Supporting the discussion to ensure that the key elements of the theme of the particular session are adequately canvassed in the group, by keeping the dialogue on track
- Ensuring that discussion reasonably restricts the amount of individual anecdotal information (war stories and historical memories) and focuses on current facts and data and potential future options and changes
- Gathering and posting all relevant supporting documents and information in advance of each session
- Monitoring dialogue sessions and completing reporting on the outcomes of each session
- Developing a report on the input received during the dialogue on licensing process and sessions, by theme, options, challenges and proposed next steps and/or additional dialogue considerations.

Proposed Dialogue Themes

Session #1

- Multiple sessions in multiple locations in Ontario

1. The Purpose: what problem(s) are we trying to solve, or what challenges are we seeking to address, by changing the licensing process?

- This general discussion is meant to elicit responses that will guide the overall understanding of the key concerns or challenges of lawyer education and training, licensing activities, and maintenance of competence post-licensing
- Supporting materials will provide a list of issues that the regulator is in a position to address, and an issues list that the regulator is not in a position to address. For instance, discussions may explain:

- The regulator is likely not able to/cannot:
 - Restrict the influx of candidates coming from international jurisdictions
 - Restrict the size of incoming law school classes
 - Require that law schools change their curriculum to focus more significant effort on skills and tasks training
 - Establish an entry-level assessment benchmark (licensing examination pass rate) that is not fully validated and defensible
 - Establish licensing requirements that result in invalid, indefensible, or unreasonable barriers to completion
- The regulator is likely able to/can:
 - Ensure that the licensing process is consistent/defensible in its application to all candidates
 - Change the components of licensing to ensure there are no unreasonable barriers to entry, ensuring that the public is protected
 - Address the stage of licensing at which assessments should occur depending on what the assessment is meant to confirm – for example – pre or post-licensing options
 - Increase the entry level assessment benchmark (the examination passing score or the extent of assessment(s) of other skills and tasks) if there is evidence to indicate it is necessary to do so in the public interest
- Information provision for Session #1 will include
 - Law school curriculum – what does law school in Canada look like today?
 - Demographics and numbers related to Canadian trained licensing candidates
 - Roles of the various players in the continuum of legal learning – the academy, the regulator, the profession: obligations, protocols, levels of authority and decision making, where one ends and the other begins
 - International entrants into the Canadian legal market – demographics and numbers
 - Scope and purpose of the NCA assessment process for international entrants
 - Obligations of regulatory authorities respecting international entrants (OFC)
 - Purpose of licensure – ensuring defensibility by avoiding protectionist decision-making or anticompetitive behaviours, including Competition Bureau considerations

Session #2

- Multiple sessions in multiple locations in Ontario

2. The Legal Market: Supply and Demand in the Lawyer Profession in Ontario

- Studies (PRISM) show that the supply of lawyers will far outstrip demand in 10 years' time – by a margin of 1 job for every 1.6 newly licensed lawyers. What does this mean for the profession, and more specifically, what might this mean for the licensing assessment protocols?
 - Consider changes to the licensing process requirements and/or the post-licensing application of lawyer skills to address the anticipated supply and demand issue
 - Consider how best to support the continued training and competence in the circumstances of the continuing increase in licensed lawyers
 - Consider “levels” of licensing that may address alternatives for practice and future client/population needs
 - Consider the appropriateness of all new lawyer licensees receiving a general license to practice at call to the bar, entitled to practice in any and all areas at any time throughout their entire careers
 - Assuming there may be a change in the manner in which legal knowledge and skill will be applied to legal jobs in Ontario in the near future (changes in the provision of legal services which are already happening), is it appropriate that all candidates in the licensing process should be going through the exact same process to gain entry to the lawyer profession?
 - Should the “paths” to licensing remain equivalent in their requirement to assess certain core competencies at entry, or should they be different and dependent upon selecting a specific outcome for one’s career (for e.g., traditional practice (generalist), focused practice (specialist), non-practising, etc.?)
 - Consider the setting of multiple career paths with differentiated licensing requirements
- Information provision for Session #2 (building on session #1)
 - Law schools in Canada – cohort sizes, curriculum, training opportunities
 - NCA process – how the assessment works, cohort sizes and demographics
 - Ontario’s licensing process – number of registrants and demographics

- Demographics of the profession – age of the profession, geographic distribution of profession, length of career (greying), lack of succession
- Data on supply and demand – numbers in profession, annual entrants, PRISM study predictions, data from international jurisdictions
- Sources of candidates – Canadian law schools, international law schools/NCA
- Synopses of change/adaptations in other jurisdictions challenged with similar concerns (U.S., Australian, UK examples)
- Examples of licensing paths and changes/adaptations from other regulated professions – e.g., CPA, PEO, etc.

