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Bill 161

**An Act to enact the Legal Aid Services Act, 2019 and to make various amendments
to other Acts dealing with the courts and other justice matters**

The Hon. D. Downey
Attorney General

Government Bill

1st Reading December 9, 2019

2nd Reading March 5, 2020

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on Justice Policy
and as reported to the Legislative Assembly June 23, 2020)*

(The provisions in this Bill will be renumbered after 3rd Reading)



This reprint of the Bill is marked to indicate the changes that were made in Committee.
The changes are indicated by underlines for new text and a ~~striethrough~~ for deleted text.

EXPLANATORY NOTE

SCHEDULE 1 ADMINISTRATION OF JUSTICE ACT

The Schedule amends the *Administration of Justice Act* by adding section 4.10, which provides a mechanism for revoking fee waiver certificates if a court determines that the certificate holder's actions in a proceeding or enforcement are frivolous, vexatious or otherwise an abuse of process, and for limiting a person's ability to request a further fee waiver. As well, the financial means condition for a fee waiver set out in subsections 4.4 (7) and 4.7 (3) of the Act is amended. The current financial means condition for a fee waiver is that a person lacks the financial means to pay court or enforcement fees. This is replaced by a condition that a person cannot, without hardship, afford to pay the fees. Finally, references to case management masters in the French version of the Act are corrected.

SCHEDULE 2 CANADIAN PUBLIC ACCOUNTABILITY BOARD ACT (ONTARIO), 2006

The Schedule makes two technical amendments to the *Canadian Public Accountability Board Act (Ontario)*, 2006.

SCHEDULE 3 CIVIL REMEDIES ACT, 2001

The Schedule amends the *Civil Remedies Act, 2001*. The major elements of the Schedule are described below.

The Schedule adds a new Part I.1 to the Act. This Part sets out a procedure for the administrative forfeiture of property that the Attorney General has reason to believe is proceeds of unlawful activity or an instrument of unlawful activity.

The Attorney General is required to provide notice of administrative forfeiture proceedings through personal service to specified persons, including any person that the Attorney General believes may have an interest in the property that is subject to forfeiture. Notice must also be published on a website of the Government of Ontario.

If the Attorney General receives a notice of dispute from any person in respect of the property within a 120-day deadline, the Attorney General must choose to withdraw from seeking forfeiture of the property under the Act or commence a proceeding under Part II, III, III.1 or IV in relation to the property. If no notice of dispute is received by the 120-day deadline, the property is forfeited to the Crown in right of Ontario.

The proceeds of administratively forfeited property must be deposited into a special purpose account in the Consolidated Revenue Fund for limited uses.

Section 1.10 establishes a procedure for persons to commence an action against the Crown to recover damages if they failed, ~~in a manner that was not wilful or deliberate~~ without a reasonable excuse, to provide a notice of dispute within the 120-day deadline. In the event of a successful action, damages are to be limited to the fair market value of the person's interest in the property or the liquidated value of the person's interest in the property, whichever is greater.

Part I.1 also requires public bodies who receive a notice of administrative forfeiture to maintain the property until certain conditions are met.

Part II is amended to change the defined term "legitimate owner" so that it instead refers to an "uninvolved interest holder".

Sections 6, 11, 11.4 and 15 are amended to allow for payments to be made to the estates of deceased persons who suffered pecuniary or non-pecuniary loss as a result of unlawful activity or vehicular unlawful activity.

New sections 3.1, 8.1, 11.2.1 and 13.1 allow the Attorney General to make a motion to the Superior Court of Justice requesting an order for the disclosure of information or records that are reasonably required by the Attorney General in order to exercise the Attorney General's powers or perform the Attorney General's functions and duties under the Act.

The special purpose account provisions in Parts II, III, III.1 and IV are amended to allow for payments to the Crown for costs incurred in conducting proceedings under Part I.1.

Section 18.1 is amended to clarify that the power to approve a settlement includes the power to approve a settlement that provides for payment of a monetary amount instead of forfeiture of the property.

New section 18.2 authorizes public bodies to maintain possession of property ~~for a reasonable time~~ in order to allow the Attorney General to determine whether a proceeding should be commenced under the Act and, if necessary, for the Attorney General to obtain an interlocutory order under the Act in respect of the property. Possession is not authorized under this section after 75 days have passed following the receipt of a written request or demand for the return of the property or the commencement, or receipt of notice respecting, a legal proceeding seeking the return of the property.

New section 20.1 requires the Director of Asset Management – Civil to prepare and publish an annual report in respect of activities conducted under the Act in the previous fiscal year.

SCHEDULE 4 **CLASS PROCEEDINGS ACT, 1992**

The Schedule makes various amendments to the *Class Proceedings Act, 1992*, including the following:

1. Section 2 is amended to add a requirement to register proceedings commenced under the Act in accordance with the regulations made under the Act.
2. The Act is amended to take into account multi-jurisdictional class proceedings and proposed multi-jurisdictional class proceedings commenced in Ontario or elsewhere in Canada.
3. A new section 13.1 addresses carriage motions, in which the court may, if there are multiple proceedings under the Act involving the same or similar subject matter and some or all of the same class members, permit one to proceed and stay the others, as well as bar new proceedings under the Act involving the same or similar subject matter and some or all of the same class members from being commenced without court leave. In addition, if there is an existing proceeding under the Act, a proceeding involving the same or similar subject matter and some or all of the same class members may not be commenced under the Act without court leave if more than 60 days have passed since the existing proceeding was commenced.
4. Changes are made to sections 17 to 19 respecting the requirements of notices under the Act, and section 20 is changed to require the notices to be written in English and in French, and in a plain language manner. Section 22 is amended to provide that the costs of a notice of certification may be awarded to a representative plaintiff only in the event of success in the class proceeding, except to the extent the defendant consents to their payment in whole or in part at an earlier time.
5. Section 26 is amended to require the person or entity administering the distribution of an award under section 24 to file a report respecting the distribution with the court.
6. A new section 27.1 addresses settlements, and specifies new requirements respecting the seeking of court approval of the settlement of a proceeding under the Act or in relation to the common issues affecting a subclass. The section authorizes the court to appoint a person or entity to administer the distribution of settlement funds. The person or entity who administers the distribution of settlement funds is required to file a report respecting the distribution with the court.
7. A new section 27.2 addresses distribution of awards under section 24 and of settlement funds on a *cy-près* basis, including providing for when the court may make an order authorizing such distribution and specifying to whom the distribution may be made.
8. A new section 27.3 sets out requirements that apply if a proceeding under the Act includes or may include a subrogated claim, as defined by the regulations made under the Act.
9. A new section 29.1 provides for a process for dismissing a proceeding commenced under the Act for delay, if the specified criteria are met.
10. Section 30 is amended to change the appeal route or monetary threshold for a number of appeals of decisions under the Act, as well as to restrict the ability of an appellant to materially amend materials on an appeal.
11. Section 32 of the Act is amended to provide that a court shall not approve an agreement respecting fees and disbursements between a solicitor and a representative party without determining that the fees and disbursements are fair and reasonable, and to specify factors to consider in making that determination. The same factors inform a determination of the court respecting the amount owing to a solicitor for fees and disbursements if the agreement is not approved. The court may order that all or part of the amount owing to a solicitor in fees and disbursements be held back from payment until the specified conditions are met.
12. A new section 33.1 addresses rules respecting third-party funding agreements, which are contingent on court approval.
13. Section 39 addresses transition rules respecting existing and other proceedings specified by the regulations.

In addition, a number of corrections in terminology are made to the French version of the Act.

SCHEDULE 5 **~~COMMISSIONERS FOR TAKING AFFIDAVITS ACT~~**

~~The Schedule makes various amendments to the *Commissioners for taking Affidavits Act*, including adjusting its short title and making consequential amendments to other Acts:~~

- ~~1. Section 3 of the Act, providing authority for the Attorney General to grant specified powers respecting the administration of oaths and taking of affidavits to specified persons, is repealed. Under the new section 12.1, persons exercising powers conferred under section 3 before its repeal may continue to exercise those powers in accordance with the Act.~~

- 2. Section 4 of the Act is amended to remove special provision for the appointment of certain corporate officers as commissioners for taking affidavits, and to give the Attorney General the authority to, by regulations made under the Act, change the terms of appointment and renewal of appointment for commissioners.
- 3. Under subsection 4 (1.1) of the Act, the Attorney General may delegate the authority to appoint commissioners. Subsection 8 (3) is added to the Act to give the Attorney General power to delegate the authority to revoke appointments.
- 4. Section 9 of the Act is re-enacted to provide for circumstances in which a person administering an oath or declaration need not be in the physical presence of the deponent or declarant.
- 5. The regulation making authority in section 13 of the Act, currently with the Lieutenant Governor in Council, is amended to grant certain of the regulation making powers to the Attorney General.

SCHEDULE 6 COURTS OF JUSTICE ACT

The Schedule makes various amendments to the *Courts of Justice Act*.

No compensation for costs if removal from office following complaint

Section 33.1 of the Act is amended by providing that deputy judges who are removed from office following a complaint against them are not entitled to compensation for any part of the legal costs incurred by them in relation to the complaint. Section 51.7 of the Act is amended to provide for the same consequence if the Judicial Council recommends that a provincial judge be removed from office following a complaint, and section 86.2 of the Act is amended to provide for the same consequence if a case management master is removed from office following a complaint.

Appointment of case management masters

Various amendments are made to section 86.1 of the Act to provide that the appointment of case management masters not be for a specified term, but that a case management master must retire on reaching the age of 65, subject to reappointment in accordance with the section. The change is made to apply to existing case management masters whose appointments are subject to a term.

Masters

Section 87 of the Act is repealed, and consequential amendments made to other provisions of the Act as well as to other Acts, to remove the judicial office of master.

SCHEDULE 7 CREDITORS' RELIEF ACT, 2010

The Schedule re-enacts section 15 of the *Creditors' Relief Act, 2010* to give the authority to designate a bank in which a sheriff is required to deposit money to the Deputy Attorney General and to the person designated by the Deputy Attorney General under subsection 73 (2) of the *Courts of Justice Act*.

SCHEDULE 8 CROWN LIABILITY AND PROCEEDINGS ACT, 2019

The Schedule makes various amendments to the *Crown Liability and Proceedings Act, 2019* in relation to section 17 of the Act (no proceeding for misfeasance, bad faith without leave), which is re-enacted. The Schedule re-enacts section 17 of the *Crown Liability and Proceedings Act, 2019*. The re-enacted section sets out rules that apply with respect to proceedings brought against the Crown or an officer or employee of the Crown that include a claim for misfeasance or bad faith. The section provides that such proceedings are stayed on commencement, subject to leave of the court to proceed. If leave is not granted, the proceeding is rendered a nullity. The Crown may waive the leave requirement. The section also sets out transition rules for existing proceedings, as well as rules as to the application of limitation periods to the proceedings. Changes made to the section include a new requirement to give, within a specified time, notice of a motion for leave to bring a proceeding described in the section, a new power of the Attorney General to require that additional particulars respecting the notice be provided and other changes to make the provisions of section 17 more consistent with those set out in section 18 of the Act in relation to claims for damages brought against the Crown. A complementary amendment is made to section 18. Finally, sSection 30 of the Act is amended to add a regulation-making authority respecting procedures that apply to a motion for leave brought under section 17.

Provisions are added to sections 17 and 18 to state that proceedings for which leave is not obtained in accordance with those sections are a nullity.

SCHEDULE 9 ESTATES ACT

The Schedule makes various amendments to the *Estates Act*, including the following:

1. The Schedule amends the Act with respect to small estates, which are estates that do not exceed an amount to be prescribed by regulations made under the Act. Section 36 of the Act is amended to provide that, except in specified circumstances, a bond is not required in respect of a small estate.

2. The Schedule removes the requirement that, unless a court orders otherwise, a certificate under the hand of the Estate Registrar for Ontario must be received by the local registrar before the granting of probate or administration. Instead, the local registrar is required to confirm the matters that are currently required to be confirmed by the Estate Registrar for Ontario before probate or administration is granted.
3. The Schedule repeals certain provisions that require local registrars to transmit by mail specified information to the Estate Registrar for Ontario, such as a list of the grants of probate and administration made by the local registrars' courts.
4. The Schedule repeals various provisions that impose obligations on the Estate Registrar for Ontario, such as forwarding to a local registrar specified information and filing and keeping all notices in respect of applications for probate or administration.
5. Provisions respecting caveats against a grant of probate or administration are repealed.

SCHEDULE 10 EXECUTION ACT

The definition of "sheriff" in section 1 of the *Execution Act* is amended to reflect that a sheriff means a sheriff under section 73 of the *Courts of Justice Act*. In addition, the future repeal of subsection 8 (1) of the *Execution Act* is itself repealed.

SCHEDULE 11 JUDICIAL REVIEW PROCEDURE ACT

The Schedule makes various amendments to the *Judicial Review Procedure Act*:

1. Section 2 of the Act is amended to provide the court with a generally applicable power to refuse to grant relief on an application for judicial review.
2. Section 5 of the Act is re-enacted to establish new rules as to when an application for judicial review may be brought. These rules apply with respect to any application for judicial review of a decision that is made or of a matter that occurs on or after the day on which the Schedule comes into force.
3. Subsection 9 (1) of the Act is re-enacted to specify what is sufficient in respect of information provided in an application for judicial review.

SCHEDULE 12 JURIES ACT

The Schedule amends the *Juries Act* respecting the addresses of persons on the jury panel list:

1. Subsection 15 (3) of the Act is amended so that the address of a person selected to be on a panel list is not included in the list.
2. Section 18 of the Act is amended to add a power of the court to order, in the circumstances specified, that the disclosure by the sheriff of the panel list under the section include disclosure of the addresses of the persons on the list.

As well, subsection 3 (1) of the Act is amended to change the terminology of "lock-up" to reflect recent legislation in the corrections context.

SCHEDULE 13 JUSTICES OF THE PEACE ACT

Sections 11 and 11.1 of the *Justices of the Peace Act* are amended to provide that if a complaint against a justice of the peace results in a formal hearing, it is the hearing panel that may make recommendations respecting any compensation payable to the justice of the peace for legal costs incurred in relation to both the investigation of the complaint and the resulting hearing. Section 11.1 is further amended to provide that if the hearing panel recommends that the justice of the peace be removed from office, the justice of the peace is not entitled to any such compensation.

SCHEDULE 14 LAW SOCIETY ACT

The Schedule makes various amendments to the *Law Society Act*.

The Act is amended by adding sections 61.1.1 to 61.1.4, respecting the practice of law or provision of legal services through a firm, as defined by a new definition added to section 1 of the Act. Section 62 of the Act is amended to give Convocation authority to make by-laws governing the practice of law or provision of legal services through a firm.

Other amendments to the Act include the following:

1. Subsection 35 (1) is amended to increase the maximum fine that may be imposed on a licensee in the event of a contravention of section 33 (prohibited conduct) from \$10,000 to \$100,000.

2. Sections 42 (review: professional competence), 49.2 (audit of financial records) and 49.3 (investigations) are amended to permit a person conducting a review, audit or investigation, as the case may be, to enter former business premises of a licensee or group of licensees and require people who formerly worked with a licensee or group of licensees to provide information.
3. Subsection 48 (1) is re-enacted to add to the circumstances in which a licensee's licence may be summarily revoked.
4. Amendments are made to section 49.12 to add to the circumstances in which specified persons may disclose specified information respecting audits, investigations, reviews, searches, seizures and proceedings. Subsections 49.12 (2.1) and (2.2) are added to specify that certain information that is subject to solicitor-client privilege or that may tend to criminate or establish a person's liability to civil proceedings may nevertheless not be disclosed in some of those circumstances.
5. Clause 62 (3) (a) of the Act, which requires that copies of the by-laws made under the Act be filed in the office of the Attorney General for Ontario, is repealed.

SCHEDULE 15 LEGAL AID SERVICES ACT, 1998

The Schedule makes various amendments to the *Legal Aid Services Act, 1998*, including the following:

1. Section 5 is re-enacted and section 6 is repealed to change the composition of the board of directors of Legal Aid Ontario. The existing board members are continued as members of the new board.
2. Section 36, which provides for a process by which clinics may request reconsideration of funding decisions, is repealed. Under a new section 72.4, any existing reconsiderations are terminated.
3. A new section 39.1 provides for circumstances in which Legal Aid Ontario is required to provide specific legal aid services. Section 16 is consequentially amended.
4. A new section 72.3 states that Legal Aid Ontario may [at any time before April 1, 2021](#) attempt to enter into discussions with clinics and with deans of law schools respecting new agreements for the provision of legal aid services by the clinics and by student legal aid services societies. Any prior agreements are cancelled ~~six months after the section comes into force on April 1, 2021~~, unless they are cancelled earlier. Under a new section 72.4, any existing proceedings or processes under a cancelled agreement are terminated. Section 72.5 provides for immunity for the Crown and for Legal Aid Ontario respecting the cancellations and terminations under sections 72.3 and 72.4, and additionally provides that no person is entitled to compensation respecting the cancellations or terminations.

SCHEDULE 16 LEGAL AID SERVICES ACT, 2020

The Schedule enacts the *Legal Aid Services Act, 2020*, repeals the *Legal Aid Services Act, 1998* and makes complementary amendments to other Acts.

Purpose and interpretation

Sections 1 and 2 of the *Legal Aid Services Act, 2020* set out the purpose of the Act and definitions.

Legal aid services

Sections 3 to 15 address the provision of legal aid services under the Act by Legal Aid Ontario ("the Corporation"). Sections 3 to 5 set out the legal aid services that may be provided and the manner in which they may be provided, including by the authorization of persons and entities who would provide the legal aid services as service providers. The legal aid services that may be provided and the areas of law in which they may be provided are subject to regulations made by the Minister responsible for the Act. Section 7 sets out the eligibility requirements for receiving legal aid services which, under section 8, are to be provided without cost to an individual. Section 9 sets out an exception to this, as it authorizes the Corporation to require an individual or person responsible for the individual to contribute to the cost of providing legal aid services to the individual. Section 15 addresses circumstances in which the Corporation is obligated to provide specific legal aid services.

Legal Aid Ontario

Sections 16 to 26 continue the Corporation, set out its objects and powers and provide for its board of directors, as well as address other corporate matters.

Accountability, finances and administration

Sections 27 to 33 set out various powers and duties of the Corporation in relation to fiscal and administrative matters, including a requirement to submit an annual budget (section 28) and to develop a public consultation policy (section 33). Section 29 provides that the money required for the purposes of the Act shall be paid out of money appropriated by the Legislature.

General

Sections 34 to 44 set out various provisions respecting the exercise and performance of powers, duties and functions under the Act and the provision of legal aid services, including provisions addressing personal immunity for Corporation employees and

others (section 37) and deeming specific communications to be privileged (section 40). Section 45 sets out offences for specified contraventions of the Act.

Rules and regulations

Section 46 sets out the rule-making authority of the board of directors of the Corporation, which permits the board to make rules respecting a broad range of matters, including governing the authorization of service providers and their payment, setting out eligibility requirements to receive legal aid services and governing the determination of eligibility, and governing contribution to the cost of providing legal aid services. However, the board may not make a rule without first posting the proposed rule on the Corporation's website for a specified period of time. As well, some rules do not become effective unless, after they are made, they are submitted to the Minister responsible for the Act and either approved or else not rejected or returned by the Minister before the specified period expires. Once rules become effective, the board must make them publicly available.

Section 47 provides for regulation-making authority, most of which, including regulation-making authority relating to transitional matters, is given to the Lieutenant Governor in Council. The Minister responsible for the Act may make regulations respecting, among other things, the legal aid services the Corporation may or must provide, and the areas of law in which it may or must provide them.

SCHEDULE 17 LIMITATIONS ACT, 2002

The Schedule makes housekeeping amendments to the Limitations Act, 2002. Subsection 16 (1.2) of the Act is amended to replace the description of a date with the actual date. The Schedule to the Act is amended to remove and update obsolete references to provisions of other Acts.

SCHEDULE 18 MARRIAGE ACT

The Schedule amends the *Marriage Act*.

The amendments permit a person to be registered as authorized to solemnize marriage if the person belongs to a band located in whole or in part in Ontario, a First Nation, Métis or Inuit organization or community located in whole or in part in Ontario or a permanently established Indigenous entity located in whole or in part in Ontario, and is duly recognized by the band, First Nation, Métis or Inuit organization or community or Indigenous entity as entitled to solemnize marriage according to its customs and traditions.

The amendments provide that judges of any court in Canada, as well as Ontario case management masters, may solemnize marriages in Ontario. The ability of Ontario justices of the peace and persons prescribed by the regulations to solemnize marriages is continued.

Amendments related to the administration of the Act, and consequential amendments to other Acts, are also made.

SCHEDULE 19 NOTARIES ACT

~~The Schedule makes various amendments to the *Notaries Act*:~~

- ~~—1. Section 2 of the Act is amended in the first instance to change the conditions for appointment and reappointment. In the second instance, section 2 is repealed and replaced in order to provide that the requirements a person must meet to be appointed a notary public be specified by regulations made under the Act; section 8 of the Act is amended to give that regulation-making authority, along with certain other regulation-making authorities, to the Attorney General.~~
- ~~—2. Sections 3 and 4 of the Act are repealed, and a new section 3 is re-enacted, to restate the powers of a notary public. Subsection 3 (3) provides for circumstances in which a notary public need not be in the physical presence of the person with respect to whom the notary public is exercising his or her powers.~~
- ~~—3. Section 5 of the Act is amended to give the Attorney General the authority to, by regulation, change the terms of appointment and reappointment for notaries public.~~
- ~~—4. Under subsection 1 (2) of the Act, the Attorney General may delegate the authority to appoint notaries public. Subsection 7 (4) is added to the Act to give the Attorney General a power to delegate the authority to revoke appointments.~~
- ~~—5. Numerous amendments are made to the Act to provide that it applies to persons licensed under the *Law Society Act* to provide legal services in Ontario in the same way as it applies to persons licensed under that Act to practise law in Ontario.~~

SCHEDULE 20
PUBLIC GUARDIAN AND TRUSTEE ACT

The Schedule re-enacts subsection 10 (3) of the *Public Guardian and Trustee Act* (exception to listed requirements for delivering up of property) to change the threshold amount in that subsection from a maximum of \$20,000 to a maximum of an amount prescribed by regulations made by the Lieutenant Governor in Council under the Act. Section 14 of the Act is amended to add the necessary regulation-making authority.

**An Act to enact the Legal Aid Services Act, 2020 and to make various amendments
to other Acts dealing with the courts and other justice matters**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Smarter and Stronger Justice Act, 2020*.

**SCHEDULE 1
ADMINISTRATION OF JUSTICE ACT**

1 Section 4.1 of the *Administration of Justice Act* is repealed and the following substituted:

Purpose

4.1 The purpose of sections 4.2 to 4.10 is to provide a mechanism for fee waivers that is fair and proportionate, so that individuals who might otherwise be denied access to justice because of their financial circumstances can be excused from paying fees.

2 Section 4.2 of the Act is amended by adding the following subsection:

Subject to revocation

(2) Subsection (1) is subject to the revocation of the certificate under section 4.10.

3 Paragraph 1 of subsection 4.4 (7) of the Act is amended by striking out “The person lacks the financial means to pay fees” at the beginning and substituting “The person cannot, without undue hardship, afford to pay fees”.

4 Subsection 4.7 (3) of the Act is amended by striking out “the person lacks the financial means to pay fees” and substituting “the person cannot, without undue hardship, afford to pay fees”.

5 The Act is amended by adding the following section:

Revocation of fee waiver

4.10 (1) A certificate given to a person under section 4.3 or 4.4 respecting a court proceeding or enforcement in a proceeding may, despite anything to the contrary in those sections, be revoked by order of a judge, deputy judge or case management master of the court in which the proceeding was commenced, if the judge, deputy judge or case management master is of the opinion that the person’s actions in the proceeding or enforcement are frivolous, vexatious or otherwise an abuse of the process of the court.

Same

(2) A certificate given to a person under section 4.5 or 4.7 respecting the enforcement of an order may, despite anything to the contrary in those sections, be revoked by order of a judge, deputy judge or case management master of the court in which the order was made or filed, as the case may be, if the judge, deputy judge or case management master is of the opinion that the person’s actions in the enforcement are frivolous, vexatious or otherwise an abuse of the process of the court.

Submissions

(3) Before making an order under subsection (1) or (2), the judge, deputy judge or case management master shall give the person an opportunity to make submissions.

Same

(4) Submissions shall be made in the manner and form specified by the judge, deputy judge or case management master.

