



Law Society
of Ontario

Barreau
de l'Ontario

Tab 2.1

Competence Task Force

Renewing the Law Society's Continuing Competence Framework

May 26, 2022

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MOTION

That Convocation:

1. Approve the creation of a practice essentials course that will have the following requirements:
 - Effective January 2024, all licensees will be required to take the practice essentials course within one year of designating as a sole practitioner for the first time.
 - The practice essentials course will be offered at a modest fee for licensees required to take the course.
2. Recommend that the Professional Regulation Committee amend the Commentary of Rule 3.1-2 of the *Rules of Professional Conduct* to adopt the Federation of Law Societies of Canada Model Code of Professional Conduct commentary regarding technological competence.
3. Recommend that the Paralegal Standing Committee amend the Rule 3.01 Reference in the *Paralegal Professional Conduct Guidelines* to adopt the Federation of Law Societies of Canada Model Code of Professional Conduct commentary regarding technological competence.
4. Approve the wind up of the Certified Specialist Program, effective September 1, 2022 subject to the following qualifications:
 - The Indigenous Legal Issues specialization will be continued subject to any future recommendation made by the Equity and Indigenous Affairs Committee to Convocation regarding the specialization.
 - Current Certified Specialists will continue to be able to use the C.S. designation until they retire, cease practicing or surrender their practicing license with the Law Society.
5. Approve the elimination of the six-hour limit on archived or recorded CPD programs that are eligible for CPD credit.

It has been over 20 years since the Law Society last undertook a comprehensive review of its policies and programs applicable to the competence of lawyers. Much has changed since then including the licensing of paralegals, tremendous change in the use of technology in the practice

of law and an ever-increasing number of annual calls to the bar with varied pre-licensing experience.

The Competence Task Force (the Task Force) was established to ensure that the Law Society's competence framework remains effective, proportionate, and balanced while addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs now and in the years to come.

In this report, the Task Force has reviewed existing programs and recommended new initiatives that will help to fill perceived gaps, ensuring competence of paralegals and lawyers and elevating the legal profession. The recommendations in this report represent a unique and exciting opportunity to ensure that post-licensure competence remains effective and relevant.

BACKGROUND

Law Society Legislative Mandate and Statutory Obligation

The Law Society's principal legislative mandate is to regulate the practice of law and the provision of legal services in Ontario by licensed lawyers and paralegals. It carries out this mandate by establishing standards and requirements for the competence and conduct of lawyers and paralegals, in the public interest.

The Law Society's mandate and foundational principles related to the regulation of competence are set out in ss. 4.1 and 4.2 of the *Law Society Act* (the "Act").¹

Function of the Society

4.1 It is a function of the Society to ensure that,

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

...

- 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

The concepts of universality and proportionality are embedded in the description of the Law Society's oversight functions in the Act: both lawyers and paralegals are to be subject to

¹ *Law Society Act*, R.S.O. 1990, c. L.8.

standards of professional competence and conduct, and the standards are to be reflective of the Law Society's regulatory goals. Other core principles that inform the Law Society's exercise of its competence mandate are the duty to facilitate access to justice for the people of Ontario, and the duty to protect the public interest, both of which are set out in the Act.

The Act also prescribes a standard of professional competence by defining what constitutes a failure to meet that standard:

Interpretation – standards of professional competence

41 A licensee fails to meet standards of professional competence for the purposes of this Act if,

(a) there are deficiencies in,

- (i) the licensee's knowledge, skill or judgement,
- (ii) the licensee's attention to the interests of clients,
- (iii) the records, systems or procedures of the licensee's professional business, or
- (iv) other aspects of the licensee's professional business; and

(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

The Establishment of the Competence Task Force

The Competence Task Force is grounded in both the Law Society's legislative mandate and its 2019-2023 Strategic Plan. In 2020 Convocation approved the plan, which set out four key objectives to guide and direct the Law Society's strategic agenda for the 2019–2023 board term: proportionate regulation; scope of regulation; competence and quality of service and access to justice. Subsequently, the Law Society established the Task Force to examine regulatory approaches to ensuring and improving career-long licensee competence.

The objective of the Task Force is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs. While licensee competence is intertwined with many aspects of Law Society regulation, the Task Force's mandate is focused on competence programs. For example, the Task Force's work excluded consideration of the definition of competence in the professional conduct rules so that the Task Force could focus on practical improvements to the competence framework. Competence matters relating to equality, diversity and inclusion were also excluded from the Terms of Reference. The Terms of Reference are attached at Appendix A.

The Task Force's determinations included:

- a review of all existing programs to assess their continued relevance and whether new programs and rules are required to ensure that the Law Society's competence framework is keeping pace with the evolution of legal services and regulation in Ontario; and,
- that licensee competence is addressed at every stage of a licensee's career, from the

licensing process to retirement.

In making these determinations, the Task Force considered how regulation and the provision of legal services will evolve over the next ten years and what changes should be made in that context. The Task Force reviewed the 2001 competence framework and sought to make recommendations that will ensure the Law Society competence framework will remain relevant ten years from now.

The Task Force focused on ways to maintain the competence of the legal profession, particularly in areas that result in the most Law Society complaints and malpractice claims. Further, the Task Force considered how to ensure that licensees remain competent in the face of significant technological change and innovation.

2001 Competence Model

The Law Society undertook a comprehensive consultation on the implementation of its expanded competence mandate² in 2000-2001. In March 2001, Convocation adopted the 2001 Competence Model,³ consisting of the following five components and building blocks:

Components	Building Blocks
Practice Guidelines	Specific in nature, flexible in application; from “acceptable performance” to “best practices”; initial focus on practice management, technology, and client service issues then subsequently on substantive law; broad consultation in developing; widely published; continuously reviewed and updated.
Practice Enhancement	<i>Voluntary Self-Assessment Program</i> Self-evaluation guide to practice management approaches, including use of technology and client service issues; utilizes existing tools; available electronically and on paper; links to assistance where sought. <i>Voluntary Peer Assessment Pilot Project</i> Minimum two-year term; development of a voluntary office visit system to foster quality practice.
Continuing Legal Education (“CLE”)	<i>Post-Call Minimum Educational Expectations</i> Articulation of what amount of CLE lawyers are expected to undertake annually; reporting of annual CLE; accreditation of CLE programs. <i>Requirements for Requalification</i> Enhanced program; required number of mandatory CLE credits as constituent element of program.

² In 1999, the Act was amended to give the Law Society authority to conduct practice reviews and conduct competence hearings.

³ Professional Development and Competence Committee (“PD&C Committee”), March 22, 2001 Report to Convocation.

Components	Building Blocks
Reformulated Specialist Designation	Combined developmental and experience recognition program; expanded areas of specialization including possible “generalist” designation; staged levels of specialization; mandatory educational component with enhanced province-wide accessibility.
Remedial Components Mandated by Statutes	Focused practice reviews; competence hearings.

The 2001 Competence Model established a foundation for the Law Society’s contemporary approach to regulating post-licensure competence. It consisted of programs and activities that were primarily voluntary in nature and reflected many of the attributes of a largely supportive, coaching model. The 2001 Competence Model also integrated both quality assurance and quality improvement measures. Quality assurance measures are focussed on ensuring compliance with established standards and include programs such as practice reviews and spot audits. Quality improvement measures address both compliance with established standards and involve tools designed to facilitate improved practices and professional development. CLE and the certified specialist designation are examples of quality improvement measures. It was recognized that both quality assurance and quality improvement measures are required to ensure that minimum standards and best practices are integrated into the regulation of competence.

While many of the components and building blocks of the 2001 Competence Model have evolved to keep pace with regulatory best practices and are in place today, some have been discontinued due to lack of feasibility or the introduction of other initiatives.

In addition, the introduction of mandatory continuing professional development (“CPD”), a comprehensive practice management review program, and increased attention around the importance of mentoring and coaching have all been notable developments in the competence landscape.

Currently, the Law Society’s Professional Development and Competence division administers a suite of proactive, remedial programs that collectively support continuing competence. The Law Society continues to employ both quality improvement and quality assurance measures which collectively address competence through universal requirements and programs focussed on areas of risk. These measures include: the CPD requirement and programs; the Practice Management Helpline; the Coach and Advisor Network; practice assessment programs (practice reviews, spot audits, and practice audits); the Certified Specialist Program; and legal information and research supports.

Evidence and Consultation

As a modern regulator, the Law Society must strive to achieve a balanced and proportionate approach to ensuring that lawyers and paralegals maintain their professional knowledge, skills, and judgement over the course of their careers. To achieve this objective, the Law Society’s renewal of its continuing competence framework must be evidence-based, informed by regulatory outcomes and reflective of the needs of the professions and their clients. To that end, the Task

Force considered data from the Law Society's competence and conduct streams, as well as from LawPRO,⁴ and the results of a five-month consultation with the professions and the public, including specific outreach to sole practitioners and individual and business clients.

The Task Force also reviewed the competency framework for lawyers in other Canadian and international jurisdictions.

Client Service and Practice Management Issues

Law Society data shows that approximately half of the complaints made to the Law Society are related to service issues.⁵ Service issues do not arise from inadequate knowledge of the law, but rather from basic communication and practice management issues. Service issues include:

- failing to provide client reports;
- failing to follow client instructions;
- miscommunication or no communication;
- failing to preserve client property;
- failing to pay financial obligations; and
- failure to correctly manage accounts.

LawPRO data corroborates the Law Society data. Most malpractice claims arise from lawyer/client communication and relationship issues, inadequate investigation, poor time management and procrastination.

The communication complaints and claims occur when important aspects of a matter are not handled properly. For example, there is not enough time or effort spent on:

- setting and controlling client expectations on the scope of the retainer;
- explaining how the matter will proceed and how long it will take;
- outlining what strategies or options exist; describing the potential outcomes of the matter; and
- clarifying what final recoveries and legal fees will be.

Further errors arise in circumstances where a lawyer gives summary advice because the client wants a quick answer with minimal legal fees. Finally, common errors involve not knowing a limitation period, missing a limitation period because it was not entered in a tickler system, or a failure to respond to a deadline in a tickler system.

Years Licensed

Law Society data indicates that newly licensed lawyers and paralegals have a lower risk of complaints and claims than other groups. Lawyers and paralegals who have been in private practice for five years or less received a proportionately lower percentage of complaints compared to those who have been licensed for more than five years. The risk of complaints increases for licensees who have been licensed for 10 years and remains elevated for the next

⁴ The Law Society does not have access to data about the malpractice claims experience for paralegals.

⁵ [Professional Regulation Division End of Year Report at 18.](#)

10 years.⁶ LawPRO trends align with Law Society complaints data, indicating that the risk of malpractice claims peaks when lawyers are 10-20 years out from licensure.

Sole Practitioners and Small Firms

The majority of law firms in Ontario are sole practices and small firms of five or fewer licensees. As of December 31, 2020, 94% of law firms and 99% of paralegal firms are comprised of five or fewer licensees. It is not surprising, then, that a significant portion of the Law Society's regulatory activity relates to lawyers and paralegals practising in these settings. However, licensees in small firm and sole practitioner settings are the subject of complaints at a higher proportion than licensees in other contexts.⁷

Sole practitioners represent approximately 32% of lawyers in private practice and 55% of paralegals in private practice. That percentage has remained fairly constant over the years.

While sole practitioners make up about one-third of lawyers in private practice and slightly over half of paralegals in private practice, they are the subject of 78% and 82% of the most serious complaints (i.e. complaints that result in notices issued in discipline) and the subject of 48% and 65% respectively of the complaints of substance (i.e. complaints received in Professional Regulation).⁸ Approximately 35% of sole proprietors who receive a practice review require a follow up review, compared to only 15% of firms with two to five licensees, and less than 7% of firms with more than five licensees.

Consultation

On June 23, 2021, the Task Force issued a consultation report entitled *Renewing the Law Society's Continuing Competence Framework* (attached at Appendix B). The Report invited lawyers, paralegals, legal organizations, members of the public and others to share their ideas about how to support post-licensure competence. The consultation report specifically sought input on the Law Society's competence framework and the programs that constitute the framework, including their efficacy and suggestions on how they could be changed or improved. The consultation report also sought input on the principles that the Task Force used to review components of the competence framework in order to make its decisions.

The call for comment was widely promoted using a proactive communications approach that leveraged the Law Society's corporate communications channels and engaged with Law Society partners and stakeholders to share information across their networks. The Law Society communicated the launch of the Report via a number of avenues, such as social media posts, a dedicated webpage, a news release and the Licensee Update. It was also highlighted in materials to stakeholders and licensees, a blog post and full-page ads in the Ontario Reports. The call for comment closed on November 30, 2021 having generated a total of 77 substantive responses. This included 50 responses from individual licensees (7 paralegal licensee responses and 43 lawyer licensee responses); 24 responses from lawyer associations and other legal organizations and 3 from non-licensee individuals or organizations.

As a part of the consultation process the Law Society retained Earnscliffe Strategies, an opinion research company to conduct ten focus groups. Six of the focus groups were conducted with

⁶ 2020 Operations Report to Convocation, February 2021 at 60.

⁷ *Ibid.* at 59.

⁸ [Professional Regulation Division End of Year Report at 19-20.](#)

lawyers: two with barristers; two with solicitors; and two with a mix of both barristers and solicitors (including one of which was in conducted in French). Two other focus groups were conducted with paralegals. Finally, two focus groups were conducted with clients who had retained the services of a lawyer or paralegal in the last three years: one with members of the general population and one with institutional clients. The goal of the focus groups was to reach audiences and include licensee and stakeholder viewpoints that would not be captured through the call for comment, gathering further perspectives and allowing for a more fulsome consultation.

REVIEW OF EXISTING PROGRAMS

As it undertook to review the existing programs that form the Law Society competence framework the Task Force identified five principles to guide its decisions. These principles informed whether existing programs should be continued and whether new programs and initiatives should be implemented. During the consultation, the Task Force sought feedback on these principles.⁹ The principles that the Task Force relied on in making these determinations are:

1. **Risk-based** – Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
2. **Flexible** – Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
3. **Feasible** – Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
4. **Forward-looking** – The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
5. **Client-centred** – Competence requirements should consider the client’s needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences (including differences in backgrounds, education, income levels, abilities and cultures) that may impact communications with clients and the way in which legal advice and services are provided.

