

This material is in support of three motions with respect to TLAB agenda item 6.4, Public Guide, to be moved by Ted Yao on May 3, 2017:

(a) That TLAB request the Law Society of Upper Canada to amend paragraph 28.3 in By-law 4, Part IV (p 8 in these materials) so that it reads:

3. A person whose profession or occupation is not the provision of legal services or the practice of law, who on behalf of another person, participates in hearings before a committee of adjustment constituted under section 44 of the Planning Act or in a hearings before the Toronto Local Appeal Board constituted under section 115 of the City of Toronto Act.

(b) To replace paragraph titled "Representatives" in the Public Guide p 16 with the following:

What is an Authorized Representative?

If you are a party or participant, you may choose to be represented by an authorized representative. The duties of an authorized representative are to file and receive documents electronically on your behalf before the hearing in a timely fashion and act for you during the hearing. He or she will necessarily advise you on your rights and responsibilities, as well as draft, complete or revise your documents. Form 5 states that the TLAB will not generally permit an authorized representative to also give evidence at the hearing as a witness.

Who can be an Authorized Representative?

A lawyer, paralegal or other person, such as a friend, neighbour or relative, can be your authorized representative. If your authorized representative is not a lawyer or paralegal, he or she cannot take a fee from you for this service and must not be in the business of acting for persons at hearings, defined as no more than three times a year.

How do I give notice of my Authorized Representative?

The authorized representative must inform everyone involved including the TLAB that you have elected to act through an authorized representative. This can be done on the Notice of Appeal (Form 1) or by filing an Authorized Representative Form (Form 5) to the TLAB via email at tlab@toronto.ca. If authorization changes, the TLAB and all other parties must be notified by serving and filing a new Authorized Representative Form (Form 5).

(c) To replace paragraph entitled “Hiring a lawyer or representative” in the Public Guide p 23 with the following:**What is the role of my Authorized Representative at the Hearing?**

If you already have named an authorized representative, that person will assist you at the hearing by giving you advice, questioning the other side, and possibly summing up your case, based on the evidence presented. Even if the authorized person is not a paralegal or a lawyer, if the authorized representative is knowledgeable about the hearing process, this can make for a smoother hearing process.

What if I decide to act for myself at the hearing?

You should be prepared to do your own research into the facts and the process. Since it is expected that all materials should be filed in advance of the hearing, you should do your research early and serve an electronic copy of any Documents, Notices, or Witness Statements on all parties and the TLAB in accordance with the TLAB's Rules of Practice and Procedure. Please see the section in this Guide “What are the Parties’ Responsibilities Prior to a Hearing?”

Once the hearing commences, you may present your case. This includes your spoken words under oath, during which time you may refer to any of the documents which have been filed. You would also

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call any witnesses, professional or non-professional, in support of your case.

If you are a party, you will also be permitted to question the other side’s witnesses, to obtain clarification and point out inconsistencies. This is not a time for presenting your own evidence, since the when you ask questions you are not giving evidence under oath.

Finally, if you are a party, you will be permitted to sum up your case, based on all of the evidence presented.

The following consists of background material in support of these motions

Excerpts of the Law Society Act1
Excerpts from Law Society By-law 4.....4
Current version of “Representatives” in the Guide11
Current version of “Hiring a Lawyer or a representative” in the Guide11
Form 5.....13



[Français](#)

Law Society Act

R.S.O. 1990, CHAPTER L.8

Consolidation Period: From April 7, 2014 to the [e-Laws currency date](#).

Last amendment: [2013, c. 17, s. 1-26](#).

Legislative History: [+]

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Provision of legal services

(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person. 2006, c. 21, Sched. C, s. 2 (10).

Same

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.
2. Selects, drafts, completes or revises, on behalf of a person,
 - i. a document that affects a person's interests in or rights to or in real or personal property,
 - ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,
 - iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,
 - iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),
 - v. a document that relates to the custody of or access to children,
 - vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or
 - vii. a document for use in a proceeding before an adjudicative body.

3. Represents a person in a proceeding before an adjudicative body.
4. Negotiates the legal interests, rights or responsibilities of a person. 2006, c. 21, Sched. C, s. 2 (10).

Representation in a proceeding

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.
2. Conducting an examination for discovery.
3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10).

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.
2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.
3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.

PART I.1

PROHIBITIONS AND OFFENCES

Prohibitions

Non-licensee practising law or providing legal services

26.1 (1) Subject to subsection (5), no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario. 2006, c. 21, Sched. C, s. 22.

