The Law Society of British Columbia

Agenda

Benchers

Date:	Friday, December 2, 2022
Time:	**8:00 am – Breakfast** **9:00 am - Call to order** ***For those attending virtually, please join the meeting anytime from 8:30 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 as a hybrid meeting. If you would like to attend the meeting as a virtual attendee, 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 November 4, 2022 meeting (regular session)		
2	Minutes of November 4, 2022 meeting (*in camera* session)		
3	External Appointment: Land Title and Survey Authority		
4	Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)		
5	Rule Amendments: Superior Courts Clerkship Program		

REPORTS

6	President's Report	20 min	Lisa Hamilton, KC
7	CEO's Report • Strategic Plan Update	20 min	Don Avison, KC

The Law Society of British Columbia

Agenda

DISCUSSION/DECISION			
8	Unmet and Underserved Legal Needs	30 min	Lisa Dumbrell
9	Bencher, Committee and Tribunal Compensation Review	15 min	Don Avison, KC
10	Finance & Audit Committee: 2022 Enterprise Risk Management Plan – Update	15 min	Jeevyn Dhaliwal, KC Don Avison, KC Jeanette McPhee
11	Single Legal Regulator	30 min	Lisa Hamilton, KC
UPDATES			
12	Report on Outstanding Hearing & Review Decisions (*Materials to be circulated at the meeting*)	1 min	Christopher McPherson, KC
FOR INFORMATION			
13	Year-end Advisory Committee Reports		
14	External Appointments: Law Foundation of BC		
15	External Appointment: CBABC Provincial Council		
16	Three Month Bencher Calendar – December 2022 to February 2023		
IN CAMERA			
17	Other Business		

The Law Society of British Columbia

Minutes

Benchers

Date:	Friday, November 04, 2022	
Present:	Lisa Hamilton KC, President	Steven McKoen, KC
	Christopher McPherson, KC, 1st Vice-President	Jacqueline McQueen, KC
	Jeevyn Dhaliwal, KC, 2nd Vice-President	Paul Pearson
	Paul Barnett	Georges Rivard
	Kim Carter	Michèle Ross
	Tanya Chamberlain	Kelly H. Russ
	Jennifer Chow, KC	Gurminder Sandhu
	Cheryl S. D'Sa	Barbara Stanley, KC
	Lisa Dumbrell	Natasha Tony
	Brian Dybwad	Michael Welsh, KC
	Brook Greenberg, KC	Kevin B. Westell
	Katrina Harry	Sarah Westwood
	Sasha Hobbs	Guangbin Yan
	Lindsay R. LeBlanc	Gaynor C. Yeung
	Dr. Jan Lindsay	
Unable to Attend:	Geoffrey McDonald	Thomas L. Spraggs
Staff:	Don Avison, KC	Alison Kirby
	Avalon Bourne	Michael Lucas, KC
	Barbara Buchanan, KC	Alison Luke
	Jennifer Chan	Claire Marchant
	Lance Cooke	Jeanette McPhee
	Natasha Dookie	Cary Ann Moore
	Su Forbes, KC	Doug Munro
	Andrea Hilland, KC	Lesley Small
	Kerryn Holt	Adam Whitcombe, KC
	Jeffrey Hoskins, KC	

Guests:	Tobi Adebowale	Scholarship for Graduate Legal Studies Recipient Guest
	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, KC	President, Canadian Bar Association, BC Branch
	Pinder K. Cheema, KC	Law Society of BC Representative on the Federation Council
	Dr. Cristie Ford	Professor, Allard School of Law
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Oludolapo Makinde	Scholarship for Graduate Legal Studies Recipient
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Daleen Millard	Dean of Law, Thompson Rivers University
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Lana Walker	Assistant Dean, Thompson Rivers University
	Jaxxen Wylie	Indigenous Scholarship Co-Recipient

RECOGNITION

1. Presentation of Law Society Indigenous Scholarship Co-Recipients

President Hamilton introduced and congratulated one of the co-recipients of the 2022 Law Society Indigenous Scholarship, Jaxxen Wylie.

2. Presentation of Law Society Scholarship for Graduate Legal Studies Recipient

President Hamilton introduced and congratulated the recipient of the 2022 Law Society Scholarship for Graduate Legal Studies, Oludolapo Makinde.

CONSENT AGENDA

3. Minutes of September 23, 2022, meeting (regular session)

The minutes of the meeting held on September 23, 2022 were approved unanimously and by consent as circulated.

4. Minutes of September 23, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on September 23, 2022 were approved unanimously and by consent as circulated.

5. 2023 Fee Schedules

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2023, as follows:

1. ***In Schedule 1, by striking "***$2,289.00***" at the end of item A 1 and substituting "***$2,303.00***";***

2. ***In Schedule 2, by revising the prorated figures in the columns headed "***Practice fee***" accordingly; and***

3. ***In the headings of schedules 1, 2 and 3, by striking the year "***2022***" and substituting "***2023***".***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

6. Retired Member Fee Waiver Request

The following resolution was passed unanimously and by consent:

> **BE IT RESOLVED** that the retired member's request for a waiver of the retired member fee be approved for 2023.

REPORTS

7. President's Report

President Lisa Hamilton, KC confirmed that no conflicts of interest had been declared.

Ms. Hamilton began her report by acknowledging Pinder Cheema, KC's last Bencher meeting as the Law Society's representative on the Federation of Law Societies Council. Ms. Hamilton thanked Ms. Cheema for her many years of service in this role.

Ms. Hamilton provided an overview of recent meetings and events she had attended since the last Bencher meeting, including a workshop held by the Health and Justice alliance to come up with projects to help families going through family law matters; the CBABC Provincial Council meeting on October 1 at which there was a great deal of discussion regarding the Ministry's Intentions Paper; the Vancouver Bar Association's annual Judge's Luncheon on October 4 to recognize new and retiring judges; a similar event on October 25 held by the New Westminster Bar Association; and opening of the Rise Women's Legal Centre office. She mentioned Rise's One Billable Hour Campaign, which encourages lawyers to donate the equivalent of one billable hour to help support the provision of Rise's services. Ms. Hamilton also spoke about the Federation Conference, which took place from October 11 to 14, and the presentation put on by herself and Don Avison, KC regarding the Ministry's intention to establish a single legal regulator. Ms. Hamilton indicated that discussions were ongoing between the Federation and the Law Society regarding the possibility of the Federation submitting a response to the Ministry's Intentions Paper.

Ms. Hamilton then provided an overview of the International Bar Association conference, which she was currently attending with Mr. Avison. She spoke about the conference's opening ceremony, which had included an address from the President of Ukraine. She then spoke about the many thought provoking sessions she had attended, including those focused on threats to the rule of law and the independence of the bar across the world and the increase of threats to the judiciary in the United States and other countries. Ms. Hamilton spoke about the importance of upholding the rule of law, particularly within the current climate of instability both in Canada and abroad. She indicated that she would share her notes and other materials from the sessions with Benchers.

Ms. Hamilton spoke about her recent engagement activities related to the Ministry's intention to establish a single legal regulator, including meeting with the managing partners of the large law firms, meeting with the Federation of Asian Canadian lawyers, Vancouver Bar Association, and the BC Paralegal Association. She indicated that the discussions had focused on the importance of the independence of the profession and regulator. Ms. Hamilton also provided an overview of upcoming engagement activities, including possible engagement with the South Asian Bar Association, and meeting with the Attorney General on November 17.

Ms. Hamilton then provided an update on current engagement regarding the Ministry's intention to establish a single legal regulator. She indicated that Benchers would be discussing the Law Society's response to the Ministry's intentions paper *in camera*, which would be made public once finalized. Based on Benchers' discussions to date regarding this matter, Ms. Hamilton indicated that she was of the opinion that the response would likely include concerns regarding the maintenance of the independence of the bar and the regulator, including how the composition of the board contributes to independence, as well as the importance of maintaining the current level of diversity on the board. Ms. Hamilton expressed her view that any significant reduction in the size of the board would affect diversity, and she spoke about how proud she was that the Law Society had achieved such a diverse board.

Ms. Hamilton then invited Brook Greenberg, KC to provide an update regarding the National Wellness Study conducted jointly by the Université de Sherbrooke and the Canadian Bar Association. Mr. Greenberg provided a brief overview of the findings of the study, and indicated that the report of the findings does not contain any recommendations. He indicated that the recommendations would come at a later date following review of the findings. Mr. Greenberg informed Benchers that phase two of the study would occur in 2023 and would involve a series of subjective interviews. He then spoke about the initial findings of the study, and noted that a great deal of work would be needed to reduce the perceived stigma of mental health. Mr. Greenberg concluded his remarks with a recommendation that the Mental Health Task Force and the Truth and Reconciliation Advisory Committee also develop recommendations based on the findings of the report to help with the continued raising of awareness of these matters.

