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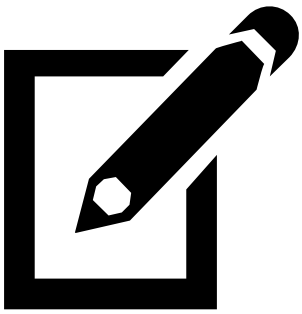
THE COMPREHENSIVE GUIDE TO ARTICLING IN ONTARIO



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INTRODUCING EMOND

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 the Ontario licensing exams.

Emond's bar preparation courses have 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

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. General articles are the most common type of articling, designed to provide exposure to multiple practice areas through an articling rotation. At larger firms or in government, the rotation process allows students to spend designated periods of time working with different departments or lawyers within the 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. At smaller firms, there may not be a formal rotation process but nevertheless an opportunity to work within different areas of law. 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., 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.

The following template may help you determine what type of articling position would be the right fit for you. It allows you to identify which firms or organizations offer general or specialized articling placements, whether they meet the competencies set out by the LSO, what areas of law you will gain exposure to, and any additional notes that may influence your decision. This exercise may help illuminate which types of positions are more appealing to you depending on your career goals.

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). While most firms with experience hiring articling students will be familiar with the competencies, you may still want to review the firm's website or speak with recruiters or lawyers at the firm to ensure that you will gain the requisite experience.

FIRM OR ORGANIZATION	GENERAL OR SPECIALIZED	MEETS LSO COMPETENCIES	AREA(S) OF LAW	ADDITIONAL NOTES

A Note on the Law Practice Program

Since 2014, the Law Practice Program (LPP) has served as an alternative to articling. It consists of a four-month training course followed by a four-month work placement. The LPP is designed to ensure that students gain the necessary practical experience before becoming licensed. For more information, visit the LSO website: https://lso.ca/becoming-licensed/lawyer-licensing-process/law-practice-program.

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, and not-for-profit organizations.

In any of these settings, you will still be required to complete the training and appraisal competencies 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 may 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 make one option more fitting for 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).

Within both public and private practice, you may want to consider articling with an in-house legal team. This may be at a corporation (private in-house) or with a public body (public in-house). In these roles, you will be required to develop a broader skill set and often be more business-minded in order to give the right legal advice.

Keep in mind that the practice setting you select for your articling term will not dictate where you work in the future. While it is more traditional to continue in one setting, transitioning from private practice to public or an in-house position is not uncommon.

Finally, another important consideration when selecting a practice setting may be the hire-back rate. Hire-back rates can vary greatly, but it is generally typical for students articling at larger private firms to have a greater likelihood of being offered positions following their articling term. If you are unsure about the prospect of future employment at a firm or organization, you should ask your potential principal or a recruiter. Most employers will be transparent about their ability to hire students back post-articling, or be able to provide you with statistics about previous hire-back rates.

Length of Articling Term

In recent years, the LSO has permitted articling students to complete either eight-, nine-, or ten-month placements. The length of your articling term will likely depend on several factors, including the needs of the firm/organization, any plans you have following the articling term, and your own career goals. In its 2022 Annual Report (available online at https://lso.ca/annualreport/2022/key-trends-and-financials), the LSO reported that just over half of articling placements in that year were 10 months long. It is also important to note that in some cases, you may be able to extend your articling term for a month or two. This is something you can discuss with your principal towards the end of the term.

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 to ensure that your principal, and place of employment during articling, is the right fit for you. Not every person will work well in a large national firm and that is okay.

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.

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. You may also find it useful to connect with alumni working in different settings to get a better sense of what to expect. You can ask about daily workflow, weekly responsibilities, any supports that are available, etc.

2 ARTICLING AND PROFESSIONALISM

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 may be quite high—you will find yourself in new situations, working on matters that are new to you, or reviewing legislation that is unfamiliar. That's okay! This is all part of the learning process. It's important to remain confident in yourself and your legal education. Your articling principal and supervising lawyers will know that articling is challenging, and while they don't expect you know everything on day one, they will expect you to work hard and improve over the course of the articling term.

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 is often about much more than just giving legal advice. If you are articling in private practice, you will likely learn about the business aspect of legal work during your articles. Similarly, if you article with an in-house legal team, you may learn about the ways in which the legal department interacts with and supports other organizational functions. We will spend more time discussing practical aspects of legal work 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 opportunity that will teach you the necessary skills to become a competent *and* successful lawyer. This includes receiving support and education from your principal, a discrimination-free and harassment-free workplace, and compensation that meets or exceeds the Mandatory Minimum Compensation set by the LSO.

⚠ **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 Discrimination and Harassment Counsel (DHC) Program can be found on the LSO website at: https://www.lso.ca/dhc/home.

WHAT THE FIRM EXPECTS OF YOU

Although articling is a learning opportunity, you are nevertheless expected to be a dedicated professional willing to work hard and learn from others. 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;
- manage your time wisely and be cognizant of deadlines; and
- participate in firm events and social functions.

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. If a file or project has caught your attention, ask your principal if there is some way to get involved. Taking initiative is a great way to show your interest and gain valuable experience.

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. At first, it may take you more time to complete assignments. However, this will change and you'll get faster and find tasks easier as you learn more through your articling term. Instead of prioritizing your speed, prioritize your understanding of the law and the task at hand.

