



Agenda

Benchers

Date: Friday, March 4, 2022

Time: **8:00 am – Continental breakfast, 9:00 am - Call to order**

For those attending virtually, please join the meeting anytime from 8:45 am to allow enough time to resolve any video/audio issues before the meeting commences.

Location: Hybrid: Bencher Room, 9th Floor, Law Society Building & Zoom

Recording: *Benchers, staff and guests should be aware that a digital audio and video recording will be made at this Benchers meeting to ensure an accurate record of the proceedings. Any private chat messages sent will be visible in the transcript that is produced following the meeting.*

VIRTUAL MEETING DETAILS

The Bencher Meeting is taking place in a virtual format. If you would like to attend the meeting, please email BencherRelations@lsbc.org.

CONSENT AGENDA:

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

1	Minutes of January 28, 2022 meeting (regular session)
2	Minutes of January 28, 2022 meeting (<i>in camera</i> session)
3	Rule Amendments: Delegation to Discipline Committee Chair
4	Rule Amendments: Indigenous Intercultural Course – Late Fee

REPORTS

5	President's Report	15 min	Lisa Hamilton, QC
6	CEO's Report <ul style="list-style-type: none"> • Practice Advice Online • Update from Member Services • Update from Trust Assurance 	60 min	Don Avison, QC Claire Marchant/Rose Morgan Jeanette McPhee/Lynwen Clark Jeanette McPhee/Eva Milz



Agenda

DISCUSSION/DECISION			
7	Governance Reform: Further Discussion	60 min	Lisa Hamilton, QC Don Avison, QC
UPDATES			
8	National Discipline Standards Report	10 min	Natasha Dookie Tara McPhail
9	Report on Outstanding Hearing & Review Decisions <i>(Materials to be circulated at the meeting)</i>	1 min	Lisa Hamilton, QC
FOR INFORMATION			
10	Minutes of February 17, 2022, Executive Committee Meeting		
11	Law Society Appointment: Law Foundation of BC		
12	Update on Access to Justice Advisory Committee Recommendations from December 2021		
13	Three Month Bencher Calendar – March to May 2022		
IN CAMERA			
14	Other Business	60 minutes	



Minutes

Benchers

Date: Friday, January 28, 2022

Present:	Lisa Hamilton QC, President	Geoffrey McDonald
	Christopher McPherson, QC, 1 st Vice-President	Steven McKoen, QC
	Jeevyn Dhaliwal, QC, 2 nd Vice-President	Jacqueline McQueen, QC
	Paul Barnett	Paul Pearson
	Kim Carter	Georges Rivard
	Tanya Chamberlain	Kelly H. Russ
	Jennifer Chow, QC	Gurminder Sandhu
	Cheryl S. D'Sa	Thomas L. Spraggs
	Lisa Dumbrell	Barbara Stanley, QC
	Brian Dybwad	Michael Welsh, QC
	Brook Greenberg, QC	Kevin B. Westell
	Katrina Harry	Sarah Westwood
	Sasha Hobbs	Guangbin Yan
	Lindsay R. LeBlanc	Gaynor C. Yeung
	Dr. Jan Lindsay	

Unable to Attend: Not Applicable

Staff:	Don Avison, QC	Michael Lucas, QC
	Shelley Braun	Alison Luke
	Barbara Buchanan, QC	Claire Marchant
	Jennifer Chan	Jeanette McPhee
	Lance Cooke	Cary Ann Moore
	Natasha Dookie	Doug Munro
	Su Forbes, QC	Lesley Small
	Andrea Hilland, QC	Michael Soltynski
	Kerryn Holt	Adam Whitcombe, QC
	Jeffrey Hoskins, QC	Vinnie Yuen
	Jason Kuzminski	

Guests:	Rhaea Bailey	Bencher Guest
	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Michael Bryant	CEO, Legal Aid BC
	Samad Twemlow Carter	Bencher Guest
	Pinder K. Cheema, QC	Law Society of BC Representative on the Federation Council
	Christina Cook	Member, Aboriginal Lawyers Forum
	Indira Dhaliwal	Bencher Guest
	Jim Donaldson	Bencher Guest
	Nicholas Donaldson	Bencher Guest
	Joseph D'Sa	Bencher Guest
	Bryanna Dybwad	Bencher Guest
	Hallgier Dybwad	Bencher Guest
	Michele Dybwad	Bencher Guest
	Stan Dybwad	Bencher Guest
	Stephanie Fabbro	Bencher Guest
	Dr. Cristie Ford	Professor, Allard School of Law
	Norman Grant	Bencher Guest
	Alex Hamilton	Bencher Guest
	Keenan Hamilton	Bencher Guest
	Spencer Hamilton	Bencher Guest
	Lori Hildebrandt	Bencher Guest
	Chief Justice	Chief of Justice, Supreme Court of BC
	Christopher E. Hinkson	
	Clare Jennings	President, Canadian Bar Association, BC Branch
	Pat Johannson	Bencher Guest
	Carman Kane	Bencher Guest
	Jon Knuston	Bencher Guest
	Carolyn Lefebvre	Senior Director, Canadian Bar Association, BC Branch
	Katie Lever	Bencher Guest
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Joven Narwal	Bencher Guest
	Caroline Nevin	CEO, Courthouse Libraries BC
	Jesse Olynyk	Bencher Guest
	Josh Paterson	Executive Director, Law Foundation of BC
	Michèle Ross	President, BC Paralegal Association
	Geoff Russ	Bencher Guest
	Sarah Russ	Bencher Guest

Linda Russell	CEO, Continuing Legal Education Society of BC
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
Kerstin Stuerzbecher	Bencher Guest
Laura Tamblyn Watts	Bencher Guest
Ron Usher	General Counsel and Practice Advisor, BC Society of Notaries Public

1. Administer Oaths of Office

The Honourable Chief Justice Christopher E. Hinkson administered oaths of office to President Lisa Hamilton, QC, First Vice-President Christopher McPherson, QC, and Second Vice-President Jeevyn Dhaliwal, QC, and to all appointed and elected Benchers, whose terms began on January 1, 2022.

Chief Justice Hinkson spoke about the work of the Law Society and the importance of balancing the many interests of the Law Society's stakeholders. He also spoke about the importance of the relationship between the Law Society and the judiciary.

2. Indigenous Welcome

Via a pre-recorded video, Rosalind Campbell, a member of the Musqueam Indian Band, introduced herself to Benchers and welcomed them to the meeting and to the ancestral lands of the Musqueam people. Ms. Campbell congratulated all of the newly elected Benchers, in particular the five newly elected Indigenous Benchers, and emphasized the importance of having Indigenous voices at the Bencher table.

CONSENT AGENDA

3. Minutes of December 3, 2021, meeting (regular session)

The minutes of the meeting held on December 3, 2021 were approved unanimously and by consent as circulated.

4. Minutes of December 3, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on December 3, 2021 were approved unanimously and by consent as circulated.

5. Law Society Representatives on the 2022 QC Appointments Advisory Committee

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers appoint President Lisa Hamilton, QC and First Vice-President Christopher McPherson, QC as the Law Society’s representatives on the 2022 QC Appointments Advisory Committee.

6. Recommendation for Amendments to Law Society Rules: Rule 3-6, 3-81, and 3-86

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that Rules 3-6, 3-81 and 3-86 be amended by replacing “the Discipline Committee” where it appears in each rule with “the Chair of the Discipline Committee or designate” and that “its,” where it appears in Rule 3-6(2), 3-81(3) and 3-86(2) be replaced with “the Chair’s or designate’s.”

7. Terms of Reference for Committees and Related Rule Amendments

The following resolutions were passed unanimously and by consent:

BE IT RESOLVED that the Benchers approve the attached terms of reference for the Ethics and Lawyer Independence Advisory Committee and the revised terms of reference for the Executive Committee and the Truth and Reconciliation Advisory Committee; and

BE IT RESOLVED to amend Rules 9-3 and 9-16 by striking “Ethics Committee” where it appears and substituting “Ethics and Lawyer Independence Advisory Committee”.

8. Indigenous Intercultural Course – Late Fee

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers approve, in principle, that the Law Society Rules be amended to require a late fee associated with the late reporting and late completion by a practicing lawyer of the Indigenous Intercultural Course in the amount of \$200 and \$500 respectively, and that the matter be referred to staff to prepare draft Rules to present to the Benchers for approval.

9. Administrative Penalties

The following resolution was passed unanimously and by consent:

BE IT RESOLVED

THAT the general introduction of administrative penalties for breaches of Law Society Rules in amounts aimed at deterring recidivism be approved;

THAT rules necessary to accomplish administrative assessments set out a process that takes into account issues of procedural fairness and due process, including providing sufficient notice to lawyers, a right of response, and a potential avenue for review;

THAT at the outset, such assessments apply to standard contraventions of the CIV Rules (Rules 3-98 to 3-110) and cash transactions (Rule 3-59);

THAT the Law Society investigate the possibility of obtaining a legislative amendment to ensure the availability of administrative assessments for other matters not related to standards of financial responsibility; and

THAT the Benchers approve these changes in principle, and refer the matter to staff to draft rules to effect the policy direction, with the Rules as drafted being returned to the Benchers at a later date for consideration and approval.

10. Bencher Compensation

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers approve the recommendation made by the Governance Committee that the Law Society retain an independent consultant to review and make recommendations on the appropriate compensation for the President, Vice-Presidents and Appointed Benchers.

REPORTS**11. President's Welcome and Report**

Ms. Hamilton welcomed Benchers, staff, and guests to the first Bencher meeting of 2022.

Ms. Hamilton began her report with an overview of priorities for 2022, including considering the recommendations made by Harry Cayton in his report on the Law Society's governance, continuing progress on the review of the Law Society's discipline processes, and furthering the work of the Lawyer Development Task Force in looking at alternative pathways for entry to the profession.

Ms. Hamilton spoke about work being done in consideration of annual fee reform, and that the Executive Committee had agreed to conduct a survey to obtain data to assist with consideration of whether or not a differential model may be appropriate.

Mandate letters were sent to all committee chairs at the beginning of January, and Ms. Hamilton noted that many of the committees had been asked to provide a work plan for the year. She also indicated that each committee was asked to consider its work through the lens of equity, diversity, and inclusion, as well as how the work furthers the work of truth and reconciliation.

Ms. Hamilton indicated that her intention for 2022 was to have more robust, substantive discussions at the Bencher table, while at the same time ensuring Bencher meetings are as efficient and effective as possible.

12. CEO's Report

Mr. Avison began his report by speaking about the current situation with the COVID-19 pandemic, noting that the Bencher meeting fell on the second anniversary of the first diagnosis of COVID-19 in BC. He spoke about the remarkable work of staff in pivoting to remote work arrangements at the start of pandemic and thanked staff for their continued extraordinary efforts in managing the operations of the Law Society during a challenging and demanding time.

Mr. Avison informed Benchers that the Indigenous Intercultural Course was fully operational and available to all members of the profession. He noted that modifications to the Course would continue to be made as appropriate.

Mr. Avison spoke about the tenure of Richard Fyfe, QC, who would be stepping down from his role as Deputy Attorney General on February 14. Mr. Avison spoke about the excellent leadership that Mr. Fyfe had demonstrated over the course of his time as Deputy Attorney General. Mr. Avison also spoke about the tenure of Mark Benton, QC, who had stepped down from his long-serving position as the CEO of Legal Aid BC at the end of 2021. Mr. Avison indicated that Mr. Benton would be replaced by Michael Bryant. Mr. Avison spoke about how much he had enjoyed working with both Mr. Fyfe and Mr. Benton and wished them all the best in their future endeavours. Shannon Salter has been appointed as the new Deputy Attorney General, and Mr. Avison spoke about her work with the Civil Resolution Tribunal and on the Innovation Sandbox Working Group, and noted that the Law Society was looking forward to working with her in her new role.

13. Briefing by the Law Society's Member of the Federation Council

Ms. Hamilton welcomed Ms. Cheema, the Law Society's representative on the Federation Council, to the meeting.

Ms. Cheema began her briefing by providing an overview of the Federation and Federation Council for new Benchers. She then updated Benchers on the national wellbeing survey, which is being conducted to obtain national data on the wellbeing of the profession across Canada. She indicated that the phase 1 report would be presented to the law societies in the fall, and that phase 2 would involve the conducting of qualitative interviews with the profession in each jurisdiction.

Ms. Cheema provided an update on *Abrametz v Law Society of Saskatchewan* appeal, which is before the Supreme Court of Canada. Ms. Cheema noted that arguments had been made and a decision was being awaited.

Ms. Cheema then provided an update on the work of the Standing Committee on the Model Code, which has completed a review of feedback received from the law societies with respect to proposed revisions regarding the discrimination and harassment provisions and ex parte communications sections of the Code. She noted that the amendments would be likely be on the agenda for approval at the March Council meeting. She also noted that the Standing Committee would be considering responsibilities to Indigenous groups in relation to the competence and quality of service provisions in the Model Code and the recognition of Indigenous legal traditions and processes.

