

# THE COMPREHENSIVE GUIDE TO ARTICLING IN ONTARIO MANUAL





# INTRODUCING EMOND

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In 1978, Professor Paul Emond published the first Emond textbook. It was a casebook on real estate law and was soon followed by administrative law and constitutional law casebooks that were used for classes at the University of Toronto and Osgoode Hall Law School.

More than 40 years later, Emond Publishing is one of Canada's leading publishers of casebooks, textbooks, and legal practice resources. In addition to publishing texts for lawyers, paralegals, law clerks, and other legal practitioners, Emond offers exam support resources for students preparing to write Ontario licensing exams.

Emond's CanBarPrep course has been in operation since 2006, and since 2013, Emond has expanded the scope and depth of its licensing exam preparation resources to include free manuals (such as this one), online course options, tutoring, and full-length practice exams.

After helping thousands of students through the licensing process, we recognized that many students would benefit from a resource to guide them through the articling experience. For this reason, we developed and published the *Comprehensive Guide to Articling in Ontario* to provide students with an understanding of what to expect from their articles. It includes guidance on how to manage challenging aspects of the articling experience and offers practical tips that will help articling students be more successful in their tasks and duties. We hope it helps you on the road to success.

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# 1 PREPARING FOR ARTICLING

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## TYPES OF ARTICLING POSITIONS

Many students determine during law school that they want to focus on a specific area or niche in practice. These students will typically select law school courses that educate them in their chosen area and build the foundation for their future career. Specialized practice areas include intellectual property, health law, tax law, criminal law, and a host of others. In these cases, students may look for specialized articling positions that align with their area of interest.

Students who have not decided or remain open to different areas of practice may opt for generalized articling instead. This option offers an opportunity to explore and discover new areas of interest that can help them determine where they will want to practice.

General articles are the most common type of articling, designed to provide exposure to multiple practice areas through an articling rotation. In this rotation process, students will spend designated periods of time working with different departments or lawyers within the firm or office. This provides a greater breadth of general knowledge and experience in a multitude of areas, giving students the opportunity to discover, first-hand, the advantages and pitfalls of those areas. This exposure to different practice areas can help students make informed decisions about their futures. General articles are also most likely to ensure that students complete all the requirements sought by the Law Society of Ontario (LSO) through the articling period.

If you have decided to pursue a particular practice area (e.g., litigation, health law, or intellectual property), you might consider articling at a specialized firm or boutique to maximize your learning experience and equip you with relevant skills. Certain specialized practice areas may come more easily to those who have specialized undergraduate degrees or backgrounds, such as science or engineering, so your past educational experience is an aspect to consider when making the decision. Specialized articles can also include articles of clerkship.

## 1 PREPARING FOR ARTICLING

The following chart offers guidance in determining whether specialized or general articles would be a better fit for you. Remember that the LSO expects you to meet all or most of the experiential training and performance appraisal competencies in your articles (see the LSO’s experiential training competencies and performance appraisal competencies at <https://lso.ca/becoming-licensed/lawyer-licensing-process/articling-principals/filing-and-reporting/experiential-training-competencies>). Investigate whether the **specialized** and/or **generalized** articling positions you are considering would help you meet these competencies. Review the firm and speak with recruiters and/or your potential principal, then check off the boxes below. This exercise will help you objectively determine if the articling program at a firm or office you are contemplating will provide you with these requirements for entry into practice:

EXPERIENTIAL TRAINING COMPETENCY	SPECIALIZED ARTICLES	GENERAL ARTICLES
Ethics and professional responsibility		
Interviewing		
Fact investigation and legal research		
Drafting and legal writing		
Planning and advising		
File and practice management		
Negotiation		
Advocacy		
Transactional/advisory matters		



## 1 PREPARING FOR ARTICLING

PERFORMANCE APPRAISAL COMPETENCIES	SPECIALIZED ARTICLES	GENERAL ARTICLES
Establishing the client relationship		
Conducting the matter: matter management		
Conducting the matter: advocacy		
Ethics and professionalism		
Practice management		



# CHOOSING THE RIGHT PRACTICE SETTING

## Public Versus Private

In addition to the different practice areas available for you to choose from, there are several practice domains where students may find articling positions. These practice domains are generalized as public or private practice. **Private practice** involves the practice of law as a business by a sole practitioner or with others as a firm or association with a goal to making a profit. Private practice is the most common form of practice for lawyers. **Public practice** includes government, non-government public organizations, in-house legal departments, and not-for-profit organizations.

In any of these settings, you will still be required to complete the training and appraisal competencies above and ensure that you obtain competency in the required areas designated by the LSO. However, there will be differences between public and private law with respect to the type of work you will experience and some of the expectations placed upon you as an articling student. In many instances, articling students work longer hours in private law firms than in public law settings. In addition to the longer hours, articling students at private law firms will often participate in more networking and marketing events, which will add to their time spent working.

There are distinct differences between public and private law settings that may be more fitting toward your career aspirations. Overall, private law is more entrepreneurial and requires more engagement and longer hours. Public law tends to provide more control over work/life balance, although there are many public law positions that also require considerable amounts of work (e.g., Crown prosecutors and duty counsel).

While obtaining exact figures for articling students is difficult, recent studies give insight into the articling experience in Ontario<sup>1</sup> and the western provinces of Alberta, Saskatchewan, and Manitoba.<sup>2</sup> In an LSO survey from 2017, 58 percent of articling student respondents indicated that they worked between 35 and 50 hours per week, while 41 percent indicated that they worked in excess of 50 hours per week. Of the practice settings, 24 percent of the respondents articulated in public law or corporate in-house settings.

The Law Society of Alberta survey from 2019 indicated that 68 percent of students worked in excess of 50 hours per week, with an average of 63 hours worked per week at large firms, 56 hours per week at mid-sized firms, and 53 hours per week at small firms. Of the practice settings, only 12 percent of respondents articulated in public law or corporate (i.e., in-house) settings.

It is also important to note that articling, and eventually working in a public law setting, will require you to develop a broader skill set and often to be more business-minded, particularly when acting as in-house counsel for corporations, public organizations, and some government positions.<sup>3</sup> This may cause difficulty transitioning from private practice to public practice at a later date.

Finally, hire-back rates vary according to the practice setting, with students who article for private law firms having a greater likelihood of being offered positions following their articling compared to students who article for the public sector.<sup>4</sup>

## CHOOSING THE RIGHT ENVIRONMENT FOR YOU

Finding an articling position is difficult, and there is a lot of competition. For many articling students, their focus is simply getting *any* articling position. However, it is important that your principal, and where you article, is the right fit for you. Not every person will work well in a large national firm or in a small firm or sole practice.

Before committing to an articling position, take the time to consider where you will thrive and the environment that you are best suited for. Think about your long-term goals, the importance of work/life balance, practice areas in which you are interested, and the type and size of the work environment that you will be comfortable in. You should also consider factors such as the entrepreneurial nature of private practice and whether or not you are compatible with a competitive workplace. Articling is an important part of your legal education, and you will be spending considerable time working closely with the people in your office. You need to feel that you can work with, and learn from, the people who will become an important part of your early career.

## 1 PREPARING FOR ARTICLING

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If you are unsure of the type of environment that will work best for you, spend time with the career counsellors at your law school to discuss these issues. Career counselling may provide you with important information tailored to your unique situation and can provide considerable guidance in choosing the course of articling that is best suited to you.

- 1 A Sidiq Ali, *Summary of Articling Experience Survey Results*, Law Society of Upper Canada (6 January 2017), online: <<http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>>.
- 2 Illumina Research Partners, *Articling Program Assessment Research Report*, Law Society of Alberta (26 September 2019), online: <[https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report\\_September-27\\_2019.pdf](https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report_September-27_2019.pdf)>.
- 3 F Garcia, “Practise In-House or in Private Practice?”, *Canadian Lawyer Magazine* (1 April 2019), online: <<https://www.canadianlawyermag.com/news/opinion/practise-in-house-or-in-private-practice/276008>>.
- 4 R Dinovitzer, *Law and Beyond: A National Study of Canadian Law Graduates*, University of Toronto, p 13 (no date on study but was launched in 2012).

# 2 ARTICLING AND PROFESSIONALISM

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## WHAT YOU SHOULD EXPECT AS AN ARTICLING STUDENT

As an articling student, your goal is to learn as much as possible in a short period of time. The learning curve will be extraordinarily high, but don't let this affect you. You should expect to be assigned many tasks within short periods of time, work long hours, take on tedious assignments, and produce high-quality output. While you are doing this, you should be taking every opportunity to absorb as much knowledge as you can from your principal, other lawyers, and your assignments. Part of the expectation of articling is that you, the articling student, will be engaged in matters that will teach you important skills and provide you with knowledge that will move you toward being a competent lawyer.

Ideally, you will have an articling plan that enables you to meet the required competencies set out by the LSO and to build the skills you will need to start your legal career. However, the practice of law, particularly private practice, is a business. This means that in addition to learning how to prepare corporate documents, interview clients, and prepare attending motions, among other practical skills, you should seek to understand the business aspects of practising law during your articles. We will spend more time discussing the business aspects of the practice of law in Chapter 3, but we strongly suggest that you speak to your principal and seek to include this education as part of your articling plan.

Ultimately, you should expect to participate in an experiential learning experience that will teach you the necessary skills to become a competent *and* successful lawyer. What you should *not* expect is to be subject to an environment that involves any form of mistreatment or discrimination. Unfortunately, statistics from recent surveys by the LSO and the Law Society of Alberta (see Notes 1 and 2) show that articling students are sometimes subject to improper and/or inappropriate conduct during their articling. While articling is demanding and stressful, inappropriate, abusive, or discriminatory conduct will always be unacceptable.

**▲ IMPORTANT:** If you experience inappropriate, abusive, or discriminatory conduct as an articling student, know that the LSO has resources to help you; for example, the Member Assistance Program, Equity Supports & Resources, and the Discrimination and Harassment Counsel (DHC) and can be found as part of the practice supports and resources on the LSO website at: <https://www.lso.ca/>.

### WHAT THE FIRM EXPECTS OF YOU

At all times, the firm will expect you to be a dedicated professional willing to work hard and learn. This means that you will be expected to:

- show up on time for work every day;
- act and dress professionally;
- communicate professionally with the lawyers, staff, and clients;
- put in the work necessary to make deadlines (even if this means working on weekends or late into the night); and
- participate in firm events.

Having the right attitude is the first step to setting yourself up for success in your articling period. Be engaging and willing to take on tasks. Seek out work instead of waiting for it to come to you.