8. CEO's Report

Don Avison, KC began his report with an update on recent political developments in BC, by noting that David Eby, KC would become the premier of BC, once the current premier, John Horgan steps down later this year. He informed Benchers that Mr. Eby's transition team would include Shannon Salter as Deputy Minister to the Premier, with Barbara Carmichael, KC taking over as Acting Deputy Attorney General. Mr. Avison indicated there would likely be continued interactions with Ms. Salter regarding Ministry's intention to establish a single legal regulator, and that a meeting had been organized with the Attorney General on November 17.

Mr. Avison then updated Benchers on recent conferences in which the Law Society had taken part, including the Federation conference, which had included a session on the proposed establishment of a single legal regulator in BC and the International Bar Association conference, which included a session regarding corporate structures and anti-money laundering initiatives. Mr. Avison indicated that Frederica Wilson, Executive Director, Policy and Public Affairs, and Deputy Chief Executive Officer of the Federation had provided helpful comments during this session regarding the work the Federation has done to combat money laundering. Mr. Avison also provided an overview of the session regarding the Innovation Sandbox, in which he had been involved, as well as an overview of the International Conference of Legal Regulators, which was hosted by the Illinois State Bar and provided many opportunities to hear about a number of regulatory matters, particularly alternative business structures. Mr. Avison indicated that he would provide Benchers with the presentations that he made at the International Bar Association conference and the International Conference of Legal Regulators regarding the Innovation Sandbox.

Mr. Avison spoke about the Law Society's recent compensation review, which was undertaken by Watson Advisors. He indicated that some modest changes would be proposed at the December Bencher meeting, particularly in regard to compensation for publicly appointed Benchers.

Chris McPherson, KC provided some additional comments regarding the breakout sessions he had attended at the International Conference of Legal Regulators, including those focused on what it means to be an ethical lawyers in the 21st century, the role of data in legal services regulation, and the role of the regulator in terms of wellness.

UPDATES

9. Financial Report - 2022 - Q3 and Forecast

Jeevyn Dhaliwal, KC introduced the item. She indicated that the financial forecast appeared to be on track for 2022 to end positively. Ms. McPhee provided an overview of the financial results and highlights to the end of September 2022. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which was due to increased revenues, along with lower operating expenses due to a combination of permanent variances and timing differences. Ms. McPhee also provided an overview of forecasted 2022 year-end results, and noted that revenue was projected to be ahead of budget due primarily to a higher number of practising lawyers, along with increased electronic filing revenues, PLTC fees, and interest income. Ms. McPhee also noted that operating expenses were projected to be slightly under budget due to savings in meeting and travel expenses, the delivery of the PTLC program virtually, and other savings. Ms. McPhee concluded her remarks with an overview of the Law Society's investment portfolio. She also noted an error in financial report included in the agenda package, and indicated that the

benchmark for the 2022 Lawyers Indemnity Fund long term investments should be -6.2%, not -7.56%.

10. Report on Outstanding Hearing & Review Decisions

Christopher McPherson, KC, as Tribunal Chair, 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.

Other Business

Sasha Hobbs, in her capacity as a publicly appointed Bencher, expressed her support for a larger board of the regulator that represents the diversity of the public. She indicated that having a diverse board that represents and reflects different perspectives, particularly those of Indigenous peoples, provides value in a way that is not achievable with a much smaller board. Ms. Hobbs spoke about how the law touches on all parts of society, and the importance of recognizing Indigenous peoples significant understanding of this. She also spoke about the importance of having a strong legal presence on the board as well as having diverse representation.

FOR INFORMATION

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

There was no discussion on this item.

12. 2023 Executive Committee and Bencher Meeting Dates

There was no discussion on this item.

13. Three Month Bencher Calendar – November 2022 to January 2023

There was no discussion on this item.

The Benchers then commenced the *in camera* portion of the meeting.

AB
2022-11-23

The Law Society of British Columbia

Memo

To:	Benchers
From:	Finance and Audit Committee
Date:	November 7, 2022
Subject:	Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)

Background

The Finance and Audit Committee (FAC), management, and Law Society independent investment advisors, George & Bell, undertook the triennial review of the Law Society Statement of Investment Policies and Procedures (SIPP).

The changes recommended in this triennial review are relatively routine, except for the change related to the introduction of policy wording around Responsible Investing and Environmental, Social and Governance (ESG) matters. The committee believes it is important to have the investment managers recognize the importance of addressing and reporting on ESG matters.

Based on this review, the following changes are recommended:

A) **Introduction of Policy Wording on ESG Considerations and Responsible Investing** – Section 4.4 has been added, addressing these matters in 3 areas:

   i. Risk Consideration – Subsection 4.4(a) provides a principles-based overview of the Law Society's and the investment manager's acknowledgement of the importance of, and requirement for, considering ESG matters, along with other risks, as part of the investment decision process;

   ii. Proxy Voting – Subsection 4.4(b) strengthens the policy wording with respect to proxy voting, which remains delegated to investment managers. This section includes the expectation that voting should support best practices in corporate governance and social responsibility, and require managers to report to the Law Society on votes exercised with related commentary; and

   iii. Reporting – Managers are already expected to report to the Law Society regularly, but Subsection 4(c) adds a specific requirement for an annual summary of actions taken with respect to ESG matters or related initiatives.

B) **Infrastructure Transition** – Section 5 of the SIPP has been amended to remove wording that is no longer needed, as the transition to infrastructure funds is now complete.

C) **Investment Restrictions Review** – The provisions of Section 7 of the SIPP, which include investment restrictions for the fund, have been reviewed with Fiera (the fund's balanced mandate manager). As a result, minor revisions to the section are being proposed. The changes proposed primarily address minor breaches to the SIPP that have been identified in recent quarterly performance reports (e.g. the global equity portfolio has become somewhat more concentrated over time, and the allocation to US equities has also increased, relatively in line with the increase in market capitalization of the US relative to other global regions). Note that exact consistency with Fiera's policies is not necessary, nor has it been incorporated, as Section 1.3 of the SIPP allows a pooled fund manager to follow its own policies. Nonetheless, it is good practice to review any differences periodically.

D) **Administrative Items** – A few minor administrative revisions have also been proposed throughout the document, such as the removal of the references to the Captive Insurance Company Account that is no longer in place, and updates to benchmark names since the last SIPP review.

The above-noted changes, have been incorporated into the SIPP (see attached red-lined and clean versions).

Recommendation

The Finance and Audit Committee recommends the following Bencher resolution:

BE IT RESOLVED: To adopt the attached 'Statement of Investment Policies and Procedures' which replaces Appendix 1 - Investment Guidelines of the Bencher Governance Policies.

Appendix 1 – Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: November 2001

Revised: July 2005

Revised: April 2009

Revised: March 2010

Revised: June 2015

Revised: December 2019

Revised: December 2022

Table of Contents

1. General

1.1 Application

These investment guidelines ("Investment Guidelines") apply to the investment funds (the "Funds") owned and controlled by the Law Society of British Columbia (the "Law Society") for which the Law Society has retained external investment management.

An investment manager providing services in connection with the Law Society's investment assets must adhere to these guidelines.

1.2 Compliance

All Funds will be managed in accordance with all applicable legal requirements notwithstanding any indication to the contrary which may be construed from these guidelines.

All investment activities by the investment managers will be made in accordance within the scope of the Code of Ethics and Standards of Practice of the CFA Institute and the Code of Ethics established by the investment management firms retained to manage the Fund assets.

1.3 Pooled Funds

Pooled funds are managed under guidelines established by the investment manager for each pooled fund approved for use within the Investment Guidelines. It is recognized that from time to time, when pooled funds are used, it may not be entirely possible to maintain complete adherence to the Investment Guidelines. However, the investment manager is expected to advise the Finance Committee if a pooled fund exhibits, or may exhibit, any significant departure from the Investment Guidelines. The Finance Committee may accept the non-compliance, or take such further action as may be required, and the Finance Committee shall report any such action to the Benchers on a quarterly basis.

1.4 Effective Date

A reasonable transition period is expected to bring assets, now subject to these Investment Guidelines, into compliance.

2. Responsibilities

2.1 Plan Administration

The Benchers have the sole power to amend or terminate the application of the Investment Guidelines.

2.2 Delegation

The Benchers may delegate all of their responsibilities related to the Investment Guidelines, except for changes to these Investment Guidelines, to a Committee, to Law Society staff or to investment managers.

2.3 Investment Managers

The investment managers are responsible for:

- Selecting securities within the asset classes assigned to them, and the mix of asset classes, subject to applicable legislation and the constraints set out in these Guidelines;
- Providing the Law Society with a monthly report of portfolio holdings;
- Providing the Law Society with a quarterly compliance report and a review of investment performance and future strategies;
- Providing the Law Society with an annual summary of actions taken and key relevant metrics related to environmental, social and governance matters or related initiatives;
- Attending meetings at the Law Society at least once per year, at the discretion of the Law Society, to review performance and to discuss investment strategies;
- Informing the Law Society promptly of any investments which do not comply with these guidelines and what actions will be taken to remedy this situation; and
- Advising the Law Society of any element of these Guidelines that could prevent attainment of the Law Society's investment objectives.