Session #3

- Held only in Toronto by webcast (session is predominantly information provision and education about process)

3. Ontario's Lawyer Licensing Process: The Licensing Examinations – Purpose and Scope

- What is the purpose of the examinations?
 - How do the examinations achieve that purpose?
 - Do written (multiple-choice) practice and procedural examinations using substantive law application in practical legal contexts continue to be the most appropriate measure of entry-level competence for licensing?
 - What does it mean to create a “more robust” assessment protocol for entry to the lawyer profession?
 - How is the need for such a change determined?
 - Is this only about licensing examinations?
 - What are the benefits and risks of changing or not changing the entry level examination benchmark and/or other licensing requirements?
- Information provision for Session #3
 - Outline of the development process for Ontario's current licensing examination process
 - Entry-level competency profile and expectations
 - Examination success rates (pass/fail), by entry path and demographics
 - Comparative analysis of Ontario licensing examinations past and present, and examination results in other jurisdictions, and in other regulated professions – where available

- Policies for writing, rewriting and returning to the process after hiatus

Session #4

- Multiple sessions in multiple locations in Ontario

4. Ontario's Lawyer Licensing Process: Transitional Training Requirement

- Is transitional training a necessary part of the lawyer entry-level licensing regime?
 - What is the purpose of transitional training?
 - Are the current transitional training options (articling/LPP/exemption based on prior practice experience) achieving their purpose?
 - Does a work placement assure/confirm capacity to be able to practice competently, safely and ethically?
 - What are the challenges regarding access to transitional training – are they acceptable or, if not, can they be overcome? Why and how?
 - Insufficient numbers of articling placements
 - Candidates without articles are not choosing the LPP
 - Impact of insufficient numbers of placements on the quality of training
 - Consider the scope and timing of skills and tasks (transitional) training in the overall continuum of legal learning and legal career path
 - What options might there be for achieving optimal assurance of practice-ready capacity in the public interest?
 - Consider other regulated professional environments, scope and timing of transitional training activities
- If transitional training is considered a necessary component of the licensing process, address the inconsistency in training posed by the current transitional training paths (articling placements versus the LPP, and articling placement versus articling placement)?
 - Consider: articling only in a litigation practice vs. clerkship at a court vs. simulated skills training only

- Which of these is better/worse/not appropriate for pre-licensing entry level assessment? Why?
 - Should all pre-licensing transitional training be consistent in the requirement to achieve certain defined skills and tasks competencies?
- If articling is maintained, is it necessary to ensure there are sufficiently consistent training activities/placements available for candidates in every placement?
 - If yes – how?
 - If no – what are the concerns and risks of inconsistency and can they be/are they overcome by the importance of pre-licensing on-the-job training?
- If the LPP is maintained, is it necessary to ensure there is a work placement as part of that training path?
 - Can a simulated skills and tasks training provide a sufficient alternative for on-the-job training at the point of entry to the profession?
 - Can a simulated skills and tasks training provide a level of consistency that other paths of transitional training cannot (articling, exemption based on prior experience)?
 - Could this be a more appropriate and sustainable option for the future of lawyer licensing in the public interest?
- Accepting that transitional training is not consistent – is its objective related to gaining exposure to the profession, or as a means of recruitment (firm) or job hire back (candidates)?
 - Are these appropriate objectives for an entry level pre-licensing assessment process?
 - Are there alternative means to achieving this exposure and/or job search opportunities in the continuum of lawyer training and competence development?
- Environmental Scan – looking at other jurisdictions with and without transitional training for lawyer licensing candidates:
 - Is there evidence that the existence of or lack of transitional training results in a greater or lesser quality of service provided by newly licensed lawyers?