You will be expected to produce high-quality work, which requires you to pay attention to detail, ask questions, and spend the necessary time on your tasks to ensure that they are complete and meet your principal's standards. Over time, you will learn to do things quickly without being sloppy and cutting corners. It is all right if you take longer than a lawyer to do the same thing. That is to be expected because you are learning.

Remember that you are producing work that will be relied upon by others at your firm or office so that they may complete their work. Because of this, you will be expected to complete your work in the allotted time. If you are unsure of how much time a task or assignment should take you, the expectation is that you will ask your principal.



If you run into difficulties while completing a task, you will be expected to try to figure things out on your own first before going to the assigning lawyer or your principal. If this means that you may have to spend time doing some research, looking at templates or precedents, reading the Rules of Civil Procedure, or looking at other resources online or in a library, then you should do so. Ultimately, the firm expects you to take responsibility for your work.

### **OFFICE DECORUM: DRESS, POLITICS, AND ETIQUETTE**

Regardless of the size of the firm or office you article with or whether it is private practice, public sector, or in-house, you will be working in a professional environment. You must understand that as an articling student and a future lawyer, you need to make a good impression on the people you work with, clients, and those outside the office. In fact, etiquette, protocol, and conduct are so important that the LSO has codified rules respecting these in the Rules of Professional Conduct.



Most firms and offices, if not all, will have dress and etiquette policies that set out specifics on what is acceptable and expected of you as an articling student. In many cases, this will be covered in any orientation that you undergo. If you do not receive any orientation, make certain that you take the time to speak with your principal or student liaison about their policies or guidelines at your earliest opportunity. At a minimum, you should be mindful of your firm's or office's norms as demonstrated by the people around you. Until you become familiar with this, you should err on the side of caution by dressing and conducting yourself professionally.

At a minimum, you should adhere to the following as a guideline:

- When you begin your articling period, you will likely be advised of office hours and when you are expected to start work. Always show up for work on time, if not early. If possible, try to be in the office before your principal. At the other end, work as late as you need to but keep a balance. Try not to make a habit of leaving the office before your principal.
- Take the time to be helpful and show you are a team player. If you are in early, make coffee, put away dishes if there is a common kitchen, offer to help set up for morning meetings, etc. Make an effort to do things that others in the office will appreciate, show humility, and demonstrate that you are willing to do the little things.
- Ensure that you are aware of your firm's or office's dress code and dress accordingly. If there is no specific policy, dress professionally. Stick to the basics. Business suits in classic or neutral colours are best. Certain items of clothing can elevate an outfit from business casual to formal, such as a suit jacket, formal shoes, or a tie for men. It is prudent to keep these in your office so that you can be ready should you be called into an unexpected meeting or event. And while it should go without saying, make sure that your clothes and footwear fit well and are clean. Also be certain to look after your personal hygiene. The image you create by dressing professionally can go a long way, particularly when combined with a good work ethic and a good attitude.
- Always be courteous to the people at your firm or office. Never look down on anyone or think that a task is beneath you. Treat other staff, such as clerks, assistants, and receptionists, the same way you would treat your principal or other lawyers. There will also be many times when you will have to photocopy documents, send faxes, address envelopes, courier packages, and clean up a boardroom after a meeting. This is not menial work; it is part of the business of law.



## 2 ARTICLING AND PROFESSIONALISM

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- Do not get engaged in office politics. You are almost guaranteed to hear the complaints of lawyers, staff, and other articling students during your articling period. In some circumstances, you may run into groups or cliques within the office that have their own agendas, which can create tension and rifts among the people within the office. As much as possible, avoid these situations and groups. If you have a legitimate complaint or problem, take the time to speak with your principal or student liaison, in private, about the situation and see how it can be remedied. Never turn something into a bigger problem than it might be.
- Do not be tempted to discredit or undermine other articling students in an attempt to make yourself look better. These situations are easily seen through and only affect your reputation and trustworthiness within the office.



### **NETWORKING AND SOCIAL EVENTS**

As an articling student, you will be invited to attend networking and/or social events, particularly in mid- to large-sized firms. Even in smaller firms and offices, you may be invited to networking lunches and dinners. These events are an important part of business development for lawyers. As an articling student, these are opportunities to learn and to begin making relationships that will serve you in building your practice as a new lawyer.

At these events, it is important for you to understand that, even as an articling student, you reflect the firm or office. Etiquette and attire are very important. Your ability to interact with others, conduct yourself with courtesy and professionalism, and represent the firm or office in a positive light will be noticed by your principal and other lawyers. This can play a role in hire-back decisions.

If you are invited to any of these events and are unsure of what you should wear, how you should act, or any other aspect of event professionalism, speak with your principal or student liaison. It is always best to ask questions and seek guidance in advance.

Alcohol will be available at many of these events. Unless expressly told not to, it will be fine to have a drink with a guest, a client, or another lawyer, but always remember to be in control. If possible, try to abstain from drinking at any event so that you are always at your best and will never run into the misfortune of overindulging as this can be embarrassing for you and your firm or office and could affect your relationship with it.

### **WORKING WITH YOUR PRINCIPAL, LAWYERS, AND OTHER STAFF**

To ensure that you make the most of your articling experience, you will want to work closely with the others within your firm or office on a daily basis. As an articling student, you will likely want to accept anything and everything in terms of assignments, but you need to ensure that you manage this correctly. Volume does not mean quality. As part of your articling process, you will need to practise time management and learn to say no to assignments. This may be challenging at times, but it is necessary for you in order to maintain your health and ensure that you produce quality work. We will discuss these skills in Chapter 3.

Key to your learning will be to work closely with your principal. Your principal has taken on this role and gone through an application and approval process because they are committed to passing on their knowledge and to providing you with the experiential training required to start your career as a lawyer. Show your principal the same dedication. Be aware that there will be times when your principal may be too busy or out of the office and not readily available for you to seek advice or direction from. In these situations, seek the advice or guidance of senior lawyers or other trusted sources, such as law librarians or law clerks.

Try to set up weekly meetings with your principal to review your workload and progress on files and assignments, discuss any issues that you may be experiencing, and ask questions. You may also be asked to use a project management program that you can share with your principal. This will allow your principal to see what you are working on and the status of matters and to prioritize and assign matters to you. Unless expressly told otherwise, your principal is your priority, and you should allow them to help you manage your workload and assignments.

Before going to your principal or another lawyer overseeing assigned work about a problem or question, first try to work it out on your own. For example, if you run into a problem or are unsure about something relating to a litigation file, take the time to look through the Rules of Civil Procedure, the Ministry of the Attorney General website, or other resources to see if you can find the answer. Doing so will demonstrate initiative while familiarizing you with these resources. The same can be done in other practice areas by looking at precedents and reviewing secondary materials that will provide guidance. The answers are usually there, and it can be frustrating to a principal to be approached by an articling student who has not taken the time to look for the answer first. The same applies when you are dealing with any other lawyer who has assigned you work. Remember that part of your experiential and performance training includes fact investigation and legal research as well as practice management. Doing this initial work on your own will help improve your competency in these areas.



## 2 ARTICLING AND PROFESSIONALISM

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When working with other staff, always be respectful and understand that they also have knowledge and experience that you can benefit from. Law clerks and legal assistants in particular hold a wealth of knowledge about litigation and corporate processes and procedures, dealing with courts and clients, and where to find things when you need them, such as forms and filing fees. Staff will be able to show you how to do many of the necessary tasks required to run a practice. When time permits, ask staff to show you what they do and offer to help when possible. By taking an interest in what they do and building rapport with other staff, they will be more inclined to go out of their way to help you when you have questions or need some assistance. By treating others in the office with respect, you will add to a positive work environment, which will be noticed by your principal and other senior members of the office.



# 3 PRACTICAL SKILLS FOR ARTICLING

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## UNDERSTANDING THAT LAW IS BOTH A PROFESSION AND A BUSINESS

The debate has gone on for eons as to whether law is a profession or a business. As early as 1916, Julius Henry Cohen published his first book, titled *The Law: Business or Profession?* (Banks Law Publishing Company), examining this philosophical issue—a debate that continues into our current times, as can be seen with SJ Levine’s article titled “The Law: Business or Profession: The Continuing Relevance of Julius Henry Cohen for the Practice of Law in the Twenty-First Century” ([2012] 40:1 Fordham Urb LJ). There is no doubt that as a lawyer, you are a professional, with all the ethical and social obligations that come with it. But you also should appreciate that there is a distinction between the profession and the business.

As an articling student, you need to understand from a very early stage that the practice of law is a business for the purpose of generating profits in the same fashion as any other industry. Law firms, professional associations (e.g., law chambers), and sole practices sell legal services. They sell the **expertise**, the **knowledge**, and the **decision-making ability** of lawyers to legal purchasers. These are the commodities of lawyers. Even in the case of in-house counsel or public organizations, lawyers use these same skills to improve business decisions, keep within budgets, and otherwise help the organization keep costs down and stay profitable.

You also need to appreciate that as an articling student, you are a commodity. There is a business-like relationship between you and the firm, office, or organization. The firm or office, your principal, other lawyers, and staff invest time, knowledge, and resources into your further education and training. In return, you do work that, among other things, generates fees, adds value to a client’s file, and allows your principal and senior lawyers to focus their time on other client matters. In the case of in-house or public organizations, the trade-off is that the work you do helps to add value to the company or organization and assists in its goal of profitability or maintaining budgets.

## BILLING AND ACCOUNTING FOR YOUR TIME

### Billable Versus Non-Billable Time

As discussed in the previous section, the practice of law is a business. Lawyers have commodities that they sell to legal purchasers (i.e., clients). As an articling student, your expertise and knowledge are less than those of your principal or senior lawyers, but you still hold considerable value in your time and education. In private law, this is reflected in your “billing rate,” which will be less than that of more senior lawyers. However, even though your billing rate is lower, it is still valuable to the business of the firm or office.

By recording the amount of time that you spend working on a matter, you are billing. However, there is a distinction between “billable” and “non-billable” time. In general, when you are working on a task or assignment that moves a matter forward, this is billable time. This includes drafting documents, doing legal research, meeting with clients, reviewing searches, and preparing memoranda for other lawyers. Alternatively, joining your principal at a lunch with clients, attending a networking event, organizing files, or attending a mediation or court with a senior lawyer to observe does not move client matters forward and therefore will be considered non-billable time.