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, ask your principal or supervising lawyer. It will be your responsibility to meet any deadlines and assess whether you can complete the work based on your existing schedule and workload.

If you run into difficulties while completing a task, you will be expected to try and identify solutions before approaching your principal or supervising lawyer. If the challenge is a file or legal concept that isn't clear, do some more research, review templates or precedents,

look for resources online, or ask a fellow articling student. By taking the initiative to problem-solve on your own before approaching a supervising lawyer, you will demonstrate that you are motivated, eager to learn, and that you respect the lawyer's time. 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. Accordingly, it is important to put your best foot forward when it comes to etiquette and conduct both at the office and while working remotely. In fact, the LSO has codified rules respecting conduct and professionalism in the Rules of Professional Conduct.

Most firms and offices, if not all, will have dress codes 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.

Below are a few suggestions as an initial 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. At the end of the day, leave at an appropriate time based on the work you've done and any upcoming deadlines. The same principles apply if you are working remotely.

- Take the time to be helpful and show you are a team player. Ask lawyers and staff members if you can assist them with anything, attend meetings and take notes, and get involved during team meetings or activities.

- 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. 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. You may also wish to keep some of these items in your office in case you are called into a meeting or event unexpectedly. Also, be certain to look after your personal hygiene. The image you create by dressing professionally can go a long way, even if you are working remotely. Avoid casual clothing when you appear on video calls, unless told otherwise by supervising lawyers or your principal.

- 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. Building strong professional relationships with the people at your workplace will largely shape your learning experience during the articling term.

- Do not get engaged in office politics. You are almost guaranteed to hear the complaints about lawyers, staff, or 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. Your reputation will be built by your attitude and work ethic, not by your engagement in undermining others. This type of conduct is seldom reflective of a team player.

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 and remain professional. While it may seem important to grab a drink because everyone else is doing it, you have the choice to abstain from drinking. You may wish to have a glass of water or other non-alcoholic beverage to blend into the crowd. It's better to be cautious and calm than to risk an embarrassing moment in front of your supervising lawyers or clients. At the end of the day, you should think of these events as "professional" opportunities for networking that are an extension of your day-to-day work.

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 may also 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 some 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. Declining assignments also allows you to manage expectations appropriately. We will discuss this further in Chapter 3.

A 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 regular meetings (weekly or bi-weekly) 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 related 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, you just have to find them. If you are unable to resolve the problem on your own, approach your principal or supervising lawyer and outline the steps you've already tried. 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.

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

UNDERSTANDING THAT LAW IS BOTH A PROFESSION AND A BUSINESS

As an articling student, you need to understand that the practice of law inevitably involves some degree of business. In private practice, legal services are provided for the purpose of generating profits in the same way as any other industry. Law firms, professional associations (e.g., law chambers), and sole practitioners sell their **expertise**, **knowledge** of the law, and **decision-making ability** to legal purchasers. These are the commodities of private practice lawyers. For in-house counsel or public lawyers, the same skills are used to improve business decisions, keep organizations within budgets, and otherwise help organizations keep their costs (and liabilities) down to 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. Understanding your role as a legal professional in the larger context can help you stay focused, manage priorities, and recognize the scope of your role during the articling term.

The LSO has recognized the interconnected nature of the practice of law and business management by integrating Practice Management questions into both the barrister and solicitor licensing exams.

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, 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 to work.

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

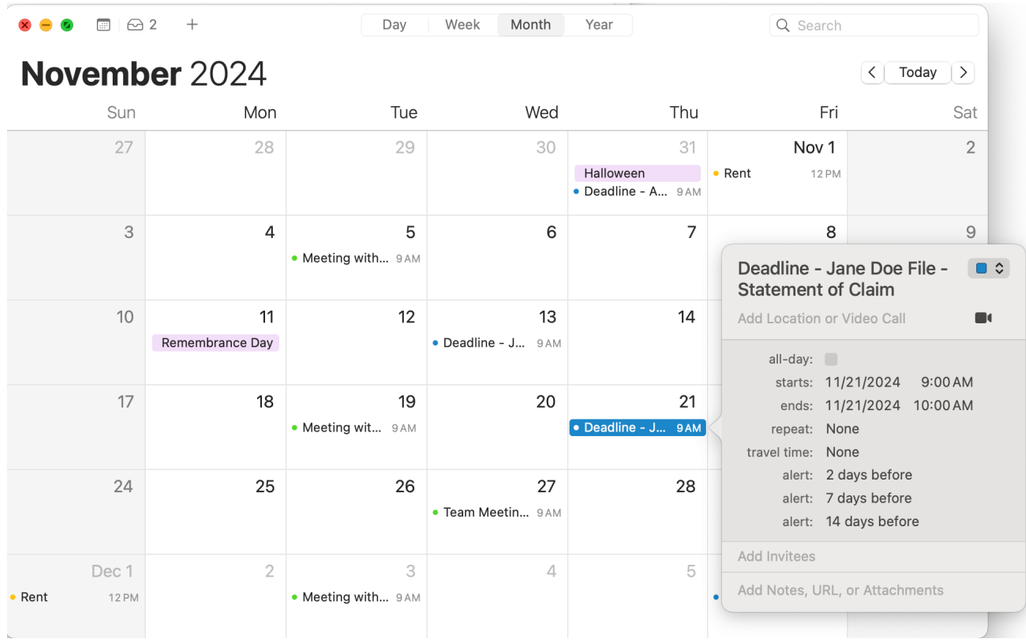
As an articling student, you can expect to be assigned multiple tasks at the same time. Depending on the size of the firm or office you are articling at, these assignments may also come from multiple lawyers. As noted earlier, though it may be tempting to say "yes" to every assignment that comes by your desk, it is important to manage your time appropriately. Accepting every single file that you are asked to take on can lead to considerable stress and uncertainty in terms of managing your time and prioritizing projects. It may also 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 less time to complete. If you are spending large amounts of time on smaller projects, you may feel rushed or stressed as deadlines loom closer. 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, an Excel spreadsheet, or even a Word document. 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.