Ms. Cheema then spoke about the work of the National Discipline Standards Committee and provided some background on the adoption and implementation of the national discipline standards by the law societies, as well as the work of the Anti-Money Laundering Working Group.

Ms. Cheema provided an update on the activities of the National Committee on Accreditation (NCA) and provided some statistical information on applicant numbers. She also noted that work was underway to develop a competency profile for NCA candidates that would culminate in the development of benchmarks to help identify the level of competency required at each stage of the legal education and training process and entry to bar programs. Ms. Cheema also informed Benchers that the National Requirement would be reviewed this year.

Ms. Cheema concluded her report with an update of the December Council meeting, noting that both Chief Justice Richard Wagner and the Honourable David Lametti, Minister of Justice and Attorney General of Canada, were in attendance. Ms. Cheema provided an overview of comments made by Chief Justice Wagner regarding the introduction of legislation to reform the Judicial Council, the mental health challenges being faced within the profession, and how technology can promote better access to justice. Ms. Cheema also provided an overview of comments made by the Honourable David Lametti regarding addressing systemic discrimination within the justice system, as well as the overrepresentation of Indigenous peoples within the legal system, and the importance of fostering judicial recruitment from marginalized groups.

DISCUSSION/DECISION

14. Governance Reform: Further Discussion

Ms. Hamilton provided some background regarding Harry Cayton's Report on the Law Society's Governance and indicated that the Report was currently for discussion, and she hoped Benchers would be in a position to make some decisions at the April Bencher meeting.

Mr. Avison provided an overview of the process by which the Law Society obtained Harry Cayton to conduct a review of the Law Society's governance. He also spoke about the work Mr. Cayton undertook in performing his review and preparing his report. Mr. Avison then presented on the key recommendations from Harry Cayton's Report. Mr. Avison spoke to a number of Mr. Cayton's recommendations, including considering the overall composition and size of the board; reducing the number of committees, task forces, and working groups; addressing conflict in the different roles of Benchers; changing the Law Society's nomenclature; and introducing an induction day as part of the Bencher election process. Mr. Avison spoke about those recommendations for which work was already underway, including the development of a public engagement strategy, the separation of the Tribunal, the implementation of administrative penalties, and the incorporation of regulatory impact assessments into policy reports.

Benchers then engaged in discussions regarding the recommendations in Mr. Cayton's report, including having greater separation between the Law Society's board and the tribunal, the best approach to the size and composition of the board and the term-lengths of Benchers, and increasing engagement with the public. Benchers also discussed how to approach those recommendations that would require legislative changes to sections 12 and 13 of the *Legal Profession Act*, having a clear understanding of the purpose of the Law Society and the functions of the board, public representation on the board, and the utility of Benchers providing confidential advice to lawyers.

Ms. Hamilton thanked Benchers for the fulsome discussion, and then indicated that discussions on this matter will continue at the March Bencher meeting and beyond.

UPDATES

15. Report on Outstanding Hearing & Review Decisions

President Hamilton provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION**16.2023 Bencher and Executive Committee Meeting Schedule**

There was no discussion on this item.

17. Appointment of the Tribunal Chair: Minute of Approval by Email

There was no discussion on this item.

18. Law Society Appointment: Continuing Legal Education of BC

There was no discussion on this item.

19. Minutes of January 13, 2022 Executive Committee Meeting

There was no discussion on this item.

20. Three Month Bencher Calendar – February 2022 to April 2022

There was no discussion on this item.

The Benchers then commenced the *In Camera* portion of the meeting.

AB
2022-01-28



Memo

To: Benchers
From: Executive Committee
Date: February 18, 2022
Subject: Rule Amendments: Delegation to Discipline Committee Chair

Purpose

The Executive Committee recommends that the Benchers approve the attached rule amendments to implement their policy decision made in principle at the January 2022 Benchers meeting. That decision addressed the process relating to reversing or delaying administrative suspensions where, during an investigation, a lawyer has failed to respond substantively to Law Society requests for information.

Discussion

At the January 2022 Bencher meeting, the Benchers approved, in principle, amendments to Rules 3-6, 3-81 and 3-86, each of which provides for administrative suspensions resulting from a lawyer's failure to respond substantively to the Law Society's request for information and records in an audit or investigation. The proposed amendments were to improve the process for making a determination in situations where a lawyer seeks to reverse the decision to suspend or, alternatively, to delay the imposition of the suspension. The Rules required that decision to be made by the full Discipline Committee. The proposed amendments gave the power to the Chair of the Committee or a designate.

When presented to the Benchers in January, it was proposed simply to replace "Committee" with "Chair or designate" as required in each Rule. While preparing the actual amendments for approval by the Benchers, however, staff reported to the Executive Committee that there are some provisions elsewhere in the Rules regarding decisions that are already permitted to be made by the Chair of the Discipline Committee that could usefully be adopted for these amendments and which would accomplish the same outcome approved in principle at the last Bencher meeting in a manner that would be more consistent with the rest of the rules. The Executive Committee agreed.

Rule 4-2(4) currently provides that:

Any function of the chair of the Discipline Committee under this part may be performed by the vice chair if the chair is not available for any reason, or by another Bench member of the Committee designated by the President if neither the chair nor the vice-chair is available for any reason.

That Rule, as currently drafted, only applies to functions of the Chair under Part 4 of the Rules. Rules 3-6, 3-81 and 3-86 are under Part 3. That problem can be addressed by replacing “under this Part” with “under these rules.” There are other rules in Part 3 where a function is assigned to the Committee or its chair that would be affected by the proposed amendment to Rule 4-2. Staff consulted with the Chief Legal Officer who advised that extending the provisions of Rule 4-2 to all instances where functions are given to the Chair (thereby extending them to be performed, in the absence of the Chair, by the vice-chair or another Bench member of the Committee) would not be anticipated to cause any unintended consequences.

When considering Rule 4-2, staff noted and advised the Executive Committee that the provision requiring the President to designate a Bench member of the Committee seemed incongruous as well. It would be more logical for the Chair of the Committee to designate the Bench member to act, as the Chair would be better placed to know the interests, strengths and perhaps even the availability of members of the Committee to exercise the function. The Executive Committee agreed.

As a final note, staff has noted that “vice-chair” in Rule 1 is spelled with a hyphen, whereas the other references in the Rules to “vice chair” contain no hyphen. Drafting protocol for legislative drafting in BC prefers the spelling of “vice chair” (no hyphen), so staff recommends amending the spelling in Rule 1 and Rule 4-2(4) accordingly.

Decision

The Benchers are asked to resolve that the rules be amended as set out in the attached resolution, which requires a 2/3 majority of the Benchers present to pass. Copies of the proposed amended rules and a red-lined version based on the current rules are attached.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

- 1 In these rules, unless the context indicates otherwise:
- “**chair**” means a person appointed to preside at meetings of a committee, panel or review board;
- “**vice-chair**” means a person appointed to preside at meetings of a committee in the absence of the chair;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Failure to produce records on complaint investigation

- 3-6 (2) When there are special circumstances, the **chair of the Discipline Committee** may, in ~~its~~ **the chair’s** discretion, order that
- a lawyer not be suspended under subrule (1), or
 - a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- the date on which the suspension will take effect;
 - the reasons for the suspension;
 - the means by which the lawyer may apply to the **chair of the Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Resolution by consent agreement

- 3-7.1 (1) At any time before a complaint is referred to a Committee or the **chair of the Discipline Committee** under Rule 3-8 [*Action after investigation*], the Executive Director may resolve a complaint by agreement with the lawyer.
- (3) A consent agreement is not effective unless it is
- signed by the Executive Director,
 - personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and
 - approved by the **chair of the Discipline Committee** ~~or another member of the Discipline Committee designated for the purpose by the chair.~~

LAW SOCIETY RULES

- (4) Under subrule (3) (c), the **chair of the Discipline Committee** ~~or the chair's designate~~ may
- (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.

Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

- (a) treat the breach as a complaint under this division;
- (b) reopen investigation of the complaint that gave rise to the consent agreement;
- (c) refer the matter to a Committee or the **chair of the Discipline Committee** under Rule 3-8 [*Action after investigation*];
- (d) enter into an amended consent agreement under Rule 3-7.3 [*Amending consent agreement*].

Amending consent agreement

- 3-7.3** (3) Either party may apply to the **chair of the Discipline Committee** to approve a proposed amendment concerning
- (a) a course of study, remedial program or other task to be completed by the lawyer,
 - (b) conditions or limitations on the practice of the lawyer, or
 - (c) an extension of time to pay a fine or begin a suspension.
- (4) On an application under subrule (3), the **chair of the Discipline Committee** may
- (a) amend the agreement as proposed, or
 - (b) decline to amend the agreement.
- (5) The **chair of the Discipline Committee** may designate another member of the Committee to exercise the discretion under subrule (4).

Action after investigation

- 3-8** (4) Despite subrule (3), the Executive Director may refer a complaint to the **chair of the Discipline Committee** if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;

LAW SOCIETY RULES

(d) breached an order made under the Act or these rules.

Division 2 – Practice Standards

Consideration of complaints

3-17 (4) Despite subrule (3) (e), the Practice Standards Committee may refer a complaint to the **chair of the Discipline Committee** if the complaint concerns only allegations that the lawyer has done one or more of the following:

- (a) breached a rule;
- (b) breached an undertaking given to the Society;
- (c) failed to respond to a communication from the Society;
- (d) breached an order made under the Act or these rules.

Referral to Discipline Committee

3-21 (2) Despite subrule (1), the Practice Standards Committee may refer a report to the **chair of the Discipline Committee** with respect to allegations that the lawyer has done one or more of the following:

Division 3 – Education

Practice management course

3-28 (2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

Indigenous intercultural course

3-28.1 (3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

Professional development

3-29 (8) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

LAW SOCIETY RULES

Division 6 – Financial Responsibility

Failure to satisfy judgment

- 3-50** (3) If a lawyer fails to deliver a proposal under subrule (1) (b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

Division 7 – Trust Accounts and Other Client Property

Failure to file trust report

- 3-81** (3) When there are special circumstances, the **chair of the Discipline Committee** may, in ~~its~~ **the chair's** discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (4) At least 30 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the **chair of the Discipline Committee** for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.

Failure to produce records on compliance audit

- 3-86** (2) When there are special circumstances, the **chair of the Discipline Committee** may, in ~~its~~ **the chair's** discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the **chair of the Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Discipline Committee

- 4-2 (4) Any function of the **chair of the Discipline Committee** under ~~this part~~these rules may be performed by the vice chair ~~if the chair is not available for any reason,~~ or by another Bench member of the Committee designated by the ~~President if neither the chair nor the vice chair is available for any reason~~chair.

Consideration of complaints by Committee

- 4-3 (2) If, in the view of the Executive Director and the **chair of the Discipline Committee**, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the chair for consideration under Rule 4-5 [*Consideration of complaints by chair*].

Consideration of complaints by chair

- 4-5 (1) The **chair of the Discipline Committee** must consider any complaint referred to the chair under these rules and may instruct the Executive Director to make or authorize further investigation that the chair considers desirable.
- (2) After considering a complaint under subrule (1), the **chair of the Discipline Committee** must
- (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-17(1) [*Direction to issue, expand or rescind citation*], or
 - (b) refer the complaint to the Discipline Committee.

Conduct meeting

- 4-10 (2) The Discipline Committee or the **chair of the Discipline Committee** may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer or a law firm required to attend a conduct meeting under Rule 4-4 (1) (c) [*Action on complaints*].

Conduct Review Subcommittee

- 4-11 (1) The Discipline Committee or the **chair of the Discipline Committee** must appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4 (1) (d) [*Action on complaints*].

LAW SOCIETY RULES

Conditional admission

- 4-29** (2) The **chair of the Discipline Committee** may waive the 14-day time limit in subrule (1).

Investigation of books and accounts

- 4-55** (1) If the **chair of the Discipline Committee** reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“**chair**” means a person appointed to preside at meetings of a committee, panel or review board;

“**vice chair**” means a person appointed to preside at meetings of a committee in the absence of the chair;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Failure to produce records on complaint investigation

3-6 (2) When there are special circumstances, the **chair of the Discipline Committee** may, in **the chair’s** discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the **chair of the Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Resolution by consent agreement

3-7.1 (1) At any time before a complaint is referred to a Committee or the **chair of the Discipline Committee** under Rule 3-8 [*Action after investigation*], the Executive Director may resolve a complaint by agreement with the lawyer.

(3) A consent agreement is not effective unless it is

(a) signed by the Executive Director,

(b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and

(c) approved by the **chair of the Discipline Committee**.