Practice Assessments Programs

1. Program Overview

The Law Society operates three practice assessments programs focussed on proactively ensuring licensee compliance with established standards: (1) practice reviews (for lawyers), (2) spot audits (for law firms), and (3) practice audits (for paralegals).

The three programs involve a similar model: licensees are selected for a review and provided with information about the criteria and process that will be followed; a Law Society reviewer or

⁹ While most respondents agreed with these principles some concerns were raised during the consultation around the client-centred principle. Specifically, concerns were raised that these would be applied in a regulatory context that took outcomes (e.g., a litigation loss) into account. The Task Force took those comments into consideration when making their deliberations and applying these principles.

auditor attends at the licensee's business to meet with the licensee, observe the licensee's practice arrangements, and review documentation; and the reviewer or auditor subsequently prepares a summary of findings and recommendations for consideration by the licensee. The vast majority of reviews and audits are remedial in nature and reveal minor deficiencies that can be addressed by the lawyer or paralegal through improved practices and procedures. A small percentage of review and audits disclose serious deficiencies and require escalation to the enforcement arm of the Law Society.

2. Consultation Feedback and Task Force Considerations

Respondents to the consultation found that practice assessments are beneficial to licensees and often helped identify issues that, if unchecked, could become significant problems. This was corroborated in the focus groups where licensees indicated that audits and reviews are an important component of the competency framework. Most felt that reviews and assessments were an effective means of ensuring competency. Virtually all who had received a review or audit agreed that they had identified small problems and ensured they avoided larger issues in the future. Client participants in the focus groups had no knowledge of the reviews and audits that licensees undergo. When told of them, they were enthusiastically supportive and claimed that it raised their confidence in the legal profession and instilled trust in lawyers and paralegals.

Task Force members agreed with the important role that practice assessments play as part of the competence framework. Members recognized the effectiveness of practice assessments as a critical quality assurance tool for supporting licensee competence and addressing areas of regulatory risk. Task Force members found that practice assessments satisfy the operating principles; however it was consistently noted that because of limited resources not all high-risk groups are likely to receive practice assessments.

3. Task Force Recommendation

The Task Force recognizes the importance of practice assessments and strongly supports the continuation of this important program. Task Force members recommended that the Law Society explore ways to increase the reach of practice assessments to more licensees, and particularly to those groups of licensees identified as higher risk that currently receive a limited amount of practice assessments. Some Task Force members suggested exploring ways to better harness technology to achieve these goals.

A minority of the Task Force felt that, subject to budgetary concerns, practice reviews and practice audits should be mandatory for all licensees in their 10th year of licensure. It was noted that is the time frame when licensees are statistically most likely to encounter practice management difficulties.

Certified Specialist Program

1. Program Overview

The Certified Specialist program ("CSP") recognizes lawyers who have met established standards of experience and knowledge requirements in one or more designated areas of law and have maintained exemplary standards of professional practice. The CSP also assists members of the public identify lawyers who can meet their needs for specialist legal assistance. The Law Society does not offer a CSP for paralegals.

Certified Specialists are permitted to use “C.S.” as a post-nominal designation. The C.S. designation is an indication to the public and to colleagues that the specialist has demonstrated elevated standards of competence in their area of practice. As of 2020, 784 lawyers were designated as Certified Specialists, representing approximately 2% of practising lawyers. The relatively low percentage of lawyers designated as specialists has been consistent for several years. The program has undergone at least two significant revisions since its inception to increase the level of participation, but this has not had a marked impact on enrollment. Despite the small number of Certified Specialists in the province, those that have committed the time and effort to become certified value being recognized in their field and the ability to distinguish themselves from others in their practice area. There is no data readily available about whether the public relies on the C.S designation in selecting legal counsel.

2. Consultation Feedback and Task Force Considerations

There were not many submissions made regarding the CSP. Slightly over half of respondents who made submissions regarding the CSP indicated a preference that the program should be kept or modified. Slightly less than half indicated a preference that it be eliminated altogether. Most respondents who wanted the program eliminated had not participated in the program (although some had heard of it or had interacted with other lawyers who were certified specialists). Those who wanted the CSP eliminated did not think that it is a true marker for excellence in the profession or that it had significant utility.

3. Task Force Recommendations

The Task Force recommends that the CSP should be eliminated except for the Indigenous Legal Issues specialization. All existing Certified Specialists should be able to retain and use their C.S. designation until they retire, cease practising or surrender their practising license with the Law Society.

The Task Force was of the view that the CSP does not meet the principles of an effective competence regime. Task Force members noted that there has been a limited uptake in the CSP, and many felt that the program does not assure or improve licensee competence. It was felt that the energy and efforts expended on continuing the CSP could be better put to other programs that are more consistent with the principles.

Task Force members also noted that there is no ongoing evaluative component as part of the CSP. The CSP does not include a mechanism for ensuring ongoing elevated expertise in the subject area once a licensee has obtained a C.S. designation (other than the CPD requirement applicable to all licensees).

4. Grandparenting of existing Certified Specialists

All Task Force members felt that existing Certified Specialists should be grandparented. A majority of Task Force members believed that Certified Specialists should retain and be able to use their C.S. designation until they retire from the practice of law. This would recognize the work that Certified Specialists had put into achieving their designation while allowing the Law Society to wind down the program.

A minority of Task Force members believed that Certified Specialists should retain their C.S. designation for five years after which time the use of the designation should be concluded. Those who recommended this approach felt that the C.S. designation does not provide a

protection for the public and that its continued use after the Law Society is no longer maintaining the program may, in fact, mislead the public. As such, it makes sense to wind it down in a shorter period.

5. Indigenous Legal Issues Specialization

The Indigenous Legal Issues specialization comprises core requirements and three distinct, but related sub-specializations that each has its own set of experience, knowledge and skills requirements. The three sub-specializations are: Rights and Governance, Litigation and Advocacy, and Corporate and Commercial. It was developed in 2016 after significant consultations with Indigenous and legal communities.

The required skills for all sub-specializations include demonstration of the ability to properly articulate the Indigenous perspective and to effectively serve Indigenous clients. To this end, inter-cultural competencies have specifically been integrated into the standards. Applicants are required to submit a brief statement confirming that they have obtained a significant understanding of Indigenous cultures, perspectives and contexts. They must also submit a reference from an Indigenous community member as one of the four references required as part of the application process.

The Task Force recognized that the Indigenous Legal Issues specialization is unique in the CSP in that it certifies both substantive legal specialization and inter-cultural understanding. It is intended to enhance the level of service to Indigenous Peoples by providing a mechanism by which excellence in Indigenous legal matters is both identified and encouraged. For these reasons, it is interconnected with the Law Society's Indigenous Framework and commitments to reconciliation. As such, any recommendations regarding the Indigenous Legal Issues specialization should be made by the Equity and Indigenous Affairs Committee (EIAC), with the input of the Indigenous Advisory Group (IAG). To this end, the Task Force recommends retaining the Indigenous Legal Issues specialization in its current form until the EIAC has had an opportunity to engage with IAG, review the specialization and determine what role it plays in the Law Society's Indigenous Framework and commitment to reconciliation. Depending on its conclusions, EIAC may recommend that the specialization be continued in its current form, revised or replaced by another program to enhance competence in Indigenous legal matters.

Continuing Professional Development Requirement

1. Program Overview

Continuing Professional Development is defined as the maintenance and enhancement of a licensee's professional knowledge, skills, attitudes, and professionalism throughout their career. The Law Society requires licensees who are practising law or providing legal services to complete 12 CPD hours each year, including at least three professionalism hours and up to nine substantive hours. Professionalism CPD must be related to professional responsibility, ethics, or practice management. As of 2021, at least one professionalism hour each year must relate to equality, diversity, and inclusion topics.

2. Consultation Feedback and Task Force Considerations

The vast majority of respondents indicated their preference that the CPD requirement be maintained as is or enhanced, with very few respondents stating it should be eliminated or curtailed. Most respondents indicated that CPD is an important part of how they maintain their

competence. This was corroborated in the focus groups where every licensee and client who participated indicated that the CPD requirement should be maintained. Licensees in the focus groups universally indicated that they view CPD as an essential component of the competence framework and an important part of their own competency and means of keeping up with changes to the law and developments within the profession. Further, during the focus groups, licensees advised that their CPD requirement is an important component to maintaining societal trust in their position as a lawyer or paralegal. The client participants in the focus groups had no knowledge of the CPD requirements that licensees undergo. When told of them, they were enthusiastically supportive and claimed that it raised their confidence in the legal profession and instilled trust in lawyers and paralegals.

A recent study of quality assurance and competence assessment mechanisms across various professions and jurisdictions found that in all jurisdictions and professions examined, continuing education or CPD were explicitly identified as critical to the maintenance of professional competence.¹⁰ All 91 regulatory bodies reviewed for the study required practitioners to complete some form of life-long learning to be eligible for annual renewal of registration.

3. Task Force Recommendations

Task Force members noted that the CPD requirement allows licensees the flexibility to determine their greatest needs and develop forward-looking plans for their learning. Further, it provides enough flexibility for licensees to adapt their CPD learning, as the law and licensee needs develop. Task Force members recommend maintaining the status quo with respect to licensees' annual CPD requirements.

4. The six-hour limit on viewing or listening to archived or recorded CPD

Currently, licensees can only claim up to six hours of CPD by viewing or listening to archived or recorded CPD without a colleague. The remaining six hours must be interactive. In response to the pandemic this requirement has been waived over the past two years with no discernible disruption or adverse impact on licensee compliance.

The Task Force recommends eliminating the six-hour limit. Task Force members felt that the elimination would allow for flexible delivery options that allow licensees to engage in professional development activities when and where they need. Further, it would likely result in cost savings for licensees through decreased travel costs, particularly for licensees practising outside of urban centres.

The Task Force agreed that, where appropriate, CPD should be interactive in nature to facilitate an active learning experience for licensees; however it was not felt that the six-hour limit achieves this goal.

¹⁰ Zubin Austin and Paul A.M. Gregory, "Quality Assurance and Maintenance of Competence Assessment Mechanisms in the Professions: A Multi-Jurisdictional, Multi-Professional Review" (2017), *Journal of Medical Regulation* Vol. 103, No. 2, online: <https://meridian.allenpress.com/jmr/article/103/2/22/80878/Quality-Assurance-and-Maintenance-of-Competence..>

Mentorship and Coach and Advisor Network

1. Program Overview

The goal of the Coach and Advisor Network (“CAN”) has been to promote and facilitate a systematic approach to enhancement of lawyer and paralegal competence through peer connection and support, particularly for those in sole and small practices and new licensees who may not have ready access to colleagues and senior practitioners. CAN expands upon the traditional concept of mentoring through a more structured and focussed process. The program provides lawyers and paralegals with access to short-term, outcome-oriented relationships with volunteer coaches and advisors drawn from the professions. Advisors provide limited scope assistance with substantive and procedural law inquiries on client files. Coaches assist with longer term objectives involving the implementation of best practices over a 3-month period.

2. Consultation Feedback and Task Force Considerations

There was near universal agreement amongst respondents that mentorship is an invaluable experience for mentors and mentees alike, and that it should be encouraged. In the focus groups licensees pointed to mentorship as the second most valuable part of licensees’ competency, ongoing learning and professional development, only surpassed by the CPD requirement. At the same time, many respondents and focus group participants, and particularly paralegals, indicated that finding a mentor is difficult. This has been exacerbated by the pandemic.

3. Task Force Recommendation

The Task Force agreed with the importance of mentorship and CAN as part of the competence framework. The Task Force strongly supports the continuation and enhancement of CAN. Further, Task Force Members encouraged the Law Society to consider opportunities to promote and facilitate mentorship awareness and relationships by:

- emphasizing the importance of mentorship relationships;
- encouraging licensees to be coaches, advisors or mentors;
- producing resources for licensees on how to make the most of these relationships;
- establishing a program on effective mentor/menteeship; and
- promoting and providing more resources to the Coach and Advisor Network.

RECOMMENDED NEW INITIATIVES

While the Task Force agreed that the existing Law Society programs provide a strong basis for continuing competence, Task Force members felt that there remain some gaps in ensuring post-licensure competence. Specifically, Task Force members felt that licensee technological competence and practice management and communications issues for sole practitioners remain challenges that the current programs do not fully address. In determining initiatives to fill these gaps, the Task Force was guided by the same operating principles that it used to consider existing programs.

A Practice Essentials Course for Licensees starting Sole Practices

1. Task Force Recommendation

The majority of Task Force members recommend that all licensees who are designating as sole practitioners be required to take a course of practical and effective “front end” training on the foundational topics, i.e., those resulting in the highest incidence of complaints, malpractice claims and identified practice deficiencies.

The legal education and licensing placements for new licensees do not consistently provide all the necessary skills to understand and mitigate these risks and run effective legal practices. Instead, new licensees who are starting as sole practitioners are required to independently learn and develop the foundational systems, structures and habits to mitigate these risks while, at the same time, opening a firm, developing a client base and beginning their professional legal careers.

Experienced licensees transitioning to sole practices also need to develop skills, structures and systems to mitigate the risks associated with operating as a sole practitioner. Those who have been working in mid-sized or large firms are unlikely to have been directly exposed to the processes related to law office management, accounting and bookkeeping, and file management.

Errors in practice management and client service can have profound implications for clients who cannot exercise their rights or experience financial losses. They also impact licensees. For a licensee starting a sole practice, a malpractice claim or Law Society complaint can be a devastating personal blow and have significant long-term implications on the practice’s success.

A practice essentials course would set new sole practitioners up for commercial and professional success by ensuring that all licensees starting new firms are equipped with the requisite knowledge and resources to operate as sole practitioners. Task Force members feel that this would be a significant risk management achievement for the Law Society and is likely to have a measurable impact on licensee competence and public interest protections.

The practice essentials course would be complementary to the resources available for licensees starting new sole practices, such as the *Guide to Opening Your Law Practice* and the CPD programs that the Law Society produces for licensees who are in the process of starting a sole practice.

Recently, the Law Society also launched Bridge to Practice, a new initiative designed to supplement the academic education and experiential training received by articling students and newly licensed lawyers with free, hands-on learning opportunities. Bridge to Practice provides tools for new lawyers to enhance their knowledge and skills as they begin their legal careers. Leveraging archived programming from the Law Society’s CPD library, the Bridge to Practice content has been carefully curated to address some of the most pressing topics for new lawyers in core practice areas, as well as practice management and the business of law. Bridge to Practice will be expanded to paralegals in 2022.

