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November 24, 2022

Law Society of Ontario
Professional Regulation Committee
policyconsultation@lso.ca

RE: CCLA response to LSO consultation regarding mandatory succession planning

Dear Members of the Professional Regulation Committee,

We are writing in response to the Law Society of Ontario's ("LSO") request for comments regarding mandatory succession planning. As part of this effort, the County of Carleton Law Association ("CCLA") solicited views and opinions from its membership. LSO's Consultation Report was also considered by various CCLA committees.

The CCLA is one of Ontario's largest law associations, representing lawyers and paralegals in the Ottawa and Eastern Ontario legal community. Our members practice in all areas of law.

As a not-for-profit association, the CCLA advocates to, *inter alia*, protect and promote the interests of the legal profession, champion access to justice, equality, diversity, and inclusion within the legal system. The CCLA also provides its members with regional law library and reference services, continuing legal education, annual conferences, advocacy, and guidance through the evolving challenges facing the profession.

Overview of CCLA Member Response

Our membership did not indicate any specific opposition to the Law Society's plans for mandatory succession planning. We believe that the lack of opposition confirms that the membership accepts that succession planning of the kind described in the LSO's Consultation Report is an important element of running a law practice in a responsible manner and that there are many benefits associated with succession planning.



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This was a view shared by key CCLA committees, including the Real Estate Committee, whose membership reflects the licensees who will be among the most impacted by mandatory succession planning.

Having said that, our members made specific comments and voiced concerns regarding the need for proper supports and guidance during the initial roll-out and implementation of this initiative. Also, our members have provided suggestions that may assist in providing ongoing support and guidance for successor licensees who have taken on the responsibility of administering a fellow licensee's practice under sudden and unfortunate circumstances. In short, our members want to ensure that the LSO provides guidance and support with respect to ongoing compliance and, ultimately, in the execution of succession plans. These comments and concerns are set out in more detail in response to the Law Society's specific consultation questions.

What are the impediments to proper succession planning by licensees?

Our members identified the following impediments to proper succession planning by licensees:

- a) There are a large number of sole practitioners without precedents or staff to ensure they are up to date with ever changing compliance regulations.
- b) There is concern with respect to ongoing management/compliance for a situation where the licensee intends to return to work, but the date for return to work is uncertain or may occur in stages. This may occur in a situation where the licensee is dealing with a significant illness where return to work occurs incrementally over time.
- c) The succession plans initially established may not be responsive to the situation that triggers the need a successor licensee to carry out the succession plan. As such, it is important for ongoing support, guidance and prompting to maintain a current and responsive succession plan.
- d) There are also concerns regarding various unknowns, such as:
 - i. Commercial/business concerns relating to files/clients returning to the lawyer after a period of illness;
 - ii. Regulatory/liability impacts as files will be transferred from one lawyer to another during a mandate;
 - iii. Client consents required to have successor lawyer access files;



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- iv. Conflicts need to be managed in a way that does not negatively affect the successor licensee; and
- v. Indemnification and liability issues as succession planning suggests that at least two lawyers will be involved with a particular client/mandate.

What supports and resources should be in place to assist licensees with succession planning?

Our members identified the following ways that the Law Society may support succession planning:

- a) The LSO should develop fulsome standard forms that are easy to use. The forms should include prompts for options and commentaries regarding choice of option or alternative language to address common situations. The form should be everything that a licensee needs to clearly state their intentions. This should be the only form required but may be supplemented by further information.
- b) The LSO should consult with other stakeholders to ensure that the successor licensee's authority to carry out tasks as such are recognized by key stakeholders, such as banks and clients. For example, the standard forms should include all the information necessary for a bank to recognize the successor licensee's right/ability to access trust or other accounts, as necessary. The LSO should consult with banks and other key third party stakeholders to ensure that their basic requirements are met as this will minimize the work of the successor licensee.
- c) The LSO should support successor licensee as is necessary by confirming the identity and legitimacy of the successor licensee to third parties such as banks, landlords and clients.
- d) To maintain the currency of the succession plan, LSO should create a form that can be completed at the same time as the annual filing requirements for sole practitioners, with the option of indicating "no change."
- e) The LSO should have appropriate CPD supports to assist licensees with developing and executing a succession plan. There are two sides to this matter – the succession plan being developed by the licensee and the succession plan being implemented by the successor licensee. The LSO must endeavor to have appropriate guidance for both aspects of succession planning.
- f) The CPD courses should be offered at a low cost, which reflects the fact that the key demographic being most effected is solo or small firm lawyers. This CPD should apply to



