



Federation of Ontario
Law Associations
Fédération des associations
de barreau de l'Ontario

November 30, 2024

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

Via Email (PolicyConsultation@LSO.ca)

To Whom It May Concern:

Re: Increased Transparency on Licensee Reporting and Disclosure to the Public

The Federation of Ontario Law Associations [“**FOLA**”] is pleased to provide this response to the Law Society of Ontario [“**LSO**”] consultation process relating to the Professional Regulation Committee [“**Committee**”] [report](#) entitled “Considering Increased Transparency – Licensee Reporting and Disclosure to the Public”.

FOLA represents Ontario’s 46 county and district law associations, and through them, their members. Our association is the only provincial legal organization representing LSO licensees at the front lines of legal services in communities in all parts of the province. Consequently, this submission carries the weight of a significant cross-section of licensees.

LSO Policy Must Accord with the Professions’ Bedrock Principles

Our conceptual approach to this consultation is simple: FOLA is of the view that the LSO’s mandate is not to enflame trials of public opinion about licensees or online witch-hunts of its members, but rather to regulate the legal professions in the public interest. To do so effectively, LSO policy should be set to reflect our profession’s bedrock principles rather than media pressures or misguided criticisms. The LSO must act in a manner that accords with the dignity and core values of the legal professions. This requires that its policy extends due process and procedural fairness to licensees, and respects the importance of a licensee’s professional integrity.

Respectfully, the Committee’s recommendations fall short of these core values and principles – chief among them being the presumption of innocence – that a person is not guilty until proven before a fair and impartial adjudicator. For this reason, FOLA strongly objects to the publication of unproven allegations or charges on the LSO’s public register. No such publication should occur unless and until findings have been made by a court, tribunal, or the LSO itself.

The reality is that the fact of a charged offence does not mean the allegations are true and a charge is not, in and of itself, proof that the public is at risk. Yet, the proposal from the Committee urges the public to conclude otherwise. This is not evidence-based policy (within the very literal meaning of that term). The LSO has appropriate tools available to deal with actual instances of serious concern. For instance, if the public is actually at risk, the LSO can

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seek an order, which will, in fact, be a matter of public record that is tested on an evidentiary record.

Obviously, making public unproven allegations or charges is unjustly detrimental to a licensee's reputation, disproportionately affecting their ability to attract and maintain clients, and thereby places careers and livelihoods at stake. The hidden and pernicious inference from the proposal is that the fact of a bare charge itself is a reason not to hire a lawyer. In our view, this gives life to unhelpful stereotypes about what a criminal charge actually means. This also takes the regulator away from its purpose. The LSO's duty to act in the public interest means preventing the public from relying upon stereotypical or prejudicial reasons for selecting a particular licensee to represent or advise them.

It is noted that where the licensee is part of a firm or works closely with others, this action by the LSO also risks destroying the businesses of innocent bystanders to alleged misconduct, unnecessarily compromising unrelated lawyer-client relationships. In our view, the notion that unproven allegations or the fact of an ongoing investigation would be made public offends our professional values, and indeed, the norms that guide the justice system and the rule of law itself.

Broader Consequences of Publishing Unproven Allegations

FOLA is also of the view that the proposal gives rise to several broader unintended, adverse consequences.

First, we are concerned that in pursuing increased transparency around allegations of licensee misconduct, the LSO appears to draw imperfect analogies to other professional regulators and their practices without noting fundamental differences between these professions. Lawyers and paralegals are unique in that we are not just governed by laws, but we trade in the law itself. Licensees are routinely called on because of our proximity to law and its limits. We walk a fine line in service of our clients and their causes. Our work borders compliance, advocacy, and protest. Our retainers frequently find disfavour with government bodies, institutions, and individuals, sometimes resulting in unfounded allegations, investigations, and charges.

Second, we are concerned that the proposal supports attacks on lawyers for their advocacy. As we enter an era where governments and political parties are demonstrating an increasing willingness to engage in "lawfare", to malign lawyers who represent unpopular or inconvenient causes, and to target legal institutions with unfair criticisms, the LSO's proposals hasten this politicization of law. They effectively serve to further sanction or threaten licensees, by weaponizing the spectre of unfounded allegations and charges, leading to public ridicule and economic loss. In our view, the LSO should be doing the opposite and adopting policies that stand with licensees who do important work that challenges state and political actors and pushes institutions for accountability. Instead, the Committee proposes to have the LSO platform smears of licensees based on bare and unproven allegations.