2.4 Standard of Care

In exercising their responsibilities the Benchers, Committees, and Law Society staff shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

In exercising their responsibilities, the investment managers, as persons who possess, or because of their profession, business or calling, ought to possess, a particular level of knowledge or relevant skill, shall apply that particular knowledge to the administration of these guidelines.

3. Account Management

3.1 Overview of Accounts

The Law Society maintains several investment accounts for which different portions of the Investment Guidelines have application.

3.2 Lawyers Indemnityfication Fund - LT Account

The Lawyers Indemnification Fund - LT Account is subject to all of the provisions of the Investment Guidelines.

3.3 Unclaimed Trust Funds Account

The Unclaimed Trust Funds Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.0% per year for short term and 3.0% per year for fixed income
- the Benchmark Portfolio shall consist of short term or fixed income investments in any combination, totalling 100%.

~~### 3.4 Captive Insurance Company Account~~

~~The Captive Insurance Company Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:~~

- ~~the investment objective is to earn a rate of return of 1.0% per year~~
- ~~the Benchmark Portfolio shall consist of 100% short term investments.~~

3.~~4~~5 Lawyers Indemnityfication Fund - ST Account

The Lawyers Indemnityification Fund – ST Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

4. Fund Objectives

4.1 Investment Philosophy

The overall investment philosophy of the Funds is to maximize the long-term real rate of return subject to an acceptable degree of risk.

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period 2020 to 2029, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

The Law Society's long-term funding requirements and relatively low requirement for asset liquidity dictate a moderate risk portfolio with a mix of fixed income, equity, real estate, mortgages and infrastructure. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

4.3 Investment Constraints

a. Time Horizon: The portfolio has a long-term time horizon.
b. Liquidity Requirements: Liquidity requirements are expected to be low.
c. Tax Considerations: The Law Society is a non-taxable entity.
d. Legal and Regulatory Considerations: Other than regulations governing the tax-exempt status of the Society, there are no legal constraints on the portfolio outside the provisions of the Legal Profession Act.
e. The Law Society has no unique preferences in regard to its investment approach.

4.4. Environmental, Social and Governance Considerations

a. Risk Consideration

The Law Society recognizes that environmental, social, and governance (ESG) issues may have an impact on the performance of investment portfolios. As a result, the Law Society will consider ESG risks alongside financial, economic, and other risks as part of the investment decision-making process. Key components of ESG activities include, but are not limited to:

- Ensuring that investment managers incorporate ESG issues into investment analysis and decision-making processes and follow the United Nations-supported Principles for Responsible Investment;
- Receiving regular reporting on ESG issues from the investment managers; and
- Exercising the Law Society's rights and influence as an investor to support improvements in ESG performance across asset classes

b. Proxy Voting Rights

~~8.3 Proxy Voting Rights~~

Proxy voting rights on securities held are delegated to the investment manager;~~.~~

- The investment managers are expected to vote in a manner consistent with applicable duties of loyalty and care and that supports implementation of current best practices in corporate governance and social responsibility; and
- The investment managers shall maintain~~s~~ a record of how voting rights of securities in each fund were exercised, and will provide a summary of the votes to the Law Society in its annual summary.

c. Reporting Requirements

- Investment managers will be required to report to the Law Society at least annually regarding actions taken and relevant metrics with respect to ESG matters or initiatives.

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

The Benchmark Portfolio is the portfolio consisting of specified asset class indices combined in specified percentages that is intended to meet the investment objectives. The Law Society has established the following Benchmark Portfolio that is expected to achieve the investment objectives. Each asset class shall be maintained within the minimum and maximum, as set out below.

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	5%	10%	15%
Foreign Equities	MSCI-World Index (CAD)	15%	20%	25%
Total Equities		**20%**	**30%**	**40%**
Bonds	FTSE ~~TMX~~ Canada Universe Bond Index	5%	10%	15%
Cash and Short Term	FTSE ~~TMX~~ Canada 91-Day Treasury Bill Index	0%	0%	5%
Mortgages	FTSE ~~TMX~~ Canada Short Term Bond Index + 1%	18%	20%	22%
Real Estate	Absolute Return (net of fees) of 6% per annum	8%	10%	12%
Infrastructure	Absolute Return (net of fees) of 8% per annum	25%	30%	35%

~~The Infrastructure allocation is in the process of being funded. Until the Infrastructure allocation reaches the minimum allocation of 25% of assets:~~

~~The minimum allocation to Infrastructure shall not apply,~~

~~The difference between the benchmark weight to Infrastructure (30% of assets) and the actual allocation to infrastructure will be invested as follows: 50% in Bonds, 16.7% in Canadian Equities and 33.3% in Foreign Equities, and~~

~~The maximum allocations to Bonds, Canadian Equities and Foreign Equities shall not apply if a breach is caused by the transition.~~

5.2 Investment Management Structure

As of approximately January 2020, the long-term structure of the Funds will be as follows:

	Asset Class Percentages (market value)		
Manager	**Minimum**	**Benchmark**	**Maximum**
Balanced Manager	35%	40%	45%
Real Estate .Manager	8%	10%	12%
Mortgage Manager	18%	20%	22%
Infrastructure Manager 1	12.5%	15%	17.5%
Infrastructure Manager 2	12.5%	15%	17.5%

~~The Infrastructure allocation is in the process of being funded. Until the Infrastructure allocation reaches 12.5% of assets to each Infrastructure Manager:~~

- ~~The minimum allocation to each of the Infrastructure Managers shall not apply,~~
- ~~The difference between the benchmark weight to the Infrastructure Managers (30% of assets) and the actual allocation to infrastructure will be invested as follows: 66.7% with the Balanced Manager and 33.3% in a temporary bond mandate managed by the Balanced Manager,~~
- ~~Investments in an Infrastructure Manager shall be funded by withdrawing 66.7% of the investment from the Balanced Manager and 33.3% from the temporary bond mandate managed by the Balanced Manager, and~~

- ~~The maximum allocations to the Balanced Manager shall not apply if a breach is caused by the transition.~~

a. Balanced Manager's Asset Mix

The Balanced Manager shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	20%	25%	30%
Foreign Equities	MSCI-World Index (CAD)	45%	50%	55%
Total Equities		**65%**	**75%**	**85%**
Bonds	FTSE ~~TMX~~ Canada Universe Bond Index	15%	25%	35%
Cash and Short Term	FTSE ~~TMX~~ Canada 91-Day Treasury Bill Index	0%	0%	10%

b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

d. Infrastructure Managers' Asset Mix

Each Infrastructure Manager shall invest its assets in an Infrastructure Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Manager

The Balanced Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the Balanced Benchmark Portfolio over that period, plus 1%.

b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 6% per annum.

c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE ~~TMX~~ Canada Short Term Bond Index + 1%.

d. Infrastructure Managers

The Infrastructure Managers' target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 8% per annum.

5.4 Active Asset Mix Management

The Balanced Manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.2a.

5.5 Re-Balancing

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

Common and preferred stocks, income trusts, debt securities that are convertible into equity securities, rights and warrants.

b. Foreign Equities:

- Common and preferred stocks, depository receipts, debt securities that are convertible into equity securities, rights, warrants; any of which may be denominated in foreign currency

c. Short-term instruments, subject to limitations in Section 7.3:

- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury Bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issued by banks and insurance and trust companies

d. Fixed Income instruments, subject to limitations in Section 7.3:

- Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian federal, provincial and municipal governments and agencies, Canadian corporations, non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
- Private Placements;
- Debentures (convertible and non-convertible);
- Mortgages, mortgage-backed securities; and
- Any other securities with debt-like characteristics that are constituents of the FTSE TMX Canada Universe Bond Index.

e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.

f. Infrastructure investments made either through closed or open-ended pooled funds (including limited partnerships).

g. Pooled funds and closed-end investment companies in any or all of the above permitted investment categories are allowed.

6.2 Derivatives

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

6.3 Prohibited Transactions

Investment managers will not engage in the following unless first permitted in writing by the Benchers:

- Purchase of securities on margin;
- Loans to individuals;
- Short sales; and
- Investments in venture capital, resource properties, hedge funds and commodity funds.

6.4 Securities Lending

Securities lending is permitted only in pooled funds, and only if the investment manager has disclosed to the Law Society the terms and conditions that apply to securities lending within each pooled fund.

