



Law Society
of Ontario

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The Honourable William Francis Morneau
Minister of Finance
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5
Sent by email: bill.morneau@canada.ca

Dear Minister Morneau:

We are writing to thank you for your leadership in designing and implementing the Canada COVID-19 Economic Response Plan, and to request your support in ensuring that it addresses the economic hardships faced by lawyers, paralegals and licensing candidates, particularly those working in sole and small practices.

Mandated to govern Ontario's legal professions in the public interest, the Law Society has a duty to act in a manner that facilitates access to justice for the people of Ontario. Lawyers and paralegals play vital roles in providing legal services, advice and representation to individuals and businesses in their local communities.

As a result of the sudden economic downturn and reduction in court services caused by the COVID-19 outbreak, some legal professionals have sustained significant declines in revenue and business opportunities. These professionals are looking to the federal government for a financial lifeline. Some have found it in the Response Plan but others have not. Even though sole proprietorships and small firms are essentially self-employed individuals and small businesses, they may fall through the cracks of the Response Plan, depending on the structure and operation of the individual practice.

Lawyer and paralegal offices are operated through myriad business structures of varying complexity:

- Some operate through a sole proprietorship as unincorporated owners, not employees;
- Others are incorporated owners operating through a professional corporation (“PC”), and treated as employees of the PC;
- Some others operate through a PC that is a partner in a partnership (PCs can and often are members of a partnership).

With respect to income, lawyers and paralegals operating through a sole proprietorship earn business income, whereas those operating through a PC pay themselves either a salary or dividends. To further complicate the picture, a PC that is a member of a partnership receives professional income (a type of business income), as its revenue from the partnership, not employment income.

Owing to the diverse business structures used by legal practitioners, some will be eligible for assistance, while others will not, despite the fact that the practitioners may essentially operate the same kind of business, with the same revenue losses caused by the pandemic. Our licensees have identified some instances where this inconsistency could arise:

1. The **Canada Emergency Wage Subsidy (“CEWS”)** may not be applicable to subsidize:
 - a. the salary of a lawyer or paralegal who operates through a sole proprietorship and may not be considered an “eligible employee”;
 - b. the dividends that lawyers or paralegals pay to themselves when operating through a professional corporation (“PC”), as dividends may not constitute “eligible remuneration”;
 - c. the professional income of an incorporated partner, i.e., a lawyer or paralegal who operates through a PC, where the PC is a member of a partnership (this is an area of uncertainty).
2. The **Canada Emergency Business Account (“CEBA”)** may not be available to a lawyer or paralegal who had no payroll expenses in 2019 (as they had no employees and did not pay themselves a salary) or whose payroll expenses in 2019 were less than \$20,000.

In addition, the **Canada Emergency Response Benefit (“CERB”)** does not appear to be of assistance to some articling students whose position has disappeared as a result of COVID-19. For the vast majority of Ontario’s approximately 2,000 licensing candidates, the path to licensure involves articling (interning) for a lawyer over a 10-month period, starting in August and concluding the following June. This year, we

expect articling terms to start later in the year, as the Law Society has reduced the minimum articling period to eight months—a proactive move intended to mitigate against possible losses of articling positions due to the pandemic. Since the 16-week CERB eligibility period ends on October 3, 2020, many articling candidates may not be eligible for the CERB, even though they are required to complete the articling phase of their training before qualifying as lawyers. We suggest that the CERB be extended to cover university and college graduates, such as articling candidates, who must complete a period of interning to qualify in their occupations.

In Ontario, lawyer and paralegal offices have been declared “essential businesses”. They are allowed to remain open during the state of emergency as they provide professional services that support the justice system and help to keep the economy moving. While most non-urgent court matters have been postponed, legal professionals are working every day to represent clients on remote bail hearings and guilty pleas, advise laid-off and redeployed workers, represent tenants unable to pay their rent, advise clients in family law disputes, prepare wills and powers of attorney, close real estate transactions and provide many other legal services. When our economy reopens and our judicial system returns to its regular operations, legal representation will be more important than ever, as businesses resume operations and parties seek to resolve long-delayed matters.

Sole practitioners and small firms work in the trenches of the justice system and, as such, will be best positioned to step in and facilitate access to justice. However, they will only be able to do so if their practices survive, and for that, they need to be supported now.

Thank you in advance for your attention to this important matter. Should you have any questions or wish to discuss any aspect of our request, I am available at your convenience.

Sincerely,



Malcolm M. Mercer
Treasurer

cc: The Right Honourable Justin Trudeau, Prime Minister of Canada
The Hon. David Lametti, Minister of Justice and Attorney General of Canada