LAW SOCIETY RULES

- (4) Under subrule (3) (c), the **chair of the Discipline Committee** may
- (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.

Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

- (a) treat the breach as a complaint under this division;
- (b) reopen investigation of the complaint that gave rise to the consent agreement;
- (c) refer the matter to a Committee or the **chair of the Discipline Committee** under Rule 3-8 [*Action after investigation*];
- (d) enter into an amended consent agreement under Rule 3-7.3 [*Amending consent agreement*].

Amending consent agreement

- 3-7.3** (3) Either party may apply to the **chair of the Discipline Committee** to approve a proposed amendment concerning
- (a) a course of study, remedial program or other task to be completed by the lawyer,
 - (b) conditions or limitations on the practice of the lawyer, or
 - (c) an extension of time to pay a fine or begin a suspension.
- (4) On an application under subrule (3), the **chair of the Discipline Committee** may
- (a) amend the agreement as proposed, or
 - (b) decline to amend the agreement.
- (5) The **chair of the Discipline Committee** may designate another member of the Committee to exercise the discretion under subrule (4).

Action after investigation

- 3-8** (4) Despite subrule (3), the Executive Director may refer a complaint to the **chair of the Discipline Committee** if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.

LAW SOCIETY RULES

Division 2 – Practice Standards

Consideration of complaints

- 3-17** (4) Despite subrule (3) (e), the Practice Standards Committee may refer a complaint to the **chair of the Discipline Committee** if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.

Referral to Discipline Committee

- 3-21** (2) Despite subrule (1), the Practice Standards Committee may refer a report to the **chair of the Discipline Committee** with respect to allegations that the lawyer has done one or more of the following:

Division 3 – Education

Practice management course

- 3-28** (2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

Indigenous intercultural course

- 3-28.1** (3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

Professional development

- 3-29** (8) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

LAW SOCIETY RULES

Division 6 – Financial Responsibility

Failure to satisfy judgment

- 3-50** (3) If a lawyer fails to deliver a proposal under subrule (1) (b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee or the **chair of the Discipline Committee**.

Division 7 – Trust Accounts and Other Client Property

Failure to file trust report

- 3-81** (3) When there are special circumstances, the **chair of the Discipline Committee** may, in **the chair's** discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (4) At least 30 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the **chair of the Discipline Committee** for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.

Failure to produce records on compliance audit

- 3-86** (2) When there are special circumstances, the **chair of the Discipline Committee** may, in **the chair's** discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the **chair of the Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Discipline Committee

- 4-2** (4) Any function of the **chair of the Discipline Committee** under these rules may be performed by the vice chair or by another Benchers member of the Committee designated by the chair.

Consideration of complaints by Committee

- 4-3** (2) If, in the view of the Executive Director and the **chair of the Discipline Committee**, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the chair for consideration under Rule 4-5 [*Consideration of complaints by chair*].

Consideration of complaints by chair

- 4-5** (1) The **chair of the Discipline Committee** must consider any complaint referred to the chair under these rules and may instruct the Executive Director to make or authorize further investigation that the chair considers desirable.
- (2) After considering a complaint under subrule (1), the **chair of the Discipline Committee** must
- (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-17(1) [*Direction to issue, expand or rescind citation*], or
 - (b) refer the complaint to the Discipline Committee.

Conduct meeting

- 4-10** (2) The Discipline Committee or the **chair of the Discipline Committee** may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer or a law firm required to attend a conduct meeting under Rule 4-4 (1) (c) [*Action on complaints*].

Conduct Review Subcommittee

- 4-11** (1) The Discipline Committee or the **chair of the Discipline Committee** must appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4 (1) (d) [*Action on complaints*].

Conditional admission

- 4-29** (2) The **chair of the Discipline Committee** may waive the 14-day time limit in subrule (1).

LAW SOCIETY RULES

Investigation of books and accounts

- 4-55** (1) If the **chair of the Discipline Committee** reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

CHAIR OF DISCIPLINE COMMITTEE

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules as follows:

1. *In Rule 1, the definition of “vice-chair” is rescinded and the following substituted:*
 - “vice chair” means a person appointed to preside at meetings of a committee in the absence of the chair;
2. *In Rules 3-6, 3-81 (3) and (4) and 3-86:*
 - (a) “the Discipline Committee” *where it occurs is struck and* “the chair of the Discipline Committee” *is substituted, and*
 - (b) “in its discretion” *where it occurs is struck and* “in the chair’s discretion” *is substituted.*
3. *Rule 3-7.1 (3) and (4) is rescinded and the following is substituted:*
 - (3) A consent agreement is not effective unless it is
 - (a) signed by the Executive Director,
 - (b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and
 - (c) approved by the chair of the Discipline Committee.
 - (4) Under subrule (3) (c), the chair of the Discipline Committee may
 - (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.
4. *Rule 4-2 (4) is rescinded and the following is substituted:*
 - (4) Any function of the chair of the Discipline Committee under these rules may be performed by the vice chair or by another Bench member of the Committee designated by the chair.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Executive Committee
Date: February 18, 2022
Subject: Rule Amendments: Indigenous Intercultural Course – Late Fee

Purpose

The Executive Committee recommends that the Benchers approve the attached rule amendments regarding the introduction of a late fee for non-completion of the Indigenous Intercultural Course.

Discussion

In December 2021, the Benchers approved Rules 3-28.1 and 3-28.2, which require all practising lawyers to complete the Indigenous Intercultural Course within a specified timeframe, as well as creating an enforcement mechanism to deal with non-compliance that provided for the “failure to meet a minimum standard of practice,” and the imposition of an administrative suspension where the course is not completed as required.

It was noted at the time that the question of a late fee would be considered separately. At its meeting in January 2022, the Benchers approved, in principle, a recommendation from the Executive Committee concerning the amount of the late fee associated with the late reporting and late completion by a practising lawyer of the Indigenous Intercultural Course.

The approval in principle of these amendments to the rules was referred to staff to prepare draft Rules to present to the Benchers for approval. The changes are modeled closely on related provisions regarding the CPD program.

Decision

The Benchers are asked to resolve that the rules be amended as set out in the attached resolution, which requires a 2/3 majority of the Benchers present to pass. Copies of the proposed amended rules and a red-lined version based on the current rules are attached.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Definitions

3-26 In this division

“**Indigenous intercultural course**” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

Indigenous intercultural course

- 3-28.1** (1) A practising lawyer must comply with subrule (2) before
- (a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or
 - (b) January 1, 2024
- whichever is later.
- (2) Every practising lawyer must
- (a) complete the Indigenous intercultural course, and
 - (b) certify to the Executive Director in the prescribed form that the lawyer has completed the Indigenous intercultural course.
- (3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Late completion of Indigenous intercultural course

3-28.11 (1) A practising lawyer who fails to comply with Rule 3-28.1 [Indigenous intercultural course] by the date by which the lawyer is required to comply is deemed to be in compliance with the Rule if the lawyer does all of the following within 90 days following that date:

- (a) completes the Indigenous intercultural course;
- (b) certifies the completion of the Indigenous intercultural course as required in Rule 3-28.1 (2) (b);
- (c) pays the late completion fee specified in Schedule 1.

(2) A practising lawyer who complies with Rule 3-28.1 (2) (a) [Indigenous intercultural course] by the date by which the lawyer is required to comply but fails to comply with Rule 3-28.1 (2) (b) by that date is deemed to be in compliance with the Rule if the lawyer does both of the following within 90 days following that date:

- (a) certifies the completion of the required professional development as required in Rule 3-28.1 (2) (b);

LAW SOCIETY RULES

(b) pays the late reporting fee specified in Schedule 1.

Failure to complete Indigenous intercultural course

- 3-28.2** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 [*Indigenous intercultural course*] by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.
- (2) When there are special circumstances, the chair of the Credentials Committee may, in the chair's discretion, order that
- (a) the lawyer not be suspended under subrule (1), or
 - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the chair of the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Late completion of professional development

- 3-31** (1) A practising lawyer who fails to comply with Rule 3-29 [*Professional development*] by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:
- (a) completes the remainder of the required professional development;
 - (b) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);
 - (c) pays the late completion fee specified in Schedule 1.
- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-29 (3) (a) [*Professional development*] by December 31 but fails to comply with Rule 3-29 (3) (b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
- (a) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);
 - (b) pays the late reporting fee specified in Schedule 1.

LAW SOCIETY RULES

SCHEDULE 1 – 2022 LAW SOCIETY FEES AND ASSESSMENTS

L. Late fees

1. Trust report late filing fee (Rule 3-80 (2) (b) [<i>Late filing of trust report</i>])	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) [<i>Late completion of professional development</i>])	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b))	200.00
4. Late registration delivery fee (Rule 2-12.4)	200.00
5. Late self-assessment delivery fee (Rule 2-12.4)	500.00
<u>6. Indigenous intercultural course late completion fee (Rule 3-28.11 (1) (c) [<i>Late completion of Indigenous intercultural course</i>])</u>	<u>500.00</u>
<u>7. Indigenous intercultural course late reporting fee (Rule 3-28.11 (2) (b))</u>	<u>200.00</u>

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Definitions

3-26 In this division

“Indigenous intercultural course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

Indigenous intercultural course

- 3-28.1** (1) A practising lawyer must comply with subrule (2) before
- (a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or
 - (b) January 1, 2024
- whichever is later.
- (2) Every practising lawyer must
- (a) complete the Indigenous intercultural course, and
 - (b) certify to the Executive Director in the prescribed form that the lawyer has completed the Indigenous intercultural course.
- (3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Late completion of Indigenous intercultural course

- 3-28.11** (1) A practising lawyer who fails to comply with Rule 3-28.1 [*Indigenous intercultural course*] by the date by which the lawyer is required to comply is deemed to be in compliance with the Rule if the lawyer does all of the following within 90 days following that date:
- (a) completes the Indigenous intercultural course;
 - (b) certifies the completion of the Indigenous intercultural course as required in Rule 3-28.1 (2) (b);
 - (c) pays the late completion fee specified in Schedule 1.
- (2) A practising lawyer who complies with Rule 3-28.1 (2) (a) [*Indigenous intercultural course*] by the date by which the lawyer is required to comply but fails to comply with Rule 3-28.1 (2) (b) by that date is deemed to be in compliance with the Rule if the lawyer does both of the following within 90 days following that date:
- (a) certifies the completion of the required professional development as required in Rule 3-28.1 (2) (b);

LAW SOCIETY RULES

(b) pays the late reporting fee specified in Schedule 1.

Failure to complete Indigenous intercultural course

- 3-28.2** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 [*Indigenous intercultural course*] by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.
- (2) When there are special circumstances, the chair of the Credentials Committee may, in the chair's discretion, order that
- (a) the lawyer not be suspended under subrule (1), or
 - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the chair of the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Late completion of professional development

- 3-31** (1) A practising lawyer who fails to comply with Rule 3-29 [*Professional development*] by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:
- (a) completes the remainder of the required professional development;
 - (b) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);
 - (c) pays the late completion fee specified in Schedule 1.
- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-29 (3) (a) [*Professional development*] by December 31 but fails to comply with Rule 3-29 (3) (b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
- (a) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);
 - (b) pays the late reporting fee specified in Schedule 1.

LAW SOCIETY RULES

SCHEDULE 1 – 2022 LAW SOCIETY FEES AND ASSESSMENTS

L. Late fees

1. Trust report late filing fee (Rule 3-80 (2) (b) [<i>Late filing of trust report</i>])	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) [<i>Late completion of professional development</i>])	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b))	200.00
4. Late registration delivery fee (Rule 2-12.4)	200.00
5. Late self-assessment delivery fee (Rule 2-12.4)	500.00
6. Indigenous intercultural course late completion fee (Rule 3-28.11 (1) (c) [<i>Late completion of Indigenous intercultural course</i>])	500.00
7. Indigenous intercultural course late reporting fee (Rule 3-28.11 (2) (b))	200.00

INDIGENOUS INTERCULTURAL COURSE LATE FEE

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules as follows:

1. The following rule is added:

Late completion of Indigenous intercultural course

- 3-28.11** (1) A practising lawyer who fails to comply with Rule 3-28.1 [*Indigenous intercultural course*] by the date by which the lawyer is required to comply is deemed to be in compliance with the Rule if the lawyer does all of the following within 60 days following that date:
- (a) completes the Indigenous intercultural course;
 - (b) certifies the completion of the Indigenous intercultural course as required in Rule 3-28.1 (2) (b);
 - (c) pays the late completion fee specified in Schedule 1.
- (2) A practising lawyer who complies with Rule 3-28.1 (2) (a) [*Indigenous intercultural course*] by the date by which the lawyer is required to comply but fails to comply with Rule 3-28.1 (2) (b) by that date is deemed to be in compliance with the Rule if the lawyer does both of the following within 60 days following that date:
- (a) certifies the completion of the required professional development as required in Rule 3-28.1 (2) (b);
 - (b) pays the late reporting fee specified in Schedule 1.