Restriction on further fee waivers

(5) In making an order under subsection (1) or (2), the judge, deputy judge or case management master may make an order that the person may not, despite anything contrary in this Act, make any further requests for a fee waiver under this Act with respect to the same proceeding or any related proceeding or with respect to the same enforcement, without permission obtained in advance from a judge, deputy judge or case management master, as applicable.

Decision final

(6) The decision of the judge, deputy judge or case management master is final.

Rules of court and *Statutory Powers Procedure Act* do not apply

(7) The rules of court and the *Statutory Powers Procedure Act* do not apply to this section.

No fee

(8) No fee is payable for anything done in connection with this section.

6 (1) The French version of the following provisions of the Act is amended by striking out “protonotaire responsable de la gestion de la cause” wherever it appears and substituting in each case “protonotaire chargé de la gestion des causes”:

1. Subsections 4.4 (1), (5) and (9).

2. Clause 4.7 (1) (b) and subsections 4.7 (3) and (5).

(2) The French version of the following provisions of the Act is amended by striking out “protonotaire de la gestion de la cause” wherever it appears and substituting in each case “protonotaire chargé de la gestion des causes”:

1. Subsection 4.4 (4).

2. Subsection 4.7 (2).

Commencement

7 (1) Subject to subsection (2), this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Sections 1 to 5 come into force on the day that is 30 days after the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 2
CANADIAN PUBLIC ACCOUNTABILITY BOARD ACT (ONTARIO), 2006

1 The French version of subsection 11 (5) of the *Canadian Public Accountability Board Act (Ontario), 2006* is amended by striking out “de nier l’existence d’un privilège ni de constituer” and substituting “d’invalider un privilège ni ne constitue”.

2 The English version of subsection 14 (2) of the Act is amended by adding “or documents” after “information based on privileged information”.

Commencement

3 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

**SCHEDULE 3
CIVIL REMEDIES ACT, 2001**

1 (1) The *Civil Remedies Act, 2001* is amended by adding the following Part:

**PART I.1
ADMINISTRATIVE FORFEITURE**

Definitions

1.1 In this Part,

“deadline date” means, in respect of an administrative forfeiture proceeding under this Part, the day that is 120 days after the later of,

- (a) the day on which every person who is entitled to receive written notice of the proceeding under clause 1.3 (1) (b) has either,
 - (i) received the notice or been deemed to have received the notice, or
 - (ii) been the subject of a final attempt to serve the person under clause 1.3 (4) (b), and
- (b) the day the notice required by subsection 1.3 (7) is published on a website of the Government of Ontario; (“date limite”)

“Director” means the Director of Asset Management – Civil appointed under section 15.1; (“directeur”)

“instrument of unlawful activity” has the same meaning as in section 7; (“instrument d’activité illégale”)

“notice of dispute” means a notice of dispute described in section 1.5; (“avis de contestation”)

“proceeds of unlawful activity” has the same meaning as in section 2; (“produit d’activité illégale”)

“property” means real or personal property, and includes any interest in property; (“bien”)

“public body” means,

- (a) an entity with which the Director has an agreement under subsection 19 (1.1),
- (b) an institution belonging to a class of institutions prescribed by the regulations made under this Act for the purposes of paragraph 1 of subsection 19 (4), or
- (c) a chief of police as defined in subsection 2 (1) of the *Police Services Act*; (“organisme public”)

“unlawful activity” means an act or omission that,

- (a) is an offence under an Act of Canada, Ontario or another province or territory of Canada, or
- (b) is an offence under an Act of a jurisdiction outside Canada, if a similar act or omission would be an offence under an Act of Canada or Ontario if it were committed in Ontario,

whether the act or omission occurred before or after this Part came into force. (“activité illégale”)

Property eligible for administrative forfeiture

1.2 (1) Property may be the subject of an administrative forfeiture proceeding under this Part if,

- (a) it is personal property that is located in Ontario;
- (b) it is held by or on behalf of a public body;
- (c) no person has a prior registered interest in the property; and
- (d) the property is not the subject of a proceeding under Part II, III, III.1 or IV.

Grounds to seek administrative forfeiture

(2) The Attorney General may commence an administrative forfeiture proceeding against property if he or she has reason to believe that the property is proceeds of unlawful activity or an instrument of unlawful activity.

Commencing administrative forfeiture proceeding

1.3 (1) In order to commence an administrative forfeiture proceeding, the Attorney General must,

- (a) file notice of the administrative forfeiture proceeding against the property in the registration system established under the *Personal Property Security Act*; and
- (b) give written notice of the administrative forfeiture proceeding to,
 - (i) the person from whom the property was seized,

- (ii) the public body that is holding the property or on whose behalf the property is being held, and
- (iii) any other person whom the Attorney General has reason to believe may have an interest in the property.

Manner of giving notice

(2) Subject to subsections (3) to (6), the Attorney General must make reasonable efforts to personally serve the notice required by subclauses (1) (b) (i) and (iii) on the person.

If person not available

(3) If the person is not available to be served a notice required by subclause (1) (b) (i) or (iii), the Attorney General shall make two additional attempts to serve the person over the course of the next 14 days.

Final service

- (4) If the two additional attempts to serve the person are not successful,
- (a) the notice shall be left at the person's last known address; or
 - (b) if there is no last known address associated with the person, the Attorney General shall make one more final attempt to serve the person.

Deemed receipt of notice

(5) A notice that has been left at a person's last known address in accordance with clause (4) (a) is deemed to have been served personally on the person on the day it was left at that address.

Exception

(6) The Attorney General is not required to give notice to a person referred to in subclause (1) (b) (i) or (iii) if the Attorney General does not have any information respecting the person's location.

Notice to the public

(7) The Attorney General shall give public notice of the administrative forfeiture proceeding against the property by publishing notice of the proceeding on a website of the Government of Ontario.

Contents of notice

- (8) A notice required by clause (1) (b) or subsection (7) must include,
- (a) a file number assigned to the forfeiture by the Attorney General;
 - (b) a description of the property that is subject to forfeiture;
 - (c) the name of the public body or police force that seized the property;
 - (d) the date the property was seized and the place of seizure;
 - (e) a statement that the property is either a proceed of unlawful activity or an instrument of unlawful activity;
 - (f) a statement that the property may be forfeited to the Crown in right of Ontario;
 - (g) a procedure for submitting a notice of dispute to the Attorney General, and a statement that a person who wishes to oppose forfeiture of the property may submit a notice of dispute to the Attorney General in accordance with that procedure; and
 - (h) a statement that a notice of dispute must be submitted to the Attorney General within 120 days after receipt of the notice of proceeding.

Public body to maintain possession of property

1.4 (1) Subject to subsection (2) and to any orders made under this Act, a public body that receives a notice of administrative forfeiture from the Attorney General shall maintain the property that is subject to forfeiture and ensure that it is not released to any person, despite any other claim, interest or right of possession in the property, until,

- (a) the Attorney General notifies the public body that the Attorney General is withdrawing from seeking forfeiture of the property under this Act;
- (b) the Attorney General notifies the public body in accordance with subsection 1.8 (2) that the property has been forfeited; or
- (c) the public body receives notice of an order made pursuant to Part II, III, III.1 or IV that forfeits the property to the Crown in right of Ontario or otherwise deals with possession of the property.

Exception, perishable or rapidly depreciating property

(2) Despite subsection (1), a public body may take any action in relation to perishable or rapidly depreciating property that is subject to forfeiture if it has received prior authorization from the Attorney General.

Disputing administrative forfeiture

1.5 (1) A person who claims to have an interest in property may oppose the forfeiture of that property by submitting a notice of dispute to the Attorney General in accordance with this section.

Notice of dispute requirements

(2) The notice of dispute must include,

- (a) either,
 - (i) the file number specified in the notice issued under section 1.3, or
 - (ii) a description that identifies the property;
- (b) the name of the person claiming an interest in the property;
- (c) the particulars of the person's interest in the property;
- (d) the basis upon which the person disputes forfeiture of the property; and
- (e) the address for service of the person opposing forfeiture of the property.

Deadline

(3) A notice of dispute must be received by the Attorney General on or before the deadline date.

If Attorney General receives notice of dispute

1.6 (1) Within 45 days after receiving a notice of dispute in respect of property, the Attorney General shall,

- (a) either commence proceedings against the property under Part II, III, III.1 or IV or withdraw from seeking forfeiture of the property under this Act; and
- (b) give notice of the commencement of the new proceedings, or the withdrawal from seeking forfeiture of the property under this Act, to,
 - (i) every person and public body that received notice of the administrative forfeiture proceeding under clause 1.3 (1) (b), and
 - (ii) each person who submitted a notice of dispute in respect of the property.

Discharge of notice

(2) After receiving a notice of dispute in respect of property, the Attorney General shall discharge the notice registered pursuant to clause 1.3 (1) (a) as soon as is practicable.

Attorney General's power to withdraw or convert to other proceedings

1.7 (1) The Attorney General may, at any time and on his or her own initiative,

- (a) withdraw from seeking forfeiture of property under this Act; or
- (b) discontinue an administrative forfeiture proceeding and commence proceedings under Part II, III, III.1 or IV.

Notice

(2) If the Attorney General takes either of the actions described in subsection (1),

- (a) the notice registered pursuant to clause 1.3 (1) (a) shall be discharged by the Attorney General as soon as is practicable; and
- (b) the Attorney General shall give notice of the action to each person and public body that received notice of the administrative forfeiture proceeding under clause 1.3 (1) (b).

~~Forfeiture if no notice of dispute~~

~~**1.8** (1) If the Attorney General does not receive a notice of dispute on or before the deadline date, the property specified in the notice of dispute is forfeited to the Crown in right of Ontario on the day after the deadline date.~~

Forfeiture if no notice of dispute

1.8 (1) If the Attorney General does not receive a notice of dispute on or before the deadline date, the property specified in the notice of administrative forfeiture proceeding published under subsection 1.3 (7) is forfeited to the Crown in right of Ontario on the day after the deadline date.

Notice to public body

(2) The Attorney General shall prepare a notice of forfeiture that confirms the property has been forfeited to the Crown in right of Ontario and give a copy of the notice to the public body in possession of the property.

Release of property

(3) The public body shall release the property to the Director upon receipt of the notice of forfeiture.

Special purpose account

1.9 (1) If property forfeited to the Crown in right of Ontario under this Part is money or is converted to money, the money shall be deposited in a separate, interest bearing account in the Consolidated Revenue Fund.

Same

(2) For the purpose of the *Financial Administration Act*, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

Payments out of account for Crown's costs

(3) If money is deposited in an account under subsection (1), the Minister of Finance shall make payments out of the account, at the request of the Director and in the amounts determined by the Director under subsection (8), to compensate the Crown in right of Ontario for its costs incurred in,

- (a) conducting the proceeding under this Part with respect to the property;
- (b) determining whether the proceeding under this Part should be commenced; and
- (c) preserving, managing or disposing of the property under this Part.

Other payments out of account

(4) Subject to the regulations made under this Act and after making the payments, if any, out of the account under subsection (3), the Minister of Finance may make payments out of the account described in subsection (1) for the following purposes:

1. To compensate persons, or the estates of deceased persons, who suffered pecuniary or non-pecuniary losses, including losses recoverable under Part V of the *Family Law Act*, as a result of the unlawful activity that the property was used to engage in or that resulted in the acquisition of the property.
2. To assist victims of unlawful activities or the estates of deceased victims of unlawful activities or to prevent unlawful activities that result in victimization.
3. To compensate the Crown in right of Ontario for costs incurred in respect of any proceeding under this Part that relates to the property, other than the costs described in subsection (3), and for pecuniary losses suffered as a result of the unlawful activity that the property was used to engage in or that resulted in the acquisition of the property, including costs incurred in remedying the effects of the unlawful activity.
4. To compensate a municipal corporation, or a public institution that belongs to a class prescribed by the regulations made under this Act, for pecuniary losses that were suffered as a result of the unlawful activity that the property was used to engage in or that resulted in the acquisition of the property, and that are costs incurred in remedying the effects of the unlawful activity.
5. If, according to the criteria prescribed by the regulations made under this Act, the amount of money in the account is more than is required for the purposes referred to in paragraphs 1 to 4, such other purposes as are prescribed by the regulations.

Director's election to give priority to persons who suffered loss

(5) The Director may elect not to request payment out of the account under subsection (3) if, in his or her opinion, all or substantially all of the money in the account is needed to compensate the persons who are entitled to compensation under paragraph 1 of subsection (4).

Payment for Crown's costs after payment to persons who suffered loss

(6) If the Director elects not to request payment under subsection (3), the Minister of Finance shall, at the request of the Director and in the amounts determined by the Director under subsection (8), make payments to compensate the Crown in right of Ontario for its costs incurred as described in subsection (3) out of the account, after the payments are made to compensate the persons who are entitled to compensation under paragraph 1 of subsection (4).

Payment for Crown's costs out of other accounts

(7) If the amount of money in the account is insufficient to satisfy the Crown's costs pursuant to a request made by the Director under subsection (3) or (6), the Minister of Finance shall make payments to compensate the Crown in right of Ontario for its unsatisfied costs out of another account into which money is deposited under subsection (1) as a result of another proceeding,

after payments have been made out of that account to compensate the persons who are entitled to compensation out of that account under paragraph 1 of subsection (4) and to compensate the Crown for its costs incurred in respect of that account.

Determination of Crown's costs

(8) The amount of the Crown's costs under subsection (3) or (6) shall be determined by the Director on any basis, or combination of them, that he or she considers appropriate in the circumstances, including,

- (a) a flat rate for every forfeiture;
- (b) a flat rate for every step taken;
- (c) an hourly rate;
- (d) the actual costs; or
- (e) a percentage of the value of the property forfeited.

Related activities

(9) If money is required to be deposited under subsection (1) in respect of two or more unlawful activities and the Minister of Finance is of the opinion that the unlawful activities are related, the money may be deposited into a single account and, for the purpose of payments out of the account, a reference in subsection (4) to "the unlawful activity" that the property was used to engage in or that resulted in the acquisition of the property shall be deemed to be a reference to any of the unlawful activities.

Failure to deliver notice of dispute

1.10 (1) A person who claims to have had an interest in the property at the time it was forfeited under section 1.8 but who failed to submit a notice of dispute ~~before the deadline date on or before the deadline date~~ may commence an action for damages against the Crown in right of Ontario.

Onus on plaintiff

(2) The plaintiff in an action commenced under this section must establish that,

- (a) he or she has an interest in the property; and

~~(b) his or her failure to submit a notice of dispute before the deadline date was not wilful or deliberate.~~

- (b) he or she had a reasonable excuse for the failure to submit a notice of dispute to the Attorney General on or before the deadline date.

Same, proceeds of unlawful activity

(3) If the Crown in right of Ontario establishes that the property was proceeds of unlawful activity, the plaintiff's action will be unsuccessful unless the plaintiff establishes that he or she is an uninvolved interest holder, as defined in section 2, of the property.

Same, instrument of unlawful activity

(4) If the Crown in right of Ontario establishes that the property was an instrument of unlawful activity, the plaintiff's action will be unsuccessful unless the plaintiff establishes that he or she is a responsible owner, as defined in section 7, of the property.

Exception, forfeiture clearly not in interests of justice

(5) Subsections (3) and (4) do not apply if the court is satisfied that the forfeiture of the property to the Crown in right of Ontario was clearly not in the interests of justice.

Owner

(6) If an action under this section is successful, the court shall order the Crown in right of Ontario to pay to the plaintiff the greater of,

- (a) the fair market value of the plaintiff's interest in the property, as determined by the court, on the day the Attorney General published notice of the administrative forfeiture proceeding on a website of the Government of Ontario; and
- (b) the liquidated value of the plaintiff's interest in the property that was realized on the forfeiture or disposition of the property.

Payment or settlement

(7) The Minister of Finance shall, at the request of the Director, make payments out of a special purpose account in which property, or the proceeds from selling property, is deposited in order to,

- (a) comply with an order of the court made under subsection (6) in respect of the property; or
- (b) settle a proceeding or an anticipated proceeding under this section in respect of the property which, in the Director's opinion, could result in a judgment against the Crown.

If money insufficient

(8) If the amount of money in the special purpose account is insufficient to satisfy a request made by the Director under subsection (7), the Minister of Finance shall make payments to satisfy the request for the unsatisfied amount out of another account into which money is deposited under subsection 1.9 (1) as a result of another proceeding, after payments have been made out of that account to compensate the persons who are entitled to compensation out of that account under paragraph 1 of subsection 1.9 (4).

(2) Clause (c) of the definition of “public body” in section 1.1 of the Act, as enacted by subsection (1), is repealed and the following substituted:

(c) a chief of police as defined in subsection 2 (1) of the *Community Safety and Policing Act, 2019*; (“organisme public”)

(3) Clause 1.3 (8) (c) of the Act, as enacted by subsection (1), is amended by striking out “police force” and substituting “police service”.

2 (1) The definition of “legitimate owner” in section 2 of the Act is repealed.

(2) Section 2 of the Act is amended by adding the following definition:

“uninvolved interest holder” means, with respect to property that is proceeds of unlawful activity, a person who did not, directly or indirectly, acquire the property as a result of unlawful activity committed by the person, and who,

- (a) was the rightful owner of the property before the unlawful activity occurred and was deprived of possession or control of the property by means of the unlawful activity,
- (b) acquired the property for fair value after the unlawful activity occurred and did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity, or
- (c) acquired the property from a person mentioned in clause (a) or (b); (“détenteur innocent d’un intérêt”)

3 (1) Subsection 3 (3) of the Act is amended by,

- (a) striking out “a legitimate owner” and substituting “an uninvolved interest holder”; and
- (b) striking out “legitimate owner’s interest” and substituting “uninvolved interest holder’s interest”.

(2) Clause 3 (4) (a) of the Act is amended by striking out “legitimate owner’s interest” and substituting “uninvolved interest holder’s interest”.

(3) Clause 3 (4) (b) of the Act is amended by striking out “legitimate owner” at the end and substituting “uninvolved interest holder”.

4 The Act is amended by adding the following section:

Disclosure order

3.1 (1) On motion of the Attorney General in a proceeding or intended proceeding under section 3, the Superior Court of Justice may make an order requiring a person to disclose to the Attorney General information or records in the custody or control of the person if the Court is satisfied that the information or records are reasonably required by the Attorney General in order to exercise the Attorney General’s powers or perform the Attorney General’s functions and duties under this Act.

Timing

(2) The Attorney General may apply for an order under subsection (1) before, at the time of or after,

- (a) commencing proceedings under section 3; or
- (b) applying for an order under section 4.

Motion made without notice

(3) An order under subsection (1) may be made on motion without notice for a period not exceeding 60 days.

Costs

(4) The Attorney General must pay to a person who is subject to an order under subsection (1) the reasonable costs of producing, reproducing or delivering the information or records.

5 (1) Clauses 6 (2.1) (a), (b) and (c) of the Act are amended by striking out “this Part” wherever it appears and substituting in each case “this Part or Part I.1”.

(2) Paragraphs 1 and 2 of subsection 6 (3) of the Act are repealed and the following substituted:

- 1. To compensate persons, or the estates of deceased persons, who suffered pecuniary or non-pecuniary losses, including losses recoverable under Part V of the *Family Law Act*, as a result of the unlawful activity.

2. To assist victims of unlawful activities, or the estates of deceased victims of unlawful activities, or to prevent unlawful activities that result in victimization.

(3) Paragraph 4 of subsection 6 (3) of the Act is repealed and the following substituted:

4. To compensate a municipal corporation, or a public institution that belongs to a class prescribed by the regulations made under this Act, for pecuniary losses that were suffered as a result of the unlawful activity and that are costs incurred in remedying the effects of the unlawful activity.

6 The Act is amended by adding the following section:

Disclosure order

8.1 (1) On motion of the Attorney General in a proceeding or intended proceeding under section 8, the Superior Court of Justice may make an order requiring a person to disclose to the Attorney General information or records in the custody or control of the person if the Court is satisfied that the information or records are reasonably required by the Attorney General in order to exercise the Attorney General's powers or perform the Attorney General's functions and duties under this Act.

Timing

- (2) The Attorney General may apply for an order under subsection (1) before, at the time of or after,
 - (a) commencing proceedings under section 8; or
 - (b) applying for an order under section 9.

Motion made without notice

- (3) An order under subsection (1) may be made on motion without notice for a period not exceeding 60 days.

Costs

- (4) The Attorney General must pay to a person who is subject to an order under subsection (1) the reasonable costs of producing, reproducing or delivering the information or records.

7 (1) Clauses 11 (2.1) (a), (b) and (c) of the Act are amended by striking out "this Part" wherever it appears and substituting in each case "this Part or Part I.1".

(2) Paragraphs 1 and 2 of subsection 11 (3) of the Act are repealed and the following substituted:

1. To compensate persons, or the estates of deceased persons, who suffered pecuniary or non-pecuniary losses, including losses recoverable under Part V of the *Family Law Act*, as a result of unlawful activity that the property was used to engage in.
2. To assist victims of unlawful activities, or the estates of deceased victims of unlawful activities, or to prevent unlawful activities that result in victimization.

(3) Paragraph 3 of subsection 11 (3) of the Act is amended by striking out "this Part" and substituting "this Part or Part I.1".

(4) Paragraph 4 of subsection 11 (3) of the Act is repealed and the following substituted:

4. To compensate a municipal corporation, or a public institution that belongs to a class prescribed by the regulations made under this Act, for pecuniary losses that were suffered as a result of unlawful activity that the property was used to engage in and that are costs incurred in remedying the effects of the unlawful activity.

8 The Act is amended by adding the following section:

Disclosure order

11.2.1 (1) On motion of the Attorney General in a proceeding or intended proceeding under section 11.2, the Superior Court of Justice may make an order requiring a person to disclose to the Attorney General information or records in the custody or control of the person if the Court is satisfied that the information or records are reasonably required by the Attorney General in order to exercise the Attorney General's powers or perform the Attorney General's functions and duties under this Act.

Timing

- (2) The Attorney General may apply for an order under subsection (1) before, at the time of or after,
 - (a) commencing proceedings under section 11.2; or
 - (b) applying for an order under section 11.3.

Motion made without notice

- (3) An order under subsection (1) may be made on motion without notice for a period not exceeding 60 days.

Costs

(4) The Attorney General must pay to a person who is subject to an order under subsection (1) the reasonable costs of producing, reproducing or delivering the information or records.

9 (1) Clauses 11.4 (3) (a), (b) and (c) of the Act are amended by striking out “this Part” wherever it appears and substituting in each case “this Part or Part I.1”.

(2) Paragraphs 1 and 2 of subsection 11.4 (4) of the Act are repealed and the following substituted:

1. To compensate persons, or the estates of deceased persons, who suffered pecuniary or non-pecuniary losses, including losses recoverable under Part V of the *Family Law Act*, as a result of the vehicular unlawful activity that gave rise to the forfeiture.
2. To assist victims of vehicular unlawful activities, or the estates of deceased victims of vehicular unlawful activities, or to prevent vehicular unlawful activities that result in victimization.

(3) Paragraph 3 of subsection 11.4 (4) of the Act is amended by striking out “this Part” and substituting “this Part or Part I.1”.

(4) Paragraph 4 of subsection 11.4 (4) of the Act is repealed and the following substituted:

4. To compensate a municipal corporation, or a public institution that belongs to a class prescribed by the regulations made under this Act, for pecuniary losses that were suffered as a result of the vehicular unlawful activity that gave rise to the forfeiture and that are costs incurred in remedying the effects of that vehicular unlawful activity.

10 Clause (c) of the definition of “injury to the public” in section 12 of the Act is repealed and the following substituted:

- (c) any expenses or increased expenses incurred by the public, including any expenses or increased expenses incurred by the Crown in right of Ontario, a municipal corporation or a public institution that belongs to a class prescribed by the regulations made under this Act;

11 The Act is amended by adding the following section:

Disclosure order

13.1 (1) On motion of the Attorney General in a proceeding or intended proceeding under section 13, the Superior Court of Justice may make an order requiring a person to disclose to the Attorney General information or records in the custody or control of the person if the Court is satisfied that the information or records are reasonably required by the Attorney General in order to exercise the Attorney General’s powers or perform the Attorney General’s functions and duties under this Act.

Timing

- (2) The Attorney General may apply for an order under subsection (1) before, at the time of or after,
 - (a) commencing proceedings under section 13; or
 - (b) applying for an order under section 14.

Motion made without notice

- (3) An order under subsection (1) may be made on motion without notice for a period not exceeding 60 days.

Costs

(4) The Attorney General must pay to a person who is subject to an order under subsection (1) the reasonable costs of producing, reproducing or delivering the information or records.

12 (1) Clauses 15 (2.1) (a), (b) and (c) of the Act are amended by striking out “this Part” wherever it appears and substituting in each case “this Part or Part I.1”.