Regardless of whether the time you spend is billable or non-billable, you should be recording all of your time to show how you are spending your days. Speak with your principal about how they want you to record this time. Typically, unless it is clearly for events unrelated to a client matter, you should record your time as billable and allow your principal to decide if the time should be changed to non-billable or, in some instances, reduced in order to better reflect value to the legal purchaser. It is the billable time that ultimately forms the basis for client bills.

#### How to Docket

The way by which you record your time spent working on a client matter is called “docketing.” Most offices use a software program to record dockets.

For the purpose of docketing, time is broken down into units of 10. Each hour is composed of 10 units. Each unit is the equivalent of 6 minutes. For example, if you speak with a client on the phone for 6 minutes, you record this time as 0.1 hours. If you spend 30 minutes drafting a memo, this time will be recorded as 0.5 hours. Time will generally be rounded up to the next unit of time so that something that takes you 3 hours and 10 minutes to do would be recorded as 3.2 hours.

Docketing should be done on an ongoing basis. If your office uses a software program to record dockets, you should enter your time immediately upon completing a task or when you stop in order to do something else. This will take you some time to get used to, but by doing it on a regular basis right from the start, it will become easier to remember to do this. Unfortunately, if you choose to record your dockets at the end of the day or next morning rather than doing it on an ongoing basis, it becomes very challenging to properly record the time you spent on client matters, and you will inevitably lose time or forget things altogether.

If you spend time at a networking event or attending a training session or meeting with clients outside the office or after regular office hours, make it a habit to record this time in a journal or on your smartphone and then docket that time when you get back into the office.

Regardless of whether you are manually or electronically recording your dockets, always remember to include the client name and file number, the amount of time spent working on any task, and a detailed explanation of the services provided. Err on the side of caution by including more information about what you did than you think may be required. At least you will have a full accounting of your time and what you have done. Your principal or the senior lawyer overseeing the matter will review all the dockets entered into a file at some point and will see what work you put into it. If your time needs to be adjusted for the purpose of a client bill, let your principal or supervising lawyer make that decision.

## MANAGING YOUR TIME AND PRIORITIZING PROJECTS

As an articling student, you can expect to be assigned multiple tasks at the same time. Depending on the size of the firm or office you are articling at, these assignments will also come from multiple lawyers. Too often, articling students will say “yes” to every assignment or task they are asked to do. This can lead to considerable stress and uncertainty in terms of managing your time and prioritizing projects, and it may affect the quality of your work and your overall performance. The following tips will help reduce stress and allow you to stay on top of things:

- 1. Employ good time-management skills.** To accomplish this, you must proactively plan and monitor your time and assignments. Ask for due dates and keep track of the amount of time that you are spending on projects. Small tasks should take smaller amounts of time to complete. If you are spending large amounts of time on smaller projects, you will quickly run up against deadlines, requiring you to work later hours or weekends. In some instances, other projects may be affected or deadlines may be missed. If you are unsure how long something should take to complete, speak with your principal or the assigning lawyer. This will help you manage your time more effectively.
- 2. Develop strong planning and organization skills.** By being organized, you will maximize your productivity, increase your efficiency, and ensure that you do not miss any deadlines. There are many apps designed to help you manage your workload, or you can simply use the calendar on your computer. You should regularly meet with your principal to review and discuss your workload and prioritize assignments. In addition to having deadlines set out in your app or calendar, you should employ a tickler or reminder system. By scheduling notices well in advance of due dates, you will receive reminders that will keep you mindful of time. Ticklers can be used for everything from due dates to meetings, telephone calls, and limitation periods.



### 3 PRACTICAL SKILLS FOR ARTICLING

**⚠ IMPORTANT:** The LSO identifies a tickler system as a notification system that should assist in, among other things, flagging limitation periods and deadlines (see the LSO’s Practice Management Guidelines online at: <https://lso.ca/lawyers/practice-supports-and-resources/practice-management-guidelines>). A simple tickler system can be set up by using the calendar on your computer to enter all important dates and set reminders well in advance of those dates.

#### ACTIVE FILES (March 1, 2011)

No.	Supervising Lawyer	File Number	Client Name	Description of Matter	Court	Opposing Counsel	Responsible Persons	Hourly/Contingency	File Location	Instructions	Date Required
1.			██████████ ██████████	Rescission claim	Superior Court ██████████	██████████ ██████████ (██████████)			Litigation	Review and revise OSC application. Prepare discovery plan.	
2.			██████████ ██████████	Shareholder dispute/ oppression action	Superior Court Toronto (Commercial List)	██████████			Litigation	Finalize minutes of settlement.	
3.			██████████	Franchise rescission/ arbitration	Superior Court ██████████	██████████ (██████████)			Litigation	Perfect appeal.	
4.			██████████ ██████████	Commercial client – restructure and incorporation					Corporate	Review with ██████████	
5.			██████████ ██████████	Planning Act/ contract – real estate dispute	Superior Court ██████████				Real estate	Bring application to strike term in purchase agreement.	

- 3. Maintain an organized workspace.** Start by ensuring that your physical workspace is uncluttered and that files and other materials are placed where they are easily accessed but out of the way. When possible, use a cabinet or filing system to store these items so that your desk stays clear. When drafting materials, correspondence, or other documents on your computer, save these in an organized manner that allows you to quickly access the most recent documents. Archive or delete older versions to keep your electronic files uncluttered and use the appropriate file naming system so that you and others can quickly access this work. By doing this, your workspace will feel less overwhelming and stressful, you will greatly reduce the risk of losing things (and the time spent finding them), and you will be more efficient, allowing you to get more done in less time.
- 4. Itemize and prioritize your tasks.** This will ensure that important and urgent matters are dealt with in priority. Creating a specific list that can be edited as you complete tasks or as new ones come in is a common way of organizing your assignments. You can objectively determine the priority of matters by knowing if there are limitation periods or codified timelines (for litigation), closing dates or deadlines for contracts or transactions, or general due dates and assessing the amount of work required to complete the task within the time available. Similar to time management, if you are unsure of how to prioritize your work, speak with your principal and have them give you guidance on what to prioritize.



## MANAGING FIRM/LAWYER EXPECTATIONS

As an articling student, you will occasionally find yourself besieged with work from lawyers in your office. Too often, articling students will respond with an unconditional “yes” to every assignment, which can lead to an overwhelming amount of work. Even when you try to prioritize by asking when a lawyer wants something completed, they may tell you that it is urgent (even when, in reality, it is not urgent).

Although you may feel obligated to take on all the work given to you, you must try to maintain a level of control, particularly when it comes to prioritizing your assignments. While you may not want to tell a lawyer that you cannot do something within the time frame they have requested, it is incumbent upon you to do so. Otherwise, you risk losing control of your time and priorities, leading to considerable stress and lower-quality work as you labour to complete everything in the limited time you are given.

To manage these situations, you can negotiate deadlines with lawyers. Be truthful about the amount of work you have and the assignments that you are balancing. If you have matters that are clearly a priority, then let the lawyer know this as part of your negotiation. Tell them that you are happy to do the work and appreciate that they came to you with it, but inform them that you require more time. Senior lawyers will generally respect this and appreciate your efforts. It will indicate to them that you understand when to prioritize an important project and that you can be relied upon to complete crucial tasks on time and without arbitrary delays. The only time when it is inadvisable to say “no” is when the assignment is coming from your principal. Even then you should explain your workload and try to negotiate timelines based upon priority.

In some instances, your efforts to negotiate a deadline will not be fruitful. If appropriate, let the lawyer know that you will need to review it with your principal so that you can adjust your workload in order to meet the new demand. In many instances, your principal will address the issue with the lawyer and negotiate for you or simply decide on it for you. This will take away any concern about upsetting other lawyers by having to decline their requests.

## PROBLEM-SOLVING: WHAT TO DO BEFORE GOING TO YOUR PRINCIPAL

Throughout this section, we discuss situations when you should meet with your principal to resolve problems or organize your workload. Keep in mind, however, that even though your principal has made a commitment to you and your learning, they will also be extremely busy with a full practice, and there will be occasions when your principal will not have a lot of time.

As part of your articling experience, it is anticipated that you will develop critical thinking and problem-solving skills. There will be many instances when you will need the experience and guidance of your principal, but this does not mean that you should turn to them for quick answers instead of making an effort to figure things out independently. Articling is an experiential learning experience, and the best way for you to learn is to work through questions and problems. Doing so will help you retain information better and become more self-sufficient in your early years of practice.

For example, if you are working on a litigation file and are given specific tasks to complete, there are many resources that you can turn to for answers to questions you may have before going to your principal. First, review correspondence from the assigning lawyer to ensure that they did not already provide you with the answer. Next, if you are working in a firm or office with other articling students, speak to them. If you still do not have an answer or are unsure about the information provided to you by another articling student, review the Rules of Civil Procedure (the “Rules”). The Rules contain all the information you should need to answer questions about litigation processes, forms, and procedures.

Similarly, if you are working on a commercial matter, a real estate transaction, or an estate issue, there are many resources available to you, including Government of Ontario websites with complete information on processes and forms and secondary sources such as annotated legislation, treatises, this manual, and precedents to review in an attempt to answer your own questions. (An excellent secondary source for this information is EA Gillis’s 2018 book, *Advanced Corporate Legal Procedures*, 2nd ed. [Toronto: Emond Publishing].) Once again, by going through the effort of working through your questions,

### 3 PRACTICAL SKILLS FOR ARTICLING

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you will learn much more than if someone were to simply give you the answer. You will retain this knowledge, and it will make you a better and more efficient lawyer.

**⚠ IMPORTANT:** If you still have questions or cannot find the answers you need, arrange to spend time with your principal or the supervising lawyer who assigned you the matter and work through it together. You can describe how you attempted to work through the question or problem before seeking help. Your principal or a senior lawyer will be more than pleased to work with you to figure out the answers if you have first tried on your own.



# 4 PRACTICE ASPECTS OF ARTICLING

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The purpose and approach of this chapter are to provide you with some guidance on and insight into many of the tasks that you are certain to be asked to do, or become engaged in, as an articling student. The information in this section is intended to give a general guideline to each topic. While this information is non-exhaustive, many of the underlying principles in these topics can be applied to other tasks that you may be asked to do. By way of example, where we discuss motions and court decorum, the same fundamentals will apply in administrative proceedings, criminal matters, and small claims court. In those circumstances, you only need to modify what you do based upon the specific forum you are in. Also, while some of these topics may seem elementary (e.g., correspondence and meeting with clients), you need to appreciate early in your role as an articling student that there can be serious consequences as a result of being casual about small things. As a lawyer, you must always be “on” and aware of all the little things that can lead to potential problems. The same applies to you as an articling student. If you start to employ these guidelines during your articling, you will have a better experience and be better prepared to start practice.