- Information provision for Session #4
 - Background information and outline of articling and the LPP
 - Incidence of the completion of transitional training skills and tasks activities in articling and LPP (Pathways Evaluation Report)
 - Statistics on articling placements – demographic and geographic distributions, numbers
 - Statistics on LPP work placements – demographic and geographic distributions, numbers
 - New York or other U.S. State bar outcomes (no transitional training in advance of licensing), and the U.K./Australian bar outcomes (required completion of transitional training either pre- or post-licensing (including limited license requirements))
 - Statistics of other jurisdictions with or without lawyer pre-licensing transitional training related to quality and capacity of legal professionals – as evidenced by key indicators such as incidence of misconduct and negligence
 - Information about transitional training requirements (pre- and post-licensing) of other regulated professions in Ontario

TAB 6.3

FOR INFORMATION

**PROFESSIONAL DEVELOPMENT & COMPETENCE DIVISION
ANNUAL RESOURCE AND PROGRAM REPORT**

23. The PD&C Division Annual Resource and Program Report is set out at [TAB 6.3.1: Annual Report](#) for Convocation's information.
24. Providing an annual report to the PD&C Committee and Convocation enables benchers to see, at a glance, the operational effect of their approved PD&C policies and the work done within the PD&C Division.



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

Professional Development and Competence Department

Program and Resource Report 2016

FOR INFORMATION ONLY

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February 2017

Professional Development and Competence Operations Report 2016

2016

2,188 LAWYERS LICENSED

1,945 ARTICLING PLACEMENTS

231 LPP CANDIDATES

994 PARALEGALS LICENSED

54,044 CPD REGISTRANTS

126,332 ACCESSCLE VISITS

21,111 LEGAL RESEARCH QUESTIONS

7,851 PRACTICE MANAGEMENT QUESTIONS

438 LAWYER PRACTICE REVIEWS

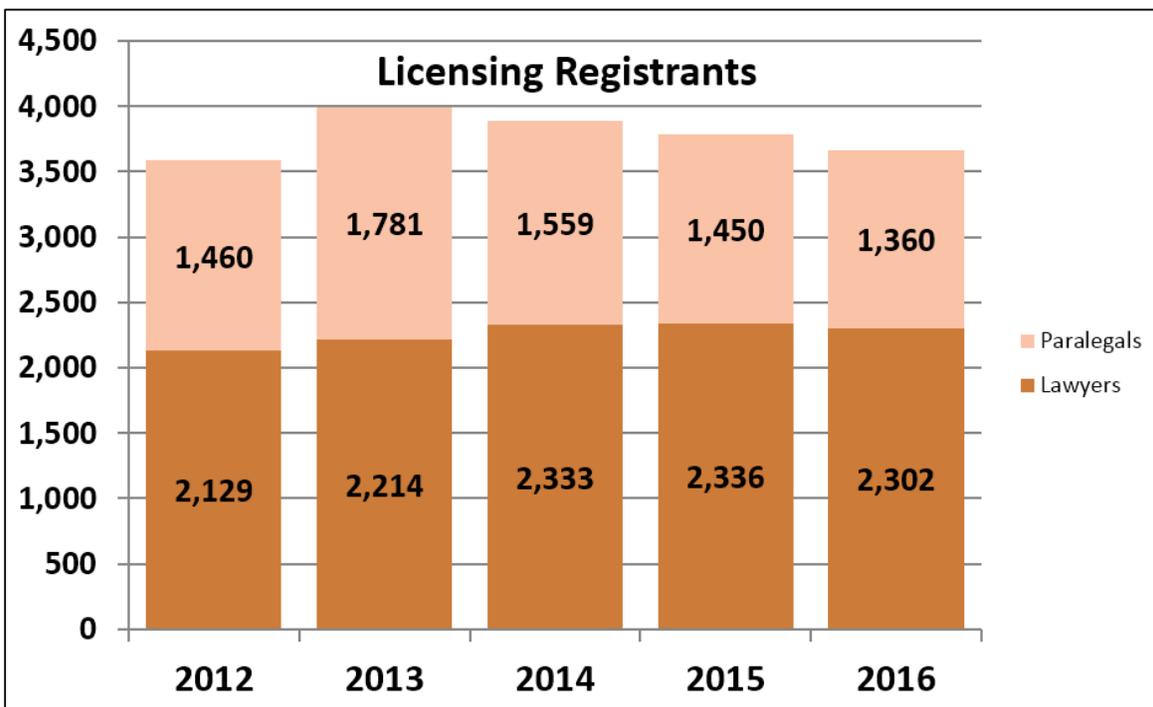
147 PARALEGAL PRACTICE AUDITS

1,455 SPOT AUDITS

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Licensing

The licensing cycle begins each year on May 1 and a registered lawyer candidate must be called to the bar within three years of their entry in a licensing year. Paralegals must also complete licensing requirements within three years, but the paralegal licensing year begins on June 1. Paralegal registrants are increasingly likely to come from a community college, rather than a private college. Canadians comprise over 60% of lawyer candidates registering under the National Committee of Accreditation process from the United Kingdom and Australia, and 51% of those coming from the United States, the top three sources of NCA candidates.



