



Barreau
de l'Ontario

Tab 5.1

Report of the Alternative Business Structures Working Group

Permitting lawyers and paralegals to provide services through charities and not-for-profit corporations: A draft regulatory framework

Committee Members:

Susan McGrath (Chair)
Fred Bickford
Marion Boyd
Suzanne Clément
Cathy Corsetti
Janis P. Criger
Carol Hartman
Brian Lawrie
Jeffrey Lem
Anne Vespry

Authored By:
Juda Strawczynski
jstrawcz@lso.ca

October 25, 2018



Report of the Alternative Business Structures Working Group

Table of Contents

Issue..... 2

Executive Summary 2

Background 3

Implementation 4

 A. Policy Implementation4

 B. Cost.....10

 C. Evaluation10

 D. Follow Up.....11

Issue

The following report for information from the Alternative Business Structures Working Group (“Working Group”) presents a draft regulatory framework to implement Convocation’s approval in principle of a policy to permit lawyers and paralegals to provide legal services through civil society organizations (“CSOs”) such as charities and not-for-profit organizations to clients of such organizations.¹ The Working Group invites input from the legal community and the public on the draft regulatory framework by January 18, 2019. Based on the input received, the Working Group will refine the draft regulatory framework, and expects to present a finalized regulatory framework for Convocation to consider in early 2019 for adoption.

Executive Summary

The report presents a draft regulatory framework that would permit lawyers and paralegals to provide legal services through registered CSOs to clients of such organizations, and invites public comment on the draft framework by January 18, 2019.

The draft regulatory framework has been designed as a means to facilitate access to justice. It was developed further to Convocation’s September 2017 approval in principle that lawyers and paralegals should be permitted to provide legal services through CSOs directly to clients of such organizations, provided that certain conditions are met.

CSOs are defined in the draft regulatory framework as charities, not-for-profit corporations incorporated under the laws of Ontario, and not-for-profit corporations permitted under the laws of Ontario to operate in Ontario.

The draft regulatory framework features:

- guidelines for potential civil society registrants, a straight forward, easy to complete registration process, and civil society registrant annual filing requirements
- rule changes to the lawyer and paralegal conduct rules highlighting particular competency requirements that apply when delivering services through CSOs, and prohibiting licensees from charging their clients a fee for their services or accepting referral fees when providing services through a CSO
- By-Law changes prescribing CSO registration and de-registration processes, setting licensee professional liability insurance requirements, and prohibiting fees being charged for the licensee’s services and the payment or acceptance of referral fees by either CSOs or licensees providing services to CSO clients

¹ [September 2017 ABS Working Group Report, Professional Regulation Committee Report to Convocation](#) at Tab 5.3 [“September 2017 Report”].



Report of the Alternative Business Structures Working Group

- Insurance requirements for licensees providing services to third party clients of CSOs. A CSO that employs lawyers who provide professional services to third parties pursuant only to their employment can apply to be approved by LAWPRO as a “Designated Agency” under LAWPRO’s “Designated Agency” program. If approved, lawyers providing services through the CSO may qualify for a discount currently set at 75% of the base rate. Paralegals providing legal services to the public under this framework would continue to be required to carry professional liability insurance as prescribed by the Law Society.

If the draft regulatory framework is approved, then the Law Society will update the Lawyer and Paralegal Annual Reports as necessary for the 2019 annual reporting year, and develop practice supports for licensees working in CSOs.

The Working Group recommends that the program be evaluated within three years from its implementation, with the evaluation reported to Convocation.

Implementing the draft regulatory framework will come at no additional cost to the Law Society, other than small costs related to program evaluation.

Background

In September 2017, Convocation approved in principle the Working Group’s recommendation that lawyers and paralegals be permitted to provide legal services through CSOs directly to clients of such organizations, provided that:

- The licensee has control over the delivery of legal services
- Solicitor-client privilege is protected
- The fundamentals of professionalism are safeguarded
- The legal services will be provided at no cost to the client by way of fee for service, membership fee or otherwise;
- CSOs may not refer clients to licensees in exchange for donations, payments or other consideration; and
- The regulatory framework will expressly exclude Legal Aid Ontario funded organizations and will not affect the provision of legal services, legal information and support services as currently permitted.²

The policy was adopted as a means to facilitate access to justice for Ontarians.³

² September 2017 Report, at para. 18.

³ For an overview of the potential access to justice benefits of implementing the policy, see the September 2017 Report.

As per Convocation's recommendation, Law Society staff has spent the last several months developing a draft regulatory framework to implement the policy.

The Law Society received informal input from approximately a dozen organizations which reached out to it during these initial stages to express an interest in the development of the draft regulatory framework and to offer their comments. These organizations ranged from charities and not-for-profit organizations to justice sector organizations. The Law Society greatly benefitted from this early input, and thanks all those who reached out to assist in the early implementation stage.

The Working Group invites comment on the draft regulatory framework. Comments may be submitted online at www.lso.ca/abs by January 18, 2019. The Working Group will review the input it receives to refine the draft regulatory framework, and will return to Convocation with a finalized framework in early 2019 for Convocation's consideration.

Implementation

A. Policy Implementation

Based on the September 2017 Report, the Working Group has developed the draft regulatory framework to include the elements described below.

a) General eligibility requirements

(i) Charities and Not-For-Profit Corporations

The program has been described as applying to "civil society organizations". In order to implement the program, the Working Group gave further consideration to which types of entities should be able to register with the Law Society at this time.

The Working Group recommends that the draft regulatory framework apply to registered charities, not-for-profit corporations incorporated under the laws of Ontario, and not-for-profit corporations permitted under the laws of Ontario to operate in Ontario. This recommendation is advanced because registered charities and not-for-profit corporations are easy to define, are legal entities, and can be verified by the Law Society with ease.

Canadian registered charities are charitable organizations, public foundations, or private foundations that are created and resident in Canada. They must use their resources for prescribed charitable purposes. It will be relatively simple to find information about Canadian charities, as the



Report of the Alternative Business Structures Working Group

Government of Canada maintains an online charities listing which, among other information, confirms if a charity is registered, revoked, annulled, penalized or suspended.⁴

Not-for-profit organizations are associations, clubs, or societies that are not charities and are organized and operated exclusively for social welfare, civic improvement, pleasure, recreation, or any other purpose except profit. Not-for-profit corporations are registered and governed provincially and federally.

It will be relatively straight forward for the Law Society to verify information regarding not-for-profit corporations incorporated under the laws of Ontario, or a not-for-profit corporation permitted under the laws of Ontario to operate in Ontario:

- Not-for-profit corporations incorporated under the laws of Ontario may be easily verified through a corporate search.
- Not-for-profit corporations incorporated elsewhere in Canada or under federal law can be verified through various sources, including the Initial Return / Notice of Change (Form 2) such not-for-profit organizations file with the Ministry of Government and Consumer Services within 60 days from starting to carry on business in Ontario.⁵
- Not-for-profit corporations incorporated or continued under the laws of a jurisdiction outside of Canada must obtain a licence from Ontario's Ministry of Government and Consumer Services in order to carry on business in Ontario.⁶

While the Working Group does not rule out expanding this program to not-for-profit organizations that are not incorporated, this would require developing a more complex regulatory approach.⁷ The Working Group recommends starting with the easily defined classes of registered charities and not-for-profit corporations for the launch of the program and expanding the program at a later date should there be interest and need.

⁴ See "Charities Listings" online at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities-listings.html>.

⁵ See s. 3 (1) of the *Corporations Information Act*, RSO 1990, c C.39.

⁶ See s.4(2) of the *Extra-Provincial Corporations Act*.

⁷ Expanding the program to include not-for-profit organizations which are not incorporated would require further consideration as to whether / how the Law Society could screen such applicants. At a minimum, the Law Society would seek to review the objects of the not-for-profit organization. In certain situations it may require considering whether the activities of the not-for-profit entity are consistent with Canadian public policy, and may result in a more complex process.



Report of the Alternative Business Structures Working Group

(ii) *In-House Counsel for Charities and Not-For-Profit Corporations*

The Working Group recognizes that in certain cases, in-house counsel at charities or not-for-profit corporations may be interested in providing professional services to clients of the organization pursuant to their employment. The Working Group recommends encouraging and permitting this practice, as long as the in-house counsel ensures that there are no conflicts of interest, and that in-house counsel obtains insurance that would cover the delivery of professional services to clients of the organization.

b) Guidelines for CSO

Guidelines for CSOs have been developed to explain how to register, and the key elements of licensee professionalism and ethics which must be safeguarded. The draft Guidelines are attached at [Tab 5.1.1](#).

c) A straight forward CSO registration process

The draft registration materials are attached at [Tab 5.1.2](#). The registration document is designed to be straight forward and easy to complete. It is intended to provide the Law Society with necessary information in a manner that will not overburden the registering organization. The document also sets out the responsibilities being undertaken by the organization, and the possibility of deregistration should issues arise.

d) Rule changes

The draft lawyer Rules of Professional Conduct are attached at [Tab 5.1.3 \(English\)](#) and [Tab 5.1.4 \(French\)](#). The draft Paralegal Rules of Conduct and Paralegal Guidelines are attached at [Tab 5.1.5 \(English\)](#) and [Tab 5.1.6 \(French\)](#). The changes to the lawyer and paralegal conduct rules include:

- the term “civil society organization”, which is defined as a registered charity under the *Income Tax Act* (Canada), a not-for-profit corporation incorporated under the laws of Ontario, or a not-for-profit corporation permitted under the laws of Ontario to operate in Ontario
- language to highlight particular competency requirements that apply when delivering services through CSOs, such as acting on behalf of the client’s best interest and avoiding conflicts of interest between the client and the CSO
- prohibitions against lawyers and paralegals who are providing services through CSOs from charging their clients a fee for their services or accepting referral fees.

e) By-Law changes

The draft By-Law amendments to By-Law 7 Part VI are attached at [Tab 5.1.7](#) and include:

- a definition for the term “civil society organization” that is the same as the definition in the rules of professional conduct
- the requirement that the civil society register with the Law Society, and that the Law Society may de-register a CSO
- a requirement that the licensee(s) control the delivery of legal services
- a requirement that the legal services delivered through the CSO be provided at no cost to the client, and that neither licensees providing services through this framework nor the CSO receive or pay referral fees
- a prohibition against licensees practicing law or providing legal services through a CSO from operating a trust account in connection with these services
- a requirement that licensees maintain professional liability insurance as prescribed by By-Law 6

f) Insurance requirements

Lawyers and paralegals providing services to third party clients of the CSO will be required to hold professional liability insurance.

