

**Certified True Copy of Amendments
to the Rules of the Law Society of Saskatchewan
February 17, 2023**

It was moved, seconded and carried that the *Rules* of the Law Society of Saskatchewan be amended. Please note that deletions have a “line-through” for identification purposes.

AMENDMENTS:

Practice conditions and restrictions arise out of either the admissions process or the complaints and discipline process governed by Parts 7 and 11 of the Rules respectively. The Benchers approved the addition of new Rules speaking to publication of practice conditions to each of these parts.

New Rules 745(1) and 1137.1 authorize the Law Society to publish practice conditions and restrictions arising out of both Admissions & Education and Complaints processes, whether they occur within or outside of the hearing process.

PART 7 – Membership and Practice Privileges

I. Notice of Practice Conditions and Restrictions

Notice of Practice Conditions and Restrictions

745(1) Where a member is the subject of practice conditions or restrictions, whether they arise out of proceedings pursuant to the Act, Part 7 of these Rules or through undertakings provided by the member, said conditions or restrictions, or a summary or excerpt thereof, may be published on the Society website.

PART 11 – Professional Responsibility

Notice of Practice Conditions and Restrictions

1137.1 Where a member is the subject of practice conditions or restrictions, whether they arise out of proceedings pursuant to the Act, Part 11 of these Rules or through undertakings provided by the member, said conditions or restrictions, or a summary or excerpt thereof, may be published on the Society website.

AMENDMENTS:

Amendment to Rule 704 was approved to make it mandatory for lawyers seeking to act as principals to complete the principal training course; and amendment to Rule 709 was approved to exempt lawyers from completing the mandatory principal training course who are supervising a Student-at-law for a secondment.

PART 7 – Membership and Practice Privileges

C. Students-at-Law

Approval to Act as a Principal

704(1) A lawyer seeking to act as a principal must:

- (a) meet the requirements of subrule 729(2);

- (b) be a lawyer currently practising full-time in Saskatchewan; ~~and~~
 - (c) have practised in Saskatchewan for at least the past five consecutive years; ~~and~~
 - (d) have completed the mandatory principal training course prescribed by the Benchers.
- (2) Before hiring a Student-at-law, a lawyer must submit:
- (a) an application to the Executive Director for approval as a principal in a form approved by the Committee and pursuant to Rule 729;
 - (b) any other information and documents required by the Act or these Rules or requested by the Executive Director.
- (3) No lawyer shall commence acting as a principal before the Executive Director approves the application pursuant to Rule 729.
- (4) A member shall only act as a principal to one Student-at-law at a time, except in the following circumstances, where a member may act as a principal to a maximum of two Students-at-Law:
- (a) during the final three months of one Student-at-law's articles; or
 - (b) during a secondment pursuant to Rule 709.
- (5) Pursuant to The Justice and Attorney General Act, subrule (4) does not apply to the Attorney General or Deputy Attorney General.
- (6) The Executive Director may approve as a principal a member who does not meet the qualifications set by this Rule but who satisfies the Executive Director that the lawyer is suitable to act as a principal.
- (7) A principal who ceases to meet the qualifications set by this Rule shall immediately notify the Executive Director in writing.
- (8) If the Executive Director becomes aware that the principal has not met or no longer meets the requirements of subrule (1), the Executive Director may:
- (a) revoke the approval of the principal; or
 - (b) refer the matter to the Committee for its consideration.

Secondment of Articles

709 (1) A principal may permit a Student-at-law to work in the office of another member approved to act as a principal pursuant to Rule 704, or to a court pursuant to subrule 707(1), for a total of two months during the Student-at-law's articling term.

(2) A member who will be supervising a Student-at-law pursuant to subrule 709(1) is not required to complete the mandatory principal training course identified in subrule 704(1).

AMENDMENTS:

Amendment to Rules 701, 702, 717, 728, and 1202 and 1407 were approved to clarify that Pro Bono registration is an active category.

PART 7 – Membership and Practice Privileges

A. Definitions

Definitions

701 In this Part: [...]

“Active Pro Bono member” means an active member permitted to practise in accordance with Rule 717;

B. Practising Status

Entitlements and Restrictions

702(7) **Active** Pro Bono member is permitted to practise in accordance with Rule 717.

D. Lawyers

Pro Bono Member

717(1) An active member may apply for a change of status to an **Active** Pro Bono member.

(2) A member who is not an active member may apply to be reinstated as an **Active** Pro Bono member on the same terms and conditions as required pursuant to Rule 728 for reinstatement to active membership but will be exempt from the fee provided in subrule 728(2)(b).

(3) All applications for **Active** Pro Bono ~~m~~Membership shall include an undertaking to restrict practice to legal services provided through pro bono organizations approved by the Society.

