

November 25, 2021

Competence Task Force
Law Society of Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N5

Dear Task Force members,

The Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique (CALE/ACEJ) is a federal not-for-profit corporation whose members are academics, lawyers, and regulators interested in topics related to ethics and professionalism in the Canadian legal profession. CALE/ACEJ seeks to encourage and facilitate debate on issues of ethics and professionalism in Canada and to increase awareness about those issues in the public, the profession and the judiciary.

Your June 2021 report “Renewing the Law Society’s Continuing Competence Framework” invites comments on the wide range of questions it raises. The Board of CALE/ACEJ appreciates this opportunity to provide the following thoughts relating to continuing professional development (CPD) and technological competence.

A. CPD

Your report states that “The Law Society may wish to consider a reduced emphasis on mandatory CPD, or alternatively, more focussed requirements tied to licensee practice areas, experience levels, or identified areas of regulatory risk” (page 3). In our view, mandatory CPD remains of vital importance for the legal profession and it would be an unfortunate and retrograde step to eliminate mandatory CPD.

Requiring licensees to engage in continuing learning has several diverse objectives. These go well beyond reducing instances of professional malpractice and complaints against licensees. They include improving the quality of legal services, promoting public confidence in the legal profession and the administration of justice, building community among legal professionals and fostering important initiatives relating to equality, diversity, inclusion, access to justice and intercultural competence (including Indigenous intercultural competence). Critically, several of these objectives are notoriously difficult to measure with data and evidence. The benefits of any continuing learning requirement cannot be assessed in whole or in significant part by looking, for example, at changes to annual complaints per licensee or the volume of tribunal proceedings. Moreover, the reasons that malpractice claims or complaints against licensees may vary from year to year are complex. It is difficult to contemplate a study protocol that could meaningfully measure the degree to which CPD is a causal factor in any changes.

Université d'Ottawa
Faculté de droit
Section de common law

University of Ottawa
Faculty of Law
Common Law Section

☎ 613-562-5794

📠 613-562-5124

📍 57 Louis-Pasteur
Ottawa ON K1N 6N5
Canada

🖱 uOttawa.ca

Further, even if the relationship between CPD and complaints or claims could be isolated, this would be a highly imperfect measure of how CPD impacts the ethical and effective delivery of legal services. Claims and complaints tend to represent legal professionals who have fallen below a minimum standard of professional behaviour. But CPD has the possibility of making good legal professionals even better, with tangible benefits accruing to their clients and the public more broadly. The degree to which CPD can lead to these types of improvements is not captured by counting complaints and claims from year to year.

For the reasons set out in the above paragraphs, the lack of “hard evidence” (page 22) of benefits noted in your report is not a meaningful basis on which to reconsider the Law Society’s current approach to CPD.¹

We continue to agree with the statement in the February 25, 2010, committee report to Convocation wherein the introduction of the CPD requirement was recommended: “continuing professional development is a positive tool that benefits lawyers and paralegals and is an essential component of the commitment they make to the public to practice law or provide legal services competently and ethically.”²

We also note that the new *Ethical Principles for Judges* strongly encourages judges to engage in ongoing professional education. The reason why it is not mandated is because the *Ethical Principles for Judges* is not a binding code. In our opinion, it would be incongruous for the Law Society to backtrack on CPD at the very moment when it is being endorsed and embraced by the Canadian judiciary.

The specific content of any CPD requirement implemented by the Law Society is, of course, important. CALE/ACEJ has eight submissions on this point:

1. The Law Society should retain a mandatory (as opposed to a suggested or otherwise voluntary) CPD requirement. As the Supreme Court of Canada acknowledged in *Green v Law Society of Manitoba*, 2017 SCC 20, “as a practical matter, an unenforced educational standard is not a standard at all, but is merely aspirational” (para. 46). The objectives of continuing learning for licensees are too important to be operationalized or achieved through aspirational measures.

¹ We note that a similar argument was made by some at the time that the requirement was first being considered and the LSO Committees studying the matter concluded: “The Committees agree that there does not appear to be any empirical evidence of a *direct* link between a CPD requirement and reduced claims. They have considered whether this fact is fatal to introducing a requirement, but in the end they disagree that this resolves the issue. The impact of much of formal education on behaviours, abilities, and performance cannot truly be quantified and yet few dispute its importance.” (Professional Development & Competence Committee and Paralegal Standing Committee, *Joint Report to Convocation* (October 29, 2009) at para 30).