Despite these useful resources, there is no single interactive program that provides a full overview of the foundational topics needed for operating a sole practice. It is left to licensees to determine their knowledge deficiencies and undertake to address them. That is the void that the practice essentials course would fill.

A practice essentials course would be consistent with other jurisdictions that have implemented mandatory post-licensure courses for lawyers opening a sole practice.¹¹ An overview of these courses can be found at Appendix C.

2. The Practice Essentials Course

The practice essentials course would involve online classes delivered incrementally over either a few months or a year, totalling approximately 30 hours. The course would be offered as an executive style course providing significant points of interaction, practical training and evaluative components.

The topics covered would include, broadly, client service and communication; financial and practice management; the business of running a law practice and professional responsibility in practice. Practical lessons, advice and materials would be provided on issues such as financial obligations; accounting for law firms; available software for law firm financial records; how to deal with your financial institution; billing practices; hiring employees; setting up an office; file management and organization. Some topics would be contextualized between barristers, solicitors and paralegals. Key features of the program delivery would include:

- **Online Delivery** – The course would be offered primarily online to ensure accessibility to licensees across the province. Opportunities for in-person activities could be offered, including as part of a culminating workshop or networking event.
- **Interactive** – Although the course would be delivered primarily online, it would be designed to facilitate interaction between participants and instructors through discussion groups and forums.
- **Self-paced modules** – Content would be broken down into separate modules to support the learning needs of practitioners who require flexibility to balance their professional and personal obligations. A modular format would allow learners to undertake the course in manageable sections and focus on specific themes and concepts in a progressive manner.
- **Practically-oriented** – The course would focus on application of principles and best practices to the individual licensee's practice. Learning outcomes would emphasize goal setting, reflection, and business planning. Case studies, including lessons learned from the regulatory stream, with instruction and feedback from investigators and disciplinary counsel who "have seen it all" would be used to illustrate concepts and principles in context.
- **Evaluative** – The course would embed assessment activities appropriate for professional adult participants. Assessments would be focused on developing a thorough understanding of client service and practice management best practices.

Supplementary to the course, materials would be provided to participants. These would include supports that would serve as both a workbook and a post-course reference tool for participants, consisting of practice guides, precedents, scenarios, and checklists. There would also be substantive law resources for core practice areas such as real estate and wills and estates.

¹¹ Because Ontario is the only province that regulates paralegals, there are no comparable required post-licensing courses for sole practitioner paralegals. A brief environmental scan of countries with common law legal systems reveals that this would be a novel initiative for paralegals.

In addition, the Law Society would explore the following additional benefits for course participants:

- Participants would not be subject to a practice assessment for five years following their completion of the practice essentials course unless there are complaints or claims against the licensee;
- A voucher towards free Law Society CPD;
- Automatic fulfilment of CPD hours for the following reporting year given the duration of the course (note that the course will be sufficient CPD hours for the year in which it is taken and, given its length, will sometimes span two calendar years);
- A certificate or credential to provide recognition to participants who have successfully completed the course and to signal a level of assurance to the public;
- A reduction in LawPRO premiums through the Risk Management Credit or other means; and/or
- Assignment of a mentor, coach, or peer group for a 6–12-month period following completion of the course to facilitate ongoing support and accountability.

There would be multiple intakes each year to allow licensees to access the course as they select into a sole practice category.

While the course would initially be offered only for licensees starting, or intending to start, new legal practices, the Law Society could explore ways to expand it on a voluntary basis once it is established.

3. Benefits to New Sole Practitioners

A significant number of lawyers and paralegals in Ontario operate sole practices providing fundamental legal services to individuals in critical areas ranging from family law to criminal defence to residential real estate and other personal or small business services. Approximately 32% of lawyers and 55% of paralegals in private practice are sole practitioners. However, Law Society and LawPRO data show that sole practitioners struggle with client service and practice management issues, when compared to their counterparts in larger firms. This has profound impacts on the licensees as well as their clients and the general public. Further, the Law Society spends significant resources reacting to regulatory complaints that arise from these errors.

Each year approximately 775 lawyers and 220 paralegals change their status with the Law Society to sole practitioner for the first time. Of those who make this status change, approximately 280 lawyers and 100 paralegals each year are new licensees. This means approximately 12% of new lawyers and 10% of new paralegals start their legal careers as sole practitioners.

A practice essentials course will set these new sole practitioners up for long term success and have the same impact as practice assessments. While only approximately 5% of newly formed sole practices receive a practice assessment each year, those practices are approximately 20% more likely to remain sole practices five years later, compared to soles who do not undergo a practice review or spot audit. By moving the lessons gleaned from spot audits and practice reviews to a proactive course, the Law Society has a unique opportunity to extend the benefits of those practice assessments to all licensees starting sole practices.

The practice essentials course will provide licensees who are starting out as sole practitioners with a road map to the most critical information that they need to be successful in starting their sole practices. Licensees will spend less time determining their knowledge gaps and finding resources and more time setting up the necessary structures and learning new skills.

Further, it will allow course participants to start their sole practice with added confidence and security in their ability to manage their firm. It will help ensure licensees are providing better client service, communicating more clearly with their clients and have the knowledge and strategies to avoid common mistakes.

The course would also provide a direct opportunity to socialize and promote the Law Society's voluntary practice supports such as the Coach and Advisor Network, the Practice Management Helpline, the Member Assistance Program and many online resources which are available free to licensees, most of which have been designed to address the needs of soles and smalls.

4. Benefits to the Public

The Law Society has a statutory duty to ensure baseline competence of lawyers and paralegals in the public interest and ensuring entry level competence for sole practitioners is critical to complying with this duty. The practice essentials course will provide foundational knowledge and practical skills that can reduce the errors that impact clients and opposing parties.

Many sole practitioners act for clients with limited exposure to legal issues or concerns and are relied upon for real estate transactions, landlord and tenant issues, estate planning, collections or establishing small businesses. Other sole practitioners practise in areas of law that serve clients of limited means or education or dealing with crises such as family breakdown or arrest. Those clients are relying on their paralegal or lawyer to resolve issues of critical personal importance. Reducing the risk of practice management and communication errors for licensees will be a further protection to members of the public. The practice essentials course is an opportunity to proactively develop the skills to work with these clients and mitigate risks to the general public.

By ensuring that licensees opening sole practices receive structured training on the foundational issues related to client communication and practice management, the Law Society is seizing a unique opportunity to mitigate risks that sole practitioners will make mistakes related to client service and practice management. A practice essentials course could have a measurable positive impact on licensee competence and provided added public protections.

5. Benefits to the Law Society of Ontario

Ensuring that licensees understand how to effectively serve their clients is an important aspect of the Law Society's statutory obligations. In addition, the adoption of the course could have longer term benefits to Law Society operations.

The more licensees that are set up for success at the commencement of their sole practice careers, the less likely it is that the Law Society will need to address issues in the regulatory stream. Practice management habits are formed early in one's legal career and Law Society statistics indicate that licensees who become sole practitioners within two years of being licensed are likely to remain sole practitioners for the duration of their careers. Reactive regulation is more expensive and it is anticipated that the practice essentials course would, in the long term, result in further cost savings.

Moreover, the course could have positive impacts on the Law Society's quality assurance regime. All licensees completing the practice essentials course would receive up-front training and competence development, similar to the remedial support that licensees receive during practice assessments. Accordingly, the implementation of this course may create opportunities to reallocate the Law Society's practice assessment resources to more licensees and to address some of the areas of interest expressed by the Task Force. For example:

- The percentage of sole practitioner lawyers and paralegals being assessed by the practice review program is small relative to the overall population of sole practitioners. Lawyers and paralegals who have taken the course in the past five years could be removed from the pool of sole practitioners subject to a practice review, allowing the Law Society's quality assurance to benefit a greater number of licensees overall.
- Currently the practice review program focuses on lawyers in their first eight years of practice. Removing lawyers who have taken the practice essentials course from the pool of sole practitioners subject to a practice review could also create space for practice reviews of lawyers who have been licensed for 10 or more years and who are more likely to demonstrate practice deficiencies.
- Alternatively, audits and reviews of sole practitioners who have taken the course could be reduced in scope, reducing the time and resources involved for the Law Society and for licensees.

Opportunities to further streamline the practice audits program could evolve organically as more licensees in sole practice have taken the course and achieved a core level of competence.

6. Impacts to Licensees starting up Sole Practices

Each licensee designating as a sole practitioner would be required to register and begin the practice essentials course within 12 months of opening their new firm.

Licensees would be required to take approximately 30 hours of training. This represents a significant time commitment for a licensee also setting up a new sole practice, however the proposed modular structure and online modality creates flexibility for participants. The time spent taking the practice essentials course would be offset, to some extent, by a reduction in the hours that they would need to dedicate to CPD in the calendar year(s) in which they take the course.

Further, as outlined above, the Law Society could consider either reducing the scope of practice assessments or refocusing practice assessments away from course participants during the five years following completion of the program. This would save further time for the licensee that would have been spent preparing for and attending at the practice assessment.

Finally, it should be noted that the information being taught during the practice essentials course is essential information for all sole practitioners that all licensees starting sole practices will need to familiarize themselves with. The time spent in the practice essentials course would have been spent locating and obtaining this information from another source.

A minority of Task Force members felt that any new practice essentials course should not be mandatory, and some Members felt that there was no need for the proposed course at all.

Those who did not want the course to be mandatory felt that it was an additional burden for licensees starting a new firm or that there are already sufficient resources available.

7. Cost Considerations to the Law Society

The cost estimate for developing a practice essentials course is \$500,000. This would include configuration of an online platform; online course design and content development as well as the development of course materials and translation. The development costs would be borne by the Law Society.

8. Ongoing Operational Costs

Ongoing operational costs are estimated to be \$500,000 - \$600,000 per year. These projections include costs for additional staff resources as well as continued course updates and improvements.

For most programming provided by the Law Society, a cost recovery model is used where program participants pay an amount that offsets the ongoing operational costs. However, the Task Force felt that ongoing operational costs for attendees of the practice essentials course should be offset by averaging some of the costs amongst all Law Society licensees. At the same time, the Task Force felt that the practice essentials course should not be free for attendees.

The Task Force proposes that the Law Society should charge attendees a modest amount (for example, \$250) with the remaining operational costs averaged amongst all licensees (which is estimated to be approximately \$5 per licensee).

The Task Force noted that the benefit of the course was such that a modest fee was justifiable for someone opening a new business; while averaging some of the operations cost recovery across all Law Society licensees would ensure that the course participants do not have an additional significant fee. Task Force members pointed to the following four reasons for averaging some of the costs among all licensees:

1. The practice essentials course would elevate the legal profession, benefitting all licensees. Ensuring that licensees understand practice management basics will ensure that the legal profession is more credible, competent and reliable. That in turn raises the reputation of the entire legal profession and instills the public with more confidence in the profession's overall competence.
2. Sole practitioners play a vital access to justice function in Ontario, as they primarily serve individuals, families and small businesses. As such, it is critical that they are able to access, understand and implement the knowledge and tools needed to comply with their professional obligations and run successful practices.
3. Many licensees starting a new firm have limited available financial resources. This is particularly applicable to new licensees who have outstanding school fees; licensing costs and examination fees. As such, any significant out of pocket expense would be a burden.
4. The anticipated benefits to the Law Society, as noted above, arising from less reactive regulation and reallocation of practice assessments are costs that are borne by all licensees. While the program is not expected to result in immediate Law Society cost savings from those programs, it is anticipated that there will be long term cost savings for all licensees through less reactive regulation.

A minority of Task Force members felt that attendees should not be charged any fee to attend the practice essentials course. Some felt that new licensees should be exempt from the fee.

Task Force members who did not agree with a mandatory practice essentials course did agree that if it were mandatory the costs should be averaged across all licensees to some extent.

9. Effective Date

The Law Society aims to offer the first practice essentials course in January, 2024. This will allow time for the Law Society to develop and operationalize the high-quality course outlined above; explore possible course incentives and ensure that the appropriate administration of the course is in place.

Supporting Licensee Technological Competence

The Task Force sought recommendations from the Law Society Technology Task Force on whether technological competence should be encouraged or mandated and, if so, would be appropriate regulation in this area. The Technology Task Force provided the following three recommendations, each of which were adopted by the Competence Task Force. In making these recommendations, the Competence Task Force members considered the same operating principles set out above. Task Force members were particularly interested in ensuring that any recommendations are forward-looking and will keep pace with new and future technological developments.

1. Task Force Recommendations

The Competence Task Force makes the following three recommendations:

1. The Law Society should adopt the Federation of Law Societies of Canada Model Code commentary.
 2. The Law Society should update the Law Society Technology Guideline.
 3. The Law Society should provide more resources to help licensees maintain and enhance their technological competence.
2. Adopt the Federation of Law Societies of Canada Model Code commentary

The Task Force recommends that the Law Society should adopt the commentary to Section 3.1-2 of the Model Code developed by the Federation of Law Societies of Canada (Federation).¹² This Section sets out the duty of competence and is similar to the competence obligation in the Law Society's professional conduct rules. It states that a licensee must perform all legal services undertaken on a client's behalf to the standard of a competent licensee. In October 2019, the Federation added new commentary paragraphs to the competence rule that are intended to prompt legal professionals to consider the benefits and risks associated with the use of technology. Further, the commentary sets out an obligation to be technologically competent in

¹² Federation of Law Societies of Canada Model Code of Professional Conduct, online: <https://flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>.

a manner appropriate to the licensee's circumstances. The commentary to section 3.1-2 reads as follows:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- a) The lawyer's or law firm's practice areas;
- b) The geographic locations of the lawyer's or firm's practice; and
- c) The requirements of clients.¹⁴

The law societies of seven provinces / territories have already incorporated in its entirety the Model Code's language regarding tech competence into their codes of conduct:¹⁵

1. Alberta¹⁶;
2. Manitoba¹⁷;
3. Newfoundland and Labrador¹⁸;
4. Northwest Territories¹⁹;
5. Nova Scotia²⁰;

¹⁴ *Ibid.* at 16.

¹⁵ While New Brunswick has only adopted the language in part [4A] of the Model Code's commentary on tech competence, New Brunswick's Code of Professional Conduct includes an appendix entitled Guidelines on Ethics and the New Technology (the NB Guidelines) that addresses several aspects of technology.

¹⁶ Law Society of Alberta Code of Conduct, online: <https://documents.lawsociety.ab.ca/wp-content/uploads/2017/01/14211909/Code.pdf> at 8.