⚠ **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.

Sample Calendar Tickler System



3. **Maintain an organized workspace, physically and digitally.** Start by ensuring that your physical workspace is uncluttered and that files and other materials are placed where they are easily accessible 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.

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), or closing dates or deadlines for contracts or transactions, and then 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 may occasionally find yourself inundated with work from lawyers in your office. Again, though it can be tempting to say “yes” to every assignment, this approach can very quickly lead to stress and overwhelm. Do not feel obligated to take on all the work given to you. Instead, try and maintain some degree of control when it comes to prioritizing your assignments. This is where a strong organizational system and effective time management skills come into play. While it can be difficult (and sometimes daunting!) 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 have been given. Being able to communicate existing obligations and limitations also allows you to keep your word to lawyers who are already expecting work from you.

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. You may wish to speak to your principal about how to best prioritize files and whether priority should be given to their files or simply based on upcoming deadlines.

In some instances, your efforts to negotiate a deadline will not be fruitful. If appropriate, let the assigning lawyer know that you will need to review the matter 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 may take away any concern about upsetting other lawyers by having to decline their requests, but will depend largely on the workflow dynamic established at your articling placement.

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 opportunity, 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 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. They might have the answers or may be able to help you identify additional resources that are available to you. If you still do not have an answer, 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 as well as secondary sources such as annotated legislation, treatises, and precedents. An excellent secondary source about the life cycle of a legal file is *Legal Office Procedures*, 8th Edition (Toronto: Emond Publishing). Once again, by going through the effort of working through your questions,

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 supervising lawyer and address the issue 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

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 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), it is important to understand early in your legal career that there can be serious consequences for 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 term, you will have a better experience and be much 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 regarding 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.

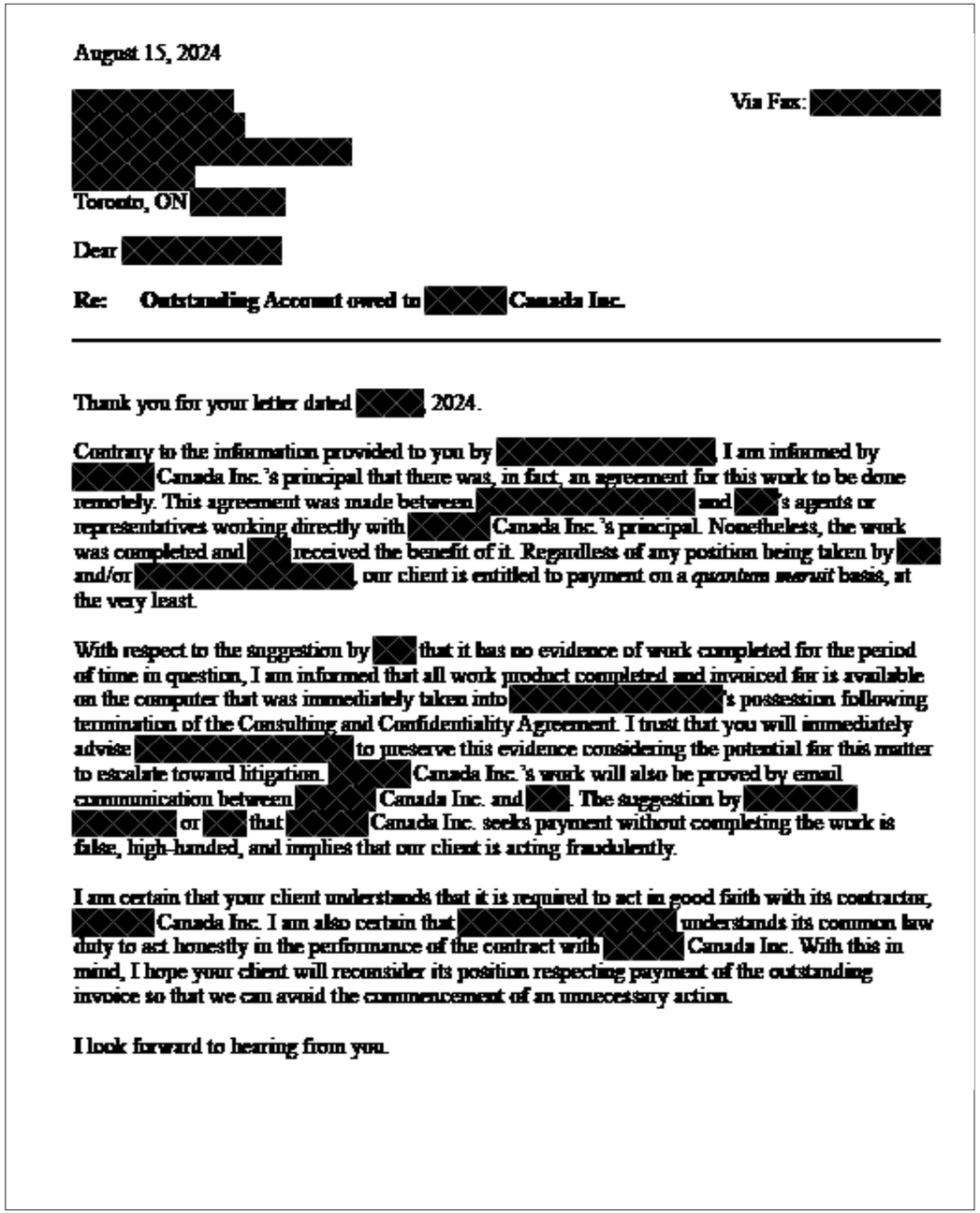
Additionally, the obligation to keep client information confidential extends to conversations and communications with others inside and outside your office. While you may want to discuss a file with a colleague in the office or with friends or family, you must not communicate any information, particularly 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. You should also be mindful of where discussions are taking place. While speaking to a fellow articling student on the same file would be fine in the office, it would not be okay in a public place. Similarly, ensure that confidentiality is prioritized when you are taking phone calls. This is especially important if you are working remotely. 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.