(2) Paragraph 1 of subsection 15 (3) of the Act is repealed and the following substituted:

1. To assist victims of unlawful activities, or the estates of deceased victims of unlawful activities, or to prevent unlawful activities that result in victimization.

(3) Paragraph 2 of subsection 15 (3) of the Act is amended by striking out “this Part” and substituting “this Part or Part I.1”.

(4) Paragraph 3 of subsection 15 (3) of the Act is repealed and the following substituted:

3. To compensate a municipal corporation, or a public institution that belongs to a class prescribed by the regulations made under this Act, for pecuniary losses that were suffered as a result of unlawful activity that the proceeding related to and that are costs incurred in remedying the effects of the unlawful activity.

13 (1) Subsection 15.5 (1) of the Act is amended by adding the following paragraph:

4.1 Where the property that is the subject of the proceeding or intended proceeding was previously the subject of a proceeding under Part I.1, every person who submitted a notice of dispute under that Part in respect of the property.

(2) Paragraph 5 of subsection 15.5 (1) of the Act is amended by striking out “the legitimate owner” and substituting “an uninvolved interest holder”.

(3) Paragraph 9 of subsection 15.5 (1) of the Act is amended by striking out “4, 5” and substituting “4, 4.1, 5”.

14 Section 18.1 of the Act is amended by adding the following subsection:

Payments in lieu

(3) For greater certainty, the power to approve a settlement under subsection (1) includes a power to approve a settlement that provides for payment of a monetary amount instead of the full or partial forfeiture of the property that is the subject of the proceeding.

15 (1) The Act is amended by adding the following section:

Maintenance of property by public body

18.2 (1) A public body may maintain possession of property ~~for a reasonable period of time~~ in order to allow the Attorney General to determine whether a proceeding should be commenced under this Act in respect of the property and, if the Attorney General deems it necessary, obtain an interlocutory order under this Act in respect of the property.

Same

(1.1) Subsection (1) does not authorize the possession of property by a public body after the earlier of the following:

1. The day that is 75 days after the day the public body receives a written request or demand for the return of the property.
2. The day that is 75 days after the day the public body commences or receives notice of a legal proceeding seeking the return of the property.

Definition

(2) In subsection (1),

“public body” means,

- (a) an entity with which the Director of Asset Management – Civil has an agreement under subsection 19 (1.1),
- (b) an institution belonging to a class of institutions prescribed by the regulations made under this Act for the purposes of paragraph 1 of subsection 19 (4), or
- (c) a chief of police as defined in subsection 2 (1) of the *Police Services Act*.

(2) Clause (c) of the definition of “public body” in subsection 18.2 (2) of the Act, as enacted by subsection (1), is repealed and the following substituted:

- (c) a chief of police as defined in subsection 2 (1) of the *Community Safety and Policing Act, 2019*.

16 (1) Subsection 19 (5) of the Act is amended by striking out “the person who disclosed the information to”.

(2) Subsection 19 (5.1) of the Act is amended by striking out “a person who discloses information to the Attorney General” in the portion before clause (a) and substituting “a person who disclosed information to a reviewing authority under subsection (4) that was subsequently disclosed to the Attorney General”.

(3) Subsection 19 (6) of the Act is amended by striking out “Subsections (4) and (5) do” at the beginning and substituting “Subsection (4) does”.

(4) Subsection 19 (7) of the Act is amended by striking out “(5) or”.

(5) Subsection 19 (8) of the Act is amended by striking out “(5) or”.

17 Subsection 19.1 (1) of the Act is amended by striking out “Part II” and substituting “Part I.1, II”.

18 The Act is amended by adding the following section:

Annual Report

20.1 (1) On or before July 1 in each year, the Director of Asset Management – Civil shall prepare a report on the activities conducted under this Act in the previous fiscal year.

Contents of report

(2) The report must contain,

- (a) general information respecting the activities conducted under this Act in the previous fiscal year;
- (b) statistics respecting proceedings under this Act in the previous fiscal year, including,

- (i) the number of proceedings commenced under each of Parts I.1, II, III, III.1 and IV,
 - (ii) the number of proceedings under Part I.1 in which a notice of dispute was filed,
 - (iii) the number of ongoing proceedings under each of Parts II, III, III.1 and IV,
 - (iv) the number of forfeitures that occurred under each of Parts I.1, II, III, III.1 and IV,
 - (v) the total value of all forfeitures under each of Parts I.1, II, III, III.1 and IV,
 - (vi) the total amount paid out to compensate the Crown in right of Ontario for its incurred costs,
 - (vii) the total amount paid out to compensate victims of unlawful activities,
 - (viii) the total amount paid in grants under this Act to assist victims of unlawful activities and to prevent unlawful activities that result in victimization, and
 - (ix) the total number of actions commenced under section 1.10 of the Act and the total amount paid out under that section; and
- (c) any other information that the Attorney General believes should be made available to the public.

Provision of report and publication

(3) The Director of Asset Management – Civil shall provide the report to the Attorney General on or before July 1 of each year and make it available to the public on a website of the Government of Ontario.

Definition of fiscal year

(4) In this section,

“fiscal year” means the period commencing on April 1 in each year and ending on March 31 of the following year.

19 Clause 21 (1) (b) of the Act is repealed and the following substituted:

- (b) governing payments out of accounts referred to in section 1.9, 6, 11, 11.4 or 15, including governing the circumstances in which payments may be made, governing the amounts of payments, governing procedures for determining what payments are made, prescribing classes of public institutions for the purpose of paragraph 4 of subsection 1.9 (4), paragraph 4 of subsection 6 (3), paragraph 4 of subsection 11 (3), paragraph 4 of subsection 11.4 (4) and paragraph 3 of subsection 15 (3);

Commencement

20 (1) Subject to subsections (2) and (3), this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Section 1, subsections 5 (1), 5 (3), 7 (1), 7 (3), 7 (4), 9 (1), 9 (3) and 9 (4), section 10, subsections 12 (1), 12 (3), 12 (4), 13 (1), 13 (3) and 15 (2) and sections 17 and 19 come into force on a day to be named by proclamation of the Lieutenant Governor.

(3) Section 18 comes into force on the later of April 1, 2021 and the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 4
CLASS PROCEEDINGS ACT, 1992

1 (1) Section 1 of the *Class Proceedings Act, 1992* is amended by adding the following definitions:

“Minister” means the Attorney General or such other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“multi-jurisdictional class proceeding” means a proceeding,

- (a) brought on behalf of a class of persons that includes residents from two or more provinces or territories of Canada, and
- (b) certified as a class proceeding under this Act or under the law of another Canadian jurisdiction, as the case may be; (“recours collectif multiterritorial”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act. (“règlements”)

(2) Section 1 of the Act is amended by adding the following subsections:

Interpretation, proceeding under this Act

(2) For greater certainty, unless the context requires otherwise, a reference to a proceeding under this Act includes reference to,

- (a) a proceeding commenced under section 2, regardless of whether it has been certified as a class proceeding; and
- (b) a proceeding or proceedings referred to in section 3 or 4, once a motion for certification is made in respect of the proceeding or proceedings.

Interpretation, representative party, etc.

(3) If the context so requires, a reference in this Act to a representative plaintiff, defendant or party, or to a class or subclass member, includes a reference to a person who would, if a proceeding under this Act were certified as a class proceeding, be a representative plaintiff, defendant or party or class or subclass member, as the case may be.

Interpretation, success in a class proceeding

(4) For the purposes of this Act, success in a class proceeding includes,

- (a) a judgment on common issues in favour of some or all class members; and
- (b) a settlement that benefits one or more class members.

2 The Act is amended by adding the following section:

Determining same or similar subject matter

1.1 A determination under this Act as to whether two or more proceedings involve the same or similar subject matter shall include consideration of whether the proceedings involve the same or similar causes of action and the same or affiliated defendants.

3 (1) Section 2 of the Act is amended by adding the following subsection:

Registration of proceeding

(1.1) A person who commences a proceeding under subsection (1) ~~shall, on the same day, register~~ shall register the proceeding in accordance with the regulations.

(2) The French version of subsection 2 (2) of the Act is amended by striking out “certifiant que l’instance est un recours collectif” and substituting “certifiant l’instance comme recours collectif”.

(3) Subsection 2 (3) of the Act is repealed and the following substituted:

Proof of registration

(3) The person shall, in an affidavit filed for use on the motion for certification, provide proof that the proceeding was registered in accordance with subsection (1.1).

Notice of certification motion to others

(4) In addition to giving notice of a motion for certification in accordance with the rules of court, the person shall give notice of the motion to the representative plaintiff of any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that,

- (a) was commenced in a Canadian jurisdiction other than Ontario; and
- (b) involves the same or similar subject matter and some or all of the same class members.

Submissions

(5) A person to whom notice is given under subsection (4) is entitled to make submissions at the hearing of the motion for certification.

4 The French version of section 3 of the Act is amended by striking out “certifiant que les instances sont un recours collectif” and substituting “certifiant les instances comme recours collectif”.

5 The French version of section 4 of the Act is amended by striking out “certifiant que l’instance est un recours collectif” and substituting “certifiant l’instance comme recours collectif”.

6 The Act is amended by adding the following section:

Early resolution of issues

4.1 If, before the hearing of the motion for certification, a motion is made under the rules of court that may dispose of the proceeding in whole or in part, or narrow the issues to be determined or the evidence to be adduced in the proceeding, that motion shall be heard and disposed of before the motion for certification, unless the court orders that the two motions be heard together.

7 (1) Subsection 5 (1) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Certification

(1) The court shall, subject to subsection (6) and to section 5.1, certify a class proceeding on a motion under section 2, 3 or 4 if,

.

(2) Section 5 of the Act is amended by adding the following subsections:

Same

(1.1) In the case of a motion under section 2, a class proceeding is the preferable procedure for the resolution of common issues under clause (1) (d) only if, at a minimum,

- (a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding, or any remedial scheme or program outside of a proceeding; and
- (b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members.

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Existence of other class proceeding

(6) If a class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, has been commenced in a Canadian jurisdiction other than Ontario involving the same or similar subject matter and some or all of the same class members as in a proceeding under this Act, the court shall determine whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under this Act.

Same, considerations

(7) In making a determination under subsection (6), the court shall,

- (a) be guided by the following objectives:
 - (i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,
 - (ii) ensuring that the ends of justice are served,
 - (iii) avoiding irreconcilable judgments where possible,
 - (iv) promoting judicial economy; and
- (b) consider all relevant factors, including,
 - (i) the alleged basis of liability in each of the proceedings, and any differences in the laws of each applicable jurisdiction respecting such liability and any available relief,
 - (ii) the stage each proceeding has reached,
 - (iii) the plan required to be produced for the purposes of each proceeding, including the viability of the plan and the available capacity and resources for advancing the proceeding on behalf of the class,

- (iv) the location of class members and representative plaintiffs in each proceeding, including the ability of a representative plaintiff to participate in a proceeding and to represent the interests of class members,
- (v) the location of evidence and witnesses, and
- (vi) the ease of enforceability in each applicable jurisdiction.

Motion for determination under subs. (6)

(8) The court, on the motion of a party or class member made before the hearing of the motion for certification, may make a determination under subsection (6) with respect to a proceeding under this Act, and, in doing so, may make any orders it considers appropriate respecting the proceeding, including,

- (a) staying the proceeding; and
- (b) imposing such terms on the parties as the court considers appropriate.

(3) The French version of subsection 5 (2) of the Act is amended by striking out “certifier qu’il s’agit d’un recours collectif” in the portion before clause (a) and substituting “certifier le recours collectif”.

(4) The French version of subsection 5 (5) of the Act is amended by striking out “certifiant qu’il s’agit d’un recours collectif” and substituting “certifiant un recours collectif”.

8 The Act is amended by adding the following section:

Motion to certify, multi-jurisdictional class proceeding

5.1 (1) The court may make any order it considers appropriate on a motion to certify a multi-jurisdictional class proceeding, including,

- (a) certifying the proceeding if,
 - (i) the conditions set out in subsection 5 (1) are met, and
 - (ii) the court determines, having regard to subsections 5 (6) and (7), that Ontario is the appropriate venue for the proceeding;
- (b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding in another jurisdiction; or
- (c) refusing to certify the proceeding with respect to class members that the court determines may be included as class members in a class proceeding or proposed class proceeding in another Canadian jurisdiction.

Same

(2) In making an order under clause (1) (a), the court may,

- (a) divide the class into Ontario resident and non-resident subclasses;
- (b) appoint a separate representative plaintiff for each subclass; and
- (c) specify, for the purposes of section 9, the manner and time of opting out of the multi-jurisdictional class proceeding with respect to each subclass.

9 The French version of section 6 of the Act is amended by striking out “certifier qu’une instance est un recours collectif” in the portion before paragraph 1 and substituting “certifier une instance comme recours collectif”.

10 Section 7 of the Act is repealed and the following substituted:

Refusal to certify

7 (1) If the court refuses to certify a proceeding as a class proceeding, the court shall consider whether notice of the refusal should be given under section 19, and whether such notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding;
- (c) any other prescribed information; and
- (d) any other information the court considers appropriate.

Proceeding may continue in altered form

(2) If the court refuses to certify a proceeding as a class proceeding, the court may permit the proceeding to continue as one or more proceedings between different parties and, for the purpose, the court may,

- (a) order the addition, deletion or substitution of parties;
- (b) order the amendment of the pleadings or notice of application; and

(c) make any further order that it considers appropriate.

11 (1) The French version of subsection 8 (1) of the Act is amended by striking out “certifiant que l’instance est un recours collectif” in the portion before clause (a) and substituting “certifiant l’instance comme recours collectif”.

(2) The French version of subsection 8 (3) of the Act is amended by striking out “certifiant qu’une instance est un recours collectif” at the end and substituting “certifiant une instance comme recours collectif”.

12 The French version of section 9 of the Act is amended by striking out “l’ordonnance certifiant le recours collectif” at the end and substituting “l’ordonnance de certification”.

13 (1) The French version of subsection 10 (1) of the Act is amended by striking out “modifier ou annuler l’ordonnance certifiant le recours collectif,” and substituting “modifier l’ordonnance de certification de l’instance, révoquer la certification de l’instance”.

(2) The French version of subsection 10 (2) of the Act is amended by striking out “ordonnance d’annulation de l’ordonnance certifiant le recours collectif” and substituting “ordonnance révoquant la certification”.

14 Section 12 of the Act is repealed and the following substituted:

Court may determine conduct of proceeding

12 The court, on its own initiative or on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

15 Section 13 of the Act is amended by striking out “the class proceeding before it” and substituting “the proceeding under this Act before it”.

16 The Act is amended by adding the following section:

Carriage motions

13.1 (1) In this section,

“carriage motion” means a motion for an order under this section.

Stay of other proceedings

(2) Where two or more proceedings under this Act involve the same or similar subject matter and some or all of the same class members, the court may, on the motion of a representative plaintiff in one of the proceedings, order that one or more of the proceedings be stayed.

Timing

(3) A carriage motion shall be made no later than 60 days after the day on which the first of the proceedings was commenced, and shall be heard as soon as is practicable.

Considerations

(4) On a carriage motion, the court shall determine which proceeding would best advance the claims of the class members in an efficient and cost-effective manner, and shall, for the purpose, consider,

- (a) each representative plaintiff’s theory of its case, including the amount of work performed to date to develop and support the theory;
- (b) the relative likelihood of success in each proceeding, both on the motion for certification and as a class proceeding;
- (c) the expertise and experience of, and results previously achieved by, each solicitor in class proceedings litigation or in the substantive areas of law at issue; and
- (d) the funding of each proceeding, including the resources of the solicitor and any applicable third-party funding agreements as defined in section 33.1, and the sufficiency of such funding in the circumstances.

Decision final

(5) The decision of the court on a carriage motion is final and not subject to appeal.

Bar on proceedings without leave

(6) In making an order under this section ~~staying a proceeding~~, the court shall also bar the commencement, without leave of the court, of any proceeding under this Act involving the same or similar subject matter and some or all of the same class members.

Costs

(7) Solicitors for the representative plaintiffs who are parties to the carriage motion shall bear the costs of the motion, and shall not attempt to recoup any portion of the costs from the class or any class member, or from the defendant.

Bar on proceedings without leave following motion period

- (8) Despite section 2, a proceeding may not be commenced under that section without leave of the court if,
- (a) the proceeding would involve the same or similar subject matter and some or all of the same class members as an existing proceeding under this Act; and
 - (b) more than 60 days have passed since the existing proceeding was commenced.

17 Subsection 14 (1) of the Act is amended by striking out “at any time in a class proceeding” and substituting “at any time in a proceeding under this Act”.

18 (1) The French version of subsection 17 (1) of the Act is amended by striking out “un avis les informant que le recours collectif est certifié” and substituting “un avis de certification du recours collectif”.

(2) The French version of the following subsections of the Act is amended by striking out “points” wherever it appears and substituting in each case “facteurs”:

- 1. Subsection 17 (2).**
- 2. Subsection 17 (3).**

(3) Subsections 17 (4) to (6) of the Act are repealed and the following substituted:

Means of giving notice

(4) The court may, for the purposes of subsection (3), order that notice be given by any of the following means or combination of the following means, and may order that notice be given to different class members by different means:

- 1. Personally or by mail.
- 2. By posting, advertising, publishing or leafletting.
- 3. By individual notice to a sample group within the class.
- 4. By any electronic means the court considers appropriate.
- 5. By any means that may be prescribed.
- 6. By any other means the court considers appropriate.

Contents of notice

- (5) Unless the court orders otherwise, notice under this section shall,
- (a) describe the proceeding, including the names and addresses of the representative parties and the relief sought;
 - (b) state the manner by which and time within which class members may opt out of the proceeding;
 - (c) describe the possible financial consequences of the proceeding to class members;
 - (d) summarize any agreements between representative parties and their solicitors respecting fees and disbursements;
 - (e) indicate whether there is a third-party funding agreement as defined in section 33.1 between the representative plaintiff and a funder and, if so, provide a description of the payment to which the funder is entitled under the agreement;
 - (f) describe any counterclaim being asserted by or against the class, including the relief sought in the counterclaim;
 - (g) state that the judgment, whether favourable or not, will bind all class members who do not opt out of the proceeding;
 - (h) describe the right of any class member to participate in the proceeding;
 - (i) provide contact information for a person or entity to whom class members may direct inquiries about the proceeding;
 - (j) include the prescribed information; and
 - (k) include any other information the court considers appropriate.

Court to consider circumstances

(6) The court shall make such orders under subsections (3), (4) and (5) as are necessary to ensure that the notice given is the best notice that is practicable in the circumstances.

(4) Section 17 of the Act is amended by adding the following subsection:

Public Guardian and Trustee

(8) Notice ordered to be given under this section shall be served on the Public Guardian and Trustee if there is a reasonable possibility that the Public Guardian and Trustee is authorized to act on behalf of one or more class members.

19 Subsections 18 (2) and (3) of the Act are repealed and the following substituted:

Order respecting notice

(2) The court shall make an order setting out when and by what means notice shall be given under this section, and in so doing shall have regard to the factors set out in subsection 17 (3).

Means of giving notice

(3) The court may, for the purposes of subsection (2), order that notice be given by any of the following means or combination of the following means, and may order that notice be given to different class members by different means:

1. By any means referred to in paragraphs 1 to 4 of subsection 17 (4).
2. By any means that may be prescribed.
3. By any other means the court considers appropriate.

Contents of notice

(4) Unless the court orders otherwise, notice under this section shall,

- (a) state that common issues have been determined in favour of the class;
- (b) state that class members may be entitled to individual relief;
- (c) describe the steps to be taken to establish an individual claim;
- (d) state that failure on the part of a class member to take those steps will result in the member not being entitled to assert an individual claim except with leave of the court;
- (e) provide contact information for a person or entity to whom class members may direct inquiries about the proceeding;
- (f) include the prescribed information; and
- (g) include any other information the court considers appropriate.

Court to consider circumstances

(5) The court shall make such orders under subsections (2), (3) and (4) as are necessary to ensure that the notice given is the best notice that is practicable in the circumstances.

20 Section 19 of the Act is repealed and the following substituted:**Notice to protect interests of affected persons**

19 (1) At any time in a proceeding under this Act, the court may order any party to give such notice as it considers necessary to protect the interests of any class member or party, or to ensure the fair conduct of the proceeding.

Order respecting notice

(2) The court shall make an order setting out when and by what means notice shall be given under this section, and in so doing shall have regard to the factors set out in subsection 17 (3).

Means of giving notice

(3) The court may, for the purposes of subsection (2), order that notice be given by any of the following means or combination of the following means, and may order that notice be given to different class members by different means:

1. By any means referred to in paragraphs 1 to 4 of subsection 17 (4).
2. By any means that may be prescribed.
3. By any other means the court considers appropriate.

Court to consider circumstances

(4) The court shall make such orders under subsections (2) and (3) as are necessary to ensure that the notice given is the best notice that is practicable in the circumstances.

21 Section 20 of the Act is repealed and the following substituted:**Notices, general requirements****Plain language**

20 (1) A notice under section 17, 18 or 19 shall be written in a plain language manner.

Bilingual

(2) A notice under section 17, 18 or 19 shall be written in English and in French, unless the court orders otherwise.

Court approval

(3) A notice under section 17, 18 or 19 shall be approved by the court before it is given.

22 Section 22 of the Act is amended by adding the following subsection:

Exception, costs of notice of certification

~~(1.1) Despite subsection (1), the costs of any notice under section 17 may be awarded to the representative plaintiff only in the event of success in the class proceeding and, for greater certainty, shall not be ordered to be paid by the defendant at any earlier time in the proceeding.~~

Exception, costs of notice of certification

(1.1) Despite subsection (1), the costs of any notice under section 17 may be awarded to the representative plaintiff only in the event of success in the class proceeding, except to the extent the defendant consents to their payment in whole or in part at an earlier time, and, for greater certainty, shall not be ordered to be paid by the defendant at any earlier time in the proceeding absent the defendant's consent.

23 (1) Subsections 26 (4), (5) and (6) of the Act are repealed.

(2) Section 26 of the Act is amended by adding the following subsections:

Duty of person, entity administering distribution

(11) A person or entity administering the distribution of an award under section 24 or 25 shall do so in a competent and diligent manner.

Report

(12) No later than 60 days after the date on which an award made under section 24 is fully distributed, including any distribution under subsection (10) or section 27.2, the person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the award.
2. The total number of class members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class members who made a claim for monetary relief and, of them, the numbers of class members who did and who did not receive the relief.
6. The amount of the award distributed to class members and a description of how the award was distributed.
7. The amount and recipients of any distribution under subsection (10) or section 27.2.
8. The number of class members who opted out of the class proceeding.
9. The smallest and largest amounts distributed to class members, the average and the median of the amounts distributed to class members, and any other aggregate data respecting the distribution that the person or entity who administered the distribution considers to be relevant.
10. The administrative costs associated with the distribution of the award.
11. The solicitor fees and disbursements.
12. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
13. Any other information the court requires to be included in the report.

Same

(13) Once the court is satisfied that the requirements of subsection (12) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

Same

(14) If the regulations so provide, the person or entity who administered the distribution, or such other person or entity as may be prescribed, shall provide, in accordance with the regulations, a copy of the approved report to the person or entity specified by the regulations.

24 The French version of subsection 27 (3) of the Act is amended by striking out “l’ordonnance certifiant le recours collectif” wherever it appears and substituting in each case “l’ordonnance de certification”.

25 The Act is amended by adding the following sections:

Settlement

27.1 (1) A proceeding under this Act may be settled only with the approval of the court.

Subclass

(2) A settlement may be concluded in relation to the common issues affecting a subclass only with the approval of the court.

Not binding without court approval

(3) A settlement under this section is not binding unless approved by the court.

Effect of settlement

(4) If a proceeding is certified as a class proceeding, a settlement under this section that is approved by the court binds every member of the class or subclass, as the case may be, who has not opted out of the class proceeding, unless the court orders otherwise.

Settlement must be fair and reasonable

(5) The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be.

Differences not a bar

(6) The court may approve a settlement even if individual class or subclass members, including a representative party, are subject to different settlement terms.

Evidentiary requirements

(7) On a motion for approval of a settlement, the moving party shall make full and frank disclosure of all material facts, including, in one or more affidavits filed for use on the motion, the party’s best information respecting the following matters, which the court shall consider in determining whether to approve the settlement:

1. Evidence as to how the settlement meets the requirements of subsection (5).
2. Any risks associated with continued litigation.
3. The range of possible recoveries in the litigation.
4. The method used for valuation of the settlement.
5. The total number of class or subclass members, as the case may be.
6. A plan for allocating and distributing the settlement funds, including any proposal respecting the appointment of an administrator under subsection (14), and the anticipated costs associated with the distribution.
7. The number of class or subclass members expected to make a claim under the settlement and, of them, the numbers of class or subclass members who are and who are not expected to receive settlement funds.
8. The number of class or subclass members who have objected or are expected to object to the settlement, and the nature or anticipated nature of the objections.
9. A plan for giving notice of the settlement to class or subclass members in the event of an order under section 19, and the number of class or subclass members who are expected to obtain the notice.
10. Any other prescribed information.