Non-licensee holding out, etc.

(2) Subject to subsections (6) and (7), no person, other than a licensee whose licence is not suspended, shall hold themselves out as, or represent themselves to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario. 2006, c. 21, Sched. C, s. 22.

Licensee practising law or providing legal services

(3) No licensee shall practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence. 2006, c. 21, Sched. C, s. 22.

Licensee holding out, etc.

(4) No licensee shall hold themselves out as, or represent themselves to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario, without specifying, in the course of the holding out or representation, the restrictions, if any,

(a) on the areas of law that the licensee is authorized to practise or in which the licensee is authorized to provide legal services; and

(b) on the legal services that the licensee is authorized to provide. 2006, c. 21, Sched. C, s. 22.

Exception, non-licensee practising law or providing legal services

(5) A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the by-laws. 2006, c. 21, Sched. C, s. 22.

Exception, non-licensee holding out, etc.

(6) A person who is not a licensee may hold themselves out as, or represent themselves to be, a person who may practise law in Ontario, if,

(a) the by-laws permit the person to practise law in Ontario; and

(b) the person specifies, in the course of the holding out or representation, the restrictions, if any, on the areas of law that the person is authorized to practise. 2006, c. 21, Sched. C, s. 22.

Same

(7) A person who is not a licensee may hold themselves out as, or represent themselves to be, a person who may provide legal services in Ontario, if,

(a) the by-laws permit the person to provide legal services in Ontario; and

(b) the person specifies, in the course of the holding out or representation, the restrictions, if any,

(i) on the areas of law in which the person is authorized to provide legal services, and

(ii) on the legal services that the person is authorized to provide. 2006, c. 21, Sched. C, s. 22.

BY-LAW 4

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June 25, 2015
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April 28, 2016
May 16, 2016 (editorial changes)
February 23, 2017

LICENSING**PART I****CLASSES OF LICENCE**

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2. The licensee is prohibited from practising law in Ontario as a barrister and solicitor if the licensee is prohibited from practising law in Quebec.
3. The licensee is prohibited from practising law in Ontario as a barrister and solicitor if the licensee does not maintain the full mandatory professional liability insurance coverage required by the Barreau du Québec.

LICENCE TO PROVIDE LEGAL SERVICES

Classes of licence

5. There shall be the following classes of licence to provide legal services in Ontario:

- 1. Class P1.

Scope of activities

Class P1

Interpretation

6. (1) In this section, unless the context requires otherwise,

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

“party” means a party to a proceeding;

→ “proceeding” means a proceeding or intended proceeding,

- (a) in the Small Claims Court,
- (b) in the Ontario Court of Justice under the *Provincial Offences Act*,
- (c) in a summary conviction court under the *Criminal Code (Canada)*,
- (d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or
- (e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*;

“Statutory Accident Benefits Schedule” means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

Activities authorized

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:

- 1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
- 2. Represent a party before,
 - i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
 - ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
 - iii. in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
 - iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
 - v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.
- 3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.
- 4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.
- 5. Negotiate a party’s legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
- 6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party’s legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

Terms, etc.

- (a) provide to the Society such documents and explanations as the Society may require; and
- (b) provide to the insurer of the Society’s insurance plan such releases, directions and consent as may be required to permit the insurer to make available to the Society information relating to the payment by the applicant of insurance premium levies and the filing by the applicant of any certificate, report or other document required under any policy for indemnity for professional liability.

Rejection of application

27. If the Society rejects an application under clause 26 (1) (b), the Society may specify terms and conditions to be complied with by the applicant as a condition of his or her application being accepted, and if the applicant complies with the terms and conditions to the satisfaction of the Society, the Society shall accept the application.

PART IV

NOT PRACTISING LAW OR PROVIDING LEGAL SERVICES

Not practising law or providing legal services

28. For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

Aboriginal Courtwork Program

- 1. A person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Ontario or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtwork Program.

Other profession or occupation

- 2. A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

Committee of adjustment

- 3. A person whose profession or occupation is not the provision of legal services or the practice of law, who, on behalf of another person, participates in hearings before a committee of adjustment constituted under section 44 of the Planning Act.

PART V

PROVIDING LEGAL SERVICES WITHOUT A LICENCE

Interpretation

29. In section 30,

“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society.