## CONFIDENTIALITY

As an articling student, you are bound by the Rules of Professional Conduct as you would be if you were licensed. Among the many things you must be aware of as an articling student, client confidentiality is essential.

Rule 3.3-1 requires that a lawyer (and, in your case, an articling student) shall, at all times, keep all information concerning the business and affairs of all clients *strictly* confidential. Only in specific circumstances are you allowed to divulge any information respecting a client or their file(s). The issue of client confidentiality is so important that you should carefully and thoroughly read and understand Section 3.3 of the Rules of Professional Conduct. If you have any questions or are uncertain as to when or what information may be divulged, *always* speak to your principal or supervising lawyer *before* releasing any



information. The issue of confidentiality can be tricky, and it may take some time to fully understand what information can and cannot be disclosed. Always err on the side of caution by not disclosing information until you obtain instructions from your principal or supervising lawyer. When you do, make a note to file indicating who authorized its disclosure and when.

Also, you should understand that the obligation to keep client information confidential extends to conversations and communications with others inside and outside your office. While you may want to discuss a file with a colleague in the office or with friends or family, you must not communicate any information, particularly if it can identify a client or a file. It is always best to only discuss files with the people you are directly working with and to otherwise not discuss files at all. A breach of confidentiality is significant and can lead to disciplinary action by your firm or office. In the case of serious breaches, it can also lead to disciplinary action by the LSO. If asked about work by friends or family, you can tell them about your general experiences, but politely let them know that you cannot discuss any files.

## CORRESPONDENCE AND COMMUNICATION (WITH OTHERS INSIDE AND OUTSIDE THE FIRM/OFFICE)

Lawyers and law students have a tendency to use legal jargon when communicating to others. The use of legalese is associated with a form of communication by lawyers intended to insulate against laypeople and create an air of importance and distinction. Contrary to this, when you are communicating with others, you need to be clear and concise, even when directing your communication to other lawyers or drafting documents for court. Plain language will always serve you best unless you are referring to specific legal terms, such as *contra proferentem*, *inter vivos*, and *mens rea*.

**▲ IMPORTANT:** For a list of common legal terms, see Emond's Glossary of Legal Terms at: <https://emond.ca/resources/glossary-of-legal-terms.html>.

February 13, 2020

Via Fax: [REDACTED]

[REDACTED]

Dear [REDACTED],

**Re: Outstanding Account owed to [REDACTED] Canada Inc.**

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Thank you for your letter dated [REDACTED], 20[REDACTED].

Contrary to the information provided to you by [REDACTED], I am informed by [REDACTED] Canada Inc.'s principal that there was, in fact, an agreement for this work to be done remotely. This agreement was made between [REDACTED] and [REDACTED] agents or representatives working directly with [REDACTED] Canada Inc.'s principal. Nonetheless, the work was completed and [REDACTED] received the benefit of it. Regardless of any position being taken by [REDACTED] and/or [REDACTED], our client is entitled to payment on a *quantum meruit* basis, at the very least.

With respect to the suggestion by [REDACTED] that it has no evidence of work completed for the period of time in question, I am informed that all work product completed and invoiced for is available on the computer that was immediately taken into [REDACTED] possession following termination of the Consulting and Confidentiality Agreement. I trust that you will immediately advise [REDACTED] to preserve this evidence considering the potential for this matter to escalate toward litigation. [REDACTED] Canada Inc.'s work will also be proved by email communication between [REDACTED] Canada Inc. and [REDACTED]. The suggestion by [REDACTED] or [REDACTED] that [REDACTED] Canada Inc. seeks payment without completing the work is false, high-handed, and implies that our client is acting fraudulently. I know that you appreciate the seriousness of alleging fraud against a party.

I am certain that your client understands that it is required to act in good faith with its contractor, [REDACTED] Canada Inc. I am also certain that [REDACTED] understands its common law duty to act honestly in the performance of the contract with [REDACTED] Canada Inc. With this in mind, I hope your client will reconsider its position respecting payment of the outstanding invoice so that we can avoid the commencement of an unnecessary action.

I look forward to hearing from you.



In every correspondence, be professional in your tone and language. Before sending any correspondence (including emails), have your principal or supervising lawyer review them, even if only a few sentences. While this may sound unnecessary, there is an art to writing proper and professional correspondence. It is important to go through this review process until your principal indicates otherwise. Do not consider it demeaning or beneath you: it is for your benefit. In law, something as simple as a comma in the wrong place can make a significant difference to the way your correspondence is read and interpreted. When writing to clients or laypeople, make sure to use plain language and do not overcomplicate your correspondence.

Tone is also critical as it can be interpreted in different ways and can unintentionally create hostility. You may run into situations where there is tension between parties and lawyers. In these circumstances, it is particularly important to have your correspondence reviewed. Responding immediately to communication from another party without pause for thought, or responding in kind, can inflame situations and make matters more difficult. If you receive correspondence from another party that is antagonizing, belligerent, or potentially unprofessional, it may be more appropriate for your principal or supervising lawyer to respond. If you are ever in doubt about how to deal with such a situation, speak to your principal.

When communicating by phone, use the same principles as you would with written correspondence. At all times, be professional, particularly when the call is related to a disputed matter and you are dealing with other articling students or lawyers. If you are trying to negotiate or work out an issue (even something as simple as scheduling dates for a motion), do not interject, and let the other party complete what they are saying before responding. By doing so, you have all the information, know the position of the other party, and are not assuming anything. You can then respond with your own position. If the other party starts to interject as you are responding, you are in a position to ask them that they provide you with the same courtesy. If you start the conversation and the other party interjects, simply ask that they allow you to complete what you have to say and assure them that they will have an opportunity to respond.

When you complete any calls with another party involving a client matter where decisions are made on such things as schedules, terms, meetings, or anything else that affects a file, send an email to the other side confirming the agreement. If the relationship with the other party is acrimonious, draft a memo to file that reflects the communication. This will act as a record in the event that there is a later dispute over what was discussed, what was agreed to, or how you acted during the call.

When speaking with clients on the phone, keep your language simple, be patient, and take extra time to explain things, if needed. Ensure that clients understand your conversation and the information that you are providing. If you are receiving instructions from them, make sure to repeat their instructions and have them confirm to you that you properly understand them. Similar to when you are dealing with another articling student or lawyer, if your conversation involves decision-making, instructions, scheduling of meetings, or anything involving the client file, send an email to the client confirming what you discussed and copy your principal or supervising lawyer. It is also a good habit to copy the email or make a separate memo to be put in the client's file so that there is a written record of the call and what was discussed.



**NOTE:** *Additional information respecting communications with the LSO, lawyers, and others (including the public and the press) can be found in Chapter 7 of the Rules of Professional Conduct.*

## MEETING WITH CLIENTS

During your articling period, you will likely be asked to attend meetings between your principal or a supervising lawyer and clients or other parties. Meetings that are unproductive will leave people, particularly clients, feeling like they wasted their time and money.

Organization and preparation are key to a productive meeting. If you are invited to participate in a meeting, ask how you can assist in scheduling rooms, sending invitations to the parties that will be attending, preparing and distributing agendas, or setting up.

Always prepare for the meeting by reviewing the file (unless it is an initial intake meeting) or any other information that will be necessary for you to know so that you can learn from the meeting or, when necessary, assist the lawyer who invited you.

You should always try to be engaged in any meeting that you attend. To that end, make certain to attend with your laptop or notepad and take notes. These notes can be used to prepare minutes or to record what was discussed, instructions, next steps, or any other issues. These records can then be formalized and kept with the file for reference at any time. You can also use these notes to send confirmation of instructions to clients or confirm anything else that was agreed to between the parties during the meeting.

In the event that the meeting is an intake meeting or for the purpose of gathering information for a file, be certain to pay close attention to how your principal or supervising lawyer conducts the interview. Developing strong interviewing skills is important as they are something you will employ throughout your career.

**▲ IMPORTANT:** For a greater overview and guidance on interviewing skills in a practical context, see [\*The Comprehensive Guide to Legal Research, Writing & Analysis\*, 3rd ed.](#) and [\*Clinical Law: Practice, Theory, and Social Justice Advocacy\*](#), both from Emond Publishing.

After the meeting, make sure to help clean up so that the room is ready for the next people using it. In some circumstances, it may be the responsibility of some staff to do this, but unless expressly told this is the case, do not take the attitude that it is someone else's job to do it. In addition to this being your responsibility as an articling student, it will look good on you to take this responsibility and show that you have a vested interest in the cleanliness and presentation of the office. It may be a small thing, but it will be noticed.

### FILE MANAGEMENT

During your articling period, you will be responsible for maintaining client files. File management is critical as having an organized file means that you will be able to find things when you need them and will have a complete record of all communication between all parties involved (including clients) and quick access to accounting and other information. It is also important that files are maintained and organized so that others may review them and retrieve information in your absence.

Most firms and offices will have a filing system in place, which you will need to learn. Regardless of the system used, your office should have a record or manual of filing procedures. Seek this out and become familiar with the filing system so that you can maintain continuity and consistency.

Ensure that you update files regularly. This can be done by scheduling time each day or week to file documents, correspondence, or anything else that should be placed in the file. Without regular and constant filing and maintenance, it will be easy to lose important documents. It will also allow you to catch things that are misfiled and put them in their proper places.

### LEGAL RESEARCH

As an articling student, you will do a lot of legal research and will write legal memos setting out your research. Hopefully, you will have an opportunity to extend this into the preparation of facta, mediation briefs, and oral arguments before a court or tribunal.

Although all students are taught legal research and writing in law school, there will be an elevated level of expectation in the quality and thoroughness of your work when you are articling. At this point, your work is no longer for marks, and it may have a significant impact on others. It is likely for this reason that legal research is listed first in the set of skills in Rule 3.1-1(c) of the LSO Rules of Professional Conduct and requires the utmost competence.

In order to meet this level of competence, you should employ planning as part of your legal research and make a record of your research. When planning your legal research, you need to consider the most thorough *and* efficient approach. Your research plan should consider the tools and resources that you require to obtain your results and ensure that you are organized. Recording your research safeguards against unnecessary duplication and will account for changes to your research plan based upon the results of your findings.

A research plan must consider all resources available to you, including both primary and secondary sources. Do not limit yourself to what can be found online. Secondary sources such as your law school casebooks and other professional publications will be a significant source of information for you. You must consider the strengths and limitations of every resource at your disposal. Depending on the size of your firm or office, you may have limited access to secondary material. However, this should not be an obstacle to you. Secondary material is available to you through law libraries found at various courthouses and law associations.

