

Central South Regional Rep Report for Plenary on May 12, 2022

Central South is still dealing with the impact of COVID, as are all other jurisdictions. Recently the Chief Justice provided general direction on new protocols and whether certain events will be presumptively in person or online. The Central South judiciary is still working through these presumptive protocols. We await further information on how to integrate in-person video conference and documentary evidence (Hybrid). The RSJ has advised that he may modify these presumptive rules over time.

In Central South the RSJ is proposing expanding case management by request. Requests can be made for case management by filling out a one page form and parties will get 15 minutes before a judge at 9:30 am to work out procedural issues in order to move claims along more efficiently.

Generally speaking, Associations are not producing the same number of CPD hours nor the same revenue from CPD as they did pre-COVID. Associations have adapted to the present circumstance. Uncertainty is still a major issue in determining whether to bring events back in person or by video conference. I expect that these challenges are province wide and not just restricted to Central South.

Recently the Hamilton Law Association wrote to the Treasurer of the Law Society regarding concerns over the involvement of accounting firms in the legal market place. Attached to this report is the letter of Andrew Confente, President of the Hamilton Law Association, dated April 14, 2022 (copy attached). The Treasurer has proposed a meeting with regards to this and other issue and I will continue to keep you advised of any further information in the future.

Even though juries have been recalled in Hamilton, concerns amongst the public remain which is evidenced by a recent Hamilton Spectator, Op Ed, piece by Susan Clairmont, Hamilton Spectator Columnist, a link to the article is attached.

Hamilton Spectator: Opinion | Jurors need protection, bring back courthouse COVID protocols.
https://www.thespec.com/news/hamilton-region/opinion/2022/05/05/jury-duty-covid-19-protocols.html?utm_source=newsshowcase&utm_medium=gnews&utm_campaign=CDAqKggAlhCUUsUgQ-5hmOyqGMpcOCriKhQICiIQLFIEPuYZjsqhjKXDgq4jCxw0w&utm_content=run-down

THE HAMILTON LAW ASSOCIATION

The Hamilton Law Association exists to enable its members to become successful, respected and fulfilled in their profession.

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Teresa Donnelly
Treasurer of the Law Society of Ontario
Office of the Treasurer Osgoode Hall
130 Queen Street West, Toronto, Ontario, M5H 2N6

April 14, 2022

Dear Treasurer Donnelly,

RE: Meeting Sought Regarding Accounting Firms with Law Divisions

I write this letter on behalf of the Hamilton Law Association, in its quest to navigate the unprecedented challenges that face law firms today. Lawyers, and law firms at large, have proven to be resilient when the traditional practice of law has been displaced. Although some of these changes have been abrupt, like when COVID-19 forced many lawyers to practice outside of the physical office, law firms have adapted and persevered to uphold the rule of law and provide access to justice. Lawyers recognize that businesses and individuals are becoming increasingly price conscious and are demanding leaner firm structures. Accordingly, law firms are constantly revisiting their business models and trying to adapt to the ever-changing needs of the client.

As of late, law firms are finding some recent challenges more difficult to navigate: namely, the competitors emerging in the legal arena. In this letter, while we assess accounting firms and financial institutions participating in the legal marketplace, I also invite you to ask how accounting firm competition is displacing the marketplace by asking the questions: how do accounting firms impact the legal marketplace, law profession, competency and provision of legal services to the public? What risks does that pose to the legal profession? And, what will the Law Society of Ontario do about it?

Accounting firms, financial institutions and the legal marketplace

A few years back, the impact came from the Big Four accounting networks by enhancing their revenue with legal divisions. The Big Four already have a combined annual revenues of \$120 billion, which exceed the \$89 billion generated by the 100 largest law firms combined.

Today, law firms are not only displaced by the Big Four, but by accounting firms and financial institutions at large. Accounting firms and financial institutions have been building up legal-

President Andrew Confente • Vice-President David van der Woerd
Secretary-Treasurer Hussein Hamdani • Executive Director Rebecca Bentham

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service divisions and creating a one-stop-shop opportunity for clients that would have previously been serviced by law firms. However, accountants have assured that they do not want to compete with law firms, and will instead focus on mid-tier, process-oriented work.

The focused approach also means that accounting firms and financial institutions are concentrating on practice areas that add to their existing services. These areas are primarily: immigration, labour, compliance, commercial contracts, and due diligence.