(4) Each year **Active** Pro Bono members shall file the following:

- (a) a letter from an approved pro bono organization, certifying that the **Active** Pro Bono member continues to be actively serving the approved pro bono organization; and
- (b) an Annual Practice Declaration.

(5) **Active** Pro Bono members are exempt from paying the annual fee, the annual insurance levy, and any registration fees for Continuing Professional Development programs provided by the Society.

F. Disqualification, Resignation, Retirement, Inactive Membership and Reinstatement

Reinstatement or Change in Membership Category

728(1) This Rule applies to: [...]

- (e) **Active** Pro Bono members;

PART 12 - Insurance

Saskatchewan Lawyers' Insurance Association Inc.

1202(3) The following members are exempt from payment of the annual assessment pursuant to subrule (1) and any special assessments pursuant to subrule (2), and, subject to subrules (5) and (6), are not covered by the liability policy: [...]

- (g) **Active** Pro Bono members;

PART 14 – Law Society Fees and Assessments

Refund of Fees

1407(4) The Society shall, upon being satisfied that an active member has during the current year become a Pro Bono member, refund one-twelfth of the current year's active member annual fee, multiplied by the number of months remaining in the calendar year excluding the month that the member becomes an **Active** Pro Bono ~~m~~Member.

AMENDMENTS:

Amendment to Rules 1002(1)(a)(iv) and 1002(1)(a)(xi) provide clarification and introduce terms and conditions to support effective exemptions from unauthorized practice for lobbyists and university law students.

PART 10 – Alternative Legal Services Providers

Exemptions from the Prohibition Against the Unauthorized Practice of Law

1002(1) Subject to subrule (2), for the purposes of clause 10(k.1) and clause 31(i) of the Act:

- (a) the following persons are exempt from the prohibition against the unauthorized practice of law in section 30 of the Act insofar as they are carrying out the functions mentioned in clauses (i) to (xii):
 - (i) a person serving in a neutral capacity as a mediator or conciliator;
 - (ii) a person participating in labour negotiations, arbitrations, conciliations, or proceedings respecting collective bargaining rights or agreements;
 - (iii) a person exercising an adjudicative function pursuant to statutory authority;
 - (iv) a person acting as a legislative lobbyist **provided they are in compliance with *The Lobbyists Act for Saskatchewan***;
 - (v) a public officer acting within the scope of the person's authority as a public officer;
 - (vi) a person employed by or currently funded through a service agreement or otherwise demonstrably accountable to the government to act as a lay representative before administrative agencies or tribunals;
 - (vii) a notary public exercising the powers conferred on the notary public pursuant to statutory authority;
 - (viii) a person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Saskatchewan or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtworker Program;
 - (ix) a person authorized in accordance with any provincial or federal statute to engage in activities listed in s.29.1 of the *Legal Profession Act, 1990*;
 - (x) an officer or employee of an incorporated or unincorporated organization preparing a document for the use of the organization or for an action or matter to which the organization is a party;
 - (xi) ~~a university law student in respect of services permitted to be provided by that student in accordance with the Rules~~ **delivered through an approved pro bono program and provided that:**
 - (A) Subject to the Act, *The King's Bench Rules of Court*, the *Criminal Code*, and subrule (B) a university law student may perform any legal service under the direct supervision of a lawyer that the supervising lawyer (a) is personally competent to perform; and (b) is satisfied that the university law student is competent to perform because of the direct supervision.**
 - (B) A university law student shall not give or accept a professional undertaking.**
 - (xii) an individual who is representing a person in an administrative adjudicative proceeding if the administrative tribunal determines that the individual would be of assistance to the person and the tribunal.

AMENDMENTS:

Practice Directive 1 and Form PD1 were amended to align with the new definition of "electronic means" contained in *The Land Titles Regulations, 2001*, effective February 16, 2023, the date that the changes to *The Land Titles Regulations, 2001* came into force.

Amendments to the following practice directive and its corresponding form have been affected by the changes:

- Practice Directive 1 – Remote Execution of Certain Documents via Electronic Means;
- Form PD1 – Declaration of Lawyer who has Witnessed Documents via Electronic Means.

Practice Directive1, along with corresponding form PD1, are attached.