Your research plan should include, without limitation, the following considerations:

- determine the facts and issues for analysis;
- determine your research parameters;
- determine the legal topic and identify legal keywords;
- identify and connect material facts to legal concepts;
- identify the jurisdiction—federal, provincial, municipal, foreign, etc.;
- determine if the issue is governed by any statutory scheme, common law, or other civil law; and
- identify sources most likely to provide you with the legal information you require.

When recording your research, systematically record your findings. This should include the full case name and citation. Also record all statutes, regulations, and policies that may be relevant to the issues you are researching. Your research record should include:

- the full case name and citation;
- any noting up of cases to identify subsequent use of the case or any appeals that may affect the case you are relying on;
- the full name, citation, and currency of any statute, legislation, or regulation; and
- the title, author, chapter and/or page, and publication date for any secondary sources.

### Research on Privative Clauses for

The court will consider the privative clause in the context of the legislation as a whole. In *Hibernia Management and Development Company Ltd. v. Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2008 NLCA 46, a clause in one section said that the decision wasn't reviewable in any court. However, another section did not mention court, but rather said that the decision was not subject to review. The court interpreted the second section to be a partial privative clause, even though the clause said that decisions were final and not subject to review.

It should also be noted that courts will intervene even when there is a full privative clause. The inclusion of privative clauses is always taken to signal deference by the courts, but it is still only a signal. The court in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, determined that the presence or absence of a privative clause will influence, but not determine outright, the standard of review. This (1) protects individual rights; (2) because of division of powers (to protect constitution role of superior courts and existing balance of power in the judicial appointments process); and (3) jurisdiction (tribunal may be acting outside of their statutory jurisdiction).

If a statute states that a certain decision may be appealed to a particular court, it signals that the legislature intended to permit courts to review a decision and therefore it is not determinative. Furthermore, statutes allowing appeals on a basis of mixed fact and law or just law indicate a broad right of appeal. However, it is important to note any procedural points with respect to time limits, who to appeal to, notice of appeal to particular parties, and the basis and extent of appellate jurisdiction. This might all be spread out over several statutes. Start with the enabling statute, then look at the subject-specific statute, then look at the general legislation (i.e., omnibus style legislation that allows appeals on particular issues).

### Full Privative Clauses

"[O]ne that declares that decisions of the tribunal are final and conclusive from which no appeal lies and all forms of judicial review are excluded," *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1977] 2 SCR 890. Full privative clauses use broad language in order to preclude review.

### *Why do courts intervene even when there is a full privative clause?*

This has generated debate in the legal community. There are tensions forthwith between the rule of law and parliamentary supremacy. Courts will intervene even where there is a full private clause on basically three occasions: to protect individual rights, division of powers, and jurisdiction. Protecting individual rights rings hollow in the *Charter* era. Nevertheless, the notion is that power may be abused through coordinated acts of the legislature and parliament that must be rectified by the courts. Division of powers is a factor, because the constitutional role of the courts allocated by s.96 of the Constitution must be protected, especially with the balance of power in the judicial appointments process. And with jurisdiction, administrative agencies cannot define their own powers since they are delegated by the legislature through the enabling statute. Therefore, courts need to review when the agencies are challenged with operating beyond their jurisdiction. **The problem therefore is that it may be easily used to justify any type of intervention.**

### Partial Privative Clauses

Partial privative clauses state that decisions are final and conclusive or that a decision-maker has sole or exclusive jurisdiction without expressly precluding any review. It can only be one of these things: both would connote a full private clause.

### Ontario Municipal Board

Appeals from the Ontario Municipal Board are governed by the *Ontario Municipal Board Act* (the "Act"). Section 96 of the Act covers the appeal process. On its face, section 96(1) appears to provide a broad right of appeal because it permits appeals but only on a question of law.

However, section 96(4)(a) states that "every decision or order of the Board is final." (The courts impute that such statements do not prevent the constitutional role of court from being exercised).

Furthermore, section 96(4)(b) states that "no order, decision or proceeding of the Board shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari* or any other process or proceeding in any court." This appears to be a full privative clause, suggesting a high degree of deference to the Ontario Municipal Board.

### Cases

"Madam Justice Pardu, writing for the Divisional Court in *Mississauga (City) v. Erin Mills Corp.* L [2003] O.J. No. 638 (Ont. Div. Ct.), par. 17, observed that the privative clause contained in the Ontario Municipal Board Act, R.S.O. 1990 does not apply to appeals on a question of law," *London Development Institute v. London District Catholic School Board* (ON Div. Court 2004).

**"The Board is a specialized tribunal and is entitled to deference with respect to findings** involving its jurisdiction in municipal planning matters. The Board's decisions are protected by a **privative clause found in s. 96(4) of the Ontario Municipal Board Act, R.S.O. 1990, c.0.28** ("the OMB Act") and the Court will not interfere, unless the decision is patently unreasonable," *London (City) v. Ayerswood Development Corp.* (ON Div. Court 2002).

"The Board is a quasi-judicial tribunal with expertise in dealing with, among other things, the requirements of applications contemplated by the Planning Act. The work of the Board is protected by a privative clause in s. 96(4) of the Ontario Municipal Board Act. Therefore, on an application for judicial review, the impugned decision is entitled to a high degree of deference and this court will not interfere unless the decision is patently unreasonable. See: *Concepcion, Re* (1994), 30 O.M.B.R. 449 (Ont. Div. Ct.)," *Stein-Peters v. Ontario (Municipal Board)* (ON Div. Court 2001).

If the case has anything to do with the *Expropriations Act*, look at *Antim Truck Centre Ltd. v.*

*Ontario (Ministry of Transportation)* (ONCA 2011) where the court held that because of a section in that act, the privative clause did not apply to cases involving that act.



With respect to judicial review applications based off of section 96(1) the Ontario Court of Appeal in *Bramport Shopping Centres Ltd. v. Peel (Regional Municipality)* (ONCA 2004) has said the following:

35 There is no privative clause protecting the Board's decisions when they come before the Divisional Court on appeal with leave pursuant to s. 96(1) of the Ontario Municipal Board Act. This suggests a less differential standard of review.

36 The appeal to the Divisional Court can only be on a question of law. Thus, what is reviewed by the court is a finding of law not one of fact. In this case the legal question is the interpretation to be given to the term "conflict" in a regulation to the 1997 DCA. This is not the Board's home statute nor is there any other reason to presume that the Board has unique experience in interpreting it. Neither is it apparent that the Board's general expertise in matters of planning and land use is engaged in defining this term. The Board would seem to have no greater expertise than the court in giving meaning to the concept of "conflict"<sup>11</sup> between a contract and a by-law. This points to closer scrutiny of the Board's decision.

This appears to conflict with jurisprudence on section 96(4), where the courts have held (see above) that the standard of review is patent unreasonableness.

The court in *DeGasperis v. Taranto (City) Committee of Adjustment*, however, held that:

30 In the case at bar, however, the Act is the Board's home statute and there is good reason to presume that the Board does have a unique experience in interpreting it" in relation to the provisions dealing with minor variances. In *London (City) v. Ayerswood Development Corp.*, [2002] O.J. No. 4859 (Ont. C.A.), the Court of Appeal held that a reasonableness standard should be applied to decisions in which the OMB is interpreting its own statute. A similar analysis was made and the same conclusion reached by this Court in *Eastpine Kennedy-Steeles Ltd. v. Markham (Town)*, [2004] O.J. No. 644 (Ont. Div. Ct.), a case involving another provision of the Act. Accordingly, I conclude that reasonableness is the standard of review that must be applied here.

The conclusion may therefore be that the standard of review, when the Ontario Municipal Board is interpreting its own statute, is reasonableness. This is typical with other administrative bodies. However, the ONCA has suggested that when the OMB is interpreting other statutes, the standard is correctness.

The courts have suggested that section 96(1) provides no privative clause, but only with respect to judicial review applications on a question of law. The courts have also suggested that section 96(4) provides a private clause that warrants a level of deference equal to patent unreasonableness. Patent unreasonableness used to be the highest standard of three that the courts would apply (the others being reasonableness *simpliciter* and correctness). Patent unreasonable no longer exists as standard. The standards of review are now reasonableness and correctness.

No cases found with respect to an injunction.



# DRAFTING DOCUMENTS

## Legal Memoranda

One of the many tasks you will be asked to do will be to prepare a legal memorandum for your principal or other lawyers. These documents are internal and the means by which you will communicate your legal analysis to your principal or supervising lawyer. Based upon the information you provide in the legal memorandum, others will make decisions on files that will affect legal positions and the advice given to clients.


The purpose of the memorandum is to provide a thorough analysis of the law that applies to legal issues. Your legal memoranda will contain information used to make legal decisions and/or provide clients with legal advice, so you should ensure that they are objective, neutral, and formal.

The organization of your legal memoranda is of great importance. An organized memorandum will be easy to navigate and understand and allows your principal or supervising lawyer to go directly to specific parts of the memorandum as needed. Your memorandum may also be the basis for a legal opinion that will be presented to clients. If this is the case, an organized memorandum will allow the information to be easily transferred into the form of an opinion letter.

A strong legal memorandum should be organized in the following manner. Be certain to use headings so that the memorandum remains organized and is easy to navigate:

- **Introduction.** An introductory paragraph addresses the exact assignment given to you. It should set out the purpose for the research and succinctly outline your method of researching the legal issues.
- **Facts.** List all the facts provided to you. The facts will come from the client, your principal or assigning lawyer, and any documents that you are provided with. Be certain to identify the parties involved in the matter and only include relevant facts. Present the facts accurately and objectively. Once again, be certain to organize your facts in a manner that will make sense to the reader: often facts are best presented in a chronological manner.

