



Law Society
of Ontario

Barreau
de l'Ontario

Tab 1

Technology Task Force

Report on Regulatory Sandbox for Innovative Technological Legal Services

April 22, 2021

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CONTENTS

- Motion 2**
- Executive Summary 2**
- Background 5**
- Momentum for Change 5**
 - Emergence of and Demand for Legal Tech Tools..... 5
 - Tech Innovation during COVID-19 Pandemic 6
 - Sandboxes and Regulatory Reform in Other Jurisdictions..... 6
- Benefits of Creating a Regulatory Sandbox 8**
 - Access to Justice 8
 - Public Protection 8
 - Informing Regulatory Development..... 9
 - Impacts on Licensees 9
- Risks and Risk Mitigation 10**
 - The Public..... 10
 - The Law Society 10
- Overview of the Sandbox Proposal 11**
 - Purpose..... 11
 - Project Concept 12
 - Key Features..... 12
 - Pathways to Ongoing Delivery 13
 - Duration 13
 - Legal Framework 13
- Resources 14**
 - Staffing..... 14
 - Advisory Council 14
 - Program Costs 14
 - Funding Sources..... 15
- Implementation and Launch..... 16**
- Conclusion..... 16**
- Appendix: Sandbox Operations..... 17**

Working Title:
Regulatory Sandbox for Innovative Technological Legal Services

Motion

That Convocation:

1. Approve the launch of a regulatory sandbox as a five-year pilot with the following features:
 - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
 - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.
 - Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes.
2. Adopt amendments to the Law Society's By-Laws, as set out at **Tab 1.1**.

Executive Summary

The Law Society's Technology Task Force recommends the creation of a regulatory sandbox for innovative technological legal services ("ITLS") as a five-year pilot.

Advancements in technological capabilities like artificial intelligence have contributed to the rapid rise of ITLS. Through websites, apps and software, ITLS providers offer tools to help people find legal information, answer routine questions, navigate legal processes, analyze contracts, generate legal documents, or predict outcomes. Consumers may see such tools as the only practical option for legal assistance or as a precursor or supplement to a legal professional. There is a growing demand for ITLS due to unmet legal needs, consumer comfort with technologically delivered services, and the convenience of accessing help on demand.

The trend in technological advancement in the legal sector has accelerated during the COVID-19 pandemic with the adoption of digital and online tools by public institutions, private enterprises, and community organizations. Moving more of the justice sector infrastructure online (such as through e-filing portals and video hearings) has opened up new pathways for ITLS tools in Ontario.

Despite the growth of digital innovation, ITLS currently operate in an environment of regulatory uncertainty. Standards for competent and ethical legal tech services have not been established. ITLS provided by persons not licensed as lawyers or paralegals may be subject to prosecution for the unauthorized practice of law. ITLS provided by licensees may be subject to professional conduct rules in ways that have not been

clarified. This uncertainty can both deter the best innovation and deprive ITLS consumers of basic safeguards accorded to clients of licensees.

An “Uber moment” is arriving in the legal sector as it has in other sectors and industries when innovative technologies transform markets and consumer choices. Inaction on the Law Society’s part would risk allowing ITLS providers to proliferate in Ontario outside of an effective regulatory scheme.

In the proposed sandbox pilot, approved participants will receive permission from the Law Society to serve consumers through ITLS while complying with requirements for risk-based monitoring and reporting. Amendments will be required to create a new category of permitted exception from licensure in the Law Society’s By-Laws (See **Tab 1.1**). The Law Society will determine whether, and under what conditions, participants should receive a permit to continue providing the services after their participation in the sandbox has ended. During the pilot the Law Society will gather critical information about the operation of ITLS and will use that information to inform policy and regulatory decisions, including possible changes to professional conduct rules.

The sandbox will help to fulfill the Law Society’s responsibilities as a public interest regulator by:

- Facilitating access to justice: By eliminating regulatory uncertainty, the sandbox will remove barriers to the development of ITLS that could reach new consumers in new ways, especially in areas of high unmet need.
- Protecting the public: The sandbox will provide a mechanism to ensure ITLS consumers have the same type of safeguards available to clients of licensees: competent and ethical services, recourse when required, and the provision of relevant details enabling informed choices to be made about the providers of the services.
- Informing future regulatory development: The sandbox will gather evidence to inform longer term decision-making about ITLS regulation. During the pilot period, the sandbox team will report, at a minimum, annually to Convocation, thus enabling Convocation to review and potentially adjust rules, by-laws, or standards that participants have demonstrated can be satisfied in alternative ways.

The sandbox will also enable licensees to better understand how the public is using ITLS and the impact on legal service delivery. With this information, licensees can enhance their practices by using, adapting to, or developing ITLS tools.

The presence in Ontario of leading legal tech entrepreneurs and proponents in legal, academic, government, and judicial circles bodes well for attracting sandbox participants and expert advisors. Several entrepreneurs have already expressed interest in participating. Participation in the sandbox would provide a measure of quality assurance to consumers and reassurance to developers and investors who would

otherwise be wary of investing resources in an enterprise that could be shut down by the regulator.

