

**Federation of Law Societies of Canada**  
**Pandemic Pivot: Lessons Learned and New Possibilities for Legal Regulation**  
**Report from the 2020 Annual Conference (Virtual), October 14-15, 2020**

**Conference Summary**

The leaders of Canada's law societies gathered virtually in October 2020 to talk about the impact of COVID-19 on legal services, the legal profession and its regulation. The Conference explored how life as we know it has changed, as the pandemic forced the justice system and the legal profession to adapt to the "new normal" with uncharacteristic speed. Participants reflected on lessons learned and looked to the future to strengthen legal regulation in the public interest for a changed tomorrow.

**The Pandemic in Context**

Jordan Furlong, legal futurist and author, opened the Conference with a keynote presentation titled ***Regulation in the New Reality: Canada's Law Societies in the COVID-19 Era***. Mr. Furlong took a wide-angle view of the pandemic and its impact on the legal profession and regulators within the broader societal transformations also taking place. He noted that the pandemic super-charged and rapidly accelerated change and innovation within the legal industry. Mr. Furlong stated that this "perfect storm" legal regulators now face coincides with a major generational shift as societal institutions built early in the post-war era start to crumble.

Mr. Furlong challenged legal regulators to look at the upheaval as an opportunity to become change-leaders in creating the future. He discussed the need to build new systems for delivering justice and to move justice from the courthouse into the communities. He stressed that legal regulators must be pro-active to avoid changes being imposed by government and legislatures.

Conference participants were told legal regulators must be prepared to experiment and make quick decisions to respond to challenges intensified by the pandemic, such as justice system backlogs, and access to justice barriers. In carrying out this work, legal regulators should focus on the core principle of "acting in the public interest". Efforts highlighted to accomplish this included the creation of regulatory sandboxes, such as in Utah and Arizona. Mr. Furlong suggested that during rebuilding, law societies also need to address systemic issues of Reconciliation and underrepresented communities to ensure the new system is fair and equitable.

Paul-Matthieu Grondin, Bâtonnier of the Barreau du Québec, moderated a discussion of the issues raised in Mr. Furlong's presentation. Participants described some of the regulatory sandbox initiatives being explored and implemented in Quebec and British Columbia. In response to questions, Mr. Furlong encouraged law societies to reach out, engage with stakeholders in the community and build partnerships with law schools, firms, in-house lawyers, and continuing legal education developers to explore alternatives to articling. Law societies were also advised to work collaboratively with governments and help direct change in order to avoid government-imposed regulatory reform similar to what England and Wales experienced.

## **Disruptions to Access to Justice and Legal Services**

Karen Wilford, Federation Council member for the Law Society of the Northwest Territories, moderated a panel discussion on ***The Impact of the COVID-19 Pandemic on A2J, A2LS and the Digitization of Legal Services***. Panel members represented the diverse views of academia, private practitioners, law students and legal insurers on what the pandemic means for access to justice and access to legal services.

Panelists pointed to the challenge of all legal professionals being forced to adapt to the pandemic and its aftermath at the same time. This led to an irregular work flow for many. It was generally disruptive and resulted in early retirements, practice interruptions, or legal practitioners becoming swamped and struggling to fill service gaps. The unprecedented nature and scale of the pandemic make it difficult for firms, individuals and professional indemnity insurers alike to assess risk.

Panelists described how emerging technologies have allowed legal practices to adapt on the ground. They also discussed the limitations of providing legal services primarily through digital and online tools. Access to technology and familiarity with it may not be as prevalent among practitioners and clients in remote communities, presenting access to justice barriers and increasing the justice equity gap for Indigenous communities.

Technology has also been essential in transforming legal education. In response to the changes, law students expressed the isolation and uncertainty they experienced. Panelists also discussed how the shift to technological solutions and online delivery of legal education must still foster competency in the law. In addition to legal competency, however, students are now also learning competency in the new technologies relevant to legal practice.

## **Impact on Mental Health and Wellness**

Professor Nathalie Cadieux, associate professor at Sherbrooke University, who is also lead researcher for the Federation's National Well-being Study, gave a presentation titled ***Well-Being Check-up: What Toll has the Pandemic Taken on the Mental Health of Legal Professionals?*** While the pandemic has been universally felt, Professor Cadieux explained that its impact on mental health has been unique to each legal practitioner based on their personal and professional circumstances. Initial stressors included being forced to work remotely, and the challenges and changes that entails. The pandemic has had a disproportionate effect on women who often carry more of the burden at home in addition to their professional duties.

Professor Cadieux discussed how the new normal of remote work or telework has redefined concepts of productivity. The boundaries between work and personal life are blurred, with coping strategies including working late into the night or outside of regular work hours. Remote working requires a reliance on technology, which has posed additional challenge for some practitioners.

Professor Cadieux noted legal professionals already experience a disproportionate amount of psychological stress and that the pandemic may exacerbate existing unhealthy coping mechanisms, such as alcohol and drug abuse. Loss of income and economic uncertainty have added to these pressures. Young and new lawyers are also experiencing heightened uncertainty at this crucial moment in their careers.

## **Operational Pivots: Articling, Bar Admissions, and Disciplinary Hearings**

After examining several “big picture” themes, the Conference focused on the impact of the pandemic on bar admissions, articling, and disciplinary hearings.

Kent Teskey, President of the Law Society of Alberta (LSA), and Brenda Grimes, Executive Director at the Law Society of Newfoundland and Labrador (LSNL), co-facilitated the discussion ***Swift Pivot: Reflections on the Changes Made to Bar Admissions and Articling.***

Ms. Grimes gave an overview of the LSNL’s challenges administering bar admissions virtually during the pandemic, after having provided in-class bar admissions centrally for 30 years. She discussed how the digital approach that relied on online recorded lectures reduced dialogue and interaction between students and instructors, despite offering added flexibility for the students and more opportunities for rural practitioners who previously had to travel to St. John’s. The LSNL anticipates eventually offering a mixed program of online recorded and in-person sessions to ensure bar admission standards are preserved in the public interest.