- **Legal issues.** List all the legal issues that you identify or are raised by the facts and/or dispute. Make sure that the legal issues are relevant and set them out in the form of a question. Number each issue and ensure that you present them in a form that is broad enough to provide for a full discussion of the law.
- **Brief answer.** This section provides a brief conclusion to the legal issues raised and introduces your discussion of the relevant law. State your conclusions clearly and concisely, with brief factual and legal reasons.
- **Discussion.** Address each legal issue separately. Analyze the law, apply it to the facts you identify, and provide a legal opinion respecting the likely result. Include subheadings to organize your discussion. The following is a useful way of organizing your discussion:
  - **Legislation.** Discuss any relevant legislation. Consider both statutes and regulations if relevant to your issues and facts. If necessary, consider any bills in progress that may affect the client in the future once the bill comes into effect.
  - **Case law.** Set out all the relevant case law. Where the case is analogous, set out the facts, the court's findings, and its reasoning. If the case law is not analogous but establishes first principles or foundations that will be relevant to your client's facts or legal issues, set out how the case law will negatively or positively influence your client's matter.
  - **Summary of legal principles.** Summarize the legal principles established by case law and legislation. Provide a general statement of the law.
  - **Application of the law to facts.** Apply the relevant law to your client's facts in a logical order. Include any legal arguments that support your client's position. If the case law or legislation is not favourable, include legal arguments that attempt to differentiate/distinguish your client's case from any binding law.
  - **Conclusion.** Provide a summary of the client's position. Summarize each issue by explaining the relationship of the law to the client's case.

 **NOTE:** For a complete overview and guidance on legal research and the preparation of legal memoranda and opinion letters, see [The Comprehensive Guide to Legal Research, Writing & Analysis, 3rd ed.](#) from Emond Publishing.

Dear \_\_\_\_\_ :

**Re:** Legal memorandum relating to

I am asked to provide you with an opinion setting out potential legal options in regards to \_\_\_\_\_ Ontario Inc., and its agreement with \_\_\_\_\_ (“\_\_\_\_\_”), \_\_\_\_\_ (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”), dated \_\_\_\_\_. In particular, you asked for a determination of the most suitable course of action that may be taken in light of the circumstances, outlined below.

**Qualifications**

Based on the documents and information provided to us, I prepared the following:

1. List of the documents in our possession;
2. A brief outline of the facts which you have provided to us;
3. An analysis of the corporate governance of \_\_\_\_\_ Ontario Inc.; and
4. An analysis of what we believe to be your best option with respect to your current situation.

As a firm, we are qualified to render opinions only as to the laws of the province of Ontario, including relevant federal laws of Canada, and accordingly I express no opinion as to the laws of any other jurisdiction.

To date, I reviewed only those facts and documents which the client provided to us. I ask that you advise me immediately if my understanding of the facts, as set out below, is incomplete or inaccurate in any way or if additional facts or documents become known to you from the client.

List of Documents in Our Possession

1. Agreement for the admittance of new shareholders (translated from the original document written in \_\_\_\_\_), dated \_\_\_\_\_; and
2. Corporate Minute Book for \_\_\_\_\_ Ontario Inc.

**1. Facts Provided by the Client**

1. \_\_\_\_\_ (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”) are the directors and 100% shareholders of \_\_\_\_\_ Ontario Inc. (the “Corporation”);

2. ██████ and ██████ each equally hold 50% of the shares of the Corporation;
3. The Corporation owns a 1.75 acre property, located at the intersection of ██████ and ██████, in the town of ██████ (the “Property”);
4. The Property is subject to certain easements and/or zoning restrictions, which at all relevant times were to knowledge of all parties;
5. On or about ██████, ██████, ██████ and ██████, entered into an agreement with the Corporation to purchase 50% of the Corporation’s shares (the “Agreement”);
6. The Agreement was prepared by the parties in ██████ and not reviewed by legal counsel;
7. The Agreement was subsequently translated into English by a certified ██████ translator/interpreter, ██████;
8. The Agreement sets out all of the terms as understood and agreed upon by the parties and was signed by each individual, including ██████;
9. According to the terms of the Agreement, ██████ and ██████ were to each purchase 20% of the Corporation’s shares, and ██████ was to purchase 10% of the Corporation’s shares;  
(██████, ██████ and ██████ will hereafter be referred to as the “New Shareholders”)
10. The New Shareholders paid approximately \$██████ CDN as a deposit pursuant to the Agreement, which is being held by ██████, in trust, on behalf of the Corporation;
11. At all relevant times ██████ was aware of the payment of the deposit by the New Shareholders;
12. After entering into the Agreement, and the payment of the deposit by the New Shareholders, ██████, a telecommunication company, initiated efforts to erect a communication tower adjacent to the Property;
13. Due to ██████ effort to erect said tower, ██████, on behalf of and with the approval of the New Shareholders, ██████ and ██████, retained the services of a lawyer, ██████ (“██████”), in an attempt to prevent ██████ from same;
14. Through ██████ efforts, all parties became aware that certain easements and/or zoning restrictions could be removed and/or resolved, ultimately increasing the value and usability of the Property;
15. After ██████ learned that the easements and/or zoning restrictions could be removed and/or resolved, he refused to proceed with the Agreement;
16. ██████ denies the validity and/or enforceability of the Agreement altogether, alleging that he did not receive the New Shareholder’s deposit and that the Agreement did not specify a closing date;

17. [REDACTED] subsequently retained the services of a lawyer, [REDACTED], to enforce his position;
18. The New Shareholders retained the services of a lawyer, [REDACTED], to protect their contractual interests against [REDACTED] and the Corporation.

### 2. Corporate Governance of [REDACTED] Ontario Inc.

#### Officers of the Corporation

Based on the Corporation Profile Report for [REDACTED] Ontario Inc., dated [REDACTED], there are two directors for the Corporation, [REDACTED] (the president) and [REDACTED] (the secretary).

As the president of the Corporation, [REDACTED] is the chief operating officer, and has general supervision of the business and the affairs of the Corporation.<sup>1</sup>

As the secretary of the Corporation, [REDACTED] has the general responsibility of keeping notes on meetings of the board and/or shareholders, as well as keeping the books, papers and records belonging to the Corporation.<sup>2</sup>

#### Standard of Care

As directors of the Corporation, [REDACTED] and [REDACTED] must exercise their powers and discharging their duties in good faith and in best interest of the Corporation. Furthermore, they shall exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.<sup>3</sup>

#### Meeting of Directors

Meetings of the board of directors may be held at any time and at any place. While meetings of directors are generally held in-person, with the consent of both directors, a director may participate in a meeting of the board by telephone or other form of electronic communication.<sup>4</sup>

Both Directors must be present at a meeting of the board.<sup>5</sup>

Notice of the time and place for the holding of a meeting of the board shall be given to each director no less than two (2) days (excluding Sundays and statutory holidays) before the date of the meeting. Notice is not necessary where all directors are present and none object to the holding of the meeting.<sup>6</sup>

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<sup>1</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 5.4(a).

<sup>2</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 5.4(d).

<sup>3</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 6.1.

<sup>4</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 4.1.

<sup>5</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 4.7.

<sup>6</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 4.4.

### Meeting of Shareholders

The board of directors or the president may at any time call a meeting of shareholders for any business which may reasonably be brought before a meeting of shareholders.<sup>7</sup>

Notice of the time and place of the meeting shall be sent to directors and shareholders, not less than ten (10) days and not more than fifty (50) days before the date of the meeting, and shall include the nature of the meeting to be held.<sup>8</sup>

The meeting may be held anywhere the board determines, or in the absence of such determination, at the place where the registered address of the Corporation is located.<sup>9</sup>

As [REDACTED] and [REDACTED] are the two sole shareholders, holding an equal number of shares, they must both be present to effectively hold a shareholders' meeting.<sup>10</sup>

### Notice

Any notice required to be given to the Corporation's shareholders or directors must be: (1) delivered personally, (2) delivered to their personal address, (3) mailed to their address by ordinary mail, or (4) sent by any means of transmitted or recorded communication.<sup>11</sup>

### 3. Legal Issues

The legal issues raised by the facts and dispute between the parties include:

1. Is the Agreement valid and/or enforceable by the New Shareholders?
2. What remedy is available to shareholders whose rights or interests are disregarded?
3. Is the conduct of the major shareholder(s) sufficient to give rise to oppression?
4. What is the most appropriate and efficient way to enforce the New Shareholders rights?

### 4. Brief Answer

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<sup>7</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 7.2.

<sup>8</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 7.5.

<sup>9</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 7.3.

<sup>10</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 7.8.

<sup>11</sup> By-Law No. 1 for [REDACTED] Ontario Inc., s. 10.1

Based upon the facts and legal analysis, the Agreement is enforceable. As a result of the Agreement, our client is a minority shareholder in the Corporation. As the majority shareholder subsequently acted in a manner that disregards the rights and interest of the minority shareholders, our client may seek oppression remedy from the court by commencing an application in the Ontario Superior Court of Justice. Also, as a result of the nature of the dispute and location of the Property and Corporation, the minority shareholders may bring this application before the Commercial Court.

### 5. Discussion

#### OBCA

The Ontario *Business Corporation Act* (“OBCA”) governs the conduct of Ontario business corporations. As an Ontario Corporation, ██████████ Ontario Inc. is subject to the rules and regulations of the OBCA.<sup>12</sup>

Under the OBCA, a director or shareholder may apply to the court to bring an action in the name and on behalf of a corporation, referred to as a derivative action, for the purpose of prosecuting or defending an action on behalf of the corporation.<sup>13</sup>

In connection with a derivative action, the court may make any order it thinks necessary.<sup>14</sup>

Under the OBCA, a director or shareholder may also apply to the court for an oppression remedy. In order to bring a claim for oppression, a director or shareholder must satisfy the court that a director’s act or omission has affected, threatened or been executed in a manner that is oppressive, unfairly prejudicial to or that unfairly disregards any interest of any shareholder or director of the corporation.<sup>15</sup>

In connection with an oppression remedy, the court may make any order it thinks necessary.<sup>16</sup>

#### Commercial List

The Commercial List is a Toronto court comprised of a team of judges who have extensive experience in managing complex commercial litigation. Practice procedures under the Commercial List are formalized under the Consolidated Practice Direction Concerning the Commercial List.<sup>17</sup>

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<sup>12</sup> *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 7(2).

<sup>13</sup> *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 246(1).

<sup>14</sup> *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 247.

<sup>15</sup> *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 248(2).

<sup>16</sup> *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 248(3).

<sup>17</sup> Consolidated Practice Direction Concerning the Commercial List:

[\<https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/commercial/\>](https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/commercial/)



Matters which may be listed on the Commercial List are applications, motions and actions which fall into an enumerate list of matters, including applications involving the *OBCA*.<sup>18</sup>

### Application

A proceeding may be commenced by an application where the relief claimed includes the determination of rights that depend on the interpretation of a contract, the declaration of an interest in land, or where it is unlikely that there will be any material facts in dispute requiring a trial.<sup>19</sup>

### 6. Conclusion

I believe that...

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Rules of Civil Procedure*, R.S.O. 1990, Regulation 194, rr. 14.05(3)(d), 14.05(3)(e), 14.05(3)(h).