2. Schedule 1, section L is amended by adding the following:

- | | | |
|----|--|--------|
| 6. | Indigenous intercultural course late completion fee (Rule 3-28.11 (1) (c) [<i>Late completion of Indigenous intercultural course</i>]) | 500.00 |
| 7. | Indigenous intercultural course late reporting fee (Rule 3-28.11 (2) (b)) | 200.00 |

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



CEO's Report to the Benchers

March 4, 2022

Prepared for: Benchers

Prepared by: Don Avison, QC

1. Law Society Selected as One of BC's Top 100 Employers

I am pleased to announce that the Law Society received this recognition in recent weeks.

This would be an honour in almost any circumstances but it is particularly meaningful to achieve this in the context of the challenging times brought on by COVID-19.

For me, this is welcome recognition of the Society as an employer, but I see it mostly as a tribute to the commitment of our staff to the public interest and to the mission of the Law Society as the regulator of legal services in BC.

2. Updates to Lawyer Directory and Member Portal

Given some recent comments and questions, I thought it would be helpful to provide a quick update on changes we plan to implement with the Lawyer Directory and Member Portal.

Since last summer we have been working on changes that will facilitate lawyers being able to provide, update and display pronouns, honorifics and chosen names in the Lawyer Directory. These changes will facilitate the proactive sharing of pronouns, which is one way to avoid misgendering and promote inclusive and respectful communication, and also ensure the names listed in the Lawyer Directory accurately reflect how lawyers would like to be addressed. We expect to be able to roll out Phase One of these changes shortly.

We have also been looking into how we can support the display of non-English names using Unicode characters, a universal character encoding standard capable of supporting most of the speaking languages in the world. I will provide further updates on the progress of this second phase of the project in future reports.

3. 2023 Second Vice-President-elect Nominations

In accordance with Law Society Rule 1-19, the election of the Second Vice-President-elect is held at the annual general meeting (AGM) each year. The Executive Committee agreed at its February 17 meeting that the 2022 AGM will be held at 12:30 pm on June 22 as an entirely virtual meeting with no physical locations.

In 2019, Benchers directed staff to implement a formal process for selecting the Benchers' nominee for Second Vice-President-elect by conducting a call for nominations, and if more than one candidate puts their name forward, the holding of an election to determine who will be the Benchers' nominee.

To allow sufficient time for a call for nominations and to hold an election (if required) prior to the 2022 AGM, I propose the following:

- I will email Benchers calling for nominations in late March/early April.
- The final day to submit nominations will be April 21.
- If there is only one candidate, President Hamilton can declare that Bencher nominated by acclamation at the April 22 Bencher meeting.
- If an election is required, it will take place in early May with the results being confirmed at the May 28 Bencher meeting.
- The Second Notice for the AGM that confirms the Benchers' nominee for Second Vice-President will be sent by June 3.

4. Practice Standards Self-Referral Pilot Project

Further to the Law Society's Strategic Plan objective of providing training in practice management, the Practice Standards Group (PSG) is rolling out a pilot self-referral program in early March 2022 aimed at assisting newly called lawyers who are practising in a solo or small firm environment. The program will provide participants with information and advice about how to avoid poor practice management that often lead to client complaints. The participants will also receive mentorship and support. The program will draw on the extensive resources and reviewers already used by the PSG. Participants in the self-referral program, will not be referred to the Practice Standards Committee for consideration but participants will agree in advance that serious conduct concerns, discovered in the course of the consultation, will be addressed. We have budgeted for 10 self-referrals but already there have been dozens of inquiries from potentially eligible lawyers looking to participate in the program.

This is the first step in adding a proactive practice standards approach to the profession. This pilot will allow PSG to do a "practice run" of what may ultimately be a larger initiative. Staff will implement a before and after survey to measure progress and gain feedback. Staff hope to be able to accept applications in early March 2022 and we expect the first practice consults to take place in April 2022.

5. ADMA – A New Online Practice Support Tool

The Practice Support department has been developing a new online tool to assist lawyers in answering ethics and practice management questions and pre-schedule calls with practice advisors. The Advice Decision-Making Assistant (ADMA) will connect lawyers to resources specifically curated to be responsive to a variety of questions of professional responsibility in a user-friendly, intuitive manner and available anytime through the Law Society website. The ability to book a call with a practice advisor in advance through ADMA will provide lawyers the convenience of slotting a call into their already busy schedules. ADMA is in the

final stages of development and is planned to launch in April 2022. The Practice Support department is very grateful to their law student Rose Morgan, whose care, ingenuity, and creativity made it a reality.

Rose Morgan and Claire Marchant will be available at the March 4 Bencher Meeting for a short presentation on the ADMA program.

6. 2022 Bencher Retreat

In most years, the Bencher Retreat is held towards the end of May at a location selected by the President.

The 2021 Retreat took place in October during a brief window in COVID-19 restrictions. This was very much a “working retreat” focussing on elements of the discipline process and on the evolution of the hearing tribunal.

Mr. McPherson, QC, in his capacity as First Vice-President, has confirmed that the focus of the event this year will be a discussion on next steps with the Tribunal and a session on lawyer development. Planning is underway and an update will be provided at the April meeting.

We will return to our regular spring cycle with the Retreat being held this year in Kelowna from May 26 to 28. A separate note will follow with details on hotel, conference facilities and associated logistics.

7. CBABC Provincial Council Meetings

On February 5, 2022 the Law Society participated in the CBABC’s Provincial Council meeting that was conducted virtually.

President Lisa Hamilton, QC provided an overview of Society priorities for 2022 followed by a session that Steve McKoen, QC, in his capacity as Chair of the Lawyer Development Task Force, and I spoke at regarding “Articling in British Columbia.” I have attached a copy of the presentation deck used at that event for your information.

The Provincial Council spent their afternoon session on the Cayton Report and I understand they will be conducting a number of regional sessions on the report.

8. BC Provincial Budget

The provincial budget was delivered by the Minister of Finance on Tuesday, February 22, 2022.

Key areas of focus set out in the Minister's speech, budget and financial plans included expected investments in child care, climate change planning/remediation, reconciliation and skills training in health care and the green economy.

Of the priorities that the Law Society identified in its presentation to the Select Standing Committee on Finance and Government Services, the budget and 5-year fiscal plan commits \$300M to increasing connectivity in rural and remote areas.

As well, a little deeper in the three-year fiscal plan, there is this:

A Responsive Justice System

Budget 2022 provides more than \$46 million over the fiscal plan period to support timely access to justice services, alleviate wait time to trials, and help victims and their families resolve disputes more quickly. An additional \$12 million is provided to continue the digitization of justice services that were implemented during the COVID-19 pandemic, including online traffic court, virtual bail, and a virtual Indigenous Justice Centre. The expansion of these services has reduced court backlogs, saved residents or rural and remote communities extensive travel time, and helped to build a more responsive justice system.

The budget also includes a new commitment of \$12M over three years to create a new Declaration Act Secretariat. The secretariat will begin bringing legislation into consistency with the Declaration on the Rights of Indigenous Peoples Act (DRIPA) through consultation and cooperation with Indigenous peoples.

Don Avison, QC
Chief Executive Officer

Articling in British Columbia: Challenges and Opportunities

Steven McKoen, QC

Chair – Lawyer Development Task Force

Don Avison, QC

CEO and Executive Director

Two Areas for Discussion

1. The Articling Experience
2. Towards an Alternative Pathway to the Bar

The Articling Experience

- Completion of articles following graduation from law school has been a key requirement of lawyer formation for decades.
- For many, the articling experience is deeply worthwhile – an effective transition from academic studies to the professional world.
- For some, the articling experience is less than satisfactory.

What Students Said

- A number of months ago the Law Society conducted a survey of those students who were articling or had recently done so.
- We received nearly 900 responses to the survey
- Over 300 students and former students provided comments

I had a more positive articling experience than a lot of peers that I know. The salaries are low, positions are hard to find regardless of whether paying or not, and the requirements of a lot of practitioners can be ridiculous. I know of articling students who worked 60+ hours a week for their entire articles for less than 30K, and the work environments could be cutthroat and demeaning ... Thank you LSBC for looking into articling in BC. It is stressful and tough and while it is everywhere, it doesn't need to be more stressful than actual practice or more stressful to find an articling position than an associate position immediately after being called.

At the end of the day, I was routinely at the office until 9 or 10pm doing work. I had to set a boundary where I wouldn't work on weekends, because it would have been too depressing to think that all of my time was being put into a job where I felt like I was being taken advantage of, wasn't really appreciated - just a commodity - and all for a thousand dollars a week, which when divided by my hours worked, was just above minimum wage.

Positive experience, though I know for small firms, as was case where I articulated, it is a large commitment for firms to take on a student, pay them fairly (as I was) and provide mentorship as articulated students cost firms a lot of money (unless they are a large volume outfit, with high profits).

My articling experience has not been enjoyable so far. The lawyers at the firm don't have time to teach or mentor me, so I end up doing a lot of administrative work, some research, and a small amount of drafting. It's very stressful, and I don't feel supported. I think I'm grossly underpaid. I have decided not to practice law after I finish articling.

My articling year was very busy and I worked long hours and often weekends and holidays. I think our articling year was busier than most years at our firm. However, I feel as though this prepared me well for the practice of law as I got a lot of experience. Once you become a lawyer, you are expected to be competent. My concern with limiting articling hours to 40 hours per week is that articling students may not receive adequate experience in their articling year.

Worst experience of my life. Underpaid, overworked, and mentally abused on a daily basis. If that's what it takes to become a successful lawyer I guess I don't have it in me. In any other job I would not have put up with one day of what I had to endure during my articles. If I knew then what I know now I would never have gone to law school. Articling students are treated extremely poorly. They then become lawyers, and many think the articling status quo is a right of passage, paving the way for the next crop of articling students to be abused. Articling is fundamentally broken. Fix it.

A Call for Change

- At the Law Society's October 6, 2020 Annual General Meeting a Member Resolution was approved calling on Benchers to take action to ensure that articling agreements are consistent with the hours of work and compensation requirements in the *Employment Standards Act*
- Resulted in the Lawyer Development Task Force inquiring into compensation and hours of work during articles.

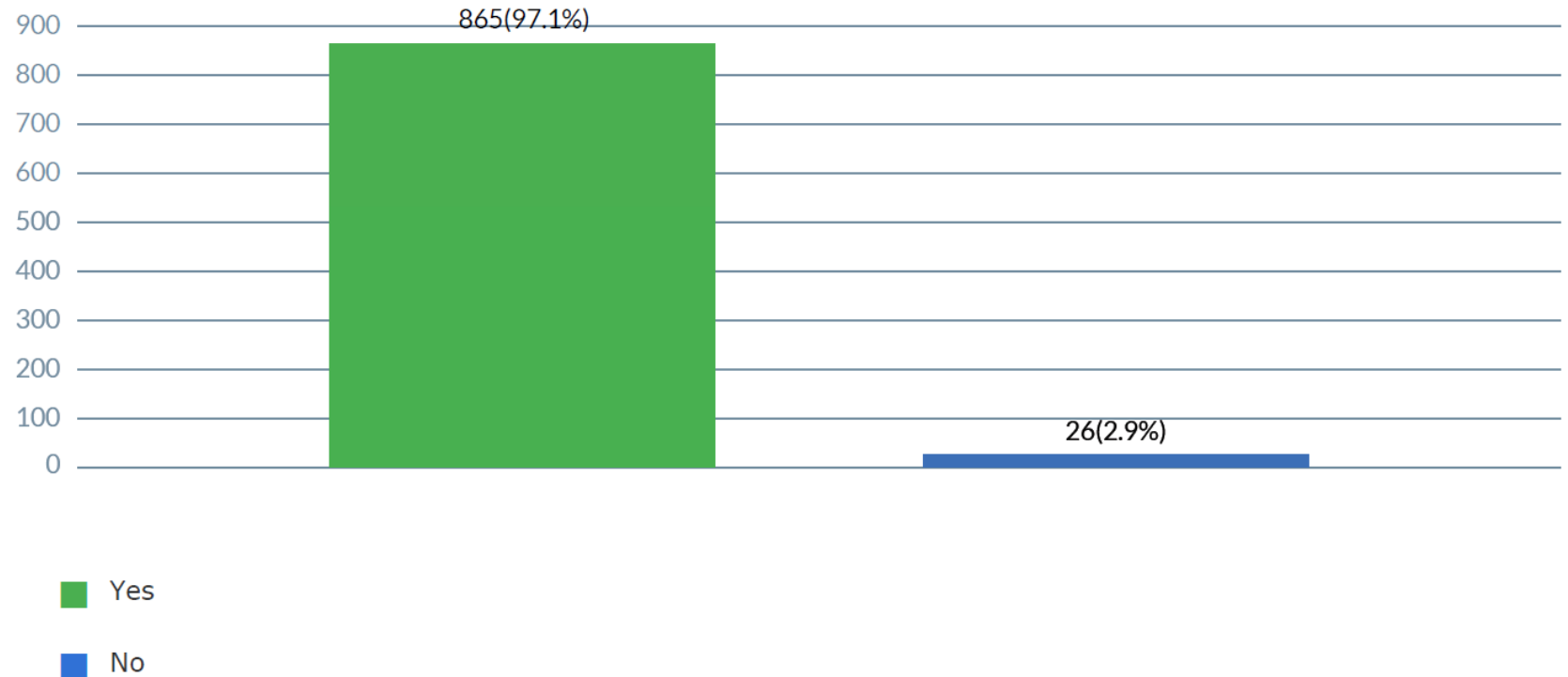
Compensation

Although the vast majority of articulated students were paid a salary, some were not.

