

SENT VIA ONLINE FORM

November 30, 2021

Law Society of Ontario
130 Queen Street West
Toronto, Ontario M5H 2N5

Dear Members of the Competence Task Force:

RE: Consultation on the Competence Task Force: Renewing the Law Society's Continuing Competence Framework

The Law Society of Ontario's Competence Task Force initiated a process to renew the Law Society's competence framework for lawyers and paralegals. The Women's Law Association of Ontario ("WLAO") welcomes the opportunity to provide input on this crucial issue from the perspective of women lawyers.

The WLAO, founded in 1919, stands as one of the oldest legal associations in Canada. The WLAO advances the interests of women in the legal profession and society through advocacy, mentorship, and professional development. The WLAO brings a practiced understanding of gender equality and intersectional discrimination to bear on the issue of the regulation of competency.

The WLAO is a member group of the Equity Advisory Group ("EAG"). The WLAO adopts the submissions made by EAG to this Task Force. We offer additional remarks below.

A. OVERVIEW COMMENTS ON THE APPROACH OF THE TASKFORCE

In its June 23, 2021 Report, the Task Force recommends a shift in the competence framework, proposing a reduction or modification of mandatory continuing professional development ("CPD") in favour of increased reliance on spot audits, practice reviews and practice audits. However, in doing so, the Task Force presents no evidence of improved effectiveness to support the shift.



The WLAO submits that the Task Force's suggested approach would not effectively promote competence. The knowledge and skills training offered by CPD more directly improves the quality of legal services delivered to the public than practice management skills.

CPD events serve to update legal knowledge and skills in an ever-changing legal landscape with minimal interference with the law firm's day-to-day operations. In contrast, spot audits, practice reviews and practice audits are more disruptive and demand numerous lawyer's hours.

Furthermore, the proposed shift from CPD to practice reviews and audits may exacerbate the problem of the retention of women in the profession.

Women face discrimination and pay equity disparities in the legal workplace. The reduction of CPD and, by extension, EDI removes a tool aimed at eradicating these problems.

Women lawyers carry the bulk of childcare and domestic responsibilities. Women licensees cite the time pressures caused by legal work and domestic demands as a reason for leaving the profession. Consequently, the Task Force should carefully consider the time requirements for responding to onerous regulatory procedures such as spot audits and practice reviews and audits where no deficiencies exist.

Racialized and Indigenous licensees have reported that they experience barriers in the workplace, underscoring the need to preserve EDI CPD. In addition, the shift to practice reviews and audits may impose greater burdens on racialized and Indigenous licensees.

Much of the Report addresses sole and small firm practitioners. Racialized and Indigenous lawyers practice in this area in disproportionate numbers. The proposed shift from CPD events that efficiently deliver knowledge and skills training to a more time-consuming and intrusive audit and review process will impose greater burdens on these groups.

Based on feedback, competency is a goal for all lawyers. In pursuing competency training, the WLAO asks the LSO to consider the time efficiencies and educational benefits in the CPD model over increased randomized spot audits, practice reviews and audits.

RECOMMENDATIONS: The WLAO recommends that the LSO maintain CPD/EDI as its primary tool to advance competency and reserve practice reviews and audits as a preventative measure for new licensees and licensees with demonstrated deficiencies.

The WLAO recommends that the LSO maintain and further develop practice management tools that licensees can access voluntarily.



The WLAO recommends that the LSO work with LawPro to create increased premium credits for voluntary participation in practice management skills training.

B. THE IMPORTANCE OF CPD

The Supreme Court of Canada in *Green v. Law Society of Manitoba* affirmed the importance of CPD:

A lawyer’s professional education is a lifelong process. Legislation is amended, the common law evolves, and practice standards change as a result of technological advances and other developments. Lawyers must be vigilant in order to update their knowledge, strengthen their skills, and ensure that they adhere to accepted ethical and professional standards in their practices.

...

CPD programs serve this public interest and enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada. Most law societies across the country have implemented compulsory CPD programs.¹

In addition to the gains in knowledge and skills training, licensees derive intangible benefits by participating in CPD events. Based on feedback, the CPD events provide licensees with an opportunity to socialize and network with colleagues informally. Licensees have commented feeling reinvigorated about their work after participating in a CPD event.

Notwithstanding the clear value gained from CPD programs, some members report that the cost of CPD events can be burdensome, with Law Society programming running as high as \$250.00. As one licensee put it, *“I pay my fees. The speakers volunteer their time. The Law Society can put on these events for free”*.

RECOMMENDATIONS: **The WLAO recommends that the LSO maintain mandatory CPD requirements especially given that the Task Force appears to predicate the reduction of the CPD hours with an increased resort to the number and scope of audit and practice reviews.**

¹ *Green v. Law Society of Manitoba*, [2017] 1 S.C.R. 360 at paras. 1 and 3



The WLAO recommends that the LSO significantly decrease the cost of CPD and increase the number of free CPD.

The WLAO recommends that links for free CPD events offered by third parties be included on the LSO webpage to facilitate access to the free CPD.

The WLAO recommends that the LSO provide specialized CPD for senior licensees such as roundtable or fireside chats with senior bar members or the judiciary- again at a no-cost or reduced fee basis.

C. Equality, Diversity and Inclusion Education (“EDI”)

The proposal to reduce CPD requirements necessarily calls into question the preservation of EDI, a program that the WLAO urges LSO to maintain.