7. Investment Restrictions

7.1 Canadian Equities

a. No more than 10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.

b. At any given time, a Canadian equity portfolio is expected to be invested in no less than seven ~~sub~~sectors of the S&P/TSX Composite Index. The market value~~portion~~ of a Canadian equity portfolio invested in a ~~sub~~sector shall not exceed the lesser of 40% or the ~~sub~~sector weight of the index plus 10%.

c. No more than 1~~5~~0% of the market value of the assets of the Canadian equity portfolio may be invested in companies with a capitalization of less than $1.5 billion.

d. The 10 largest stocks by market capitalization of a Canadian equity portfolio may not account for more than 50% of the market value of the assets of that equity portfolio.

7.2 Foreign Equities

a. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.

b. No more than 30% of the market value of the assets of a foreign equity portfolio may be invested in a single country, except the United States, and no more than 15% of the market value of the assets may be invested in Emerging Markets.

c. No more than ~~6~~70% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

~~b.~~d. At any given time, a foreign equity portfolio is expected to be invested in no less than six sectors of the MSCI World Index (as defined by the Global Industry Classification Standard (GICS)). The market value of a foreign equity portfolio invested in a sector is limited to the sector weight of the MSCI World Index plus or minus 20%.

~~d~~e. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in companies with a capitalization of less than $2 billion.

f~~e~~. The 10 largest stocks by market capitalization may not account for more than 5~~4~~0% of the market value of the assets of the foreign equity portfolio.

7.3 Fixed Income, including Short-Term Securities

a. No more than 15% of a fixed income portfolio shall be invested in debt securities ~~bonds~~ with a BBB rating. Short-term and fixed income instruments rated below BBB are not permitted.

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 7550% for Provincial bonds with a maximum of 40% in a single province ~~A-rated or higher~~, 20% for Municipalities and government-backed bonds, 50% for Corporate bonds, 2015% for investment-grade asset-backed securities including mortgage-backed securities ~~of which 10% will be rated at least A~~, 105% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to FTSE index's methodology of credit rating categories or any equivalent credit rating. ~~the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poor's or Moody's. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.~~

d. No more than 10% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies).

e. Private Placements are permitted subject to the following conditions:

i. The restrictions and limitations identified in the Investment Guidelines for publicly traded securities must be adhered to,

ii. Maximum 3% of the market value of any one private placement,

iii. Sufficient liquidity to ensure the sale of the private placement in a reasonable time and a reasonable price.

f. The minimum rating for short-term securities is R1 (low).

8. Other Matters

8.1 Valuation of Investments

a. Investments in publicly traded securities shall be valued no less frequently than monthly at their market value.

b. Investments in pooled funds comprising of publicly traded securities shall be valued according to the unit values published at least monthly by the investment manager.

c. If a market valuation of the investment is not readily available, then the investment manager shall determine a fair value. For each such non-traded investment, an estimate of fair value shall be provided by the investment manager quarterly. In all cases, the methodology should be applied consistently over time.

d. The Benchers shall be provided with a qualified independent appraiser's evaluation of all such non-traded investments not less frequently than every three years, or annually where the investments represent more than 2% of the invested assets.

8.2 Conflict of Interest

a. It is a conflict of interest for anyone with authority or control over the invested assets to have an interest in the invested assets of sufficient substance and proximity to impair their ability to render unbiased advice or to make unbiased decisions affecting the investments.

b. Anyone who has a potential or actual conflict of interest as defined in section 8.2.a must disclose it as soon as possible to the President who, in turn, shall disclose it all to the Benchers at an appropriate time.

~~**8.3 Proxy Voting Rights**~~

~~a. Proxy voting rights on securities held are delegated to the investment manager.~~

~~b.a. The investment manager maintains a record of how voting rights of securities in each fund were exercised.~~

9. Monitoring

9.1 Monthly Investment Reports

Each month, each investment manager, other than the Infrastructure Managers, will provide an investment report containing the following information:

a. Portfolio holdings at the end of the month;

b. Portfolio transactions during the month;

c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and

d. Commentary on any material changes with the investment manager.

9.2 Quarterly Investment Reports

At the end of each calendar quarter, each investment manager will provide an investment report containing the following information:

a. Rates of return for the portfolio and each asset class;

b. The rate of return of the Benchmark Portfolio;

c. Details of all asset-backed securities held;

d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and

e. A commentary on the markets including market outlook and management strategy.

9.3 Quarterly Compliance Reports

Each investment manager will provide the Law Society with a report at the end of each quarter. Such report will contain:

a. Confirmation that each pooled fund managed by the investment manager complies with the Investment Guidelines established by the investment manager, and, if not, an explanation of the areas of non-compliance and the plan by the investment manager to put the pooled fund into compliance;

b. Confirmation that each pooled fund managed by the investment manager agrees with these Investment Guidelines, and, if not, an explanation of the areas of non-compliance; and

c. Confirmation that the Funds have been managed in accordance with these Investment Guidelines.

Notwithstanding the above, it is acceptable for the infrastructure managers to provide a compliance statement annually, or upon request, that confirms the manager is in compliance with its pooled investment vehicle or similar policy or agreement, provided that the investment vehicle's investments constitute authorized investments as defined in Section 6 of these guidelines and the investment vehicle's own investment policy agreement

9.4 Meetings with the Law Society

Each investment manager will meet at least once per year with the Law Society. At these meetings, the investment manager will:

a. Review the rate of return achieved by the funds;

b. Review capital market performance and expectations of future returns;

c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;

~~c.~~d. Report on actions taken with respect to environmental, social and governance matters or related initiatives and key relevant metrics;

~~d.~~e. Provide any information concerning new developments affecting the firm and its services; and

~~e.~~f. Comment on the continued appropriateness of the Investment Guidelines.

10. Investment Guidelines Review

10.1 Review

The Investment Guidelines will be reviewed within three years of each previous review.

10.2 Material Changes

Material changes in the following areas may require a need for a revision of the Investment Guidelines:

a. Long-term risk/return/correlation tradeoffs in capital markets;
b. Risk tolerance of the Benchers;
c. Legislation or regulation; and
d. Shortcomings of the Investment Guidelines that emerge in its practical application or significant modifications that are recommended to the Benchers by the investment managers
e. Change in objectives and/or constraints of the funds.

11. Investment Guidelines Approval

The Benchers ~~have~~ approved the Investment Guidelines originally at the Benchers meeting in November 2001 and have approved updated versions in July 2005, April 2009, March 2010, June 2015, ~~and~~ December 2019 and December 2022.

Appendix 1 – Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: November 2001

Revised: July 2005

Revised: April 2009

Revised: March 2010

Revised: June 2015

Revised: December 2019

Revised: December 2022

Table of Contents

1. General

1.1 Application

These investment guidelines ("Investment Guidelines") apply to the investment funds (the "Funds") owned and controlled by the Law Society of British Columbia (the "Law Society") for which the Law Society has retained external investment management.

An investment manager providing services in connection with the Law Society's investment assets must adhere to these guidelines.

1.2 Compliance

All Funds will be managed in accordance with all applicable legal requirements notwithstanding any indication to the contrary which may be construed from these guidelines.

All investment activities by the investment managers will be made in accordance within the scope of the Code of Ethics and Standards of Practice of the CFA Institute and the Code of Ethics established by the investment management firms retained to manage the Fund assets.

1.3 Pooled Funds

Pooled funds are managed under guidelines established by the investment manager for each pooled fund approved for use within the Investment Guidelines. It is recognized that from time to time, when pooled funds are used, it may not be entirely possible to maintain complete adherence to the Investment Guidelines. However, the investment manager is expected to advise the Finance Committee if a pooled fund exhibits, or may exhibit, any significant departure from the Investment Guidelines. The Finance Committee may accept the non-compliance, or take such further action as may be required, and the Finance Committee shall report any such action to the Benchers on a quarterly basis.

1.4 Effective Date

A reasonable transition period is expected to bring assets, now subject to these Investment Guidelines, into compliance.

2. Responsibilities

2.1 Plan Administration

The Benchers have the sole power to amend or terminate the application of the Investment Guidelines.

2.2 Delegation

The Benchers may delegate all of their responsibilities related to the Investment Guidelines, except for changes to these Investment Guidelines, to a Committee, to Law Society staff or to investment managers.

2.3 Investment Managers

The investment managers are responsible for:

- Selecting securities within the asset classes assigned to them, and the mix of asset classes, subject to applicable legislation and the constraints set out in these Guidelines;
- Providing the Law Society with a monthly report of portfolio holdings;
- Providing the Law Society with a quarterly compliance report and a review of investment performance and future strategies;
- Providing the Law Society with an annual summary of actions taken and key relevant metrics related to environmental, social and governance matters or related initiatives;
- Attending meetings at the Law Society at least once per year, at the discretion of the Law Society, to review performance and to discuss investment strategies;
- Informing the Law Society promptly of any investments which do not comply with these guidelines and what actions will be taken to remedy this situation; and
- Advising the Law Society of any element of these Guidelines that could prevent attainment of the Law Society's investment objectives.