However, some recognized that an unpaid position was the only way to obtain articles.

“Finding an articling position was tougher than I expected. Had to settle for an unpaid position for the entire duration. In my opinion, by making articling positions compulsorily paid, it would be next to impossible for foreign graduates to even land an articling position.”

Did you receive a salary during your articles?

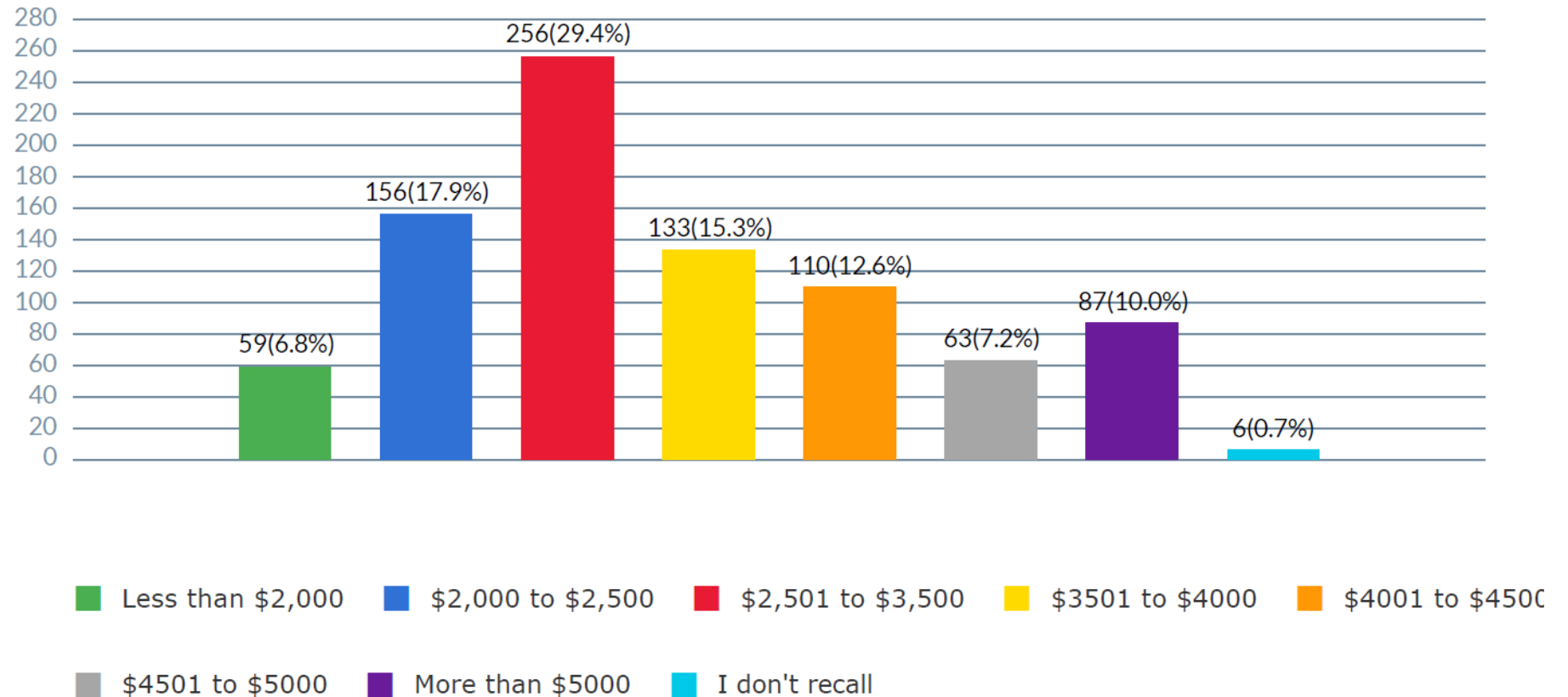


Compensation

About 25% of articling students receive earnings of less than \$2,500 per month

Based on a 40 hour work week (and we all know many students are putting in much longer hours) – \$2,500 per month works out to about \$30,000 per year – less than minimum wage

If you received a salary, what was the approximate monthly amount?

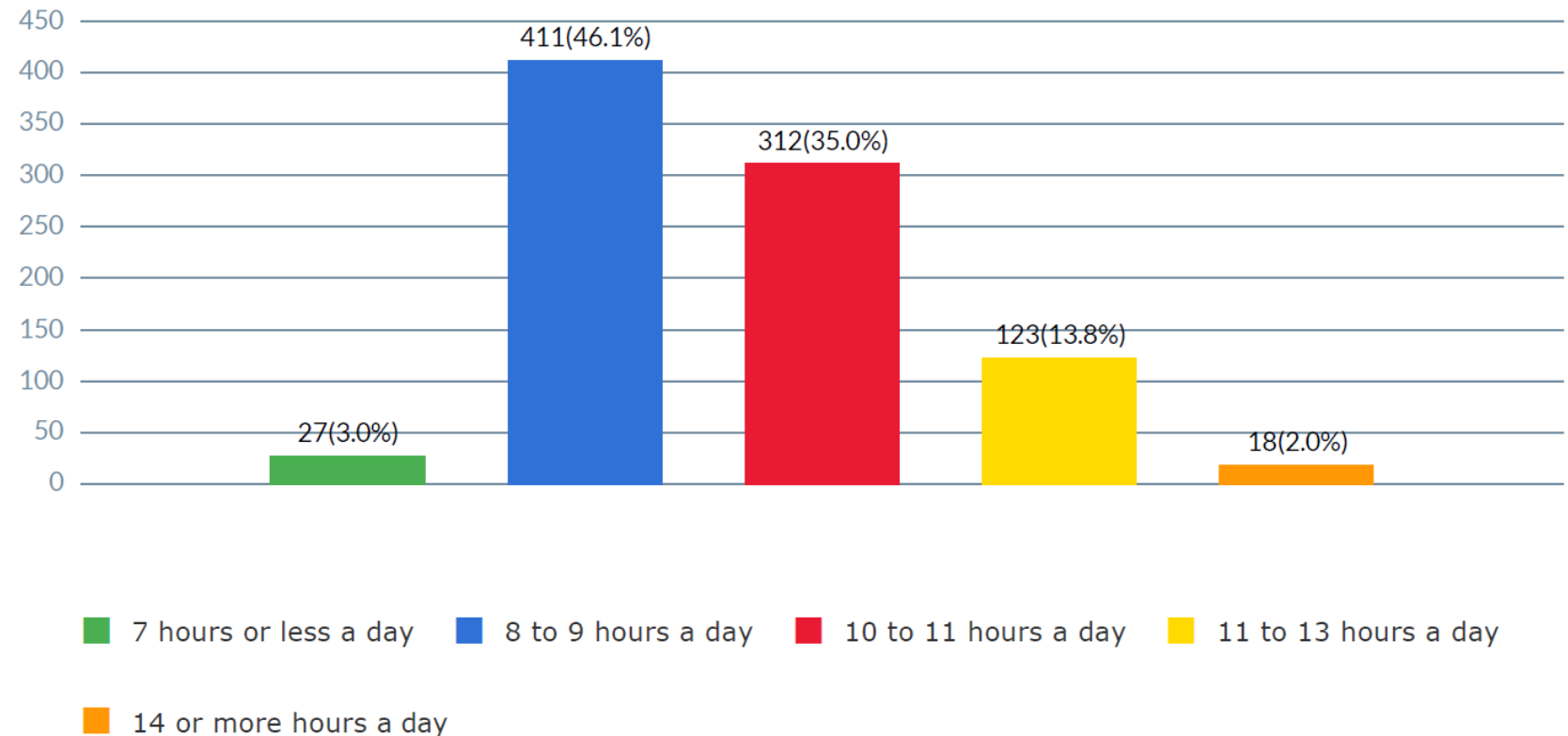


Hours of Work

Nearly 50% of the articulated students reported working 10 or more hours per day

The survey indicated that almost all articulated students work what would be considered “overtime”.

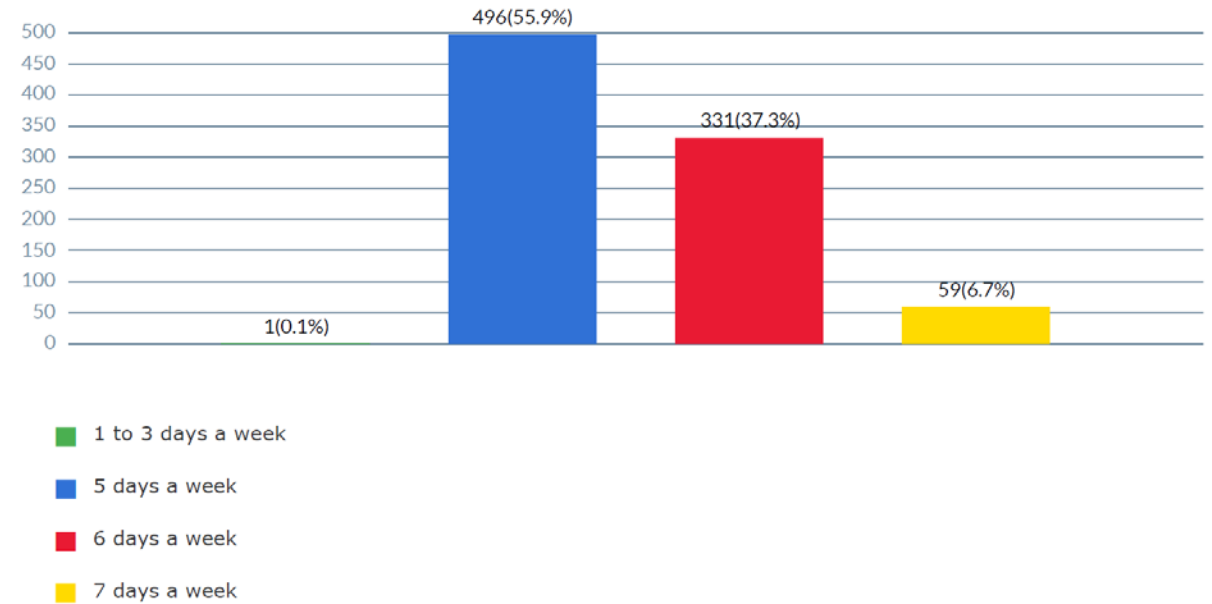
How many hours a day did you typically work during your articles?



Hours of Work

Well over one third of articulated students reported working six days or more per week

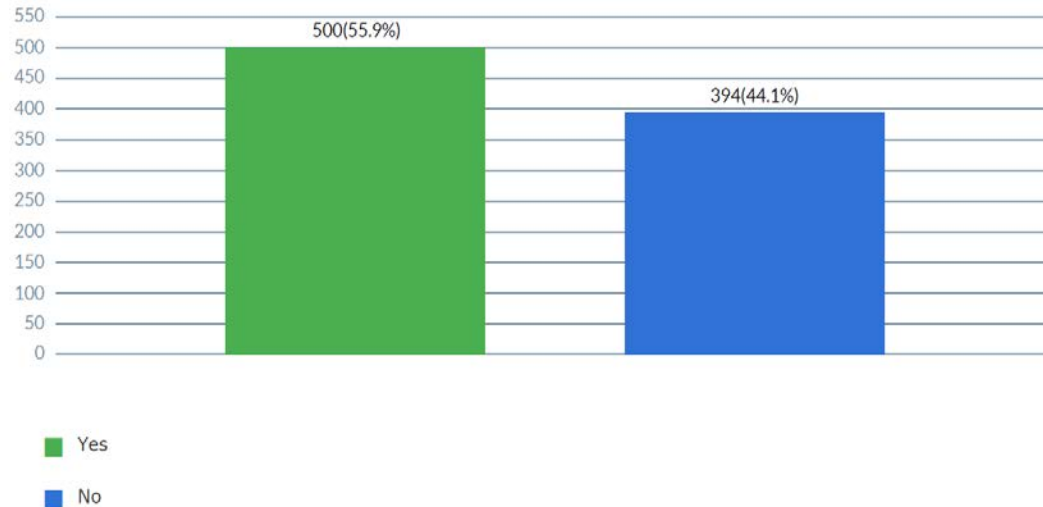
How many days each week did you typically work during your articles?