This report begins by describing developments in Ontario and elsewhere that have created the impetus to move forward in establishing the Law Society's regulatory role for ITLS. It then discusses benefits and risks of proceeding (or inaction) to launch the sandbox pilot. The latter half of the report provides an overview of the sandbox proposal, including the project's purpose, concept, key features, and legal framework. It concludes with a discussion of budgetary considerations along with the need for a small staff team and expert volunteer advisory council. An Appendix provides additional detail on operational issues.

The Task Force recommends the sandbox as an imperative in regulatory advancement. The Law Society is well positioned to assess the potential benefits of innovative legal technologies, minimize risks of harm, and identify new pathways for regulation in the public interest.

Background

The Law Society's Technology Task Force was formed in 2018. Its mandate is to consider the role of technologies in the delivery of legal services, and the Law Society's role as a regulator in this changing environment.

The Task Force submitted an Update Report¹ to Convocation in November 2019. That report discusses the technological landscape for legal services, implications for access to justice and the regulation of legal services, and potential regulatory directions. Building on extensive research and consultation, the Task Force recommends that the Law Society launch a regulatory sandbox to test ITLS in a safe environment.

Momentum for Change

Several factors have created momentum for the Law Society to establish a role in relation to ITLS. Key factors are the proliferation of and demand for legal technological tools, the accelerated adoption of digital and online tools during the pandemic, and the emergence of regulatory sandboxes in the legal sectors of other jurisdictions.

Emergence of and Demand for Legal Tech Tools

There has been a rapid rise of novel legal technological tools and services due to advancements such as artificial intelligence. The new technologies are developing unprecedented capabilities at an unprecedented pace, sparking innovations in the ways that legal services are being delivered. The demand for ITLS has grown stronger due to rising unmet legal needs, constant downward pressure on prices for legal services and increasing consumer expectations for on-demand online services.

Many of the new tools aim to help consumers of legal services make more informed decisions in their own legal matters. Different consumers may see such "direct-to-public" tools as the only practical option for legal assistance or as a precursor or supplement to a legal professional. Such tools may perform a range of legal tasks and functions, assisting people with locating and identifying legal information, answering routine questions, navigating legal processes, analyzing contracts, generating legal documents, and predicting case outcomes. Such services are commonly delivered through websites, apps, or software. As of August 2019, 88 direct-to-public legal tech tools have been identified as operating in Canada.²

Direct-to-public legal tech tools are currently subject to regulatory uncertainty or, in many cases, clear prohibition. If the providers are not licensees, they may be engaging in the unauthorized practice of law and may be subject to Law Society prosecution. If

¹ <https://lawsocietyontario.azureedge.net/media/iso/media/about/convocation/2019/technologytaskforce-report-en.pdf>

² Amy Salyzyn, William Burke, and Angela Lee, "Direct-to-Public Legal Digital Tools in Canada: A Draft Inventory" (2019), online: <https://techlaw.uottawa.ca/direct-public-legal-digital-tools-canada>

licensees are providing the tools, they may be subject to the Law Society's professional conduct rules, by-laws and other rules in ways that have not been clarified.

Tech Innovation during COVID-19 Pandemic

The impacts of the COVID-19 pandemic have accelerated consumer adoption of digital and online tools, as well as the development of innovative tech products. These patterns have been widely observed across many sectors of the economy, and the legal sector is no different. The announcements since March 2020 of tech modernization projects for Ontario's court and tribunal systems illustrate this trend. Most recently, Attorney General Doug Downey announced the Justice Accelerated Strategy, which includes a \$28.5 million investment for a digital case management and dispute resolution system for tribunals and a plan for moving more services online.³

Moving the infrastructure of the justice system online (such as through e-filing portals and video hearings) opens more pathways for ITLS tools. For example, platforms that help users prepare legal documents for court filings can now build in the added feature of filing the completed document on the user's behalf, through the court's e-filing portal.⁴

For ITLS developers, the economic impacts of the pandemic have also highlighted opportunities for new services.⁵ Innovation can thrive in circumstances where established practices and consumer expectations are disrupted. Ontario can expect to see continued growth in the development of disruptive legal services, which has set the stage for the Law Society to consider its regulatory role.

Sandboxes and Regulatory Reform in Other Jurisdictions

Legal services regulators in other jurisdictions have accelerated reforms that support innovation, including through the use of sandboxes that have attracted a significant number of participants. Momentum for these regulatory reforms is particularly building in the United States. As these other jurisdictions progress in their experiments with ITLS providers, this could change conditions in Ontario's legal sector and increase pressure on the Law Society to act.