Experiential Training

There were 1,945 articling placements in 2016 and 1,772 were traditional 10 month, full-time Articles. Articling principals have been filing plans and reports at high rates, with 93% filing a training plan and 92% filing reports. 92% of candidates have also filed reports on the skills they



Strategic Plan: LEAD AS PROFESSIONAL REGULATOR

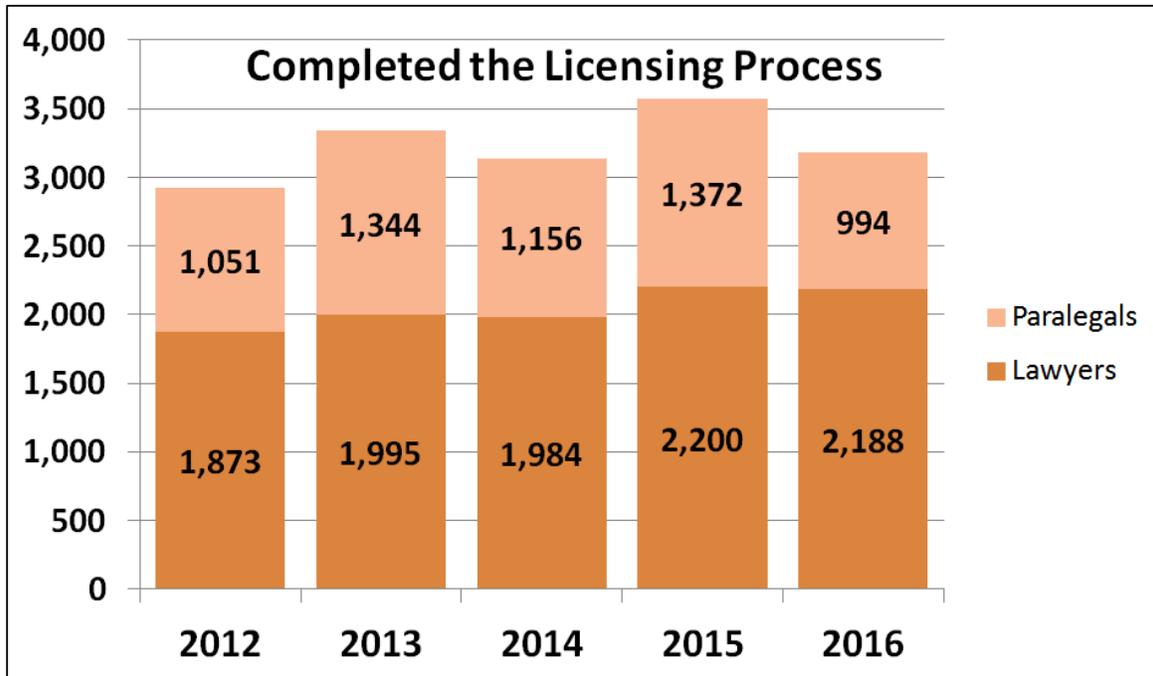
The Law Society of Upper Canada has the only psychometrically validated legal professional licensing examinations process in Canada and continues to lead in the area of lawyer and legal services assessment protocols both nationally and internationally.

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have gained and tasks they have undertaken. 257 candidates began the 2016-2017 Law Practice Program, up from 231 who completed the 2015-2016 program year.

New Licensees

The vast majority of licensees complete the standard licensing process. Roughly 4% of lawyer licensees have entered as licensees through the national mobility process.