- 1 to 3 days a week
- 5 days a week
- 6 days a week
- 7 days a week

More than 50% of articulated students reported working on statutory holidays.

Did you work on any statutory holidays during articles?



- Yes
- No

The Lawyer Development Task Force Considerations

- Many of the rationales for establishing standards for mandatory levels of compensation and limits on hours of work during articles are unified by themes of ensuring fairness and preventing exploitation, which are matters that the Law Society can address through its regulatory powers.
- The Task Force supported taking action to address issues of unpaid and underpaid articles and excessive hours of work
- The Task Force also recognized the need to consider the potential negative consequences, including the likelihood of an overall reduction in the number of available articling positions.
- In expectation of a decline in positions the Task Force felt that work would have to be done to develop – and implement – an alternative to the articling program.

The Lawyer Development Task Force Recommendations

- The Benchers endorsed, in principle, the Law Society establishing limits on the number of hours of work during articles, with limited exceptions.
- The Benchers endorsed, in principle, the Law Society establishing minimum levels of financial compensation during articles, with limited exceptions.
- To address the potential reduction in articling positions resulting from establishing standards for financial compensation, and to ensure that the introduction of the requirement does not create barriers to licensing for some students, *the new standards for financial compensation will not be implemented until at least one additional pathway to licensure is in place, which the Task Force expects to occur by September 2023.*

“At least one additional pathway ...”

Five year Law Society Strategic Plan adopted by Benchers in December of 2020 identified “alternative pathways” for entry to the profession as a priority.



Towards an Additional Pathway...

- The law school option – some models in Canada and in other jurisdictions.
 - Lakehead’s Integrated Practice Curriculum
- The Law Society/law school Partnership Model
 - Lincoln Alexander Law School and University of Ottawa Practice Program (L.P.P.)
- An In-House LSBC Program
- Initiatives like Access Pro Bono’s “Everyone Legal Clinic”
- *Very interested to hear your thoughts on options.*

Some Questions to Consider

- If Benchers were to implement minimum levels of compensation and maximum hours of work during articling:
 - What impact would there be on the availability of articling positions?
 - How might any adverse impact on availability be mitigated?
 - What kinds of exceptions, if any, should be considered or permitted?
- If a pathway, such as Ontario's L.P.P., was developed:
 - Should the Law Society retain articling?
 - If articling was retained, what would be the implications of more than one pathway to call and admission?
 - Who should bear the cost of any alternatives?



Cayton Report on Law Society Governance: Recommendations and Discussion

Date: February 24, 2022

Prepared for: Benchers

Prepared by: Don Avison, QC
Chief Executive Officer/Executive Director

Purpose: Discussion and Decision

Purpose

1. The purpose of my report is to facilitate further board consideration of the specific recommendations in the Cayton report and to suggest that some recommendations should be adopted now and to highlight the remainder to determine the board's views on whether they should or should not be implemented.

Discussion

2. For the purposes of this discussion, I am suggesting that there are a number of Cayton's recommendations which were either in place prior to his report or which we have started to work on since. For example, the recommendation that we include a regulatory impact assessment as part of reports to the Benchers seemed a sensible idea and I believe there is a consensus that we should do this.
3. There are also a number of Cayton's recommendations that reflect both his view of the Law Society and the current professional regulatory climate, which I am suggesting will require more consideration by the Benchers as the implications for the organization may well be substantial. For example, his observation that the board is too large and that there should be fewer elected Benchers and more appointed Benchers presents a fundamental issue for the Benchers and merits thoughtful and informed consideration.
4. With those observations in mind, I have structured the balance of my report to reflect those recommendations about which I expect there is a consensus and they should be adopted, and those recommendations where I expect there may not be a consensus and require further discussion.

Consensus Recommendations

5. The following lists those recommendations about which I believe there is consensus and, much like our consent agenda process, I propose that, unless the board disagrees, we should begin, and in some cases continue, to implement them.
 - a) *The Society should seek to improve the efficiency and effectiveness of its governance arrangements by always bearing in mind the Right-touch regulation principles of proportionality and simplicity.*
 - b) *The Society should clarify the role of the Benchers meeting in relation to the Executive Committee to ensure that both are effective and not duplicative.*
 - c) *The Society should establish a register of conflicts of interest for all Benchers, committee members and senior executives. The register should be published.*

- d) *The Society should review the agendas of Benchers meetings, it should eliminate items that are unnecessary, shorten papers so they are concise and clear and identified as 'for information', 'for discussion' or 'for decision'.*
- e) *Benchers should take account of the convenience to Benchers and the savings the Society has obtained by moving to virtual meetings during the pandemic and continue to use virtual meeting where possible while recognising the value of some person to person meetings and the relationships they enable.*
- f) *Benchers should fill in and discuss a mandatory board effectiveness questionnaire annually and commit to any necessary individual or group training that is needed.*
- g) *Benchers should declare any interests relating to the agenda at the beginning of a meeting and that should be recorded in the minutes. The guidance on conflicts of interests in the Benchers Manual should be consistently observed and enforced.*
- h) *New groups should not be established unless their role converges with the strategic plan and reasons are clear as to why they are in the public interest.*
- i) *Before setting up any advisory committee, working group or taskforce the Benchers should be aware of the cost and resources necessary. This will include volunteer costs (travel, accommodation, subsistence) and executive team costs, (staff time, administration, external resources and so on). The Benchers should make a decision as to whether setting up a new group is the most efficient and effective way of approaching the issue.*
- j) *The terms of reference of all committees and groups should be reviewed and decision-making powers and lines of accountability clarified. This should apply particularly to advisory committees, working groups and taskforces.*
- k) *Reports from Committees, Working Groups and Taskforces should always set out their evaluation criteria and be explicit about how they engaged the public and why their recommendations are in the public's interests.*
- l) *The Society should carry out a comprehensive audit of the risks of harm to legal clients and the public from failures by lawyers to meet the standards in the Law Society Rules and Code of Professional Conduct.*
- m) *The Society should identify the most frequent and most severe risks of harm and agree specific actions to mitigate them.*
- n) *The Society should review the way it receives complaints in the light of its work on equality and diversity and cultural understanding.*

- o) *The Society should make it easier to make a complaint in ways other than in writing including by telephone and in languages other than English.*
- p) *The Society should simplify the description of the complaints process on the website and commit itself to actively helping complainants from the public to explain their concerns.*
- q) *The Society should take a preventative approach to regulation, collecting data on outcomes of decisions by the discipline committees and tribunals, and the Professional Conduct group and adjusting its decisions and standards and guidance accordingly.*
- r) *The Society should take a more serious approach to repeat offending and recidivism, recognising that a very small number of lawyers are responsible for a large number of complaints at great cost to the public interest and indeed to all competent and honest lawyers.*

Other Recommendations

6. The balance of Cayton's recommendations would have a more significant impact on the Law Society. If all were adopted as recommended, they would fundamentally alter the structure and organization of the Law Society. I believe that these recommendations will require the board's careful consideration over several further meetings before making decisions about them, always bearing in mind Cayton's observation:

The direction of reform in regulation of professions is clear across numerous jurisdictions. Boards are being reduced in size, elections are being replaced with appointment on merit, the proportion of public members is being increased to half or more. Chairs are appointed separately, and public members may become chair. Terms of office may be three or four years renewable. Board members may be paid an appropriate fee for their work. Board members are no longer responsible for disciplinary decision-making and tribunals are increasingly established as independent of the regulator. The requirements of transparency, accountability and public benefit are coming under greater scrutiny. Self-regulation, it is often said, is a privilege not a right. The terms on which that privilege is granted are getting ever more demanding.

The Society should reduce the number of committees, working groups and taskforces.

7. Cayton observed that *“In the last twenty years there have been over 40 advisory committees and working groups. Currently there are seven ... This is not the most efficient or effective way of dealing with an issue ... Consistent criteria for establishing advisory committees, working groups or task forces and for closing them down if they have completed their report or are no longer useful, should be agreed and adhered to.”*
8. At the end of last year, President Hamilton, QC, did recommend to the Benchers that an effort should be made to reduce the number of committees and the Benchers accepted that recommendation. Although we have made a start at reducing committees, we still have 14 committees and task forces. Some of these are necessary to address regulatory issues. Whether the advisory committees and task forces are necessary to advance the policy work of the Law Society is worth considering. It may be that some of the work that is delegated to advisory committees and task forces could be retained by the board and discussed and decided directly, based on the same type of advice and support from the policy and other staff that would otherwise be provided to committees.

Criteria for appointment to committees should be transparent and based on expertise and merit. They should be applied consistently even when the President changes.

The Society should open up the membership of advisory committees and groups to suitably knowledgeable and experienced and diverse members of the public. The Society should actively engage the public and legal clients in developing its policies.

All advisory committees and groups should justify their value at an annual review or be discontinued.

9. Cayton made a number of observations about the creation, populating and conduct of our committees. He noted that the President has control of who is appointed to the Society’s committees and that how Benchers are selected and how these appointments are distributed is opaque. He observed there are no open criteria for selection, and it is not apparent if appointments are made on merit.
10. While there are a number of considerations involved in the appointment of members to committees and task forces, such as any criteria set out in the terms of reference, pursuant to Rule 1-49, the President does have a free hand in appointing and

terminating the members of our committees and task forces and generally has ensured that all Benchers are on at least two committees and often more.

11. In support of his recommendations, Cayton did note:

It has been suggested to me that the large number of benchers is necessary because of the large number of committees on which they must serve. This is a circular argument; too many committees does not justify too many Benchers. Even if so many committees and working groups were desirable there are many skilled and knowledgeable lawyers and members of the public in British Columbia who could serve on such committees and bring fresh thinking, experience, and diversity to the Society's policies. Benchers do not have to control everything although some believe that they do.

Changing the term member to 'registrant' and the title president to 'chair'

12. Cayton recommended that the Law Society consider changing the term member to 'registrant' and the title president to 'chair' to better reflect that the Society is a regulatory body not an association. His view was that nomenclature matters and he thought it was significant that the lawyers who are regulated by the Society are referred to as 'members' not as registrants or licensees. He noted, in particular, that our organization is a society, not a college or a council. His conclusion was that, despite being a regulatory authority, the Law Society remains fundamentally a membership-focused association.

An induction day for all candidates for election and creating a nominations committee

13. Cayton recommended that the Society should introduce an induction day for all candidates for election prior to them deciding whether or not to stand for election and consider creating a nominations committee. He observed that *"Board members may have been elected or appointed for the first time with no knowledge of the functions of a regulator and very little, if any, experience of serving on a board. It is essential that comprehensive, supportive induction is provided. Of great importance is that board members have read and understood the legislation under which they operate and from which they receive their mandate on behalf of the public."*

14. He also observed that some regulators have set up nominations committees to identify and recommend candidates standing for election and that nominations committees provide the opportunity to review candidates, and assess their knowledge and competence before recommending a candidate for election. He noted that a nominations committee is usually independent of an existing board and fulfils a similar role to the short-listing process for candidates for a job.

No member who is currently under investigation or against whom there has been a finding of professional misconduct, conduct unbecoming or a breach of the rules should be permitted to stand for election.

15. Currently, there are only two qualifications to stand for election as a Bencher: the person must be a member in good standing and the member must practice or reside in the electoral district from which they seek election. Cayton recommended that no member who is currently under investigation should be permitted to stand for election while the investigation continues; no member against whom there has been a finding of professional misconduct, conduct unbecoming or a breach of the rules should be allowed to stand for election as a Bencher.
16. Although Cayton did not say much about this recommendation in his report to us, in his report on the College of Dental Surgeons of BC, he observed that:

Dentists who are the subject of a complaint are able to stand for election to the Board and indeed to be elected, while that complaint is under consideration. This undermines the regulatory role of the College. I recognise that a complaint may not have been found to have any substance at that point and may indeed subsequently be found to be without merit. But that is not the point. Serving on the Board of a regulator is a public privilege not a professional right and all those who seek such responsibility should demonstrate their personal commitment to and respect for patients.

Bencher should cease the practice of interviewing articulated students

17. Based on his observations and interviews, Cayton concluded that the practice of Bencher interviewing articulated students was time-consuming for both parties and a pointless initiation rite. He made the recommendation in the context of encouraging Bencher to do less so that they can concentrate more on what matters and in the context of the observations he passed along to the Bencher in December, 2021.

“If they're for Bencher to help educate and inform Bencher at least that could be explicit. If ... there [is] a way of collating what all those students are saying and whether there's any pattern to it, I don't know. Perhaps that would be one way of making them more organizationally valuable. And ... has there been a survey of all the students to whether they think it's valuable and useful? I'm sure some do but I get the impression again that these interviews vary massively between Bencher and Bencher in terms of there not being a specific set of objectives and a specific reporting.”

