

**GUIDELINES FOR LAWYERS WORKING
WITH INDIGENOUS PEOPLES**

Preamble

The Law Society of Ontario recognizes the Indigenous community's unique experience and history, and specifically the (ongoing) impacts of colonization across Canada. These Guidelines are therefore provided as 1) a tool primarily to assist lawyers who act for Indigenous peoples and 2) the need for the Law Society of Ontario to implement safeguards for Indigenous peoples engaged in legal processes.

These Guidelines are in keeping with the spirit and letter of the *Rules of Professional Conduct* ("the Rules"). In particular, Rule 2.1-1 Commentary paragraph [4.1] recognizes that lawyers have a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights law in force in Ontario. These Guidelines are also an attempt to answer Call to Action 27 from the Truth and Reconciliation Commission to:

Ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The Guidelines, advisory in nature, are meant to be educational and should be read in conjunction with the Rules. A lawyer will not be subject to discipline by the Law Society for a breach of the Guidelines, but may be subject to discipline for a breach of the standards of professional conduct found in the Rules, some of which are referenced in these Guidelines. The Guidelines have been created with a view to ensuring the competence and professional conduct of lawyers in providing legal services to Indigenous peoples and non-discriminatory access to legal services in Ontario.

In these Guidelines, words such as "respect" and "healing" are used throughout. These words have significant meaning in an Indigenous world-view. For the purposes of these Guidelines, "respect" reflects either an acceptance of the importance of the issue referred to, or polite, honourable, kind and careful consideration of the person referred to. "Healing" refers to the person's emotional, psychological, physical and spiritual journey towards health and wellness in their life, and in their relationships with family and community.

General

1. Given the specific knowledge required to responsibly serve the legal needs of Indigenous Peoples, lawyers should ensure they are culturally competent to act prior to accepting Indigenous clients, and specifically in matters of institutional abuse or vulnerable circumstances. Rule 3.1-1 provides a definition of a “competent lawyer”. Rule 3.1-1(h) states that being a competent lawyer includes “recognizing limitations in one’s ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served.” Competence also involves “performing all functions conscientiously, diligently, and in a timely and cost-effective manner.”
2. Lawyers should be aware of the possible need for training for law office personnel to effectively manage the practice and maintain culturally competent legal service to clients. Lawyers acting in institutional abuse cases, for example, are encouraged to ensure that employee assistance programs and counselling are available for law office lawyers and staff.
3. Lawyers should recognize and respect that clients may be seriously damaged from their experiences, which may include cultural damage resulting from being cut off from their own society, culture and traditions and removed from their parents. These experiences may be aggravated by clients having to relive their childhood abuse, and healing may be a necessary component of any real settlement. Accordingly, lawyers should take into account that any redress provided to clients may include a broader range beyond the monetary. Lawyers should endeavour to understand and respect clients’ cultural roots, customs and traditions.

Guidance for Counsel

4. Lawyers should recognize and respect the unique nature of institutional abuse cases and appreciate clients’ need for “healing” in the legal process. Lawyers should recognize and respect the special nature of clients’ cases and should assist in facilitating their client’s healing process through, where possible:
 - a) Seeking compensation for the costs of rehabilitative and treatments services and resources;
 - b) identifying and providing referrals to appropriate community resources, including counselling resources, to assist the client;
 - c) referring their client to treatment programs, if appropriate;
 - d) for lawyers acting for a client pursuing a claim within the processes established by the Sixties Scoop Settlement Agreement or Indian Residential School Settlement Agreement (IRSSA), referring their client to the mental health and emotional services available through the settlement agreement, if appropriate; and,
 - e) recognizing and respecting the need for the client to develop a personal support network.

Lawyers should review these options with the client at the beginning of and throughout the retainer.

5. Lawyers should recognize and respect that certain cases may place unique demands on the lawyer and other law office staff by virtue of the complicated legal issues, the emotional nature of such cases, the additional amount of time and resources required for each case, the special needs of clients, the potential need for crisis intervention and management, and the lawyer’s role in facilitating the client’s healing process. Lawyers should recognize and respect that these demands may place a practical limit on the number of cases which they can

competently and responsibly take on at any one time. Lawyers must also remember that they must act consistent with their responsibilities to their clients.