¹⁷ The Law Society of Manitoba Code of Professional Conduct, online: <https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Documents-English.pdf> at 17.

¹⁸ The Law Society of Newfoundland and Labrador Code of Professional Conduct, online: https://lsnl.ca/wp-content/uploads/2021/11/NL_Code-of-conduct_2020Jan01_WORD.pdf at 17.

¹⁹ Law Society of the Northwest Territories Code of Professional Conduct, online: <https://lawsociety.nt.ca/wp-content/uploads/2021/06/Model-Code-as-amended-March-16-2021.pdf> at 17.

²⁰ Nova Scotia Barristers' Society Code of Professional Conduct online: <https://nsbs.org/wp-content/uploads/2019/11/CodeofProfessionalConduct.pdf> at 12.

6. Saskatchewan²¹; and

7. Yukon.²²

3. Benefits of adopting the Model Code commentary

The Model Code commentary is flexible and aspirational. Rather than prescribing specific measures or tools that licensees must learn or employ, the commentary is context-specific and encompasses the principle of proportionality - it captures only technology that is “necessary to the nature and area of the lawyer’s practice and responsibilities” and that is “reasonably available to the lawyer”.²³ The intent of the commentary is not to add a new, unduly burdensome requirement.²⁴

Task Force members also noted the importance of acknowledging technological competence as an element of the duty of competence. The commentary recognizes that being able to understand and use technology is part of being a competent licensee, similar to other skills such as effective communication and time-management skills.²⁵

Finally, the adoption of the tech competence commentary in the Model Code would also align the Law Society with other jurisdictions in Canada and the U.S.A.

4. Considerations

The responses to the consultation report revealed that some licensees believe the Law Society should stay out of the area of technological competence or that the current competence framework adequately captures technological competence. However, Task Force members felt that advances in technology are transforming the way in which legal services are performed and delivered. Now more than ever, licensees need to have basic competence in technology to meet the needs of their clients and to function effectively. The COVID-19 pandemic has illustrated the importance of basic technological skills to communicate effectively with clients, create practice efficiencies, and participate in court and tribunal proceedings as they modernize their platforms. The Model Code commentary achieves that goal in a manner that is proportionate and addresses the challenge associated with regulating disparate practice areas.

5. Update the Law Society’s Technology Guideline

The Law Society’s eight *Practice Management Guidelines* provide a general framework to assist lawyers with complying with their professional responsibilities and adhering to best practices. The Guidelines cover the following areas: client service and communication, file management, financial management, technology, professional management, time management, personal management, and closing your practice. In its current form, the *Technology Practice*

²¹ The Law Society of Saskatchewan Code of Professional Conduct, online: <https://www.lawsociety.sk.ca/wp-content/uploads/2021/05/Annotated-Code-of-Professional-Conduct-final-00221148xB6EE0-1-1.pdf> at 16.

²² Law Society of Yukon Code of Conduct, online: <https://lawsocietyyukon.com/wp-content/uploads/2020/02/Code-of-Conduct.pdf> at 19.

²³ Amy Salyzyn, “It’s Finally (Sort Of) Here!: A Duty of Technological Competence for Canadian Lawyers” (2019), online: <http://www.slaw.ca/2019/11/26/its-finally-sort-of-here-a-duty-of-technological-competence-for-canadian-lawyers/>.

²⁴ *Ibid.*

²⁵ *Ibid.*

Management Guideline (the Guideline) recognizes that lawyers should have a reasonable understanding of the technologies used in their practices or access to someone who does. The Guideline provides a high-level overview of the use of technologies to support client service expectations and practice management systems, security, disaster management, and technological obsolescence.

The Guideline has been regularly updated to address rule and legislative amendments but would benefit from a holistic review and comprehensive update. Adoption of the technological competence commentary by the Law Society presents such an opportunity. This update would include:

- Repositioning the Guideline's current recommendations to align with the technology competence commentary and recent case law;
- Describing current technology opportunities, threats, and best practices; and
- Revising and expanding the Guideline to reflect the rapidly evolving ways in which lawyers have been using technology during the pandemic.

6. Provide More Technology Supports and Resources

Of the consultation report respondents that mentioned technological competence, the majority expressed the view that the Law Society should provide more resources to help licensees maintain and enhance their tech competence. The Technology Task Force also recommended the provision of more technology supports and resources. The Competence Task Force is supportive of continuing development and updating of technology supports and resources.

APPENDICES

Appendix A – Competence Task Force Terms of Reference

Appendix B – Consultation Report June 2021

Appendix C – Cross Jurisdictional Scan

Competence Task Force - Terms of Reference

Mandate and Objective:

The Competence Task Force will examine the Law Society's regulatory approaches to ensuring and improving lawyer and paralegal post-licensure competence. It will examine the principles and rationales for regulating post-licensure competence and will study potential approaches in order to identify the most appropriate regulatory tools available.

The Task Force's objective is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long licensee competence, in a manner that protects the public interest and is responsive to the public's legal needs.

The Task Force will:

- identify the key components of professional competence in a dynamic and evolving environment for legal professionals;
- consider the Law Society's legislative mandate for regulating post-licensure competence, and identify the principles and rationales on which the Law Society should proceed;
- study approaches to post-licensure competence used in other jurisdictions and by other professional regulators;
- articulate a regulatory framework for post-licensure competence that:
 - prioritizes proactively identifying and mitigating risks and reducing demonstrated harms;
 - enables the achievement of competence benchmarks in a manner that is not duplicative, onerous or fails to address certain risks;
- consider whether, and if so how, the regulatory framework should include improving post-licensure competence as well as ensuring minimum competence;
- assess the effectiveness of the post-licensure competence programs and procedures currently operated or supported by the Law Society, including assessing:
 - the validity of the program's policy objectives,
 - the effectiveness of the program in meeting its objectives,
 - the efficiency of the program in delivering its outcomes,
 - the efficiency, including cost-effectiveness, of the program's structure for its purpose,
 - the proportionality of the program's operations and regulatory obligations in relation to its purpose and objectives, and
 - whether the Law Society is or continues to be the appropriate body to support the program;
- determine which programs and procedures, based on the assessment, should continue, be modified or restructured, or be ended;
- identify and evaluate alternative post-licensure competence programs and procedures that would better achieve the regulatory framework articulated;
- identify any policy issues arising from these determinations that may require review by a standing or other committee;
- consider any budgetary implications arising from these determinations that may require referral to the Audit & Finance Committee;

- update Convocation from time to time on the Task Force’s work; and
- submit a final report, including recommendations, to Convocation.

Parameters:

In undertaking this work the Task Force is expected to be open to re-evaluating the Law Society’s approaches to post-licensure competence, in light of continuous changes in the legal landscape, in the profiles and practices of the legal professions, in the legal needs of the public, and in regulatory best practices.

The Task Force’s work will involve evaluating current Law Society programs and procedures, as well as identifying and considering alternative options for regulating post-licensure competence, such as specialized licensing for certain types of practice and self-reported competence evaluations and learning plans.

Current Law Society programs and procedures include:

- continuing professional development programming and the annual CPD requirement;
- quality assurance programs, such as practice management reviews and spot audits;
- practice supports and resources, such as the Practice Management Helpline and the Coach and Advisor Network;
- the Certified Specialist program; and
- the Great Library and the Legal Information and Resource Network.

Methodology:

The Task Force will study potential regulatory approaches and tools using environmental scans and ongoing subject monitoring, data collection and assessment, review of leading reports, and engagement with subject matter experts. The Task Force will also consult widely as engages in its work and as it develops any recommendations.

Timetable:

The Task Force will commence its work under these terms of reference in the fall of 2020 and will meet regularly thereafter. The Task Force will report to Convocation from time to time on the Task Force’s work, as appropriate, and will submit a status report to Convocation by September 2021. That report should include a plan and timetable for completing the Task Force’s work by no later than June 2022.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 7

Competence Task Force

Renewing the Law Society's Continuing Competence Framework

June 23, 2021

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Executive Summary

The Law Society of Ontario's (the "Law Society's") Competence Task Force (the "Task Force") was established to examine regulatory approaches aimed at ensuring and enhancing the post-licensure competence of lawyers and paralegals. The objective of the Task Force is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs.

The work plan of the Task Force includes four phases: discovery, development, design, and implementation. The Task Force has completed the discovery phase and is currently in the development phase of its work. This has included the creation of a working definition of competence and the identification of themes and principles to inform the design and implementation phases.

It has been 20 years since the Law Society engaged in a comprehensive consideration of its core mandate to regulate the competence of lawyers and paralegals. The 2001 Professional Development Model of Competence (the "2001 Competence Model") established a foundation for the Law Society's contemporary approach to regulating post-licensure competence. Many of the components and building blocks of the 2001 Competence Model have evolved to keep pace with regulatory best practices and remain in place today. In addition, the introduction of mandatory continuing professional development ("CPD"), a comprehensive practice management review program, and increased attention around the importance of mentoring and coaching have all been notable developments in the competence landscape.

Currently, the Law Society's Professional Development and Competence division administers a suite of proactive, remedial programs that collectively support continuing competence. The Law Society continues to employ both quality improvement and quality assurance measures which collectively address competence through universal requirements and programs focussed on areas of risk. These measures include: the CPD requirement and programs; the Practice Management Helpline; the Coach and Advisor Network; practice assessment programs (practice reviews, spot audits, and practice audits); the Certified Specialist Program; and legal information and research supports.

The Task Force seeks to renew the Law Society's continuing competence framework for lawyers and paralegals and has identified the following principles to guide the development and design phases of its work:

- **Risk-based** – regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- **Flexible** – obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- **Feasible** – competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- **Forward-looking** – the competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.

- **Client-centred** – competence requirements should consider the client’s needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

In addition, the Task Force has identified a number of key themes that may inform new approaches to competence programs and requirements:

1. **Peer Support and Assessment** – Strong peer relationships that provide informal opportunities for learning and problem solving are integral to competence and ought to be nurtured through continued emphasis on mentoring and coaching. There may be value in exploring peer assessments as a mechanism for facilitating a supportive approach to assisting licensees with their practice management challenges.
2. **Adjustments to CPD Requirement** – The Law Society may wish to consider a reduced emphasis on mandatory CPD, or alternatively, more focussed requirements tied to licensee practice areas, experience levels, or identified areas of regulatory risk. While lawyer and paralegal compliance with the CPD requirement has been high since inception, there may be a need to consider the type and content of program that will be the most impactful in maintaining and enhancing competence.
3. **Guided Learning and Development** – Licensee recognition of and commitment to the need for ongoing professional development could be enhanced by learning roadmaps or curricula that lead to credentialing or a concrete achievement. While many practitioners can navigate their professional development on their own, some direction on required competencies for particular areas or stage of practice could further incentivize progression over the course of one’s legal career.
4. **Baseline Competence and Beyond** – While the Law Society has a statutory duty to ensure baseline competence of lawyers and paralegals in the public interest, there may be value in having mechanisms to promote ongoing learning and for achieving and recognizing standards of excellence.
5. **Importance of Practice Reviews** – Practice reviews are a critical quality assurance tool for supporting licensee competence and addressing areas of regulatory risk. The Law Society may wish to increase the number of practice reviews conducted and to include practitioners who are more senior and may be more likely to exhibit competence deficiencies. In addition, licensees should be encouraged to reflect on their critical practice management obligations regularly.
6. **Enhanced Support for Soles and Small** – Sole practitioners and small firms play a vital access to justice function in Ontario, as they primarily serve individuals, families, and small businesses. Soles and smalls also face a higher risk of complaints and may have fewer resources. Lawyers and paralegals practising as soles or in small firms may benefit from focussed support and training. The Law Society would benefit from input as to what support would best ensure continuing and increasing competence.
7. **Technological Competence** – Advances in technology are transforming the way in which legal services are performed and delivered. As illustrated by the COVID-19 pandemic, licensees need to have basic competence in technology to meet the needs of

their clients and to function effectively. The Task Force considered how the Law Society can help prepare licensees for the rapidly changing future and discussed whether technological competence and security should be encouraged or mandated.

The input of the legal professions and other stakeholders is integral to the work of the Task Force at this juncture and will assist the Law Society in renewing its continuing competence framework to ensure that it is both meaningful and sustainable. A number of questions are included at the end of this document that might assist you in your consideration of the issues and in providing your input. The Law Society encourages lawyers, paralegals, legal organizations, members of the public and others to share their concerns, experiences, and ideas, including those that may not have been addressed in this report, in order to ensure that the Task Force has the benefit of a full range of options and approaches to supporting post-licensure competence. Feedback is requested by **November 30, 2021**.

1. Introduction

The Task Force is seeking feedback from lawyers, paralegals, legal organizations, and the public on regulatory approaches to ensuring lawyer and paralegal post-licensure competence. The input of the legal professions and other stakeholders is integral to the work of the Task Force and will assist the Law Society in renewing its continuing competence framework to ensure that it is both meaningful and sustainable.

A number of questions are included at the end of this document that might assist you in your consideration of the issues and in providing your input. Please provide your feedback by **November 30, 2021**.

2. Competence Task Force Mandate, Objectives and Work Plan

The Task Force was established to examine approaches aimed at ensuring and enhancing the post-licensure competence of lawyers and paralegals. The objective of the Task Force is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs. While licensee competence is intertwined with many aspects of Law Society regulation, the Task Force's mandate is focused on competence programs. For example, the Task Force's work excluded consideration of the definition of competence in the professional conduct rules and the requirement that each licensee complete one professionalism hour annually on matters of equality, diversity and inclusion.

The work plan of the Task Force includes four phases: discovery, development, design, and implementation. During the discovery phase, the Task Force engaged in exploratory discussions about present and future needs for a regulatory framework for continuing competence. Key activities have included:

- reviewing the Law Society's legislative authority for regulating competence of lawyers and paralegals;
- considering principles and rationales for regulating post-licensure competence;
- examining post-licensure competence programs and procedures currently operated or supported by the Law Society;
- studying literature and best practices regarding regulating competence;
- examining approaches to post-licensure competence by law societies in other jurisdictions and by other professional regulators; and
- considering outcomes of the Law Society's quality assurance and complaints processes and claims processed by the malpractice claims insurer for lawyers, Lawyers' Professional Indemnity Company ("LawPRO").

The Task Force is currently in the development phase of its work. This phase has included the creation of a working definition of competence and the identification of themes and principles to inform the design and implementation phases.

