



Law Society
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Law Society of Ontario
Submission to the Standing Committee on Social
Policy
Bill 27, Working for Workers Act, 2021



November 18, 2021

Natalia Kusendova, MPP, Chair
Tanzima Khan, Clerk
Standing Committee on Social Policy
99 Wellesley Street West
Room 1405, Whitney Block
Toronto, On M7A 1A2

Dear MPP Kusendova:

Re: Bill 27: Working for Workers Act, 2021

Thank you for the opportunity to provide a submission on Bill 27, Working for Workers Act, 2021 (Bill 27). We understand that Bill 27 proposes to make several amendments in respect of *Fair Access to Regulatory Professions and Compulsory Trades Act, 2006*¹ (FARPACTA). The Law Society wishes to offer the following comments for consideration by the Standing Committee regarding Bill 27 and its impact on FARPACTA.

The Law Society of Ontario (Law Society) is the governing body for more than 55,000 lawyers and 9,000 paralegals who are licensed to practice law and provide legal services in the province of Ontario. The Law Society governs Ontario's lawyers and paralegals in the public interest, by ensuring that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct. The Law Society's authority to regulate the legal professions in Ontario is set out under the *Law Society Act*² (LSA).

As a regulator of the legal professions in Ontario, and for lawyers in particular, the Law Society collaborates and works jointly with other provincial and territorial law societies pursuant to a national structure for the governance of the legal profession in Canada. Working within the Federation of Law Societies of Canada the Law Society has adopted consistent rules and practices to ensure that the public is served by members of the legal profession, who are held to same level of competence and ethics, wherever they practice in Canada.

¹ <https://www.ontario.ca/laws/statute/06f31>

² <https://www.ontario.ca/laws/statute/90l08>

Canadian experience requirements

The Law Society is concerned that the proposed prohibition on Canadian experience is overly broad. Under section 27.1, the Minister of Labour may issue a compliance order to amend or revoke by-laws or regulations that require Canadian experience. While the intent of the legislation is focussed on eliminating an experience requirement as a qualification for registration for internationally trained individuals, the Law Society is cognizant that FARPACTA applies to all applicants in a regulated profession's registration process.

The Law Society has not had a Canadian experience requirement for over a decade. Rather applicants seeking registration must satisfy experiential training competencies that are critical to the legal professions practising in Ontario and Canada. While the Law Society's competency-based licensing model provides a complete exemption from the experiential training requirement, the Law Society is not prepared to concede that any experience obtained either inside or outside of Canada by an individual may be relevant or even appropriate experience for the legal professions in Ontario. The Law Society's policy and consultation processes on both the provincial and national levels regularly explore these requirements and continue to affirm the value of a practical training component to new licensees, the professions, and to the public.

While it may be the intent of the amendment to ensure that internationally trained individuals are not disproportionately impacted by a regulated profession's experiential training programs, the implementation of the amendment in FARPACTA appears to be applicable to all applicants regardless of whether they are internationally trained or not. In the absence of regulatory precision, the amendment conceivably prohibits any experiential requirements that are principally focussed on exposing the applicant to experiential competencies relevant to Canadian practice, including such programs as the Articling program, the Law Practice Program or the Integrated Practice Curriculum requirement. All these programs are focused on fulfilling experiential competencies in a Canadian legal context, in the public interest.

By-law making authority

The Law Society is concerned that the by-law making authority in the proposed amendments is also overly broad. Subsection 31(2) states that a regulated profession's authority to make regulations and by-laws is subject to FARPACTA. This provision applies to any regulation or by-law enacted by the regulated profession. Subsection 31(2) broadens the authority currently afforded under section 31 FARPACTA and impacts the jurisdiction of the Law Society's board to make by-laws across a broad spectrum of areas affecting the profession, including registration processes. Without any limitation on the application of subsection 31(2), the jurisdiction of the Law Society's board to regulate the legal professions risks being arrogated.

Required compliance with expedited registration processes in an emergency

Subsection 8(2) requires regulated professions to ensure compliance with regulations respecting expedited registration processes in the event of an emergency. As currently drafted, this subsection has broad-ranging implications for the Law Society's registration processes. The Law Society would be greatly concerned if it was forced to implement externally imposed changes to its licensing process that have not fully considered the Law Society's legislative authority, duties and powers, or its role in protecting the public interest. The Law Society responded with urgency to the pandemic to ensure that effective licensing processes would continue with minimal disruptions for licensing candidates. In three months, we shortened the minimum articling term, moved all exams online, and implemented an administrative call to bar process. The Law Society views the requirement to comply with an order to expedite registration processes in an emergency as an extraordinary measure which should only be used in contexts where a regulated profession is unwilling to execute its statutory authority to mitigate the impact of the emergency on registration.

Time limits for decisions

Clause 34 (1)(C) grants the Lieutenant Governor in Council the authority to make regulations that establish time limits for compliance with any provision of FARPACTA, including establishing a maximum time period for a regulated profession to make a decision. While the Law Society understands the government's goal of ensuring that applicants are able to obtain registration to a profession in a timely way, the setting of time limits that are not calibrated against the statutory requirements for the profession will affect the operations of the regulated profession, and will have resource implications for both applicants and licensees.

The Law Society is mindful that it must manage its processes in a manner that optimizes both quality and quantity of its regulatory operations, while minimizing the resources that are dedicated to regulating the professions. The Law Society is concerned that the operations of multiple departments with different functions, including the Law Society Tribunal, will be affected by the imposition of arbitrary maximum timelines that do not fully consider the impact of LSA's statutory requirements on registration.

In particular, it is important to note that the internal processes and timelines within the Law Society Tribunal lie outside the direct influence of the Law Society, since the Tribunal is an independent adjudicative tribunal. Similar to the above noted measures regarding expedited processes, the Law Society requests that amendments be made to this clause to ensure that time limits cannot be imposed if they do not protect the public

interest or would impair the regulated profession's ability to carry out its statutory functions, duties or powers.

Conclusion

In addition to the specific comments listed above, we would like to note that the Law Society has been actively and collaboratively engaged with the Office of the Fairness Commissioner since its inception. The Law Society has participated in three separate assessments in 2011, 2014, and 2016, that resulted in favourable reviews for the majority of our practices. We have implemented the recommendations stemming from those assessments to bring all of our admissions policies and processes in alignment with FARPACTA. The Law Society continues to comply with our obligation to submit Fair Registration Practices Reports annually, and has participated in a variety of committees and advisory groups to assist the Office of the Fairness Commissioner in its important work. Bill 27 represents a substantial departure from that previous work. The Law Society is concerned that there has been such a rapid change in approach with very little consultation with affected parties. The Law Society is eager to continue discussing these issues and is hopeful that the consultation for the regulations required to enable Bill 27 will be more fulsome than the process that led to the Bill's development.

I look forward to receiving more details on this consultation, which is mentioned in Ontario's Regulatory Registry, in the days ahead.

Yours truly,

A handwritten signature in black ink, appearing to read 'Diana Miles', with a stylized flourish at the end.

Diana Miles
Chief Executive Officer