



LAW SOCIETY
of ALBERTA

ABA Canadian - American Roundtable discussion Law Society of Alberta Report – 2020/2021

Introduction & Background:

The Law Society of Alberta's 2020-2024 Strategic Plan includes the following objectives:

1. Reduce regulatory oversight where possible and adopt proportionate regulatory responses, including remediation and early intervention where it is a suitable substitute for formal discipline processes;
2. Increase innovation, efficiency and transparency of all regulatory and governance processes;
3. Reduce regulatory barriers to innovation in the delivery of legal services, and increasing access to legal services;
4. Enhance the competence and wellness of the profession through the development of training resources and broadening the concept of competency;
5. Promote cultural competency, diversity and inclusion in the profession; and
6. Increase collaboration with stakeholders to respond to the Truth and Reconciliation Commission's Calls to Action.

This report touches on the work the Law Society of Alberta has done over the course of the last year to advance its Strategic Plan in these areas. The report will also address the effect of the pandemic on our work and the pandemic's "silver linings".

1. Regulatory Updates:

Workloads: Complaints are handled by our Early Intervention and Conduct departments, depending on their nature and severity. Both groups have noticed an increase in the volume of materials submitted with complaints over the last year. While it is not possible to pinpoint whether this trend started with, or is caused by, the pandemic conditions, we note that complainants seem to be providing much more in the way of information and materials to accompany complaints. Complaint files require more time to review and assess, leading to delays in completing reviews.

More generally, the disruption caused by the closure of our office, the shift to virtual/remote work, and increased workload has also contributed to the time it takes to complete files. We continue, however, to identify opportunities to provide educational resources and coaching to lawyers, where appropriate, to engage in early intervention rather than sending a lawyer to a hearing.

New pre-hearing and hearing processes: Despite the pandemic, we continued to work on a project to update and modernize our hearing processes and rules. We completed and implemented new rules and a new pre-hearing and hearing guideline, which will have the effect of streamlining hearing processes and ensuring fairness, transparency and consistency in the adjudicative process. The

new rules and guideline introduce new procedures related to the use of notices to admit facts and documents prior to a hearing, and provide guidance on the consideration of joint submissions, as just two examples.

Pandemic Silver linings: There have been some silver linings in the pandemic. We have been able to transition to paperless processes and to online meetings for some of our processes that previously took place in-person. Practice management office consultations, for example, have been conducted entirely online, including electronic file reviews. Our investigators have been able to conduct witness interviews online as well, and in some cases have found that witnesses are more comfortable and forthcoming in the online environment.

2. Tribunal Office

Virtual Hearings: Since April 2020, we have conducted all hearings virtually. The Tribunal Office developed a “best practices” guideline, with scripts for adjudicators. We also developed a Video-Conference Hearing Guideline and new video hearing rules, adopted in June 2020, and anticipate continuing with video hearings until June 2022. It was originally envisioned as a one-year pilot but we are proposing that it be extended for an additional year, at which time we will revisit our rules and consider the resumption of in-person or hybrid hearings.

The Tribunal Office very quickly adopted video hearings on Zoom, and has developed technical expertise and best practices, including advance Zoom testing to ensure access to the hearing process for all parties and hearing panels. Since early 2020 to date, the Law Society’s Tribunal Office has supported over 70 hearings of all types, with the majority being disciplinary.

Pandemic Silver Linings: We may have been forced to do virtual hearings, but we have demonstrated that we can continue to offer fair and efficient hearings in a virtual environment. The hearings have gone smoothly, and parties and panels adjusted almost immediately. We have had positive feedback and it has been a positive experience overall, due to cost savings, efficiencies, ease of attendance, and minimizing travel. Technical glitches are generally resolved quickly and do not affect the quality and integrity of the hearings.

The Benchers, Adjudicators and Committee members that sit on panels have all completed our Adjudicator Training Program prior to their appointment to panels, including those new Benchers who joined us in February 2021. This training has included live online training sessions on virtual hearings, standard of review, joint submissions on sanctions, and updates on the top Professional Discipline cases from 2020. These sessions were previously offered in-person, which required extensive travel and cost.

3. Membership

Election: We completed a Bencher (board of directors) election in the pandemic, which was definitely a first for us. It was conducted entirely online, and proceeded very smoothly.