In August 2020, the Utah Supreme Court approved the implementation of a regulatory sandbox for non-traditional legal services and providers.⁶ A new office within the Supreme Court – the Office of Legal Services Innovation – oversees the approval and

³ Ontario's Accelerated Justice Strategy, March 11, 2021, <https://news.ontario.ca/en/background/60642/ontarios-justice-accelerated-strategy>; <https://www.lawtimesnews.com/resources/professional-regulation/ontarios-justice-accelerated-strategy-includes-new-digital-case-management-system-for-tribunals/354031>

⁴ <https://www.canadianlawyermag.com/resources/legal-technology/legal-tech-company-releases-toolkit-summarizing-e-filing-requirements-across-canada/332994>

⁵ <https://www.ryerson.ca/zone-learning/legal-innovation-zone/news/blogs/2020/07/for-startups-can-crisis-fuel-opportunity/>

⁶ <https://iaals.du.edu/blog/utah-supreme-court-makes-history-vote-establish-regulatory-sandbox>

monitoring of sandbox participants.⁷ The Utah sandbox had about a dozen applications within a week of announcing its launch.⁸ As of April 1, 2021, 22 applications had been approved.⁹

Examples of innovations in the Utah sandbox include a technological solution that provides information about Utah's Clean Slate law and legal advice to people with criminal records,¹⁰ a software platform to guide consumers through the process of completing financial disclosures related to divorce proceedings,¹¹ and a platform to generate legal documents in contested and uncontested divorce and custody cases, eviction cases, and debt-related property seizure cases.¹²

A working group of the California State Bar Board of Trustees is exploring the development of a regulatory sandbox for the innovation of accessible legal services.¹³ In Florida, a Special Committee to Improve the Delivery of Legal Services is considering the regulation of online service providers.¹⁴ In its regulatory reform efforts, the Arizona Supreme Court has changed the state's rules around legal services delivery models in order to spur innovation.¹⁵

A task force established by the Chicago Bar Association and the Chicago Bar Foundation¹⁶ has prioritized the use of legal technology to improve the ability of courts and lawyers to provide legal services to consumers and to make legal services more affordable and accessible.¹⁷ The task force recommends the creation of an "Approved Legal Technology Provider". Lawyers would be able to collaborate with approved entities in the provision of technology-based legal products and services.¹⁸

⁷ <https://sandbox.utcourts.gov/interested>

⁸ <https://legaltechnology.com/us-regulatory-reform-utah-sandbox-leader-john-lund-gives-us-insight-into-the-changes-you-can-expect/>

⁹ <https://sandbox.utcourts.gov/approved>

¹⁰ The service will aim to help people with criminal records access their criminal history, understand what it means, learn whether they have been impacted by Utah's Clean Slate law, and whether they might be eligible for petition-based expungement under Utah law.

https://drive.google.com/file/d/1QGSOQFkxkcfi_1ARkpk4yI7rM8ZmFlxA/view

¹¹ The software walks consumers through the Utah disclosure form and provides basic information and nonlegal advice assistance to enable completion. The software can be used by lawyers or by pro se litigants. The software was developed and is managed by a Utah licensed lawyer employed by the company. https://drive.google.com/file/d/1ti6HRrHY_Qma6Mmu1r6Lsko07kgG3nAx/view

¹² The platform will guide consumers through a series of questions to help them complete the forms and proceed pro se. <https://drive.google.com/file/d/1ZC5uv1HqQUeJMAABdkkSYEiwZT9qzK7N/view>

¹³ <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Closing-the-Justice-Gap-Working-Group>

¹⁴ <https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-to-improve-the-delivery-of-legal-services/>

¹⁵ <http://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf>

¹⁶ <https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/>

¹⁷ <https://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf>

¹⁸ *Ibid.*

In Canada, the Law Society of British Columbia took an initial step by introducing its “Innovation Sandbox” in the fall of 2020.¹⁹ The BC sandbox had 25 applications in its first two months of operations. As of March 8, 2021, there were 32 applications, five of which have been approved thus far.²⁰

Benefits of Creating a Regulatory Sandbox

The advantages of creating a sandbox at this time include enhanced access to justice, better protection for the public and the ability to inform future regulatory policy through detailed evidence about an emerging area of service. In addition to achieving these regulatory objectives, the sandbox can also lead to new opportunities for licensees.

Access to Justice

Despite concerted efforts across the justice system, access to legal assistance continues to remain elusive for many people with everyday legal problems. Research shows that Canadians do not seek professional assistance for more than 80% of their legal issues.²¹ Everyday legal problems can take a considerable toll, including increased stress, poor physical health, emotional issues, and strained relationships with family members.²² They can also threaten a family’s basic security by potentially leading to a loss of employment or housing.²³

Regulatory uncertainty inhibits the development of new services that enhance access to justice through innovative legal services that reach new consumers in new ways. Thoughtful developers and investors may not want to operate in an environment where they risk being shut down by the regulator or becoming the test case on unauthorized practice. By removing that uncertainty, the sandbox can stimulate innovation, including attracting ITLS providers who focus on everyday legal problems in areas of high unmet need such as family law, employment, residential tenancies disputes, wills or powers of attorney.²⁴

Public Protection

¹⁹ <https://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/>

²⁰ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/InnovationSandbox-presentation.pdf>

²¹ A 2016 study found that 19% of Canadians sought legal advice for the legal problems they identified: Trevor C.W. Farrow et al., “Everyday Legal Problems and the Cost of Justice in Canada: Overview Report” (2016), at p. 9, online: <http://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>

A 2018 study found that 14% of low-income British Columbians sought legal assistance for their everyday legal problem: BC Legal Services Society, “Everyday Legal Problems” (2018), at p. 17, online: https://lss.bc.ca/sites/default/files/2019-03/lssEverydayLegalProblems07_2018.pdf.