18. Student interviews have been part of the Law Society admission program for a number of decades. The Bencher minutes of July 9, 1948 record that the Bencher

resolved that each applicant be personally interviewed by the Credentials Committee before enrolment. Benchers may be interested to know that it was also during this meeting that the Benchers discussed the issue of enrolments of Norman Littlewood and R.J.G. Martin. Both of these students were members of the Labour Progressive Party, a party with Communist underpinnings.

19. It is perhaps also worth noting that no other Canadian law societies require a similar interview process in which students meet with a Bencher or director, as a condition precedent to call and admission.

Benchers should cease to provide confidential advice to members

20. Cayton also recommended that the Benchers should also cease to provide or be a source of confidential advice to members. He suggested that the practice was fraught with ethical conflicts and observed that the Practice Advice department at the Law Society exists to provide this service to members.
21. Benchers have noted that there are occasions when a lawyer needs advice immediately and sometimes outside normal working hours. Being able to contact a Bencher in these situations is seen to be of real value to the lawyer where there is an issue that might escalate into a bigger problem if it isn't addressed and resolved before that happens.
22. Our previous governance review in 2012 also noted the conflict between the role of the Benchers as directors and as trusted advisors. The 2012 Governance Review Task Force recognized that the practice did inevitably create the potential for the Benchers to be setting the standards for professional practice, advising individual members about those standards and also sitting in judgment on whether those standards have been met in individual cases. Nevertheless, in the final report to the Benchers in December 2012, the recommendation that the Law Society consider whether to continue to encourage lawyers to contact individual Benchers for ethical guidance was not adopted.
23. As with the student interviews, we appear to be the only Canadian law society that actively encourages lawyers to contact Benchers for ethical advice.

The Society should consider separating the disciplinary tribunal from the Society to create independence of adjudication, leaving investigation and prosecution with the regulator.

Benchers should not sit on hearing panels at the same time as serving as Benchers.

24. The Law Society has already moved beyond Cayton's general recommendation that the Law Society consider separating the Tribunal from the Law Society. The recent change to the Rules to provide for the appointment of a Tribunal Chair for a two year term, along with the development of a more formal Tribunal office and a separate website for the Tribunal, all contribute to creating greater distance between the work of the Tribunal and the regulatory functions of the Law Society.
25. Cayton also recommended that Benchers not continue to participate in hearings while serving as a Bencher. He made this specific recommendation in the context of his broader recommendation about separating the Tribunal from the Law Society because in his view, there is a clear conflict between Bencher's duties as directors of the Law Society and participating in hearing panels.
26. The board has already come some way towards limiting the participation of Benchers in the hearing process. In 2011, the Benchers agreed that non-Bencher members of the legal profession and the general public ought to have a role, along with Benchers, in the Law Society Tribunal. Since that time, the Rules have provided that a panel must consist of 3 persons, be chaired by a lawyer, and include at least one Bencher or Life Bencher who is a lawyer, and one person who is not a lawyer.
27. Cayton's recommendation proposes the next step in the evolution of our hearing panels. His recommendation is based on what he sees as a clear conflict between the Benchers duty to govern and administer the affairs of the society, including the investigation and prosecution of discipline cases, with the expectation that hearing panels will be neutral adjudicators in discipline cases.

The Society should seek to remove the power of members to challenge or countermand the decisions of the Benchers meeting.

The Society should seek to remove the ability of a minority of members to block changes supported by a majority.

28. Cayton's recommendations refer to the consequences of sections 12 and 13 of the *Legal Profession Act* and reflect his observations about the 2021 Annual General Meeting.
29. Cayton's comment on section 12 was that it "*effectively limits the power of the Benchers and the majority of members to bring about change as a minority can stop any developments they think are against their personal or professional interests. This was clearly demonstrated by the votes at the 2021 AGM when a minority of members voting were able to block a sensible rule change.*"

30. On the consequences of section 13, Cayton noted:

At [the annual general] meeting members of the Society can instruct their own governing body through resolutions. These resolutions in order to be debated require the signatures of only two members and if passed must be considered by the Benchers. While the resolutions are not binding on the Benchers, in practice the Benchers act on resolutions passed at annual general meetings even if the matter has no public interest benefit or is not regulatory. Further, members may order the Society to hold a referendum instructing the Society to follow a particular course of action or policy. These are governance arrangements you would expect to see in the structure of a Trades Union or political party rather than an oversight body accountable to the public.

31. Both sections 12 and 13 underpin Cayton's observation "That lawyers, rather than the citizens of BC, 'own' the Law Society is explicit in the holding of an Annual General Meeting"

32. If the Benchers are to make any significant changes to the governance of the Law Society, sections 12 and 13 will be a factor and Cayton's recommendations need to be given serious thought.

The Society should seek amendments to its rules to reduce the number of elected Benchers and increase the proportion of public appointed Benchers.

The Society should seek to amend the terms of office so that Benchers serve for two terms of four years and Presidents and vice-Presidents serve for at least two years.

The Society should revisit recommendations made in previous external and internal reviews to reform the electoral college structure and should move away from geographical diversity towards diversity of skills, lived experience, gender and ethnicity.

33. Three of Cayton's recommendations relate specifically to the composition of the board and the length of the term of office for Benchers and the President and Vice-Presidents.

34. Both the size of the board and the electoral process have been considered in the previous governance review. In 2012, WATSON Advisors provided an interim report to the board which noted:

As to the structure of the Bencher table, the most common observation made by interviewees is that with 31 voting members, the Bencher table is very large. Some view the current size as problematic, while others believe that a large number is necessary given Benchers' current roles and responsibilities.

35. As a result, WATSON Advisors concluded:

A board must be large enough to ensure that there are sufficient members to manage the board's workload and the board as a whole has the requisite skills to govern and diverse perspectives are brought to the table, but small enough to ensure that there is interactive discussion, greater personal accountability and meaningful engagement in all of the board's responsibilities. In WATSON's experience, the optimal size of a board is generally seen to be somewhere between seven and 11 directors.

36. In commenting on the electoral process, WATSON Advisors observed:

The current election model (whereby Benchers are elected from various regions around BC) has a long history and many Benchers feel that it is important that Benchers continue to be elected in this manner so that all regions have a voice. However, many external stakeholders observed that the geographic model is problematic because it suggests to members (and indeed even Benchers) that they are there to "represent" the interests of a particular constituency when in fact they are there to regulate all lawyers in the public interest.

37. As a result, WATSON Advisors suggested electing at least some of the Benchers on an "at large" basis.

38. At the governance retreat in October 2012, the Benchers of the day concluded that the recommendations to elect some Benchers on an "at large" basis and to create a smaller Bencher table were not to be adopted or referred to the Governance Committee.

39. Cayton said of the size of the board *"Thirty-one non-executives is too many for effective discussion, deliberation or decision-making. Benchers' meetings are not deliberative, rather they are a series of speeches and position statements, some clearly prepared in advance. Benchers rarely ask questions of each other, rather they make counter statements as though they were in court."*

40. It is worth noting that in its written submission to Cayton, the Canadian Bar Association BC Branch commented:

Modern principles of good governance favour a board of directors that is of reasonable size to allow for sufficient deliberation of the issues before it in a timely manner and reflects the diverse demographics of its membership. A board of over 30 does not seem to meet the first requirement of having a reasonable size to ensure sufficient and timely deliberation. This is apparent at any benchers meeting where only a few speak, and there is pressure to conclude a discussion without robust deliberation. CBABC recommends consideration be given to a board of 15 including three Appointed Benchers.

41. In summarizing the 2012 feedback on the length of the Presidential term, WATSON said *“The one-year term length served by the President is seen by many as too short, but given the current responsibilities associated with the role, a longer term is widely acknowledged as being too disruptive to a lawyer’s practice. Many voiced a concern that a longer term length would dissuade strong candidates from putting their names forward.”* which led to a recommendation that in the longer term, the board should consider changing the length of the President’s term to two years. At the 2012 governance retreat, the Benchers chose not to adopt this recommendation.
42. Cayton echoed the observations from the previous governance review, observing *“The rapid turnover of presidents limits their ability to provide consistent leadership and therefore to bring about improvements. Each president has their own style and priorities but insufficient time, opportunity, or control to deliver anything but the most uncontroversial of changes, initiatives they have begun can easily be forgotten when a new President takes over and brings a different set of priorities.”* In his view, the President term should be two years.
43. Cayton noted the impact of two year terms for Benchers. In his view, two year terms meant that elected Benchers were beholden to their electorate and found it hard to sustain both a long-term and independent view of controversial issues.
44. Whether or not one accepts WATSON and Cayton’s assessment of the impact of the size of the board or the electoral model, Cayton’s observation that *“Boards are being reduced in size, elections are being replaced with appointment on merit, the proportion of public members is being increased to half or more ... Terms of office may be three or four years renewable.”* is accurate.
45. The College of Physicians and Surgeons of BC with 13,770 registrants has 10 elected physicians and 4 public members serving four year terms. The College of Dental Surgeons of BC with 10,000 registrants has a 12-person board composed of 50% certified dental assistants, dental therapists and dentists, and 50% public members

serving three year terms. Engineers and Geoscientists BC with 40,118 registrants has a 12 person board consisting of 7 registrant councillors, 4 lay councillors and the immediate past president serving three year terms. The BC College of Nurses and Midwives with 63,000 registrants has a 10 person board consisting of five elected board members and five appointed board members serving three year terms. The Chartered Professional Accountants of BC (CPABC) has 38,000 CPA members and 6,000 CPA candidates. BC's three accounting profession governance bodies were amalgamated in 2015 with proclamation of the *Chartered Professional Accountants Act*. They currently have a board of 19 directors, 15 elected from 4 geographic regions and there are 3 "public representatives".

46. These trends suggest, the board ought to give serious consideration to Cayton's recommendations regarding board size and composition.

The Society should consider the relationship between the Society as regulator and the Lawyers Indemnity Fund by further separating the latter from the Society to avoid any perception of a conflict of interest.

The Society should consider changing the name of the Equity Ombudsperson service and should make clear that confidentiality can only extend to disclosures that are not a potentially serious breach of Society rules or against the law.

47. Cayton considered the relationship between the Law Society and Lawyers Indemnity Fund (LIF) and the Equity Ombudsperson program give rise to conflicts of interest that should be considered.
48. As you will know, the question of the relationship between the Law Society and the insurance/indemnity program has been recently been considered and, consistent with the recommendations made by working groups and approved by the Benchers, LIF was restructured and a number of changes were made to increase the independence of LIF from the Law Society, including development of a new website and rebranding of LIF in our communications. I suggest that the Benchers have adequately addressed the conflict of roles and that nothing further need be done at this time.
49. The Equity Ombudsperson program has been in existence for many years and the Benchers receive annual reports on the program. Since its inception, the program has kept confidential any information received or provided and confidentiality is specifically provided for in Rule 10-2.1 (formerly Rule 5-7). While Cayton stated that the issue for him was not the effort on the part of the Society to assist those who may be the victims of discrimination, bullying or sexual misconduct, but the conflict he saw that arises from doing so in secret at the same time as being responsible as the legal regulator for upholding standards of conduct. Cayton suggested that there needed to be a transparent limit to confidentiality in the event of serious disclosures. I disagree.

In my view, the Equity Ombudsperson program is different from our Practice Advice program or the role of Benchers as Trusted Advisors where there are limits on what must be kept confidential. If the Equity Ombudsperson program is to be effective in assisting those who reach out to our Equity Ombudsperson, the information shared with the Equity Ombudsperson must be kept confidential and not shared with anyone else, including anyone at the Law Society.

Next Steps

50. I am of the view that the bulk of Cayton's recommendations are well-considered and reflect the current thinking on professional regulatory governance. As I suggested earlier in this paper, there are a number of recommendations that I believe are sensible and should be implemented unless the board says otherwise. There are also two that I believe require no action.
51. But while I believe Cayton's recommendations are well-considered and reflect current thinking, I am also of the view that this does not mean the board has to adopt all of them. There are a number of recommendations I have outlined above which, to a lesser or greater extent, if adopted would fundamentally change the governance of the Law Society. These recommendations are challenging for the board and I believe they require thoughtful consideration. I am hopeful that this report will assist the board in making progress in that deliberation at the March meeting.



Memo

To: The Benchers
From: Natasha Dookie, Chief Legal Officer
Date: February 16, 2022
Subject: National Discipline Standards Report

Background

The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for the handling of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards at their meeting on June 13, 2014. All law societies in Canada have adopted the standards.

The standards address many aspects of our regulatory processes including: timeliness, public participation, transparency, accessibility and training of adjudicators and investigators.