Certified Specialists

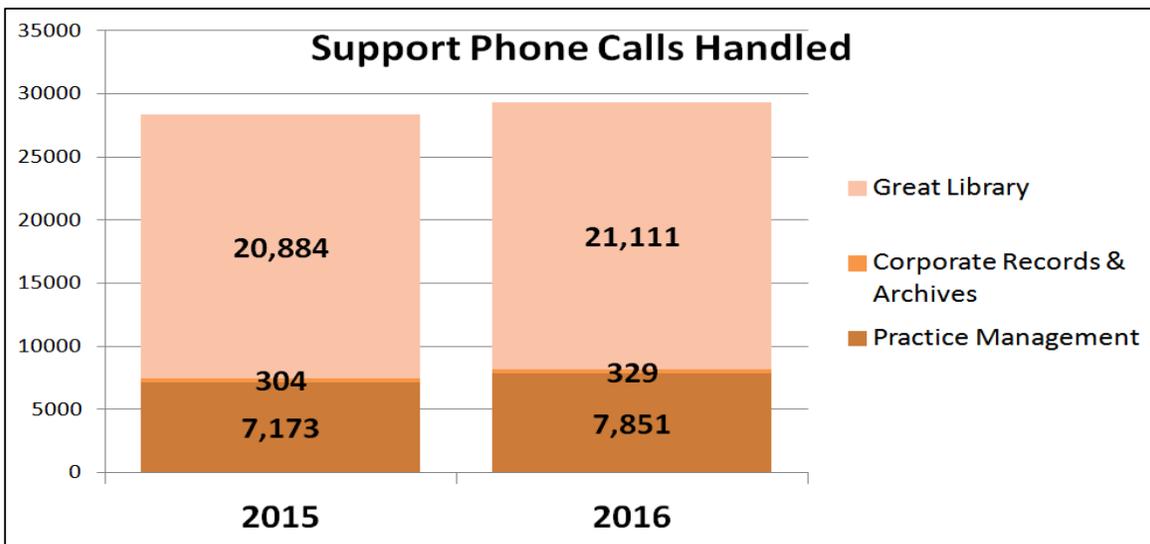
Certified Specialists continue to account for about 2% of practising lawyers. 804 lawyers have achieved 826 specialist designations. The new Indigenous Legal Issues designation was finalized in 2016 and applications from prospective specialists are being accepted. To date, two (2) applications have been received.

Competence

Numerous supports exist for Law Society licensees to receive assistance to enable them to competently practice law. The Coach and Advisor Network was launched in 2016 and has recruited 84 lawyers and paralegals to its roster and has received requests from over 80 individuals to be matched with a coach or advisor, or both.

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Licensees access professional staff for help with their needs. Lawyers discuss ethical issues on the practice management helpline. Research staff answer reference questions relating to legal research and corporate knowledge.



Practice Management Helpline calls often deal with conflicts of interest and trust accounts, two of the top topics for both lawyers and paralegals. Those two topics account for over 18% of lawyer calls, while scope of practice is the clear leader for paralegals at 16.5% of calls.

Great Library continued to provide both physical and digital information to licensees. Over 23,000 books were used in the library’s collection. Licensees received over 35,300 pages of legal research, e-mailed directly to them. The library’s digital collections, centered around AccessCLE’s free CPD material, was visited over 126,300 times in 2016. This is a 30% increase over 2015. The library’s mobile app was downloaded nearly 2,200 times and users searched the library’s collections over 12,000 times through the app.

At the end of last year, I experienced the breakdown of a relationship with a longstanding client, which quickly became extremely volatile.... I would like to sincerely thank the Practice Management Department for their help during this process, which has been extremely difficult and stressful.

Anonymous Caller

Practice Management Helpline

Thank you so much. The Lawyer was still in the library and he is very appreciative of the quick service!