²² Farrow et al., *supra* note 21, at p. 12.

²³ *Ibid.*

²⁴ <http://angusreid.org/will-and-testament/>

- ITLS tools pose unique, novel, and complex risks for the public. The sandbox can help to protect the public from the risks while also providing the benefits of expanded opportunities for obtaining legal assistance. The sandbox will help to ensure ITLS consumers have the same type of safeguards available to clients of licensees: competent and confidential services, recourse when required, and the provision of relevant details enabling informed choices to be made about the providers of the services.

Simply shutting down these services would be neither practical nor desirable in the public interest. Consumers are demanding cheaper and more convenient legal services and technological platforms for delivering them.

Informing Regulatory Development

The sandbox presents an opportunity for the Law Society to obtain detailed evidence about the market interest in the new services, as well as their risks and benefits. Sandbox participants would be required to disclose information about their operations as a condition of participation. This would allow the Law Society to learn what kind of consumer uptake there is for these products, which aspects of these services particularly appeal to consumers, and which aspects are posing challenges. This information will aid future policy development.

The sandbox is also consistent with the Law Society’s strategic plan, which states that the Law Society must “periodically confirm the scope of what and how it regulates, particularly in an environment where accessibility of affordable legal services is an issue and significant advances in technology and related innovations are taking place.”²⁵

Through thoughtful operating criteria and ongoing supervision, the Law Society can also help to shape the delivery of emerging services. The sandbox parameters would give providers targets for the features and protections they would need to build into their products.

Impacts on Licensees

As new service models and tools become increasingly available, they will present innovation opportunities across all legal practice areas and settings, and clients will expect providers to take advantage of these opportunities.

The sandbox’s information-gathering and awareness-raising functions can benefit lawyers and paralegals by providing information about how the public is using legal technologies and how these tools are impacting legal practices. This will provide a window into the development of tech tools so that licensees can either develop their own tools or adapt their practices.

²⁵ <https://lawsocietyontario.azureedge.net/media/iso/media/about/convocation/convocation-february-2020-priorityplanningcommittee-report.pdf> at p. 7.

Establishing this sandbox will help licensees compete in innovative new markets. Lawyers and paralegals start with the built-in advantages of subject matter expertise and client bases. Whether they choose to develop tech tools themselves or to incorporate other tech tools into their services, the scale and convenience offered by the tools can give firms – especially smaller firms – opportunities to build sustainable practices for a more digital future. The Law Society, in turn, can learn from this experience and better tailor regulation for licensees in these practice settings.

Window of Opportunity

The legal sector has reached an “Uber moment.” As with other sectors and industries, the proliferation of new market entrants and innovative technologies will continue to transform markets and gain users, with or without the regulator’s involvement. Inertia on the Law Society’s part risks allowing ITLS providers to proliferate in Ontario outside of an effective regulatory scheme. The time is right for the Law Society to move forward, ensuring the chance for input and regulatory influence.

Risks and Risk Mitigation

The Public

There is a risk that sandbox participants may fail to deliver quality legal services and therefore harm the public. Such risks could be both significant and novel with the use of tech tools. For example, if an algorithm is inadvertently programmed to make an error, it could affect everyone who uses the tool. Such risks will be mitigated by careful vetting and monitoring participants and by imposing tailored operating conditions. As indicated below in the Overview of the Sandbox Proposal, quality assurance processes and tools will focus on key risks of harm to the public. Please also see the Appendix on Sandbox Operations for details about eligibility, approvals, participation agreements, reporting, and final determinations.

It should be noted that such risks already exist in the market for direct-to-public ITLS. The public will continue to be exposed to them if the Law Society does not act. It will be better to learn about problems with an ITLS tool in a structured sandbox with safeguards as opposed to in the open market. And if some or all of the services prove to be effective, the Law Society will see new pathways forward for effective regulation and quality assurance.

The Law Society

There is a risk that the sandbox will fail to attract a sufficient number of applicants. However, the Task Force has consulted with legal tech entrepreneurs and closely observed developments in other jurisdictions. Many entrepreneurs have confirmed that they would be interested in participating, so long as the sandbox provides a potential pathway to long-term operation. In addition to providing a measure of quality assurance for consumers, sandbox participation will also provide reassurance to developers and

investors who would otherwise be wary of investing resources in an enterprise that could be shut down by the regulator.