2.4 Standard of Care

In exercising their responsibilities the Benchers, Committees, and Law Society staff shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

In exercising their responsibilities, the investment managers, as persons who possess, or because of their profession, business or calling, ought to possess, a particular level of knowledge or relevant skill, shall apply that particular knowledge to the administration of these guidelines.

3. Account Management

3.1 Overview of Accounts

The Law Society maintains several investment accounts for which different portions of the Investment Guidelines have application.

3.2 Lawyers Indemnity Fund - LT Account

The Lawyers Indemnification Fund - LT Account is subject to all of the provisions of the Investment Guidelines.

3.3 Unclaimed Trust Funds Account

The Unclaimed Trust Funds Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.0% per year for short term and 3.0% per year for fixed income
- the Benchmark Portfolio shall consist of short term or fixed income investments in any combination, totalling 100%.

3.4 Lawyers Indemnity Fund - ST Account

The Lawyers Indemnity Fund – ST Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

4. Fund Objectives

4.1 Investment Philosophy

The overall investment philosophy of the Funds is to maximize the long-term real rate of return subject to an acceptable degree of risk.

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period 2020 to 2029, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

The Law Society's long-term funding requirements and relatively low requirement for asset liquidity dictate a moderate risk portfolio with a mix of fixed income, equity, real estate, mortgages and infrastructure. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

4.3 Investment Constraints

a. Time Horizon: The portfolio has a long-term time horizon.
b. Liquidity Requirements: Liquidity requirements are expected to be low.
c. Tax Considerations: The Law Society is a non-taxable entity.
d. Legal and Regulatory Considerations: Other than regulations governing the tax-exempt status of the Society, there are no legal constraints on the portfolio outside the provisions of the Legal Profession Act.
e. The Law Society has no unique preferences in regard to its investment approach.

4.4. Environmental, Social and Governance Considerations

a. Risk Consideration

The Law Society recognizes that environmental, social, and governance (ESG) issues may have an impact on the performance of investment portfolios. As a result, the Law Society will consider ESG risks alongside financial, economic, and other risks as part of the investment decision-making process. Key components of ESG activities include, but are not limited to:

- Ensuring that investment managers incorporate ESG issues into investment analysis and decision-making processes and follow the United Nations-supported Principles for Responsible Investment;
- Receiving regular reporting on ESG issues from the investment managers; and
- Exercising the Law Society's rights and influence as an investor to support improvements in ESG performance across asset classes

b. Proxy Voting Rights

Proxy voting rights on securities held ar.e delegated to the investment manager;

- The investment managers are expected to vote in a manner consistent with applicable duties of loyalty and care and that supports implementation of current best practices in corporate governance and social responsibility; and
- The investment managers shall maintain a record of how voting rights of securities in each fund were exercised, and will provide a summary of the votes to the Law Society in its annual summary.

c. Reporting Requirements

- Investment managers will be required to report to the Law Society at least annually regarding actions taken and relevant metrics with respect to ESG matters or initiatives.

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

The Benchmark Portfolio is the portfolio consisting of specified asset class indices combined in specified percentages that is intended to meet the investment objectives. The Law Society has established the following Benchmark Portfolio that is expected to achieve the investment objectives. Each asset class shall be maintained within the minimum and maximum, as set out below.

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	5%	10%	15%
Foreign Equities	MSCI-World Index (CAD)	15%	20%	25%
Total Equities		**20%**	**30%**	**40%**
Bonds	FTSE Canada Universe Bond Index	5%	10%	15%
Cash and Short Term	FTSE Canada 91-Day Treasury Bill Index	0%	0%	5%
Mortgages	FTSE Canada Short Term Bond Index + 1%	18%	20%	22%
Real Estate	Absolute Return (net of fees) of 6% per annum	8%	10%	12%
Infrastructure	Absolute Return (net of fees) of 8% per annum	25%	30%	35%

5.2 Investment Management Structure

As of approximately January 2020, the long-term structure of the Funds will be as follows:

	Asset Class Percentages (market value)		
Manager	**Minimum**	**Benchmark**	**Maximum**
Balanced Manager	35%	40%	45%
Real Estate .Manager	8%	10%	12%
Mortgage Manager	18%	20%	22%
Infrastructure Manager 1	12.5%	15%	17.5%
Infrastructure Manager 2	12.5%	15%	17.5%

a. Balanced Manager's Asset Mix

The Balanced Manager shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	20%	25%	30%
Foreign Equities	MSCI-World Index (CAD)	45%	50%	55%
Total Equities		**65%**	**75%**	**85%**
Bonds	FTSE Canada Universe Bond Index	15%	25%	35%
Cash and Short Term	FTSE Canada 91-Day Treasury Bill Index	0%	0%	10%

b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

d. Infrastructure Managers' Asset Mix

Each Infrastructure Manager shall invest its assets in an Infrastructure Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Manager

The Balanced Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the Balanced Benchmark Portfolio over that period, plus 1%.

b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 6% per annum.

c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE Canada Short Term Bond Index + 1%.

d. Infrastructure Managers

The Infrastructure Managers' target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 8% per annum.

5.4 Active Asset Mix Management

The Balanced Manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.2a.

5.5 Re-Balancing

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

Common and preferred stocks, income trusts, debt securities that are convertible into equity securities, rights and warrants.

b. Foreign Equities:

- Common and preferred stocks, depository receipts, debt securities that are convertible into equity securities, rights, warrants; any of which may be denominated in foreign currency

c. Short-term instruments, subject to limitations in Section 7.3:

- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury Bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issued by banks and insurance and trust companies

d. Fixed Income instruments, subject to limitations in Section 7.3:

- Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian federal, provincial and municipal governments and agencies, Canadian corporations, non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
- Private Placements;
- Debentures (convertible and non-convertible);
- Mortgages, mortgage-backed securities; and
- Any other securities with debt-like characteristics that are constituents of the FTSE TMX Canada Universe Bond Index.

e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.

f. Infrastructure investments made either through closed or open-ended pooled funds (including limited partnerships).

g. Pooled funds and closed-end investment companies in any or all of the above permitted investment categories are allowed.

6.2 Derivatives

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

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Investment managers will not engage in the following unless first permitted in writing by the Benchers:

- Purchase of securities on margin;
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Securities lending is permitted only in pooled funds, and only if the investment manager has disclosed to the Law Society the terms and conditions that apply to securities lending within each pooled fund.

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a. No more than 10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.

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a. No more than 15% of a fixed income portfolio shall be invested in debt securities with a BBB rating. Short-term and fixed income instruments rated below BBB are not permitted.

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 75% for Provincial bonds with a maximum of 40% in a single province, 20% for Municipalities and government-backed bonds, 50% for Corporate bonds, 20% for investment-grade asset-backed securities including mortgage-backed securities, 10% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to FTSE index's methodology of credit rating categories or any equivalent credit rating.

d. No more than 10% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies).

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f. The minimum rating for short-term securities is R1 (low).

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8.1 Valuation of Investments

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a. Rates of return for the portfolio and each asset class;

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a. Review the rate of return achieved by the funds;

b. Review capital market performance and expectations of future returns;

c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;

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10. Investment Guidelines Review

10.1 Review

The Investment Guidelines will be reviewed within three years of each previous review.

10.2 Material Changes

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a. Long-term risk/return/correlation tradeoffs in capital markets;
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d. Shortcomings of the Investment Guidelines that emerge in its practical application or significant modifications that are recommended to the Benchers by the investment managers
e. Change in objectives and/or constraints of the funds.

11. Investment Guidelines Approval

The Benchers approved the Investment Guidelines originally at the Benchers meeting in November 2001 and have approved updated versions in July 2005, April 2009, March 2010, June 2015, December 2019 and December 2022.

The Law Society of British Columbia

Memo

To: Benchers
From: Staff
Date: December 2, 2022
Subject: Superior Courts Clerkship Program

Background

1. A decision, in principle, was made at the September 2021 Bencher meeting to approve accepting clerking with the Courts as an alternative pathway to licensing. In order to facilitate this decision, changes to the current rules and processes in relation to enrolment, and call and admission, needed to be made in consultation with the British Columbia Court of Appeal and the Supreme Court of British Columbia.

2. Those consultations have been carried out. Attached are draft rule amendments (redlined and clean versions) to implement the Benchers' approval in principle to amend the Law Society Rules to recognize that the completion of a judicial law clerkship fully satisfies the articling requirement for the purpose of admission to the bar.

Drafting Notes

3. The proposed amendments permit a law clerk to be called and admitted, if they chose, without articling at a law firm and are not intended to require that all law clerks must follow this alternate pathway to licensing. Law clerks who wish to complete a period of articles at a law firm, government body, or other organization, with a principal lawyer, will still be able to do so.