In the design phase, the Task Force will assess the effectiveness of the existing Law Society competence programs, consider which programs should continue, be modified or concluded, and evaluate alternative competence programs that would better achieve the regulatory objectives articulated. In particular, the Task Force will assess:

- the validity of the program’s policy objectives;
- the effectiveness of the program in meeting its objectives;
- the efficiency of the program in delivering its outcomes;
- the cost-effectiveness of the program’s structure for its purpose;
- the proportionality of the program’s operations and regulatory obligations in relation to its purpose and objectives; and
- whether the Law Society is or continues to be the appropriate body to support the program.

As part of this work, the Task Force will identify any policy issues arising from these determinations that require review by a standing or other committee, including those related to equality, diversity and inclusion that would require consideration by the Equity and Indigenous Affairs Committee, and budgetary implications that would require consideration by the Audit and Finance Committee. Finally, in the implementation phase, the Task Force will finalize recommendations to Convocation and identify measures for ongoing monitoring and evaluation of the competence framework.

3. Legislative Authority for the Law Society’s Competence Mandate

The Law Society’s principal legislative mandate is to regulate the practice of law and the provision of legal services in Ontario by licensed lawyers and paralegals. It carries out this mandate by establishing standards and requirements for the competence and conduct of lawyers and paralegals, in the public interest.

The Law Society’s mandate and foundational principles related to the regulation of competence are set out in ss. 4.1 and 4.2 of the *Law Society Act* (the “Act”).¹

Function of the Society

4.1 It is a function of the Society to ensure that,

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

...

¹ *Law Society Act*, R.S.O. 1990, c. L.8.

5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

The concepts of universality and proportionality are embedded in the description of the Law Society's oversight functions in the Act: both lawyers and paralegals are to be subject to standards of professional competence and conduct, and the standards are to be reflective of the Law Society's regulatory goals. Other core principles that inform the Law Society's exercise of its competence mandate are the duty to facilitate access to justice for the people of Ontario, and the duty to protect the public interest, both of which are set out in the Act.

The Act also prescribes a standard of professional competence by defining what constitutes a failure to meet that standard:

Interpretation – standards of professional competence

41 A licensee fails to meet standards of professional competence for the purposes of this Act if,

- (a) there are deficiencies in,
 - (i) the licensee's knowledge, skill or judgement,
 - (ii) the licensee's attention to the interests of clients,
 - (iii) the records, systems or procedures of the licensee's professional business, or
 - (iv) other aspects of the licensee's professional business; and
- (b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

This statutory definition is the basis for the Law Society's authority to conduct practice management reviews (practice reviews) of licensees, and to commence regulatory and disciplinary proceedings based on a failure to meet standards of professional competence, which are also authorized by the Act. The criteria, process, and outcomes for practice management reviews are further defined in the Law Society's by-laws, along with other parameters and processes related to the regulation of licensee professional conduct and competence obligations generally.

4. Duty of Competence

A commitment to ongoing learning and professional development is one of the hallmarks of a self-regulating profession. Most Canadian law societies introduced the concept of competence into their codes of professional conduct in the 1970s, when legislative amendments were first being introduced to explicitly recognize law society jurisdiction over the post-entry competence

of members.² Both the lawyers' Rules of Professional Conduct (at s. 3.1)³ and the Paralegal Rules of Conduct (at s. 3.01)⁴ (collectively, the "Rules") codify a duty of competence. The Rules require licensees to perform any legal services undertaken on a client's behalf to the standard of a competent lawyer or paralegal, placing responsibility on licensees to maintain and enhance their professional knowledge, skills, and judgement. The Rules also require licensees to not undertake any matter or task for a client without being competent to handle it. The ability to accurately self-assess one's knowledge, skills, and judgement at a point in time is a dimension of professional competence. The duty of competence is supported by extensive commentary that addresses how to make this assessment and provides guidance on effective client service and communication in a variety of contexts.

5. Working Definition of Competence

The Task Force's discussions during the discovery phase have generated many ideas about the core attributes of competence for licensees. Articulating what competence means for lawyers and paralegals, and the public they serve both today and, in the future, was one of the first key steps in the Task Force's process. The Task Force has developed the following working definition of competence:

- Competence is composed of knowledge, skills, abilities, behaviours, judgement and values. Competent performance requires the habitual and simultaneous application of many of these attributes.
- Competence, and the attributes that comprise it, is developmental. Methods of acquisition include:
 - education,
 - training,
 - practical experience,
 - remedial training prompted by the regulator or insurer,
 - peer observation and evaluation, and
 - mentorship and coaching.
- The practices and habits that define competence should be instilled at the beginning of one's career and must be continually maintained and improved throughout one's career.
- Competence requires self-awareness, self-reflection, and a growth mindset.
- Competence is dynamic and adaptive. It varies and evolves according to factors such as:
 - one's level of experience,

² Amy Salyzyn, "From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence" (2017), *The Canadian Bar Review*, Vol. 95 at 497, online:

<https://cbr.cba.org/index.php/cbr/article/view/4417/4408>.

³ <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-3>

⁴ <https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct>

- the nature and complexity of one’s work, including one’s level of specialization,
 - one’s practice circumstances,
 - one’s clients’ needs and circumstances, and
 - changes in the legal landscape.
- The manner in which clients experience legal services provided by a lawyer or paralegal is a critical dimension of competence. The notion of competence is informed by a consumer perspective.⁵
 - Recognizing that competence is dynamic and context-dependent, any lawyer or paralegal will experience varying levels of competence according to the particular circumstances, and may find their professional knowledge, skills, and/or judgement challenged in some situations. Transitions to a new practice area, a long absence from practice, or working on unfamiliar issues or with an unfamiliar client are examples of such situations.
 - Concepts of competence evolve with societal changes. For example, the pandemic has emphasized a facility with technology as a key element of competence.

6. Evolution of the Law Society’s Continuing Competence Framework

a. Professional Development Model of Competence

While the Law Society has been regulating the legal profession for close to 225 years, its approach to ensuring the post-licensure, continuing competence of lawyers and paralegals has evolved through a series of policy decisions spanning the last 50 years or so. It was at this time, beginning in the 1980s, that law societies began to shift away from a “policing” model of regulating competence, which employs traditional disciplinary measures to address lawyer misconduct in response to client complaints, to a “coaching” model, which actively promotes competence using a range of preventative tools such as CPD, mentoring, and personal assistance services.⁶ The policing model has been criticized because it is reactive in nature and focuses on adherence to minimum standards and on individual behaviour rather than institutional practices that may more effectively address deficiencies before they result in harm to clients.⁷ In contrast, the coaching model offers a continuous, holistic, and tailored approach to licensee development and competence.⁸

Most notably, the Law Society undertook a comprehensive consultation on the implementation of its expanded competence mandate⁹ in 2000-2001. In March 2001, Convocation adopted the 2001 Competence Model,¹⁰ consisting of the following five components and building blocks:

⁵ Logan Cornett, “Think Like a Client” (2019), Institute for the Advancement of the American Legal System at 17, online: https://iaals.du.edu/sites/default/files/documents/publications/think_like_a_client.pdf.

⁶ A. Salyzyn, *supra* note 2, at 497.

⁷ *Ibid.*

⁸ *Ibid.* at 508.

⁹ In 1999, the Act was amended to give the Law Society authority to conduct practice reviews and conduct competence hearings.

¹⁰ Professional Development and Competence Committee (“PD&C Committee”), March 22, 2001 Report to Convocation.

Components	Building Blocks
Practice Guidelines	Specific in nature, flexible in application; from “acceptable performance” to “best practices”; initial focus on practice management, technology, and client service issues then subsequently on substantive law; broad consultation in developing; widely published; continuously reviewed and updated.
Practice Enhancement	<p><i>Voluntary Self-Assessment Program</i> Self-evaluation guide to practice management approaches, including use of technology and client service issues; utilizes existing tools; available electronically and on paper; links to assistance where sought.</p> <p><i>Voluntary Peer Assessment Pilot Project</i> Minimum two-year term; development of a voluntary office visit system to foster quality practice.</p>
Continuing Legal Education (“CLE”)	<p><i>Post-Call Minimum Educational Expectations</i> Articulation of what amount of CLE lawyers are expected to undertake annually; reporting of annual CLE; accreditation of CLE programs.</p> <p><i>Requirements for Requalification</i> Enhanced program; required number of mandatory CLE credits as constituent element of program.</p>
Reformulated Specialist Designation	Combined developmental and experience recognition program; expanded areas of specialization including possible “generalist” designation; staged levels of specialization; mandatory educational component with enhanced province-wide accessibility.
Remedial Components Mandated by Statutes	Focused practice reviews; competence hearings.

The 2001 Competence Model established a foundation for the Law Society’s contemporary approach to regulating post-licensure competence. It consisted of programs and activities that were primarily voluntary in nature and reflected many of the attributes of a largely supportive, coaching model. The 2001 Competence Model also integrated both quality assurance and quality improvement measures. Quality assurance measures are focussed on ensuring compliance with established standards and include programs such as practice reviews and spot audits. Quality improvement measures address both compliance with established standards and involve tools designed to facilitate improved practices and professional development. CLE and the certified specialist designation are examples of quality improvement measures. It was recognized that both quality assurance and quality improvement measures are required to ensure that minimum standards and best practices are integrated into the regulation of competence.

While many of the components and building blocks of the 2001 Competence Model have evolved to keep pace with regulatory best practices and are in place today, some have been

discontinued due to lack of feasibility or the introduction of other initiatives. Selected subsequent policy developments related to competence are described below.

b. Practice Management Review Program

As noted above, practice reviews and competence hearings were introduced in the 2001 Competence Model as a result of the expansion of the Law Society's authority to regulate competence under the Act. This expanded authority was initially applied in cases where there were reasonable grounds to believe a lawyer was failing to meet standards of professional competence. The Law Society's quality assurance program began with focussed practice reviews prompted by serious client complaints, an order from the Law Society Tribunal, or other indications of significant competence deficiencies. While responsive to risk, this early version of the program was reactive and therefore subject to many of the limitations of the policing model.

In June 2006, the Law Society broadened its use of quality assurance measures with the introduction of an integrated practice review program that included both focussed practice reviews of licensees with demonstrated competence deficiencies and preventative practice reviews of licensees in their early, formative years of private practice. The preventative component was designed to identify practice management issues, which, if neglected, could have an adverse effect on the quality of legal services offered to the public. The program was structured to leverage the strengths of the Law Society's Spot Audit program, offering licensees guidance and information to fulfill their regulatory obligations and effectively manage their practices.

c. Regulation of Paralegals

On May 1st, 2007, the Law Society became responsible for regulating the paralegal profession as a result of amendments to the Act brought about by Bill 14, the *Access to Justice Act, 2006*.¹¹ The *Access to Justice Act* and the regulations made under it authorize the Law Society to educate and license paralegals and regulate their conduct. As a result of these developments, paralegals were brought into the Law Society's competence framework and are subject to the same professional obligations as lawyers.

d. Mandatory Continuing Professional Development

In 2011, the Law Society transitioned from the minimum expectation of CLE hours set out in the 2001 Competence Model to a requirement that all lawyers and paralegals who are practising law or providing legal services engage in CPD on an annual basis. In principle, the introduction of mandatory CPD was grounded in the view that it would provide licensees with a critical opportunity to reflect and act upon their professional development needs, leading to improved service to the public.¹² The Law Society's introduction of mandatory CPD had been on the horizon for several years and crystallized shortly after similar policies began to emerge in other Canadian law societies. These policies reflected the prevailing view that law societies have an interest in articulating a requirement for ongoing education and training, evidencing a regulatory commitment to the sustained competence of lawyers and paralegals. In addition, there was a

¹¹ *Access to Justice Act, 2006*, S.O. 2006, c. 21.

¹² PD&C Committee and Paralegal Standing Committee, February 25, 2010 Joint Report to Convocation at 10.

recognition that law societies were lagging in this area given that mandatory CPD was well established for lawyers in most of the US states and in many regulated professions in Canada.¹³

The concept of CPD is broader than CLE, encompassing traditional legal education and training programs as well as other developmental activities that enhance skills and knowledge in a professional context as practitioners mature. For example, teaching, writing, and mentoring are all eligible for CPD hours in Ontario. More information about the CPD requirement is provided in the section below.

7. The Law Society's Current Continuing Competence Framework

The Law Society's current approach to regulating the competence of lawyers and paralegals after licensure can be characterized as a hybrid of the coaching and policing models. The Law Society's Professional Development and Competence division administers a suite of proactive, remedial programs that collectively support continuing competence, while the Professional Regulation division investigates and prosecutes significant breaches of professional standards and licensee misconduct.

The main components of the Law Society's current competence framework are similar to those employed by Canadian law societies and other regulated professions¹⁴ and build on the view informing the 2001 Competence Model, which is that most lawyers and paralegals are intrinsically committed to career-long professional development and learning. The competence framework aims to encourage lawyers and paralegals to proactively manage their competence as well as to address and prevent competence issues that lead to complaints and malpractice claims. The Law Society acknowledges that no single program or requirement can ensure the competence of lawyers and paralegals, which is both an ongoing, individual professional responsibility, and a significant regulatory endeavour. Like many other professional regulators, the Law Society continues to employ both quality improvement and quality assurance measures which function collectively to mandate and foster continuing competence through universal requirements and programs focussed on areas of licensee need and regulatory risk. Below is an overview of each of the programs in the Law Society's current continuing competence framework.

a. CPD Requirement

CPD is defined as the maintenance and enhancement of a licensee's professional knowledge, skills, attitudes, and professionalism throughout their career. The Law Society requires licensees who are practising law or providing legal services to complete 12 CPD hours each

¹³ PD&C Committee and Paralegal Standing Committee, October 29, 2009 Joint Report to Convocation at 6.