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

Historically, lawyers and law students have had a tendency to regularly use legal jargon or "legalese" when communicating with others in the profession. This is now far less common, especially in email communications or other correspondence between legal professionals. The focus instead should be on being clear, concise, and polite in your message. Even in court documents, 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.

Sample Correspondence



August 15, 2024

[redacted]

Via Fax: [redacted]

Toronto, ON [redacted]

Dear [redacted]

Re: Outstanding Account owed to [redacted] Canada Inc.

Thank you for your letter dated [redacted], 2024.

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]'s 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]'s 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] [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 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. At the start of your articling term, you may wish to ask your principal or a supervising lawyer to review any correspondence (including emails) you draft before they are sent out. Alternatively, you may ask to CC them on emails to get their feedback. While this may sound unnecessary, it is for your benefit. There is an art to writing proper and professional correspondence. It is important to use this as an opportunity to learn and avoid mistakes in the future. 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 and even other lawyers, make sure to use plain language and do not overcomplicate your correspondence.

Tone is also critical as it can be interpreted in different ways. 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 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 things such 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 if 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.

After the meeting, ensure that you leave the meeting room in the same state that you found it. You may also wish to schedule a quick meeting to debrief with your principal or supervising lawyer. This is a great opportunity to ask any questions about the meeting and get a better understanding of the lawyer's thinking during the meeting. You can also discuss next steps that you can take to further assist on the matter.

NOTE: *For a greater overview and guidance on interviewing skills in a practical context, see The Comprehensive Guide to Legal Research, Writing & Analysis, 4th ed. and Clinical Law: Practice, Theory, and Social Justice Advocacy, both from Emond Publishing.*

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, have a complete record of all communication between all parties involved (including clients), and have 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. This may include things like naming conventions for documents or formatting rules for different types of files, such as meeting minutes or memos. 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. Regular maintenance will help ensure that you do not lose or misplace 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. While your research plan is only for your use, it can serve as a useful resource if your principal wants more information about a topic covered in your research but not in your final product (e.g. memorandum, court documents, etc.).

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. You can also access additional secondary material through law libraries at various courthouses and through law associations.

Your research plan should, without limitation, involve the following:

- 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.

Sample Research Plan

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.**

Sample Research Plan (Cont.)

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.

Sample Research Plan (Cont.)

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[11] 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., [20021 *0.1.* 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.

DRAFTING DOCUMENTS

Legal Memoranda

One of the many tasks you will be asked to do as an articling student will be to prepare legal memoranda for your principal or other lawyers. A legal memorandum (“memo”) is an internal document you will use to communicate your legal analysis of certain legal issues to your principal or supervising lawyer. Based on the information you provide in the legal memo, others will make decisions on files that will affect legal positions and the advice given to clients. Accordingly, you should ensure that your legal memos 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.

The structure of your legal memo will depend largely on the needs of your principal or supervising lawyers. Generally, however, a strong legal memo will be organized in the following manner:

- **Introduction.** One or two sentences that set out the purpose for the research and the exact assignment given to you.
- **Questions/legal issues.** List out any questions posed by your assigning lawyer or the legal issues raised by the facts or dispute. Number each question and ensure that you present them in a form that is broad enough to provide for a full discussion of the law.
- **Brief answer.** Provide a brief conclusion or answer to the questions/issues raised, with a short explanation of the legal reasoning. Often, the brief answer may be “Yes” or “No” followed by a very short explanation.
- **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.

- **Discussion.** Address each legal issue separately and expand on your brief answer. 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 the matter. 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 your findings. Summarize each issue by explaining the relationship of the law to the questions posed by your assigning lawyer or the client's case, as applicable.

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, 4th ed. from Emond Publishing.*

Sample Memorandum of Law

Note: This document is for reference purposes only and may not reflect an accurate or current analysis of the law.