(i) Lawyers’ professional liability insurance

Lawyers must obtain professional liability insurance through LAWPRO.

On September 27, 2018, Convocation approved LAWPRO’s 2019 insurance program, which included an expansion of LAWPRO’s “Designated Agency” program (“DA Program”) to apply to CSOs if the Law Society approves a regulatory framework to permit the delivery of legal services directly to the public through CSOs.⁸

Under LAWPRO’s insurance program, CSOs may apply to be approved as a “Designated Agency”. The DA Program offers discounted insurance to promote access to justice. The rationale for the DA program is described in LAWPRO’s September 2016 Report to Convocation as follows:

⁸ LawPRO Report to Convocation, September 2018, online at: <https://lawsocietyontario.azureedge.net/media/iso/media/about/convocation/convocation-sept-2018-lawpro-report.pdf> at pages 6-7 and 11-13.



Report of the Alternative Business Structures Working Group

To promote access to justice and to address the lower demonstrated risk of certain employed lawyers, a new premium adjustment is proposed for lawyers who are employed by specific Designated Agencies, provided the lawyers only perform professional services for third parties pursuant to their employment and on a no-fee basis. Such lawyers typically assist those who would otherwise have challenges in accessing legal advice, and thus advance access to justice.⁹

Under LAWPRO's DA Program, once an organization is approved as a "Designated Agency", their lawyers who provide professional services to third parties pursuant only to their employment can qualify for a discount which is currently set at 75% of the base rate.¹⁰ In addition LAWPRO has waived the requirement that civil litigation transaction levies (currently set at \$100 per transaction) be paid by qualifying DA lawyers when acting on litigation matters pursuant to their employment.

The application process is fairly straight forward. Interested organizations contact LAWPRO, who will request that the organization complete a written application about the organization and the services to be provided by individual lawyers at the organization. LAWPRO will confirm that the lawyers will only provide professional services on a no-fee basis, that the program is intended to promote access to justice, and will determine whether the professional services to be provided by the employed lawyers would likely be within a demonstrated lower risk for claims.

LAWPRO conducts its own due diligence, and if it has questions about the program or risk for claims, it follows up with the organization. After LAWPRO completes its review, LAWPRO advises whether the agency has been approved, and if not, what changes could be made to allow for program approval. It is entirely within LAWPRO's discretion whether to approve an applicant employer for DA status. Approved CSOs will be listed along with other Das on LAWPRO's website.

Currently, approved DAs are assigned a member of LAWPRO's customer service staff to assist with the process of applying the discount and renewing insurance for lawyer members annually, which makes the process even easier for agencies.

⁹ LAWPRO Report to Convocation, September 2016, online at: www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/Convocation-September-2016-LAWPRO-Report.pdf, at pages i and ii.

¹⁰ For example, the 2019 based premium of \$2,950 would be adjusted to \$737.50.



Report of the Alternative Business Structures Working Group

(ii) Paralegals' professional liability insurance

Paralegals who provide legal services to the public under this framework would continue to be required to carry professional liability insurance in accordance with By-Law 6, which outlines the minimum requirements for professional liability insurance, as follows:

- Policy limits of \$1 million per claim and \$2 million in the aggregate are required
- The coverage must specify the provision of legal services by a paralegal
- Individual paralegals must be named as an "Insured" on the policy, or by way of endorsement
- A minimum, non-optional 90-day extended reporting period is required
- The Law Society should, for the purposes of reporting and cancellation, be added as an "Additional Insured"
- Cancellation notice of 60 days is required, and
- Licensees must provide written proof of their compliance with this requirement to carry mandatory insurance before they begin providing legal services, as well as on an annual basis.

g) CSO annual filing requirements

The Working Group recommends that CSOs provide annual updates to the Law Society with respect to the nature of the legal services being delivered. If the draft regulatory framework is approved, then the CSO annual filing requirements will be developed for 2020, and will require minimal reporting by the CSO.

h) Updates to the Lawyer and Paralegal Annual Reports as required

If the draft regulatory framework is approved, then updates to the Lawyer and Paralegal Annual Reports will be completed, if necessary, for the 2019 annual reporting year.

i) Practice supports for licensees working in CSO

The Law Society will develop practice supports for licensees working in CSOs based on uptake. Practice supports may include, for example:

- Mentoring opportunities for licensees working in CSOs through the Law Society's Coach and Advisor Network
- Continuing professional development or other resources to support licensees addressing particular practice management issues arising in the CSO context, such as, for example:

- maintaining confidentiality and privilege in a multi-disciplinary environment;
- how to develop information-sharing protocols in a multi-disciplinary environment;
- providing trauma-informed services; and
- mental health and wellness supports when working with vulnerable clients.

B. Cost

The Working Group expects that implementing the regulatory framework will come at no additional cost to the Law Society. The components of the regulatory framework can all be developed using existing staff resources. There are no other significant costs expected. Should a program evaluation (described below) be conducted by a third party, then there would be some relatively small costs incurred at that time.

C. Evaluation

The Working Group recommends a program evaluation, to be completed within three years from the implementation of the program, on the program's access to justice impacts, achievements, challenges and recommended improvements.

The Working Group recommends that the scope of the program evaluation be developed once the Law Society has a sense of uptake. The evaluation should also align with the Law Society's general approach to evaluating its access to justice initiatives, which is currently being developed by the Access to Justice Committee. The program evaluation may consider:

- the number of CSOs which have registered with the Law Society
- the number of CSOs which have been de-registered
- the number of lawyers or paralegals providing legal services pursuant to the regulatory framework
- the number of individuals assisted by lawyers and paralegals
- the types of legal services delivered
- complaints received by the Law Society with respect to services provided by lawyers and paralegals pursuant to the regulatory framework
- feedback from lawyers, paralegals, CSOs and their clients about the operation of the regulatory framework
- Law Society resources dedicated to the regulation of lawyers and paralegals practicing through CSOs.

This program evaluation should be undertaken through the Professional Regulation Committee, and reported to Convocation.



Report of the Alternative Business Structures Working Group

D. Follow Up

The Working Group looks forward to receiving comments by January 18, 2019. Based on the input received, the Working Group will refine the draft regulatory framework, and expects to present a finalized regulatory framework for Convocation to consider in early 2019 for adoption.

DRAFT FOR REVIEW
October 2018**Delivering Lawyer and Paralegal Services through Registered Charities and Not-for-Profit Corporations*****A Guide for Registered Charities and Not-For-Profit Corporations
Registering with the Law Society Under Part VI of By-Law 7,
Services Delivered by Lawyers and Paralegals Through Civil Society Organizations*****Introduction****About this Guide**

This guide has been developed to assist registered charities and not-for-profit corporations (“charities and NFPCs”) in understanding how they can register with the Law Society to employ lawyers and paralegals to deliver their professional services through their organizations to the public.

This guide applies to the following charities and NFPC which may register with the Law Society:

- ✓ Registered charities under the Income Tax Act (Canada)
- ✓ Not-for-profit corporations incorporated under the laws of Ontario, and
- ✓ Not-for-profit corporations permitted under the laws of Ontario to operate in Ontario, including:
 - (i) Federally incorporated not-for-profit corporations and not-for-profit corporations incorporated in other Canadian provinces or territories, which have filed an Initial Return / Notice of Change (Form 2) with the Ministry of Government and Consumer Services and
 - (ii) Not-for-profit corporations incorporated outside of Canada which have obtained a licence from Ontario’s Ministry of Government and Consumer Services to carry on business in Ontario

This guide introduces the basic principles for delivering lawyer and paralegal services through charities and the NFPCs, and describes the professional standards lawyers and paralegals must adhere to when serving clients as an employee of a charity or NFPC.

Why Offer Lawyer and/or Paralegal Services to Clients**Client Wellbeing**

Clients of charities and NFPCs often have multiple, interconnected issues, including legal issues. Addressing legal issues as early and proactively as possible can help prevent cascading problems.

Like many Ontarians, clients of charities and NFPCs may not perceive that their issues may be or have associated legal problems. They may not seek legal assistance for their legal problem for a variety of reasons. They may think that obtaining legal advice would be too expensive, or that they are not eligible for services through Legal Aid Ontario. Clients of charities and NFPCs may face additional barriers to accessing lawyer and paralegal services, such as mobility, geographical, cultural or linguistic factors.