¹⁴ Zubin Austin and Paul A.M. Gregory, "Quality Assurance and Maintenance of Competence Assessment Mechanisms in the Professions: A Multi-Jurisdictional, Multi-Professional Review" (2017), *Journal of Medical Regulation* Vol. 103, No. 2, online: <https://meridian.allenpress.com/jmr/article/103/2/22/80878/Quality-Assurance-and-Maintenance-of-Competence>. The authors reviewed the competence-related policies and practices of regulatory bodies in the health and non-health professions in Ontario and other jurisdictions. Of the 91 regulatory bodies reviewed for the study, 42 were from Ontario. The other jurisdictions were British Columbia, Massachusetts, California, England, Qatar (Australia), and New Zealand. The study included professions such as law, dentistry, optometry, nursing, engineering, accounting and aviation. Many of the regulators employed similar tools to enhance competence, such as CPD requirements, self-assessments, and practice-based assessments and/or peer assessments.

year, including at least three professionalism hours and up to nine substantive hours. Professionalism CPD must be related to professional responsibility, ethics, or practice management.¹⁵ As of 2021, at least one professionalism hour each year must relate to equality, diversity, and inclusion topics.¹⁶

The Law Society employs a partial accreditation model – only CPD programming that is eligible for professionalism hours must be accredited by the Law Society, while substantive CPD is not subject to accreditation. An accredited provider model was introduced in 2013 to allow providers who fulfill certain criteria to self-accredit their professionalism content.¹⁷ Substantive CPD may address substantive or procedural law topics and/or related skills. Non-legal subjects may also be eligible for substantive hours if they are relevant to the licensee’s practice and professional development.

From the outset of the introduction of mandatory CPD, the Law Society has taken a flexible approach to eligible activities, recognizing that learning preferences and practice circumstances vary for individual lawyers and paralegals. CPD hours can be obtained through a range of permissible activities and formats, many of which do not involve direct costs to licensees:¹⁸

- Participating in CPD programs or courses, either through live attendance, online completion, or reviewing archived programs;
- Participating in a college, university or other designated educational institution program, including LL.M. programs;
- Teaching law-related content (on a volunteer or part-time basis);
- Acting as a judge or coach in a mooted competition;
- Writing or editing law-related books or articles;
- Mentoring, being mentored, providing coach or advisor support, participating in a coach or advisor program, acting as an articling principal, or supervising a Law Practice Program work placement or paralegal field placement;
- Participating in study groups of two or more colleagues; or
- Participating in legal association meetings that involve both business related to the association and an educational session dealing with substantive, procedural or professionalism content.

Compliance with the CPD requirement has been very high since inception of the program. Over the past 10 years, approximately 99% of practising lawyers and 94% of practising paralegals fulfill the requirement on an annual basis. The majority of licensees participate in CPD programs to fulfill their annual requirements, with only a small percentage of other eligible learning

¹⁵ In the first two years of mandatory CPD, a separate “new licensee CPD requirement” applied to lawyers and paralegals in their first two years of practising law or provision of legal services. Under this requirement, new licensees had to take CPD which was specifically accredited for the early years of practice and integrated 25% professionalism content. This separate requirement was discontinued in 2013 in favour of a consistent approach for all licensees.

¹⁶ Challenges Faced by Racialized Licensees Working Group, December 2, 2016 Report to Convocation, online: [Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions](#).

¹⁷ As of May 19, 2021, there are 92 accredited providers.

¹⁸ Activities such as teaching, writing, and the review of archived CPD programs are capped at 6 hours per year. These limits have been temporarily waived for 2020 and 2021 as an acknowledgement of the impacts of the pandemic on licensees’ practices and schedules.

activities being reported. Licensees who do not complete annual CPD requirements are subject to administrative suspension.

b. Law Society CPD Programming

The Law Society has been providing professional development sessions and content since the 1940s in accordance with its longstanding mandate to ensure that lawyers (and more recently, paralegals) have access to quality educational offerings.¹⁹ Over the years, the Law Society's CPD programming function has progressed to become a modern provider that incorporates adult education best practices, a competency-based approach, and digital platforms in virtually all aspects of its business. Since the introduction of mandatory CPD, the Law Society has designed its programs to support licensees in meeting the requirement by integrating relevant professionalism and substantive content. The Law Society has developed a catalogue of programs aimed at different sectors of the professions and in a variety of accessible formats that include comprehensive, multi-day summits in core practice areas as well as shorter, webcast only sessions that concentrate on emerging issues. The Law Society's CPD programs promote interactive learning through question and answer sessions, roundtable discussions, reflective exercises, and polling techniques.

In 2020, the Law Society delivered approximately 138 programs (78 live offerings and 60 live replays) to licensees on topics of substantive and procedural law, and professionalism, ethics, and practice management. An additional 142 free, archived programs were offered to support licensees in addressing the impacts of the COVID-19 pandemic. In 2020, there was a record attendance of 119,269 registrations across all Law Society CPD programs, including approximately 70,000 registrations for free offerings. Feedback from attendees at Law Society CPD programs indicates that lawyers and paralegals value the calibre of chairs and presenters, the relevance of program topics, and the convenient formats offered, including online programs of a variety of lengths that can be viewed live or on demand.

High quality CPD programming is also the domain of a number of legal associations, law firms, government and non-profit organizations, and for-profit legal education providers. Examples of these organizations include the Ontario Bar Association, the Canadian Bar Association, The Advocates' Society, the Federation of Ontario Law Associations, the Women's Law Association of Ontario, the Canadian Association of Black Lawyers, the Indigenous Bar Association, the Federation of Asian Canadian Lawyers, the South Asian Bar Association, and the Ontario Paralegal Association. There are many others. Together, through regional and national programs and learning events, these providers facilitate the maintenance of lawyers' and paralegals' knowledge and skills across a variety of practice areas.

c. Practice Management Helpline and Practice Resources

Established in 1978, the Practice Management Helpline ("Helpline") is a confidential telephone service that responds to inquiries from licensees about the Rules and other professionalism and practice management topics. The Helpline provides "just in time" guidance to enable licensees to make informed decisions, often at a critical juncture in a file or in their practices. The Helpline identifies key issues and principles to assist lawyers and paralegals in making decisions and finding solutions but does not provide advice or legal opinions. Helpline staff also develop and

¹⁹ The Law Society department responsible for accrediting professionalism CPD programming operates independently of the Law Society department that develops and delivers CPD programming.

maintain professional responsibility and practice management resources that support licensees. The Law Society currently provides over 130 resources, in the forms of practice management guidelines, practice area resources, FAQs, checklists, articles, and other tools. These resources are published on the Law Society's website.

In 2020, the Helpline assisted with 9,887 inquiries from licensees – 80% of calls were from lawyers and 13% were from paralegals.²⁰ Approximately 70% of all Helpline inquiries come from sole practitioners or lawyers and paralegals working in small firms. In 2020, the Helpline created over 70 new resources specifically in response to COVID-19 to assist licensees with navigating the pandemic, attracting approximately 168,000 page views last year. Generally, feedback from licensees on the services and supports provided by the Helpline is very positive, particularly in light of the shift to more practically oriented resources and FAQs in recent years.

d. Coach and Advisor Network

The Coach and Advisor Network (“CAN”) is the newest of the Law Society's competence programs. CAN was launched in 2016 after several years of consideration by a dedicated task force whose mandate was to explore the benefits of creating mentoring initiatives in the legal professions.²¹ The goal of CAN has been to promote and facilitate a systematic approach to enhancement of lawyer and paralegal competence through peer connection and support, particularly for those in sole and small practices and new licensees who may not have ready access to colleagues and senior practitioners.²²

CAN expands upon the traditional concept of mentoring through a more structured and focussed process. The program provides lawyers and paralegals with access to short-term, outcome-oriented relationships with volunteer coaches and advisors drawn from the professions. Advisors provide limited scope assistance with substantive and procedural law inquiries on client files and are typically 30 minutes in length. Coaches assist with longer term objectives involving the implementation of best practices over a 3-month period.

CAN is now in its fourth full year of operation. In 2020, CAN's roster of volunteer coaches and advisors grew to 389 licensees and facilitated a total of 654 engagements—509 advisor matches and 145 coaching matches. Ninety-two percent of licensees seeking coaching or advising services work in sole practitioner or small firm environments. Satisfaction ratings for both coaching and advising engagements have been consistently very high – in the 96-100% range.

e. Practice Assessments Programs

The Law Society's practice assessments programs are quality assurance tools focussed on proactively ensuring licensee compliance with established standards. They aim to promote competent service and to address risk within the professions. The Law Society operates three such programs: practice reviews (for lawyers), spot audits (for law firms), and practice audits (for paralegals).

The three programs involve a similar model: licensees are selected for a review and provided with information about the criteria and process that will be followed; a Law Society reviewer or

²⁰ The remaining 7% of Helpline calls were from non-licensees.

²¹ Mentoring and Advisory Services Proposal Task Force, January 28, 2016, Final Report to Convocation.

²² Sole practitioner and small firms are defined as those with 5 or fewer licensees.

auditor attends at the licensee's business to meet with the licensee, observe the licensee's practice arrangements, and review documentation; and the reviewer or auditor subsequently prepares a summary of findings and recommendations for consideration by the licensee. The vast majority of reviews and audits are remedial in nature and reveal minor deficiencies that can be addressed by the lawyer or paralegal through improved practices and procedures. A small percentage of review and audits disclose serious deficiencies and require escalation to the enforcement arm of the Law Society.

Licensee feedback on the programs has been consistently positive in recent years, with most lawyers and paralegals indicating that they found the process to be constructive and a beneficial tool for improving their practices. In addition, Law Society data indicates that practice reviews and spot audits may have a positive impact on the longevity of sole practices. Sole practices that have undergone practice reviews and spot audits are approximately 20% more likely to remain sole practices five years later, compared to soles who did not undergo a practice review or spot audit.

i. Practice Reviews

Practice reviews address an individual lawyer's practice management activities. Practice reviewers provide concrete suggestions on how to maintain a practice at optimal levels, with the objective of increasing efficiencies, ensuring high quality service, and improving lawyer and client satisfaction. Areas of review are set out in the [Lawyer Basic Management Checklist](#) and include: time management (e.g., recording/docketing of time, calendar control system); file management / client service (e.g., opening/closing file procedure, conflicts check, handling client complaints); financial management (e.g., fees and billings, trust accounts); communications (e.g., following client instructions, keeping client reasonably informed); technology and equipment (e.g., document templates, library and research resources); and professional management (e.g., training and support, managing articling students and support staff).

Since 2009, the program has been comprised of three main streams:

- random reviews of lawyers who were licensed within the past eight years,
- focussed reviews of lawyers selected for a review due to cause, and
- re-entry reviews of lawyers re-entering private practice as a sole practitioner or in a small firm after five years.

The majority of the Law Society's practice reviews are random. Random practice reviews are focussed on newly licensed lawyers working as sole practitioners and in small law firms, based on risk indicia informed by Law Society conduct proceedings and LawPRO malpractice outcomes.²³ The Law Society conducted 473 lawyer practice reviews in 2019;²⁴ 66% of initial reviews met the professional competence standards and 34% required a follow-up review. After follow-up reviews, 99% of practices met required standards. Over time, the percentage of lawyers exhibiting practice management deficiencies in most key areas has declined.

ii. Spot Audits

²³ Professional Development, Competence and Admissions Committee, June 22, 2006, Report to Convocation.

²⁴ As the number of practice reviews, spot audits, and practice audits in 2020 was significantly impacted by restrictions imposed by the COVID-19 pandemic, 2019 figures have been provided.

The spot audit program was established in 1998 to support the Law Society's adoption of a self-reporting model for trust accounting compliance. Designed as a proactive compliance and trust safety tool, spot audits measure the integrity of law firm financial filing, assess ongoing compliance with the Law Society's financial record-keeping requirements as defined in the by-laws and Rules, and identify serious misconduct related to financial matters. In particular, spot audits aim to help law firms correct minor deficiencies with their record-keeping practices before they lead to serious non-compliance or misconduct issues. Law Society auditors support law firms by reviewing and auditing financial records, answering questions, and providing guidance.

The spot audit program includes both random and focussed audits. The majority of spot audits are random and based on approved risk criteria, including firm size, area of practice, newly formed practices, and other factors. Unlike practice reviews and practice audits, spot audits are intended to reoccur on a cyclical basis. Based on these risk criteria, sole practitioners and two-lawyer firms with a real estate practice are audited every five years, other sole practitioners and small firms are audited every seven years, and mid-sized and large-sized firms are audited every 10 years.

Although a significant number of spot audits are selected at random based on the above criteria, there are other circumstances which may also trigger a focussed audit, including:

- Failure to file the Lawyer Annual Report with the Law Society;
- New formation of a law firm, to ensure the establishment and maintenance of appropriate practices and procedures;
- Identification of inadequacies during a previous spot audit;
- Information on the Lawyer Annual Report which suggests non-compliance with record-keeping requirements; and
- Referral of lawyers or law firms from another Law Society department.

In 2019, the Law Society conducted 1,309 spot audits.²⁵ Fifty-four per cent of law firms had either minor or no books and records deficiencies and 32% of law firms had deficiencies that were remediated to the Law Society's satisfaction. The remaining 14% of law firms had serious books and records deficiencies and required further monitoring and regulatory action.

iii. Practice Audits

Practice audits are combined financial audit and practice management reviews conducted on paralegal practices. Conducted randomly, they are proactive and preventative, combining the practice management elements of the lawyer practice review with the financial record-keeping auditing elements of the lawyer spot audit. Areas covered in a practice audit are set out in the [Paralegal Basic Management Checklist](#) and include the same practice management areas as the Lawyer Basic Management Checklist.

The Law Society conducted 195 paralegal practice audits in 2019;²⁶ 49% of initial audits met the professional competence standards and 51% required a follow-up audit. After follow-up audits, 97% of practices met these standards. Similar to lawyers above, the percentage of practice management deficiencies in most key areas has declined over time for paralegals.

²⁵ *Ibid.*

²⁶ *Ibid.*

f. Certified Specialist Program

The Certified Specialist program (“CSP”) is a quality improvement program that recognizes lawyers who have met established standards of experience and knowledge requirements in one or more designated areas of law and have maintained exemplary standards of professional practice. The CSP also assists members of the public identify lawyers who can meet their needs for specialist legal assistance. The Law Society does not offer a CSP for paralegals.