Bar Admission requirements: One notable development that affected our membership department was the change to articles and the bar admission program because of COVID. The articling term was reduced from 12 months to a minimum of 8 and a maximum of 12. This change was approved by the Benchers in a matter of weeks after the pandemic started, in response to concerns that law firms may be terminating students’ articling positions before they could complete the requirements. Also, students in Alberta can now enroll in and complete our new PREP program without having an

articling position. Previously, only those students who were fortunate enough to secure an articling position were eligible to enroll. We consider these developments to be important regulatory updates as well as ***pandemic silver linings***, as we have removed significant barriers for articling students and increased flexibility around meeting the admission and enrolment requirements.

4. Innovating Regulation

As legal regulators have all observed, the legal profession is experiencing rapid transformation, driven by several factors, including alternative service providers, technological advances, unmet legal needs and accessibility issues. The legal needs of the public are increasing and placing growing pressure on accessible and affordable legal services. The Law Society recognizes these pressures on the legal profession and its need to respond and adapt.

We have formed an Innovating Regulation Working Group (IRWG) to enhance access to legal services and encourage innovation in the delivery of legal services, while maintaining protection of the public. The IRWG is currently focused on two objectives:

- a. *Entity Regulation*: Helping lawyers improve their practice standards and client service via Entity Regulation which would permit the Law Society to expand the scope of regulation beyond individual lawyers to entities through which lawyers deliver legal services (Law firm registration, appointment of Designated Representatives and Practice Assessment Tool).
- b. *Innovation Sandbox*: Allow for innovation in the delivery of legal service through use of regulation in a manner that encourages new and creative delivery models and does not inhibit growth. This includes the use of a regulatory ‘sandbox’ where a proposal may not be in technical compliance with the Rules or the Code, without incurring regulatory intervention.

Entity Regulation:

Since 2014, the Prairie Law Societies of Alberta, Saskatchewan and Manitoba (PLS) have been collaborating to develop a consistent approach to regulation of law firms and other legal entities. The PLS identified core issues that can be addressed through proactive regulation of law firms and other legal entities (such as in-house legal departments and legal clinics).

The Law Society already has several proactive programs in place, including our Practice Management, Early Intervention, Practice Advisor and Trust Safety programs. Education activities are also generally proactive, and we have newly formed an Education department as part of our work in the area of lawyer competency. Some of these activities are supportive in nature, while others enforce standards lawyers and law firms must follow. For example, the Trust Safety program establishes requirements that law firms must meet in their handling of client funds and property and is the closest thing the Law Society currently does to regulate entities.

The PLS have been working on a new tool, called the Prairie Law Societies’ Practice Management Assessment Tool (the “Assessment Tool”), that can be used both as a supportive and educational measure, and a regulatory requirement. The Assessment Tool aims to assist firms to identify gaps or areas of improvement in seven categories relating to practice management and firm culture, as follows:

1. Competence and capacity
2. Client management
3. File management and record keeping
4. Financial management and operational sustainability

5. Relationships with third parties and the administration of justice
6. Equity, diversity and inclusion
7. Access to legal services

The Assessment Tool asks firms to rate themselves on a number of objectives related to each category and helps identify areas for improvement, examples to consider for implementation, and resources that will assist with that process. The Assessment Tool was tested through a joint PLS pilot project in 2017, consisting of 53 law firms of various sizes and locations throughout the prairie provinces. Overall, the Assessment Tool was met with positive feedback. The IRWG has carried on overseeing the operational components of this work.

Innovation Sandbox: The *Legal Profession Act* and the *Rules of the Law Society of Alberta* prescribe that only lawyers may provide legal services and prescribe the entities through which lawyers may provide those services. Accordingly, lawyers practise law and provide legal services “inside the box”.

In addition, non-lawyers are prohibited from providing legal services to the public. Such measures stifle innovation in the delivery of legal services, both by lawyers and by non-lawyers who may wish to provide legal services through innovative delivery models that may not be allowed due to regulatory constraints.

As part of its work to achieve the strategic goals of innovation and proactive regulation, and access to legal services, the Law Society is exploring how it can permit greater flexibility in its current regulatory framework and minimize regulatory barriers to both encourage and foster innovation in the delivery of legal services in Alberta and bridge the access to justice gap. One concept that the Law Society is currently exploring as a means of fostering such innovation is an “Innovation Sandbox”.