Notice of settlement hearing

(8) The court shall consider whether notice of a hearing of a motion for approval of a settlement should be given under section 19, and whether such notice should include,

- (a) a statement of the purpose of the hearing;
- (b) the process for objecting to the approval of the settlement;
- (c) any other prescribed information; and
- (d) any other information the court considers appropriate.

Public Guardian and Trustee

(9) Notice of a motion for approval of a settlement and other materials filed on the motion, as well as any notice given under subsection (8), shall be served on the Public Guardian and Trustee, if there is a reasonable possibility that the Public Guardian and Trustee is authorized to act on behalf of one or more class or subclass members.

Same

(10) An entitlement to receive materials under subsection (9) includes an entitlement to make submissions at the hearing of the motion, unless the court orders otherwise.

Children's Lawyer

(11) If there is a reasonable possibility that the class or subclass includes minors, the court may direct that,

- (a) the notice of motion and other materials filed on the motion be served on the Children's Lawyer; and
- (b) the Children's Lawyer make any recommendations it may have in connection with the proposed settlement in writing to the court.

Notice of settlement approval

(12) In approving a settlement, the court shall consider whether notice of the settlement should be given under section 19, and whether such notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding;
- (c) a description of any plan for distributing settlement funds;
- (d) any other prescribed information; and
- (e) any other information the court considers appropriate.

Supervisory role of the court

(13) The court shall supervise the administration and implementation of the settlement.

Court-appointed administrator

(14) The court may appoint a person or entity to act as an administrator to administer the distribution of settlement funds.

Duty of administrator, other person or entity

(15) An administrator appointed by the court or, if no administrator is appointed, the person or entity who administers the distribution of the settlement funds, shall administer the distribution in a competent and diligent manner.

Report

(16) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 27.2, the administrator or other person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the settlement funds before distribution.
2. The total number of class or subclass members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds.
6. The amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed.
7. The amount and recipients of any distribution under section 27.2, and the amount, if any, that was subject to reversion or otherwise returned to the defendant.
8. The number of class or subclass members who objected to the settlement and the nature of their objections.
9. The number of class or subclass members who opted out of the class proceeding.

10. The smallest and largest amounts distributed to class or subclass members, the average and the median of the amounts distributed to class or subclass members, and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant.
11. The administrative costs associated with the distribution of the settlement funds.
12. The solicitor fees and disbursements.
13. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
14. Any other information the court requires to be included in the report.

Same

(17) Once the court is satisfied that the requirements of subsection (16) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

Same

(18) If the regulations so provide, the administrator or other person or entity who administered the distribution, or such other person or entity as may be prescribed, shall provide, in accordance with the regulations, a copy of the approved report to the person or entity specified by the regulations.

Distribution on *cy-près* basis

Award amounts

27.2 (1) The court may order that all or part of an award under section 24 that has not been distributed to class or subclass members within a time set by the court be paid to the person or entity determined under subsection (3) on a *cy-près* basis, if the court is satisfied that, using best reasonable efforts, it is not practical or possible to compensate class or subclass members directly.

Settlement funds

(2) In approving a settlement under section 27.1, the court may approve settlement terms that provide for the payment of all or part of the settlement funds to the person or entity determined under subsection (3) on a *cy-près* basis, if the court is satisfied that, using best reasonable efforts, it is not practical or possible to compensate class or subclass members directly.

Recipient

(3) For the purposes of subsections (1) and (2), payment may be made on a *cy-près* basis to,

- (a) a registered charity within the meaning of the *Income Tax Act* (Canada) or non-profit organization that is agreed on by the parties, if the court determines that payment of the amount to the registered charity or non-profit organization would reasonably be expected to directly or indirectly benefit the class or subclass members; or
- (b) Legal Aid Ontario, in any other case.

Subrogated claims

27.3 (1) In this section,

“subrogated claim” means a claim that is prescribed as a subrogated claim.

Notice of subrogated claim

(2) No later than 21 days after a proceeding that includes or may include a subrogated claim is commenced under section 2, the person who commenced the proceeding ~~shall serve the statement of claim or notice of application~~ shall serve the originating process on the person or entity specified by the regulations in respect of the subrogated claim for the purposes of this subsection.

Requirement for settlement approval

~~(3) If the regulations so provide, the court shall not approve the settlement of a proceeding under this Act that includes a subrogated claim unless the person or entity specified by the regulations in respect of the subrogated claim for the purposes of this subsection has had a reasonable opportunity to consider the proposed settlement and has given approval in writing of the proposed settlement of the subrogated claim in advance of the hearing of the motion to approve the settlement.~~

Requirement for settlement approval

(3) The court shall not approve the settlement of a proceeding under this Act that includes the settlement or release of a subrogated claim unless the person or entity specified by the regulations in respect of the subrogated claim for the purposes of this subsection has, before the hearing of the motion to approve the settlement of the proceeding,

- (a) had a reasonable opportunity to consider the proposed settlement or release of the subrogated claim; and
- (b) given approval in writing of the proposed settlement or release of the subrogated claim.

26 Sections 28 and 29 of the Act are repealed and the following substituted:

Limitations

Suspension in favour of class member

28 (1) Any limitation period applicable to a cause of action asserted in a proceeding under this Act is suspended in favour of a class member on the commencement of the proceeding and, subject to subsection (2), resumes running against the class member when,

- (a) the court refuses to certify the proceeding as a class proceeding;
- (b) the court makes an order that the cause of action shall not be asserted in the proceeding;
- (c) the court makes an order that has the effect of excluding the member from the proceeding;
- (d) the member opts out of the class proceeding;
- (e) an amendment that has the effect of excluding the member from the class is made to the certification order;
- (f) a decertification order is made under section 10;
- (g) the proceeding is dismissed without an adjudication on the merits, including for delay under section 29.1 or otherwise;
- (h) the proceeding is abandoned or discontinued with the approval of the court; or
- (i) the proceeding is settled with the approval of the court, unless the settlement provides otherwise.

Effect of appeal

(2) If there is a right of appeal in respect of an event described in subsection (1), the limitation period resumes running as soon as the time for appeal has expired without an appeal being commenced or as soon as any such appeal has been finally disposed of.

Suspension in favour of defendant

(3) Any limitation period applicable to a claim by a defendant for contribution and indemnity in a proceeding commenced under section 2 is suspended in favour of the defendant on the commencement of the proceeding, and resumes running against the defendant as soon as the time for appeal of the court's decision to certify or refuse to certify the proceeding has expired without an appeal being commenced or as soon as any such appeal has been finally disposed of.

Discontinuance, abandonment and dismissal for delay

Court approval required

29 (1) A proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate.

Notice

(2) In approving a discontinuance or abandonment, or in dismissing a proceeding for delay, other than under section 29.1, the court shall consider whether notice should be given under section 19, and whether such notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding;
- (c) any other prescribed information; and
- (d) any other information the court considers appropriate.

Mandatory dismissal for delay

29.1 (1) The court shall, on motion, dismiss for delay a proceeding commenced under section 2 unless, by the first anniversary of the day on which the proceeding was commenced,

- (a) the representative plaintiff has filed a final and complete motion record in the motion for certification;
- (b) the parties have agreed in writing to a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding, and have filed the timetable with the court;
- (c) the court has ordered that the proceeding not be dismissed and has established a timetable for service of the representative plaintiff's motion record in the motion for certification or for the completion of one or more other steps required to advance the proceeding; or
- (d) any other steps, occurrences or circumstances specified by the regulations have taken place.

Notice

(2) If a proceeding is dismissed for delay under subsection (1), the court shall order that the solicitor for the representative plaintiff give notice of the dismissal by,

- (a) publishing the notice and a copy of the order on the website of the solicitor or of the law firm or other entity through which the solicitor practices law;
- (b) sending the notice and a copy of the order to every class member who has contacted the solicitor to express an interest in the proceeding; and
- (c) taking any other steps to give notice that the court may specify.

Same

(3) Section 20 applies, with necessary modifications, with respect to a notice required to be given under subsection (2).

Costs

(4) The solicitor for the representative plaintiff shall bear the costs of giving notice under subsection (2), and shall not attempt to recoup any portion of the costs from the class or any class member, or from the defendant.

27 (1) Subsections 30 (1) and (2) of the Act are repealed and the following substituted:

Appeals

Appeals: certification

- (1) A party may appeal to the Court of Appeal from an order,
 - (a) certifying or refusing to certify a proceeding as a class proceeding; or
 - (b) decertifying a proceeding.

No amendments of materials on appeal

(2) The appellant may not materially amend the notice of certification motion, pleadings or notice of application on an appeal of an order refusing to certify a proceeding as a class proceeding, except with leave of the court in exceptional or unforeseen circumstances.

(2) Subsection 30 (4) of the Act is repealed and the following substituted:

Appeals by class members on behalf of the class

(4) If a representative party does not appeal as permitted by subsection (1), or if a representative party abandons an appeal, any class member may make a motion to the court for leave to act as the representative party for the purposes of an appeal under that subsection.

(3) Subsections 30 (6), (7) and (8) of the Act are amended by striking out “and awarding more than \$3,000 to the member” wherever it appears and substituting in each case “and awarding the member an amount that is equal to or greater than the monetary jurisdiction of the Small Claims Court”.

(4) Subsections 30 (9), (10) and (11) of the Act are amended by striking out “and awarding \$3,000 or less to the member” wherever it appears and substituting in each case “and awarding the member an amount that is less than the monetary jurisdiction of the Small Claims Court”.

28 Subsection 31 (1) of the Act is amended by striking out “the class proceeding” and substituting “the proceeding”.

29 (1) Section 32 of the Act is amended by adding the following subsections:

Fees must be fair and reasonable

(2.1) The court shall not approve an agreement unless it determines that the fees and disbursements required to be paid under the agreement are fair and reasonable, taking into account,

- (a) the results achieved for the class members, including the number of class or subclass members expected to make a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who are and who are not expected to receive monetary relief or settlement funds;
- (b) the degree of risk assumed by the solicitor in providing representation;
- (c) the proportionality of the fees and disbursements in relation to the amount of any monetary award or settlement funds;
- (d) any prescribed matter; and
- (e) any other matter the court considers relevant.

Same

(2.2) In considering the degree of risk assumed by the solicitor, the court shall consider,

- (a) the likelihood that the court would refuse to certify the proceeding as a class proceeding;
- (b) the likelihood that the class proceeding would not be successful;
- (c) the existence of any other factor, including any report, investigation, litigation, initiative or funding arrangement, that affected the degree of risk assumed by the solicitor in providing representation; and
- (d) any other prescribed matter.

Same

(2.3) In determining whether the fees and disbursements are fair and reasonable, the court may, by way of comparison, consider different methods by which the fees and disbursements could have been structured or determined.

(2) The French version of subsection 32 (3) of the Act is amended by striking out “les sommes qui font l’objet d’une transaction” and substituting “les fonds de transaction”.

(3) Section 32 of the Act is amended by adding the following subsections:

Considerations

(5) In making an order under clause (4) (a), the court shall take into account the factors set out in subsection (2.1), in accordance with subsections (2.2) and (2.3).

Holdback

(6) The court may determine and specify an amount or portion of the fees and disbursements owing to the solicitor under this section that shall be held back from payment until,

- (a) the report required under subsection 26 (12) or 27.1 (16), as the case may be, has been filed with the court and the court is satisfied that it meets the requirements of that subsection; and
- (b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including the number of class or subclass members who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds.

30 (1) Subsection 33 (1) of the Act is amended by striking out “Despite the *Solicitors Act* and *An Act Respecting Champerty*, being chapter 327 of Revised Statutes of Ontario, 1897, a solicitor” at the beginning and substituting “A solicitor”.

(2) Subsection 33 (2) of the Act is repealed.

(3) Clause 33 (7) (b) of the Act is repealed and the following substituted:

- (b) may apply a multiplier to the base fee; and

(4) Subsection 33 (9) of the Act is repealed and the following substituted:

Same

(9) In making a determination under clause (7) (b), the court shall take into account the factors set out in subsection 32 (2.1), in accordance with subsections (2.2) and (2.3) of that section.

31 The Act is amended by adding the following section:

Third-party funding agreements

33.1 (1) In this section,

“third-party funding agreement” means an agreement in which a funder who is not a party to a proceeding under this Act agrees to indemnify the representative plaintiff or provide money to pursue the proceeding under this Act, in return for a share of any monetary award or settlement funds or for any other consideration.

Contingent on court approval

(2) A third-party funding agreement is subject to the approval of the court, obtained on a motion of the representative plaintiff made as soon as practicable after the agreement is entered into, with notice to the defendant.

No force or effect unless approved

(3) A third-party funding agreement that is not approved by the court is of no force or effect.

Agreement to be provided to defendant and filed

(4) For the purposes of the motion, the representative plaintiff shall serve on the defendant, or provide in any other way the court orders, a copy of the third-party funding agreement, and shall file the copy with the court.

Permissible redaction

(5) The representative plaintiff may, subject to the regulations, redact from the copy of the third-party funding agreement provided and filed under subsection (4) information that may reasonably be considered to confer a tactical advantage on the defendant, but no other information shall be redacted from the copy.

Agreement to be provided to judge

(6) The representative plaintiff shall provide to the judge who will be presiding at the hearing of the motion a copy of the complete and unredacted third-party funding agreement, which shall not form part of the court file.

Requirement to disclose

(7) The court may order the representative plaintiff to disclose to a defendant any information in the third-party funding agreement that has been redacted in accordance with subsection (5).

Submissions

(8) The defendant is entitled to make submissions at the hearing of the motion.

Factors

(9) The court shall not approve a third-party funding agreement unless,

- (a) the court is satisfied that,
 - (i) the agreement, including indemnity for costs and amounts payable to the funder under the agreement, is fair and reasonable,
 - (ii) the agreement will not diminish the rights of the representative plaintiff to instruct the solicitor or control the litigation or otherwise impair the solicitor-client relationship,
 - (iii) the funder is financially able to satisfy an adverse costs award in the proceeding, to the extent of the indemnity provided under the agreement, and
 - (iv) any prescribed requirements and other relevant requirements are met; and
- (b) it is a term of the agreement that the funder shall be subject to,
 - (i) the same confidentiality requirements in respect of confidential or privileged information in the proceeding to which the representative plaintiff would be subject, and
 - (ii) the deemed undertaking rules set out under the rules of court, as if the funder were a party to the proceeding.

Same, independent legal advice

(10) In determining whether a third-party funding agreement meets the requirements of clause (9) (a), the court shall consider whether the representative plaintiff received independent legal advice with respect to the agreement.

Indemnity for costs

(11) If costs are ordered to be paid by the representative plaintiff, the defendant has the right to recover the costs directly from the funder, to the extent of the indemnity provided under an approved third-party funding agreement.

Security for costs

(12) The defendant is entitled, on motion, to obtain from the funder security for costs to the extent of the indemnity provided under an approved third-party funding agreement, if,

- (a) the funder is ordinarily resident outside Ontario;
- (b) the defendant has an order against the funder for costs in the same or another proceeding that remain unpaid in whole or in part; or
- (c) there is good reason to believe that the funder has insufficient assets in Ontario to pay the costs.

Directions

(13) The court may give any necessary directions respecting a dispute or question that arises in relation to a third-party funding agreement.

Changes to agreements

(14) This section applies, with necessary modifications, with respect to any changes to an approved third-party funding agreement that are agreed to by the parties to it.

Notice of termination

(15) The representative plaintiff shall give notice to the court and to the defendant if,

- (a) an approved third-party funding agreement is terminated; or
- (b) the funder becomes insolvent.

Non-application

(16) This section does not apply with respect to funding provided out of the Class Proceedings Fund established under the *Law Society Act*.

32 (1) Section 34 of the Act is amended by adding the following subsection:

Exception

(1.1) Subsection (1) does not apply with respect to a carriage motion under section 13.1, which shall be heard by a different judge unless the parties to the carriage motion agree otherwise.

(2) **Subsection 34 (3) of the Act is amended by striking out “subsection (1) or (2)” and substituting “subsection (1), (1.1) or (2)”.**

33 Section 35 of the Act is amended by striking out “class proceedings” at the end and substituting “proceedings under this Act”.

34 Section 37 of the Act is amended by adding “and” at the end of clause (a), by striking out “and” at the end of clause (b) and by striking out clause (c).

35 Sections 38 and 39 of the Act are repealed and the following substituted:

Regulations

Minister

38 (1) The Minister may make regulations,

- (a) respecting any matter that, under this Act, may or must be prescribed or done by regulation, other than by the Lieutenant Governor in Council under subsection (2);

~~—(b) governing the registration of proceedings commenced under this Act;~~

(b) governing the registration of proceedings under this Act, including,

(i) requiring that documents relating to registered proceedings be provided to a registry specified by the regulations, and governing the provision of those documents,

(ii) requiring and governing proof of the provision of a document as required by regulation under subclause (i);

- (c) providing for the establishment of registries of class proceedings or classes of class proceedings commenced in Canada, or of proposed class proceedings, and governing the registries, including requiring and governing their use;
- (d) for the purposes of subsection 26 (14), requiring the person or entity who administered the distribution, or such other person or entity as the regulations may specify, to provide a copy of the approved report to the person or entity specified by the regulations, and governing the time and manner in which the copy is required to be provided;
- (e) for the purposes of subsection 27.1 (18), requiring the administrator or other person or entity who administered the distribution, or such other person or entity as the regulations may specify, to provide a copy of the approved report to the person or entity specified by the regulations, and governing the time and manner in which the copy is required to be provided;

(f) specifying, for the purposes of any provision of this Act or of the regulations made by the Minister, when a proceeding or class of proceeding shall be considered to have been commenced under section 2.

Lieutenant Governor in Council

(2) The Lieutenant Governor in Council may make regulations,

- (a) respecting any matter that, under section 27.3, may or must be prescribed or done by regulation;
- (b) for the purposes of subsection 33.1 (5), setting out information that shall not be redacted from a copy of a third-party funding agreement.

Transition

39 (1) Except as otherwise provided by this section, this Act, as it read immediately before section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2020* came into force, continues to apply with respect to,

- (a) a proceeding commenced under section 2 before that day;
- (b) a proceeding under section 3 or 4, if the motion for certification was made before that day; and

- (c) any other proceeding under this Act that may be prescribed, in the prescribed circumstances, including a proceeding commenced under this Act on or after that day.

Same

(2) Section 29.1 applies, with necessary modifications, to a proceeding referred to in clause (1) (a), except that the reference in subsection 29.1 (1) to the day on which the proceeding was commenced shall be read as a reference to the day on which section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2020* came into force.

Same

(3) If the regulations so provide, section 29.1 applies, with necessary modifications, to any proceedings prescribed under clause (1) (c) that the regulations specify, with such additional modifications as the regulations may specify.

Same

(4) A regulation made under clause 38 (1) (b) or (c) may apply with respect to proceedings referred to in clauses (1) (a) and (c) and, for greater certainty, may require the registration of any such proceedings in accordance with the regulations and require proof of the registration.

Commencement

36 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 5
COMMISSIONERS FOR TAKING AFFIDAVITS ACT

1 ~~The English version of the title to the *Commissioners for taking Affidavits Act* is amended by striking out “taking” and substituting “Taking”.~~

2 ~~Section 3 of the Act is repealed.~~

3 ~~(1) Subsection 4 (2) of the Act is repealed.~~

(2) ~~Subsection 4 (3) of the Act is repealed and the following substituted:~~

Period of appointment

~~(3) Commissioners appointed under this section shall be appointed for a three year period or such other period as may be specified by the regulations made under this Act.~~

Renewal

~~(3.1) An appointment under this section may be renewed for one or more periods of three years or such other period as may be specified by the regulations made under this Act.~~

4 ~~The English version of section 6 of the Act is amended by striking out “in anywise”.~~

5 ~~Section 8 of the Act is amended by adding the following subsection:~~

Delegation

~~(3) The Attorney General may, in writing, delegate the power conferred by subsection (1) to a public servant employed under Part III of the *Public Service of Ontario Act, 2006*.~~

6 ~~Section 9 of the Act is repealed and the following substituted:~~

Administration of oath, declaration

In person

~~**9** (1) Every oath and declaration shall be taken by the deponent or declarant in the physical presence of the commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration.~~

Not in person

~~(2) Despite subsection (1), if the regulations made under this Act so provide and the conditions set out in the regulations are met, an oath or declaration may be taken by a deponent or declarant in accordance with the regulations without being in the physical presence of a commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration.~~

Duty of commissioner, etc.

~~(3) A commissioner, notary public, justice of the peace or other officer or person administering an oath or declaration shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant and shall administer the oath or declaration in the manner required by law before signing the jurat or declaration.~~

7 ~~The Act is amended by adding the following section:~~

Transition, commissioners for specific purposes

~~**12.1** A person who exercised powers, conferred by the Attorney General under section 3 immediately before its repeal by section 2 of Schedule 5 to the *Smarter and Stronger Justice Act, 2019*, to administer oaths and take affidavits in connection with the performance of his or her official duties may continue to exercise the conferred powers, subject to any limitations determined by the Attorney General when the powers were conferred, and continues to be subject to this Act in respect of the exercise of those powers until the person ceases or is no longer authorized to perform those duties.~~

8 ~~(1) Clause 13 (a) of the Act is repealed and the following substituted:~~

~~—(a) prescribing the fees payable to commissioners under this Act and requiring their payment;~~

(2) ~~Section 13 of the Act is amended by adding the following clause:~~

~~—(d) for the purposes of subsection 9 (2), providing that an oath or declaration may be taken by a deponent or declarant without being in the physical presence of a commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration, specifying conditions that must be met in order for an oath or declaration to be administered without being in the physical presence of the deponent or declarant, and governing the administering of an oath or declaration without being in the physical presence of the deponent or declarant.~~

(3) ~~Section 13 of the Act is amended by adding the following subsection:~~

~~Same, Attorney General~~

~~(2) The Attorney General may make regulations;~~

- ~~—(a) prescribing a period of appointment for the purposes of subsection 4 (3) or a period of renewal of appointment for the purposes of subsection 4 (3.1);~~
- ~~—(b) prescribing fees payable to the Crown under this Act and requiring their payment;~~
- ~~—(c) exempting any person or class of persons from paying any or all of the fees prescribed under clause (b).~~

~~Evidence Act~~

9 ~~The English version of section 46 of the *Evidence Act* is amended by striking out “taking” and substituting “Taking”.~~

~~Homemakers and Nurses Services Act~~

10 ~~The English version of section 4 of the *Homemakers and Nurses Services Act* is amended by striking out “taking” and substituting “Taking”.~~

~~Legal Aid Services Act, 1998~~

11 ~~The English version of subsection 17 (2) of the *Legal Aid Services Act, 1998* is amended by striking out “taking” and substituting “Taking”.~~

~~Long-Term Care Homes Act, 2007~~

12 ~~The English version of section 179 of the *Long-Term Care Homes Act, 2007* is amended by striking out “taking” and substituting “Taking”.~~

~~Mining Act~~

13 ~~The English version of subsection 4 (7) of the *Mining Act* is amended by striking out “taking” and substituting “Taking”.~~

~~Ministry of Northern Development, Mines and Forestry Act~~

14 ~~The English version of subsection 7 (2) of the *Ministry of North Development, Mines and Forestry Act* is amended by striking out “taking” and substituting “Taking”.~~

~~Ontario Disability Support Program Act, 1997~~

15 ~~The English version of section 51 of the *Ontario Disability Support Program Act, 1997* is amended by striking out “taking” and substituting “Taking”.~~

~~Ontario Works Act, 1997~~

16 ~~The English version of section 69 of the *Ontario Works Act, 1997* is amended by striking out “taking” wherever it appears and substituting in each case “Taking”.~~

~~Provincial Offences Act~~

17 ~~The English version of subsection 83.1 (6) of the *Provincial Offences Act* is amended by striking out “taking” and substituting “Taking”.~~

~~Commencement~~

18 ~~This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2019* receives Royal Assent.~~

SCHEDULE 6 COURTS OF JUSTICE ACT

1 Section 33.1 of the *Courts of Justice Act* is amended by adding the following subsection:

Exception

(17.1) If the regional senior judge makes a disposition under clause (8) (h) in relation to a complaint made on or after the day section 1 of Schedule 6 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsection (15) does not apply and compensation shall not be recommended under subsection (16).