Many charities and NFPCs already play vital roles helping clients navigate their legal issues. For example, many charities and NFPCs provide clients with legal information, and refer clients to Legal Aid Ontario and to lawyers and paralegals for legal advice and/or representation where necessary.

DRAFT FOR REVIEW
October 2018

To make lawyer and paralegal services more accessible, the Law Society has approved a registration system enabling lawyers and paralegals to provide their professional services to the public as employees of charities and NFPCs. The goal is to provide new inclusive entry points for those requiring lawyer and paralegal services who otherwise might not have access to them.

Benefits of Delivery of Lawyer and Paralegal Services through Charities and NFPCs

There are many potential benefits to the delivery of lawyer and paralegal services through charities and NFPCs, including the following:

For clients:

- ✓ Quicker and more direct access to free lawyer and paralegal services
- ✓ Professional services delivered by trained, licensed, insured lawyers and/or paralegals
- ✓ Earlier identification and potential resolution of legal issues
- ✓ Reduced client stress and enhanced client outcomes and empowerment

For charities and NFPCs:

- ✓ Enhanced organizational capacity to identify and address client legal issues
- ✓ Enhanced client service by having a lawyer or paralegal potentially on-site to address legal issues
- ✓ Enhanced ability to provide holistic services to clients

How It Works

Charity and NFPC Registration with the Law Society

Charities and NFPCs seeking to employ lawyers or paralegals to deliver services directly to their clients must register with the Law Society.

- ✓ Registration is simple and easy
- ✓ In order to register, the organization will need to complete and submit the attached Registration Form
- ✓ By registering, the organization does not become regulated by the Law Society; however, it is required to comply with the terms of registration set out in the Registration Form
- ✓ The Law Society will regulate the lawyer or paralegal providing services through the charity or NFPC

Under this initiative, lawyers and paralegals employed by charities and NFPCs may provide free lawyer and paralegal services to clients of the organization.

Registered charities and NFPCs are prohibited from referring clients to outside lawyers or paralegals in exchange for donations, payments or other consideration. Similarly, lawyers and paralegals employed by charities and NFPCs cannot accept referral fees with respect to the services provided through the charity or NFPC.

Registered charities and NFPCs will be required to file a short report with the Law Society on an annual basis.

If the Law Society requirements are not met, charities and NFPCs may be de-registered, which will be made public.

Providing Free Lawyer and Paralegal Services to Clients of Charities and NFPCs

The lawyer or paralegal employed by the charity or NFPC will provide lawyer or paralegal services directly to clients of the organization. Some details relating to the provision of legal services are set out below.

Free Lawyer and Paralegal Services

Lawyer and paralegal services are to be provided by a lawyer or paralegal at no cost to the client. Clients should not be asked to pay for lawyer and paralegal services by way of fees for services, or through indirect fees for services, such as requiring the payment of a membership fee which would enable the client to access such services.

Disbursements

Clients may be asked to contribute towards the payment of disbursements incurred in the provision of services by lawyers or paralegals. Disbursements are expenses paid to third parties related to representing the client. They may include, for example, court filing fees, photocopying costs, court reporting services and the cost of hiring an expert.

Where a charity or NFPC intends to seek repayment for disbursements incurred in providing lawyers and paralegal services to a client, there should be a clear policy in place and the disbursement costs should be communicated to the client at the outset of the lawyer or paralegal / client relationship.

Legal Aid Services

Lawyer and paralegal services provided through charities and NFPCs should generally complement existing Legal Aid services.

Lawyers and Paralegals Working in Charities and NFPCs

Lawyers and paralegals employed by a charity or NFPC are regulated by the Law Society of Ontario.

They must notify the Law Society of their membership status, pay the Law Society annual membership fee and carry professional liability insurance.

- Lawyers employed by the charity or NFPC providing services to clients of the organization are required to obtain professional liability insurance through LAWPRO. They may be eligible for a significantly reduced insurance rate pursuant to LAWPRO's "Designated Agency" program. For more information about eligibility and rates, please contact LAWPRO by calling 416 598 5800 or 1 800 410 1013.
- Paralegals must carry professional liability insurance which meets the Law Society's requirements. Paralegal professional liability insurance is available through insurance brokers.

For more information about paralegal insurance, see <https://lso.ca/becoming-licensed/paralegal-licensing-process/paralegal-licensing>.

Since the lawyer or paralegal is providing its services to clients of the charity or NFPC, the lawyer or paralegal must:

- ✓ Have full control over the delivery of the services
- ✓ Protect confidentiality and privilege
- ✓ Maintain all professional obligations, such as independence, competence, integrity, candour, avoidance of conflicts of interest and service to the public good through professional client relationships and fulfilling responsibilities to the administration of justice

It is the responsibility of the lawyer or paralegal to make sure that these and all other professional obligations are maintained.

Delivering Lawyer and Paralegal Services with Other Services

At times, clients of a charity or NFPC may receive social, health or other services which are complemented by the provision of lawyer and paralegal services. When lawyer and paralegal services are delivered together with other services, the lawyer or paralegal must take particular care to protect client confidentiality and privilege. The lawyer or paralegal must also make sure that the client understands what information may be shared with other service providers, and that the client consents to the disclosure of such information.

What Services Can be Provided by Lawyers and Paralegals

Lawyers are licensed to provide legal advice with respect to all Ontario laws.

Paralegals are licensed to provide legal advice on specific Ontario laws in connection with certain types of proceedings or the subject matter of those proceedings, and can represent someone:

- ✓ In Small Claims Court
- ✓ In the Ontario Court of Justice under the *Provincial Offences Act*
- ✓ On a summary conviction offence where the maximum penalty does not exceed six months' imprisonment and/or a \$5,000 fine
- ✓ Before administrative tribunals, including the Immigration and Refugee Board

Items for Charities and NFPCs to Consider

In determining whether to seek to deliver lawyer and paralegal services, charities and NFPCs may wish to consider:

1. Mandate: Does the charity/NFPC's charitable or social objects/mandate permit the provision of professional services by lawyer and paralegal services directly to clients?
2. Client protection: What safeguards may be required to protect client confidentiality and privileged materials, and what information-sharing protocols exist or may need to be developed?

DRAFT FOR REVIEW
October 2018

3. Services to provide: What types of lawyer and/or paralegal services would most benefit clients? What type of licensed professional would be best suited to deliver these services to client?
4. Funding: What sources of funding might be available to fund such an initiative? The Law Society regulates lawyers and paralegals, but does not fund social services. Charities and NFPCs interested in providing services through lawyers and paralegals need to consider how to fund such initiatives and are encouraged to broadly consider potential sources of funding.

About the Law Society of Ontario

The Law Society regulates Ontario lawyers and paralegals in the public interest and has a duty to facilitate access to justice. We ensure that lawyers and paralegals are licensed and insured and meet standards of learning, competence and professional conduct in order to help people address legal issues.

Questions

If you have questions, please contact the Law Society's Complaints & Compliance department by calling 416-947-3315 and asking to be transferred, or by emailing lsforms@lso.ca.

Completed registration forms may be mailed to:

Law Society of Ontario
Complaints & Compliance Department
Osgoode Hall, 130 Queen St. W., Toronto, Ontario M5H 2N6

LAW SOCIETY OF ONTARIO
REGISTRATION FOR REGISTERED CHARITIES AND NOT-FOR-PROFIT CORPORATIONS

Under Part VI of By-Law 7, Services Delivered by Lawyers and Paralegals Through Civil Society Organizations

PART A: APPLICANT INFORMATION**1. Registered Charity or Not-For-Profit Corporation Information**

Legal name of the charity or not-for-profit corporation
("Organization"): _____

Operating or trade name (if different from legal name): _____

Business Number / Charitable registration number (as applicable): _____

Address: _____

Telephone: _____

Fax: _____

Website (if applicable): _____

Please check one:

- ☐ Registered Charity Registration # _____
- ☐ Not-for-Profit Corporation Business # _____

2. Organization Representatives/Contacts

a) Representative and contact person:

- Full Name: _____
- Title: _____
- Telephone: _____
- Mobile: _____
- Email: _____

b) Alternate representative and contact person:

- Full Name: _____
- Title: _____
- Telephone: _____

DRAFT FOR REVIEW
October 2018

- Mobile: _____
- Email: _____

PART B: SERVICES PROVIDED BY THE ORGANIZATION

3. Services Provided by the Organization

Please briefly describe the services provided by the Organization and/or its mandate.

4. Area(s) of Law / Legal Services

In general, what legal services will be provided by lawyers / paralegals employed by the Organization?

5. Provision of lawyer and/or paralegal services together with other services

Will the lawyer and/or paralegal provide professional services separate and apart from other client services, or will lawyer and/or paralegal services be provided at the same time or together with other services?

Please check one:

- ☐ Lawyer or paralegal services only
☐ Lawyer or paralegal services and other services

Please briefly describe the lawyer or paralegal services will be delivered together with other services.