However, the most vulnerable to the accounting firm invasion, are not the big Bay Street law firms, but rather the small to mid-tier legal firms in markets like Hamilton, Waterloo, St. Catharine's and the like. Small to mid-tier legal firms have small profit margins, so while repetitive tasks are easy to standardize for the Big Four and larger accounting firms or financial institutions, small to mid-tier law firms cannot afford any loss of market share. Further, the presence of financial institutions in the legal arena could have a direct impact on access to justice, since the invasion will affect the viability of sole-practitioners, as well as small to mid-size law firms.

Risks in the legal profession

Further, what seems perhaps just as concerning to the legal profession, is not only the loss of business, but what the accountant and financial invasion means for the Rules of Professional Conduct and the resulting services provided to clients, namely: confidentiality, conflict of interest and communication.

Confidentiality

Privilege attaches to a communication between a client and a lawyer, which is made either for the purpose of enabling the lawyer to give, or the client to receive, legal advice. However, communications between an accountant and the client are *not* privileged.

Communications between clients and accountants are confidential, but this confidentiality does not come with the same protection as privilege. Client-accountant communications are available to domestic and international law enforcement and regulatory agencies. Canada draws a line at extending legal privilege to accountants based on wider community interests in full disclosure in judicial proceedings. In a 2003 case, in *Tower v. M.N.R. and BDO Dunwoody LLP*, [2002] D.T.C. 7315 (F.C.T.D.), rev'd 2003 FCA 307 the court was asked to decide whether certain communications between BDO and a client were privileged. The Federal Court held that the documents were not privileged. In the opinion of one judge, solicitor-client privilege "is recognized because it is necessary for the proper administration of justice" while confidentiality

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between accountants and their clients “is not founded upon a need to ensure an effective system of the administration of justice.”

In light of this position, clients who seek out services as full service ‘accounting firms’ may be confused about where such privilege extends. Accountants need to remain wary of the risk that, while their clients may consider the advice being provided to be “legal” in nature and therefore expect that privilege applies, that may not be the case.

Conflict of Interest

Secondly, the Rules of Professional Conduct outline that “**conflict of interest**” means the existence of a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person.

Lawyers and accountants are bound and qualified by each regulatory body (the Law Society of Ontario and the Chartered Professional Accountant of Ontario). The question begs, does the integration of legal advice and accounting advice in a ‘one-stop-shop’ blur the line on ‘independent advice’, ultimately risking a conflict of interest? If accounting firms are incentivised to refer its clients to its in-house legal department, and vice versa, is the client truly receiving the best, independent and most cost-efficient advice?

Communication

Finally, the idea that accounting firms and financial institutions operate separate and apart from law firms, provides a false sense of departure from the rules of solicitation. These accounting firms and financial institutions offering legal services, are still in fact bound by the Rules of Professional Conduct, namely Rule 7.2-6 and 7.2-8: “Communications with a Represented Person” and “Communications with a Represented Corporation or Organization.” These rules mandate that if a person, corporation or organization is represented by a legal practitioner, a lawyer shall not, communicate, approach or deal with the person, corporation or organization, except through or with the consent of the legal practitioner.

Some clients will not realize the issues raised by solicitation, especially from a notable financial institution or accounting firm. Clients may easily swayed to hire the soliciting accounting firms or financial institutions, without realizing the impact of protecting their interests.

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What next?

Our lawyers recognize that accountants are a great resource for the practice of law, but acknowledge that the presence of accounting firms and financial institutions in the legal arena, provide grave concerns for the small to mid-tier law firms that have been slowest to react, in the face of an ever changing legal landscape.

Regulations have restricted the growth of accountants – to a degree. In the USA and Canada, accountants cannot own and control law firms. However, in Ontario, accountants can collaborate and share costs in such law firms. The reasons for why Ontario allows such collaboration, remains unanswered. The lawyers of the Hamilton Law Association have requested that this question be put to the Law Society of Ontario.

The Hamilton Law Association and its members are alive to the issues facing our legal practitioners and its clients in the face of legal services being offered by accounting firms and financial institutions. Namely, the presence of the legal services offered by accounting firms and financial institutions impact the protection of rights: confidentiality, communication and conflict of interest. We are asking the Law Society of Ontario for steps to address the current climate where legal services are at risk by the presence of accounting firms and financial institutions. We invite you to meet with us to discuss these important issues, the current law society rules and the necessary limits.

Yours truly,

A handwritten signature in black ink, appearing to read 'Andrew Confente', written over a horizontal line.

Andrew Confente,

President, The Hamilton Law Association

CC: Douglas W. Judson, Chair, Federation of Ontario Law Association

Allen Wynperle, Central South Regional Representative, Federation of Ontario Law Associations

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