4. Accordingly, a definition of "clerkship term" has been added to the Rules. In addition, since there may now be instances where a "law clerk" is not also an "articled student" as defined, the term "law clerk" has been added to a number of applicable Rules under Division 2 – Admission and Reinstatement.

5. Rule 2-63(2) has been rescinded and 2-63(4) has been added. These changes will permit a law clerk to be called and admitted, if they chose, without articling at a law firm, providing they complete the required clerkship term.

6. Law clerks will continue to be required to complete PLTC successfully. As a result, Rules 2-72(2), 3(a) and (b), (4)(b)(i) and (ii), (5) and (7) as well as Rule 2-74(1), (2), (4) and 9(b) have been amended to recognize this requirement.

7. A law clerk who opts to proceed with the alternate pathway to call and admission and chooses not to complete a period of articles with a principal will no longer be required to enrol in the admission program as an articled student. As a result, Rule 2-76 and Rule 2-77 relating to call and admission have been amended accordingly.

8. Lastly, Schedule 1 – Law Society Fees and Assessments has been amended to recognize that law clerks will pay the same total fees as they do now. Currently, an articled student must pay a $275 fee for enrolment in the admission program and a $250 fee for call and admission to the bar for a total of $525. A law clerk who does not enrol in the admission program will pay $525 at the time they apply for call and admission to the bar.

Decision

A recommended resolution is attached.

LAW SOCIETY RULES

Definitions

1 In these rules, unless the context indicates otherwise:

"clerkship term" means the period during which a law clerk is employed to work for a judge, not including any period of vacation or leave of absence;

"law clerk" means a law clerk employed ~~by~~ to work for a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;

Referral to Credentials Committee

2-51 (1) The Executive Director may refer any matter for decision under this division to the Credentials Committee.

(2) At the written request of a lawyer, former lawyer, articled student, law clerk or applicant affected by a decision made by the Executive Director under this division, the Executive Director must refer the matter to the Credentials Committee.

(3) When the Executive Director refers a matter to the Credentials Committee under this rule, the Committee may make any decision open to the Executive Director under this division and may substitute its decision for that of the Executive Director.

Articling term

2-59 (1) Unless the articling period is changed under Rules 2-59 to 2-65, an articled student must work in the office of the student's principal for a period of not less than 9 months.

(2) Unless otherwise permitted in this division, the articling term must be continuous, except that this period may be interrupted by

(a) attendance at the training course,

(b) annual vacation of up to 10 working days at the discretion of the principal, or

(c) a leave of absence as permitted under Rule 2-69 *[Leave during articles]*.

(3) Any time taken for matters referred to in subrule (2) must not be included in the calculation of the articling term.

(4) Except in the case of an application made under Rule 2-63 (1) *[Law clerks]*, ~~T~~the articling term must not be reduced by more than 5 months under any other rule or the combined effect of any rules.

(5) The Credentials Committee may increase the articling term to not more than 2 years if

(a) the articled student's performance has been unsatisfactory,

(b) the articled student has not completed the student's obligations under the articling agreement, or

(c) other circumstances justify an increase.

(6) If it would result in the articled student qualifying for call and admission within 2 years of the student's first enrolment start date, a student enrolled for a second time is entitled to credit for

(a) successful completion of the training course, and

(b) time spent in articles.

(7) If an articled student is enrolled for a second or subsequent time, the Credentials Committee may grant credit for successful completion of the training course and some or all time spent in articles when the articled student was previously enrolled.

Law clerks

2-63 (1) An articled student who has been employed as a law clerk ~~for not less than 8 months~~ may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to ~~half of~~ the time served as a law clerk.

(2) [rescinded]~~An articled student whose application under this rule is accepted must article to a principal for a period of time and according to a schedule approved by the Executive Director.~~

(3) An application under ~~this~~ subrule (1) must be accompanied by

(a) a written report on the student's character and competence from the judge to whom the articled student clerked, and

(b) other documents or information that the Credentials Committee may reasonably require.

(4) A law clerk may apply for call and admission under Rule 2-77 *[First call and admission]* without enrolment in the admission program or completion of the articling term provided the law clerk otherwise qualifies for call and admission under Rule 2-76.

Training course

2-72 (1) The Executive Director may set the dates on which sessions of the training course will begin.

(2) The Credentials Committee may direct that a~~n articled~~ student be given priority in selection of the training course session that the student wishes to attend if the student is or will be

(a) articling outside the Lower Mainland,

(b) articling as the only student in a firm, or

(c) employed as a law clerk.

(3) Before registering in the training course,

(a) an articled student or applicant, other than a law clerk, must make application for enrolment under Rule 2-54 (1) *[Enrolment in the admission program]*;

(b) a law clerk must deliver to the Executive Director written confirmation from the applicable court of the law clerk's acceptance as a law clerk.

(4) To register in a training course session, an articled student, law clerk or applicant must

(a) pay to the Society the fee for the training course specified in Schedule 1, and

(b) deliver to the Executive Director

(i) an application for training course registration, and

(ii) in the case of an articled student, the principal's consent to the training course session chosen.

(5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, if applicable, a transcript stating whether the student passed or failed the training course.

(6) [rescinded]

(7) An articled student or law clerk may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student or law clerk has

(a) successfully completed a bar admission course in another Canadian jurisdiction, or

(b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

Review of failed standing

2-74 (1) Subject to subrule (2), a~~n articled~~ student who has failed the training course may apply in writing to the Executive Director for a review of the student's failed standing, not more than 21 days after the date on which the Executive Director issued the transcript under Rule 2-72 (5) *[Training course]*.

(2) A~~n articled~~ student may not apply under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:

(a) the original attempt;

(b) a further attempt to pass examinations, assignments or assessments;

(c) any attempt to meet a requirement under subrule (7).

(3) The Executive Director may consider an application for review received after the period specified in subrule (1).

(4) A~~n articled~~ student applying for a review under this rule must state the following in the application:

(a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;

(b) any grounds, based on the student's past performance, that would justify opportunities for further remedial work;

(c) the relief that the student seeks under subrule (7).

(5) and (6) [rescinded]

(7) After considering the submissions made under subrule (4), the Executive Director may do one or more of the following:

(a) confirm the standing, including any failed standing;

(b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;

(c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Executive Director;

(d) require the student to complete or repeat and pass all, or a portion of, the training course;

(e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.

(8) A student who is required to do anything under subrule (7) must pay the fee for the training course, or for each examination, assignment or assessment as specified in Schedule 1.

(9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions have been met to

(a) each student whom the Executive Director has required to do anything under subrule (7), and

(b) each such student's principal, if applicable.

LAW SOCIETY RULES

Call and admission

2-76 (1) To qualify for call and admission, an applicant who is an articled student or a law clerk must complete the following satisfactorily:

(a) in the case of an articled student, the articling term;

(a.1) in the case of a law clerk who is not enrolled in the admission program, a clerkship term of not less than 9 months;

(b) the training course;

(b.1) the practice management course;

(c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

(2) Subrule (1) (b.1) applies to articled students enrolled in the admission program on or after January 1, 2018.

First call and admission

2-77 (1) An articled student or law clerk who applies for call and admission must deliver to the Executive Director

(a) the following in the prescribed form:

(i) a petition for call and admission;

(ii) in the case of an articled student,

(A) a declaration of the principal;

(~~iii~~B) a declaration of the applicant;

(~~iv~~C) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;

(iii) in the case of a law clerk who is not enrolled in the admission program,

(A) an application for call and admission;

(B) proof of academic qualification as required of applicants for enrolment under Rule 2-54 (2) *[Enrolment in the admission program]*;

(C) a written report on the law clerk's character and competence from the judge to whom the law clerk clerked;

(iv) [rescinded]—

(v) a completed questionnaire;

(vi) written consent for the release of relevant information to the Society,

(b) a professional liability indemnity application or exemption form,

(c) the following fees:

(i) the applicable call and admission fee~~s~~ specified in Schedule 1;

LAW SOCIETY RULES

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*, and

(d) any other information and documents required by the Act or these rules that the Credentials Committee or the Benchers may request.

(2) An articled student or law clerk may apply under this rule at any time.

(3) If an articled student or law clerk fails to meet the requirements of this rule, including the delivery of all documents specified, the Executive Director must summarily

(a) reject the application for call and admission, and

(b) in the case of an articled student, terminate the student's enrolment.

(4) When the Credentials Committee has initiated a review under Rule 5-19 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the Committee withdraws the review.