PART C: REQUIRED CONDITIONS

By signing this registration form, the Organization acknowledges and accepts the conditions under Law Society By-Law 7, Part VI including the following conditions:

- i) that lawyers or paralegals (“LSO licensees”) serving clients of the Organization by practising law or providing legal services on behalf of the Organization will do so only as employees of the Organization;
- ii) that services provided by LSO licensees to clients of the Organization on behalf of the Organization will be provided at no cost to the clients in any form, although the Organization may charge costs for disbursements;
- iii) that neither LSO licensees nor the Organization may receive or pay referral fees in connection with the practice of law or provision of legal services;
- iv) that all LSO licensees will have control over the delivery of their services to clients of the Organization;
- v) that all appropriate confidentiality and privilege will be protected by the LSO licensee, and respected by the Organization; the LSO licensees serving clients of the Organization will only disclose client information with the client’s consent, or as required by law;
- vi) that all LSO licensees employed by the Organization will follow the professional conduct rules;
- vii) that if there is a change in information, the Organization will notify the LSO in writing of such change as soon as the change is known to the Organization; and
- viii) that the Organization must file a Report each year with the LSO in the form and on the date required by the LSO.

I understand that the Organization may be de-registered at any time at the LSO’s discretion for failing to adhere to any of the conditions set out in this form or for whatever other reasons determined by the LSO. I authorize the LSO to make public information about de-registering of the Organization.

DRAFT FOR REVIEW
October 2018

PART D: ORGANIZATION AUTHORIZATION

I hereby authorize the LSO to make inquiries of any person, government, official or body, about the status of the registering organization. I will provide any additional specific authorization or any release that is required for the purpose of enabling the LSO to obtain any information required to register the Organization, including, without limitation, documents relating to the Organization's status. I further authorize the LSO to make information about the registering Organization available to the public.

I declare that all information supplied by me with respect to this application, and in the documents provided in connection with this application, if any, is true, accurate, and complete.

Signature

Date

Full Name:

Title:

I have the authority to bind the Organization

Questions about how charities and not-for-profit corporations register with the Law Society as Civil Society Organizations should be directed to Complaints & Compliance by calling 416-947-3315 and asking to be transferred, or by emailing lsforms@lso.ca. Completed registration forms may be mailed to:

Law Society of Ontario
Complaints & Compliance Department
130 Queen St. W., Toronto, ON M5H 2N6

Rules of Professional Conduct – CSO Amendments

SECTION 1.1 DEFINITIONS

“civil society organization” means a registered charity under the *Income Tax Act* (Canada), a not-for-profit corporation incorporated under the laws of Ontario, or a not-for-profit corporation permitted under the laws of Ontario to operate in the Province;

SECTION 3.1 COMPETENCE

Commentary

[11.1] Lawyers who provide legal services through civil society organizations to clients are required to control the delivery of legal services. The lawyer should take care to:

- (a) act on behalf of the client’s interest;
- (b) advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide through the civil society organization; and
- (c) avoid conflicts of interest between the client and the civil society organization.

[11.2] Where other services are provided through the civil society organization, or where the lawyer’s services are provided together with other services, the lawyer should take care to protect client confidentiality and privilege, and should only disclose client confidential or privileged information with client consent, or as required by law.

SECTION 3.4 CONFLICTS

Civil Society Organizations

3.4-16.1.1 When practising through a civil society organization, a lawyer shall establish a system to search for conflicts of interest of the civil society organization.

SECTION 3.6 FEES AND DISBURSEMENTS

Civil Society Organization Clients

3.6-1.2 A lawyer providing legal services through a civil society organization shall not directly or indirectly charge a fee to the person for whose benefit the legal services are provided, but the lawyer may charge disbursements in accordance with rule 3.6-1.

Referral Fees

[...]

3.6-6.1 (1) A lawyer may accept and a lawyer may pay a fee for the referral of a matter provided that:

(a) the referral fee is fair and reasonable and does not increase the total amount of the fee payable by the client;

(b) a referral agreement has been entered into at the time of the referral or as soon as practicable after the referral;

(c) the lawyer or paralegal who receives the referral has the expertise and ability to handle the matter;

(d) the referral was not made because the referring lawyer or paralegal:

(i) has a conflict of interest;

(ii) was a lawyer or paralegal whose license was suspended when the referral was made and who was accordingly not permitted to act on the matter;

(e) the amount of the referral fee shall not exceed fifteen percent (15%) of the fees paid to the lawyer or paralegal who received the referral for the first fifty thousand dollars (\$50,000) of such fees for the matter and five percent (5%) of any additional fees for the matter to a maximum referral fee of \$25,000; and

(f) the lawyer or paralegal making or accepting the referral is not providing legal services through a civil society organization.

Code de déontologie – Modifications CSO

ARTICLE 1.1 DÉFINITIONS

« organisme de la société civile » s'entend d'un organisme de bienfaisance enregistré aux fins de la Loi de l'impôt sur le revenu (Canada), une organisation à but non lucratif constituée conformément aux lois de l'Ontario ou une organisation à but non lucratif pouvant être exploitée dans la province conformément aux lois de l'Ontario ;

ARTICLE 3.1 COMPÉTENCE

Commentaire

[11.1] Les avocats qui fournissent des services juridiques à des clients par l'entremise d'organismes de la société civile sont tenus de contrôler la prestation de ces services juridiques. L'avocat devrait s'assurer :

a) d'agir dans l'intérêt du client ;

b) d'informer le client avec honnêteté et franchise de la nature, de l'étendue et de la portée des services qu'il peut rendre par l'entremise de l'organisme de la société civile ;

c) d'éviter les conflits d'intérêts entre le client et l'organisme de la société civile.

[11.2] Si d'autres services sont fournis par l'entremise de l'organisme de la société civile, ou si les services de l'avocat sont fournis avec d'autres services, l'avocat devrait s'assurer de protéger les renseignements confidentiels et privilégiés du client, et devrait seulement divulguer les renseignements confidentiels et privilégiés du client avec le consentement de ce dernier, ou si la loi l'exige.

ARTICLE 3.4 CONFLITS

Organismes de la société civile

3.4-16.1.1 S'il pratique par l'entremise d'un organisme de la société civile, l'avocat établit un système de recherche de conflits d'intérêts concernant l'organisme de la société civile.

ARTICLE 3.6 LES HONORAIRES ET LES DÉBOURS

Clients d'organisme de la société civile

3.6-1.2 L'avocat qui fournit des services juridiques par l'entremise d'un organisme de la société civile ne facture pas ses services juridiques directement ou indirectement à la personne qui en bénéficie, mais l'avocat peut facturer les débours conformément à la règle 3.6-1.

Honoraires de renvoi

[...]

3.6-6.1 (1) Un avocat peut accepter et un avocat peut payer des honoraires pour le renvoi d'une affaire pourvu que :

a) les honoraires de renvoi soient justes et raisonnables et ne fassent pas augmenter le montant total des honoraires payables par le client ;

b) une entente de renvoi ait été conclue au moment du renvoi ou dès que possible après le renvoi ;

c) l'avocat ou le parajuriste qui reçoit le renvoi ait l'expertise et la capacité d'agir dans l'affaire ;

d) le renvoi n'ait pas été fait parce que l'avocat ou le parajuriste qui renvoie l'affaire :

(i) est en conflit d'intérêts ;

(ii) était un avocat ou un parajuriste dont le permis était suspendu au moment du renvoi et qui ~~n'a en~~ n'avait en conséquence pas le droit d'agir dans l'affaire ;

e) le montant des honoraires de renvoi ne dépasse pas quinze pour cent (15 %) des honoraires payés à l'avocat ou au parajuriste qui a reçu le renvoi pour les premiers cinquante-mille dollars (50 000 \$) des honoraires recouvrés et cinq pour cent (5 %) des honoraires supplémentaires recouvrés, jusqu'à un maximum de 25 000 \$ en honoraires de renvoi ;

f) l'avocat ou le parajuriste qui fait ou accepte le renvoi ne fournit pas de services juridiques par l'entremise d'un organisme de la société civile.

Paralegal Rules of Conduct – CSO Amendments

1.02 DEFINITIONS

“civil society organization” means a registered charity under the *Income Tax Act* (Canada) a not-for-profit corporation incorporated under the laws of Ontario, or a not-for-profit corporation permitted under the laws of Ontario to operate in the Province.

3.04 CONFLICTS OF INTEREST – GENERAL

Civil Society Organizations

(17) When practising through a civil society organization, a licensee shall establish a system to search for conflicts of interest of the civil society organization.

Short-term Pro Bono Legal Services

~~(17)~~ (18) In this rule,

"paralegal's firm" means the paralegal firm at which the pro bono paralegal provides legal services as a partner, associate, employee, or otherwise;

"pro bono provider" means a pro bono or not-for-profit legal service provider that makes pro bono paralegals available to provide advice or representation to clients;

"pro bono paralegal" means (i) a volunteer paralegal who provides short-term pro bono services to clients under the auspices of a pro bono provider; or (ii) a paralegal providing services under the auspices of a Pro Bono Ontario program;

"short-term pro bono services" means pro bono legal services or representation to a client under the auspices of a pro bono provider with the expectation by the pro bono paralegal and the client that the pro bono paralegal will not provide continuing legal services or representation in the matter.

~~(18)~~ (19) A pro bono paralegal may provide short-term pro bono services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the paralegal's firm or of the pro bono provider;

~~(19)~~ (20) A pro bono paralegal shall take reasonable measures to ensure that no disclosure of the client's confidential information is made to another paralegal in the paralegal's firm;

~~(20)~~ (21) A pro bono paralegal shall not provide or shall cease providing short-term pro bono services to a client where the pro bono paralegal knows or becomes aware of a conflict of interest;

~~(24)~~ (22) A pro bono paralegal who is unable to provide short-term pro bono services to

a client because there is a conflict of interest shall cease to provide such services as soon as the paralegal becomes aware of the conflict of interest and the paralegal shall not seek the pro bono client's waiver of the conflict.