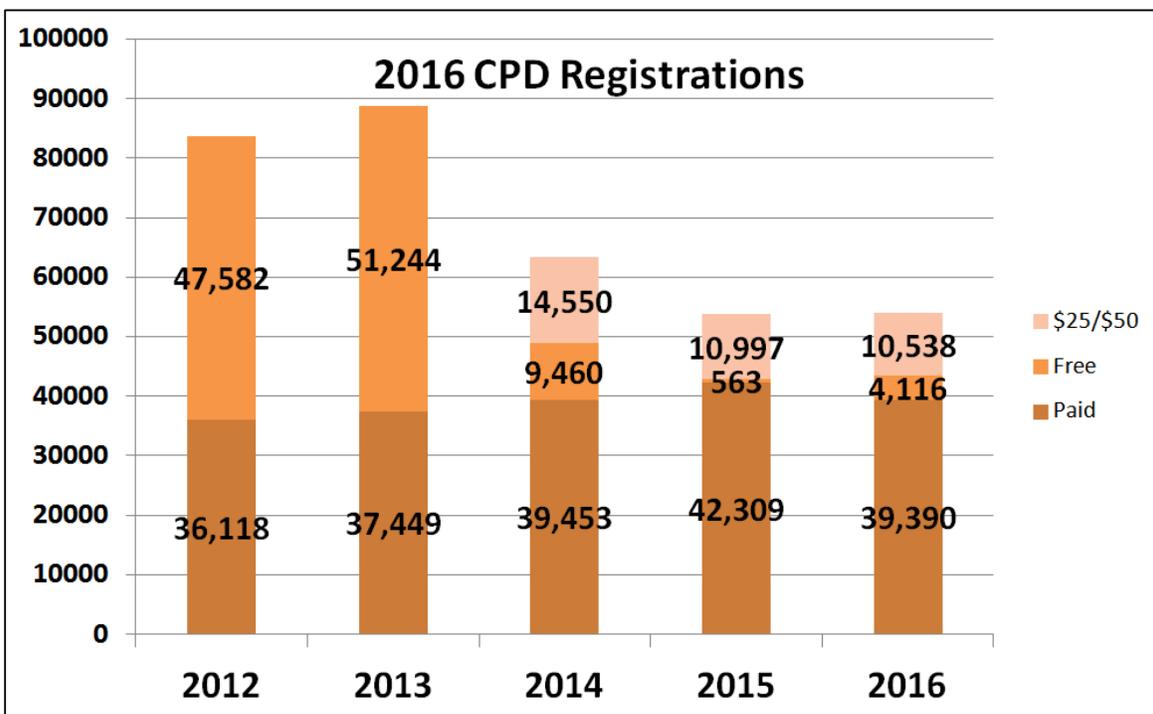
Courthouse librarian

Great Library

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Education

PD&C staff produced 149 CPD programs, including 86 live programs, 58 replays, and 5 interactive self-paced e-Courses. The Law Society stopped providing free professionalism programming as of 2014. If there is a particularly important issue of interest to all practitioners, such as New Rules of Professional Conduct, or the recent program on accessibility for disabled persons, CPD continues to offer those for free to ensure that the learning is available to all licensees.



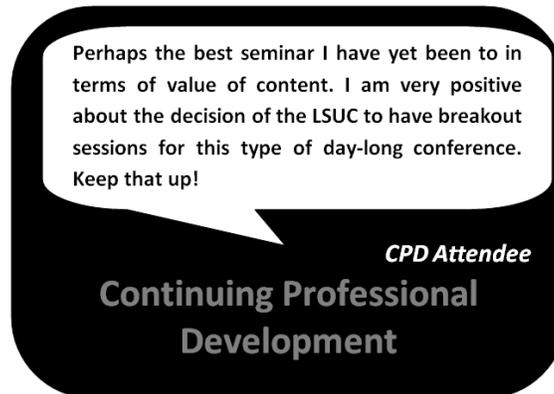
The CPD department researched, developed and categorized practice competencies by substantive areas of law and began to introduce them into the CPD program process as the benchmarks for learning. They address basic, intermediate and advanced knowledge, skills and abilities.



Strategic Plan: PRIORITIZE LIFE-LONG COMPETENCE

The CPD department will continue in 2017 to review and validate this preliminary set of competencies as the department shifts to a competencies-based curriculum.

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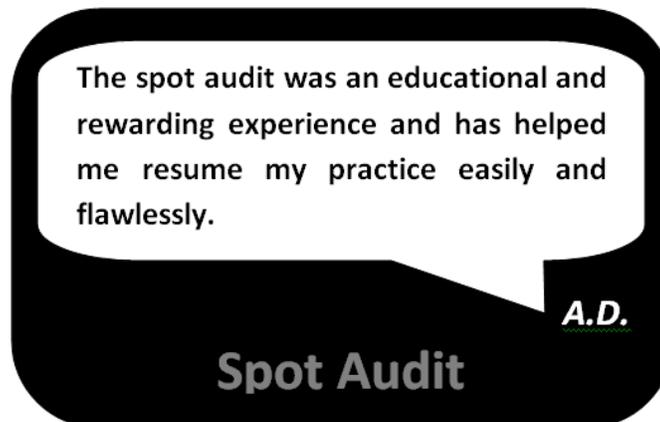


The Summit and 6-Minute Lawyer courses continue to be among the most popular. In the 2016 program lineup, 36 were entirely new concepts developed to address feedback and input received from the profession on their continuing education needs.