Mr. Teskey explained how the LSA articling process, already under scrutiny prior to the pandemic, encountered intensified problems of over-reliance on market conditions to create positions and inconsistencies in articling experiences in the short-term. The LSA shortened the articling term, increased the subsidy for the Canadian Centre for Professional Legal Education (CPLED) program, and allowed students to start the CPLED program even if they had not secured an articling position. He suggested support for young lawyers may need to extend to their first few years of practice to make up for articling terms affected during the pandemic.

Conference participants were asked to consider questions related to articling and bar admissions.

Participant discussions in small groups demonstrated some common themes and ideas:

- the articling / new lawyer training process required a rethink even before the pandemic.
- many law societies are exploring or have implemented course-based options for articling.
- how best to achieve competence standards if offering both traditional articles and course-based streams
- the mentorship element has always been a challenge and inconsistent based on where the student is placed, with those at big firms getting an advantage.
- how to encourage the important skill of connecting with multiple practitioners during mentoring in an online environment.
- law societies are likely to adopt a permanent mixed program for bar admissions that offers a hybrid online and in-person format.
- it is important to collect and use statistics to help guide articling and bar admissions programs.
- for both articling and bar admissions, the first duty is to protect the public interest, so solutions must be practical and maintain competency standards.

Continuing to examine the pandemic’s impact on law society operations, David Wright, Chair of the Law Society Tribunal (Ontario), and Craig Ferris, President of the Law Society of British Columbia (LSBC), moderated a discussion titled ***Focus on the Digitization of Hearings and Discipline Processes.***

Mr. Wright shared the Law Society Tribunal's experience in shifting from paper-based hearings pre-pandemic to teleconferences, then almost entirely to virtual hearings. The disadvantages of virtual hearings he identified included technical problems, difficulties with reviewing documents, and opportunities to coach witnesses off-camera. Through trial and error, the Law Society Tribunal developed strategies to address problems and all parties have learned to adapt.

Mr. Ferris discussed similar experiences with disciplinary hearings in British Columbia. Hearings went from in-person pre-pandemic to virtual as the new default. Initially, adjournment requests would have created an unsustainable backlog. In virtual hearings, the goal remains fairness but to allow a degree of flexibility. Mr. Ferris noted that an increase in the length of hearings has been a consequence of going virtual.

Conference participants were asked to discuss their experiences related to digital hearings:

Common themes that arose from the discussion were:

- the ineffective and inefficient incorporation of electronic documents during virtual hearings
- jurisdictions are likely not going back to their pre-pandemic hearings and processes.
- there is a general desire to adopt a mixed or hybrid model using both in-person and virtual hearings to take advantage of the benefits of each.
- law societies need to be open-minded in developing post-pandemic hearing policies and procedures to avoid being predisposed to thinking in-person hearings are best.
- there is a need to look to other industries and organizations more familiar with virtual hearings.
- there has been a focus on moving toward identifying what types of hearings should be done virtually versus in-person (e.g. contested, credibility).
- initial efforts in virtual hearings were subject to technical problems, and the parties to them were unfamiliar with technology, but the tribunals and parties have adapted.
- holding hearings virtually has reduced costs and travel time.

### **Communications and Marketing Solutions**

The Conference concluded with a session entitled ***Improving Law Society Communications in the Post-pandemic World***. Christine Saunders, marketing consultant, in conversation with Julie Sobowale, Director of Communications with the Law Society of Saskatchewan, addressed challenges and opportunities in communications and marketing that law societies could leverage through the pandemic and beyond.

In-person interaction was identified as the main challenge as all communications went digital. Presenters emphasized that human interaction develops rapport and builds trust, which is so important for regulators. Law societies must compete with other online "experiences" that create expectations among the audience for clarity of message and smooth interactivity. Format was considered as important as content, especially with respect to developing continuing legal education programs.

Presenters also discussed the distinction between communications and marketing. Law societies were encouraged to adopt marketing tools to better understand their members, who are their main audience, and to change behaviour to improve compliance.

## **Conclusion**

The Conference was an opportunity for law societies to step back from the pandemic and reflect on the pressures it created, share lessons learned from their initial responses, and to look to the future of regulation in a post-pandemic world. Through insightful and thought-provoking presentations, panels discussions, and participant engagement, several common ideas and themes emerged:

- the pandemic created new challenges, but also exacerbated many pre-existing problems, accelerating the need for law societies to develop and implement solutions.
- post-pandemic there will not be a “return to normal” in society or the legal profession; instead, law societies are facing a “new normal”.
- the speed of adaptation within the legal profession, in legal services and regulation has been unprecedented.
- while initially law societies had to be quick and reactive in their responses, the pandemic presents an opportunity to rethink and rebuild regulatory processes and institutions.
- law societies should proactively embrace initiatives to help direct regulatory change.
- technology has been central to law society adaptations and will create opportunities in the future; however, over-reliance on technology can reinforce access to justice challenges and justice inequities.
- technology alone cannot fully replace the importance and need for human, in-person interaction.
- the pandemic, which has affected and continues to affect all law societies, presents a unique opportunity for collaboration on a national level to explore new standards, technological solutions, policies and procedures, and best practices.

The Conference was intended to allow law societies to share their recent experiences, but more importantly to act as a springboard to launch future national dialogue on the “new normal” as it relates to legal services, the legal profession and its regulation in a post-pandemic world.