Referral Fees

5.01(15) A paralegal may accept and a paralegal may pay a fee for the referral of a matter provided that:

(a) the referral fee is fair and reasonable and does not increase the total amount of the fee payable by the client;

(b) a referral agreement has been entered into at the time of the referral or as soon as practicable after the referral;

(c) the paralegal or lawyer who receives the referral has the expertise and ability to handle the matter;

(d) the referral was not made because the referring paralegal or lawyer;

(i) has a conflict of interest;

(ii) was a paralegal or lawyer whose license was suspended when the referral was made and who was accordingly not permitted to act on the matter;

(e) the amount of the referral fee shall not exceed fifteen percent (15%) of the fees paid to the paralegal or lawyer who received the referral for the first fifty thousand dollars (\$50,000) of such fees for the matter and five percent (5%) of any additional fees for the matter to a maximum referral fee of \$25,000-; and

(f) the paralegal or lawyer making or accepting the referral is not providing legal services through a civil society organization.

[...]

Civil Society Organization Clients

5.01(17) A paralegal providing legal services through a civil society organization shall not directly or indirectly charge a fee to the person for whose benefit the legal services are provided, but the paralegal may charge disbursements in accordance with Rule 5.

Transitional Requirements

5.01 ~~(17)~~ (18) The provisions of subrule 5.01(15) do not apply to the payment of a referral fee pursuant to an enforceable agreement to pay and receive referral fees that was entered into before or on April 27, 2017.

In these circumstances, a paralegal who refers a matter to another paralegal or lawyer because of the expertise and ability of the other licensee to handle the matter and

where the referral was not made because of a conflict of interest, the referring paralegal may accept and a paralegal who receives a referral may pay a referral fee provided that

- (i) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (ii) the client is informed and consents.

~~(18)~~ (19) A paralegal who is entitled to receive referral fees pursuant to an unwritten agreement that was entered into before or on April 27, 2017 shall confirm in writing the terms of that agreement as soon as practicable to the other party to that agreement and shall provide a copy of such confirmation to the client.

~~(19)~~ (20) Where a referral was made before or on April 27, 2017 but there was no enforceable agreement for the payment of a referral fee as of that date, the requirement that the agreement has been entered into may be met by entering into a referral agreement at any time prior to payment of the referral fee.

~~(20)~~ (21) A paralegal shall not do indirectly what the paralegal is prohibited from doing directly under Rules 5.01(11), (14) and (15).

Paralegal Professional Conduct Guidelines – CSO Amendments

GUIDELINE 7: ADVISING CLIENTS

Civil Society Organizations

Rule Reference: 1.02 definition of “civil society organization”

Rule 3.04 (17)

Rule 5.01 (15) & (17)

By-Law 7

19. Paralegals who provide legal services through civil society organizations to clients are required to control the delivery of legal services. The paralegal should take care to:

(a) act on behalf of the client’s interest;

(b) advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide through the civil society organization; and

(c) avoid conflicts of interest between the client and the civil society organization.

20. Where other services are provided through the civil society organization, or where the paralegal’s services are provided together with other services, the paralegal should take care to protect client confidentiality and privilege, and should only disclose client confidential or privileged information with client consent, or as required by law.

Code de déontologie des parajuristes – CSO Amendments

1.02 DÉFINITIONS

« organisme de la société civile » s'entend d'un organisme de bienfaisance enregistré aux fins de la *Loi de l'impôt sur le revenu* (Canada), une organisation à but non lucratif constituée conformément aux lois de l'Ontario ou une organisation à but non lucratif pouvant être exploitée dans la province conformément aux lois de l'Ontario ;

3.04 CONFLITS D'INTÉRÊTS – GÉNÉRALITÉS

Organismes de la société civile

(17) Lorsqu'il pratique par l'entremise d'un organisme de la société civile, le titulaire de permis établit un système de recherche de conflits d'intérêts concernant l'organisme de la société civile.

Services juridiques pro bono à court terme

~~(17)~~ (18) Les définitions qui suivent s'appliquent à la présente règle,

« cabinet de parajuriste » S'entend d'un cabinet parajuridique où le parajuriste offre des services juridiques pro bono comme associé, professionnel salarié, employé ou autre ; (« *paralegal's firm* »)

« fournisseur pro bono » S'entend d'un fournisseur de services juridiques pro bono ou sans but lucratif qui met des parajuristes pro bono à la disposition de clients pour leur donner des conseils ou les représenter ; (« *pro bono provider* »)

« pro bono » S'entend (i) d'un parajuriste bénévole qui fournit des services pro bono à court terme aux clients sous les auspices d'un fournisseur pro bono ; ou (ii) d'un parajuriste qui fournit des services sous les auspices d'un programme des services juridiques pro bono de l'Ontario ; (« *pro bono paralegal* »)

« services pro bono à court terme » S'entend de services juridiques ou de représentation pro bono fournis à un client sous les auspices d'un fournisseur pro bono, étant entendu, tant par le parajuriste que par le client, que le parajuriste ne fournira pas de services juridiques ou de représentation de façon permanente dans l'affaire en cause. (« *short-term pro bono legal services* »).

~~(18)~~ (19) Un parajuriste pro bono peut fournir des services pro bono à court terme sans prendre de mesures pour déterminer si un conflit d'intérêts découle des devoirs envers des clients actuels ou anciens du cabinet du parajuriste ou du fournisseur pro bono ;

~~(19)~~ (20) Un parajuriste pro bono prend des mesures raisonnables pour s'assurer qu'aucun renseignement confidentiel du client n'est divulgué à un autre parajuriste dans le cabinet ;

~~(20)~~ (21) Un parajuriste pro bono ne fournit pas de services pro bono à court terme à un client, ou cesse d'en fournir, s'il sait ou se rend compte qu'il y a un conflit d'intérêts ;

~~(24)~~ (22) Un parajuriste pro bono qui ne peut pas fournir de services juridiques pro bono à court terme à un client en raison de conflit d'intérêts cesse de fournir ces services dès qu'il se rend compte du conflit d'intérêts, et le parajuriste ne sollicite pas la renonciation du conflit par le client pro bono.

Honoraires de renvoi

5.01 (15) Un parajuriste peut accepter et un parajuriste peut payer des honoraires pour le renvoi d'une affaire pourvu que :

a) les honoraires de renvoi soient justes et raisonnables et ne fassent pas augmenter le montant total des honoraires payables par le client ;

b) une entente de renvoi ait été conclue au moment du renvoi ou dès que possible après le renvoi ;

c) le parajuriste ou l'avocat qui reçoit le renvoi ait l'expertise et la capacité d'agir dans l'affaire ;

d) le renvoi n'ait pas été fait parce que le parajuriste ou l'avocat qui renvoie l'affaire ;

(i) ~~a-un~~ est en conflit d'intérêts ;

(ii) était un parajuriste ou un avocat dont le permis était suspendu au moment du renvoi et qui ~~n'a n'avait~~ en conséquence pas le droit d'agir dans l'affaire ;

e) le montant des honoraires de renvoi ne dépasse pas quinze pour cent (15 %) des honoraires payés à l'avocat ou au parajuriste qui a reçu le renvoi pour les premiers cinquante-mille dollars (50 000 \$) des honoraires recouvrés et cinq pour cent (5 %) des honoraires supplémentaires recouvrés, jusqu'à un maximum de 25 000 \$ en honoraires de renvoi ;

f) le parajuriste ou l'avocat qui fait ou accepte le renvoi ne fournit pas de services juridiques par l'entremise d'un organisme de la société civile.

[...]

Clients d'organisme de la société civile

5.01 (17) Le parajuriste qui fournit des services juridiques par l'entremise d'un organisme de la société civile ne facture pas ses services juridiques directement ou indirectement à la personne qui en bénéficie, mais le parajuriste peut facturer les débours conformément à la règle 5.

Exigences de transition

5.01 ~~(17)~~ (18) Les dispositions du paragraphe 5.01 (15) ne s'appliquent pas au paiement des honoraires de renvoi en vertu d'une entente exécutoire visant à payer et à recevoir des honoraires de renvoi qui est conclue avant le 27 avril 2017.

Dans ces circonstances, le parajuriste qui renvoie une affaire à un autre parajuriste ou avocat à cause de son expertise et de la capacité de l'autre titulaire de permis d'agir dans l'affaire et lorsque le renvoi n'a pas été fait en raison d'un conflit d'intérêts, le parajuriste qui fait le renvoi peut accepter des honoraires de renvoi et le parajuriste qui reçoit un renvoi peut payer des honoraires de renvoi dans les conditions suivantes :

(i) les honoraires sont raisonnables et n'augmentent pas le montant total des honoraires facturés au client;

(ii) le client est informé et consent.

~~(18)~~ (19) Le parajuriste qui est autorisé à recevoir des honoraires de renvoi en vertu d'une entente tacite qui a été conclue au plus tard le 27 avril 2017 doit confirmer par écrit les conditions de cette entente dès que possible à l'autre partie à cette entente et doit fournir une copie de cette confirmation au client.