Quality Assurance

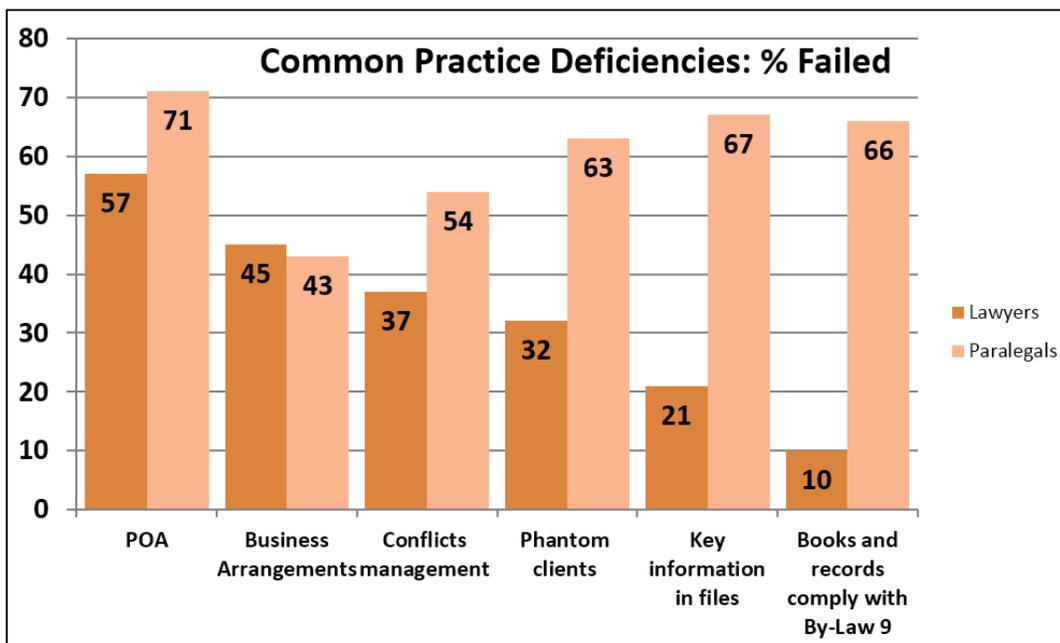
The Law Society provides three quality assurance activities: Spot Audits, Practice Management Reviews for lawyers, and Practice Audits for paralegals. The programs have been well received by licensees who indicate a measurable impact on their practices.

The majority of law firms that received a spot audit in 2016 had either minor deficiencies (47%) or deficiencies that were readily remediated to the Law Society's satisfaction through the monitoring process (37%). 438 lawyer practices underwent a practice management review in 2016. About 28% did not meet professional competence standards and were required to undergo a follow-up review. Sole practices made up 73% of follow-up reviews, with small firms accounting for 25%. 147 paralegal practices were practice audited in 2016, and 47 of those were follow-up visits.

