

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MURRAY KLIPPENSTEIN

Plaintiff

and

LAW SOCIETY OF ONTARIO

Defendant

**STATEMENT OF DEFENCE**

1. Except as expressly admitted below, the Defendant, Law Society of Ontario (“**LSO**” or the “**Society**”), denies or has no knowledge of all the allegations contained in the Statement of Claim (the “**Claim**”).

***Parties***

2. The Law Society of Ontario (the “**LSO**”) is a corporation without share capital created pursuant to the *Law Society Act*, R.S.O. 1990, c. L.8 (“**LSA**”). Its members at a point in time are its Treasurer, its benchers, the persons licensed to practice law in Ontario and the persons licensed to provide paralegal services in Ontario.

3. It is a function of the LSO to ensure that persons who practice law or who provide legal services in Ontario meet appropriate standards of learning, professional competence and conduct

and that standards of learning, professional competence and conduct for the provision of legal services apply equally to those who practice law and provide legal services in Ontario.

4. The LSA sets out certain principles to which the LSO shall have regard in carrying out its functions, duties and powers, including a duty to maintain and advance the cause of justice and the rule of law, to facilitate justice for Ontarians, to protect the public interest, to act in a timely, efficient and open manner and to apply standards of learning and professional conduct and competence for licensees that are proportionate to the significance of the regulatory objectives sought to be realized.

5. The Plaintiff is a lawyer licensed to practice law in Ontario and an elected benchers of the Society.

*Convocation governs the Affairs of the LSO*

6. Elected benchers are elected by the licensee members of the LSO. Section 10 of the LSA provides that benchers shall govern the affairs of the LSO. The primary forum for their doing so is Convocation, which the LSA defines as a regular or special meeting of the benchers convened for the purpose of transacting business of the Society. The LSA also provides that Convocation through by-laws may create committees of benchers and delegate such powers and duties of Convocation as may be considered expedient.

7. Various other elements of the LSA reinforce and clarify this governance structure. For example, Section 8(1) of the LSA which provides that the Chief Executive Officer of the Society (“CEO”) shall, under the direction of Convocation, manage the affairs and functions of the LSO

and paragraph 61 of the Law Society's Governance Practices and Policies which provides that the CEO reports to Convocation and that Convocation instructs the CEO through the Treasurer.

**Rights of benchers to information**

8. Whether or not the *Corporations Act*, R.S.O. 1990 c. C.38 applies to the LSA does not assist the Plaintiff. Section 304 that Act provides that certain specifically prescribed types of records shall be open for inspection by directors during normal business hours. None of the documents sought by the Plaintiff fall within the categories of records listed in section 304 that a director has a statutory right to inspect.

9. Beyond any statutory right a bencher may have, the right of an individual bencher to information is a function of what is required to fulfill his or her role as one of the collective of benchers meeting in Convocation for the purpose of transacting the business of the Society, or in a committee created pursuant to a By-law for the purpose of transacting the business delegated to it by Convocation.

10. That is a question for Convocation to decide within the governance structure set out in the LSA and By-laws pleaded above. Thus, a bencher may bring a request for information or documents which he or she believes are required either to the chair of the relevant committee (if the request relates to committee business) so that the chair may deal with the request within the context of the powers delegated to the committee by Convocation, or directly to Convocation itself. Convocation is the body which has the authority to determine whether to provide the information.

### **The Plaintiff's request for documents**

11. The Plaintiff has requested the documents set out in Schedule "A" to the statement of claim. He chose to seek disclosure of the documents by writing letters of demand to the Treasurer of the LSO through his counsel dated April 26 and May 20, 2022. On May 27, 2022, the Treasurer responded to this correspondence. She reminded the Plaintiff that 161 pages of supporting materials relating to the issues raised by the Plaintiff, including materials relating to the Inclusion Index, the Stratcom Report and the Challenges Report, had been made accessible to benchers dealing with these issues within the mandate of the Equity Indigenous Affairs Committee ("EIAAC"), of which the Plaintiff is a member.

12. The Treasurer's response went on to point out the following:

- (a) The Treasurer has no unilateral authority to decide on a request for information from a bencher. Convocation must be engaged to consider the request and provide directions on a response.
- (b) If the information is confidential, Convocation must be engaged.
- (c) If the information is not confidential, but would exceed what is normally provided to benchers by staff, Convocation must be engaged.
- (d) Information that is regulatory in nature and obtained by the LSO pursuant to its regulatory powers is intended solely for regulatory use and disclosure cannot be provided to a bencher other than if the bencher is engaged in the regulatory process for which the information was obtained.

13. The Treasurer advised that she would be referring the Plaintiff's requests for information to the Strategic Planning and Advisory Committee (“**SPAC**”) and would be asking that Committee to consider the requests and to recommend to Convocation whether it should accede to them, in whole or in part.

14. The Defendant pleads that it is Convocation that has the power to determine whether the documents requested by the Plaintiff are reasonably required by him in order to fulfill his role and obligations as a bencher. Thus he must either by motion raise the matter before Convocation himself, something which he has not done, or await the report of SPAC to Convocation.

15. The Defendant asks that the claim be dismissed with costs.

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MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-006828844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE**

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