~~(19)~~ (20) Lorsqu'un renvoi a été fait avant le 27 avril 2017, mais qu'il n'y a pas d'entente exécutoire pour le paiement d'honoraires de renvoi à cette date, l'exigence que l'entente soit conclue peut être satisfaite en concluant une entente de renvoi en tout temps avant le paiement des honoraires de renvoi.

~~(20)~~ (21) Le parajuriste ne doit pas faire indirectement ce qui lui est interdit de faire directement en vertu des règles 5.01 (11), (14) et (15).

Lignes directrices sur le Code de déontologie des parajuristes – CSO Amendments

LIGNE DIRECTRICE 7 : CONSEILLER LES CLIENTS

Organismes de la société civile

Règle 1.02 définition d'« organisme de la société civile »

Règle 3.04 (17)

Règle 5.01 (15) et (17)

Règlement administratif n° 7

19. Les parajuristes qui fournissent des services juridiques à des clients par l'entremise d'organismes de la société civile sont tenus de contrôler la prestation de ces services juridiques. Le parajuriste devrait s'assurer :

a) d'agir dans l'intérêt du client ;

b) d'informer le client avec honnêteté et franchise de la nature, de l'étendue et de la portée des services qu'il peut rendre par l'entremise de l'organisme de la société civile ;

c) d'éviter les conflits d'intérêts entre le client et l'organisme de la société civile.

20. Si d'autres services sont fournis par l'entremise de l'organisme de la société civile, ou si les services du parajuriste sont fournis avec d'autres services, le parajuriste devrait s'assurer de protéger les renseignements confidentiels et privilégiés du client, et devrait seulement divulguer les renseignements confidentiels et privilégiés du client avec le consentement de ce dernier, ou si la loi l'exige.

PART VI

SERVICES DELIVERED BY LAWYERS AND PARALEGALS THROUGH CIVIL SOCIETY ORGANIZATIONS

Interpretation

41. (1) In this Part,

“civil society organization” means a registered charity under the *Income Tax Act* (Canada) a not-for-profit corporation incorporated under the laws of Ontario, or a not-for-profit corporation permitted under the laws of Ontario to operate in the Province.

“employee” means a full-time or part-time employee of a civil society organization.

Application of this Part

42. (1) This Part does not apply to

- (a) the provision of services which are deemed neither to be the practice of law nor the provision of legal services under Part IV of By-Law 4;
- (b) the provision of legal services without a licence under Part V of By-Law 4;
- (c) the practice of law without a licence under Part VI of By-Law 4; and
- (d) the practice of law or provision of legal services through a clinic, within the meaning of the *Legal Aid Services Act, 1998*, funded by Legal Aid Ontario.

Practice of law and provision of legal services through registered civil society organizations

43. A licensee may practise law or provide legal services for a member of the public through a civil society organization if the licensee is an employee of the civil society organization, the civil society organization has registered with the Society in accordance with section 44, and the licensee has the appropriate insurance as required under section 53.

Registration

44. In order to be registered with the Society under this Part, a civil society organization shall complete and submit to the Society the registration form required by the Society and adhere to the conditions therein.

Requirement to file annual report

45. (1) In order to maintain registration, every registered civil society organization shall file a report with the Society by January 31 of each year, in respect of the practice of law or legal

services, and related activities, provided through the civil society organization to the public, during the preceding year.

Form, format and manner of filing

(2) The report required under subsection (1) shall be in a form provided, and in an electronic format specified, by the Society, and shall be filed electronically as permitted by the Society.

De-registration

46. (1) Licensees may not practise law or provide legal services for a member of the public through a civil society organization that has been de-registered by the Society.

(2) A civil society organization may at any time be de-registered at the Society's discretion for failing to adhere to any of the conditions set out in the Society's required registration form or for whatever other reason determined by the Society.

Relationship to the client

47. A licensee practising law or providing legal services under this Part shall enter into a lawyer-client or paralegal-client relationship, as the case may be, with the recipient of the services.

Licensee control of delivery of services

48. A licensee practising law or providing legal services under this Part must maintain control of the delivery of those services and must be able to take any action necessary to ensure that he or she complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's rules of professional conduct for the licensee and the Society's policies and guidelines.

Update to Society

49. (1) A licensee who becomes employed to practise law or provide legal services under this Part shall immediately update his or her change in status with the Society.

(2) A licensee is also obligated to update the Society with any changes in information with respect to his or her employer civil society organization, which obligation shall be separate from the obligation on the part of the civil society organization to provide updates to the Society regarding changes in information.

Single-service and multi-service civil society organizations

50. (1) Licensees may provide services to the public through registered civil society organizations whose sole purpose is to facilitate the practice of law or provision of legal services, or may provide direct services to the public through registered civil society organizations that also provide non-legal services.

(2) Where it is appropriate to do so, a licensee may, in connection with the practice of law or provision of legal services under this Part, refer a client to another employee of the civil society organization who provides non-legal services, but the licensee shall ensure that no confidential or privileged information concerning the client is disclosed to the non-licensee employee unless the client gives his or her informed consent.

No fees may be charged for licensee's services; no referral fees

51. (1) Services provided by licensees under this Part shall be provided at no cost to the client by way of service, membership or other fee models.

(2) Costs for disbursements in connection with the practice of law or provision of legal services may be required from a client, including but not limited to court filing fees, photocopying costs, court reporting services and hiring expert witnesses.

(3) If costs for disbursements will be charged to an individual seeking services under this Part, the individual must be informed of and understand his or her obligations prior to entering into the lawyer-client or paralegal-client relationship.

(4) Neither licensees providing services under this Part nor civil society organizations facilitating those services may receive or pay referral fees in connection therewith.

Operation of trust account prohibited

52. Licensees practising law or providing legal services under this Part are not permitted to operate trust accounts in connection with their services.

Insurance requirements

53. Licensees practising law or providing legal services under this Part shall maintain professional liability insurance as required by By-Law 6.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 5.2

Professional Regulation Committee

Review of the *Rules of Conduct* and the *Paralegal Rules of Conduct*

Committee Members:

Jacqueline A. Horvat (Chair)
David Howell (Vice-Chair)
William C. McDowell (Vice-Chair)
Fred J. W. Bickford
Rebecca C. Durcan
Seymour Epstein
Brian Lawrie
Michael Lerner
Virginia MacLean
Gina Papageorgiou
Susan Richer
Jonathan M. Rosenthal
Jerry Udell

Authored By:

Matthew Wylie
mwylie@lso.ca

October 25, 2018



**Review of the *Rules of Conduct* and
the *Paralegal Rules of Conduct***

Table of Contents

Issue.....2

Executive Summary..... 2

Background.....3

Analysis.....4

 A. Mandates.....4

 B. Approach4

 C. Timelines6

Next Steps.....6



Review of the *Rules of Conduct* and the *Paralegal Rules of Conduct*

Issue

This preliminary report is provided to Convocation for information.

At its meeting on October 11, 2018, the Committee agreed to an approach to reviews of the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* (together “the Rules”).

These reviews have been recommended in the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (the “Challenges Report”), the Indigenous Framework as developed by the Equity and Indigenous Affairs Committee (“EIAC”) and the Indigenous Advisory Group (“IAG”), and the Report of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples (the “Review Panel Report”), together referred to herein as the “three reports”.

Executive Summary

To give effect to the reviews required by the three reports, staff recommend that the reviews of the *Rules* begin at the staff level, followed by a Benchers Working Group, which should include regular consultation with internal advisory groups, IAG and the Equity Advisory Group (“EAG”), as well as interested stakeholder consultations and a public call for input.

It is suggested that these reviews proceed according to a timeframe that recognizes the scope and the importance of this project. Staff suggest that the staff level and Benchers Working Group reviews take place over the next 6-8 months, by followed by stakeholder discussions starting in the late spring of 2019, with a public consultation proceeding thereafter. A final report including any amendments to the *Rules* could then proceed to the Committees before advancing to Convocation in late 2019.

Staff recommend that two parallel reviews be commenced – one responding to the Challenges Report and the other responding to the Indigenous Framework and the Review Panel Report. These reviews should proceed in concert and align wherever possible in order to maximize efficiencies, combine the expertise and experience of those staff and benchers involved, and to ensure that the reviews are both comprehensive and holistic.

The Paralegal Standing Committee, EIAC, and the IAG have reviewed and discussed the approach to the Rules review and provided feedback, which has been incorporated into this report.



Review of the *Rules of Conduct* and the *Paralegal Rules of Conduct*

Background

In December, 2016, Convocation approved the Challenges Report.¹ Included in the Challenges Report, as part of Recommendation #1, was a direction that the Law Society review and amend the *Rules* to “reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions”.² According to the Challenges Report, this review should advance the objective of licensees infusing the principles of equity, diversity and inclusion into their everyday practice.³

Recommendation #12 in the Challenges Report also included a direction that the Law Society revise the *Rules* to clearly identify systemic discrimination and reprisal for complaints of discrimination and harassment as breaches of the professional conduct requirements applicable to licensees.

In June 2017, Convocation approved the Indigenous Framework.⁴

The Indigenous Framework included four pillars: i) creating and enhancing cultural competency; ii) achieving and improving access to justice; iii) promoting and supporting knowledge of indigenous legal systems; and iv) taking action on reconciliation. The first and fourth pillars both include broad directions that the Law Society, in partnership with the Indigenous Bar Association, “examine the codes of professional conduct and the commentaries as well as the Federation Model Code to explore changes, where necessary, to promote reconciliation and culturally competent provision of legal services”.⁵

In May 2018, Convocation received and approved the Report of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples (the “Review Panel Report”).⁶ Recommendation #9 in the Review Panel’s report called for the inclusion of additional commentary in the *Rules* “in relation to the representation of vulnerable clients, including

¹ The Challenges Report is available at http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Working-Together-For-Change-Final-Report-Updated.pdf.