2 Section 51.7 of the Act is amended by adding the following subsection:

Exception

(5.1) If the Judicial Council makes a recommendation under clause 51.6 (11) (g) in relation to a complaint made on or after the day section 2 of Schedule 6 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsections (1) to (3) do not apply and compensation shall not be recommended under subsection (4).

3 Clause 66 (2) (h) of the Act is repealed and the following substituted:

- (h) jurisdiction of case management masters, including the conferral on case management masters of any jurisdiction of the Superior Court of Justice, including jurisdiction under an Act, but not including the trial of actions or jurisdiction conferred by an Act on a judge;

4 Subsection 75 (2) of the Act is repealed and the following substituted:

Powers re case management masters

(2) Subsection (1) applies, with necessary modifications, in respect of directing and supervising the sittings and assigning the judicial duties of case management masters.

5 Subsection 76 (2) of the Act is amended by striking out “justice of the peace, master or case management master” and substituting “justice of the peace or case management master”.

6 (1) Subsections 86.1 (3), (4), (5) and (5.1) of the Act are repealed and the following substituted:

Retirement

(3) Every case management master shall retire when he or she reaches the age of 65.

Transition, previous appointments

(4) The appointment of a case management master who had not reached the age of 65 before the day subsection 6 (1) of Schedule 6 to the *Smarter and Stronger Justice Act, 2020* came into force and whose appointment was in effect immediately before that day is deemed to specify a term of office that expires when the case management master reaches the age of 65.

(2) Subsection 86.1 (5.2) of the Act is amended by adding “Despite subsections (3) and (4)” at the beginning.

(3) Subsection 86.1 (5.4) of the Act is repealed and the following substituted:

No limit

(5.4) Subject to subsection (5.3), there is no limit to the number of times a case management master can be reappointed under subsection (5.2).

(4) Subsection 86.1 (6) of the Act is repealed and the following substituted:

Jurisdiction

(6) A case management master has the jurisdiction conferred by the rules of court.

7 Section 86.2 of the Act is amended by adding the following subsections:

Exception

(12.0.1) If the Chief Justice makes a disposition under clause (8) (g) in relation to a complaint made on or after the day section 7 of Schedule 6 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsection (10) does not apply and compensation shall not be recommended under subsection (11).

Removal from office upheld

(12.4) If the Court of Appeal upholds a disposition of the Chief Justice made under clause (8) (g) in relation to a complaint made on or after the day section 7 of Schedule 6 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsection (12.1) does not apply and compensation shall not be recommended under subsection (12.2).

Removal from office not upheld

(12.5) If the Court of Appeal does not uphold a disposition of the Chief Justice made under clause (8) (g) in relation to a complaint made on or after the day section 7 of Schedule 6 to the *Smarter and Stronger Justice Act, 2020* comes into force, the Court shall, under subsection (12.1), also consider whether the case management master should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken under this section in relation to the complaint.

8 Section 87 of the Act is repealed.

9 Subsection 87.3 (15) of the Act is amended by striking out “(12), (13)” and substituting “(12), (12.0.1), (13)”.

10 Subsection 90 (2) of the Act is repealed.

11 Subsection 123 (1.1) of the Act is amended by striking out “deputy judges, masters and case management masters” at the end and substituting “deputy judges and case management masters”.

Absconding Debtors Act

12 Subsection 12 (1) of the *Absconding Debtors Act* is amended by striking out “master” and substituting “case management master”.

Assignments and Preferences Act

13 Subsection 37 (1) of the *Assignments and Preferences Act* is amended by striking out “a master” and substituting “a case management master”.

Construction Act

14 (1) Section 52 of the *Construction Act* is amended by striking out “A judge, master or case management master” at the beginning and substituting “A judge or case management master”.

(2) Subsection 58 (1) of the Act is repealed and the following substituted:

Referral of reference

(1) On motion made after the delivery of all statements of defence, or the statement of defence to all crossclaims, counterclaims or third party claims, if any, or after the time for their delivery has expired, a judge may refer the whole action or any part of it for trial,

- (a) to a case management master;
- (b) to a person agreed on by the parties; or
- (c) if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out under section 23 of the *Courts of Justice Act*, to a deputy judge of that Court or to the Small Claims Court Administrative Judge.

(3) Subsections 58 (2) to (4) of the Act are repealed and the following substituted:

Case management master not to hear motion to refer

(2) A case management master shall not hear or dispose of a motion made under subsection (1).

Reference directed

(3) At the trial, a judge may direct a reference to a case management master, to a person agreed on by the parties or, if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out under section 23 of the *Courts of Justice Act*, to a deputy judge of that Court or to the Small Claims Court Administrative Judge.

Powers on reference

(4) A case management master to whom a reference has been directed has all the jurisdiction, powers and authority of the court to try and completely dispose of the action and all matters and questions arising in connection with the action, including the giving of leave to amend any pleading and the giving of directions to a receiver or trustee appointed by the court.

Evidence Act

15 Subsection 36 (1) of the *Evidence Act* is amended by striking out “justices, masters, case management masters” and substituting “justices, case management masters”.

Human Rights Code

16 (1) Clause 24 (1) (e) of the *Human Rights Code* is amended by striking out “or master”.

(2) Subsection 24 (4) of the Act is amended by striking out “judge, master, case management master” and substituting “judge, case management master”.

Law Society Act

17 Clause 31 (1) (a) of the *Law Society Act* is amended by striking out “as a full-time master of the Superior Court of Justice” and substituting “as a full-time justice of the peace of the Ontario Court of Justice”.

Mortgages Act

18 (1) Subsection 23 (2) of the *Mortgages Act* is amended by striking out “in the master’s office” and substituting ~~“by a case management master”~~ “on a reference”.

(2) Subsection 39 (1) of the Act is amended by striking out “a judge or master” and substituting “a judge”.

(3) Subsection 39 (2) of the Act is amended by striking out “the judge or master, as the case may be, shall” and substituting “the judge shall”.

Commencement

19 (1) Subject to subsections (2) and (3), this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Sections 3, 4 and 5, subsection 6 (4) and sections 8 and 10 to 18 come into force on the day that is six months after the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(3) Subsections 6 (1), (2) and (3) come into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 7
CREDITORS' RELIEF ACT, 2010

1 Section 15 of the *Creditors' Relief Act, 2010* is repealed and the following substituted:

Deposit of money in bank

15 A sheriff shall deposit money that comes into his or her hands in a bank designated for that purpose by the Deputy Attorney General or the person designated by the Deputy Attorney General under subsection 73 (2) of the *Courts of Justice Act*.

Commencement

2 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 8
CROWN LIABILITY AND PROCEEDINGS ACT, 2019

1 Section 17 of the *Crown Liability and Proceedings Act, 2019* is repealed and the following substituted:

~~No proceeding for misfeasance, bad faith without notice and leave~~

~~17 (1) No proceeding may be brought against the Crown or an officer or employee of the Crown in respect of a tort of misfeasance in public office or a tort based on bad faith respecting anything done in the exercise or intended exercise of the officer or employee's powers or the performance or intended performance of the officer or employee's duties or functions, unless,~~

- ~~— (a) a court grants leave to bring the proceeding; and~~
- ~~— (b) at least 60 days before the notice of motion for leave to bring the proceeding is filed with the court, the claimant serves on the Crown, in accordance with section 15, notice of the claims in the intended proceeding containing sufficient particulars to identify the occasion out of which the claims arose.~~

~~Additional particulars~~

~~(2) The Attorney General may require such additional particulars in respect of the notice given under clause (1) (b) as in his or her opinion are necessary to enable the claims to be investigated.~~

~~Required documents~~

~~(3) On a motion for leave under clause (1) (a), the claimant shall, in accordance with section 15 if applicable, serve on the proposed defendant and file with the court,~~

- ~~— (a) an affidavit, or such other document as may be prescribed, setting out a concise statement of the material facts on which the claimant intends to rely for the claims; and~~
- ~~— (b) an affidavit of documents, or such other document as may be prescribed, disclosing, to the full extent of the claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding that are or have been in the claimant's possession, control or power.~~

~~Response by proposed defendant~~

~~(4) On a motion for leave under clause (1) (a), the proposed defendant may serve on the claimant and file an affidavit, or such other document as may be prescribed, setting out a concise statement of the material facts on which the proposed defendant intends to rely for the defence, but is not required to do so.~~

~~Limit on examinations~~

~~(5) No person may be examined or summoned for examination on the contents of an affidavit or prescribed document referred to in subsection (3) or (4) or in relation to the motion for leave, other than the maker of the affidavit or prescribed document.~~

~~No discovery of proposed defendant~~

~~(6) The proposed defendant shall not be subject to discovery or the inspection of documents, or to examination for discovery, in relation to a motion for leave under clause (1) (a).~~

~~Requirements for leave~~

~~(7) The court shall not grant leave unless it is satisfied that,~~

- ~~— (a) the proceeding is being brought in good faith; and~~
- ~~— (b) there is a reasonable possibility that the proceeding would be resolved in the claimant's favour.~~

~~Costs~~

~~(8) Each party to a motion for leave under clause (1) (a) shall bear its own costs of the motion.~~

~~Suspension of limitation period~~

~~(9) Any limitation period applicable to a claim in an intended proceeding to which subsection (1) applies is suspended during each of the following periods and resumes running after the end of each period:~~

- ~~— 1. The period beginning on the day on which notice of the claims in the intended proceeding is served on the Crown in accordance with clause (1) (b) and ending on the last instant of the seventh day following the end of the 60 day period referred to in that clause.~~
- ~~— 2. The period beginning on the day a notice of motion for leave under clause (1) (a) is filed with the court and ending on,~~
 - ~~— i. the day on which, if the court grants leave or dismisses the motion,~~
 - ~~— A. all appeals are exhausted, or~~
 - ~~— B. the time for an appeal expires without an appeal being filed, or~~

~~ii. the day on which the motion is abandoned or discontinued.~~

Non-application to Crown claimant

~~(10) This section does not apply if the claimant is the Crown.~~

Proceedings re misfeasance, bad faith

17 (1) This section applies to proceedings brought against the Crown or an officer or employee of the Crown that include a claim in respect of a tort of misfeasance in public office or a tort based on bad faith respecting anything done in the exercise or intended exercise of the officer or employee's powers or the performance or intended performance of the officer or employee's duties or functions.

Leave to proceed required, automatic stay

(2) A proceeding to which this section applies that is brought on or after the day section 1 of Schedule 8 to the *Smarter and Stronger Justice Act, 2020* comes into force may proceed only with leave of the court and, unless and until leave is granted, is deemed to have been stayed in respect of all claims in that proceeding from the time that it is brought.

Documents on motion for leave

(3) On a motion for leave under subsection (2), the claimant shall, in accordance with section 15 if applicable, serve on the defendant and file with the court,

- (a) an affidavit, or such other document as may be prescribed, setting out a concise statement of the material facts on which the claimant intends to rely; and
- (b) an affidavit of documents, or such other document as may be prescribed, disclosing, to the full extent of the claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding that are or have been in the claimant's possession, control or power.

Response by defendant

(4) On a motion for leave under subsection (2), the defendant may serve on the claimant and file an affidavit, or such other document as may be prescribed, setting out a concise statement of the material facts on which the defendant intends to rely for the defence, but is not required to do so.

Limit on examinations

(5) No person may be examined or summoned for examination on the contents of an affidavit or prescribed document referred to in subsection (3) or (4) or in relation to the motion for leave, other than the maker of the affidavit or prescribed document.

No discovery of defendant

(6) The defendant shall not be subject to discovery or the inspection of documents, or to examination for discovery, in relation to the motion for leave.

Requirements for leave

(7) The court shall not grant leave unless it is satisfied that,

- (a) the proceeding is being brought in good faith; and
- (b) there is a reasonable possibility that the claim described in subsection (1) would be resolved in the claimant's favour.

Costs

(8) Each party to the motion for leave shall bear its own costs of the motion.

Effect of granting leave

(9) The granting of leave under subsection (2) lifts the stay of the proceeding.

Effect of refusing leave

(10) If leave is not granted under subsection (2),

- (a) the proceeding is rendered a nullity; or
- (b) if the proceeding contains any claims other than the claim described in subsection (1), the proceeding is rendered a nullity in respect of the claim described in that subsection and the stay is lifted with respect to the remainder of the proceeding.

Waiver of leave requirement

(11) Despite subsections (2) and (10), the Crown may waive the application of subsection (2) in relation to a proceeding by giving notice of the waiver in writing to the claimant.

Same

(12) The Crown may exercise its discretion under subsection (11) at any time before the hearing of a motion for leave under subsection (2), including before an intended proceeding is brought.

Same

(13) If the Crown exercises its discretion under subsection (11) after a proceeding has been brought,

(a) the stay of the proceeding is lifted once notice of the waiver is given to the claimant; and

(b) the Crown shall give notice of the waiver in writing to the court.

Non-application to Crown claimant

(14) This section does not apply if the claimant is the Crown.

Transition

(15) This section, as it read immediately before the day section 1 of Schedule 8 to the *Smarter and Stronger Justice Act, 2020* came into force, continues to apply with respect to a proceeding for which a motion for leave was made under this section before that day, except that the Crown may, at any time before the hearing of the motion, waive the requirement for leave by giving notice of the waiver in writing to the claimant and to the court.

Same

(16) For greater certainty, if a proceeding for which leave was required under this section was brought without leave before the day section 1 of Schedule 8 to the *Smarter and Stronger Justice Act, 2020* came into force, the proceeding was a nullity in respect of the claim described in subsection (1) from the time the proceeding was brought.

Same

(17) For the purposes of any applicable limitation period,

(a) a proceeding to which subsection (15) applies shall be considered to have been commenced in respect of the claim described in subsection (1) when the motion for leave was made, despite any waiver of the leave requirement by the Crown; and

(b) a proceeding to which subsection (16) applies shall, despite being a nullity in respect of the claim described in subsection (1), be considered to have been commenced when the proceeding was brought.

2 Section 18 of the Act is amended by adding the following subsection:**Notice of claim under s. 17 sufficient**

(6) A notice of claim is not required to be given under this section with respect to a claim to which this section applies if notice of the claim was given in accordance with section 17.

2 Section 18 of the Act is amended by adding the following subsections:**Failure to give notice**

(6) For greater certainty, failure to give notice of a claim as required by this section renders a proceeding brought without such notice a nullity in respect of the claim, from the time the proceeding is brought.

Same

(7) Subsection (6) applies with respect to a proceeding brought before, on or after the day section 2 of Schedule 8 to the *Smarter and Stronger Justice Act, 2020* comes into force.

3 (1) Subsection 30 (1) of the Act is amended by adding the following clause:

(b.1) providing for procedures that apply with respect to a motion for leave under section 17;

(2) Section 30 of the Act is amended by adding the following subsection:**Conflict with rules of court**

(4) In the event of a conflict between a regulation made under clause (1) (b.1) and the rules of court, the regulation prevails.

Commencement

4 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 9 ESTATES ACT

1 (1) The definition of “common form business” in section 1 of the *Estates Act* is repealed.

(2) Section 1 of the Act is amended by adding the following definition:

“registrar” means a local registrar of the Superior Court of Justice; (“greffier”)

(3) Section 1 of the Act is amended by adding the following definition:

“small estate” means an estate that does not exceed the amount prescribed by regulations made under subsection (2); (“petite succession”)

(4) Section 1 of the Act is amended by adding the following subsection:

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing an amount for the purposes of the definition of “small estate” in subsection (1).

2 Section 2 of the Act is repealed and the following substituted:

Depository for the wills of living persons

2 The office of the registrar is a depository for all wills of living persons given there for safekeeping, and the registrar shall receive and keep those wills under such regulations as are prescribed by the rules of court.

3 Section 4 of the Act is repealed.

4 Section 7 of the Act is amended by adding the following subsection:

Rules of court

(4) Except as otherwise provided by this Act, applications for a grant of probate or letters of administration are subject to the procedures set out in the rules of court and, in the case of small estates, to the procedures set out in the rules of court that are specific to small estates.

5 Sections 16 to 22 of the Act are repealed and the following substituted:

Where probate or administration shall not be granted

16 Unless the court orders otherwise, probate or administration shall not be granted until the registrar has confirmed that,

- (a) no other application has been filed in respect of the estate;
- (b) no notice of objection filed by a person who appears to have a financial interest in the estate is in effect;
- (c) on an application where there is a will, there is no will or codicil of a later date than that for which the grant is sought deposited in the Superior Court of Justice; and
- (d) on an application where there is no will, there is no will or codicil deposited in the Superior Court of Justice.

Stay, if multiple applications

17 If the registrar determines that an application for probate or administration has been filed in two or more court offices, the proceeding shall be stayed until, on motion, a judge of the Superior Court of Justice determines where the application will proceed.

6 Section 36 of the Act is amended by adding the following subsections:

Same

(3) Subject to section 6, a bond shall not be required in respect of a small estate, unless,

- (a) a beneficiary of the estate is a minor; or
- (b) a beneficiary of the estate is incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, whether or not the person has a guardian.

Same

(4) Subsection (3) does not affect the operation of subsection (2).

Subsequently discovered property

(5) Subsection (3) ceases to apply if, following the discovery of property belonging to the deceased in the circumstances described in subsection 32 (2), the estate ceases to be a small estate.

7 Subsection 47 (1) of the Act is amended by striking out “local registrar of the Superior Court of Justice” at the end and substituting “registrar”.

8 Subsection 52 (1) of the Act is amended by striking out “registrar of the Superior Court of Justice” and substituting “registrar”.

Commencement

9 (1) Subject to subsection (2), this Schedule comes into force six months after the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Subsections 1 (3) and (4) and sections 4 and 6 come into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE 10
EXECUTION ACT**

1 The definition of “sheriff” in section 1 of the *Execution Act* is amended by striking out “who has been appointed under Part III of the *Public Service of Ontario Act, 2006*” at the end.

Open for Business Act, 2010

2 Subsection 3 (13) of Schedule 2 to the *Open for Business Act, 2010* is repealed.

Commencement

3 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

**SCHEDULE 11
JUDICIAL REVIEW PROCEDURE ACT**

1 Subsections 2 (5) and (6) of the *Judicial Review Procedure Act* are repealed and the following substituted:

Power to refuse relief

(5) The court may refuse to grant any relief on an application for judicial review.

2 Section 5 of the Act is repealed and the following substituted:

Time for bringing application

5 (1) Unless another Act provides otherwise, an application for judicial review shall be made no later than 30 days after the date the decision or matter for which judicial review is being sought was made or occurred, subject to subsection (2).

Extension

(2) The court may, on such terms as it considers proper, extend the time for making an application for judicial review if it is satisfied that there are apparent grounds for relief and that no substantial prejudice or hardship will result to any person affected by reason of the delay.

Same, other Acts

(3) Subsection (2) applies with respect to any limitation of time for the bringing of an application for judicial review under any other Act, unless that Act expressly provides otherwise.

Transition

(4) Subsection (1) applies with respect to the judicial review of a decision that is made or of a matter that occurs on or after the day section 2 of Schedule 11 to the *Smarter and Stronger Justice Act, 2020* comes into force.

3 Subsection 9 (1) of the Act is repealed and the following substituted:

Sufficiency of application

(1) It is sufficient in an application for judicial review if the applicant sets out in the notice of application the grounds on which the applicant is seeking relief and the nature of the relief.

Commencement

4 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

**SCHEDULE 12
JURIES ACT**

1 Paragraph 6 of subsection 3 (1) of the *Juries Act* is amended by striking out “correctional institutions or lockups” and substituting “correctional institutions or lock-ups”.

2 Clause 15 (3) (b) of the Act is amended by adding “and” at the end of subclause (i) and by repealing subclause (ii).

3 (1) Subsection 18 (3) of the Act is amended by striking out “may disclose” and substituting “shall disclose”.

(2) Section 18 of the Act is amended by adding the following subsection:

Order to disclose list, addresses

(4) A judge of the Superior Court of Justice may, on motion, order that the disclosure of the panel list under subsection (3) include the disclosure of the place of residence of each juror on the list, if the disclosure of their places of residence is necessary to ensure the fairness of the trial or is otherwise in the interests of justice.

Commencement

4 (1) Subject to subsection (2), this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Sections 2 and 3 come into force on the day that is 30 days after the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

**SCHEDULE 13
JUSTICES OF THE PEACE ACT**

1 Section 11 of the *Justices of the Peace Act* is amended by adding the following subsection:

Exception

(16.1) Subsection (16) does not apply if the complaints committee orders a formal hearing.

2 (1) Subsections 11.1 (17) and (18) of the Act are repealed and the following substituted:

Compensation

(17) The panel shall consider whether the justice of the peace should be compensated for all or part of the cost of legal services incurred in connection with all the steps taken under section 11 and this section in relation to the complaint.

Recommendation

(17.1) If the panel is of the opinion that the justice of the peace should be compensated, the panel shall make a recommendation to that effect, indicating the amount of compensation.

Exception

(17.2) If the panel makes a recommendation under clause (10) (g) in relation to a complaint made on or after the day subsection 2 (1) of Schedule 13 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsection (17) does not apply and compensation shall not be recommended under subsection (17.1).

Maximum

(18) The amount of compensation recommended under subsection (17.1) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

(2) Subsection 11.1 (22) of the Act is repealed.

Commencement

3 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

**SCHEDULE 14
LAW SOCIETY ACT**

1 (1) Subsection 1 (1) of the *Law Society Act* is amended by adding the following definition:

“firm” means, subject to subsection (1.1), any of the following entities or joint arrangements through which one or more licensees practise law, provide legal services to members of the public or both:

1. A sole proprietorship owned by one licensee.
2. A professional corporation.
3. An association of licensees, where the licensees hold themselves out as practising law, providing legal services or both, through an entity or joint arrangement.
4. An ordinary partnership.
5. A limited liability partnership.
6. Any other entity or joint arrangement specified by the by-laws; (“cabinet”)

(2) Section 1 of the Act is amended by adding the following subsection:

Not a firm

(1.1) “Firm”, as defined in subsection (1), does not include,

- (a) any governmental or public sector entity, including, for greater certainty,
 - (i) a governmental organization or municipal sector entity, as those terms are defined in the *Ombudsman Act*,
 - (ii) a broader public sector organization as defined in the *Broader Public Sector Accountability Act, 2010*, or
 - (iii) Legal Aid Ontario; or
- (b) an entity or joint arrangement specified by the by-laws.

2 Section 14 of the Act is amended by adding the following subsection:

Rights and privileges

(2) Benchers by virtue of their office under subsection (1) have the rights and privileges prescribed by the by-laws.

3 (1) Paragraph 4 of subsection 35 (1) of the Act is amended by striking out “\$10,000” and substituting “\$100,000”.

(2) Paragraph 15 of subsection 35 (1) of the Act is amended by adding the following subparagraph:

- i.1 The licensee’s firm.

4 Clauses 42 (2) (a) to (c) of the Act are repealed and the following substituted:

- (a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
- (b) require the production of and examine documents that relate to the matters under review, including client files, and examine systems and procedures of the licensee’s professional business; and
- (c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under review.

5 Subsection 48 (1) of the Act is repealed and the following substituted:

Summary revocation

(1) A person appointed for the purpose by Convocation may make an order revoking a licensee’s licence if,

- (a) an order under section 46, clause 47 (1) (a) or section 47.1 is still in effect more than 12 months after it was made; or
- (b) an order under subparagraph 3 ii or iii of subsection 35 (1) is still in effect more than 24 months after it was made.

6 Clauses 49.2 (2) (a) to (c) of the Act are repealed and the following substituted:

- (a) enter the current or former business premises of the licensee or group of licensees between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or by any licensee in the group of licensees or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
- (b) require the production of and examine the financial records maintained in connection with the professional business of the licensee or group of licensees and, for the purpose of understanding or substantiating those records, require the

production of and examine any other documents in the possession or control of the licensee or group of licensees, including client files; and

- (c) require the licensee or group of licensees, and people who work or worked with the licensee or group of licensees, to provide information to explain the financial records and other documents examined under clause (b) and the transactions recorded in those financial records and other documents.

7 (1) Clauses 49.3 (2) (a) to (c) of the Act are repealed and the following substituted:

- (a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under investigation.

(2) Clauses 49.3 (4) (a) to (c) of the Act are repealed and the following substituted:

- (a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under investigation.

8 (1) Section 49.8 of the Act is amended by adding the following subsection:

Same

(1.2) Subsection (1.1) applies with respect to information and documents,

- (a) regardless of whether they are received in relation to a review, audit or investigation before or after its commencement; and
- (b) regardless of whether a review, audit or investigation is ultimately commenced.

(2) The French version of subsection 49.8 (3) of the Act is amended by striking out “de nier l’existence d’un privilège ni de constituer” and substituting “d’invalider un privilège ni ne constituer”.