Established in 1986, the program has had several governance and qualification models over the years.²⁷ The CSP is currently governed by a Certified Specialist Board, comprised of both Certified Specialists and benchers. There are 17 areas of specialization,²⁸ each extensively developed with support by lawyers recognized as exemplars within their practice areas. Areas of specialization that have been added in recent years include Indigenous legal issues and taxation law. Lawyers seeking a Certified Specialist designation must submit a detailed application, references, and other supporting documentation to demonstrate their eligibility. The designation requires a lawyer to have practised for a minimum of seven years, been substantially involved in their specialty area during five of the seven years (i.e. mastery of substantive law, practices, and procedures, and concentration of their practice in the specialty area), and to have complied with all professional standards. Applications for certification are assessed internally by the Law Society and, where criteria are met, presented to the Board for approval. Once certified, lawyers must complete an annual reporting and declaration process. Certified Specialists have the same annual CPD requirement as lawyers and paralegals. The CSP is not a limited licence program and does not restrict a lawyer’s area of practice: Certified Specialists may practice in other areas of law and, conversely, lawyers who are not Certified Specialists may practice in any area that is covered by the program.

Certified Specialists are permitted to use “C.S.” as a post-nominal designation. The C.S. designation is an indication to the public and to colleagues that the specialist has demonstrated elevated standards of competence in their area of practice. As of 2020, 784 lawyers were designated as Certified Specialists, representing approximately 2% of practising lawyers. The relatively low percentage of lawyers designated as specialists has been consistent for several years. The program has undergone at least two significant revisions since its inception to increase the level of participation, but this has not had a marked impact on enrollment. Despite the small number of Certified Specialists in the province, those that have committed the time and effort to become certified value being recognized in their field and the ability to distinguish themselves from others in their practice area. There is no data readily available about whether the public relies on the C.S designation in selecting legal counsel.

g. Great Library and Legal Information and Resource Network

The competent provision of legal services requires access to legal information. There are two aspects to the Law Society’s legal information supports: the Great Library and the Legal

²⁷ Special Committee on Specialization, May 1985 Report to Convocation at 3.

²⁸ The 17 areas of specialization are: Bankruptcy and Insolvency Law; Citizenship and Immigration Law; (Immigration/Refugee Protection); Civil Litigation; Construction Law; Corporate and Commercial Law; Criminal Law; Environmental Law; Estates and Trusts Law; Family Law; Health Law; Indigenous Legal Issues (Rights and Governance/Litigation and Advocacy/Corporate and Commercial); Intellectual Property Law (Trademark/Patent/Copyright); Labour and Employment Law; Municipal Law; Taxation Law; Real Estate Law; and Workplace Safety and Insurance Law.

Information and Resource Network (“LIRN”). Qualitative data gathered in 2015 as part of a needs assessment on library system use and future need indicated that library users attach tremendous value to legal information and library services.²⁹ Legal information services play a key role in the development, maintenance and enhancement of licensee competence.

The Great Library has operated out of Osgoode Hall for over 160 years. It is open to the public, but funded by licensees, who are also its primary users. The library also serves licensing candidates, summer students, law clerks, law librarians, and others who are working for licensees. The Great Library supports the legal research and information needs of licensees by facilitating access to an extensive collection of print and electronic resources and by providing legal research assistance and instruction.

The Great Library’s services are increasingly designed to leverage technology tools and platforms to make legal information accessible to licensees more broadly. Lawyers and paralegals across the province can use the Great Library’s services in person and remotely, through online access as well as a mobile app. Lawyers who belong to local law associations can also access services through their county law libraries.

The Great Library provides 40 hours of reference support per week (via in person, telephone, email, or chat). In 2019, the Great Library’s reference team answered 23,355 legal research questions and provided 32,560 pages of electronic research material to licensees.³⁰ In addition, there were over 120,000 visits to the AccessCLE database of free Law Society CPD program materials.

The second aspect of the Law Society’s legal information supports is LIRN. LIRN, formerly known as LibraryCo, is a not-for-profit corporation responsible for centrally managing and coordinating the county law library system, comprised of 48 law libraries across Ontario. LIRN’s mandate is ensuring that the Ontario county law library system’s services and programs meet the evolving needs of licensees and the public. LIRN is guided in its work by the principles established by its shareholders: the Law Society, the Federation of Ontario Law Associations and the Toronto Lawyers Association. LIRN is funded by the Law Society fees collected from lawyers. LIRN is responsible for managing these funds through allocating finances and resources to individual libraries.

8. Regulatory Outcomes Informing the Continuing Competence Framework

As a modern regulator, the Law Society must strive to achieve a balanced and proportionate approach to ensuring that lawyers and paralegals maintain their professional knowledge, skills, and judgement over the course of their careers. To achieve this objective, the Law Society’s renewal of its continuing competence framework should be evidence-based and informed by regulatory outcomes. Trends arising from the Law Society’s competence and conduct streams, as well as from LawPRO,³¹ provide valuable insight into areas of risk that should drive the design

²⁹ Transition from LibraryCo to LIRN Inc. (Legal Information and Resource Network), PD&C Committee Report, November 29, 2019 at 3.

³⁰ As use of the Great Library’s services in 2020 was significantly impacted by the closure necessitated by the COVID-19 pandemic, 2019 figures have been provided.

³¹ The Law Society does not have access to data about the malpractice claims experience for paralegals.

and implementation of effective competence regulation strategies.³² Some key trends are outlined below.

a. Client Service and Practice Management Issues

Law Society data indicates that a significant portion of complaints against lawyers and paralegals raise client service issues such as a failure to communicate, failure to account, and failure to properly serve one's client. In 2019 and 2020, approximately 50% of complaints against licensees were related to service issues.³³ Similarly, between 1997 and 2007, malpractice claims against lawyers relating to communication deficiencies were among the most prevalent, constituting over one third of LawPRO claims, compared to inadequate investigation, errors of law, or clerical errors.³⁴ The trends observed during this period have continued: lawyer and client communication problems remain a key cause of malpractice claims across all practice areas.³⁵ Common communication errors include failure to follow client instructions, failure to properly inform the client about implications of actions, and poor communication with clients leading to confusion around roles and next steps.

Missed deadlines and time management-related errors are the second biggest cause of LawPRO claims at all sizes of firms.³⁶ Correspondingly, the proper use of written retainers and time dockets and the effective management of prospective clients are common areas of deficiency observed during Law Society practice reviews and practice audits.

b. Years Licensed

Law Society data indicates that newly licensed lawyers and paralegals have a lower risk of complaints and claims than other groups. Lawyers and paralegals who have been in private practice for five years or less received a proportionately lower percentage of complaints compared to those who have been licensed for more than five years. The risk of complaints increases for licensees who have been licensed for 10 or more years:³⁷

- In 2020, 22% of lawyers in private practice were in their first five years of practice, and 16% of complaints against lawyers were made against this group. Similarly, in 2020, 11% of paralegals in private practice were in their first five years of providing legal services, and 6% of complaints against paralegals were made against this group.

³² For data on the most common causes of malpractice claims for major areas of practice, see the LawPRO fact sheets available at <https://www.practicepro.ca/practice-aids/claims-fact-sheets/>.

³³ Professional Regulation Division End of Year Report at 18.

³⁴ Between 1997 and 2007, close to 7,200 LawPRO claims involving communication errors totalled almost \$22 million. See LawPRO, "practicePRO: Helping Lawyers for 10 Years" (2008), LawPRO Magazine, Vol. 7, no. 2 at 17, online: https://www.practicepro.ca/wp-content/uploads/2017/09/2008-08-lawpro-magazine7_2_aug2008.pdf.

³⁵ 2019 LawPRO Annual Report at 7, online: <https://www.lawpro.ca/wp-content/uploads/2020/04/2019-Annual-Report.pdf> and 2020 LawPRO Annual Report at 8, online: <https://www.lawpro.ca/wp-content/uploads/2021/04/FINAL-AODA-2020-Annual-Report-WEB.pdf>. Communication errors were the most common cause of claims in 2019. In 2020, communications errors and inadequate investigation tied for the cause of the highest number of claims.

³⁶ Between 1997 and 2007, missed deadlines and time management related errors represented 17.3 per cent of claims by count (3,566 claims) and 14.2 per cent of claims costs (\$8.8 million). See LawPRO, *supra* note 34, at 18. In 2020, time management problems were the second most common cause of claims. See 2020 LawPRO Annual Report, *supra* note 35, at 8.

³⁷ 2020 Operations Report to Convocation, February 2021 at 60.

- In 2020, 23% of practising lawyers had been licensed for 11-20 years and represented 24% of complaints made against lawyers. Similarly, in 2020, 16% of paralegals in private practice had been licensed for 8-10 years and represented 19% of complaints made against paralegals.

The risk of complaints also increases with age. Lawyers and paralegals aged 50-64 experience a higher percentage and at a higher proportion of complaints compared to other groups. LawPRO trends align with Law Society complaints data, indicating that the risk of malpractice claims peaks when lawyers are 10-20 years out from licensure.

Notwithstanding this data, there are anecdotal indicators that some newly licensed lawyers and paralegals do not feel adequately prepared for the challenges of practising law and providing legal services, particularly in the context of running their own law firms. On average, approximately 12% of newly licensed lawyers and 20% of newly licensed paralegals enter into sole practice within 3 years of being licensed.

c. Sole Practitioners and Small Firms

The majority of law firms in Ontario are sole practices and small firms of five or fewer licensees. As of December 31, 2020, 94% of law firms and 99% of paralegal firms are comprised of five or fewer licensees. It is not surprising, then, that a significant portion of the Law Society's regulatory activity relates to lawyers and paralegals practising in these settings. However, licensees in small firm and sole practitioner settings are the subject of complaints at a higher proportion than licensees in other contexts.³⁸

Lawyers and paralegals in these firms are engaging with many of the Law Society's competence supports and services at a higher rate than other practitioners, which is an indicator of need as well as motivation to comply with regulatory requirements and improve competence. As noted above, 74% of inquiries to the Helpline were from sole practitioners and small firms and 94% of participants in CAN are sole practitioners and licensees from small firms.

9. Renewing the Law Society's Continuing Competence Framework – Key Themes

In its exploratory discussions during the discovery phase, the Task Force reviewed regulatory outcomes and best practices for risks and opportunities that should be considered in the renewal of the Law Society's continuing competence framework. Through this review, the Task Force generated several important themes that may inform new approaches to competence programs and requirements.

a. Peer Support

The Task Force observed that strong relationships with colleagues and peers are a mainstay of competence for many practitioners. These informal work-related interactions, such as discussing strategy on a file with a trusted colleague, can facilitate just-in-time learning. The Task Force discussed the value of the supportive, collegial environment in local law associations where licensees – particularly those working in sole or small firm settings -- have a built-in network with whom they can exchange ideas and expand their knowledge. Networking and peer guidance provide vital “teachable moments” and should be encouraged and nurtured.

³⁸ *Ibid.* at 59.

The Task Force also highlighted mentoring as important in building competence. Traditional mentoring involves a relationship between a more seasoned practitioner who provides advice, information, and support to a less experienced mentee. CAN, which is facilitated by the Law Society, provides a version of mentoring that is oriented around shorter term coaching. Licensee uptake of coaching through CAN is progressing, but more slowly than originally envisioned. The Task Force queried how the Law Society might further bolster mentoring and coaching in the legal professions, both through law associations and its own services.

b. Peer Assessment

The 2001 Competence Model recommended the establishment of a formal, voluntary peer assessment pilot project that would include both practice management and substantive law issues.³⁹ A peer assessment is an assessment of a licensee's practice and work setting by another licensee. Volunteer lawyers were to be sought in different geographic locations, work and practice settings, and circumstances to form a roster of lawyers prepared to conduct, on a *pro bono* basis, confidential peer assessments and prepared to have their practices or work settings assessed. Peer assessment was viewed as a mechanism through which lawyers without demonstrated competence-related deficiencies could seek to validate the standards of their practice and benefit from suggestions for improvement from other lawyers. This proposal drew heavily from initiatives that were in place at the time in the regulated health professions. Convocation opted to defer development of the peer assessment pilot project until the plan for a voluntary self-assessment program, which was also one of the PD&C Committee's recommendations in the 2001 Competence Model, could be implemented and evaluated. Ultimately, the peer assessment program was not launched.

The Task Force expressed interest in once again exploring the viability of peer assessments as a mechanism for improving competence. Peer assessments are unique in that they leverage the supportive aspects of coaching and mentoring while capitalizing on the expertise of lawyers and paralegals to assist other licensees with their legal and practice management challenges.

c. Adjustments to the CPD Requirement

The Task Force considered whether the CPD requirement in its current, broad form meaningfully supports competence. High levels of licensee compliance and positive engagement in programs provided by the Law Society and a range of legal associations and education providers suggests that CPD is valued by lawyers and paralegals both as a means to improve their legal knowledge and as an important networking opportunity. Likewise, a recent study of quality assurance and competence assessment mechanisms across various professions and jurisdictions found that in all jurisdictions and professions examined, continuing education or CPD were explicitly identified as critical to the maintenance of professional competence.⁴⁰ All 91 regulatory bodies reviewed for the study required practitioners to complete some form of life-long learning to be eligible for annual renewal of registration.⁴¹ However, the study also noted that notwithstanding the widespread adoption of a continuous learning requirement across professions and geographic regions, there is little hard evidence to support the practice or any correlation to positive, practice-related outcomes.⁴² Given this, and the fact

³⁹ PD&C Committee March 22, 2001 Report, *supra* note 10, at 37-38.

⁴⁰ Z. Austin and P. Gregory, *supra* note 14, at 25.