Third, we believe that the proposed policy opens the door to false and malicious complaints against licensees, made knowing of the serious damage that premature disclosure will cause to the licensee's practice and livelihood before there has been any right to reply and address the allegations. By disclosing unproven allegations, the LSO would enable a public presumption of guilt based on accusations alone. Aside from the impact on the targeted licensee, such an approach threatens to erode public trust in legal professionals, generally, and weakens the fairness and impartiality that are essential to our justice system. As mentioned, it would do so at a time when due process and the rule of law are already under routine political siege.

Finally, we feel that publishing unproven allegations and charges levelled by external bodies does a disservice to the public interest served by the LSO's regulatory independence. The proposals in Committee's report tacitly suggest that the LSO is incapable of independently investigating and sanctioning allegations of licensee misconduct itself. If that is the case, the project of self-regulation would appear to be compromised. We are deeply uncomfortable with the LSO adopting policy which subjugates its independent oversight of licensees, especially in light of the threats to self-regulation we have seen in other jurisdictions.

Practical Concerns with the LSO's Ability to Implement the Proposal

In addition to these broader policy concerns, FOLA has practical misgivings about the LSO's ability to deliver on the Committee's proposal. For instance:

- *Discretion and Accountability:* We would be troubled by any outcome of this process that leaves discretion in the hands of unaccountable LSO staff to determine whether to make public stigmatizing information like unproven allegations and charges on a licensee's public listing. If the LSO moves forward with a recommendation to publish unproven allegations and charges against licensees, there must be notice and procedural fairness extended to the licensee.
- *Updating Information:* We are concerned that the LSO will not react quickly enough to amend, correct, or delete information on the public register as new developments arise (such as acquittals, pardons, or convictions for lesser offences than the ones charged). This is also prejudicial to the licensee.
- *Impact on Professionals:* We are concerned about the disproportionate impact on sole practitioners, who do not have the ability to hide behind a large law firm when allegations are made about the firm. How will the LSO decide which lawyers are subject to public disclosure where the actions of a law firm, partnership, or corporation are in question or sanctionable under its proposed new rules?
- *Equity and Human Rights:* We are also troubled that the recommendation would entrench the targeting of those groups who are already disproportionately and unfairly over-represented in the justice system, most notably racialized and Indigenous individuals. These groups face a disproportionately larger number of unproven allegations and charges, and we fear that the proposals would further stigmatize them. We are of the view that this engages equality and human rights concerns with the policy.

Areas of the Proposal FOLA Supports

Our objection to the proposal to publish unproven allegations about licensees stands in contrast to our more limited concerns on other areas of the report. We offer the following comments on these areas:

- We take no issue with efforts to improve the technological linkage between Law Society Tribunal information about a licensee and the public register of a licensee (as the Tribunal site provides full context for the circumstances at issue).
- We take no issue with the publication of actual judicial findings or the findings of other regulators, so long as they are pertinent to the practice of law, our duties to our clients, and the protection of the public. Again, if LSO policy is to accord with the underlying principles of our justice system, the priority should be on the disclosure of

convictions that actually meaningfully impact the licensee's ability to provide legal services or that place the public at risk. To do otherwise undercuts the rehabilitative goals of the criminal justice system and reinforces stigma and unwarranted public disdain for rehabilitation in our justice system, generally.

- We do not object to a requirement for licensees to disclose a clearly prescribed schedule of charges or disciplinary matters to the LSO (on this, we simply emphasize that these must be *specific* – unlike so many LSO rules, which are unclear and for which the LSO provides scant particulars).

Conclusion

Thank you, again, for the opportunity to provide feedback on this important topic. We remain available to provide clarification and further insights. We would be pleased to meet with you to speak further about the commentary we have provided in this letter.

Sincerely,



Douglas W. Judson
Past Chair

- C. County and District Law Association Presidents;
FOLA Board Members;
Benchers