9 The French version of subsection 49.10 (12) of the Act is amended by striking out “de nier l’existence d’un privilège ni de constituer” and substituting “d’invalider un privilège ni ne constituer”.

10 (1) Subsection 49.12 (1) of the Act is repealed and the following substituted:

Confidentiality

(1) A bencher, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge in relation to an audit, investigation, review, search, seizure or proceeding, or potential audit, investigation, review or proceeding, under this Part.

(2) Subsection 49.12 (2) of the Act is amended by striking out “or” at the end of clause (e), by repealing clause (f) and by substituting the following:

- (f) disclosure of such information as may be specified by the by-laws respecting an audit, investigation, review, search, seizure or proceeding, or potential audit, investigation, review or proceeding, under this Part, in the circumstances specified by the by-laws;
- (g) disclosure of information to an authority responsible for regulating the practice of law or the provision of legal services in another province or territory of Canada, if the authority is subject, under the laws of its jurisdiction, to restrictions and permissions respecting the disclosure of information that are comparable to those to which the Society is subject under this Act;
- (h) disclosure of information if there are reasonable grounds for believing that there is a significant risk of financial harm to a person, and the disclosure is made principally for a purpose related to preventing the harm or investigating the risk;
- (i) disclosure of information if there are reasonable grounds to believe that there is a significant threat to the life, health or security of an individual, and the disclosure is made principally for a purpose related to addressing or investigating the threat; or
- (j) any other disclosure specified by the by-laws, in the circumstances specified by the by-laws.

(3) Section 49.12 of the Act is amended by adding the following subsections:

Solicitor-client privileged information

(2.1) Despite subsection (2), information that is subject to solicitor-client privilege shall not be disclosed under clause (2) (e), (f), (h), (i) or (j).

Criminating, etc., information

(2.2) Despite subsection (2), information that came to the knowledge of a person to whom subsection (1) applies as a result of the making of an oral or written statement by another person in the course of an audit, investigation, review, search, seizure or proceeding, or potential audit, investigation, review or proceeding, under this Part shall not be disclosed under clause (2) (e), (f), (h), (i) or (j) if the disclosure may tend to criminate the other person or establish the other person's liability to civil proceedings.

(4) Subsection 49.12 (3) of the Act is amended by striking out “subsection (1)” at the end and substituting “this section”.

11 Subsection 49.27 (2) of the Act is repealed and the following substituted:

Exception

(2) The Hearing Division may only make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services if there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made.

12 Section 49.43 of the Act is amended by adding the following subsection:

Application to automatic suspensions under s. 45.1

(2.1) Subsections (1) and (2) apply, with necessary modifications, with respect to a determination by the Hearing Division of whether the conditions specified in subsection 45.1 (5) have been met in relation to a suspension under section 45.1.

13 Subsection 59.7 (7) of the Act is repealed.

14 The Act is amended by adding the following sections:

FIRMS

Practice, provision through a firm

61.1.1 Any provision of this Act, the regulations, the by-laws or the rules of practice and procedure that applies to a person who is authorized to practise law in Ontario or a person who is authorized to provide legal services in Ontario continues to apply to the person even if his or her practice of law or provision of legal services is carried on through a firm.

Application of Act to firms

61.1.2 (1) If and to the extent provided for by the by-laws, sections 33 to 36, 41 to 44 and 49.2, subsections 49.3 (1) and (2), and sections 49.8 to 49.10, 49.43 to 49.51, 57 to 59, 59.6, 59.7, 59.9 and 61 apply with respect to firms as they do with respect to licensees, subject to the modifications specified in this section, any modifications specified by the by-laws and any other necessary modifications.

Same, reference to licensee

(2) A reference in a provision listed in subsection (1) to a licensee shall be read as a reference to a firm, except in the expression “conduct unbecoming a licensee”, which shall be read as it is and shall not be considered to be a reference to “conduct unbecoming a firm”.

Same, reference to professional business

(3) A reference in a provision listed in subsection (1) to a professional business shall be read as a reference to the professional business of the firm.

Application to associations

61.1.3 A provision referred to in subsection 61.1.2 (1), or a provision of the regulations, the by-laws or the rules of practice and procedure, that applies to a firm that is an association of licensees referred to in paragraph 3 of the definition of “firm” in subsection 1 (1) shall be read as applying to the directing mind or minds of the association, as determined in accordance with the by-laws.

Registration

61.1.4 (1) If the by-laws so provide, a firm shall be registered in accordance with the by-laws.

Register

(2) If the by-laws provide for the registration of firms, the Society shall establish and maintain a register of the firms.

Same

(3) A register established under subsection (2) shall,

- (a) contain the information required by the by-laws, subject to any by-law respecting the removal of information from the register; and
- (b) be made available for public inspection by the Society in accordance with the by-laws.

15 (1) Subsection 62 (0.1) of the Act is amended by adding the following paragraphs:

27.1 governing the practice of law and the provision of legal services through a firm, including,

- i. exercising, in respect of firms, any by-law making authority listed in this subsection respecting licensees, including, for greater certainty, under paragraph 14,
- ii. for the purposes of subsection 61.1.2 (1),
 - A. providing that any or all of the provisions listed in that subsection apply with respect to firms or any class or classes of firms,
 - B. providing for modifications to the application of any or all of the provisions listed in that subsection with respect to firms or any class or classes of firms, including providing that a provision or portion of a provision does not apply with respect to firms or a class or classes of firms, or applies only in specified circumstances, or that different provisions listed in the subsection apply with respect to different classes of firms,
- iii. respecting the determination of the directing mind or minds of an association of licensees for the purposes of section 61.1.3,
- iv. requiring the registration of firms and governing the registration,
- v. requiring firms to designate a member of the firm for the purpose of receiving information and documents from and providing information and documents to the Society on behalf of the firm or of one or more members of the firm, or for the purposes of any or all of subparagraphs vi to x, and governing the designations,
- vi. requiring or authorizing specified reporting requirements or other specified requirements that are applicable to licensees who are members of a firm to be met by a designated member of the firm on behalf of some or all the licensees,
- vii. requiring a designated member of a firm to appear before a person or entity specified by the by-laws respecting the conduct of the firm or of one or more members of the firm or any other matter specified by the by-laws, or authorizing a person or entity specified by the by-laws to require such an appearance,
- viii. authorizing a person or entity specified by the by-laws to meet with a designated member of a firm or any other members of the firm specified by the by-laws to review the conduct of the firm or of one or more members of the firm or any other matter specified by the by-laws,
- ix. requiring the designated member of a firm or any other member of the firm specified by the by-laws to comply with any requirements imposed on firms under the by-laws,
- x. authorizing a person or entity specified by the by-laws to reprimand the firm, the designated member of the firm or any other member of the firm specified by the by-laws,
- xi. specifying circumstances in which the Society may publish a firm's failure to comply with a requirement under this Act and governing the publication;

.

44.1 governing disclosure and circumstances for the purposes of clause 49.12 (2) (f), or of clause 49.12 (2) (j);

.

50.1 governing any register established under subsection 61.1.4 (2), including prescribing information that the register must contain, governing the removal of information from the register and governing the Society's duty under clause 61.1.4 (3) (b) to make the register available for public inspection;

.

52. respecting anything that, under this Act, may or must be prescribed or done by the by-laws.

(2) Clause 62 (3) (a) of the Act is repealed.**16 Subsection 63 (1) of the Act is amended by adding the following paragraph:**

- 2. respecting anything that, under this Act, may or must be prescribed or done by the regulations;

Commencement

17 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 15
LEGAL AID SERVICES ACT, 1998

1 Sections 5 and 6 of the *Legal Aid Services Act, 1998* are repealed and the following substituted:

Board of directors

5 (1) The affairs of the Corporation shall be governed and managed by its board of directors.

Composition

~~(2) The board shall be composed of up to 11 persons appointed for a specified term by the Lieutenant Governor in Council on the recommendation of the Attorney General.~~

Same

~~(3) Appointments made under subsection (2) are subject to the following restrictions:~~

- ~~— 1. At least three but no more than five of the appointees shall be selected by the Attorney General from a list of persons recommended by the Law Society of Ontario.~~
- ~~— 2. No more than five practising lawyers may be members of the board.~~

Composition

(2) The board shall be composed of 11 persons appointed for a specified term by the Lieutenant Governor in Council on the recommendation of the Attorney General.

Same

(3) Five of the persons appointed under subsection (2) shall be selected by the Attorney General from a list of persons recommended by the Law Society of Ontario.

Chair

(4) The Lieutenant Governor in Council shall, on the recommendation of the Attorney General in consultation with the Law Society of Ontario, appoint one of the persons appointed under subsection (2) as chair of the board.

Acting chair

(5) The chair of the board shall designate another appointed member of the board to act as chair in his or her absence and, if the chair fails to designate a person, or if the designated person is also absent, the other appointed members of the board shall designate a person to act as chair in the absence of the chair.

Quorum

(6) A majority of the appointed members of the board constitutes a quorum.

Vacancies

(6.1) If there are one or more vacancies on the board, the remaining members may exercise all the powers of the board if they would constitute a quorum of the fully constituted board.

Remuneration

(7) The appointed members of the board are entitled to such remuneration and reimbursement for reasonable expenses as are determined by the Lieutenant Governor in Council.

Transition, board

(8) The persons who are appointed members of the board of directors of the Corporation immediately before section 1 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020* came into force continue as appointed members of the board until the earliest of the expiry of their terms, their resignation or their removal.

Transition, chair

(9) The person who acted as chair immediately before section 1 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020* came into force continues as chair until the earliest of the expiry of the person's term, the person's resignation or the person's removal.

2 Sections 9 to 11 of the Act are repealed and the following substituted:

Legal aid plan, Legal Aid Fund

9 The assets and liabilities associated with the legal aid plan or the Legal Aid Fund that have been transferred to the Corporation by the Law Society of Ontario are deemed to be held by the Corporation in its name.

3 Subsections 16 (2) and (3) of the Act are repealed.

4 Section 36 of the Act is repealed.

5 Part III of the Act is amended by adding the following section:

LEGALLY-REQUIRED LEGAL AID SERVICES

Legal aid services where legally required

39.1 (1) In addition to the other legal aid services that the Corporation provides to applicants under this Part, the Corporation shall provide the following services in the following circumstances:

1. Representation in a legal matter in which a court determines that an individual requires representation by a lawyer to meet the requirements of the *Canadian Charter of Rights and Freedoms*.
2. Representation in a legal matter in which the Corporation reasonably determines that an individual requires representation by a lawyer to meet the requirements of the *Canadian Charter of Rights and Freedoms*.
3. Representation of a young person who is the subject of a court direction under paragraph 25 (4) (b) of the *Youth Criminal Justice Act* (Canada), on the direction of the Attorney General under subsection 25 (5) of that Act.
4. Representation of a young person who is the subject of a court direction under paragraph 11 (4) (b) of the *Young Offenders Act* (Canada), on the direction of the Attorney General under subsection 11 (5) of that Act.
5. Cross-examination of a witness pursuant to an order made under section 486.3 of the *Criminal Code* (Canada).
6. Representation of an accused, if representation is ordered or counsel is assigned to act for the accused under subsection 672.5 (8) or section 672.24, 684 or 694.1 of the *Criminal Code* (Canada).
7. Appointment as a friend of the court under an order of a court in a criminal or child protection proceeding.
8. The prescribed services in the prescribed circumstances.

Application to Ontario

(2) Subsection (1) applies with respect to the provision of services only if the services are ordered or expected to be paid for or provided by the Attorney General of Ontario or the Crown in right of Ontario, as opposed to the Attorney General of Canada or the Government of Canada.

Payment by Corporation despite court order

(3) Despite any order of a court requiring that the cost of providing services under this section to an individual be borne by the Attorney General of Ontario or the Crown in right of Ontario, the cost of providing the services shall be borne by the Corporation.

Application of Act and regulations

(4) This Act and the regulations apply with respect to services provided under this section, with the following and any other necessary modifications:

1. The eligibility requirements under section 16 to receive legal aid services do not apply, but the Corporation may require contribution under Part IV towards the cost of providing services under this section.
2. A reference to an applicant includes reference to an individual to whom legal aid services are provided under this section.
3. Any other modification that may be prescribed.

No effect on power to order representation

(5) Nothing in this section confers jurisdiction on or expands the jurisdiction of a court with respect to the appointment or assignment of counsel, or expands or otherwise alters the circumstances in which a right to counsel may exist under the law.

6 Part V of the Act is amended by adding the following sections:

AGREEMENTS WITH CLINICS, STUDENT LEGAL AID SERVICES SOCIETIES AND OTHERS AND RELATED PROCESSES

Agreements and other instruments to which the Corporation is a party

Discussions re new agreements with clinics

~~72.3 (1) At any time before the day that is six months after the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2019* comes into force, the Corporation may attempt to enter into discussions with each clinic that is a party to a memorandum of understanding with the Corporation respecting the provision of legal aid services, for the purpose of entering into a new agreement with the clinic respecting the provision of legal aid services.~~

Discussions re new agreements with deans

~~(2) At any time before the day that is six months after the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2019* comes into force, the Corporation may attempt to enter into discussions with each dean of an Ontario law school who~~

is a party to an agreement under subsection 21 (3), for the purpose of entering into a new agreement with the dean under that subsection.

Effect of new agreement

(3) If the Corporation enters into a new agreement with a clinic that takes effect within the time referred to in subsection (1), the memorandum of understanding referred to in that subsection with the clinic is cancelled on the day on which the new agreement takes effect.

Same

(4) If the Corporation enters into a new agreement with a dean that takes effect within the time referred to in subsection (2), the prior agreement referred to in that subsection with the dean is cancelled on the day on which the new agreement takes effect.

Cancellation of existing instruments

(5) Every memorandum of understanding between the Corporation and a clinic respecting the provision of legal aid services and agreement entered into under subsection 21 (3) that was in effect immediately before the day the *Smarter and Stronger Justice Act, 2019* received first reading and that, for any reason whatsoever, is not cancelled under subsection (3) or (4) before the day that is six months after the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2019* comes into force, is cancelled on that day.

Same

(6) On the day that is six months after the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2019* comes into force, any other instrument to which the Corporation is a party that may be prescribed is cancelled.

Reference to memorandum of understanding

(7) For greater certainty, a reference in this section to a memorandum of understanding between the Corporation and a clinic includes each of its appendices, being,

- (a) a funding agreement (Appendix A);
- (b) a consultation policy (Appendix B); and
- (c) a dispute resolution policy (Appendix C).

Agreements and other instruments to which the Corporation is a party

Discussions re new agreements with clinics

72.3 (1) The Corporation may, at any time before April 1, 2021, attempt to enter into discussions with each clinic that is a party to a memorandum of understanding with the Corporation respecting the provision of legal aid services, for the purpose of entering into a new agreement with the clinic respecting the provision of legal aid services.

Discussions re new agreements with deans

(2) The Corporation may, at any time before April 1, 2021, attempt to enter into discussions with each dean of an Ontario law school who is a party to an agreement under subsection 21 (3), for the purpose of entering into a new agreement with the dean under that subsection.

Effect of new agreement

(3) If the Corporation enters into a new agreement with a clinic that takes effect before April 1, 2021, the memorandum of understanding referred to in subsection (1) with the clinic is cancelled on the day on which the new agreement takes effect.

Same

(4) If the Corporation enters into a new agreement with a dean that takes effect before April 1, 2021, the prior agreement referred to in subsection (2) with the dean is cancelled on the day on which the new agreement takes effect.

Cancellation of existing instruments

(5) Every memorandum of understanding between the Corporation and a clinic respecting the provision of legal aid services, and every agreement entered into under subsection 21 (3), that was in effect immediately before the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020* came into force and that for any reason whatsoever is not cancelled under subsection (3) or (4) before April 1, 2021, is cancelled on April 1, 2021.

Same

(6) Any other instrument to which the Corporation is a party that may be prescribed for the purposes of this subsection is cancelled on April 1, 2021.

Reference to memorandum of understanding

(7) A reference in this section to a memorandum of understanding between the Corporation and a clinic includes reference to each of its appendices, being,

- (a) a funding agreement (Appendix A), including any schedules to the funding agreement regardless of when they come into effect;
- (b) a consultation policy (Appendix B); and
- (c) a dispute resolution policy (Appendix C).

Reference to s. 21 (3) agreements

(8) A reference in this section to an agreement entered into under subsection 21 (3) includes reference to any schedules to the agreement regardless of when they come into effect.

Termination of proceedings and other processes

72.4 The following proceedings and other processes are terminated:

1. Any proceeding or process under an instrument cancelled by section 72.3 that was not finally disposed of before the cancellation, effective as of the day the instrument is cancelled.
2. Any reconsideration under section 36 that was not finally disposed of before the repeal of that section by section 4 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020*.

Extinguishment of causes of action

72.5 (1) No cause of action arises against the Crown, any current or former member of the Executive Council or employee or agent of or advisor to the Crown, or against the Corporation or any of its current or former directors, officers or employees, as a direct or indirect result of,

- (a) the enactment of section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020*;
- (b) the cancellation of an instrument by section 72.3;
- (c) the termination of a proceeding or process by section 72.4; or
- (d) any representation or other conduct that is related, directly or indirectly, to the matters set out in an instrument cancelled by section 72.3 or a proceeding or process terminated by section 72.4.

Proceedings barred

(2) No proceeding, including but not limited to any proceeding for a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, and any remedy under any statute, that is based on a cause of action described in subsection (1) may be brought or maintained against a person referred to in that subsection.

Application

(3) Subsection (2) applies to any proceeding, including any court, administrative or arbitral proceeding, claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief.

Retrospective effect

(4) Subsections (2) and (3) apply regardless of whether the cause of action on which the proceeding is purportedly based arose before, on or after the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020* came into force.

Proceedings set aside

(5) Any proceeding referred to in subsection (2) or (3) commenced before the day section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020* came into force is deemed to have been dismissed, without costs, on that day.

No compensation

(6) No person is entitled to any compensation for any loss or damages related, directly or indirectly, to the enactment of section 6 of Schedule 15 to the *Smarter and Stronger Justice Act, 2020*, the cancellation of an instrument by section 72.3, or the termination of a proceeding or process by section 72.4.

7 (1) Subsection 97 (2) of the Act is amended by adding the following clause:

- (f.1) prescribing anything that may be prescribed under section 39.1;

(2) Subsection 97 (2) of the Act is amended by adding the following clause:

- (f.2) prescribing instruments for the purposes of subsection 72.3 (6);

Commencement

8 (1) Subject to subsection (2), this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Sections 3 and 5 and subsection 7 (1) come into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 16
LEGAL AID SERVICES ACT, 2020

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PURPOSE AND INTERPRETATION

Purpose

1 The purpose of this Act is to facilitate the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services throughout Ontario in a client-focused and accountable manner while ensuring value for money.

Definitions

2 In this Act,

“board” means the board of directors of the Corporation; (“conseil”)

“by-laws” means the by-laws made by the board under section 25; (“règlements administratifs”)

“Corporation” means Legal Aid Ontario, continued under section 16; (“Société”)

“lawyer” means a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor; (“avocat”)

“legal aid services” means the legal and other related services provided by the Corporation to individuals under this Act; (“services d’aide juridique”)

“Minister” means the Attorney General or such other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“personal information” has the same meaning as in section 38 of the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“person responsible”, with respect to an individual, means a person specified by the rules who is responsible for contributing towards the cost of legal aid services provided to the individual; (“personne responsable”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“rules” means the rules made by the board under section 46, if effective in accordance with that section; (“règles”)

“service provider” means a person or entity authorized under clause 5 (2) (b) to provide legal aid services. (“fournisseur de services”)

LEGAL AID SERVICES

Legal aid services

3 The Corporation may, subject to the regulations, provide as legal aid services any legal or other related services that it considers appropriate, including,

- legal services that are ordinarily provided to individuals by a lawyer;
- legal and other related assistance for individuals wholly or partly representing themselves in a proceeding, including limited scope representation and the provision of summary advice or legal information;
- legal and other related services in an Ontario court or tribunal on a daily or such other basis as may be required for the purpose of advising or representing individuals in a matter before the court or tribunal;
- alternative dispute resolution services; and
- public legal education and information.

Areas of law in which legal aid services provided

4 The Corporation may, subject to the regulations, provide legal aid services in the following areas of law:

1. Criminal law.

2. Family law.

~~— 3. Poverty law, being law in relation to housing and shelter, income maintenance or social assistance.~~

3. Poverty law, being law in relation to matters that particularly affect low-income individuals, including housing and shelter, income maintenance and social assistance.

4. Child protection law.

5. Human rights law.

6. Health law, including mental health law.

7. Employment law.

8. Education law.

9. Immigration and refugee law.

Manner of providing legal aid services

5 (1) In this section,

“community legal clinic” means a community legal organization that is structured as an independent corporation without share capital whose members of its board of directors are members of the community or communities it serves or are persons who have a substantial association with or interest in the community or communities it serves; (“clinique juridique communautaire”)

“community legal organization” means a community organization that provides legal or other related services to the community or communities it serves, and includes a community legal clinic. (“organisme juridique communautaire”)

Same

(2) The Corporation may provide legal aid services by,

(a) employing lawyers and other persons to provide the services; and

(b) authorizing, in accordance with the rules, lawyers, law firms, community legal organizations, Indigenous legal services organizations, student legal services organizations or other persons or entities to provide the services as service providers.

Same

(3) In determining how to provide legal aid services, the Corporation shall, to the extent practicable, ensure a mix of service providers, as well as a mix of service providers and persons employed to provide legal aid services, that are appropriate for maintaining a flexible and sustainable legal aid system.

Same

(4) In determining how to provide legal aid services in the area of criminal law, family law or child protection law, the Corporation shall have regard to the foundational role of private practice lawyers in providing services in those areas of law.

Same

~~(5) In determining how to provide legal aid services in the area of poverty law as described in section 4, the Corporation shall have regard to,~~

~~— (a) the foundational role of community legal clinics in providing services in that area of law; and~~

~~— (b) determinations by community legal clinics of the legal needs of the communities they serve in that area of law.~~

Same

(5) In determining how to provide legal aid services in the area of poverty law within the meaning of paragraph 3 of section 4, the Corporation shall have regard to,

(a) the foundational role of community legal clinics in providing services in that area of law;

(b) determinations by community legal clinics of the legal needs of the communities they serve in that area of law; and

(c) any other information on the legal needs of communities served by community legal clinics in that area of law that is provided or made available to the Corporation.

Same

(6) In making a determination under clause (2) (b), the Corporation shall not consider the financial impact of the determination on a service provider.

Payment of service providers

(7) The payment of service providers for providing legal aid services shall be determined in accordance with the rules.

No effect on Law Society of Ontario's jurisdiction

(8) For greater certainty, nothing in this Act permits the Corporation to permit or authorize a person or entity to practise law or provide legal services in Ontario if the person or entity is not permitted or authorized to do so under the *Law Society Act*.

Considerations respecting the provision of legal aid services

6 In making a determination under section 3 or 4 or subsection 5 (2), the Corporation shall consider,

- (a) the needs, as determined by the Corporation, of individuals and communities in Ontario for legal aid services, including Indigenous individuals and communities and Francophone individuals and communities;
- (b) the costs of providing various legal aid services;
- (c) the Corporation's financial resources; and
- (d) any other matter that may be prescribed.

Eligibility for legal aid services

7 (1) An individual is eligible to receive legal aid services, in the manner the Corporation considers appropriate, ~~if the individual demonstrates, in accordance with the rules, that he or she meets~~ if the individual applies in accordance with the rules and meets any financial and other eligibility requirements that are specified by the rules.

Failure to meet eligibility requirements

(2) If an individual fails to meet the eligibility requirements set out under subsection (1), the Corporation may refuse or cease to provide legal aid services to the individual.

Review

(3) If provided for by the rules, an individual may apply in accordance with the rules for a review of the Corporation's determination of his or her eligibility to receive legal aid services.

Refusal to meet eligibility requirements

(4) An individual who refuses to meet an eligibility requirement shall be considered to have refused to receive legal aid services.

Same

(5) Subsection (4) applies only after the completion of any review under subsection (3) of the individual's eligibility to receive legal aid services.

Residents and non-residents

(6) Rules made for the purposes of this section may distinguish between and take different approaches with respect to individuals who are ordinarily resident in Ontario and individuals who are not.

Legal aid services to be provided without cost

8 The legal aid services provided by the Corporation to an individual shall be provided without cost to the individual, except as otherwise provided in this Act.

Contribution

9 (1) The Corporation may, in the circumstances set out in the rules, require an individual, or a person responsible for the individual, to agree to contribute towards the cost of providing legal aid services to the individual in an amount determined or to be determined in accordance with the rules.