The introduction of the EDI requirement followed extensive work and consultation with the profession. In 2015, the Challenges Faced by Racialized Licensees Working Group released a report that found racialized licensees face barriers to full inclusion.² Furthermore, the LSO’s Articling Survey found that approximately 21% of candidates experience racial and gender discrimination.³ The WLAO commends the LSO’s historical work on equality and discrimination, notwithstanding its recent retrenchment from these issues with its elimination of the Statement of Principles (“SOP”).

These reports, along with other data and jurisprudence, suggest that the EDI requirements play a vital role in promoting education and regulation of the profession.⁴

Currently, the LSO requires that licensees complete one hour of EDI per year. This represents a very modest demand on the licensees’ time. Based on feedback, licensees appreciate the substantive EDI programming and the fact that many EDI programs are offered at no cost.

RECOMMENDATION: WLAO recommends that the EDI CPD hours be maintained and enhanced to include Indigenous intercultural competency training. [Discussed in the next section]

² Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions: Challenges Faced by Racialized Licensees Working Group

<https://lawsocietyontario.azureedge.net/media/lsos/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>

³ The Law Society of Upper Canada Summary of Articling Experience Survey Results:

<http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>

⁴ *R. v. Le*, [2019] 2 S.C.R. 692 at paras. 90 – 97; *R. v. Morris*, 2021 ONCA 680 at para. 1; *R. v. Barton*, [2019] 2 S.C.R. 579 at para. 199



D. INDIGENOUS INTERCULTURAL COMPETENCY AS LAWYER COMPETENCY

The WLAO adopts the detailed submissions of EAG in its recommendation that the LSO implement Indigenous intercultural competency training as a component of lawyer competency.

In support of EAG's submission, the WLAO stresses that the Truth and Reconciliation Commission ("TRC") issued direct calls to law societies to ensure that lawyers receive cultural training. The training should include 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.⁵

The urgency of the TRC's calls has only intensified recently with the recent discovery of the mass unmarked graves of children held in the residential schools.

The LSO's valuable work in the 2008 Aboriginal Bar Consultation supports the need for EDI training focused on Indigenous intercultural competencies. In the consultation with the Aboriginal bar, the LSO found that 26 % of Indigenous lawyers felt that their Indigenous status factored negatively in their experience in the profession. Furthermore, the majority stated that they attributed their feelings to the racism and discrimination they experienced in their workplaces. The respondents identified a lack of awareness of aboriginal issues, a lack of content and misinformation about aboriginal issues as problems.⁶

RECOMMENDATION: WLAO recommends that the EDI CPD hours be enhanced to include mandatory Indigenous intercultural competency training.

E. RESPONSES TO SPECIFIC QUESTIONS PROPOSED BY THE TASK FORCE

Concerning the definition of competency offered by the Task Force, the WLAO raises two issues with the proposed "working definition of competence":

- 1) The Task Force suggests that the working definition of competence includes:
 - remedial training prompted by the regulator or insurer

⁵ <https://nctr.ca/records/reports/#trc-reports>

⁶ https://lawsocietyontario.azureedge.net/media/lso/media/legacy/2009-final-report-of-the-indigenous-bar-consultation_1.pdf



This component of the definition does not disclose the factors that would trigger “remedial training.” The WLAO favours an interpretation where identified deficiencies initiate “remedial training.” However, this interpretation is not evident because the Task Force refers to increased *randomized* audits and reviews elsewhere in the Report.

2) The Task Force also suggests that the working definition of competence includes:

- peer observation and evaluation

This component of the definition does not define the scope of the peer observation and evaluation. However, the language, as it stands, suggests a broad power to intervene in daily firm operations.

RECOMMENDATION: The WLAO recommends that the Task Force clarify the above-referenced components of the definition of competence

F. INCREASED REGULATORY BURDEN OF SOLE AND SMALL FIRM PRACTITIONERS

Licenses who operate from sole and small firms play a central role in the provision of legal services in Ontario.

Indigenous and racialized licenses work in sole and small practices at a greater frequency. According to the Statistical Snapshot of Lawyers on Ontario Fact Sheet, “24 % of Indigenous lawyers are sole practitioners, compared to 18 % of White lawyers.” Furthermore, “compared to White lawyers, racialized lawyers are more likely to be sole practitioners.”⁷

The Task Force Report emphasizes that sole and small firms attract more complaints than large firms in proportionate terms. However, the Report does not acknowledge that the higher number of complaints against small firms likely results from the different focus between small and big firms. Small firms receive more complaints simply because they represent individuals rather than institutional clients.

Acknowledging the nuances in the data on complaints will ensure that racialized and Indigenous licenses do not experience undue regulatory action.

CONCLUSION

⁷ <https://lawsocietyontario.azureedge.net/media/iso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyerseng-pdf.pdf>



The WLAO submits that a model of competency founded on easily accessible, reduced cost CPD is preferable to one premised on practice reviews and audits for the reasons expressed above.

The WLAO agrees with the Task Force that firms should receive guidance on practice management; however, WLAO suggests that the LSO provide guidance by developing and sharing specific tools to assist lawyers. The LSO should reserve spot audits, practice reviews and audits for established licensees exhibiting deficiency and new licensees. However, all licensees should have an avenue to pursue management review on a voluntary basis.

The WLAO strongly urges this Task Force to expand and enhance CPD and EDI based on a no-cost structure.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Gold".

Jennifer Gold
President