### Court Documents

Unless you are participating in specialized articles that do not include litigation, you are certain to be asked to prepare, or assist in the preparation of, court documents. These will likely include a wide range of matters based upon the type and stage of the litigation and will involve the use of court forms.

Litigation is governed by “rules,” each based upon the various courts and tribunals that oversee the matter, such as the Ontario Court of Justice, the Human Rights Tribunal of Ontario, and the Court of Appeal for Ontario.

As indicated previously, you need to be clear and concise when communicating with others, even when your communication is directed to other lawyers or you are drafting documents for court. This is particularly important when preparing court documents. Use plain language to state your facts, legal positions, or evidence, unless it is necessary to refer to specific legal or technical terms (e.g., when drafting materials in matters that involve complex legal and statutory rights under the Ontario *Business Corporations Act* or the federal *Bankruptcy and Insolvency Act*). It will be natural for you to want to use legalese and show your understanding of the law. However, it is better to write as though the reader has no legal background. It may be more challenging to write in this manner, but it will help you be more effective and convincing.

Many firms and offices will use automated software to generate forms (e.g., ACL) or will have a bank of forms or precedents that they use. Many courts have specific forms that are required for matters that take place in those courts (e.g., commercial court and civil court). If you are fortunate enough to use automated software, it will likely have court-specific forms and will be regularly updated to ensure that you are using the most current ones. If you are unsure of the need for special forms, always check the court’s website for practice directions that will inform you of this. Sources of court practice directions, forms, fees, and other important information can be found at the following websites:

- [https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/changes\\_to\\_rules\\_of\\_civil\\_procedure\\_flowcharts.pdf](https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/changes_to_rules_of_civil_procedure_flowcharts.pdf)
- [https://www.attorneygeneral.jus.gov.on.ca/english/courts/divisional/Guide\\_to\\_Appeals\\_in\\_Divisional\\_Court\\_EN.html](https://www.attorneygeneral.jus.gov.on.ca/english/courts/divisional/Guide_to_Appeals_in_Divisional_Court_EN.html)

- [https://www.ontario.ca/laws/regulation/920293?\\_ga=2.28136764.1818206681.1577657988-464532895.1568554450](https://www.ontario.ca/laws/regulation/920293?_ga=2.28136764.1818206681.1577657988-464532895.1568554450)
- <http://ontariocourtforms.on.ca/en>
- <http://ontariocourtforms.on.ca/en/other-documents-related-to-the-rules-of-civil-procedure-1>
- <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto>

### Corporate Documents

As with court documents, you are likely to be asked to prepare business or corporate documents as part of your articling experience. These documents will generally be in the form of contracts or formal corporate documents associated with the setting up and governance of corporations, partnerships, or sole proprietorships under various legislation.

Before preparing any documents, you need to collect all the necessary information required to properly complete the task. In order to identify the information needed to prepare the documents, identify the type of agreement or form to be prepared and speak with your principal or supervising lawyer to obtain direction or the information you need. In some circumstances, it may be necessary to meet with the client to obtain this information. Some of the important information you will typically require includes:

- the purpose of the document;
- the names of the parties;
- the roles of the parties;
- the responsibilities of the parties;
- relevant financial information;
- specific terms; and
- important dates.

Because contracts and corporate documents are often lengthy and complex, they will require several drafts. Always ensure that you carefully complete each draft and proofread them before presenting them for review by your principal or supervising lawyer. During drafting and revision, be consistent, track your changes, and do not make changes that may compromise the intent or integrity of the documents.

If possible, review completed documents as a guideline to preparing your first draft. Like court documents, your firm or office may have automated document software or a precedent bank for you to use. If you require special forms, such as Articles of Incorporation or Articles of Amalgamation, they can be located at the following websites:

- <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/MinistryResults?Openform&SRT=T&MAX=5&ENV=WWE&STR=1&TAB=PROFILE&MIN=002&BRN=&PRG=>
- <https://www.ontario.ca/page/start-dissolve-and-change-corporation>

**▲ IMPORTANT:** For more guidance on the preparation of legal documents (both litigation and corporate documents), see Chapter 10 in [Working in a Legal Environment](#), 2nd ed. from Emond Publishing.

Court File No. [REDACTED]

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

[REDACTED], [REDACTED], [REDACTED] and [REDACTED]

Plaintiffs

and

[REDACTED],  
[REDACTED], and [REDACTED]

Defendants

AND BETWEEN:

[REDACTED]

Plaintiff by Counterclaim

and

[REDACTED], [REDACTED], [REDACTED],  
[REDACTED] and [REDACTED]

Defendants to the Counterclaim

**NOTICE OF MOTION**

The Plaintiffs will make a Motion to a Judge for Orders against the Defendants, [REDACTED]  
[REDACTED] and [REDACTED] (together “[REDACTED]”), [REDACTED]  
[REDACTED] (“[REDACTED]”), and [REDACTED]  
[REDACTED] (“[REDACTED]”) on [REDACTED], 20[REDACTED] at 10:00 a.m., or as soon after that time as the Motion can  
be heard at the court house, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

-2-

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- in writing under subrule 37.12.1(1) because it is
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR:**

APPOINTMENT OF INSPECTORS

- (a) An Order appointing the accounting firm of [REDACTED] or [REDACTED] as inspectors for the purpose of investigating the operations of the defendant corporation, [REDACTED]  
[REDACTED];
- (b) An Order appointing the accounting firm of [REDACTED] or [REDACTED] as inspectors for the purpose of investigating the release of the Plaintiffs' Deposits held in trust;
- (c) An Order appointing the accounting firm of [REDACTED] or [REDACTED] as inspectors for the purpose of investigating the determination and allocation of common element fees by [REDACTED] or [REDACTED];

-3-

### ALTERNATIVE RELIEF

- (d) An Order that [REDACTED] immediately advise of the names of the auditors for the [REDACTED] [REDACTED] construction project (“[REDACTED]”) and provide contact information for same;
- (e) An Order that [REDACTED] immediately advise of the names of the auditors for the [REDACTED] and provide contact information for same;
- (f) An Order that [REDACTED] immediately advise of the names of the auditors for the condominium corporation and provide contact information for same;
- (g) A mandatory Order that [REDACTED] immediately produce all financial statements for the construction of the [REDACTED] from the commencement of construction in or around [REDACTED] 20[REDACTED] to the date of interim occupancy;
- (h) A mandatory Order that [REDACTED] immediately produce the operating budgets as prepared by [REDACTED] and all underlying documents relied upon for the development of said operating budgets;
- (i) A mandatory Order that [REDACTED] immediately produce all interim unaudited financial statements and all audited annual financial statements for the [REDACTED] [REDACTED] for the period commencing [REDACTED] [REDACTED], 20[REDACTED] and on an ongoing basis pending determination of the actions;
- (j) A mandatory Order that [REDACTED] and [REDACTED] immediately produce:



[Click here to access the full sample Notice of Motion here](#)

[Click here to access the full sample Factum here](#)



# COURTHOUSE ETIQUETTE

As an articling student, you will likely be asked to attend at court on a regular basis, particularly during any litigation rotation or if you are doing specialized articles in litigation. You will often be asked to act on small matters, such as taking out consent orders, conducting simple motions, and assisting senior lawyers on larger matters. You may also be asked to attend at court to file materials or deal with the scheduling of hearings or other administrative issues. It is important for you to understand the processes and procedures associated with attending at the courthouse. The following is a guideline to proper court etiquette and procedures that you should become familiar with:

- **Security.** All courthouses require that members of the public pass through a security check. This can cause considerable backlog getting into the courthouse. In order to avoid being late for court, ensure that you allow extra time to pass through security. Get to the courthouse early so that the lines are shorter or so that you are at the beginning of any security lineup.
  - One way of avoiding the security check is to obtain an LSO identification card. Members of the LSO and court staff can bypass courthouse security by presenting this identification. Although this card is only available to lawyers and paralegals, you can also obtain the same quick access using your LSO candidate photo identification card.
- **Daily hearing lists.** Each courthouse will post a daily hearing list, which will set out the title of the proceeding, court file number, counsel name, type of hearing (e.g., contested motion or application), courtroom number, and name of the judge or master hearing the matter. Once you find your matter, proceed to the courtroom and check in with the registrar by completing the “counsel slip.” Ensure that you identify yourself on the counsel slip as an articling student or student at law.
- **Timeliness.** Be on time! Lawyers and articling students are expected to be in the courtroom and signed in by the time the court session commences. Being late is discourteous, disruptive, and unprofessional. In some cases, if your matter is called and you are not in attendance, it can be struck from the list, requiring you to reschedule the matter, re-serve materials, and repay filing fees. If the matter is opposed and you are

not in the courtroom, it may proceed in your absence. In either case, this will cause serious problems for your principal or supervising lawyer and will reflect very poorly on you.

- In the event that you are running late, ensure that you make an effort to contact the courthouse or any opposing counsel to advise of this. Communicate your situation and provide an estimated time for your arrival at court so that the judge or master can be made aware of this and your matter can be stood down until you arrive. When you arrive, apologize to the court and any opposing counsel, then proceed as normal. Unless asked by the judge or master, do not take up any more of the court's time with explanations.
- **Entering and exiting the courtroom.** When entering or exiting the courtroom, it is proper decorum to bow. When exiting, back out of the door and slightly bow. Also, because opening and closing the door can be disruptive to proceedings, always do your best to enter and exit the courtroom quietly. It is respectful to wait until a time when the judge or master is not speaking.
- **Dress.** Any time you appear before the court, you represent your client, your principal, and your firm or office. As an articling student, you will not be gowned. As such, you should always dress professionally and conservatively: wear a dark or neutral colour business suit with a white dress shirt (and tie for men).
  - Occasionally, counsel may forget an item, such as their tabs. Similarly, you may forget a tie or be sent to court unexpectedly and not be properly attired (e.g., you may not have a jacket or may be wearing a business casual shirt). In these circumstances, it is appropriate to advise the registrar in advance and, when your matter is called, advise the judge or master and ask for leave of the court to be heard. In most, if not all, cases, you will still be allowed to speak on the matter.
- **Standing.** At all times, whenever the judge or master enters or prepares to leave the courtroom, rise and remain standing until the registrar invites you to sit or the judge or master leaves the courtroom. When addressing the judge or master, always stand.

# CONDUCTING MOTIONS

As an articling student, you will be asked to attend on motions. These motions will generally be uncomplicated, but sometimes you will be asked to argue contested motions that are more challenging than attending on an administrative matter (e.g., a motion for outstanding undertakings or refusals versus a consent order to pay money into court). Regardless of the motion you are attending on, always ensure that you are well prepared by fully reviewing the file and the motion materials and having all necessary documents ready and correct.