² Professional Development & Competence Committee and Paralegal Standing Committee, *Joint Paralegal Standing and Professional Development and Competence Committee Report* (February 25, 2010).

2. The Law Society should retain a minimum hours requirement. The current requirement for licensees to complete 12 CPD hours each year (including at least three professionalism hours) appears entirely reasonable and strikes an appropriate balance of requiring meaningful engagement and avoiding unduly onerous commitments of time or creating differential barriers. We note that 12 hours is consistent with comparators in Canada and the United States. Most other Canadian law societies have implemented a 12 hour requirement. In the United States, “on average, lawyers in mandatory CLE jurisdictions are required to certify completion of 12.2 hours per year.”³ The current requirement is not unduly onerous (especially given the highly flexible approach to eligible activities) and also meaningfully assists the valuable objectives of CPD, as discussed above. The “very high” compliance rate with the current Law Society CPD requirement, as noted in the Task Force’s report, reflects that licensees are overwhelmingly able to complete the allotted hours without facing undue barriers.

3. The Law Society should retain the specific requirement for three hours of Professionalism CPD, including one professionalism hour each year relating to equality, diversity, and inclusion topics. As stated in a 2009 report to Convocation about introducing a mandatory CPD requirement:

In most jurisdictions that require CPD there is a specific requirement that a portion of the hours be devoted to a basket of topics that include ethics, professionalism and/or practice management. This approach reflects a common understanding of the importance of these issues. Traditionally, CLE programming has not included these topics in substantive law courses and CLE attendees have not tended to sign up for programs focusing only on these issues.

Yet, there is evidence to suggest that lawyers and paralegals require additional exposure to learning in both ethics and professionalism and in practice management. For example, complaints and LawPRO statistics both regularly reveal that the primary areas of concern relate more to client and practice management than they do to weakness in knowledge of substantive law. Further, ethical issues are becoming increasingly complex and require continuous consideration both generally and in relation to the specific practice context within which lawyers and paralegals work.⁴

³ Rima Sirota, “Can Continuing Legal Education Pass the Test? Empirical Lessons From the Medical World” Notre Dame JL Ethics & Pub Pol’y (forthcoming 2022) at 6, available online: <https://scholarship.law.georgetown.edu/facpub/2386/>.

⁴ Professional Development & Competence Committee and Paralegal Standing Committee, *Joint Report to Convocation* (October 29, 2009) at paras 71-72.

We agree with the sentiments expressed in these paragraphs. All members of the CALE/ACEJ Board either currently teach professional responsibility to law students or have done so in the past. They have also, collectively, produced a significant and wide-ranging body of scholarship in the area of legal ethics and regularly participate in professionalism-related CPD events for lawyers and judges across Canada and internationally. From this position of expertise and experience, we cannot overstate the importance that the Law Society's CPD requirement continue to include a specific requirement for Professionalism hours.

The law governing lawyers is not stagnant. It is continually evolving as a result of developments in the common law (such as, for example, jurisprudence in the area of conflicts of interest or lawyer negligence) and changes to law society rules and regulations. The environment in which lawyers practice is also continually evolving and, in some cases, this also impacts lawyers' professionalism obligations. The increased use of technological tools in the practice of law is a prime example.

In order to do their jobs effectively and ethically, lawyers need to keep abreast of developments in the law governing lawyers and to their broader practice contexts. Mandating that lawyers complete a portion of their mandatory CPD hours in the area of professionalism is one means to help lawyers do this.

Further, it is essential to retain the requirement that one professionalism hour each year relate to equality, diversity, and inclusion (EDI) topics. The Law Society's public interest mandate is entirely consistent with, and indeed demands, attention to substantive equality in the legal profession and in the delivery of legal services. Individually, lawyers have an obligation to "encourage public respect for and try to improve the administration of justice" which is understood to include "a basic commitment to the concept of equal justice for all within an open, ordered, and impartial system" (r. 5.6-1 and Commentary [2] thereto). Lawyers are also recognized to have "a special responsibility to respect the requirements of human rights laws in force in Ontario" and are expected "to respect the dignity and worth of all persons and to treat all persons equally without discrimination" (r. 6.3.1-1 and Commentary [1] thereto). The area of EDI is one in which people often "don't know what they don't know" and is therefore not well suited to relying on individuals to self-identify gaps in their knowledge and to remediate them on their own. Requiring lawyers to complete one hour of EDI professionalism CPD each year is an important, pro-active step that the Law Society can take to help lawyers meet their professional obligations in relation to EDI. It also signals to the public that the Law Society is committed to the goals of substantive equality as part of its public interest mandate.