Providing Class P1 legal services without a licence

- 30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

In-house legal services provider

- 1. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a single employer that is not a licensee or a licensee firm,
 - ii. provides the legal services only for and on behalf of the employer, and
 - iii. does not provide any legal services to any person other than the employer.

Legal clinics

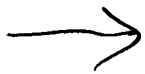
- 2. An individual, other than a Canadian law student or an Ontario paralegal student, who,

- i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,
- ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and
- iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Not-for-profit organizations

- 3. An individual who,
 - i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,
 - ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Acting for friend or neighbour



- 4. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a friend or a neighbour,
 - iii. who provides the legal services in respect of not more than three matters per year, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

→ **Acting for family**

5. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and
 - iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Member of Provincial Parliament

6. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who is a member of Provincial Parliament or his or her designated staff, and
 - iii. who provides the legal services for and on behalf of a constituent of the member.

Other profession or occupation

7. An individual,
 - i. whose profession or occupation is not the provision of legal services or the practice of law,
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
 - iv. who is a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category.

Interpretation

Current version Public Guide p 16

Representatives

If you are a party or participant in a proceeding, you may choose to be represented by an authorized agent. Legal representatives and authorized agents must confirm authorization to act for a party or participant by either indicating on a Notice of Appeal (Form 1) that he or she is authorized, or by filing an Authorized Representative Form (Form 5) to the TLAB via email at tlab@toronto.ca. If authorization changes, the TLAB and all other parties must be notified through the service and filing of a new Authorized Representative (Form 5).

Representatives who are not lawyers or licensed paralegals may have their qualifications reviewed by the Member presiding.

A representative must be authorized under the Law Society Act. There is an exemption that allows for persons who are not in the business of providing legal services to occasionally assist a friend or relative for no fee.

If you choose to be represented by an authorized representative, all communications related to the hearing will be forwarded to the representative. In addition, if a person testifies as a witness, that person cannot be a representative on your behalf

Current version Public Guide p 23

Hiring a lawyer or representative

You do not need to hire a lawyer or licensed paralegal to appeal or participate in a TLAB appeal. Some parties hire a lawyer. Lawyers and qualified representatives can be of measurable benefit to help prepare your case and at the hearing, question witnesses, and make statements. Having a legal representative presents an opportunity for a disciplined and time efficient process where the parties are focused on moving through the process for a disposition based on relevant considerations.

If you do not hire a lawyer or representative, you should be prepared to:

- ☐ Do your own research on the matter.
- ☐ Find and prepare the presentation of the documents and evidence you need for your case.
- ☐ Serve an electronic copy of

the Documents, Notices, (Forms), Witness Statement, and Motion materials, if any, on all parties and the TLAB in advance of the hearing and in accordance with the TLAB's Rules of Practice and Procedure. Speak on your own behalf at the hearing; and, Present your evidence at the hearing.

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Generally, a party without a lawyer or representative cannot both question the witnesses of other parties or participants as well as give evidence under oath or affirmation. An election may be required so as to avoid the conflict inherent in being both an advocate and a witness giving evidence to aid the public decision making process.

Authorized Representative Form 5

TLAB Case File Number

The information collected on this form is considered to be a public record as defined by section 27 of the Municipal Freedom of Information and Protection of Privacy Act. The legal authority to make the information public is section 1.0.1. of the Planning Act. Questions about this form can be directed to the Manager, Planning & Liaison, Court Services, 137 Edward Street, 2nd Floor, Toronto, Ontario M5G 2P1 or by telephone at 416-338-7320.

Part 1: Location Information		
Address and/or Legal Description of property subject to appeal		
Street Number	Street Name	Postal Code

Part 2: Party or Participant Information			
First Name		Last Name	
Professional Title		Email	
Street Number	Street Name	Suite/Unit Number	
City/Town		Province	Postal Code

Part 3: Authorization			
I hereby authorize the named company and/or individual to represent me			
First Name		Last Name	
Company Name or Association Name (Association must be incorporated)			
Professional Title		Email	
Street Number	Street Name	Suite/Unit Number	
City/Town		Province	Postal Code
Telephone Number		Mobile Number	Fax Number
Signature of Appellant, Party or Participant			Date (yyyy-mm-dd)

NOTE: An authorized representative must generally hold a licence under the Law Society Act. Representatives acting on behalf of a party or participant are generally not permitted to both give evidence under oath or affirmation and act as the representative of a person or corporation.

NOTE: Where a party or participant has appointed a Representative, service of documents, notices or materials on the