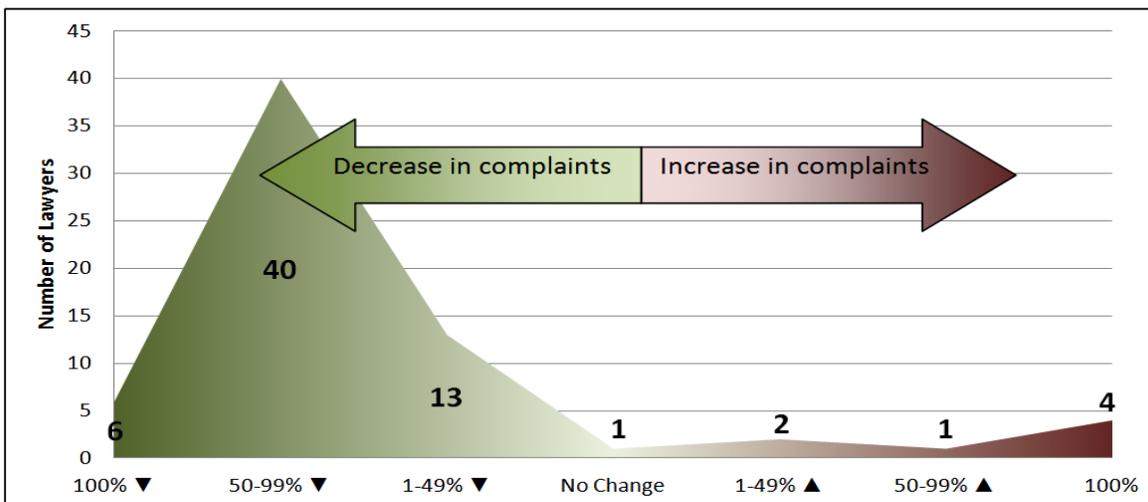


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There is a high degree of satisfaction with the practice reviewers, the spot auditors, and the impact of the review process. 97% of lawyers and 94% of paralegals found the process to be constructive.

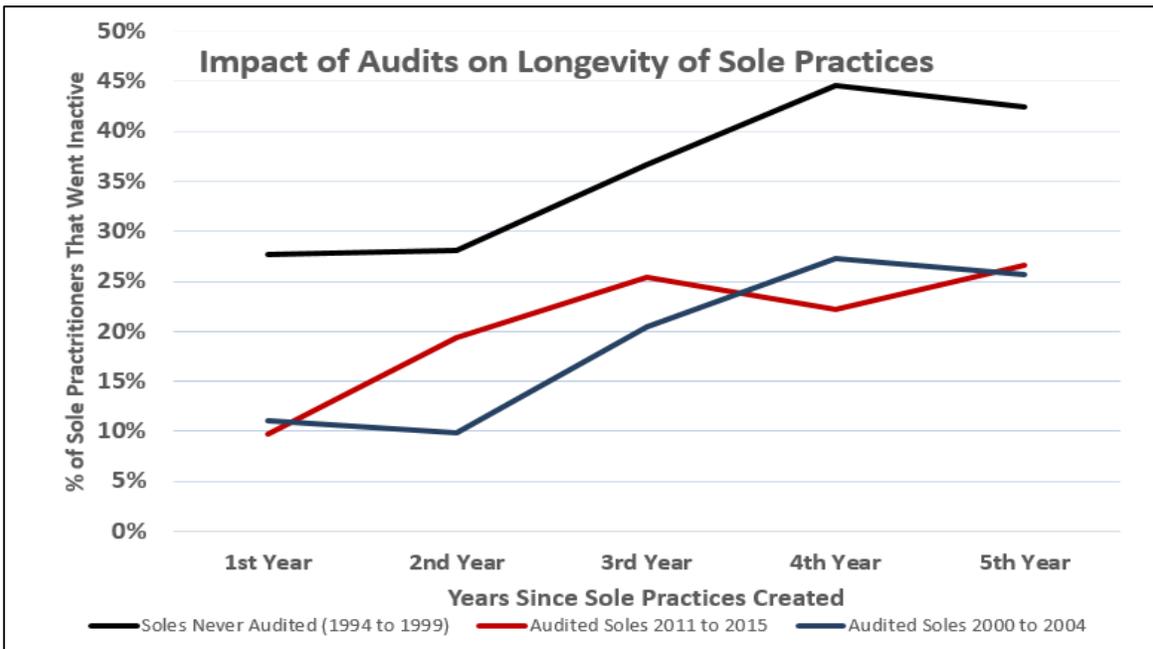


The department monitors practice trends in the profession. Lawyers who are experiencing an increase in complaints and other issues may be selected for a focused review. Those selected for a focused review exhibited a substantial change in the number of complaints they received in the years following that review.



Professional Development and Competence Operations Report 2016

Spot audits have been shown to improve the longevity of solo law practices. All newly formed solo practices receive an audit within their first two years. While direct correlations are difficult to make, one measure of overall improvement within the profession is to look at the number of solo law practices that become inactive (closing) in their first few years. The five-year period immediately preceding the initiation of the spot audit program – 1994-1999 – was compared with two five-year periods after implementation. In both of the subsequent five-year periods – 2000-2004 and 2011-2015, the rate of solo practices that had received an audit becoming inactive was 16-17% lower than those who did not receive audits before the program began.



I learned a great deal from this Practice Review. It was a wonderful learning experience for me. The Counsel, Practice Review was a phenomenal teacher and he made the process feel like a mentor/mentee session.

S.S.

Practice Review