The experience of regulatory sandboxes in other jurisdictions also provides some assurance of an interest among legal entrepreneurs to engage with sandboxes. As noted above, sandboxes in Utah and British Columbia have attracted a significant number of participants shortly after launching.

The jurisdictions of Utah and British Columbia are both smaller than Ontario. Moreover, the interest of Ontario government and judicial officers in innovative technologies, along with a healthy legal tech sector, will help to create a climate conducive to participation in the sandbox initiative.

A further risk is that the sandbox will not generate sufficient evidence to support Convocation's decision-making. To mitigate this risk, ongoing reporting requirements will be imposed on participants to generate data that will help to inform decision-making. The parameters will be designed and negotiated with the assistance of a skilled data analyst who can gather, analyze and present data to Convocation in formats that are accessible to policy-makers.

Finally, there is a potential risk that the Law Society could be exposed to legal action or damage to its reputation for approving a tool that fails to deliver quality legal services. The Law Society has statutory protection for good faith actions²⁶ and there is no known precedent for successful claims in comparable situations. The legal and policy risks of launching the sandbox are likely less than the risks of doing nothing.

Overview of the Sandbox Proposal

This section provides an overview of the proposed sandbox. Please see the Appendix for additional details about sandbox operations.

Purpose

The purpose of the sandbox is to assess and facilitate access to technological innovation in legal service delivery, especially in areas of unmet legal needs. The sandbox will also provide detailed evidence to the Law Society to inform regulatory policy-making.

²⁶ See *Law Society Act*, s. 9: "No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power."
<https://www.ontario.ca/laws/statute/90I08#BK15>

Project Concept

Interested individuals and entities will apply to provide ITLS tools and programs in Ontario. The sandbox is intended to be exploratory and innovative. For this reason, eligibility at the initial application stage will be open to a wide range of ITLS and providers, including licensees, governments, charities, not-for-profit and for-profit corporations.

Accepted participants will be permitted to serve consumers while complying with risk-based monitoring and reporting requirements during their allotted operating period in the sandbox. Each participant is expected to operate in the sandbox for about two years. At the end of that period, the Law Society will determine whether (and under what conditions) the participant should be permitted to continue providing the services. It is expected that different participants will start their operating period at different times throughout the five-year life of the sandbox.

Key Features

The Law Society will evaluate and monitor sandbox participants in order to protect the public and gain valuable insights into potential regulatory reforms for Convocation's consideration.

The sandbox will introduce novel, tailored quality assurance processes and tools that will need to be continually re-evaluated and honed. At the outset, they will focus on key risks of harm to the public:

- Failure to exercise legal rights or pursue legal recourse as a result of ignorance, error, or poor-quality legal services;
- Purchase of unnecessary or inappropriate legal services;
- Exposure or sale of confidential client data to third parties; and
- Inability to seek redress or recompense from a legal service provider that has failed to provide the service expected or agreed.

Applicants who meet approval criteria will be permitted to participate in the sandbox. The criteria will be designed to serve the following objectives:

- Expand public access to ITLS tools and programs, particularly in areas of high unmet need;
- Explore flexible new approaches to protecting the public from risk of harm when using ITLS tools and programs;
- Collect information about ITLS outcomes that will support evidence-based regulatory policy-making; and
- Foster responsible development of ITLS tools and programs.

Metrics will be developed in order to evaluate the success of individual participants and the pilot as a whole.

Pathways to Ongoing Delivery

Two key pathways will be available for ITLS providers that have completed their participation in the pilot to continue operating in Ontario:

- (a) *Individual permits* - Individual participants that have satisfied their performance objectives at the conclusion of their sandbox period may be given permission to continue operating in Ontario on an ongoing basis, notwithstanding their continued non-compliance with certain Law Society standards that apply to lawyer and paralegal licensees. The Law Society's permit could continue to impose any conditions deemed necessary based on the participant's experience in the sandbox.
- (b) *Annual reviews of regulatory standards* - Annually, for the duration of the sandbox pilot project, the Law Society will formally review and potentially adjust any rules, by-laws, or other regulatory standards that participants have demonstrated can be satisfied in alternative ways. If Convocation approves amendments of general application, certain participants' permits (obtained through pathway (a)) might be obsolete, as their operations would now be compliant with the Law Society's amended regulatory framework.

Duration

The sandbox will be established as a five-year pilot project as opposed to a permanent program. A five-year window will enable the Law Society to inform itself for longer-term and broader regulatory decision-making and to observe trends regarding the capabilities of ITLS and consumer interest.

