



November 30, 2022

Professional Regulation Committee  
Law Society of Ontario  
Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N6

Via Email ([PolicyConsultation@LSO.ca](mailto:PolicyConsultation@LSO.ca))

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To Whom It May Concern:

**Re: Mandatory Succession Planning Consultation**

Please accept this letter in response to the Law Society of Ontario's call for comments on the proposed mandatory succession planning requirement.

The Federation of Ontario Law Associations (FOLA) represents the associations and members of the 46 county and district law associations across Ontario and, through them, approximately 10,000 lawyers. Most of these lawyers are in private practice in small firms and sole practice law offices across the province.

The succession planning proposal under consideration is supported by strong policy rationale, and FOLA agrees with the objectives set out in the consultation paper. At a time when there is increasing need to scrutinize the costs that drive up the annual fees paid by licensees, it is important to look at whether policy design can reduce costs – in this case, the cost of Trustee Services.

That said, we believe that the Law Society's approach to this problem – and its ultimate policy design – needs to be moderated by several factors. Our comments and suggestions are set out below.

***The burden on licensees to meet this requirement must be reasonable.***

First, it is apparent that this new regulatory burden will fall first and foremost on the "soles and smalls" that make up the bulk of FOLA's constituency. Many of these firms have been under tremendous pressure to modernize and adapt their practices to the new way of practicing ushered in by COVID-19, but also new risks created by technology and online service delivery. Much of the feedback we have received from these lawyers is that the culmination of Law Society, LawPro, and other regulatory requirements in the administration of their practices are onerous, amorphous, and time consuming, with often byzantine or unclear guidance.

We suggest that the Law Society set an operational goal of creating a basic succession planning requirement that can be satisfied in one hour of work. We believe this should be possible through templates and other standard-form tools. We also suggest that the Law Society offer a fixed number of professionalism CPD credits to any licensee that completes or updates a succession plan. This will incentivize compliance while ensuring that the succession plans in place meet the Law Society's policy objectives.

We note that the tasks which fall to the lawyer acting as a licensee's successor may be onerous. For that reason, we also encourage the Law Society to considering putting in place a structure or guidelines for a licensee who acts as the attorney for another or as part of their succession plan to manage their practice. Unexpectedly taking on responsibility for another licensee's practice is a heavy responsibility, and there ought to be some remuneration that balances the need to compensate the lawyer while also avoiding situations where a practice is unfairly stripped of its assets after the principal is unable to act. The successor must also have clear guidance when it comes to managing any conflicts with their own practice.

As an additional strategy to reduce the burden on licensees, we suggest that the Law Society's policy consider adoption an "opt out" framework, wherein there are some "default" succession planning instruments that apply to all eligible firms *unless* the licensee creates their own.

***The obligation to create a succession plan should be targeted, as a matter of risk-management.***

Second, the obligation to create a succession plan should be targeted at those whose practices are at the greatest risk of creating costs for Trustee Services. It is apparent from the Law Society's consultation paper that the climbing budget for Trustee Services is related to the ballooning number of lawyers age 65 and up. It is obvious that this demographic is at greater risk than more-junior calls of serious illness or death that leads to practice abandonment.

We suggest that the requirement to create a succession plan apply to lawyers in sole practice who are age 60 and up. This would presumably capture the practices that are driving the largest portion of the costs for Trustee Services. We note that the Law Society is already understood to focus its other regulatory exercises based on risk (such as spot audits and practice management reviews that target newer calls who are most in need of guidance).

Relatedly, we encourage the Law Society to initially adopt a compliance-based enforcement mechanism once the need for succession planning policies comes into force.

***The Law Society should marry the need for a succession plan with efforts to fight the greying of the bar.***

Third, we see an opportunity to facilitate mentorship and fight the greying of the bar by how this policy is designed and rolled out. There is an opportunity for the Law Society to craft its policy and related communications to encourage more senior licensees to bring a junior call into their practice. There should be an exception to the requirement to create a succession plan if a junior lawyer is brought into the firm as a partner, a shareholder in the professional corporation, or practices in association with a documented understanding that the lawyers in the firm will serve as one another's succession plan.

FOLA is very concerned about the greying of the bar in several parts of the province. We believe that it is incumbent on the Law Society to start crafting policy that will support the renewal of the bar in these communities. The appropriate incentives, communications, and practice supports to complement the succession planning requirement can be used to circumvent this growing problem. We remind the Law Society of its statutory mandate to facilitate access to legal services for people across Ontario.

***Legislative amendments may reduce the burden on both the Law Society and licensees.***

Fourth, we suggest that amendments to the *Solicitors Act* or other legislation governing the profession may assist in controlling some of the cost issues that the Law Society is trying to address through this policy. Legislative amendments may also simplify succession planning for lawyers and the work of successors acting for a licensee.

FOLA suggests that by codifying a process in legislation to give Trustee Services substitute decision-making and succession planning powers in cases of an unexpected death or incapacity of a licensee could reduce the costs to the Law Society of seeking orders to empower it to act. The Law Society has previously requested amendments to legislation to facilitate regulatory reforms, and we suggest that this matter is no less pressing. Doing so could reduce the burden on both licensees and the Law Society.

We remind the Law Society that licensees continue to experience difficulties with a lack of standardization between banks. Another reason legislation could be helpful is that it could bring necessary certainty and clarity to the Law Society's objectives, as it is unlikely that all financial institutions will accept the same succession documents without clear direction in law to do so.

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As a final comment, we encourage the Law Society to consider the insightful and detailed comments provided by the Carleton County Law Association, in their letter on this issue dated November 24, 2022.

Thank you for reviewing our comments and suggestions related to this important policy initiative. Should you have any questions, we remain available to discuss these comments.

Sincerely,

A handwritten signature in black ink that reads "Douglas W. Judson". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Douglas W. Judson (*he/him/his*)  
Chair

- C. FOLA Board, *Via Email (various)*;  
County and District Law Association Presidents, *Via Email (various)*