Terms of agreement

(2) An agreement under subsection (1) may provide for the times and manner of payment, and for the payment of a rate of interest on overdue payments in accordance with the rules.

Recovery of contributions

(3) The amount that an individual, or a person responsible for the individual, agrees to contribute towards the cost of providing legal aid services to the individual shall be paid by the individual or the person responsible for the individual, and is a debt owing to the Corporation that may be recovered in any court of competent jurisdiction.

Enforcement by court

(4) If a person does not pay an amount that he or she agreed to contribute when it becomes due, the Corporation may issue a notice stating that the person is in default under this Act and setting out the amount owed to the Corporation.

Same

(5) The Corporation may, without any personal attendance, file the notice with the Superior Court of Justice or the Small Claims Court, as applicable, and, on filing, the notice is enforceable as if it were an order of that court.

Refusal to contribute

(6) If the Corporation requires contribution towards the cost of providing legal aid services to an individual and the individual or the person responsible for the individual, as the case may be, refuses to contribute, the individual shall be considered to have refused to receive legal aid services.

Requirements respecting information

10 (1) An individual receiving or requesting to receive legal aid services, and any person responsible for the individual, shall, in accordance with the rules made under subclause 46 (1) (f) (ii) or (g) (ii), as the case may be, provide to the Corporation the information required by those rules.

Corporation may disclose information to service provider

(2) The Corporation may disclose to a service provider who is providing legal aid services to an individual information, including personal information, provided to the Corporation for the purposes of this Act by the individual or by a person responsible for the individual.

Service provider's obligation to disclose information

(3) A service provider shall immediately notify the Corporation if anything comes to the service provider's attention respecting an individual receiving legal aid services that indicates that,

- (a) the individual,
 - (i) may have, in requesting to receive legal aid services, misrepresented his or her circumstances or failed to make full disclosure of those circumstances to the extent required by the rules, or
 - (ii) may have failed to make full disclosure of any change in his or her circumstances to the extent required by the rules; and
- (b) the individual may not have been eligible or may no longer be eligible to receive legal aid services.

Failure to provide information

(4) If anything comes to the attention of the Corporation that indicates that an individual or a person responsible for an individual has failed to discharge an obligation under subsection (1), the Corporation may,

- (a) declare that the individual is not eligible to receive legal aid services and cease to provide legal aid services to the individual; and
- (b) recover from the individual or the person responsible for the individual, as the case may be, any costs to the Corporation of the legal aid services provided to the individual.

Review

(5) The individual or the person responsible for the individual may apply in accordance with the rules for a review of the Corporation's determination under subsection (4).

Failure of service provider's obligation to disclose information

(6) If anything comes to the attention of the Corporation that indicates that a service provider has failed to discharge an obligation under subsection (3), the Corporation may,

- (a) declare that the service provider is not entitled to payment by the Corporation for all or a specified part of the legal aid services provided by the service provider to the individual; and
- (b) recover from the service provider the amount, if any, paid by the Corporation for the legal aid services for which the service provider is not entitled to payment.

Review

(7) The service provider may apply in accordance with the rules for a review of the Corporation's determination under subsection (6).

Recovery

(8) The amount a person or entity is required to pay to the Corporation under clause (4) (b) or (6) (b) is a debt owing to the Corporation that may be recovered in any court of competent jurisdiction.

Enforcement by court

(9) If the person or entity does not pay the amount when it becomes due, the Corporation may issue a notice stating that the person or entity is in default under this Act and setting out the amount owed to the Corporation.

Same

(10) The Corporation may, without any personal attendance, file the notice with the Superior Court of Justice or the Small Claims Court, as applicable, and, on filing, the notice is enforceable as if it were an order of that court.

Specific assignments

11 The Corporation may, in the circumstances set out in the rules, require that legal aid services be provided to an individual by a specified person or entity employed or authorized by the Corporation to provide the legal aid services.

Costs orders by court unaffected by legal aid services

12 (1) The costs awarded in any order made in favour of an individual who has received legal aid services are recoverable in the same manner and to the same extent as though awarded to an individual who has not received legal aid services.

Same

(2) Subsection (1) applies even if,

- (a) no part of the cost of the legal aid services provided to the individual in whose favour the order is made has been contributed or is or will be contributed to the Corporation by the individual or by a person responsible for the individual; or
- (b) the costs ordered are in excess of the total amount contributed or to be contributed to the Corporation by the individual, or by a person responsible for the individual, for the cost of the legal aid services provided to the individual.

Costs payable to Corporation

(3) Costs ordered by a court to be paid to an individual in a proceeding in which the individual received legal aid services are, to the extent of the legal aid services provided to the individual in the proceeding, the property of the Corporation and shall be paid to the Corporation.

Charges for recovery of legal aid costs

Charge on sum recovered

13 (1) If an individual recovers any sum under a judgment, order, settlement or otherwise in respect of a matter for which he or she received legal aid services, the amount of the cost of the legal aid services provided to the individual is a charge against the recovered sum, and shall be deducted from the recovered sum and paid to the Corporation.

Charge on property recovered

(2) If an individual who has received legal aid services in any matter recovers property other than money, the Corporation has a charge against the recovered property for the amount of the cost of the legal aid services provided to the individual, and may enforce the charge.

Registration against personal property

(3) If the recovered property is personal property, the charge shall be in the form of a financing statement under the *Personal Property Security Act*, and may be tendered for registration as provided in Part IV of that Act.

Errors in documents

(4) The charge is not invalidated nor its effect impaired by reason only of an error or omission in the charge or in its execution or registration, unless a reasonable person is likely to be materially misled by the error or omission.

Registration against land

(5) If the recovered property is real property, the Corporation may register the charge against it in the proper land registry office, and the Corporation may enforce the charge by sale of the real property against which it is registered in the same manner as a sale to realize on a mortgage.

Registration of lien against land

14 (1) If a person who owns or has any interest in any land in Ontario has agreed to contribute towards the cost of legal aid services provided to him or her, or to an individual for whom he or she is the person responsible, the Corporation may register a notice of lien for an amount equal to the amount that the person agreed to contribute against his or her land in the proper land registry office.

Sale of land

(2) If the person fails to pay the Corporation an amount he or she agreed to contribute, the Corporation may enforce the lien by sale of the real property against which it is registered in the same manner as a sale to realize on a mortgage.

Same

(3) The Corporation shall not be required to enforce the lien immediately upon default occurring, but may delay enforcing the lien to a later date or, in accordance with the terms of the agreement entered into by the person and the Corporation, to the occurrence of an event.

Legal aid services where legally required

15 (1) In addition to the legal aid services that the Corporation provides to individuals eligible under section 7 to receive them, the Corporation shall provide the following services in the following circumstances:

1. Representation in a legal matter in which a court determines that an individual requires representation by a lawyer to meet the requirements of the *Canadian Charter of Rights and Freedoms*.
2. Representation in a legal matter in which the Corporation reasonably determines that an individual requires representation by a lawyer to meet the requirements of the *Canadian Charter of Rights and Freedoms*.
3. Representation of a young person who is the subject of a court direction under paragraph 25 (4) (b) of the *Youth Criminal Justice Act* (Canada), on the direction of the Attorney General under subsection 25 (5) of that Act.
4. Representation of a young person who is the subject of a court direction under paragraph 11 (4) (b) of the *Young Offenders Act* (Canada), on the direction of the Attorney General under subsection 11 (5) of that Act.
5. Cross-examination of a witness pursuant to an order made under section 486.3 of the *Criminal Code* (Canada).
6. Representation of an accused, if representation is ordered or counsel is assigned to act for the accused under subsection 672.5 (8) or section 672.24, 684 or 694.1 of the *Criminal Code* (Canada).
7. Appointment as a friend of the court under an order of a court in a criminal or child protection proceeding.
8. The prescribed services in the prescribed circumstances.

Application to Ontario

(2) Subsection (1) applies with respect to the provision of services only if the services are ordered or expected to be paid for or provided by the Attorney General of Ontario or the Crown in right of Ontario, as opposed to the Attorney General of Canada or the Government of Canada.

Payment by Corporation despite court order

(3) Despite any order of a court requiring that the cost of providing services under this section to an individual be borne by the Attorney General of Ontario or the Crown in right of Ontario, the cost of providing the services shall be borne by the Corporation.

Application of Act, rules and regulations

(4) This Act, the rules and the regulations apply with respect to services provided under this section, with the following and any other necessary modifications:

1. The eligibility requirements under subsection 7 (1) to receive legal aid services do not apply.
2. A reference to an individual who is requesting to receive legal aid services includes reference to an individual to whom services are provided under this section.
3. Any other modification that may be prescribed.

No effect on power to order representation

(5) Nothing in this section confers jurisdiction on or expands the jurisdiction of a court with respect to the appointment or assignment of counsel, or expands or otherwise alters the circumstances in which a right to counsel may exist under the law.

LEGAL AID ONTARIO

Corporation continued

16 (1) Legal Aid Ontario is continued as a corporation without share capital under the name Legal Aid Ontario in English and Aide juridique Ontario in French.

Membership

(2) The Corporation shall consist of the members of its board of directors.

Not Crown agency

(3) Despite the *Crown Agency Act*, the Corporation is not an agent of the Crown for any purpose.

Independent but accountable to government

(4) The Corporation is independent from, but accountable to, the Government of Ontario as set out under this Act.

Same

- (5) Without limiting subsection (4), the Corporation is independent from the Government of Ontario in relation to,
- (a) determinations respecting the provision of legal aid services to individuals; and
 - (b) the exercise of the Corporation's discretion under subsection 5 (2).

Objects

17 (1) The objects of the Corporation are,

- (a) to establish and administer a flexible and sustainable system for providing legal aid services to individuals in Ontario;
- (b) to establish policies and priorities for the provision of legal aid services based on its financial resources;
- (c) to facilitate co-ordination among the different legal aid services that are provided and the manners in which they are provided, including through different service providers;
- (d) to monitor and supervise the provision of legal aid services in Ontario; and
- (e) to advise the Minister on all aspects of legal aid services in Ontario, including any features of the justice system that affect or may affect the demand for or quality of legal aid services.

Principles

(2) The Corporation shall carry out its objects in accordance with the following principles:

- 1. That legal aid services should,

0.i promote access to justice.

- i. be efficient, effective and high-quality,
- ii. be provided in a client-focused, innovative, transparent and accountable manner,

ii.1 be responsive to the needs of low-income individuals and disadvantaged communities in Ontario.

- iii. promote early resolution, where appropriate, and
 - iv. be co-ordinated with other aspects of the justice system and with community services.
- 2. That continual efforts should be made by the Corporation to maintain and improve the effectiveness and quality of legal aid services while ensuring value for money.

Powers of the Corporation

Powers of a natural person

18 (1) The Corporation has the capacity and the rights, powers and privileges of a natural person, subject to the limitations set out under this Act.

When approval of Cabinet required

(2) The Corporation shall not exercise the following powers without the approval of the Lieutenant Governor in Council:

- 1. Acquiring, disposing, leasing, mortgaging, charging, hypothecating or otherwise transferring or encumbering any interest in real property, except for,
 - i. leasing space that is reasonably necessary for the purposes of the Corporation, and
 - ii. as provided under section 13 or 14 or subsection 30 (2).
- 2. Borrowing or lending money.
- 3. Pledging, charging or encumbering any of its personal property.
- 4. Creating a subsidiary.
- 5. Entering into agreements with the government of Canada or of a province or territory of Canada, or with the appropriate authority of any such government, to provide for co-operation in matters relating to the provision of legal aid services, including cost-sharing, recovery of amounts paid for legal aid services on behalf of non-resident clients and funding arrangements.
- 6. Entering into agreements with the government of Canada or of a province or territory of Canada, or with an agency, board or commission of such a government, under which, for purposes related to the provision of legal aid services under this Act or comparable services in another jurisdiction,
 - i. the government, agency, board or commission would be allowed access to information obtained by the Corporation under this Act, and

- ii. the government, agency, board or commission would allow the Corporation to have access to information obtained by the government, agency, board or commission under statutory authority.

7. Any other power that may be prescribed.

When approval of Minister required

(3) The Corporation shall not exercise the following powers without the approval of the Minister:

1. Applying for or obtaining registration as a registered charity or qualified donee under the *Income Tax Act* (Canada).
2. Acting in association with a person or entity that conducts any fundraising activities or programs, directly or indirectly, for the Corporation.

Banking

(4) The Corporation shall establish its banking arrangements with one or more of,

- (a) a bank listed in Schedule I or II to the *Bank Act* (Canada);
- (b) a loan or trust corporation registered under the *Loan and Trust Corporations Act*;
- (c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*; and
- (d) a retail association as defined under the *Cooperative Credit Associations Act* (Canada).

Investment

(5) The Corporation shall have such investment powers as may be prescribed.

Fees

(6) The Corporation may charge fees for any service it provides, other than legal aid services.

Personal information

19 (1) For the purpose of exercising or performing any of its powers, functions or duties under this Act, the Corporation may collect, including indirectly, personal information.

Arrangements or agreements to share personal information

(2) For the purpose of exercising or performing any of its powers, functions or duties under this Act, the Corporation may enter into an arrangement or agreement with any of the following with respect to the disclosure of any personal information that the Corporation is authorized to collect under this Act:

1. The Law Society of Ontario.
2. An institution within the meaning of the *Freedom of Information and Protection of Privacy Act*.
3. Any other person or entity who may be prescribed.

Application of other laws

20 (1) The *Corporations Act* and the *Corporations Information Act* do not apply to the Corporation, except as specifically made applicable by the regulations.

Conflict of interest and indemnification

(2) Sections 132 and 136 of the *Business Corporations Act* apply with necessary modifications to the Corporation, the members of its board and its officers.

Non-application of single employer rule

(3) Subsection 1 (4) of the *Labour Relations Act, 1995* does not apply to the Corporation.

Charities Accounting Act

(4) The *Charities Accounting Act* does not apply to the Corporation, except in respect of property held in trust for specified charitable purposes.

Not charitable property

(5) The property of the Corporation is not charitable property, except in respect of property held in trust for specified charitable purposes.

Board of directors

21 (1) The affairs of the Corporation shall be governed and managed by its board of directors.

Composition

~~(2) The board shall be composed of up to 11 persons appointed for a specified term by the Lieutenant Governor in Council on the recommendation of the Minister.~~

Same

~~(3) Appointments made under subsection (2) are subject to the following restrictions:~~

- ~~— 1. At least three but no more than five of the appointees shall be selected by the Minister from a list of persons recommended by the Law Society of Ontario.~~
- ~~— 2. No more than five practising lawyers may be members of the board.~~

Composition

(2) The board shall be composed of 11 persons appointed for a specified term by the Lieutenant Governor in Council on the recommendation of the Minister.

Same

(3) Five of the persons appointed under subsection (2) shall be selected by the Minister from a list of persons recommended by the Law Society of Ontario.

Chair

(4) The Lieutenant Governor in Council shall, on the recommendation of the Minister in consultation with the Law Society of Ontario, appoint one of the persons appointed under subsection (2) as chair of the board.

Remuneration

(5) The appointed members of the board are entitled to such remuneration and reimbursement for reasonable expenses as are determined by the Lieutenant Governor in Council.

Quorum

(6) A majority of the appointed members of the board constitutes a quorum.

Vacancies

(6.1) If there are one or more vacancies on the board, the remaining members may exercise all the powers of the board if they would constitute a quorum of the fully constituted board.

Acting chair

(7) The chair of the board shall designate another appointed member of the board to act as chair in his or her absence and, if the chair fails to designate a person, or if the designated person is also absent, the other appointed members of the board shall designate a person to act as chair in the absence of the chair.

Transition, board

(8) The persons who are appointed members of the board of directors of the Corporation immediately before the repeal of the *Legal Aid Services Act, 1998* continue as appointed members of the board under this Act until the earliest of the expiry of their terms, their resignation or their removal.

Transition, chair

(9) The person who acted as chair immediately before the repeal of the *Legal Aid Services Act, 1998* continues as chair under this Act until the earliest of the expiry of the person's term, the person's resignation or the person's removal.

Chief executive officer

22 (1) The board shall appoint a chief executive officer of the Corporation, who shall be a non-voting member of the board.

Duties

(2) The chief executive officer,

- (a) shall be responsible for the management and operation of the Corporation, subject to the supervision and direction of the board; and
- (b) shall implement the by-laws, rules and policies of the board and perform such other functions as are assigned to him or her by the board.

Board to act responsibly

23 (1) The board shall act in a financially responsible and accountable manner in exercising its powers and performing its duties.

Board members to act honestly and in good faith

- (2) Every member of the board shall,
- (a) act honestly and in good faith with a view to the best interests of the Corporation; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Employees

24 (1) The Corporation may employ such persons as it considers necessary for its purposes.

Not an employee of the Crown

- (2) An employee of the Corporation is not and shall not be deemed to be an employee of the Crown.

By-laws

25 (1) The board may make by-laws generally for the management of the Corporation and for the conduct and administration of its business and affairs, including by-laws,

- (a) determining its own practices and procedures;
- (b) governing the duties and powers of the Corporation's officers and employees; and
- (c) establishing committees of the board and governing their composition and functions.

Requirement to make conflict of interest by-laws

(2) The board shall make by-laws governing conflicts of interest of members of the board and of the Corporation's officers and employees and, if the board considers it appropriate, imposing restrictions on the activities of such persons to avoid conflicts of interest.

Copies to Minister

- (3) The board shall deliver to the Minister a copy of every by-law it makes under this section.

Public availability

- (4) The board shall make every by-law made under this section available to the public.

Legislation Act, 2006, Part III

- (5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made by the board.

Delegation by the board

26 (1) The board may delegate any power, function or duty of the board to any committee of the board, member of a committee of the board or officer or employee of the Corporation, other than,

- (a) the power to make by-laws and rules; and
- (b) its powers, functions and duties in relation to section 27.

Same

- (2) A delegation by the board shall be in writing, and is subject to any conditions or restrictions set out in the delegation.

ACCOUNTABILITY, FINANCES AND ADMINISTRATION**Financial statements****Fiscal year**

27 (1) The fiscal year of the Corporation is April 1 to March 31 of the following year.

Annual statements

(2) The Corporation shall prepare annual financial statements for each fiscal year in accordance with generally accepted accounting principles.

Auditor General

- (3) The Auditor General shall audit the financial statements of the Corporation.

Annual budget

28 (1) The Corporation shall submit to the Minister its annual budget for the next fiscal year, or any other period specified by the Minister, for approval by October 1 in each year or by such other date as the Minister may specify.

Requirements

- (2) Each annual budget shall,

- (a) be prepared in consultation with the ministry of the Minister;
- (b) be based on a three-year cycle; and
- (c) set out,
 - (i) the Corporation's proposed operating budget for the next fiscal year,
 - (ii) the sum required by the Corporation from the Government of Ontario for the next fiscal year, taking into account an estimate of the money that the Corporation will receive from other sources, and
 - (iii) the Corporation's projected operating budgets for the two fiscal years after the next fiscal year.

Reserve fund

- (3) The Corporation shall maintain a contingency reserve fund in accordance with the regulations.

Government funding

29 (1) The money required for the purposes of this Act shall be paid out of money appropriated by the Legislature for those purposes.

Instalments

- (2) The money required for the purposes of this Act may be paid to the Corporation in such instalments as the Minister may direct.

Other sources of funding

30 (1) The Corporation may enter into arrangements, as it considers appropriate, to receive additional funding from any person or organization.

Gifts, bequests, devises

- (2) The Corporation may receive gifts, bequests and devises of real or personal property, to hold, use and manage or dispose of in the furtherance of its objects, subject to the terms of any trust affecting the property.

Corporation's money not part of Consolidated Revenue Fund

31 Despite Part I of the *Financial Administration Act*, the Corporation's money and investments, including the money paid to it under section 29, do not form part of the Consolidated Revenue Fund, and shall be used by the Corporation in carrying out its objects.

Reports

32 The Minister may require the Corporation or any of its subsidiary corporations to report, within the time and in the manner that the Minister may specify, on any aspect of its affairs, or to provide information on its activities, operations and financial affairs as the Minister may request.

Public consultation policy

- 33** (1) The Corporation shall develop a public consultation policy containing,
- (a) a description of whether and how the Corporation will consult with the public when changes are being considered to the rules or to the Corporation's policies after this Act comes into force, including consultation with any persons or entities, or groups of persons or entities, whose interests the Corporation determines would be affected by those changes; and
 - (b) any prescribed matter.

Approval

- (2) The public consultation policy, and any amendments made to it by the Corporation, are subject to the Minister's approval.

Review

- (3) Every three years after the public consultation policy is first approved under subsection (2), the Corporation shall review the public consultation policy to determine whether it requires amendment.

GENERAL

Non-application of *Statutory Powers Procedure Act*

34 (1) The *Statutory Powers Procedure Act* does not apply to any determinations or decisions made or proceedings conducted under this Act, whether by the Corporation, a committee of the board or an officer or employee of the Corporation.

Required procedures

- (2) In the case of a review under subsection 7 (3) or 10 (5) or (7), or any review provided for by rules made under subclause 46 (1) (b) (iv) or (c) (viii),

- (a) the person or entity who may apply for the review shall be given an opportunity to provide written submissions before the making of a decision on the review; and
- (b) the decision made on the review shall be in writing and shall include reasons.

Same

(3) A determination or decision made or proceeding conducted under this Act shall be governed only by the procedures established under the rules, if any, and by subsection (2) in the case of a review referred to in that subsection.

Determinations, decisions final

35 Except as provided for under this Act, every determination and decision of the Corporation, a committee of the board or an officer or employee of the Corporation is final and not subject to review.

Commissioners for taking affidavits

36 Every officer and employee of the Corporation is, in the exercise or performance of his or her powers, functions or duties under this Act, a commissioner for taking affidavits within the meaning of the *Commissioners for Taking Affidavits Act*.

Personal immunity

37 (1) No action or other proceeding for damages or otherwise shall be commenced against a current or former member of the board or officer or employee of the Corporation for any act done in good faith in the exercise or performance, or intended exercise or performance, of the person's powers, functions or duties under this Act or for any alleged neglect or default in the exercise or performance in good faith of their powers, functions or duties under this Act.

Corporation remains vicariously liable

(2) Subsection (1) does not relieve the Corporation of any liability to which it would otherwise be subject as a result of an act or omission of a person specified in that subsection.

Corporation not liable for service providers

38 The Corporation is not liable for any act or omission of any service provider who provides legal aid services under this Act.

Compellability of witnesses

39 (1) Except with the consent of the Corporation, members of the board and officers and employees of the Corporation are not compellable witnesses before a court or tribunal respecting any information or material furnished to or received by them while acting within the scope of their appointment or employment under this Act.

Exception

(2) If the Corporation is a party to a proceeding, the persons referred to in subsection (1) may be determined to be compellable witnesses.

Production of documents

(3) The Corporation and the persons referred to in subsection (1) are not required to produce, in a proceeding in which the Corporation is not a party, any information or material furnished, obtained, made or received in the exercise or performance of the Corporation's or the person's powers, functions or duties under this Act.

Privileged communications

40 (1) All communications between an individual receiving or requesting to receive legal aid services and the Corporation, an officer or employee of the Corporation or a service provider are deemed to be privileged in the same manner and to the same extent as if the communications had been between the individual and a solicitor under a solicitor-client relationship.

Application to service providers

(2) In the case of a service provider that is an entity, subsection (1) applies with necessary modifications with respect to each board member, officer and employee of the service provider, as applicable.

No waiver of privilege

(3) Disclosure of privileged information to the Corporation that is required under this Act does not negate or constitute a waiver of privilege.

Solicitor-client relationship

41 The relationship between a lawyer who provides legal aid services and the individual who is receiving those services is the customary solicitor-client relationship, regardless of the manner in which the legal aid services are provided under this Act.

Prohibition on information disclosure

42 (1) A member of the board, an officer or employee of the Corporation or a service provider shall not disclose or permit to be disclosed any information or material furnished to or received by the person in the exercise or performance of the person's powers, functions or duties under this Act or in the provision of legal aid services.

Exceptions

- (2) A person referred to in subsection (1) may disclose information or allow it to be disclosed,
- (a) in the exercise or performance of the person's powers, functions or duties under this Act or in the provision of legal aid services;
 - (b) with the consent of the individual receiving or requesting to receive legal aid services; or
 - (c) if authorized by the Corporation.

Same

- (3) A person referred to in subsection (1) may, for the purpose of assisting a court or tribunal, disclose to the court or tribunal information as to whether an individual has requested to receive legal aid services and the status of any such request.

Application to service providers

- (4) In the case of a service provider that is an entity, this section applies with necessary modifications with respect to each board member, officer and employee of the service provider, as applicable.