The standards are aspirational. As of 2020 year end, no law society has met all of the standards in their entirety. In 2020 Canadian law societies met on average 83% of the standards and LSBC met 92% of the standards.

Standard 23 requires us to report to you annually. As such, I provide that report below.

Report on LSBC Progress

LSBC progress on each of the standards is set out at Attachment 1. For 2021, we met 21 of 23 standards, which is similar to our performance in previous years.

Of significance we met the standards regarding:

- a. timely complaint resolution or referral to the Discipline Committee (Standard 4); and,
- b. ongoing contact with complainants during the investigation process (Standard 5).

The two standards we did not meet in 2021 are:

- c. Standard 9 which requires 75% of hearings to be commenced within 9 months of the citation being authorized. In 2021 we met this standard with 29% of the hearings¹ (compared to 9% in 2020). Standard 9 also requires that 90% of hearings be commenced within 12 months of the citation being authorized. In 2021 we met this standard with 56% of hearings (compared to 44% in 2020). It is noteworthy that the department continued to handle a large number of total hearings² in 2021 (57), which compares to 54 in 2020, 64 in 2019 (a record), and 31 in 2018.

The reasons we did not attain standard 9 in 2021 include:

- i. A COVID-19 backlog that occurred in 2020 (there were no hearings for approximately three months that year) had some impact in 2021 as matters that were adjourned or delayed in being set for hearing in 2020 had a knock-on effect in 2021;
- ii. The department's most senior counsel left in the middle of 2021 to become Tribunal Counsel. Although her position was filled towards the end of 2021, some of the department's most complex files were necessarily transferred. It will be a few more months before her replacement counsel is up to speed;
- iii. A record number of section 47 reviews and appeals to the Court of Appeal were active in 2021 – 11 such files;
- iv. Second only to 2019, we had the highest total hearing numbers in 2021. This coincides with a trend towards increased file complexity and length of hearings;
- v. Speaking to increased file complexity and length of hearings, we experienced a record number of hearing continuations in 2021 (i.e. hearings that started in 2020 and continued into 2021. Thirteen hearings from 2020 continued into 2021, as compared to the prior record of ten; and,
- vi. We continued to deal with the backlog of old files (stemming from the influx of files in 2018 combined with staffing issues at that time). To this end, we closed a record number of files (54), which exceeds the prior record of 47 (from 2020).

We look forward to reverting to the gains we made in 2019 as we eliminate the prior file backlog, develop more expertise in negotiating consent agreements and are fully staffed in terms of counsel.

¹ Hearings includes Facts & Determination hearings, Rule 4-30 resolutions and consent agreements.

² Total hearings includes all hearing types, such as Facts & Determination hearings, Disciplinary Action hearings, Rule 4-30 resolutions, Rule 4-29 resolutions, consent agreements, Section 47 reviews and appeals and judicial reviews that related to citation matters.

Year	75% of hearings commenced within 9 months	90% of hearings commenced within 12 months
2021	29%	56%
2020	9%	44%
2019	36%	72%
2018	16%	26%
2017	66%	92%

- d. Standard 10 requires 90% of hearing panel decisions to be rendered within 90 days of the last submissions. For 2021, we are at 58% of panel decisions being rendered within 90 days of the last submissions, which is less than in previous years. The Tribunal process currently requires a draft of the decision to be provided to Tribunal staff within 60 days of the last submission so that Tribunal staff can format the decision, identify any substantive issues and return it to the panel for revision or finalization and approval. The final version of the decision is then issued prior to the 90 days deadline. In 2021, there were 55 decisions issued, 23 of which were issued after the 90 day deadline. At least 20 of these late decisions were not submitted, in draft, to the Tribunal Office until the 60 days had already passed and the majority of them were not submitted until after the 90 day deadline. Tribunal Counsel has advised that it is unclear what factors may have contributed to the late decisions. Tribunal staff will be revising the reminder system such that panels get reminders at not only 30 & 60 days post hearing but also right at the end of the hearing. That reminder at the end of the hearing will provide the date that the draft decision is due for review by Tribunal staff.

Year	Percentage of decisions rendered within 90 days
2021	58%
2020	67%
2019	78%

2018	62%
2017	65%
2016	70%
2015	55%
2014	71%

ATTACHMENT 1
NATIONAL DISCIPLINE STANDARDS
ANNUAL REPORT ON LSBC STATUS FOR 2021

STANDARD		CURRENT STATUS
Timeliness		
1.	<p><i>Telephone inquiries:</i></p> <p>75% of telephone inquiries are acknowledged within one business day and 100% within two business days.</p>	<p>MET</p> <p>99% of telephone inquiries were acknowledged within one business day; 100% were acknowledged within two business days.</p>
2.	<p><i>Written complaints:</i></p> <p>95% of written complaints are acknowledged in writing within three business days.</p>	<p>MET</p> <p>99.5% of written complaints were acknowledged in writing within one business day.</p>
3.	<p><i>Early Resolution:</i></p> <p>There is a system in place for early resolution of appropriate complaints.</p>	<p>MET</p> <p>The Intake & Early Resolution Group within Professional Conduct implements early resolution of appropriate complaints.</p>
4.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	<p>MET</p> <p>91% of all complaints were resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>96% of all complaints were resolved or referred for a disciplinary or remedial response within 18 months.</p>

	STANDARD	CURRENT STATUS
	<p>(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:</p> <p>80% of all internal reviews or internal appeals are decided within 90 days.</p> <p>90% of all internal reviews of internal appeals are decided within 120 days.</p>	<p>MET</p> <p>97% of all internal reviews were decided within 90 days.</p> <p>97% of all internal reviews were decided within 120 days</p>
	<p>(c) Where a complainant has been referred back to the investigation stage from an internal review or internal appeal process:</p> <p>80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.</p> <p>90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.</p>	<p>MET</p> <p>3 complaints were referred back to staff for further investigation: 1 was concluded within 3 months; and 2 have not been concluded but are within the 12 and 18 month periods.</p> <p>See above.</p>
5.	<p><i>Contact with complainant:</i></p> <p>For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 96% of open complaints there was contact with the complainant at least once every 90 days during the investigation stage.</p>
6.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 91% of open complaints there was contact with the lawyer at least once every 90 days during the investigation stage.</p>

STANDARD		CURRENT STATUS
7.	<p><i>Interim Measures:</i></p> <p>There is authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.</p>	<p>MET</p> <p>Rule 3-10 or voluntary undertakings.</p>
Hearings		
8.	<p>75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.</p> <p>95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.</p>	<p>MET</p> <p>MET</p>
9.	<p>75% of all hearings commence within 9 months of authorization.</p> <p>90% of all hearings commence within 12 months of authorization.</p>	<p>NOT MET</p> <p>There has been a significant (i.e. almost double) increase in the number of hearings since 2018. A COVID backlog that occurred in 2020 had some impact in 2021. The department lost its most senior counsel in 2021. The files have become, on average, more complex and voluminous.</p> <p>NOT MET</p> <p>See above.</p>
10.	<p>Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.</p>	<p>NOT MET</p> <p>58.1% of hearing decisions issued in 2021 were issued within 90 days of the final submissions.</p>

Public Participation		
11.	There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	MET There was one public representative on every disciplinary panel, at least one public representative on every review board and a public representative on our charging body (i.e., Discipline Committee).
12.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	MET There is a public representative on each of the two Complainants' Review Committees.
Transparency		
13.	Hearings are open to the public.	MET Hearings are open to the public unless the panel exercises its discretion under Rule 5-8 to exclude some or all members of the public.
14.	Reasons are provided for any decision to close hearings.	MET Rule 5-8(5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
15.	Notices of charge or citation are published promptly after a date for the hearing has been set.	MET We publish the fact that a citation has been authorized once the respondent has been informed and the content of the citation after the respondent has been served.
16.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.	MET In all cases, we publish dates of hearings as soon as they are set.

17.	A law society can share information about a lawyer or Québec notary, either upon request or at its own initiative, with any other law society, or can require a lawyer or Québec notary to disclose such information to all law societies to which they are a member. All information must be shared in a manner that protects solicitor-client privilege.	MET In 2018, we enacted Rule 2-27.1, which gives us discretion to share information when it is in the public interest to do so and to provide confidential or privileged information if the information will be adequately protected against disclosure.
18.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET Rule 3-3(5) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3(6) indicates we cannot share privileged material.
Accessibility		
19.	A complaint help form is available to complainants.	MET There are online materials available on the Law Society website to assist the public in making complaints as well as printed brochures describing the complaint process and jurisdiction.
20.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	MET
Qualification of Adjudicators and Volunteers		
21.	There is ongoing mandatory training for all adjudicators, with refresher training no less often than once a year, and the curriculum for mandatory training will comply with the national curriculum.	MET All benchers/ lawyer adjudicators are required to take Administrative Justice, Decision Writing and Hearings Skill courses offered by BC Council of Administrative Tribunals (in conjunction with the Law Society to provide specific training). All public representatives are required to take the Administrative Justice course and may take the two courses offered. All adjudicators are required to attend an annual refresher course.

22.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.
Qualification of Adjudicators and Volunteers		
23.	Each law society will report annually to its governing body on the status of the standards.	MET Report to the Benchers will occur in March 2022.



February 18, 2022

Sent via email

Josh Paterson
Law Foundation of British Columbia
1340 - 605 Robson Street
Vancouver, BC V6B 5J3

Lisa Hamilton, QC
President

Office Telephone
604.605.5394
Office Email
president@lsbc.org

Dear Josh Paterson:

**Re: Appointment to the Board of Governors of the Law
Foundation of British Columbia**

I am pleased to confirm that the Law Society of BC's Executive Committee has appointed Judge Linda D. Thomas (Cariboo County) to the Law Foundation's Board of Governors for a term commencing February 18, 2022 and concluding December 31, 2024.

I am confident that the Law Foundation and its important work will be well-served by the contributions of Judge Linda D. Thomas.

Yours truly,

A handwritten signature in black ink, appearing to be 'Lisa Hamilton'.

Lisa Hamilton, QC
President, Law Society of BC

c. Lindsay LeBlanc
Chair, Law Foundation of BC

Don Avison, QC
Executive Director/Chief Executive Officer, Law Society of BC



Memo

To: Benchers
From: Staff
Date: February 8, 2022
Subject: Update on Access to Justice Advisory Committee Recommendations from December 2021

Background

At the December 2021 Bencher meeting, the Benchers accepted the recommendations made by the Access to Justice Advisory Committee concerning that Committee's report on COVID-19 measures and barriers to access by referring those recommendations back to staff for further consideration and implementation.

Status

A brief report on the status of those recommendations follows.

Recommendation 1

The first recommendation was that the Law Society adopt the principles for regulatory review that the Committee identified in its report for the purpose of guiding policy development on reducing regulatory barriers to accessing legal services and justice. The principles included ensuring that reforms and innovation must balance theoretical benefits with actual safeguards, that reforms must target real problems and offer practical solutions, that reforms should not sacrifice professionalism or standards of competence in order to maximize access, and that the Law Society be prepared to make constructive suggestions for reform, even where they may be beyond its jurisdiction to implement, if the public interest requires it to do so. These principles will be applied by staff when analyzing reform and will be included, as required, in any recommendations made for Committee or Bencher consideration.

Recommendation 2

The second recommendation was to work with government, the courts, and other justice system stakeholders to maintain justice system responses enacted to address COVID-19, and to explore ways to expand and improve upon those system changes.

Staff has begun to assemble a list of the organizations to contact, and has as well, consulted internally to determine the extent of any discussions that may have already taken place with those organizations on these subjects. Over the next few months, staff will reach out directly to these organizations to discuss which responses to COVID-19 should be maintained and to work with those organizations to ensure steps are taken and, where appropriate, contribute to making changes to maintain any improvements realized, including, where relevant, making recommendations for Law Society policy or rule changes.

Recommendation 3

The final recommendation was for staff to evaluate what changes can be made to Law Society regulatory requirements including:

- simplifying and modernizing the client identification and verification process;
- simplifying and modernizing the trust accounting rules, as well as considering modernizing the rules to address law firm regulations;
- how to make the payment of practice fees more equitable; and
- evaluating existing resources related to how lawyers can use technology and attempt to simplify the resources where possible.

Internal consultations are under way within the Policy, Trust Assurance, Discipline, and Professional Regulation departments to discuss the issues raised in the first two bullets and to assess whether there are methods that exist through which to accomplish those outcomes. These will be informed by an analysis with regard to the principles described in the first recommendation. Given the existence of the Federation's Model Rules relating to client identification and verification, it is anticipated that consultation with that group will also be necessary to determine whether, and if so, how, national considerations can be accommodated.

With respect to practice fees, a survey is being prepared for circulation within the profession to obtain relevant information relating to incomes in order to inform any policy decisions that may be made in this matter.

With respect to the final bullet, work has yet to commence on that initiative.

MDL/al