November 15, 2020

To: [redacted] **Via Email:** [redacted]
From: [redacted]

Dear [redacted],

RE: Legal Memo for [redacted] **File**

You had asked me to do some research on the *Occupier's Liability Act* and its application to [redacted]**'s matter. I have prepared the following legal memo to outline my research and findings.**

ISSUES

Under the *Occupier's Liability Act* (*Act*), are [redacted] **Day Camp and** [redacted] **liable for** [redacted]**'s injuries?**

i. **Is** [redacted] **Day Camp the occupier of the premises where the incident occurred?**
ii. **Did** [redacted] **Day Camp breach a duty of care owed to** [redacted]**?**

BRIEF ANSWER

[redacted] **Day Camp is likely to be partially liable for** [redacted]**'s injuries. Under s. 1 of the *Act*,** [redacted] **Day Camp is likely an occupier. It will likely be found liable for providing inadequate supervision on its premises which constituted a breach of its duty to ensure reasonable safety to visitors under s. 3(1) of the *Act*.** [redacted] **will likely be found contributorily negligent for her actions.**

FACTS

[redacted] **paid for her ten-year-old daughter,** [redacted]**, to attend** [redacted] **Day Camp. It is unclear whether** [redacted] **or** [redacted] **signed a waiver absolving** [redacted] **Day Camp of liability arising from injuries sustained at the camp. On the first day of camp,** [redacted] **took the deep-end swim test. She failed to complete the test.** [redacted] **was given a green plastic wristband which she wore every day. The wristband indicated to staff and counsellors that** [redacted] **had not passed the swim test.**

On August 1, 2020, [redacted] **Day Camp hosted a carnival day with rides on its property. The rides were built, maintained, and serviced by** [redacted] **Day Camp. Rushmore Rush, a waterslide, was erected adjacent to the deep end of the swimming pool. At its base was a sign that stated the slide was only intended for campers who had passed the swim test. At the top of the slide, above the water flume, was a sign that reminded campers to proceed "feet first ONLY."**

[redacted] **and her friends, all of whom had passed the swim test, approached Rushmore Rush.** [redacted] **read the sign at the slide's base and proceeded to follow her friends to the top of the slide. Camp counsellor** [redacted] **stood at the top of the slide, swinging a whistle and tapping the 'feet**

Sample Memorandum of Law (Cont.)

Note: This document is for reference purposes only and may not reflect an accurate or current analysis of the law.

first' sign. He let each of [redacted]'s friends onto the slide, before stopping [redacted] momentarily to speak with another counsellor standing at ground-level. At this time, before [redacted] had seen her wristband, [redacted] dove into the water flume head-first.

[redacted] exited the slide and hit her head on the side of the pool. Injured, she began to flail and inhale water. She was rescued but hospitalized for several weeks. [redacted] was diagnosed with a spinal fracture, permanent nerve damage, lingering pain, and anxiety.

ANALYSIS

Is [redacted] Day Camp an occupier under the *Act*?

[redacted] Day Camp will likely be found an occupier under the *Act*. An occupier includes a person who (a) physically possesses the premises or (b) maintains responsibility and control over activities carried out on the premises and its general condition.[1] [redacted] Day Camp likely satisfies the latter definition. The camp builds and maintains all carnival day rides, indicating that it is responsible for the condition of the rides and likely the property on which they are erected. Additionally, the camp conducts assessments like the deep-end swim test. This demonstrates the camp controls how activities are performed on the premises.

[redacted] Day Camp may suggest that its carnival day rides do not fall within the meaning of premises under s. 1 of the *Act*. This argument is unlikely to succeed. Premises includes lands, structures, water, certain portable structures, and inoperative vehicles.[2] Although the statutory definition does not explicitly mention camp rides and equipment, it is likely that these fall within its scope. The Supreme Court of Canada (SCC) has noted that the *Act* is meant to promote and require a "positive action on the part of occupiers to make their premises reasonably safe."[3] Given this general purpose and the fact that [redacted] Day Camp builds, maintains, and operates the carnival day rides, it is improbable that a court would find the rides excluded from the statutory definition of premises.

Did [redacted] Day Camp breach a duty of care owed to [redacted]?

As an occupier, [redacted] Day Camp owes a duty of care to [redacted] under either s. 3(1) or s. 4(1) of the *Act*. A court is likely to find that the applicable duty is under s. 3(1) and that it was breached. In the event that [redacted] or her mother signed a liability waiver, however, [redacted] Day Camp will likely not be liable as it is free to exclude itself through notice from the duty of care.[4]

Section 3(1)

[redacted] Day Camp likely breached its duty under s. 3(1) of the *Act*. An occupier is required to "take such care as in all the circumstances of the case" to ensure the reasonable safety of

[1] *Occupier's Liability Act*, RSO 1990, c. O2, s 1.
[2] *Ibid*.
[3] *Waldick* v *Malcolm*, [1991] 2 SCR 456 at para 45 [*Waldick*].
[4] *Occupier's Liability Act*, *supra* note 1, ss 3(3) and 5(3).

Sample Memorandum of Law (Cont.)