Evidence of Corporation documents

43 A document that purports to be signed on behalf of the Corporation shall, in the absence of evidence to the contrary, be received in evidence in any proceeding as proof of the facts stated in the document without proof of the signature or of the position of the person appearing to have signed the document.

Other payments prohibited

44 (1) Except as provided for under this Act, no person or entity shall request, take or receive any payment or other benefit in respect of any legal aid services provided by the person or entity under this Act.

No lien for legal aid services

- (2) No service provider has a lien for the service provider's fees, charges or expenses on the property or papers in the service provider's possession belonging to an individual to whom the service provider provided legal aid services.

Lien for non-legal aid services unaffected

- (3) Nothing in this section shall be read as depriving a service provider of a lien for the service provider's fees, charges and expenses on the property and papers in his or her possession belonging to an individual to whom the service provider provided services other than legal aid services.

Offences

45 (1) Any person who intentionally contravenes section 42 or subsection 44 (1) is guilty of an offence.

Same

- (2) Any person who intentionally provides false information or fails to make full disclosure under subsection 10 (1) is guilty of an offence.

Same

- (3) Any service provider who intentionally fails to comply with subsection 10 (3) is guilty of an offence.

Same

- (4) Any service provider who intentionally provides false information or fails to meet an obligation set out in the rules made under subclause 46 (1) (c) (v) is guilty of an offence.

RULES AND REGULATIONS

Rules

- 46** (1) The board may make rules respecting the provision of legal aid services, including rules,
- (a) respecting anything that, under this Act, may or must be provided for in the rules;
 - (b) governing the authorization of persons and entities who are not employed by the Corporation to provide legal aid services as service providers, including,
 - (i) governing the selection of persons and entities for authorization, including establishing rosters of approved persons and entities and governing the addition and removal of persons and entities from the rosters,
 - (ii) requiring persons and entities to provide to the Corporation information, including financial information, or to meet any other specified conditions or requirements in order to be considered for selection,
 - (iii) establishing standards that service providers must meet, and processes for evaluating whether the standards are being met,

- (iv) providing for the review of determinations made by the Corporation with respect to the selection and authorization of persons and entities as service providers, and governing such reviews;
- (c) governing the payment of service providers, including,
 - (i) determining the manner in which payment may be provided, including by the payment of hourly rates or block fees or by the provision of funding for a specified period of time,
 - (ii) specifying the amounts or rates payable to service providers in the manner or manners determined by the rules, or setting out methods of determining the amounts or rates,
 - (iii) providing for and governing the reimbursement of disbursements,
 - (iv) setting minimum and maximum numbers of hours for which payment may be made in respect of a proceeding or step in a proceeding,
 - (v) specifying and requiring accounts and other information to be provided, verified or updated by service providers,
 - (vi) governing the examination, settlement, approval and payment of accounts provided to the Corporation,
 - (vii) governing overpayments to a service provider, including respecting the determination of whether an overpayment has been made and processes for dealing with overpayments,
 - (viii) providing for the review of determinations made by the Corporation with respect to the payment of service providers, and governing such reviews;
- (d) setting out financial eligibility requirements for an individual to receive legal aid services;
- (e) setting out eligibility requirements, other than financial eligibility requirements, for an individual to receive legal aid services;
- (f) governing the determination of an individual's eligibility to receive legal aid services, including,
 - (i) requiring individuals to apply for legal aid services and governing the making and reviewing of applications, or providing for other methods of determining an individual's eligibility to receive legal aid services and governing those methods,
 - (ii) requiring individuals to provide, verify or update specified information, including financial information, for the purpose of determining or confirming eligibility,
 - (iii) providing for the review of determinations made by the Corporation with respect to eligibility under subsection 7 (3), and governing such reviews;
- (g) governing the contribution to the cost of providing legal aid services by an individual receiving those services or by a person responsible for an individual receiving those services, including,
 - (i) setting out the circumstances in which the Corporation may require contribution and specifying criteria to be considered in determining a person's ability to contribute,
 - (ii) requiring individuals or persons responsible for an individual to provide, verify or update specified information, including financial information, for the purpose of determining or confirming their ability to contribute towards the cost of the legal aid services,
 - (iii) setting out a method for determining a person's ability to contribute and for determining the amount persons are required to contribute,
 - (iv) specifying the rate of interest, or a method for determining it, to be charged on overdue payments;
- (h) governing reviews under subsections 10 (5) and (7);
- (i) setting out the circumstances in which the Corporation may require that legal aid services be provided to an individual by a specified person or entity, for the purposes of section 11, including setting out any criteria that must be met;
- (j) governing the recovery of the cost of providing legal aid services from court awards, settlements and costs awards;
- (k) permitting the Corporation to waive any of its rights under subsections 9 (3) to (5) or section 12, 13 or 14 to collect amounts due to it and to accept payment from a person in a lesser amount than that owed by the person to the Corporation, and governing such waivers and payments;
- (l) governing the provision of legal aid services under section 15;
- (m) governing the protection of confidential information that is in the possession of the Corporation or a service provider in relation to this Act;
- (n) respecting the management of potential conflicts of interest in the provision of legal aid services;

- (o) establishing a process for investigating and resolving complaints made against service providers providing legal aid services.

Corporation may require information

- (2) A rule made under subclause (1) (b) (ii), (c) (v), (f) (ii) or (g) (ii) may authorize the Corporation to require that any information specified by the Corporation be provided, verified or updated in the time and manner specified by the Corporation.

Precondition, posting on Corporation's website

- (3) Despite subsection (1), the board shall not make a rule before posting the proposed rule on the Corporation's website for ~~14-30~~ days or, if a ~~14-30~~-day period is not practicable in the circumstances, a shorter period determined by the Corporation.

Changes to proposed rule

- (4) If the proposed rule is changed following posting under subsection (3), the changed rule is not required to be posted under that subsection.

Copy of rule to Minister

- (5) The board shall deliver to the Minister a copy of every rule made under this section, together with a written summary of any feedback received in response to the posting of the proposed rule and, if the rule was changed following posting, a copy of the proposed rule as posted.

Summary to be posted

- (6) The board shall post every summary of feedback that it delivers to the Minister on the Corporation's website.

Certain rules subject to approval by Minister

- (7) A rule made under subclause (1) (c) (ii), clause (1) (d), subclause (1) (g) (i), (iii) or (iv) or clause (1) (j), (k) or (l) becomes effective only,
 - (a) if approved by the Minister; or
 - (b) in accordance with subsection (10).

Minister's review

- (8) The Minister may, no later than 60 days after a rule to which subsection (7) applies is delivered, approve, reject or return it to the board for further consideration.

Effect of approval

- (9) A rule that is approved by the Minister becomes effective on the date of the approval or on such later date as the rule may provide.

Expiry of review period

- (10) If the Minister does not approve, reject or return the rule for further consideration within the 60-day period, the rule becomes effective on the 75th day after it is delivered to the Minister or on such later date as the rule may provide.

Public availability

- (11) The board shall make rules that come into effect under this section available to the public.

Legislation Act, 2006, Part III

- (12) Part III (Regulations) of the *Legislation Act, 2006* does not apply to rules made or approved under this section.

Regulations

Lieutenant Governor in Council

- 47** (1) The Lieutenant Governor in Council may make regulations,

- (a) respecting anything that, under this Act, may or must be prescribed or done by regulation, other than by the Minister under subsection (2);
- (b) providing for exemptions from, or the non-application of, subsection 7 (4) or any or all of sections 9, 10, 12, 13 and 14, and specifying conditions or restrictions for any such exemptions or non-application;
- (c) governing the Corporation's investment powers, including providing that the Corporation may select an agent to make investments for it and governing the selection, and specifying terms, conditions or standards that apply to the Corporation, the agent or any other person if an agent is selected;
- (d) governing the establishment, operation and amount of the contingency reserve fund to be maintained by the Corporation;
- (e) governing any transitional matters that may arise from the enactment of this Act or the repeal of the *Legal Aid Services Act, 1998*, including,

- (i) governing proceedings commenced but not finally disposed of under the *Legal Aid Services Act, 1998*, including providing for their termination,
- (ii) providing for the continued application of any provision or provisions of the *Legal Aid Services Act, 1998*, despite its repeal, with such modifications as may be specified;
- (f) respecting any matter the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

Minister

- (2) The Minister may make regulations,
- (a) setting out legal or other related services that, despite section 3, the Corporation may or must provide under this Act, and which may be subject to any specified conditions, exceptions or circumstances, other than legal aid services that must be provided under section 15;
 - (b) setting out areas of law with respect to which, despite section 4, the Corporation may or must provide legal aid services, and which may be subject to any specified conditions, exceptions or circumstances, other than legal aid services that must be provided under section 15;
 - (c) defining, for the purposes of this Act, any word or expression used in section 4 that has not already been expressly defined in this Act;
 - (d) prescribing services and circumstances for the purposes of paragraph 8 of subsection 15 (1);
 - (e) prescribing other matters to be addressed or included in the public consultation policy under section 33.

Conflict

- (3) In the event of a conflict, a regulation made under clause (1) (e) prevails over this Act, the regulations, the by-laws and the rules.

General or particular, classes

- 48** (1) A rule or regulation may be general or particular in its application.

Same

- (2) The power to make a rule or regulation includes the power to specify a class.

AMENDMENT TO THIS ACT

Amendment to this Act

49 Subsection 20 (1) of this Act is amended by striking out “*Corporations Act*” and substituting “*Not-for-Profit Corporations Act, 2010*”.

REPEAL, REVOCATIONS AND AMENDMENTS TO OTHER ACTS

Repeal

50 The *Legal Aid Services Act, 1998* is repealed.

Revocations

51 The following regulations, made under the *Legal Aid Services Act, 1998*, are revoked:

1. Ontario Regulation 106/99 (Administration of System for Providing Legal Aid Services).
2. Ontario Regulation 107/99 (General).

Children’s Law Reform Act

52 Subsection 46 (3) of the *Children’s Law Reform Act* is amended by striking out “*Legal Aid Services Act, 1998*” at the end and substituting “*Legal Aid Services Act, 2020*”.

Family Law Act

53 Subsection 21 (5) of the *Family Law Act* is amended by striking out “section 48 of the *Legal Aid Services Act, 1998*” at the end and substituting “the *Legal Aid Services Act, 2020* or a predecessor of that Act”.

Freedom of Information and Protection of Privacy Act

54 Paragraph 7.0.1 of subsection 67 (2) of the *Freedom of Information and Protection of Privacy Act* is repealed and the following substituted:

7.0.1 Sections 40 and 42 of the *Legal Aid Services Act, 2020*.

Health Care Consent Act, 1996

55 Subsection 81 (2) of the *Health Care Consent Act, 1996* is amended by striking out “and no certificate is issued under the *Legal Aid Services Act, 1998*” and substituting “and the person is not eligible to receive comparable legal aid services under the *Legal Aid Services Act, 2020*”.

Law Society Act

56 Subsection 55 (3) of the *Law Society Act* is amended by striking out “established under the *Legal Aid Services Act, 1998*” at the end.

Members’ Integrity Act, 1994

57 Clause 9 (b) of the *Members’ Integrity Act, 1994* is repealed and the following substituted:

- (b) receiving payment for providing professional services under the *Legal Aid Services Act, 2020*;

Registry Act

58 Clause 67 (1) (h) of the *Registry Act* is amended by striking out “*Legal Aid Services Act, 1998*” at the end and substituting “*Legal Aid Services Act, 2020* or a predecessor of that Act”.

Substitute Decisions Act, 1992

59 Subsection 3 (2) of the *Substitute Decisions Act, 1992* is amended by striking out “and no certificate is issued under the *Legal Aid Services Act, 1998*” and substituting “and the person is not eligible to receive comparable legal aid services under the *Legal Aid Services Act, 2020*”.

COMMENCEMENT AND SHORT TITLE**Commencement**

60 (1) Subject to subsections (2) and (3), the Act set out in this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

(2) Sections 1 to 48 and 50 to 59 come into force on a day to be named by proclamation of the Lieutenant Governor.

(3) Section 49 comes into force on the later of the day subsection 20 (1) comes into force and the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force.

Short title

61 The short title of the Act set out in this Schedule is the *Legal Aid Services Act, 2020*.

SCHEDULE 17
LIMITATIONS ACT, 2002

1 Subsection 16 (1.2) of the *Limitations Act, 2002* is amended by striking out “the day subsection 4 (2) of Schedule 2 to the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016* came into force” and substituting “March 8, 2016”.

2 (1) The Schedule to the Act is amended by striking out the row for the *Business Practices Act*.

(2) The row for the *City of Toronto Act, 2006* in the Schedule to the Act is amended by striking out “351 (4)” in the column titled “Provision” and substituting “351 (5)”.

(3) The Schedule to the Act is amended by striking out the rows for the *Community Small Business Investment Funds Act, 1992* and the *Environmental Protection Act*.

(4) The row for the *Insurance Act* in the Schedule to the Act is amended by striking out “statutory condition 14, section 259.1 and section 281.1” in the column titled “Provision” and substituting “statutory condition 14 and section 259.1”.

(5) The row for the *Municipal Act, 2001* in the Schedule to the Act is amended by striking out “380 (4)” in the column titled “Provision” and substituting “380 (5)”.

(6) The row for the *Municipal Elections Act, 1996* in the Schedule to the Act is amended by striking out “63 (1), 80 (6) and 83 (2)” in the column titled “Provision” and substituting “63 (1) and 83 (2)”.

Commencement

3 This Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 18 MARRIAGE ACT

1 The definition of “judge” in subsection 1 (1) of the *Marriage Act* is repealed and the following substituted:

“judge” means a judge of the Superior Court of Justice or Ontario Court of Justice, except in section 24; (“juge”)

2 Section 20 of the Act is repealed and the following substituted:

Who may solemnize marriage

20 (1) No person shall solemnize a marriage unless the person is registered under section 20.1 or 20.2 as a person authorized to solemnize marriage or is authorized to solemnize marriage by or under section 24.

Application for registration

(2) Upon application, the Minister may register any person described in subsection 20.1 (1) or section 20.2 as a person authorized to solemnize marriage.

Who may be registered — religious body

20.1 (1) The Minister may register a person as a person authorized to solemnize marriage if it appears to the Minister that,

- (a) the person has been ordained or appointed according to the rites and usages of the religious body to which the person belongs, or is, by the rules of that religious body, deemed ordained or appointed;
- (b) the person is duly recognized by the religious body to which the person belongs as entitled to solemnize marriage according to its rites and usages;
- (c) the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and
- (d) the person is resident in Ontario or the parish or pastoral charge of the person is in whole or in part in Ontario.

Exception re residency

(2) Despite clause (1) (d), in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register the person as authorized to solemnize marriage during a period to be fixed by the Minister.

Who may be registered — band, First Nation, Métis or Inuit organization or community or Indigenous entity

20.2 The Minister may register a person as a person authorized to solemnize marriage if it appears to the Minister that the person,

- (a) belongs to,
 - (i) a band located in whole or in part in Ontario,
 - (ii) a First Nation, Métis or Inuit organization or community located in whole or in part in Ontario, or
 - (iii) a permanently established Indigenous entity located in whole or in part in Ontario; and
- (b) is duly recognized by the band, First Nation, Métis or Inuit organization or community or Indigenous entity as entitled to solemnize marriage according to its customs and traditions.

Who may be registered — if no persons recognized as authorized to solemnize marriage

20.3 (1) The Minister may register a person as authorized to perform all the duties imposed by this Act upon a person solemnizing a marriage, other than solemnizing the marriage, if it appears to the Minister that,

- (a) the doctrines, rites and usages or customs and traditions of a religious body described in clause 20.1 (1) (c) or of a band, First Nation, Métis or Inuit organization or community or Indigenous entity described in clause 20.2 (a) do not recognize any person as authorized to solemnize marriage; and
- (b) the person is duly designated by the governing authority of the religious body or is duly designated by the band, First Nation, Métis or Inuit organization or community or Indigenous entity.

Same, marriage valid

(2) If a person registered under subsection (1) performs the duties described in that subsection, every marriage solemnized according to the rites and usages or customs and traditions of the religious body, band, First Nation, Métis or Inuit organization or community or Indigenous entity referred to in clause (1) (a) is valid.

Rights of person registered

20.4 (1) A person registered under section 20.1, 20.2 or 20.3 is not required to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of marriage, or to otherwise assist in the solemnization of a marriage, if to do so would be contrary to,

- (a) the person's religious or spiritual beliefs; or
- (b) the doctrines, rites, usages, customs or traditions of the religious body, band, First Nation, Métis or Inuit organization or community or Indigenous entity to which the person belongs.

Definition

(2) In subsection (1),

“sacred place” includes a place of worship and any ancillary or accessory facilities.

3 Subsection 22 (2) of the Act is repealed and the following substituted:

Notice of change

(2) The religious body, band, First Nation, Métis or Inuit organization or community or Indigenous entity that recognized a person as a person entitled to solemnize marriage under subsection 20.1 (1) or section 20.2 shall notify the Minister reasonably promptly of,

- (a) the name of every such person who has died or has ceased to be associated with the entity; and
- (b) the name and address of every such person who has moved.

4 (1) Subsection 24 (1) of the Act is repealed and the following substituted:

Civil marriage

(1) The following persons may solemnize marriages under the authority of a licence:

1. A judge appointed by the federal government, a provincial government or a territorial government to any court in Canada. This includes a supernumerary judge if they are authorized to exercise all powers and rights that are vested in a judge of the court they serve.
2. A case management master under the *Courts of Justice Act*.
3. A justice of the peace under the *Justices of the Peace Act*.
4. A person of a class designated by the regulations.

(2) **Subsection 24 (3) of the Act is amended by adding “for a marriage solemnized under the authority of this section” before “except”.**

5 Subsection 29 (1) of the Act is amended by striking out “Every person or religious body authorized to solemnize marriages may” at the beginning and substituting “Every person authorized to solemnize marriages, and every entity acting on behalf of a person authorized to solemnize marriages, may”.

Human Rights Code

6 Subsection 18.1 (1) of the *Human Rights Code* is amended by striking out “section 20” in the portion before clause (a) and substituting “section 20.1 or section 20.3”.

Imitation Firearms Regulation Act, 2000

7 Clause 5 (3) (b) of the *Imitation Firearms Regulation Act, 2000* is amended by striking out “subsection 20 (3) or (4)” and substituting “subsection 20.1 (1) or 20.3 (1)”.

Commencement

~~**8 This Schedule comes into force on the later of June 1, 2020 and the day the *Smarter and Stronger Justice Act, 2019* receives Royal Assent.**~~

Commencement

8 This Schedule comes into force three months after the day the *Smarter and Stronger Justice Act, 2020* receives Royal Assent.

SCHEDULE 19 NOTARIES ACT

~~1 (1) Subsection 2 (1) of the *Notaries Act* is repealed and the following substituted:~~

Requirements for appointment

- ~~(1) Any person, other than a barrister or solicitor, who wishes to be appointed a notary public,~~
- ~~— (a) is subject to examination in regard to his or her qualification for the office by a judge of the Superior Court of Justice in the area in which he or she resides, or by a public servant employed for the purpose under Part III of the *Public Service of Ontario Act, 2006*; and~~
 - ~~— (b) shall not be appointed a notary public without a certificate from the judge or public servant referred to in clause (a) that he or she has examined the applicant and finds him or her qualified for the office.~~

~~(2) Section 2 of the Act, as amended by subsection (1), is repealed and the following substituted:~~

Requirements for appointment

~~2 A person, other than a licensee under the *Law Society Act*, may not be appointed as a notary public unless the person meets the requirements specified by the regulations made under this Act for determining the person's qualification for the office.~~

~~2 Sections 3 and 4 of the Act are repealed and the following substituted:~~

Powers

~~3 (1) Subject to subsection (2), a notary public may,~~

- ~~— (a) witness or certify, and attest, the execution of a document;~~
- ~~— (b) certify and attest a true copy of a document;~~
- ~~— (c) exercise the powers of a commissioner for taking affidavits in Ontario; and~~
- ~~— (d) exercise any other powers and perform any other functions specified by the regulations made under this Act.~~

Restriction

~~(2) The powers a notary public, other than a notary public who is a licensee under the *Law Society Act*, may exercise under subsection (1) are subject to any restrictions that may be imposed in the notary public's appointment or reappointment that limit the territory and cases in which he or she may exercise his or her powers.~~

Not in person

~~(3) Despite any requirement in law to exercise his or her powers in a person's physical presence, if the regulations made under this Act so provide and the conditions set out in the regulations are met, a notary public may, in accordance with the regulations, exercise his or her powers without being in the person's physical presence.~~

When seal not needed

~~(4) If a notary public is authorized by an Act to administer oaths or to take affidavits or declarations in Ontario, it is not necessary to the validity of any such oath, affidavit or declaration that the notary public affix his or her seal.~~

~~3 Subsections 5 (1) and (2) of the Act are repealed and the following substituted:~~

Expiry of appointments

~~(1) The appointment of a notary public expires three years after the day on which he or she was appointed or at the end of such other period as may be specified by the regulations made under this Act.~~

Non-application

~~(1.1) Subsection (1) does not apply to a notary public who,~~

- ~~— (a) is a licensee under the *Law Society Act*; or~~
- ~~— (b) was appointed as a notary public before July 1, 1963.~~

Same, transition

~~(1.2) In the case of the appointment of a person licensed under the *Law Society Act* to provide legal services in Ontario, clause (1.1) (a) applies only with respect to appointments made on or after the day section 3 of Schedule 19 to the *Smarter and Stronger Justice Act, 2019* comes into force.~~

Reappointment

~~(2) A person whose appointment as a notary public expires may be reappointed for one or more periods of three years or such other period as may be specified by the regulations made under this Act.~~

~~4 Subsection 6 (2) of the Act is amended by striking out “subsection 2 (2)” and substituting “subsection 3 (2)”.~~

~~5 (1) Subsection 7 (1) of the Act is amended,~~

- ~~— (a) by striking out “is licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor” and substituting “is a licensee under the *Law Society Act*”; and~~
- ~~— (b) by striking out “relicensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor” and substituting “relicensed under the *Law Society Act*”.~~

~~(2) Section 7 of the Act is amended by adding the following subsections:~~

~~**Same, transition**~~

~~(1.1) In the case of the appointment of a person licensed under the *Law Society Act* to provide legal services in Ontario, subsection (1) applies only with respect to appointments made on or after the day subsection 5 (2) of Schedule 19 to the *Smarter and Stronger Justice Act, 2019* comes into force.~~

~~**Delegation**~~

~~(4) The Attorney General may, in writing, delegate the power conferred by subsection (2) to a public servant employed under Part III of the *Public Service of Ontario Act, 2006*.~~

~~**6 Section 8 of the Act is repealed and the following substituted:**~~

~~**Regulations**~~

~~**Lieutenant Governor in Council**~~

~~8 (1) The Lieutenant Governor in Council may make regulations,~~

- ~~— (a) prescribing fees payable to a notary public under this Act and requiring their payment;~~
- ~~— (b) for the purposes of clause 3 (1) (d), specifying powers and functions that a notary public may exercise and perform;~~
- ~~— (c) for the purposes of subsection 3 (3), providing that a notary public may exercise powers without being in a person’s physical presence, specifying conditions that must be met in order to be able to do so, and governing the exercise of the powers without being in the person’s physical presence;~~
- ~~— (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.~~

~~**Attorney General**~~

~~(2) The Attorney General may make regulations,~~

- ~~— (a) specifying requirements for the purposes of section 2, and governing such requirements;~~
- ~~— (b) prescribing fees payable to the Crown under this Act and requiring their payment;~~
- ~~— (c) exempting any person or class of persons from paying any or all of the fees prescribed under clause (b);~~
- ~~— (d) prescribing a period of appointment for the purposes of subsection 5 (1) or a period of reappointment for the purposes of subsection 5 (2).~~

~~**Commencement**~~

~~**7 (1) Subject to subsection (2), this Schedule comes into force on the day the *Smarter and Stronger Justice Act, 2019* receives Royal Assent.**~~

~~**(2) Subsection 1 (2) and sections 2 to 6 come into force on the later of July 1, 2020 and the day the *Smarter and Stronger Justice Act, 2019* receives Royal Assent.**~~

SCHEDULE 20
PUBLIC GUARDIAN AND TRUSTEE ACT

1 Subsection 10 (3) of the *Public Guardian and Trustee Act* is repealed and the following substituted:

Exception

(3) Where the Public Guardian and Trustee acting in any capacity holds property of a person who has died and the value of the property does not exceed the amount prescribed by the regulations made under this Act, the Public Guardian and Trustee may, on receiving evidence satisfactory to him or her, distribute the property to the person's heirs or personal representative without requiring compliance with subsection (1).

2 Section 14 of the Act is amended by adding the following clause:

(f.1) prescribing an amount for the purposes of subsection 10 (3);

Commencement

3 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.