4. The Law Society should add a requirement that licensees complete Indigenous intercultural competence training. As the Law Society is aware, the Truth and Reconciliation Commission of Canada's Call to Action 27 addresses the need for law societies "to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations" and states that this will require that lawyers engage in "skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism."⁵

Following the June 2015 release of Truth and Reconciliation Commission of Canada's Executive Summary of Final Report, then-Treasurer of the Law Society, Janet Minor, stated that the Law Society was "committed to enhancing cultural competency within the legal professions and look[s] forward to further discussions about next steps, so that lawyers and paralegals have a greater understanding of Canada's history and the relationship between the Crown and the Canadian government and the First Nation, Métis and Inuit people."⁶

We question whether the Law Society has taken sufficient steps to realize this commitment. We do note and applaud the Law Society's partnership with The Advocates' Society and the Indigenous Bar Association that led to the publication of the impressive *Guide for Lawyers Working with Indigenous People* in 2018 as well as its other Indigenous initiatives, as described on its website.⁷ However, we also observe, as the Law Society is no doubt aware, that two other Canadian law societies have already instituted mandatory Indigenous intercultural competence training for lawyers but Ontario has not yet done so.⁸

⁵ Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Calls to Action (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), online: trc.ca/assets/pdf/Calls_to_Action_English2.pdf.

⁶ The Law Society of Upper Canada, *Law Society Public Statement on Truth and Reconciliation Commission of Canada's Executive Summary of Final Report* (2 June 2015), available online: <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/tr/rel/release-public-statement-trc.pdf>.

⁷ The Law Society of Ontario, "Indigenous Initiatives", online: <https://lso.ca/lawyers/practice-supports-and-resources/equity-supports-resources/indigenous-initiatives>.

⁸ The Law Society of British Columbia, "Law Society adopts Indigenous intercultural competency training" (6 December 2019), online: <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2019/law-society-adopts-indigenous-intercultural-compet/>; and the Law Society of Alberta, "President's Message: Introduction of Mandatory Indigenous Cultural Competency Training" (6 October 2020), online: <https://www.lawsociety.ab.ca/presidents-message-introduction-of-mandatory-indigenous-cultural-competency-training/>.

Although not directed to law societies specifically, Chief Justice Robert Bauman's recent statements at the Canadian Institute for the Administration of Justice conference on Indigenous peoples and the law are apposite, in our view, to the question of mandatory Indigenous intercultural competence training:

Now is time to do what we should have done when we arrived here, as uninvited guests, and demonstrate that we care enough to discover and learn and to act responsibly within the matrix of Indigenous customs, traditions, and protocols. Now is the time for humility.⁹

It is incumbent on the Law Society to demonstrate leadership in this area, including by introducing mandatory Indigenous intercultural competence training for Ontario licensees.

5. The Law Society should consider requiring licensees to prepare an annual professional development plan. This type of measure has already been adopted in other jurisdictions. For example, in Nova Scotia all lawyers are required to “prepare and implement a written plan for continuing professional development.”¹⁰ The Law Society of Alberta has also implemented a requirement that lawyers “prepare and make a record of a plan for his or her continuing professional development.”¹¹ As noted by Jordan Furlong in his report on lawyer competence prepared for the Law Society of Alberta, one limitation of a CPD approach focussed on the completion of a minimum amount of hours of learning “is that it is an input measure: It measures only what the lawyer did, not whether the lawyer received or achieved any result or outcome of value.”¹² Furlong further notes that requiring lawyers to engage in self-reflection has the additional

⁹ Zena Olijnyk, “Recognition of Indigenous legal systems crucial to reconciliation, delegates to conference told” (18 November 2021), Canadian Lawyer, online: <https://www.canadianlawyermag.com/practice-areas/esg/recognition-of-indigenous-legal-systems-crucial-to-reconciliation-delegates-to-conference-told/361854>.

¹⁰ Nova Scotia Barristers' Society, Regulations Made pursuant to the *Legal Profession Act*, SNS 2004, c.28 at s 8.3.8.