6. In the case of residential schools, lawyers should ensure that new clients are aware of the relevant settlement agreement (including the IRSSA for example), including the legal processes established by the relevant settlement agreement, any deadlines established by it for new claims, and the clients' available legal options in light of the agreement. Although most claims being pursued by lawyers are or will proceed through legal processes established by the settlement agreement, if lawyers pursue claims through a class action, lawyers should ensure that the clients understand the impact of participating in the class on other legal rights which may be available to the them, including the impact on potential claims available through legal procedures established by the settlement agreements, the nature of a class action, and the need for a representative group of clients from whom the lawyer will take instructions. The lawyer should also implement appropriate information distribution systems for the benefit of all clients.
7. Lawyers should appreciate the need for the utmost sensitivity in dealings with clients. Lawyers should ensure that the methods they employ in making legal services available to claimants are culturally appropriate and comply with Rule 4.1, in particular Rule 4.1-2(c) which prohibits unconscionable or exploitive means in offering legal services to vulnerable persons or persons who have suffered a traumatic experience and have not yet had a chance to recover. Lawyers should make reasonable efforts to ensure that initial communications offering legal services to claimants are welcomed and respectful. Care should be taken to ensure that these communications will not result in further trauma to the client. Subject to protecting and advising the client with respect to solicitor and client privilege, lawyers may wish to consider having community support people available at the initial meeting with the client and should recognize that clients may require support people to be present throughout various stages of the legal retainer. In some cases, the Lawyer may want to consider having several meetings with the client to build comfort and trust so that the client has the opportunity to fully tell their story and give instructions.
8. Lawyers should ensure that advertising aimed at soliciting clients is in good taste, is not false or misleading, and complies with Rule 4.2-1.
9. Lawyers acting on behalf of clients must comply with Section 3.6 of the Rules and ensure that all fees and disbursements are clearly communicated to the client in a way that is understandable. Lawyers acting for Indigenous clients:
 - a) who as children between 1951 and 1991 were taken into care and placed with non-Indigenous parents where they were not raised in accordance with their cultural traditions nor taught their traditional languages ("the Sixties Scoop"), have a particular obligation to advise clients about those provisions in the Sixties Scoop Settlement that address legal fees;
 - b) Lawyers acting on behalf of clients making claims under the Sixties Scoop Settlement should ensure that their clients are aware that they should not be charged legal fees with respect to any claims made under the Settlement;
 - c) More specifically, lawyers acting for claimants within the Independent Assessment Process established by the IRSSA should additionally communicate the IRSSA provisions related to the claimant's legal fees and disbursements in a manner that is clear and understandable;
 - d) Given the unique nature of residential school cases and needs of clients, lawyers should make reasonable efforts to ensure that there is clear and understandable communication regarding the lawyer and client relationship, the legal process including settlement and alternative dispute resolution processes, responsibilities of

lawyer and client, and fees and disbursements. Accordingly, lawyers should, whenever possible, meet in person with the client before establishing a lawyer and client relationship or accepting retainers from residential school claimants.

10. Lawyers may enter into an arrangement with a client for a contingency fee provided the arrangement is in accordance with Rule 3.6-2.
11. Lawyers acting for Indigenous clients should ensure that they are accessible and that clear lines of communication exist with the client. Lawyers should recognize and respect the special communication needs that some clients may have including language barriers, cultural barriers, and limited access to telephone and internet service. Rule 3.2- 2A requires that a lawyer advise a client of their language rights, including the right to use the official language of the client's choice, and a language recognized in provincial or territorial legislation as a language in which a matter may be pursued, including, where applicable, Indigenous languages.
12. Lawyers may be required to consider the services of interpreters, as necessary. Lawyers' written communications to clients should be in an understandable and accessible format and lawyers should make reasonable efforts to follow up to ensure client comprehension. Lawyers should also communicate at all stages of the matter in a timely and effective manner, in accordance with Rule 3.1-1(d). This also involves being clear with the client about what the legal system can and cannot deliver, and, depending on the circumstances, involving the client in determining the approach to gathering information relevant to the claim. Lawyers should also be prepared to deal with a client's progressive disclosure of issues related to the matter, given the emotional vulnerabilities that many clients may experience.
13. Lawyers should recognize that some clients may reside in remote areas of the province or may not have access to telephone and internet services on a regular basis. As a result, to the extent that a lawyer can, they should consider sharing information with tribal councils, friendship centres, indigenous health and justice organizations, and band councils for the purposes of distributing class information. Lawyer should update any information they share on a regular basis. Lawyers should also promptly return phone calls from these institutions and other lawyers in a timely manner as these entities can assist and be a great asset to ensuring information is distributed in a timely manner.
14. Sensitivity to the emotional, spiritual and intellectual needs of clients is necessary in the provision of legal services. Lawyers should recognize and respect that clients have had control taken from their lives and may have been victims of child and sexual abuse and therefore, as clients, should be routinely informed about and consulted as much as possible on the direction of their case. Lawyers should ensure that they obtain instructions from clients at every stage of the legal process. Lawyers should also recognize and respect that for some Indigenous clients, interaction with lawyers and the legal process can be extremely stressful and difficult.
15. Lawyers should recognize and respect that some clients may be at risk of suicide and/or violence toward themselves and others, and should seek appropriate instruction and training for all law office staff to deal with such occurrences. Lawyers should be aware of available and appropriate resources and supports in order to make referrals when crisis intervention is warranted.