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individuals on the premises.[5] The SCC has affirmed that a court must assess all of the circumstances to determine an occupier's liability.[6] In *Cox (Litigation Guardian of* v. *Marchen* (*Marchen*), the Ontario Superior Court of Justice noted that circumstances may include foreseeability of the incident, severity of the injury, and contributory negligence.[7]

i. Foreseeability

A court will likely find that [redacted]'s injury was not only foreseeable, but foreseen by [redacted] Day Camp. In *Myers v. Peel (County) Board of Education* (*Myers*), the SCC noted that an injury sustained by a fifteen-year-old boy in a high school gymnasium was foreseeable because the nature of the activity itself increased the possibility of serious injury.[8] Although the defendants introduced measures to prevent injury, such as protective mats and a supervisor, these measures were insufficient.[9] Notably, the SCC found on a balance of probabilities that a lack of supervision in *Myers* contributed to the injury.[10] It is unlikely that a court will find a waterslide an inherently risk-increasing activity. However, the fact that [redacted] Day Camp posted two signs limiting participation to certain campers and in a specific manner suggests that [redacted] Day Camp foresaw the risk of injury. Additionally, it is highly probable that a court will find that a lack of supervision contributed to [redacted]'s injury. [redacted] was responsible for allowing campers to use the slide and checking their wristbands. However, despite knowing that [redacted] was waiting her turn, he diverted his attention to another camp counsellor. On a balance of probabilities, it is unlikely that the court will find this was an adequate level of supervision to establish that [redacted] Day Camp met the requisite standard of care.

Additionally, [redacted] Day Camp likely foresaw the necessity of supervision. In *Myers*, the SCC noted that young boys have a tendency to act recklessly in disregard of authority.[11] Similarly, in *Marchen*, the court acknowledged that reasonable care must reflect a recognition that individuals on the premises, such as teenagers, may be less cautious and capable than adults.[12] There is no evidence to suggest that [redacted] was prone to recklessness. However, [redacted] Day Camp's decision to place [redacted] atop the slide with a whistle to ensure correct usage of the slide suggests that the camp foresaw the potential recklessness of campers. The camp likely recognized that reasonable care required supervision on Rushmore Rush, but failed to provide this supervision adequately. Although [redacted] Day Camp is not a gymnasium and [redacted] is not a student, the principles underlying the supervisory relationship outlined in *Myers* and *Marchen* for reasonable safety of minors are the same. A court will likely find that [redacted] Day Camp's duty of care required supervision of minors like [redacted] on the waterslide.

[5] *Occupier's Liability Act*, *supra* note 1, s 3(1).
[6] *Waldick*, *supra* note 3 at para 37.
[7] *Cox (Litigation Guardian of) v Marchen*, [2002] OJ No 3869 at para 29, 117 ACWS (3d) 87 [*Marchen*].
[8] *Myers v Peel (County) Board of Education*, 2 SCR 21 at para 15 [*Myers*].
[9] *Ibid*.
[10] *Ibid* at para 19.
[11] *Ibid*.
[12] *Marchen*, *supra* note 6 at para 38.

Sample Memorandum of Law (Cont.)

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ii. **Severity of Injury**

Severe injury does not itself establish liability. It is likely, however, that the severity of [redacted]'s injury will indicate that [redacted] Day Camp breached its duty of care. An occupier is required to provide reasonable safety, not absolute safety.[13] In *Myers*, supervision could have provided reasonable safety. While it would not have guaranteed an injury-free space, it could have prevented Myers' specific injury.[14] Similarly, [redacted] Day Camp could have provided reasonable safety and prevented serious injury through supervision. This supervision, however, was inadequate and reflects a breach of the duty of care.

iii. **Contributory Negligence**

It is likely that [redacted] will be found liable for contributory negligence. Section 9(3) of the *Act* permits courts to apportion liability.[15] Contributory negligence requires a finding of carelessness, but carelessness cannot be based merely on an individual's hurried state.[16] Additionally, the absence of warning signs may preclude a finding of carelessness.[17] In *Myers*, contributory negligence was demonstrated by Myers' reckless decision to partake in a dangerous activity without the necessary precautions.[18] However, the student evaluation system encouraged Myers to attempt the difficult activity.[19] The division of liability was u held as 80 per cent to the defendants and 20 per cent to Myers.[20] Unlike Myers, [redacted] was actively discouraged from using Rushmore Rush based on her swimming capabilities. She acknowledged the sign at the base and proceed down the slide head-first before [redacted] could check her wristband. Although it is unclear whether [redacted] noticed the sign above the slide, she demonstrated a level of recklessness that will likely support a finding of contributory negligence. The apportionment of liability, based on precedent, is also likely to be greater than 20 per cent for [redacted].

Section 4(1)

[redacted] Day Camp may suggest that it owed a restricted duty of care to [redacted] under s. 4(1) of the *Act* because she willingly assumed the risk of using the slide and proceeding head-first. This argument is unlikely to succeed. Section 4(1) limits an occupier's duty of care by stating that if an individual willingly assumes risk, the occupier must simply avoid creating a danger deliberately intended to harm the individual or treating them with reckless disregard.[21] The SCC has affirmed that s. 4(1) reflects a narrow exception to the statutory duty of care owed under s. 3(1).[22] In

[13] *Occupier's Liability Act*, *supra* note 1, s 3(1).
[14] *Myers*, *supra* note 8 at para 19.
[15] *Occupier's Liability Act*, *supra* note 1, s. 9(3); *Waldick*, *supra* note 3 at para 17.
[16] *Ibid* at paras 25 and 50.
[17] *Marciano*, *supra* note 6 at para 49.
[18] *Myers*, *supra* note 8 at para 22.
[19] *Ibid* at para 19.
[20] *Ibid* at para 1.
[21] *Occupier's Liability Act*, *supra* note 1, s. 4(1).
[22] *Waldick*, *supra* note 3 at para 48.