¹¹ Law Society of Alberta, *The Rules of the Law Society of Alberta*, at r 67.2. Note that the Law Society of Alberta has suspended its mandatory Continuing Professional Development (CPD) filing requirement until 2023 to allow it to study and develop a new competency model, which will include a new CPD planning tool (Law Society of Alberta, “CPD Filing Requirement Suspended for Additional Year” (1 October 2021), online: <https://www.lawsociety.ab.ca/cpd-filing-requirement-suspended-for-additional-year/>).

¹² Jordan Furlong, *Lawyer Licensing and Competence in Alberta: Analysis and Recommendations* (November 2020) at 51, online: https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf.

advantage of “recogniz[ing] that the responsibility for professional development lies with each individual lawyer, who is in the best position to analyze their own learning needs and identify their required learning outcomes.”¹³ In their 2017 article for the *Canadian Bar Review*, Yanneck Ostaficzuk and Suzanne Gagnon similarly observe:

Taking inspiration from the changing standards governing the continuing development of professional competencies and promoted best practices, it is possible to suggest that the reflective approach has the advantage of making each professional’s mandatory continuing professional development meaningful, insofar as it is based more on the foundations of modern adult-learning theory.¹⁴

To be clear, CALE/ACEJ does not take the position that the Law Society’s current requirement for licensees to complete 12 CPD hours each year should be *replaced* with a requirement that licensees prepare an annual learning plan. The Law Society should consider the potential benefits of requiring licensees to develop a learning plan *in conjunction* with completing their required hours. On this point, CALE/ACEJ notes the observations about reflective learning approaches in a recent report prepared for Legal Services Board in England and Wales: “[w]hilst this kind of approach has a solid foundation in adult learning theory, concerns have been expressed in some quarters that without a mandatory hours requirement, lawyers will not engage in a meaningful way with self-reflection.”¹⁵ We also note that in Nova Scotia lawyers are expected to complete a minimum of 12 hours of CPD each year *in addition to* preparing and implementing a written CPD plan.

In considering this type of supplementary requirement, we recommend that the Law Society take note of Furlong’s recommendation that the Law Society of Alberta, as part of its continuing lawyer learning measures, “oversee the development of an online training program to help lawyers understand what ‘learning self-assessment’ is and how it works, why the law society is requiring self-assessment, and how a lawyer can assess their own

¹³ *Ibid* at 53.

¹⁴ Yanneck Ostaficzuk & Suzanne Gagnon, “Professional Excellence Through Competency Development” (2017) 95(2) *Can Bar Rev* 123 at 134.

¹⁵ Hook Tangaza, *International Approaches to Ongoing Competence: A report for the LSB* (March 2021), online: <https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>.

learning needs and choose learning outcomes related to those needs.”¹⁶ Developing a learning plan is not likely to be something with which most licensees are familiar and, as such, law society guidance would be an important part of introducing this supplementary requirement.

6. Beyond requiring licensees to prepare an annual professional development plan, the Law Society should consider how knowledge and techniques from adult learning experts could be better deployed in the context of its mandatory CPD requirement. One criticism that has been levelled against mandatory CPD is that it often involves “an expert speaker presenting material to a largely passive audience” (also known more colloquially as a “sage on the stage” approach).¹⁷ This format is not always conducive to optimal learning.

To be sure, the current flexibility of the eligibility requirements of the CPD requirements permits a broader range of activities beyond lectures to passive audience. There are also great ongoing examples of more interactive learning opportunities in Ontario for licensees.¹⁸ Moreover, we do not want to be misunderstood as taking the position that lecture-based learning is never effective or appropriate. However, there is more that could be done to ensure that optimal learning is taking place when licensees complete their required CPD hours. For example, the Law Society could study best practices in adult learning, consider how these might be integrated in the context of mandatory CPD and provide the resulting findings to those who wish to provide CPD to licensees. The Law Society could also potentially use such findings to improve their own CPD offerings. As noted in a recent article by Rima Sirota, “the imperative to study and improve CLE is plain.”¹⁹ Although Sirota was addressing an American context, this imperative holds true in Canada as well.

¹⁶ Jordan Furlong, *Lawyer Licensing and Competence in Alberta: Analysis and Recommendations* (November 2020) at 6, online: https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf.