**CERTIFIED to be a true copy of the resolutions passed
by the Benchers of the Law Society of Saskatchewan
at their meeting held February 17, 2023.**

TIMOTHY J. BROWN, K.C.
Executive Director

PRACTICE DIRECTIVES

Practice Directive Number 1 – Remote Execution of Certain Documents via Electronic Means

(Enacted March 25, 2020)

(Amended August 7, 2020)

(Amended effective July 1, 2022)

(Amended effective February 16, 2023)

Law Society of Saskatchewan Practice Directive

Number 1

Remote Execution of Certain Documents Via Electronic Means

WHEREAS the Government of Saskatchewan has amended *The Health Care Directives and Substitute Health Care Decision Makers Act, 2015*, *The Powers of Attorney Act, 2002*, *The Electronic Information and Documents Act, 2000* and *The Land Titles Regulations, 2001* to modify the requirements of how the execution of certain documents may be witnessed by lawyers to allow for the witnessing of signatures via electronic means;

AND WHEREAS 'electronic means' is defined in the relevant legislation as follows:

The Health Care Directives and Substitute Health Care Decision Makers Act, 2015:

'electronic means' means an electronic means of communication that includes visual aspects by which a lawyer and the person making the directive are able to adequately communicate with each other at all times during the course of their meeting.

The Powers of Attorney Act, 2002:

'electronic means' means an electronic means of communication that includes visual aspects by which a lawyer and the grantor of an enduring power of attorney are able to adequately communicate with each other at all times during the course of their meeting.

The Electronic Information and Documents Act, 2000

'electronic means' means an electronic means of communication that includes visual aspects by which a lawyer and the person providing the document are able to adequately communicate with each other at all times during the course of their meeting.

The Land Titles Regulations, 2001

"electronic means" means a real-time electronic means of communication that includes video and any other aspects by which a lawyer and the person signing the application are able to effectively communicate with each other at all times during the course of their meeting.

AND WHEREAS the Law Society of Saskatchewan is entitled to impose additional regulatory requirements in relation to the manner in which lawyers avail themselves of these remote witnessing provisions;

AND WHEREAS the Law Society of Saskatchewan is authorized to issue directives;

THE LAW SOCIETY OF SASKATCHEWAN HEREBY DIRECTS that lawyers who avail themselves of these remote witnessing provisions shall:

- require that any signator(s) display photo identification, and ensure that they obtain a screen capture (or alternatively a photo of their screen) showing the face of the signator(s) alongside their photo identification;
- manage risks associated with fraud, identity theft, undue influence, duress and potential lack of capacity by:

- o Considering whether there are red flags of fraud in the matter;

- o Assessing whether there is a risk that the client may be subject to undue influence or duress, including observing who else is physically in the room with the client during the execution of documents. If there is such a risk, consider if you are able to assist the client at this time without meeting in person;

- o Confirming your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the meeting carried out by electronic means.

- o Being alert to the fact that persons may attempt to use the execution of documents by electronic means and the related remote witnessing provisions as an opportunity to commit fraud or other illegal acts.

- amend any jurats as required to include the words "via electronic means" or other appropriate details to ensure that users of the signed document are fully aware of the manner in which the document was signed.

- prepare a written record, in Form PD1 prescribed by the Law Society of Saskatchewan to be retained by the Lawyer, detailing how the above noted risks associated with the execution of documents by electronic means were addressed.

Lawyers continue to be required to adhere to all Law Society of Saskatchewan Rules governing client identification and verification.

The Land Titles Regulations, 2001 pertaining to remote witnessing do not apply to lawyers from outside of Saskatchewan who are not members of the Law Society of Saskatchewan.

Form PD1 – Declaration of Lawyer Who has Witnessed Documents via Electronic Means

(Enacted March 25, 2020)

(Amended August 7, 2020)

(Amended effective July 1, 2022)

(Amended effective February 16, 2023)

FORM PD1

DECLARATION OF LAWYER WHO HAS WITNESSED DOCUMENTS

VIA ELECTRONIC MEANS

I _____, of _____, in the Province of _____, a Lawyer,
did on _____, _____ witness _____ sign the following documents
via electronic means:

- 1.
- 2.
- 3.

Pursuant to Law Society of Saskatchewan Practice Directive 1, issued March 25, 2020, ~~and amended on August 7, 2020 as amended~~, I have turned my mind to the risks associated with the witnessing of documents via electronic means. I have assessed the following risks, and have answered “yes” or “no” to indicate where I have identified concerns:

1. Have I identified any indicia that the transaction might be fraudulent? _____
2. Did I identify concerns, including the physical presence of a third party in the company of my client while they were signing the documents, suggesting that there is a risk that the client may be subject to undue influence or duress? _____
3. Did I identify concerns about my client’s understanding about the documents they are executing?

4. Did I identify concerns about my client not having an adequate opportunity to ask questions about the document being signed? _____

Where I have indicated “yes” to the statements above, I managed the risks by the following means:

Attached hereto is a screen capture of the signator(s) of the documents listed above with their photo identification that was presented to me via electronic means during the session where the above noted documents were executed.

I DO SOLEMNLY DECLARE that the statements contained in this form are complete and true in every respect. AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Date

Signature of Lawyer