Sample Memorandum of Law (Cont.)

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Waldick, the Court accepted that rarely do visitors fully know and accept the risks that may arise from an occupier's negligence.[23] Section 4(1) reflects the principles of the *volenti non fit injuria* doctrine which absolves liability only when the plaintiff has assumed both the physical and legal risks of the activity.[24] It is unlikely that [redacted] knew the potential risks associated with Rushmore Rush absent adequate supervision. Although she was aware of the warning at the base of the slide, this does not indicate that she appreciated both the physical and legal risks of her actions.

CONCLUSION

It is likely that [redacted] Day Camp will be found partially liable for [redacted]'s injuries under s. 3(1) of the *Act*. A court will likely find that [redacted] Day Camp is an occupier. Furthermore, the circumstances of [redacted]'s injury, including foreseeability of injury, severity of injury, and contributory negligence, will likely result in an apportionment of liability. [redacted] Day Camp will likely be liable for failing to provide adequate supervision and thus failing to meet the standard of care for reasonable safety. [redacted] will likely be held contributorily negligent for her actions. These actions, however, are not likely to restrict [redacted] Day Camp's duty of care under s. 4(1) of the *Act* because they do not demonstrate that [redacted] willingly assumed the risks involved. If, however, [redacted] or her mother have signed a liability waiver, [redacted] Day Camp will likely be absolved from liability.

[23] *Ibid*.
[24] *Ibid* at para 47; *Crocker v Sundance Northwest Resorts Ltd*, [1988] 1 SCR 1186 at para 31.

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 certain jurisdictions or matters, such as the Ontario Court of Justice, the Human Rights Tribunal of Ontario, and the Court of Appeal for Ontario.

As indicated previously, it is important 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 may be tempting for you to use legal jargon to show your understanding of the law. However, it is always best to write as though the reader has no legal background. This allows you to explain yourself more clearly. It is possible that your legal writing is the first someone is reading about a particular legal issue and the more easy-to-understand your writing, the more effective and convincing your arguments are likely to be.

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 have access to 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:

- Ministry of the Attorney General - Appeals Process: https://www.attorneygeneral.jus.gov.on.ca/english/courts/divisional/Guide_to_Appeals_in_Divisional_Court_EN.html

- Ontario Superior Court of Justice and Court of Appeal Fees: https://www.ontario.ca/laws/regulation/920293?_ga=2.28136764.1818206681.1577657988-464532895.1568554450
- Ontario Court Forms: http://ontariocourtforms.on.ca/en

  - Civil Procedure Forms: https://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms

  - Small Claims Court Forms: https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms

  - Family Law Rules Forms: https://ontariocourtforms.on.ca/en/family-law-rules-forms

  - Other Forms: http://ontariocourtforms.on.ca/en/other-documents-related-to-the-rules-of-civil-procedure-1
- Ontario Superior Court of Justice Practice Directions & Notices: https://www.ontariocourts.ca/scj/practice

Corporate Documents

If you complete your articling term in a private practice setting or in-house with a corporate entity, 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 should 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 might 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 it before presenting it for review to 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. Additionally, be mindful of naming any drafts or final versions appropriately so that the most recent version of a document is easy to locate. Documents that undergo numerous revisions can be difficult to keep track of and, if working on the same assignment with others, it should be clear to everyone which version of any particular document is the most up-to-date.

When possible, you should also ask to review completed documents as a guideline for preparing your first draft. A completed version of the same type of document will give you an idea of the basic outline to follow for your own draft. Once you have the outline created, you can fill it in with the information you have collected about the file at hand. Your firm or employer may also have access to automated document software that can simplify this process for you. If you require special forms, such as Articles of Incorporation or Articles of Amalgamation, they can be located at the following websites:

- Ontario Central Forms Repository: https://forms.mgcs.gov.on.ca/en
- Ontario Business Registry: https://www.ontario.ca/page/ontario-business-registry-all-services

NOTE: *For more guidance on the preparation of legal documents (both litigation and corporate documents), see Chapter 10 in Working in a Legal Environment 3rd ed. from Emond Publishing.*

Sample Notice of Motion

Court File No. [redacted]

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

[redacted], [redacted], [redacted] and [redacted]

Plaintiffs

and

[redacted], [redacted], [redacted], and [redacted]

Defendants

A N D B E T W E E N:

[redacted]

Plaintiff by Counterclaim

and

[redacted], [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] and [redacted] (together "[redacted]"), [redacted] ("[redacted]"), and [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].

Sample Notice of Motion (Cont.)

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);

[X] 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];

(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];

Sample Notice of Motion (Cont.)

-3-

ALTERNATIVE RELIEF

(d) An Order that [redacted] immediately advise of the names of the auditors for the [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] for the period commencing [redacted], 20[redacted] and on an ongoing basis pending determination of the actions;

(j) A mandatory Order that [redacted] and [redacted] immediately produce:

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, either physically or attending remotely via videoconference or teleconference. The following offers some guidance to proper court etiquette and procedures that you should become familiar with:

Attending In-Person

- **Security.** All courthouses require that members of the public pass through a security check. This can cause some 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 to avoid any delays.
  - 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 access with your 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 associate judge hearing the matter. Daily hearing lists are also available online.
- **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.
  - If you are running late, 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 associate judge 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. Do not take up any more of the court's time with explanations unless asked to do so.