Legal Framework

The sandbox will operate pursuant to a new category of permitted exception from licensure under the Law Society's By-Laws. The *Law Society Act* permits the Law Society to use its by-laws to deem certain activities not to be the practice of law or the provision of legal services, as well as to identify certain classes of persons who may provide legal services without a licence.²⁷ This authority permits the Law Society to establish a comprehensive set of circumstances and conditions in its By-Laws under

²⁷ See *Law Society Act*, paragraph 5 of s.1 (8): "For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services: A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws." See also paragraph 3.1 of s. 62 (0.1): "Convocation may make by-laws, for the purposes of paragraph 5 of subsection 1 (8), prescribing persons or classes of persons who shall be deemed not to be practising law or providing legal services and the circumstances in which each such person or class of persons shall be deemed not to be practising law or providing legal services;" <https://www.ontario.ca/laws/statute/90I08#BK184>

which an approved sandbox participant (an individual or an entity) may provide legal services to the public. Proposed amendments to the By-Laws are found at **Tab 1.1**.

Resources

Staffing

The sandbox will begin with three staff: a manager, data analyst, and program administrator. The manager will be a full-time position reporting jointly to the Executive Directors of Policy and Professional Development & Competence. The other two positions will be filled by contract and will report to the manager.

The manager will have lead responsibility for policy and program development, outreach and communications, evaluation of applicants, negotiation of participation agreements, monitoring of participants, analysis and reports to Convocation. The data analyst will establish data reporting and protection protocols, monitor compliance with data reporting and protection, and assist with analysis and reporting. The administrator will manage routine communications with applicants, participants and the advisory council, coordinate media requests, manage records, and publish decisions, in addition to scheduling and general administrative work.

Advisory Council

A volunteer advisory council of external experts will be established to help steer the sandbox to meet its objectives, by providing advice and assisting in reviewing applications and evaluating participants. Advisory council members would represent a range of expertise, including: legal technology and innovation; legal regulation and professional ethics; priority legal practice areas such as family law; consumer protection and advocacy; economics; regulatory sandboxes and government or judicial administration.

Advisory bodies are common for regulatory sandboxes. They allow the regulator to tap into skills and perspectives that it lacks in-house. They also give the public and participants confidence that the regulator will be open to exploring new ideas, guided by leading independent experts.

Program Costs

There will be one-time start-up costs associated with implementing and launching the sandbox, followed by ongoing operating costs, the bulk of which will relate to compensation for the three positions. The table below contains a preliminary cost projection, on the understanding that specific operational details are still to be developed²⁸. The projected costs include inflationary increases of approximately 2% in Year 2.

²⁸ Spending for Year 1 is expected to start around the midpoint of 2021. The 2021 budget includes \$200,000 to support the sandbox. The estimated budget requirements for 2022 are preliminary, and need

Expenses	Basis	Annual Budget Year 1 (\$)*	Annual Budget Year 2 (\$)*
Staffing Salaries & Benefits	Based on the hiring of the following positions: <ul style="list-style-type: none"> • Manager (full time) • Administrator (full-time) 	270,000	276,000
Data Analyst	Part-time contract or consulting role	100,000	102,000
Staffing Operating Expenses	Based on \$15,000 per person in the first year for technology needs, office supplies, professional development etc. and \$10,000 per person in succeeding years.	45,000	30,000
Advisory Council	Reimbursement of expenses (one or two onsite meetings in the year) and costs of engagement.	20,000	20,500
Contingency	Potential legal, technical or business expertise required from external service providers.	Funded from operational contingency, if required. See below.	
Total		\$435,000	\$428,500

**Would be prorated for portion of year of operations*

Funding Sources

Initially, the sandbox will be funded by licensee annual fees. Ideally, ongoing operations can ultimately be funded on a cost recovery basis, recognizing however that unduly high fees could deter applicants, especially those with limited access to capital, thereby undermining the sandbox’s overall potential.²⁹ Tiered fee structures may be needed, including separate fee categories for not-for-profit providers and small or early-stage companies.

Additional funding will be sought from external sources, which could offset participant fee shortfalls or help to minimize participant fees. Exploratory conversations have taken place but formal fundraising cannot take place until Convocation’s approval has been provided and publicly communicated. Potential funders include government

to be revisited once further information is available. Funding requirements for 2023 and onwards will be assessed as the sandbox evolves. As the sandbox initiative is at the conceptual stage, it is not possible to project possible additional costs of internal or external resources that may be needed to support the project.

²⁹ The legal innovation sandboxes in BC and Utah do not currently charge fees to applicants or participants, although the Supreme Court of Utah has expressly given Utah’s program the power to do so. It is first working on learning more about the profiles of participants before determining fee structures.

contributions, grants from funding organizations, and collaboration or resource-sharing with other regulators.

Implementation and Launch

If Convocation approves the pilot, an early priority will be to recruit sandbox staff and advisory council members. These individuals will be centrally involved in completing the pre-launch implementation work. Staff will keep the Task Force updated on implementation progress.