The following is a checklist that you can use to ensure that you are prepared for any motion:

- ✓ Review the file so that you are familiar with the nature of the proceeding and understand why you are attending the motion.
- ✓ Thoroughly review all motion materials, including any materials from the other side if you are dealing with a contested motion.
- ✓ Review all case law that you are relying on and any that the other side is relying on so you know how to distinguish it or respond to questions from the judge or master about the law.
- ✓ If possible, prepare a factum setting out your facts and law. The factum is your opportunity to set out the jurisdiction of the court to grant you the order that you want. Make sure that any factum is served and filed in advance of the motion so that the judge or master can read it before entering the courtroom.
- ✓ Prepare a roadmap of your arguments outlining the background of the matter, key facts, and relevant case law.
- ✓ Make certain that you have copies of materials that you are relying on, including original affidavits and documents. Also ensure that you have original affidavits of service for any materials that are served so that you can present them as evidence if there is any dispute over materials being served.

## 4 PRACTICE ASPECTS OF ARTICLING

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- ✓ Highlight the relevant parts of any case law that you are relying on. This should be done on all copies provided to the court and to the other side.
- ✓ Have three copies of any order you are seeking. Prior to attending at court, check for the proper title of proceedings, court file number, and date. Make sure that the draft order contains all the terms you require and that it has a proper back page with correct information. When you attend at court and learn which judge or master is hearing your matter, write their name on the front page and beneath the signature line so that the order is complete before handing it to the registrar.
- ✓ Always bring a copy of the Rules of Civil Procedure.



Once you are at court and your matter is called, set up your materials in an organized fashion. Place materials in a location where you may easily access them and always have a notepad or laptop with you for taking notes as the motion is heard.

Sometimes articling students think that it is best to prepare a script setting out everything that needs to be said at the time of the motion. However, this is not recommended because you will likely end up reading flatly from the script instead of actively engaging the judge or master. When this happens, you are likely to miss important visual clues or questions from the bench.

Instead, prepare a roadmap of your argument or the information you intend to relay to the judge or master. If you know your file and the motion materials well, a roadmap is all that is necessary to guide you through the motion. This will allow you to adapt to any visual clues, comments, or questions from the bench, which will add credibility to your position.

If you are attending on an opposed motion, listen to the argument presented by the opposing party and take notes. Listen for, among other things, misconstrued facts, errors in law, or illogical argument. You will have an opportunity in your response or reply to address anything that you believe is not proper.

In some circumstances, you may be handed a file last thing at night or first thing in the morning and be told to attend court to attend on a motion. At a minimum, review the motion materials and any pleadings so that you are aware of the nature of the action and the motion. Even if you are reviewing these documents in the courtroom, you will still have some knowledge of the action and the motion. Never attend at court without knowing why you are there and being able to answer basic questions about the file.



## 4 PRACTICE ASPECTS OF ARTICLING

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In terms of etiquette during a motion, always stand when addressing the court. When addressing a judge of the Superior Court of Justice, call the judge “Your Honour.” Masters should be addressed as “Master” or “Master (last name).” Deputy judges or provincial judges of the Small Claims Court should be called “Your Honour.” Furthermore, opposing counsel or students should be addressed or referred to as “My Friend.”

**▲ IMPORTANT:** On an opposed motion, or even a consent motion where the other party is attending, always allow the other side to speak without interfering, although this may be difficult at times. Take notes of anything that you believe should be addressed and do so when you are given the opportunity. Never get into a dispute in the courtroom.



# 5 PREPARING FOR YOUR LICENSING EXAM WHILE ARTICLING

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## THE ONTARIO BAR EXAMS

In many circumstances, articling students commence their articles prior to writing the LSO licensing examinations. If you are doing your articles prior to your exams, you will need to find a way to balance articling with studying for the LSO licensing exams.

The Ontario bar exams consist of two open-book licensing exams: the barrister exam and the solicitor exam. Each examination is seven hours long and is composed of approximately 220 to 240 multiple-choice questions. The exam questions are designed to assess your competency in a variety of subject areas. The barrister exam is divided into sections that cover civil procedure, criminal procedure, family law, and public law. The solicitor exam covers real estate, estate planning, and business law. Both exams cover the subject of ethics and professional responsibility.

Students who registered to write the bar exams will receive study materials from the LSO approximately six to eight weeks before the exams. Study materials are around 1,600 pages in length (between the barrister and solicitor materials) and contain all the information required to pass the exams. Students must independently read and study this material to prepare for the examinations, and many students prepare additional material in preparation for the examination, such as indices and summaries.

The amount of work required to prepare for the LSO licensing examinations is extraordinary. Add this to the vast amount of work expected of you as an articling student and you will quickly see that you need to approach your studying strategically.



### DEVELOPING A STUDY PLAN

There is no question that you must read through all the LSO study materials at least once before your exam. Ideally, you will have time to go through most sections a second time. The goal of reading should be to understand the big picture—focus on grasping the key concepts and comprehending how the pieces fit together. Do not overwhelm yourself by trying to memorize all the details—the exam is open-book after all. Instead, focus on trying to understand the fundamentals of the law in each area and how the key elements fit together so that when a question arises, you will know where to look and can recognize answer choices that are blatantly wrong.

There are several factors to consider when devising your study plan:

1. Other time commitments—for example, whether you work full-time or must care for a family member.
2. Preferred learning style (audio, visual, or applied). If you are an applied learner, you may want to make notes as you go along or type up summaries at the end of each section.
3. Reading speed and attention span. Make sure you take breaks when your attention starts to wander but stay away from social media and the Internet during these breaks. Instead, go for a walk, make a cup of tea, or do a few stretches so that your 5-minute break doesn't become a 50-minute break.
4. Familiarity with the subject matter. It will likely require the most time and effort for you to work through sections that you didn't study in law school or in which you are uninterested. Be aware that these days will require more stamina and focus.
5. Time needed to devise reference materials (indexes, cheat sheets, etc.). Many students highlight, tab, and make notes as they move through their readings. If you intend to type up your notes into summaries afterward, ensure that you account for this time in your calendar.

It is important to consider your habits and your willpower and to create a detailed schedule that will maximize your strengths and accommodate your weaknesses. If you are most alert and energetic on Saturday mornings, you may plan to dedicate that time to studying every week. If you are often tired on Sundays from a night out before, then make sure your study plan reflects that by giving you a lighter load on those days.

Try to be realistic about what you expect to be able to achieve. Yes, you'll have to be ambitious and push yourself beyond your comfort zone during the intensive studying period before the bar exams, particularly if you are also articling. However, if you don't account for reality, then you risk ending up feeling overwhelmed and guilty, struggling to cram hundreds of pages into the last weeks before your exams. Your study plan should be structured to prevent this.

We suggest scheduling your most ambitious reading goals for early in the study period, during weeks 1–4. Closer to the bar exams (weeks 5–6), you'll need to have time to reread challenging sections, organize your reference materials, and test yourself with practice exams. The aim should be to feel relaxed, organized, and confident the week preceding your barrister exam. The best way to achieve this is to pull out your calendar and your calculator and physically map out exactly how many pages you need to cover each day during your study period. Then you need to stick to your plan.

For a complete guide to devising an effective study plan for the licensing exams, visit [emond.ca/cbpmanual](http://emond.ca/cbpmanual) and skip to Chapter 2.

### **Balancing Work with Study**

As an articling student, you can expect to work long hours. However, if you are writing your licensing examinations during or at the end of your articling period, you need to find a way to accommodate your study and preparation for the LSO licensing examinations.

As indicated in the previous section, the first thing that you should do is prepare a study plan. By preparing your plan first, you will have a better sense of the time that you need to properly prepare for the examination. Your plan should be built around your work schedule. By doing this, you can determine if you will have enough time to ensure that you are able to get through all the LSO study materials and successfully write the examination. Proper planning will prevent poor performance.

Most firms or offices will appreciate the enormous task of articling and preparing for your LSO licensing examination. Because of this, you should be able to negotiate your workload and the time spent at the firm or office so that you can have more time for studying. If you are not able to negotiate time away from the office, you can apply many of the skills we discuss in Chapter 3 respecting managing your time, prioritizing projects, and managing lawyer expectations. By employing these skills, you can create additional time in the evenings or on weekends to focus on studying, and if needed, you can also arrange to take vacation at strategic points in your articling. This is particularly useful in the weeks leading up to the LSO licensing examinations.

For more information on devising a study plan and other information that will help you prepare for the LSO licensing examination while you are articling, download a free copy of *The Comprehensive Bar Exam Preparation Manual* at [emond.ca/cbpmanual](http://emond.ca/cbpmanual).

### **Exam Preparation Support**

Since 2006, the CanBarPrep Course from Emond Exam Prep has helped thousands of students successfully prepare for their LSO licensing examinations. This intensive bar exam preparation course consists of a series of substantive lectures on the topics that are tested on the examinations, as well as an exam preparation strategy component. Lectures are delivered by highly qualified instructors dedicated to providing students with the knowledge, structure, confidence, and guidance to help them pass the bar exams.

Each June, a nine-day live course is held in-class in downtown Toronto. Throughout the rest of the year, the course is available online as a series of video lectures. Students can register for the barrister section or the solicitor section only or for the full course at a reduced price.

The format of each lecture involves a detailed review of the subject matter, with a focus on key exam points, and intermittent question-and-answer periods throughout. Many instructors include sample exam questions in their presentations to demonstrate the application of important concepts and to illustrate the types of challenging questions you might face on the exam. The online course format allows you to view each lecture at your convenience, working around your office hours. Your progression through the online course is self-directed.

## 5 PREPARING FOR YOUR LICENSING EXAM WHILE ARTICLING

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In addition to the CanBarPrep in-class and online courses, Emond Exam Prep offers full-length online barrister and solicitor practice exams. These exams are designed to help you evaluate your progress and identify your weaknesses while offering you an exam simulation experience that mimics the LSO licensing examinations.

For more information about Emond's licensing exam preparation resources, visit our website at [emondexamprep.ca](https://emondexamprep.ca) or click the links below:

[Register for the CanBarPrep Course](#)

[Purchase the online practice exams](#)

[Book a private tutoring session](#)

[Visit the free database of bar exam indices](#)

Should you have questions or wish to get in touch, you can reach us at [emondexamprep@emond.ca](mailto:emondexamprep@emond.ca).



LAST BUT NOT LEAST,  
**GOOD LUCK!**