An Innovation Sandbox provides a “safe space” and temporarily relaxes existing rules to permit and encourage legal service providers to develop innovative models for the delivery of legal services that cannot currently be offered due to existing regulatory barriers. This environment allows for the development of innovative models and services outside the Rules, which provide the public with greater accessibility to affordable legal services, with Law Society monitoring and oversight to ensure protection of the public.

The Law Society is working on a pilot to support legal service providers in testing new ideas and models for the delivery of legal services in a controlled environment. Proposals from innovators for innovative legal services delivery models can come from lawyers and law firms in Alberta, or we may consider non-regulated parties as well. The intent of the Innovation Sandbox is to assist those who are interested in developing innovative delivery models for legal services that can potentially benefit members of the public. At the same time, the Innovation Sandbox is a means for the Law Society to provide guidance, monitoring and oversight. The Law Society will also identify, assess and address those regulatory requirements that impede progress and innovation.

The IRWG is currently developing potential elements of a framework for an Innovation Sandbox, and potential eligibility criteria for accessing the sandbox. Once the framework and eligibility criteria for potential innovators have been approved by the Benchers, the IRWG can assess and approve applications for the Innovation Sandbox against the approved eligibility criteria.

Pandemic Silver Linings: One of the lawyers that came forward with a proposal initially faced significant barriers, in that his proposal required lawyers to conduct client identification and

verification and to take affidavits online. In Alberta, the law required that these functions be completed in person. During the pandemic, however, the courts and government authorized lawyers to conduct these functions in a virtual environment. The ability to serve clients in a virtual environment is expected to improve clients' access to legal services.

5. Competency

The Law Society suspended all continuing professional development requirements in 2020, with the intention that we would identify and implement a new and more meaningful program for lawyers' professional development.

The Law Society, in collaboration with legal commentator Jordan Furlong, approved a [Lawyer Licensing and Competence in Alberta](#) Report to guide our work in this area. One of the first steps is to develop a competency framework for lawyers from the time they are licensed through their career. To assist in this work the Law Society established a Lawyer Competence Committee and a Lawyer Competence Advisory Committee. These groups are tasked with examining the training and education of articling students and lawyers, with a view to developing a new continuing professional development program.

The Law Society is also focused on lawyer wellness, and has partnered with the Alberta Lawyers' Assistance Program to publish regular articles on mental health and wellness in the profession.

6. Equity, Diversity and Inclusion

The Law Society has established an Equity, Diversity and Inclusion Committee and Advisory Committee. These groups are tasked with examining discrimination and harassment issues arising out of an articling survey conducted in 2019, as well as the broader issues affecting lawyers in practice. Some initiatives of these groups have included an examination of safe reporting, as well as consideration of a process to support articling students to transfer to a new articling position in the event they find themselves in an inhospitable environment.

The Committee lead an initiative called the "My Experience" project, inviting Alberta lawyers, articling students, and law students to submit stories about their experiences with racial discrimination in their legal career. This information will inform the future work of the Committee and Advisory Committee, and is being shared with the profession through regular ebuletins and publication on the Law Society's website. The project has been met with overwhelmingly positive feedback.

The Law Society awaits the issuance of new rules in the Model Code of Conduct, governing harassment and discrimination. The Federation of Law Societies of Canada, through the Standing Committee on the Model Code, is currently developing more robust ethical guidance which it hopes to circulate and adopt in the coming months.

7. Truth and Reconciliation

In October 2020, the Law Society approved mandatory Indigenous Cultural Competency education for all active Alberta lawyers. The selected program, called The Path (National), was vetted by Indigenous lawyers and our Indigenous Advisory Committee. Within the Law Society, it was also vetted by the Lawyer Competence Committee, the Indigenous Initiatives Liaison and Benchers. The Path (National) also has the endorsement of the Canadian Bar Association (CBA) and is well-regarded across Canada. Having selected The Path (National), we began work to develop Alberta specific content to make our own version, which we refer to as The Path (Alberta).

We launched The Path (Alberta) in spring 2021 and lawyers will have 18 months from the launch date to complete the program. The 18-month timeline will apply to all lawyers who change to active status following the launch of The Path (Alberta), effective from the date they become active. It is being offered at no cost to our members.

This training is designed to address Call to Action 27 which includes:

- History and legacy of residential schools
- United Nations Declaration on the Rights of Indigenous Peoples
- Treaties and Aboriginal rights
- Indigenous law (Indigenous legal traditions)
- Aboriginal-Crown relations