D. Articled student and training course fees

1.	Application fee for enrolment in admission program (Rules 2-54 (1) (e) *[Enrolment in the admission program]* and 2-62 (1) (b) *[Part-time articles]*)	275.00
2.	Application fee for temporary articles (R. 2-70 (1) (c) *[Temporary articles]*)	150.00
3.	Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c)) .	50.00
4.	Training course registration (Rule 2-72 (4) (a) *[Training course]*)	2,600.00
5.	Remedial work (Rule 2-74 (8) *[Review of failed standing]*):	
	(a) for each piece of work	100.00
	(b) for repeating the training course	4,000.00

F. Call and admission fees

1.	After enrolment in admission program (Rule 2-77 (1) (c) *[First call and admission]*)	250.00
1.1	Without enrolment in admission program (Rule 2-77 (1) (c))	525.00
2.	After transfer from another Canadian province or territory (Rule 2-79 (1) (f) *[Transfer from another Canadian jurisdiction]*)	250.00

LAW SOCIETY RULES

Definitions

1 In these rules, unless the context indicates otherwise:

"clerkship term" means the period during which a law clerk is employed to work for a judge, not including any period of vacation or leave of absence;

"law clerk" means a law clerk employed to work for a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;

Referral to Credentials Committee

2-51 (1) The Executive Director may refer any matter for decision under this division to the Credentials Committee.

(2) At the written request of a lawyer, former lawyer, articled student, law clerk or applicant affected by a decision made by the Executive Director under this division, the Executive Director must refer the matter to the Credentials Committee.

(3) When the Executive Director refers a matter to the Credentials Committee under this rule, the Committee may make any decision open to the Executive Director under this division and may substitute its decision for that of the Executive Director.

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2-59 (1) Unless the articling period is changed under Rules 2-59 to 2-65, an articled student must work in the office of the student's principal for a period of not less than 9 months.

(2) Unless otherwise permitted in this division, the articling term must be continuous, except that this period may be interrupted by

(a) attendance at the training course,

(b) annual vacation of up to 10 working days at the discretion of the principal, or

(c) a leave of absence as permitted under Rule 2-69 *[Leave during articles]*.

(3) Any time taken for matters referred to in subrule (2) must not be included in the calculation of the articling term.

(4) Except in the case of an application made under Rule 2-63 (1) *[Law clerks]*, the articling term must not be reduced by more than 5 months under any other rule or the combined effect of any rules.

(5) The Credentials Committee may increase the articling term to not more than 2 years if

(a) the articled student's performance has been unsatisfactory,

LAW SOCIETY RULES

(b) the articled student has not completed the student's obligations under the articling agreement, or

(c) other circumstances justify an increase.

(6) If it would result in the articled student qualifying for call and admission within 2 years of the student's first enrolment start date, a student enrolled for a second time is entitled to credit for

(a) successful completion of the training course, and

(b) time spent in articles.

(7) If an articled student is enrolled for a second or subsequent time, the Credentials Committee may grant credit for successful completion of the training course and some or all time spent in articles when the articled student was previously enrolled.

Law clerks

2-63 (1) An articled student who has been employed as a law clerk may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to the time served as a law clerk.

(2) [rescinded]

(3) An application under subrule (1) must be accompanied by

(a) a written report on the student's character and competence from the judge to whom the articled student clerked, and

(b) other documents or information that the Credentials Committee may reasonably require.

(4) A law clerk may apply for call and admission under Rule 2-77 *[First call and admission]* without enrolment in the admission program or completion of the articling term provided the law clerk otherwise qualifies for call and admission under Rule 2-76.

Training course

2-72 (1) The Executive Director may set the dates on which sessions of the training course will begin.

(2) The Credentials Committee may direct that a student be given priority in selection of the training course session that the student wishes to attend if the student is or will be

(a) articling outside the Lower Mainland,

(b) articling as the only student in a firm, or

(c) employed as a law clerk.

LAW SOCIETY RULES

(3) Before registering in the training course,

(a) an articled student or applicant, other than a law clerk, must make application for enrolment under Rule 2-54 (1) *[Enrolment in the admission program]*;

(b) a law clerk must deliver to the Executive Director written confirmation from the applicable court of the law clerk's acceptance as a law clerk.

(4) To register in a training course session, an articled student, law clerk or applicant must

(a) pay to the Society the fee for the training course specified in Schedule 1, and

(b) deliver to the Executive Director

(i) an application for training course registration, and

(ii) in the case of an articled student, the principal's consent to the training course session chosen.

(5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, if applicable, a transcript stating whether the student passed or failed the training course.

(6) [rescinded]

(7) An articled student or law clerk may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student or law clerk has

(a) successfully completed a bar admission course in another Canadian jurisdiction, or

(b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

Review of failed standing

2-74 (1) Subject to subrule (2), a student who has failed the training course may apply in writing to the Executive Director for a review of the student's failed standing, not more than 21 days after the date on which the Executive Director issued the transcript under Rule 2-72 (5) *[Training course]*.

(2) A student may not apply under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:

(a) the original attempt;

(b) a further attempt to pass examinations, assignments or assessments;

(c) any attempt to meet a requirement under subrule (7).

LAW SOCIETY RULES

(3) The Executive Director may consider an application for review received after the period specified in subrule (1).

(4) A student applying for a review under this rule must state the following in the application:

(a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;

(b) any grounds, based on the student's past performance, that would justify opportunities for further remedial work;

(c) the relief that the student seeks under subrule (7).

(5) and (6) [rescinded]

(7) After considering the submissions made under subrule (4), the Executive Director may do one or more of the following:

(a) confirm the standing, including any failed standing;

(b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;

(c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Executive Director;

(d) require the student to complete or repeat and pass all, or a portion of, the training course;

(e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.

(8) A student who is required to do anything under subrule (7) must pay the fee for the training course, or for each examination, assignment or assessment as specified in Schedule 1.

(9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions have been met to

(a) each student whom the Executive Director has required to do anything under subrule (7), and

(b) each such student's principal, if applicable.

Call and admission

2-76 (1) To qualify for call and admission, an applicant who is an articled student or a law clerk must complete the following satisfactorily:

(a) in the case of an articled student, the articling term;

(a.1) in the case of a law clerk who is not enrolled in the admission program, a clerkship term of not less than 9 months;

(b) the training course;

(b.1) the practice management course;

(c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

(2) Subrule (1) (b.1) applies to articled students enrolled in the admission program on or after January 1, 2018.

First call and admission

2-77 (1) An articled student or law clerk who applies for call and admission must deliver to the Executive Director

(a) the following in the prescribed form:

(i) a petition for call and admission;

(ii) in the case of an articled student,

(A) a declaration of the principal;

(B) a declaration of the applicant;

(C) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;

(iii) in the case of a law clerk who is not enrolled in the admission program,

(A) an application for call and admission;

(B) proof of academic qualification as required of applicants for enrolment under Rule 2-54 (2) *[Enrolment in the admission program]*;

(C) a written report on the law clerk's character and competence from the judge to whom the law clerk clerked;

(iv) [rescinded]

(v) a completed questionnaire;

(vi) written consent for the release of relevant information to the Society,

(b) a professional liability indemnity application or exemption form,

(c) the following fees:

(i) the applicable call and admission fee specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*, and

LAW SOCIETY RULES

(d) any other information and documents required by the Act or these rules that the Credentials Committee or the Benchers may request.

(2) An articled student or law clerk may apply under this rule at any time.

(3) If an articled student or law clerk fails to meet the requirements of this rule, including the delivery of all documents specified, the Executive Director must summarily

(a) reject the application for call and admission, and

(b) in the case of an articled student, terminate the student's enrolment.

(4) When the Credentials Committee has initiated a review under Rule 5-19 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the Committee withdraws the review.

D. Articled student and training course fees

1. Application fee for enrolment in admission program (Rules 2-54 (1) (e) *[Enrolment in the admission program]* and 2-62 (1) (b) *[Part-time articles]*) 275.00
2. Application fee for temporary articles (R. 2-70 (1) (c) *[Temporary articles]*) 150.00
3. Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c)) . 50.00
4. Training course registration (Rule 2-72 (4) (a) *[Training course]*) 2,600.00
5. Remedial work (Rule 2-74 (8) *[Review of failed standing]*):
   (a) for each piece of work 100.00
   (b) for repeating the training course 4,000.00

F. Call and admission fees

1. After enrolment in admission program (Rule 2-77 (1) (c) *[First call and admission]*) 250.00

1.1 Without enrolment in admission program (Rule 2-77 (1) (c))..... 525.00

2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) *[Transfer from another Canadian jurisdiction]*)..... 250.00

LAW CLERKS

RESOLUTION:

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

1. In Rule 1,

(a) the following definition is added:

"clerkship term" means the period during which a law clerk is employed to work for a judge, not including any period of vacation or leave of absence;

(b) the definition of "law clerk" is rescinded and the following substituted:

"law clerk" means a law clerk employed to work for a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;

2. Rule 2-51 (2) is amended by striking "articled student or applicant***" and substituting "***articled student, law clerk or applicant***".***

3. Rule 2-59 (4) is rescinded and the following substituted:

(4) Except in the case of an application made under Rule 2-63 (1) *[Law clerks]*, the articling term must not be reduced by more than 5 months under any other rule or the combined effect of any rules.