¹⁷ Rima Sirota, “Can Continuing Legal Education Pass the Test? Empirical Lessons From the Medical World” *Notre Dame JL Ethics & Pub Pol’y* (forthcoming 2022) at 9, available online: <https://scholarship.law.georgetown.edu/facpub/2386/>. See also Deborah L. Rhode and Lucy Ricca, “Revisiting MCLE: Is Compulsory Passive Learning Building Better Lawyers?” (2014) 22(2) *Professional Lawyer* 2.

¹⁸ See eg Roz Bahrami, “Evidence-Based Simulated Client Initiative Just One Example of OPD’s Interactive, Skills-Based Offerings” (21 September 2021), online: <https://osgoodepd.ca/blog/evidence-based-simulated-client-initiative-just-one-example-of-opds-interactive-skills-based-offerings/>.

¹⁹ Rima Sirota, “Can Continuing Legal Education Pass the Test? Empirical Lessons From the Medical World” *Notre Dame JL Ethics & Pub Pol’y* (forthcoming 2022) at 4.

7. The Law Society should investigate whether its current CPD requirement creates burdens on certain sectors or populations in the legal profession and, if so, consider how it might remediate them. CPD opportunities are not equally accessible to all licensees in at least two respects. First, some courses and events that provide CPD opportunities are too expensive for some licensees to attend. Second, some but not all licensees have free and easy access to CPD opportunities that are directly provided by their workplace.

The impact of such limitations is addressed to a significant extent through the flexible approach that the Law Society takes to eligible activities and the significant provision of free CPD programming in Ontario, including that provided by the Law Society. That said, it is not clear that licensees, as a group, are sufficiently aware of free CPD opportunities and always find them easy to access. We have observed, for example, discussions in which licensees have expressed that they did not know that the Law Society provided free CPD resources. The Law Society should consider what additional efforts it might make to let licensees know about the free CPD resources it provides. The Law Society could also potentially play a useful role in helping to inform licensees about opportunities for free CPD that are offered by other providers. For example, the Law Society could maintain a “free CPD” webpage where events and opportunities could be posted.

Additionally, it is also not clear that all licensees can easily find free or low-cost resources that are relevant to their area of practice. It might be helpful for the Law Society to conduct a review of CPD offerings available to licensees and consider whether there are any gaps. If gaps are identified, the Law Society could develop its own programming to fill the void or reach out to other stakeholders and organizations to encourage them to develop that programming.

8. The Law Society should not institute differential CPD requirements for more experienced lawyers. One recommendation that Furlong submitted to the Law Society of Alberta is the development of “an optional alternative system of continuing learning for lawyers with more than 20 years’ experience in the profession.”²⁰ On this topic, Furlong’s report notes, among other things, that “the frequency of problems with and complaints about lawyers that require regulatory intervention decreases noticeably among lawyers with 20 years or more at the bar” and comments “traditional CLE programs are often of little interest to these lawyers and do little to help them maintain and improve their own competence.”²¹ In our view, in Ontario the current flexibility with respect to eligible activities already permits a sufficient range

²⁰ Jordan Furlong, *Lawyer Licensing and Competence in Alberta: Analysis and Recommendations* (November 2020) at 60, online: https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf.

²¹ *Ibid* at 59-60.

of learning opportunities that are relevant and appropriate to more experienced lawyers. We also reiterate our previous points that (1) the objectives of continuing learning requirements go well beyond reducing malpractice claims and law society complaints and (2) many areas of competence – such as those involving professional ethics and technology – are constantly evolving. For these reasons, we do not believe that more experienced lawyers should be subject to reduced or otherwise differentiated CPD requirements.

B. Technological Competence

Your June 2021 report raises the question of “whether technological competence should be encouraged or mandated” (page 24). CALE/ACEJ submits that the Law Society should immediately adopt the Federation of Law Societies of Canada’s Commentaries [4A] and [4B] to *Model Code of Professional Conduct* rule 3.1-2 addressing lawyer competence, which were added in October 2019.