Timing 2021	Milestone
March-April	<ul style="list-style-type: none"> • Convocation approval in principle of sandbox proposal and by-law amendments • Preliminary outreach to funding sources
May - July	<ul style="list-style-type: none"> • Outreach to government and regulators • Recruit sandbox manager • Develop communications plan and webpage
June -Sept	<ul style="list-style-type: none"> • Recruit advisory council, data analyst, and program administrator • Develop pre-launch criteria, protocols, processes, strategies, and communications
Sept	<ul style="list-style-type: none"> • Organize launch • Communicate with potential applicants
Oct	<ul style="list-style-type: none"> • Launch

Conclusion

The Law Society has an opportunity to play a proactive, forward thinking role in developing a regulatory framework for ITLS. The technologies will continue to develop, but the Law Society may lose the opportunity to have an influence if it does not act quickly. Through the sandbox pilot, the Law Society can establish a presence in the ITLS field while building evidence to inform longer term decision-making about future regulatory policies. The Law Society is well positioned to assess the potential benefits of innovative technologies, minimize risks of harm, and identify new pathways for regulation in the public interest. Entering this arena represents an imperative in regulatory advancement and leadership.

Appendix: Sandbox Operations

Operating the sandbox will involve the following functions:

- Communicating with potential applicants and other stakeholders;
- Fundraising and liaising with governments and other regulators;
- Reviewing and approving applications;
- Drafting participation agreements for eligible applicants;
- Publishing application decisions;
- Monitoring and auditing participants;
- Evaluating data received from participants and users, and potentially gathering data in other ways such as conducting surveys or focus groups or consultation with courts;
- Making final determinations following a participant's sandbox period;
- Publicly reporting participant evaluation outcomes; and
- Reporting annually to Convocation about overall sandbox outcomes and making recommendations for Convocation to review and amend any rules, by-laws, or other regulatory standards that can demonstrably be satisfied in alternative ways.

Communications

A branding and communications strategy will be developed for the sandbox. This will address how to present the sandbox to potential applicants, the public, licensees and other stakeholders.

One of the key pre-launch outreach functions will be to identify target sandbox participants, as well as target users of participants' ITLS tools and programs.

Eligibility

Any person or entity that is prevented by current regulations from operating an ITLS tool or program may apply to the sandbox.

The sandbox is intended to be exploratory, innovative, and educational. For this reason, eligibility at the initial application stage will be open to the widest possible range of ITLS tools and programs. While applicants' tools or programs must have as a central feature the innovative delivery of legal services via technology, there will not be restrictions on the kinds of legal tasks and functions performed. The approval and evaluation processes serve as safeguards to ensure that only participants who do not pose unacceptable risks of harm to the public will be permitted to operate. Applicants must have obtained all applicable permissions, such as business permits, to operate their ITLS tool or program in Ontario.

Some applicants may be given priority, such as those that are focused on expanding access to justice in areas of law with high unmet legal needs.

Intake, Application Review and Approval

Successful applicants will be permitted to join the sandbox at any point during the five-year pilot period, rather than at certain fixed intake periods. This rolling admission offers participants flexibility to apply at whatever stage in their development works best for them, with the caveat that applicants cannot join so late in the pilot period that there is insufficient time to monitor and assess their service.

The following process will be used to review and approve participants' applications:

- Sandbox staff receive and process applications, including following up with applicants to identify gaps or concerns.
- The advisory council reviews completed applications and prepares a recommendation to approve, reject, or return the application for further information.
- After reviewing the advisory council's recommendation, the sandbox manager decides to approve, reject, or return the application.
- Applicants may request a review of a decision to reject an application, or of conditions imposed in a decision to approve an application; review decisions are made by a Law Society Executive Director.

Application approval decisions will be made with reference to a detailed set of approval criteria, which will be publicly available. The following are examples of topics that the detailed criteria will include:

- Viability (whether the applicant or its tool demonstrates capability of delivering legal services over the duration of sandbox participation; whether it is at a sufficient stage of development to launch);
- Consumer benefit (whether the tool offers a good prospect of identifiable benefit to users (either directly or via increased competition) and whether it poses likely detrimental impacts to users or to the legal system);
- Licensee involvement (whether the tool has involved licensed Ontario lawyers or paralegals in its development, delivery, or both);
- Insurance (whether the applicant carries appropriate insurance commensurate to the risks involved in the delivery of its services, e.g. errors and omissions insurance, product liability insurance, general commercial liability insurance, and/or cyber insurance);
- Quality assurance (whether the applicant has appropriate mechanisms in place for continuously assuring and enhancing the tool's technical quality; whether persons involved with the operation of the tool receive appropriate training and support); and
- Exit strategy (whether the applicant has adequate plans for protecting users' rights and interests in the event of either the tool or the entity itself ceasing operation due to business or regulatory reasons).

Approval criteria will be designed to be flexible and responsive to novel proposals. Operating conditions can be imposed to address certain weaknesses in an applicant's overall compliance with the criteria. Approval criteria should focus on the outcomes that ITLS tools generate, though in some circumstances it will also be appropriate to focus on those tools' processes. They will aim to measure tools in terms of both risks and benefits so that a balancing exercise can be done.