- **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, always do your best to enter and exit the courtroom quietly. It is respectful to wait until a time when the judge or associate judge 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).
  - In the event that you must attend court unexpectedly and are underdressed, it is appropriate to advise the registrar in advance and, when your matter is called, advise the judge or associate judge and ask for leave of the court to be heard. In most cases, you will still be allowed to speak on the matter.

- **Standing.** At all times, whenever the judge or associate judge enters or prepares to leave the courtroom, rise and remain standing until the registrar invites you to sit. When addressing the bench, always stand.

Attending Virtually

- **Technology.** Ensure that you have a stable internet connection, that your device is plugged in to a power source, and that both your microphone and camera are working. Be mindful of any virtual backgrounds and ensure that they are neutral and professional. If you experience any technical issues, advise the court and opposing counsel immediately.

- **Timeliness.** Even when appearing virtually, you should ensure that you are on time. Sign into the virtual session at least 15 minutes early to prevent any delays.

- **Dress.** Always dress professionally when attending court virtually. It is a good habit to put on the same outfit you would wear if attending court in-person.

- **Decorum.** Always keep yourself muted unless you are speaking or responding to a question. Avoid interrupting others and instead wait to be given permission by the court to speak. Additionally, do not bring food to the virtual courtroom.

- **Recording.** Do not record, take photos, screen capture, or broadcast any portion of the virtual hearing. It is an offence under section 136 of the *Courts of Justice Act*.

- **Privacy.** Ensure that you are attending virtually from a quiet and private space where you will not be affected by any distractions.

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 associate judge 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 associate judge 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.
- ✓ 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 learn which judge or associate judge 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 associate judge. 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 associate judge. 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 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.

In terms of etiquette during a motion, always stand when addressing the court. When addressing a judge or associate judge of the Superior Court of Justice, call them "Your Honour" or "Justice/Associate Justice (Last Name)." Deputy judges 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 EXAMS WHILE ARTICLING

THE ONTARIO BAR EXAMS

In many circumstances, articling students commence their articles prior to writing the LSO licensing examinations. However, the LSO does permit articling students to take up to seven days off for their first attempt of each licensing exam (i.e., 14 days off in total). While this may make things a bit more manageable, keep in mind that these days will have to be added to the end of your articling term. If you are beginning your articling term before writing either the barrister or solicitor exam, you will need to find a way to balance your articling responsibilities with studying.

The Ontario bar exams consist of two open-book lisensing exams: the barrister exam and the solicitor exam. Each examination is 4.5 hours long and is composed of 160 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 have 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, providing 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 (indices, 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 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.

NOTE: *For a complete guide to devising an effective study plan for the licensing exams as well as other useful tips, visit* https://emond.ca/downloads/The_Comprehensive_Bar_Exam_Preparation_Manual *and skip to Chapter 2.*

Balancing Work with Study

As an articling student, you will find yourself quite busy. 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 and make the most of time taken off work to study. By doing this, you can ensure that you are able to get through all the LSO study materials, complete a handful of practice tests, review any challenging sections, and successfully write the examinations. Proper planning will prevent poor performance.

Most firms or offices will appreciate the enormous task of articling and preparing for your LSO licensing examination. Accordingly, do not feel conflicted about taking time off to study or negotiating your workload in the weeks leading up to the exams. You should also employ the skills we discuss in Chapter 3 regarding managing your time, prioritizing projects, and managing lawyer expectations. By employing these skills, you can develop a balanced work and study schedule to set yourself up for success.

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 https://emond.ca/downloads/The_Comprehensive_Bar_Exam_Preparation_Manual.

Exam Preparation Support

Since 2006, the barrister and solicitor exam preparation courses from Emond Exam Prep have helped thousands of students successfully prepare for their LSO licensing examinations. These intensive bar exam preparation courses consist 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.

Currently, Emond Exam Prep offers two options for the bar exam preparation course: the online course and the webinar course. The online course is comprised of over 70 hours of recorded lectures from previous years. Videos can be accessed on-demand and allow viewers to gain a deep understanding of key concepts within each examination topic. These videos allow students to watch at their own pace, working around their articling schedule, if needed.

The webinar course, takes place once a year prior to the June sitting of the bar exams. This course consists of a five-day barrister section and a four-day solicitor section. Webinar lectures are interactive and engage participants with practice questions, chat functions, and dedicated Q&A sessions.

In addition to the bar exam preparation 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 or click the links below:

- Register for a Prep Course: emond.ca/Store/Courses/Barrister-and-Solicitor-Course
- Purchase Practice Exams: emond.ca/Store/Exams/Barrister-and-Solicitor-Practice-Exams-ON
- Book a Private Tutoring Session: emond.ca/Store/Tutoring/Tutoring
- Access Emond's Indices Database: emond.ca/barexamindices

Should you have questions or wish to get in touch, you can reach us at emondexamprep@emond.ca.

emond exam prep

LAST BUT NOT LEAST,
GOOD LUCK!