These Commentaries require lawyers to “develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer’s practice and responsibilities” and specify that “the required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer’s practice and responsibilities and whether the relevant technology is reasonably available to the lawyer.” In large part, this new language simply makes explicit what is implied in existing rules. However, rendering licensees’ obligation of technological competence explicit is important: it ensures that the legal professions are clearly aware of their obligations and signals that the Law Society takes technological competence seriously. As I have noted previously about these Commentaries:

This is not a controversial change. The commentary is timely and modest. It is also not without precedent. In 2012, the American Bar Association amended its Model Rules of Professional Conduct to add similar commentary, and a duty of technological competence has now been adopted by 37 states. The sky hasn’t fallen there, and it won’t fall here, if law societies adopt the Model Code commentary. What adopting the commentary will do, however, is signal to lawyers (and dare I say the law schools that train them?) that understanding and using technology is a necessary part of modern legal practice. Lawyers don’t have to be coders or understand the complexities of artificial intelligence, but they can’t ignore the risks and benefits that technology can bring to their practice.²²

²² Amy Salyzyn, “It’s Finally (Sort Of) Here!: A Duty of Technological Competence for Canadian Lawyers”, *Slaw.ca* (26 November 2019), online: <http://www.slaw.ca/2019/11/26/its-finally-sort-of-here-a-duty-of-technological-competence-for-canadian-lawyers/>.

Since those observations at least five other Canadian law societies have adopted the new Model Code commentaries on technological competence. We note that, in November 2019, the Law Society's Technology Taskforce stated that the Law Society should consider "amending professional conduct rules and introducing a rule requiring technological competence (potentially including harmonizing standards with those of other jurisdictions)."²³ It has been over two years since that statement and over two years since the Model Code was amended. The Law Society should delay no longer and should join other Canadian law societies in adopting the new technological competence commentary.

Your report also observes that:

The Law Society offers some resources in [the area of technological competence], including Technology Practice Tips, a series of podcasts that provide a convenient way to learn about the latest technology issues, and a technology guideline that sets out professional responsibility considerations when using technology, but more attention should be paid to this area.

The above statement echoes comments made in the November 2019 Law Society Technology Taskforce Report wherein it was acknowledged that "licensees have made clear their interest in receiving more guidance about technology usage, and that the Law Society can be doing more to provide these resources."²⁴

We agree that the Law Society should pay more attention to helping licensees improve their technological competence. More specifically, we recommend that the Law Society consider implementing the following additional supports for licensees:

- **Checklists and guidelines:** To assist licensees in both assessing and using legal technology, the Law Society could publish additional, more detailed, checklists and guidelines. An example of how this could be done in a way that could be broadly applicable to licensees can be found in *Legal Ethics in a Digital Context*, a document Florian Martin-Bariteau and I prepared for the Canadian Bar Association.²⁵
- **Technology "ethics opinions":** Although ethics opinions are not generally issued by Canadian law societies, American state bars regularly use ethics

²³ Law Society of Ontario, Technology Taskforce, *Update Report* (29 November 2019) at 38.

²⁴ *Ibid.*

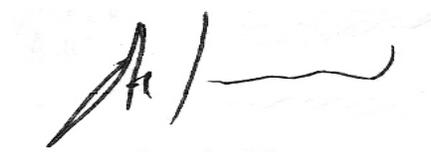
²⁵ Amy Salyzyn and Florian Martin-Bariteau, *Legal Ethics in a Digital Context* (prepared for the Canadian Bar Association Ethics and Professional Responsibility Sub-Committee), online: <https://www.cba.org/getattachment/Sections/Ethics-and-Professional-Responsibility-Committee/Resources/Resources/Legal-Ethics-in-a-Digital-Context/LegalEthicsInaDigitalContext.pdf>.

opinions as a means of providing detailed advice to lawyers about specific topics, including legal technology.²⁶ It would be very helpful for the Law Society to start publishing technology ethics opinions for licensees.

- **Increased technology CPD programming:** In recent years, Canadian law societies have increased their CPD programming in relation to legal technology generally. The Law Society should develop more programming, in conjunction with preparing a needs and gap analysis that identifies areas where licensees lack knowledge in relation to technology use.

We appreciate the opportunity to provide submissions to the Task Force on this issue and look forward to seeing the results of the consultation.

If CALE/ACEJ can provide any further information or answer any questions about the feedback provided in this letter, please do not hesitate to be in touch.



Amy Salyzyn
President, Canadian Association for Legal Ethics

²⁶ For further background, see Amy Salyzyn, “Time for Technology Ethics Opinions in Canada?” *Slaw.ca* (17 August 2017), online: <http://www.slaw.ca/2017/08/17/time-for-technology-ethics-opinions-in-canada/>. For an example of a specific legal technology opinion, see The State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2015-193 (an opinion which details how “attorney competence related to litigation generally requires, among other things, and at a minimum, a basic understanding of, and facility with, issues relating to e-discovery, including the discovery of electronically stored information [“ESI”]).