Approval decisions will aim to ensure that minimum viability and public protection requirements are met, while recognizing that some degree of uncertainty is acceptable in this environment, and indeed is beneficial for the sandbox's testing, evaluation, and learning functions. Approval decisions at this entry stage will aim to minimally impair innovation and public access to legal services. Insurance requirements, consumer communication and disclosure requirements, and compliance with other relevant law (such as privacy legislation) will also serve as concurrent public protection safeguards.

The sandbox office will publish a written decision for each completed application that it receives.

Participation Agreements

If approved to join the sandbox, participants will need to enter into a participation agreement with the Law Society, which will set out the conditions under which the participant can provide legal services. Conditions will include:

- protocols for data collection and data governance;
- requirements for participants to communicate certain information to users and the public;
- requirements for participants to address user complaints;
- maintenance of approval conditions, e.g., carrying insurance; and
- reporting and auditing requirements.

These approvals and agreements will bring participants under the exception to be created in the By-Laws that will permit participants to provide legal services. They will preclude the Law Society from exercising its "unauthorized practice" enforcement powers as long as a participant abides by the terms of its approval and agreement.

Each approved participant will be given an individualized operating period in the sandbox that best meets the needs of both the Law Society and the participant. As a general rule, participants would be given an operating period of two years, with options to extend on mutual consent. Participants need sufficient time to effectively demonstrate their viability. At the end of a participant's operating period in the sandbox, the Law Society will need to decide whether the participant can continue operating under an ongoing permit.

A process for suspension or revocation of an approval will be established, where serious problems have arisen during a participant's operating period in the sandbox. Suspension or revocation could be based on non-compliance with the participant's

approval conditions or participation agreement, as a result of a complaint resolution process, or as a result of the entity ceasing operations.

Reporting on Data and Outcomes

Each participant would have individually tailored reporting requirements. The resulting data would be evaluated based on the individualized risks of the participant and would inform decision-making about the participant. Examples of information that participants may be required to report include:

- Consumer demographics;
- Consumer interest and uptake;
- Performance outcomes and quality of service;
- Legal process outcomes;
- Complaint resolution outcomes and service feedback;
- Pricing information;
- Financial and other business outcomes;
- Marketing models; and
- Viability and sustainability of the tool.

Policies will also be developed for the Law Society's own use and protection of data shared by sandbox participants. Such policies would likely include:

- A requirement that participants anonymize any data shared with the Law Society;
- A guarantee that the Law Society would keep data provided by sandbox participants confidential, and not share it with any other organization, except for certain legal reasons, or to publicly report certain sandbox outcomes
- A policy governing who within the Law Society can access the data and for what purposes; and
- A policy for maintaining and ultimately destroying shared data.

Participants will also be required to communicate certain information to users and the public. This information could include, for example:

- Information about the sandbox program and the tool's permission to operate within it, including any conditions imposed;
- Informed consent disclosures, acknowledging that the tool or service:
 - is not being provided by an Ontario licensee,
 - carries liability insurance, and/or
 - has certain limitations in terms of the tasks or functions that it can perform, as applicable; and
- Information about the applicable complaint resolution processes and feedback channels available through the participant and/or the Law Society.

There may also be a need for escalation protocols for users who are unsatisfied with the participant's process.

A protocol will also be established for users who wish to provide additional feedback about the tool, the entity, or the sandbox pilot.

Making Final Determinations about Participants

Individual participants that have satisfied their performance objectives at the conclusion of their sandbox period may be given permission to continue operating in Ontario on an ongoing basis, notwithstanding their continued non-compliance with certain Law Society standards that apply to lawyer and paralegal licensees. The permit issued by the Law Society could continue to impose any conditions deemed necessary based on the participant's experience in the sandbox.

The decisions about participants will be made public to support transparency and to educate the public, the professions, and legal innovators about the benefits, risks, and other developments in this emerging field.

Dealing with Non-Participants

A strategy will be developed with respect to entities that do not apply to participate in the pilot project but conduct similar operations to sandbox participants, in contravention of Law Society rules and by-laws. Some of these entities may operate outside of the Law Society's traditional purview, and some may raise challenging issues about whether they provide legal services as defined by the *Law Society Act*.

Prosecution is only one among several tools available to the Law Society for these circumstances, and has a variety of practical and strategic limitations. A staged approach will be coordinated with the Law Society's Professional Regulation Division, with the aim of incentivizing non-participants to apply for participation in the sandbox. This approach will accord with the Law Society's current approach to addressing unauthorized practice complaints.

Tab 1.1

LAW SOCIETY OF ONTARIO
BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 22, 2021

MOVED BY

SECONDED BY

THAT Convocation make the following by-law:

BY-LAW 16

INNOVATIVE TECHNOLOGICAL LEGAL SERVICES

1. For the purposes of the Act, a person, including an individual, corporation or other entity, who is an approved participant in the Society's innovative technological legal services ("ITLS") sandbox program, or who has received a permit from the Society to provide an ITLS, and, in each case, is operating an ITLS tool or program in compliance with the Society's requirements, shall be deemed not to be practising law or providing legal services with respect to the operation of that ITLS tool or program.