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- any CPD category presently required. The CPD should offer not only guidance on the regulatory requirements but also address best practices and commercial concerns.
- g) The LSO should consider providing additional training to licensees who may wish to advise other licensees on preparing a succession plan and executing upon a succession plan. This would be a “train the trainer” type model. Such an approach may assist in the roll out and avoid procrastination and will also allow a licensee to provide advice and guidance as part of their own practices.
 - h) Any standard forms should prompt the licensee to provide information in their succession plan that reflects, and will be responsive to, the practical questions/issues that the successor licensee will encounter including: practice details (employee, self-employed, etc.); business documentation and information (business numbers, incorporations, trademarks, websites, etc.); file location details; banking information (including credit cards and debts); client lists; key contacts; subscriptions; memberships; secured places and passwords; rental items and details; insurance details; service providers (and list of contracts); and affiliations or partnerships. If the form is uploaded to the LSO portal, extra security measures should be in place to protect the highly sensitive information being stored.
 - i) The LSO should provide continuing support through its web portal and practice management helpline. The web portal should include the necessary forms that have been approved and any additional commentary or guidance (e.g., frequently asked questions). Also, there should be a free online seminar answering common questions about completing the forms.

Are there specific aspects of succession or business continuity planning that should be the focus of more thorough guidance and advice from the Law Society?

Our members identified the following as the specific aspects of succession planning or business continuity that should be the focus of more thorough guidance:

- a) Recognizing that successor licensees are taking on responsibility and risk, the LSO should have supports in place such that successors would be able to call the Trustee Service to get all forms or required documentation in order to be able to access trust accounts, communicate with clients, access files, etc. of the licensee who has left/died/become unable to continue. Trustee Service should be prepared to actively HELP the successor who may be stuck dealing with the practice.



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- b) There may be questions regarding the successor licensee's mandate. For example, it may not be clear whether the successor licensee ought to be maintaining/overseeing the practice or should be immediately windup the practice. The successor lawyer needs to have access to LSO guidance if there is a concern (or a dispute) regarding the successor licensee's mandate.
- c) The LSO needs to recognize that it may be necessary for the successor licensee to communicate with the licensee's spouse/family during a difficult time. For example, the successor may need to engage with a licensee's family regarding the nature and duration of the licensee's incapacity and the potential for the licensee to return to practice. The LSO should have forms that may be signed by the licensee's spouse/executor/power of attorney confirming that the licensee has died or is incapacitated.
- d) As part of the LSO forms, the LSO may want to consider whether the forms should grant the successor licensee powers similar to a power of attorney whereby the successor is not granted an immediate right to act regarding the licensee's law practice, but only a right (and duty) to act in the event of the licensee's incapacity. This will put the successor lawyer in a position where they can act quickly to address practice matters upon proof of incapacity of the licensee. This would be a power of attorney that specifically pertains to the licensee's practice and provides legal authority for the successor licensee to act on behalf of the licensee in the event of incapacity. The licensee would have a separate power of attorney for their spouse to act in all other matters.
- e) There should be a default compensation component in situations when the practice itself is not able to compensate the successor for their efforts. If this initiative will save money that would otherwise be spent by the LSO, the LSO should take steps to ensure that funds are available to compensate the successor for their efforts.
- f) Licensees who have obtained a Certificate of Authorization from the LSO to permit them to practice law under a professional corporation should have a will that names an estate trustee for their corporate assets. The licensees should be prompted to consider how such estate trustee will interact with successor licensees. It is important to delineate the duties of the two sets of people who may become involved with the licensee's affairs. Indeed, in some situations it would be appropriate for the successor licensee to take on the role of estate trustee for the corporation and the guidance/authorizations/forms provided by the LSO should prompt the licensee to consider whether this is necessary or appropriate.



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Concluding Comments

We thank you for the opportunity to provide feedback on this important initiative.

In the event that you have follow-up questions or otherwise require additional information from the CCLA, please do not hesitate to contact Rick Haga, the CCLA's Executive Director. Rick can be reached at rhaga@ccla-abcc.ca and (613) 233-9197.

Sincerely,

Sean May
President, County of Carleton Law Association