

OUTREACH FOR REAL-TIME SOLUTIONS

Association Member Issues for Justice Sector Check-In

As of Tuesday, May 5, 2020 (new items highlighted)

LAW SOCIETY ISSUES (new)

1. Can the LSO communicate to lawyers that electronic wire transfers are permissible, and/or that lawyers should accept this method of payment in light of COVID19?
2. Is there any additional information on the LSO “exploring options to minimize the impact of filing and payment deadlines on candidates?”
3. Will the Law Society be issuing any office protocols for health and safety when offices are allowed to reopen?

LAW SOCIETY ISSUES (March/April)

1. A local bank has demanded that all banking take place at the ABM, and not through a teller. This creates issues for their document requirements for their trust account, as mandated by the Law Society. Does the LSO have guidance about whether the ABM slips will be sufficient at this time?
 - LSO Response March 31: You can find the answer on our website, Corporate Statement regarding COVID 19 Response, FAQs regarding bookkeeping during COVID 19, specifically:

“Some local banks are requiring that banking take place through an ABM, not a teller.

Are ABM slips sufficient to comply with lawyers and paralegals record keeping obligations?”

“For deposits, yes. If lawyers or paralegals’ financial institutions offers ABM access to their trust accounts, it may be used for deposits only. If a lawyer or paralegal chooses to use this deposit method, they should:

- Ensure that the bank card is encoded for deposit only.
- Read the agreement carefully and make sure they understand the risks involved in using this method of deposit. In some agreements the

depositor is responsible for the funds until they are received by a bank representative.

- Always print a receipt of an ABM deposit, write the source of the funds and the client reference on the receipt, and keep the receipts in date order with your deposit slips.

2. What provisions are being made for clients (the public) who don't have access to technology to meet remotely and/or do not have access to print out documents that need signing (and they do not have e-signature set up)? Temporary solution that some lawyers are adopting is to make an outside mailbox available for document pick up which a client then signs. But this is not ideal at all. Note that the commissioning rules seem to have been amended for court matters but there are documents that need to be sworn for real estate. Should lawyers just use an undertaking to provide these after these emergency measures have passed (ie: indefinitely until told otherwise)?

- LSO Response March 31: FAQs have been posted on the use of technology to facilitate virtual commissioning and witnessing, electronic signatures and best practices for serving clients remotely. These FAQs have been developed on the basis that the governing legislation does not require either a "wet" signature or one person (e.g. the affiant) to be in the physical presence of the other (e.g. the commissioner). In the absence of specific statutory requirements, the Law Society is of the view that some flexibility is appropriate during the COVID 19 crisis. Where technology such as video conferencing is not available, other methods may be acceptable, provided:
 - The licensee takes all appropriate steps to manage risks such as fraud, identify theft and undue influence;
 - The licensee adopts measures to ensure that the clients:
 - Consent to the remote process
 - Understand the documents they are signing
 - Are signing without duress and undue influence
 - Will receive copies of the documents executed remotely
 - The licensee takes appropriate steps to protect privilege and confidentiality
 - The licensee maintains detailed records

Suggestions in the Law Society's FAQs with respect to virtual transactions can sometimes be adapted to other methods of completing transactions remotely.

3. Asking Counsel and clients to adhere to electronic document transfers, without paper being sent by mail.

- LSO Response March 31: Although the Law Society is supporting the virtual conduct of business through its FAQs, there may be circumstances in which it would be preferable or even necessary to receive paper copies. Accordingly, this matter should be left to the individual judgment of each licensee.
4. Can the LSO and/or the Courts provide information on specific procedures for virtual commissioning, as the BC Courts have done?
- LSO Response May 5: There is no prescribed process for virtually commissioning documents. However, to ensure a consistent process is used and documented, and to mitigate the risks associated with not being the physical presence of deponents, lawyers and paralegals may wish to develop or adopt best practices and/or a checklist. The Law Society has developed a Virtual Commissioning Checklist and Best Practices for Virtual Commissioning during COVID-19.
 - Virtual Commissioning Checklist:
<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/virtual-commissioning-checklist-en.pdf>
 - Best Practices for Commissioning:
<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/best-practices-for-virtual-commissioning-during-covid-19-en.pdf>
 - LSO Response March 31: The Law Society is working to prepare a checklist of best practices for virtual commissioning. However, lawyers and paralegals should review their court or tribunal’s website for practice directions about whether requirements for affidavits are being modified in the context of COVID-19. For links to Ontario’s court and tribunal websites, see the Ontario Bar Association COVID-19 Action Plan pages: Status – Courts: <https://www.oba.org/COVID-19-Action-Plan/Status-of-Ontario-Courts> or Status – Tribunals: <https://www.oba.org/COVID-19-Action-Plan/Status-Tribunals>
5. What plan is the LSO putting in place for the June licensing examinations to proceed? Students are already raising concerns about needing to prepare for examinations and have them cancelled at the last minute.
- LSO Response May 5: The Law Society has cancelled the in-person June 2020 Barrister and Solicitor licensing examinations. Instead, the Law Society is moving forward with online delivery of the licensing examinations using a staged approach, beginning with the March 2020 Solicitor Examination, followed by the June 2020 Barrister and Solicitor Examinations and the July Paralegal Examination.

- We anticipate that the cancelled June 2020 Barrister and Solicitor Examinations will be offered online beginning mid-July. Candidates will be given a minimum of four weeks' notice of the examination dates and will have approximately two weeks between the Barrister Examination and the Solicitor Examination. This approach will allow the licensing process to move forward while protecting the health of candidates and employees while social distancing requirements remain in place. More information will be provided to candidates as arrangements are confirmed.
 - LSO Response March 31: At this time, the June examinations remain as scheduled, however, the Law Society is actively monitoring the situation in light of health and safety considerations. We are aware of the students' concerns and will do everything possible to inform students of any rescheduling of the examinations well in advance of the June date?
6. What provisions are the LSO putting in place with respect to articling students who are being laid off?
- LSO Response May 5: The minimum required length of articling placements will be temporarily reduced from 10 months to 8 months for candidates commencing articling placements in the 2020-2021 licensing cycle. Candidates commencing an eight-month articling placement during the 2020-2021 licensing cycle may still apply for an articling abridgement based on compassionate grounds.
 - LSO Response March 31: The Law Society encourages articling principals and candidates to work together to maintain positions wherever possible, recognizing that while these are challenging circumstances for all participants, candidates are in a particularly vulnerable position. Under the Law Society's existing processes, candidates whose articling placements end prematurely are able to apply for an abridgment based on compassionate grounds. Articling principals and candidates should also consult the Law Society's licensing process policies which address administrative obligations related to the termination of articles.
7. When is the LSO rescheduling the June licensing examinations that were cancelled?
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8. Will the Law Society be issuing any office protocols for health and safety when offices are allowed to reopen?

- LSO Response May 5: The Law Society will continue to take direction from public health officials and government about health and safety protocols for return to work. Our FAQs currently direct licensees to the provincial office of health and local public health authorities with respect to workplace health and safety: <https://lso.ca/covid-19-response/faqs/practice-management#what-about-the-health-and-safety-of-lawyers-paralegals-employees-and-clients--5>