² Challenges Report p. 2 and p 14.

³ Ibid at p. 25.

⁴ The Indigenous Framework is available at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-on-June2017-Equity-Indigenous-Affairs-Committee-Report.pdf.

⁵ Indigenous Framework, p. 7.

⁶ The Review Panel Report is available at https://lso.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2018/Convocation-Law-Society-Review-Panel-Report.pdf.



Review of the *Rules of Conduct* and the *Paralegal Rules of Conduct*

Residential School Survivors. . . [and recommended that]. . . the competence rules be reviewed for this purpose.”⁷

Analysis

A. Mandates

The mandate of the Professional Regulation Committee (“PRC”) includes the development for Convocation’s approval of policy options on all matters relating to “rules of professional conduct applicable to persons licensed to practise law in Ontario as barristers and solicitors”.⁸ As such, the review of the *Rules of Professional Conduct*, as recommended in the three reports falls within that mandate and should be overseen by this Committee.

Similarly, the mandate of the Paralegal Standing Committee (“PSC”) includes the development for Convocation’s approval of policy options on “the rules of professional conduct applicable to persons licensed to provide legal services in Ontario.”⁹ Therefore, the review of the *Paralegal Rules of Conduct*, as recommended in the three reports is within that mandate and should be overseen by that Committee.

Staff acknowledge that there are differences in the scope of the reviews as recommended in the three reports and recommend that two parallel reviews be commenced. However, staff suggest that these reviews should proceed in concert and align wherever possible in order to maximize efficiencies, combine the expertise and experience of those staff and benchers involved, and to ensure that the reviews are both comprehensive and holistic.

B. Approach

In order to proceed with these reviews, staff recommend initial staff level reviews, followed by reviews by a Bencher Working Group, which should include regular consultation with internal advisory groups, IAG and the Equity Advisory Group (“EAG”), as well as interested stakeholder consultations and a public call for input. Specifically, staff recommend:

- a. Staff Level Review:
 - i. Staff retainer of outside experts to develop a matrix through which the *Rules* can be reviewed, aimed at identifying possible issues, gaps, and barriers, which may impact racialized or Indigenous licensees or clients, and specifically responding to the recommendations made in the three reports

⁷ Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples, *Report to Convocation*, May 24, 2018, at p 9.

⁸ Law Society By-Law 3, section 120(c).

⁹ Ibid, section 130,



Barreau
de l'Ontario

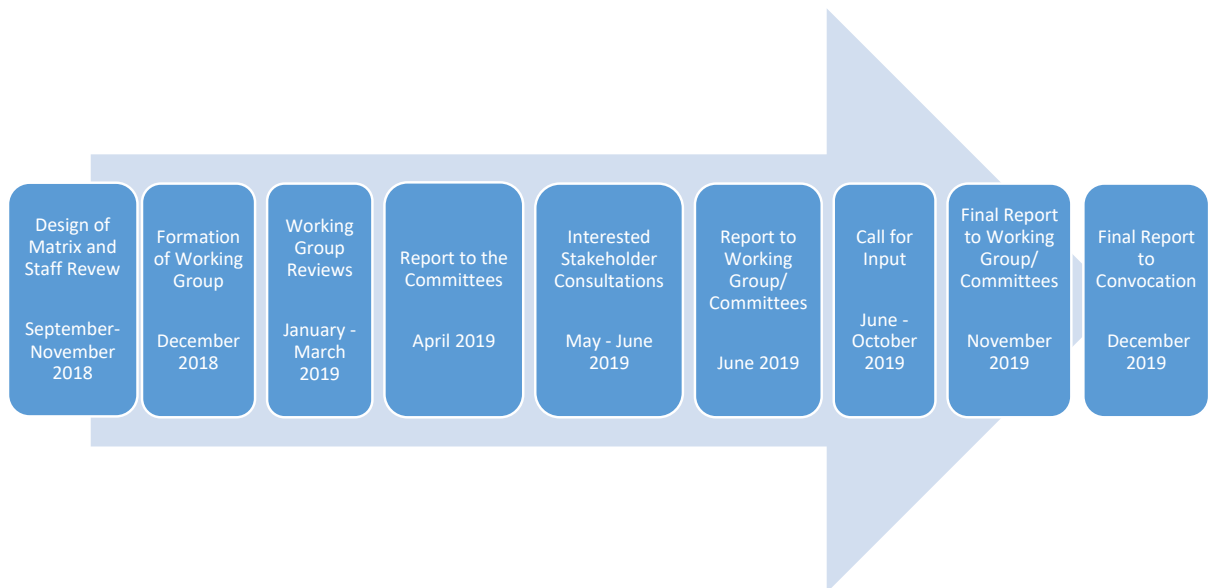
**Review of the *Rules of Conduct* and
the *Paralegal Rules of Conduct***

Two outside experts are proposed: one with expertise in equality, diversity and inclusion issues, the other with expertise in Indigenous issues.

- ii. Staff reviews of the *Rules* using that Matrix.
- iii. Staff reports on *Rules* review
- iv. Drafting of amendments to the *Rules* to address:
 - a. systemic discrimination
 - b. reprisals for complaints of discrimination and harassment
 - c. cultural competence.
- b. Working Group Reviews:
 - i. Formation of a Benchers Working Group consisting of six Benchers, with an equal number of members from PRC, PSC, and EIAC
 - ii. Review of staff reports and direction to staff
 - iii. Review of *Rules* amendments and direction to staff
 - iv. Throughout the Working Group's reviews, feedback and guidance sought from internal advisory groups and resources, in particular IAG
 - v. Report to the Committees (PRC, PSC and EIAC)
 - vi. Continued engagement with IAG to review those amendments that respond to the recommendations in the Indigenous Framework and the Review Panel Report. Additional consultations with other organizations as recommended by IAG.
 - vii. Engagement with external stakeholders to review those amendments that respond to the recommendations in the Challenges Report (see Appendix A for list of external stakeholders).
 - viii. Report to Working Group/Committees
 - ix. Public call for input
 - x. Report to Working Group/Committees
 - xi. Report to Convocation

C. Timelines

As is illustrated below, staff suggest that these reviews proceed according to a timeframe that recognizes the scope and the importance of the project. Staff recommend that the staff level review begin immediately with the goal that it be completed within the calendar year. The Working Group could start its review early in the new year, followed by stakeholder discussions starting in the late spring, with a public consultation proceeding thereafter. A final report including any amendments to the *Rules* could proceed to the Committees before advancing to Convocation in late 2019.



Next Steps

Subject to any feedback received, staff will retain experts to develop the Review Matrix and will then commence a rule-by-rule review.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 5.3

Professional Regulation Committee

Judges Returning to Practice

Committee Members:

Jacqueline A. Horvat (Chair)
David Howell (Vice-Chair)
William C. McDowell (Vice-Chair)
Fred J. W. Bickford
Rebecca C. Durcan
Seymour Epstein
Brian Lawrie
Michael Lerner
Virginia MacLean
Gina Papageorgiou
Susan Richer
Jonathan M. Rosenthal
Jerry Udell

Authored By:

Matthew Wylie
mwylie@lso.ca

October 25, 2018



Judges Returning to Practice

Table of Contents

Issue.....	2
Executive Summary	2
Background	3
A. Context	3
B. Judges Returning to Practice	4
C. Amendments to the Rules of Professional Conduct	5
D. Prior Feedback Received	5
Analysis.....	6
Next Steps.....	7

Issue

This report is provided to Convocation for information.

At its meeting on October 11, 2018, the Committee considered amendments to Section 7.7 of the *Rules of Professional Conduct*, which governs judges returning to practice. The Committee is informing Convocation of its plan to consult prior to proceeding with these proposed amendments.

Executive Summary

The *Rules* currently group former judges into two categories with respect to appearances as counsel or advocate. Specifically,

- a. Rule 7.7-1.2 contains an absolute prohibition against a former judge of the Supreme Court, the Court of Appeal, the Federal Court of Appeal, or the Superior Court of Justice appearing before any court, or in chambers, or before any administrative board or tribunal except in exceptional circumstances and with the approval of the Hearing Division of the Law Society Tribunal; and
- b. Rule 7.7-1.3 provides that judges of the Federal Court, the Tax Court of Canada, or the Ontario Court of Justice may not appear before the court on which they were a member, or any lower court, or before any administrative board or tribunal over which the court on which the judge was a member exercised an appellate or review jurisdiction, for a period of three years without the approval of the Hearing Division and only in exceptional circumstances.¹

At its September meeting, the Committee considered proposed changes to the Federation's Model Code of Conduct, including a provision that all judges who return to practice, regardless of the court on which they served, would be prohibited from communicating with or appearing before any court except in exceptional circumstances with the approval of the Law Society. It is unclear at this point if the Federation Council will approve these proposed changes.

Irrespective of the proposed amendments to the Model Code, the Committee asked staff to draft amendments to the *Rules of Professional Conduct* that would prohibit all federally and provincially appointed judges from appearing before any court, or in chambers, or before any administrative board or tribunal except in exceptional circumstances with the approval of the Hearing Division. 7.