⁴¹ *Ibid.*

⁴² *Ibid.* at 26.

that mandatory CPD has been in place for 10 years in largely the same format, the Task Force queried whether a reduced emphasis on mandatory CPD or a change in format should be considered. The Task Force also contemplated whether there should be more focussed CPD requirements such as those tied to practice area, experience levels, or identified areas of risk. More specific CPD requirements could serve to shift the focus from mere compliance with minimum CPD hours to a requirement that is connected to the licensee's practice and therefore more impactful on competence.

d. Guided Learning and Development

Another key theme was that licensees should be guided in their professional development. Learning roadmaps or curricula that lead to credentialing or a concrete achievement could help to incentivize practitioners to enhance their learning. While many practitioners can navigate their own professional development and do not require regulatory intervention, others would benefit from assistance. Direction on the required competencies or the creation of practice standards according to stage and area of practice could ensure lawyers and paralegals are actively improving their competence in a manner that reduces the risk of errors or deficiencies while they progress in their careers.

e. Baseline Competence and Beyond

The Law Society has a statutory duty to ensure baseline competence of lawyers and paralegals in the public interest. Given that our governing legislation recognizes that standards of learning and competence are related to the legal services provided, the Law Society recognizes that as licensees take on increasingly complex retainers, their competence will need to be enhanced. Related to guided learning and development was the question of whether there should be a mechanism for achieving and recognizing standards of excellence. On the one hand, it was argued that a focus only on baseline standards would fail to incentivize practitioners to achieve higher levels of competence. On the other hand, it was maintained that a minimum level of competence needs to be achieved first and should be the initial goal for all practitioners. Notably, the CSP is aimed at recognizing the excellence of lawyers in certain areas of law but has consistently had low participation rates. The Task Force acknowledged that both baseline competence and excellence are important and may form elements of a continuing competence framework.

f. Importance of Practice Reviews

Practice reviews are a critical quality assurance tool for supporting licensee competence. Practice reviews address an individual lawyer or paralegal's practice management activities and are focussed on the areas of risk that most frequently lead to complaints, discipline and negligence. The Task Force was of the view that the Law Society should consider increasing the number of practice reviews it performs to ensure that more licensees benefit from this supportive intervention. The Task Force also queried whether practice reviews should be conducted on lawyers and paralegals who are more senior, rather than in their early years of practice, because this is when the risk of competence deficiencies begins to manifest. In addition, whether a practice review is conducted or not, licensees should be encouraged to reflect on their regulatory requirements on an annual basis and there should be self-assessment tools that facilitate this reflective practice.

g. Enhanced Support for Sole Practitioners, Small Firms and Individuals Transitioning to Independent Practice

As sole practitioners and small firms provide the overwhelming majority of legal services to individuals, families, and very small businesses, these practices are crucial in providing access to justice⁴³ and their viability should be a priority for the Law Society. Sole practitioners and those in small firms face a higher risk of complaints and may have fewer resources and more limited access to training and assistance. Lawyers and paralegals practising as sole practitioners or in small firms and individuals transitioning to independent practices may benefit from additional support to help meet their regulatory requirements and to address topics that are not currently the focus of law school or paralegal education and traditional CPD programming, such as the business of law. Special investments in sole practitioners and small firms that do not create additional regulatory burdens may be warranted.⁴⁴ The Task Force considered whether new licensees who are entering sole practice or joining a small firm, or licensees who are transitioning to independent practice, should be encouraged or required to take CPD specifically designed to address their unique needs.

h. Technological Competence

Advances in technology are transforming the way in which legal services are performed and delivered. Now more than ever, licensees need to have basic competence in technology to meet the needs of their clients and to function effectively. The COVID-19 pandemic has illustrated the importance of basic technological skills to communicate effectively with clients, create practice efficiencies, and participate in court and tribunal proceedings as they modernize their platforms.

The Task Force considered how the Law Society can help prepare licensees for the rapidly changing future and discussed whether technological competence should be encouraged or mandated. It was noted that the level of tech competence required to effectively serve clients may depend on the practice area, with certain practice areas and contexts relying more heavily on technology. Likewise, licensee facility with technologies is not uniform and varies significantly. The Law Society offers some resources in this area, including Technology Practice Tips, a series of podcasts that provide a convenient way to learn about the latest technology issues, and a technology guideline that sets out professional responsibility considerations when using technology, but more attention should be paid to this area. Regardless of whether technological competence is mandated or encouraged, the Task Force was of the view that timely and responsive supports relating to tech competence will continue to be critical, and that lawyers and paralegals would be best served by practical training and resources that facilitate compliance with best practices.⁴⁵

⁴³ Jordan Furlong, “Lawyer Licensing and Competence in Alberta” (2020) at 60, online:

https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf

⁴⁴ *Ibid.*

⁴⁵ The Technology Task Force was formed in 2018 to consider the role of technologies in the delivery of legal services, examine the Law Society’s role as a regulator in a changing, tech-enabled environment, and explore how the Law Society can encourage innovation in the professions through the use of tech to better deliver legal services. The Technology Task Force’s proposal for a five-year regulatory sandbox pilot project for innovative technological legal services (“ITLS”) was approved by Convocation in April 2021. The sandbox will allow ITLS benefitting the public to be test run in a safe, controlled environment without incurring regulatory consequences. The sandbox is expected to inform Convocation about the market interest in ITLS, how they are serving clients and their impact on client expectations of service. This evidence will aid future policy development, including policies relating to technological competence.

10. Principles for an Effective Continuing Competence Framework

Given the outcomes and themes described above, the Law Society seeks to renew its continuing competence framework to address the learning and professional development needs of lawyers and paralegals over the next decade. Based on the work done thus far, the Task Force identified the following principles to guide the development and design phases of its work:

- **Risk-based** – Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- **Flexible** – Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.
- **Feasible** – Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- **Forward-looking** – The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- **Client-centred** – Competence requirements should consider the client’s needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences (including differences in backgrounds, education, income levels, abilities and cultures) that may impact communications with clients and the way in which legal advice and services are provided.

11. Questions

The Task Force is seeking input on the following questions by **November 30, 2021**. The input of the legal professions and other stakeholders is critical in helping the Law Society to renew its continuing competence framework. The Law Society has not made any decisions about the structure or content of the updated competence regime. We are open to the suggestions and feedback of all interested parties and we encourage and appreciate your input. Stakeholders may respond to some or all of the questions.

1. Working definition of competence

Do you agree with the working definition of competence? Are there any aspects of the definition that you would change?

2. Principles for an effective competence regime

Do you agree with the five principles for an effective competence regime set out below? Are there principles that should be included or omitted?

- a) *Risk-based* - Regulatory activities should ideally be designed to focus on addressing areas of greatest risk to the public based on known outcomes.
- b) *Flexible* - Obligations should reflect the diverse array of practice areas, practice settings, geographies, practice stages, and other contextual factors that impact the professional circumstances of lawyers and paralegals.

- c) *Feasible* - Competence requirements should be cost effective and achievable by the regulator and licensees alike and should not impose unreasonable burdens.
- d) *Forward-looking* - The competence framework should be future-oriented in order to accommodate the fundamental changes taking place in the market for legal services.
- e) *Client-centred* - Competence requirements should consider the client's needs, goals, and perspective on what constitutes the competent provision of legal services. This would include an awareness of differences in backgrounds, income levels, abilities and cultures that may impact communications with clients and the way in which legal advice and services are provided.

3. Components of continuing competence framework

Do the components of the Law Society's current continuing competence framework listed below adhere to the five principles for an effective competence regime set out in question 2 (i.e., risk-based, flexible, feasible, forward-looking, client-centred)? If not, why not?

- a) CPD requirement and programs
- b) The Practice Management Helpline
- c) Coach and Advisor Network
- d) Practice assessment programs (practice reviews, spot audits, and practice audits)
- e) Certified Specialist Program
- f) Legal information and research supports (Great Library and LIRN)

4. Renewing the Law Society's continuing competence framework

Should any, some or all of the key components of the competence regime set out in question 3 be modified, restructured or terminated? If so, how?

Some examples are:

CPD

- a) Should the CPD requirement be changed to target the development and maintenance of certain competencies?
- b) Should the CPD requirement be tied to the licensee's practice area(s), experience level, or identified areas of risk?
- c) Should licensees complete their CPD requirement over the course of two calendar years rather than annually?

- d) Should CPD programs be more stringent or interactive to help ensure that licensees are engaged and learning?
- e) Should the CPD requirement remain as is, be enhanced, or be eliminated altogether?
- f) As an alternative to the CPD requirement, should licensees be required to conduct a self-assessment to identify their learning and training needs and then create and execute their own unique professional development plan?

Enhanced practice support and training

- g) Should the Law Society provide enhanced support for sole practitioners and small firms, such as courses on the business of law, law firm management and financial record-keeping?
- h) Should licensees be required to complete a training course related to a set of core competencies, such as practice management or client communications? If so, should the course be mandatory for:
 - i. all licensees,
 - ii. new licensees,
 - iii. licensees in sole or small firm practice,
 - iv. licensees transitioning to sole practice?

Peer-based initiatives

- i) Should the Law Society require or encourage licensees to enter into a mentoring relationship, either as a mentor or mentee?
- j) Should the Law Society introduce peer assessments as a mechanism for improving competence? If so, how should they be structured?
- k) Are you aware of the Coach and Advisor Network? Have you participated in it and if so, did you find it helpful?
- l) Should the Coach and Advisor Network remain as is, be enhanced, or be eliminated altogether?

Practice assessments

- m) Are you aware of practice assessments (i.e., practice reviews, spot audits, and practice audits)? Have you ever received one and if so, did you find it helpful?
- n) Should the Law Society increase the number of practice assessments that it performs? If so, who should these additional practice assessments target?
- o) Should the practice assessment program remain as is, be enhanced, or be eliminated altogether?

Certified Specialist Program

- p) Are you aware of the Certified Specialist Program? Have you participated in it and if so, did you find it useful?
- q) Should the Certified Specialist Program remain as is, be modified, or be eliminated altogether?

Technological competence

- r) Are there basic technological skills that the Law Society should require all licensees to have? If so, what are the skills and how should the Law Society verify or ensure that licensees have them?
- s) In order to prepare licensees for the rapidly changing future, should the Law Society require or encourage licensees to take courses to enhance their technological competence?

Encouraging excellence

- t) Should the Law Society incentivize licensees to strive for excellence? If so, how?

5. Additional aspects of competence regime

Is there anything else that should be included in the competence framework or that you would like to comment on with respect to continuing licensee competence?

APPENDIX C

Cross Jurisdictional Scan

An environmental scan indicates that there are Law Societies in other jurisdictions that have mandatory post-licensure courses that lawyers opening a sole practice¹ are required to take.

Australia

The Law Societies of New South Wales, Victoria, Western Australia and the Australian Capital require lawyers to successfully complete a practice management course through an accredited provider prior to submitting an application for a principal practising certificate, the certificate required to operate as a sole practitioner.²

In New South Wales, the Practice Management Course is offered by four providers including the Law Society of New South Wales. It is typically three full days and costs participants approximately \$1500 AUD (depending on the provider selected).³

Topics covered include: finance essentials and taxation strategies; pricing your services and billing the client; avoiding pitfalls in trust money and trust records; leadership and management techniques, including self-leadership and stress management; hiring and training reliable staff; managing risk; managing technology and innovation; business planning; marketing methods to grow your business; attracting and retaining clients; and ethics and responsibility.⁴

The New Zealand Law Society

The New Zealand Law Society requires that lawyers intending to be a partner in a law firm; a director of an incorporated law firm; a sole practitioner (barrister and solicitor) or a barrister on own account must complete a Stepping Up course prior to applying for approval to practise on own account.

The Stepping Up course includes 40 to 50 hours of online work followed by a three-day workshop.⁵ Participants pay \$1690 NZD to complete the Stepping Up course.⁶ The Stepping Up course focuses on: running the business of a law practice; being responsible for the obligations of the practice; understanding and applying the relevant rules of conduct and client care; and understanding the principles and rules of trust accounting.

The Law Society of Scotland

The Law Society of Scotland requires anyone who becomes a “manager of a practice”, which includes a sole practitioner and a partner in a firm of solicitors, to attend the New Partner Practice Management course (PMC) within 12 months of assuming that role.

¹ Because Ontario is the only province that regulates paralegals, there are no comparable required post-licensing courses for sole practitioner paralegals. A brief environmental scan of countries with common law legal systems reveals that this would be a novel initiative for paralegals.

² https://www.lawsociety.com.au/sites/default/files/2022-01/LS3567_LIC_CommencePracticeChecklist_SolePrac_2021-11-26.pdf

³ An example course can be viewed [here](#).

⁴ An example course can be viewed [here](#).

⁵ <https://www.lawsociety.org.nz/professional-practice/legal-practice/practising-on-own-account-as-a-barrister-and-solicitor/stepping-up-course/>

⁶ <https://www.lawyerseducation.co.nz/shop/Workshops2022/22STU.html>

The PMC has two components: approximately 4 ½ hours of online modules and one live training day. Attendees are charged £375 to complete the course. The PMC focuses on: standards of conduct and service adherence; demonstrating good practice in client service; minimising risks; accounts rules; anti money laundering regulations; business processes and management accounts; knowledge of financial imperatives in running a business; responsibilities to the profession and the public; ethical dimensions and business development and strategic planning.⁷

The Law Society of Hong Kong

The Law Society of Hong Kong requires all principals, which includes partners in Hong Kong law firms and sole practitioners, to complete the principal's Risk Management Education ("RME") Programme.⁸

The principal's RME Programme consists of four half-day modules and is offered at no direct cost to participants.⁹ The principal's courses focus on engagement management and quality assurance and risk management. The program covers: setting up the engagement; engagement letters; managing client expectations throughout the engagement; varying the terms of the engagement; closing the engagement; informal advice; third party obligations; communication skills; legal diagnostics: proactive and transferable techniques to aid supervision; managing the team with a view to maximising financial profitability and minimising claims exposure; the process for accepting a transferred matter; dealing with all aspects of conflict of interest; monitoring risk; implementing sound auditable routines; establishing usable trails; risk strategy; using checklists effectively and appropriately; attitudes to risk management; the Risk Manual; quality system; risk tolerance and the entrepreneurial law firm and managing change.

The Law Society of British Columbia

The Law Society of British Columbia (LSBC) has a Practice Management Course¹⁰ designed primarily to assist new lawyers, lawyers practicing alone or in small firms and others to review key practice management topics. The LSBC Rules make the course mandatory for lawyers practicing in a small firm, who must complete the course within 6 months after commencing practice in a small firm setting. Recently, the course was extended to all articulated students subsequent to January 1, 2018, regardless of whether the articulated students intend to be sole practitioners or operate in a small firm.

The course is comprised of 16 self-guided written modules and corresponding tests. It appears that completion of these is anticipated to take 6 hours. There is no direct cost to participants. In order to successfully complete the course, the applicant is required to score 100% on each of the tests. The modules are as follows: Accounting System Learning; Trust Accounting Essentials; Trust Filing and Trust Applications; Taxation and Employee Deductions; PST; GST; Retainers; File Retention and Disposal; Coverage During Absence; Withdrawal of Services;

⁷ <https://www.lawscot.org.uk/members/cpd-training/practice-management-course/>

⁸ <https://www.hklawsoc.org.hk/en/Support-Members/Professional-Support/Risk-Management-Education-Programme>

⁹ Detailed program information can be found at:
<https://www.hklawacademy.org/course.php?courseType=rme>

¹⁰ <https://learnlsbc.ca/node/48>

Conflicts; Client Screening; Difficult Clients; File Management and Diary Systems; Delegation of Tasks and Supervision and Avoiding Fraud.