The Committee also considered broadening the rule to include justices of the peace.

¹ Section 7.7 of the *Rules of Professional Conduct* is available at <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-7>.

A copy of the Committee's report was provided for information to the Paralegal Standing Committee and the Equity and Indigenous Affairs Committee.

Prior to proceeding with these amendments, The Committee decided to:

- a. Engage in discussions with Associate Chief Justice Frank Marrocco and the Office of Chief Justice Maisonneuve with a view to developing a collaborative approach to the issues related to post-judicial court appearances and return to practice, including any perception that a retired judge has a competitive advantage in litigation; and
- b. Communicate with judges and judicial associations potentially impacted by the proposed rule change, advising them of the Committee's deliberations and requesting their feedback.

Background

A. Context

In January 2016, Convocation approved changes to the provisions in the *Rules* that address post-judicial practice. At that time, former judges of the Superior Court of Justice were moved into the group of former judges that must apply for approval in order to appear as counsel or advocate in any court, in chambers, or before an administrative board or tribunal.²

These changes were prompted by a request from Associate Chief Justice Frank Marrocco on behalf of the Senior Executive of the Superior Court of Justice, who in September 2015, had suggested that the rules relating to Superior Court judges returning to practice required amending.

Associate Chief Justice Frank Marrocco noted that the optics of former judges appearing in court may be problematic, and highlighted one incident where a former judge was referred to as "His Honour" by opposing counsel and another where a former superior court judge's advertisement for his practice included a reference to the fact that he was a former judge of the Superior Court.

Between September, 2016 and June, 2018, the Federation's Standing Committee considered changes to the Model Code provisions concerning post-judicial practice before recommending final proposed amendments including:

² *Report to Convocation*, Professional Regulation Committee, January 28, 2016. Available at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-PRC.pdf.

- a. a new rule 5.6-4, and accompanying commentary, which provides that a lawyer or law firm may not “solicit, recruit or engage in discussions with a judge concerning a potential employment or business relationship”; and
- b. a revision of rule 7.7 (Former Judges Returning to Practice) to provide:
 - i. that a judge who returns to practice must not communicate with or appear before any Canadian Court, except with permission from the Law Society, which may only be granted in exceptional circumstances; and
 - ii. a requirement that a former judge who returns to practice respects the confidentiality of the judicial process and does not use or disclose any information obtained in their former capacity.

The Model Code amendments are scheduled to proceed to the Federation Council for approval in December. However, if there is significant opposition to the amendments, they may be deferred again or abandoned.

According to our information, British Columbia has indicated that it has not finished reviewing the proposed amendments, but is still likely to vote against them. Saskatchewan has also indicated that it does not support the proposed amendments, while Alberta has advised that it is still consulting with their courts and has not made a decision with respect to their final position.

B. Judges Returning to Practice

Under subsection 31(1) of the Law Society Act, when a lawyer is appointed as a full-time judge, the judge’s licence to practice law is placed in abeyance. Under subsection 31(2), upon ceasing to hold office, former judges may apply to have their licence restored. The restoration is approved through an administrative process and may only be refused after a hearing by the Hearing Division (subsection 31(2.1)).

Once their licence is restored, former judges must update their membership status and pay the applicable fees.

Between January 1, 2013 and September 26, 2018, 41 judges applied to have their licence restored.³

Former judges who wish to appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal are subject to the requirements set out in Section 7.7 of the Rules and must complete a separate additional application.

No applications from former judges to appear as counsel or advocate have been received in many years. In addition, it does not appear that we have received any recent complaints about former judges appearing before courts or tribunals

C. Amendments to the Rules of Professional Conduct

At its September meeting, this Committee discussed the proposed changes to the Model Code, but indicated that it was of the view that the Rules should be amended irrespective of any amendments to the Model Code, so as to prohibit all judges who return to practice from appearing in court or before tribunals, regardless of the court on which they served.

D. Prior Feedback Received

In the spring of 2017, this Committee considered changes to provisions governing post-judicial practice in the Rules of Professional Conduct and the Paralegal Rules of Conduct, as well as the proposed amendments to the Model Code.⁴

At that time, the Committee received feedback from the Honourable Paul S. Crampton, Chief Justice of the Federal Court, Justice Bruce E. Pugsley, President of the Association of Ontario Judges, Lori Newton, Executive Legal Officer, Office of the Chief Justice, Ontario Court of Justice, and the Association of Justices of the Peace of Ontario. The feedback received was not supportive of the proposed amendments.

3

Year	Judges Returning to Practice
2013	5
2014	10
2015	5
2016	7
2017	10
2018	4

⁴ The amendments to the *Rules of Professional Conduct* considered at that time would have prohibited lawyers who were formerly federally appointed judges, judges of the Ontario Court of Justice, or a justice of the peace from appearing before any court, or in chambers, or before any federal or provincial tribunal, except in exceptional circumstances with the approval of a panel of the Hearing Division.

Chief Justice Crampton indicated that a “lifetime ban” on Federal Court judges appearing before that court would be appropriate; however, a similar ban for Federal Court judges appearing before the Superior Court of Justice or one of the lower courts would be “excessive and unfair”. Chief Justice Crampton also advised that the prevailing view among members of the Federal Court was that a former judge should not be permanently banned from appearing before a tribunal whose decisions are subject to review by the Federal Court.

Justice Pugsley advised that the view of the Association of Ontario Judges was that the proposed changes were unnecessary and overly broad. He suggested further that the proposed amendments were “profoundly unfair” and argued that the cooling off period should remain the only restriction.

Lori Newton advised that the Office of the Chief Justice of the Ontario Court of Justice had requested comments from both the Association of Ontario Judges and the Association of Justices of the Peace, who both agreed that the Rules should not be amended. Ms. Newton also advised the Office of the Chief Justice was similarly not seeking amendments.

The Association of Justices of the Peace of Ontario characterized the proposed amendments as “unjust and unfair”. It noted that justices of the peace are not the same as judges in terms of salary and pensions, which it suggested resulted in many justices of the peace who retire at age 65 continuing to work for financial reasons.⁵

The Association also noted the omission of deputy judges of the Small Claims Court from the proposed amendments to the Rules, suggesting that the judicial function performed by deputy judges and justices of the peace is comparable and the reason for differential treatment unclear.

Analysis

It does not appear that the Courts or the Association of Justices of the Peace were advised in 2017 about the status of proposed amendments to Section 7.7. Therefore, they may have assumed that the Committee was no longer considering this issue. In keeping with standard Law Society practice, staff suggest that the Courts and the Association of Justices of the Peace should be advised that the Committee is once again considering amendments to section 7.7 and should be invited to provide additional feedback, if any.

There may also be additional benefits to consulting with the Courts and judicial associations. Many of the concerns that have been specifically articulated in both the Committee and the Federation’s review of this issue relate less to the conduct of former judges and more to the manner in which

⁵ Our statistics do not appear to support a conclusion that justices of the peace are returning to practice. Between January 1, 2013 and September 26, 2018, only 2 justices of the peace applied to have their licence restored.

they have been interacted with when before the courts, as well as the manner in which they have used their experience to gain a competitive advantage.

For instance, both Associate Chief Justice Marrocco and the Federation Standing Committee expressed concern about former judges being referred to by an honorific title while appearing before courts, but did not address the manner in which the presiding judges responded when this occurred. At least in the moment, the presiding judge's response may have been the most effective way to combat the problematic optics presented by the scenario.

Judges have a gatekeeper role in determining who may appear in their court and the conduct of counsel and others when before the bench. Consequently, effectively resolving these issues may ultimately require collaboration with the Courts and with judges.

Feedback from the Courts may also provide better insight into the extent and the exact nature of the problem and, therefore, how it would best be resolved. For instance, the second incident referenced in Associate Chief Justice Marrocco's memo related to possibly problematic advertising by a former judge, which the 2016 amendments to the Rules did not specifically address. Consulting with Associate Chief Justice Marrocco about whether the amendments to the *Rules* in 2016 effectively addressed the Superior Court's concerns may assist in determining the scope of the changes required.

Staff also recommend that the Committee request feedback from the government, the professions, and the public before proceeding to Convocation for approval of any amendments to the Rules governing the return to practice by former judges. The Law Society's standard practice is to consult with the professions and the public prior to making significant amendments to the *Rules*. In addition, amendments concerning judges returning to practice may alter career plans and career trajectories for licensees and prospective licensees, who should have an opportunity to comment on the proposed amendments prior to adoption.

There may also be benefits gained by hearing diverse perspectives about this issue, especially from racialized or Indigenous licensees, or licensees who serve traditionally marginalized groups and communities. These licensees may be impacted by the amendments disproportionately or differently. Comments and suggestions provided through a comprehensive call for input will strengthen the effectiveness of any future amendments.

Next Steps

At its meeting on October 11, 2018, the Committee agreed to the following next steps in the order set out below, with a report back from staff following execution of each step:

- a. Discussions with Associate Chief Justice Frank Marrocco and the Office of Chief Justice Maisonneuve with a view to developing a collaborative approach to the issues related to



Judges Returning to Practice

post-judicial court appearances and return to practices, including any perception that a retired judge has a competitive advantage in litigation; and

- b. Communication with judges and judicial associations potentially impacted by the proposed rule change, advising them of the Committee's deliberations and requesting their feedback.