4. Rule 2-63 is rescinded and the following substituted:

(1) An articled student who has been employed as a law clerk may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to the time served as a law clerk.

(3) An application under subrule (1) must be accompanied by

(a) a written report on the student's character and competence from the judge to whom the articled student clerked, and

(b) other documents or information that the Credentials Committee may reasonably require.

(4) A law clerk may apply for call and admission under Rule 2-77 *[First call and admission]* without enrolment in the admission program or completion of the articling term provided the law clerk otherwise qualifies for call and admission under Rule 2-76.

5. Rule 2-72 (2) to (7) is rescinded and the following substituted:

(2) The Credentials Committee may direct that a student be given priority in selection of the training course session that the student wishes to attend if the student is or will be

(a) articling outside the Lower Mainland,

(b) articling as the only student in a firm, or

(c) employed as a law clerk.

(3) Before registering in the training course,

(a) an articled student or applicant, other than a law clerk, must make application for enrolment under Rule 2-54 (1) *[Enrolment in the admission program]*;

(b) a law clerk must deliver to the Executive Director written confirmation from the applicable court of the law clerk's acceptance as a law clerk.

(4) To register in a training course session, an articled student, law clerk or applicant must

(a) pay to the Society the fee for the training course specified in Schedule 1, and

(b) deliver to the Executive Director

(i) an application for training course registration, and

(ii) in the case of an articled student, the principal's consent to the training course session chosen.

(5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, if applicable, a transcript stating whether the student passed or failed the training course.

(7) An articled student or law clerk may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student or law clerk has

(a) successfully completed a bar admission course in another Canadian jurisdiction, or

(b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

6. Rule 2-74 is amended as follows:

(a) by striking "an articled student***" wherever it occurs and substituting "***a student***";***

(b) by rescinding subrule (9) (b) and substituting the following:

(b) each such student's principal, if applicable.

7. Rule 2-76 (1) (a) is rescinded and the following substituted:

(1) To qualify for call and admission, an applicant who is an articled student or a law clerk must complete the following satisfactorily:

(a) in the case of an articled student, the articling term;

(a.1) in the case of a law clerk who is not enrolled in the admission program, a clerkship term of not less than 9 months;

8. Rule 2-77 is rescinded and the following substituted:

2-77 (1) An articled student or law clerk who applies for call and admission must deliver to the Executive Director

(a) the following in the prescribed form:

(i) a petition for call and admission;

(ii) in the case of an articled student,

(A) a declaration of the principal;

(B) a declaration of the applicant;

(C) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;

(iii) in the case of a law clerk who is not enrolled in the admission program,

(A) an application for call and admission;

(B) proof of academic qualification as required of applicants for enrolment under Rule 2-54 (2) *[Enrolment in the admission program]*;

(C) a written report on the law clerk's character and competence from the judge to whom the law clerk clerked;

(v) a completed questionnaire;

(vi) written consent for the release of relevant information to the Society,

(b) a professional liability indemnity application or exemption form,

(c) the following fees:

(i) the applicable call and admission fee specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*, and

(d) any other information and documents required by the Act or these rules that the Credentials Committee or the Benchers may request.

(2) An articled student or law clerk may apply under this rule at any time.

(3) If an articled student or law clerk fails to meet the requirements of this rule, including the delivery of all documents specified, the Executive Director must summarily

(a) reject the application for call and admission, and

(b) in the case of an articled student, terminate the student's enrolment.

(4) When the Credentials Committee has initiated a review under Rule 5-19 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the Committee withdraws the review.

9. Schedule 1, part F is amended by adding the following item:

1.1 Without enrolment in admission program (Rule 2-77 (1) (c)) 525.00

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

CEO Report

December 2, 2022

Prepared for: **Benchers**

Prepared by: **Don Avison, KC**

1. Update on 2021-25 Strategic Plan

At the December 2, 2022 meeting of Benchers I will provide a status update regarding progress on the Law Society's current strategic plan.

2. Towards a Single Legal Regulator

As part of the consultation process relevant to government's Intentions Paper on a proposed single legal regulator we have received copies of a number of submissions. For ease of reference, a number of the following submissions can be found here:

i) Response of the Law Society of British Columbia;

ii) Response from the Canadian Bar Association – BC Branch;

iii) Submission from the Society of Notaries Public of BC;

iv) Submission from Dentons;

v) Position Paper from the Federation of Asian Canadian Lawyers;

vi) Correspondence from the President of the Law Society of Manitoba;

vii) Correspondence from the School of Legal Studies at Capilano University;

viii) Correspondence from Dom Bautista, Executive Director, Amici Curiae Friendship Society.

The B.C. Paralegals Association had requested an extension on filing a response to the Intentions Paper. We would expect to see a copy of that submission prior to the December meeting of Benchers.

3. Christine Tam Appointed as Law Society Communications Director

I am pleased to say that Christine Tam will be our new Director, Communications and Engagement. Christine has most recently been the Senior Communications Manager with Doctors of BC where she led a team of six in providing strategic external and internal communications advice and assistance. Christine has previously worked with the Rick

Hansen Foundation and earlier in her career, Christine was a reporter with Global news and CTV news. Christine brings a wide range of communications and public engagement experience that will be invaluable as we continue to respond to the government's intention to establish a single legal regulator for lawyers, notaries public and licensed paralegals. Christine's first day will be December 5th.

4. Provincial Government Update

Premier Eby was sworn in as the Province's 37th Premier on November 17, 2022.

The current legislative session came to a close on November 24. It is expected that there will likely now be some changes in ministerial assignments. More will be known about this on December 7 and it is anticipated that there will also be some senior public service staff changes around that same period of time.

There have been a number of recent announcements from government, most of which have focused on housing, enhanced support for the RCMP contract, the proposed implementation of unexplained wealth orders to assist with asset forfeiture and revised directions on bail proceedings.

Don Avison, KC
Chief Executive Officer

The Law Society of British Columbia

The Law Society of British Columbia

Response to the Ministry of Attorney General's Intentions Paper

Legal Professions Regulatory Modernization

November 2022

Executive Summary

The Law Society of British Columbia appreciates the opportunity to provide its comments on the Ministry of Attorney General's Intentions Paper.

We agree with the Ministry's observations that actions must be taken to increase access to justice and the Intentions Paper identifies a number of concrete steps with which we also agree. However, we do have several comments regarding the Ministry's stated intentions.

First, we agree with the Ministry that the importance of an independent bar to the functioning of a free and democratic society cannot be overstated. The ability of lawyers to fearlessly advocate for their clients even, and especially, when their client is at odds with government requires an independent bar governed by a regulatory board on which lawyers constitute a majority. The public interest in the independence of lawyers places legal regulation in a unique position in relation to government involvement and lawyers are best qualified to ensure that proper standards of competence and ethics are set and enforced in the practice of law. We are confident that self-regulation of the legal profession would be held to be a principle of fundamental justice and that a majority of lawyers on the board is essential to self-regulation.

Second, we agree with the Ministry that there is tension between the dual objectives of diversity and functionality in setting the size of the future board. In our view, a significantly smaller board will undermine diversity and it is important to consider the public interest benefits of diversity in governance in determining the size of the future board. A diverse board enhances public confidence in the regulator and in the profession and leads to better decision-making. It is our view that diversity in governance would be undermined if the board size were to be substantially changed.

Third, we agree with the Ministry that a new statute for the legal professions should authorize the delivery of legal services through licensed paralegals. However, setting a minimum scope of practice for licensed paralegals will create a barrier to entry and reduce access to justice. If the scope is too narrow or prescriptive, the door may be closed to some paralegals, which would reduce the options available to address access to justice issues. Instead, it is our view that a more flexible competency-based approach to licensing will better achieve the goal of increasing access to justice, while also ensuring protection of the public.

Lastly, we agree with the Ministry that the new statute should assign the regulator the broad authority to regulate the competence and integrity of legal service providers in B.C. and to promote the rule of law. The current *Legal Profession Act* is an effective example of a framework for regulation that is filled in with Rules passed by the Law Society and meets the objective stated by the Supreme Court of Canada that regulation of lawyers by the state must be as much as possible free from state interference.

The Law Society looks forward to working with the Ministry to ensure that these goals are achieved within a framework that recognizes the importance of an independent bar, an independent profession and an independent regulator reflecting the diversity of the British Columbia public and ensuring a variety of legal service providers meeting the legal needs of the citizens of British Columbia.

Introduction

The Law Society of British Columbia appreciates our dialogue with the Ministry regarding the establishment of a single legal regulator, including the participation of former Deputy Attorney General Shannon Salter at our board meeting on September 23, 2022, to discuss the Ministry of Attorney General's Intentions Paper.

In responding to the Ministry's Intentions Paper, we should state upfront that we agree with the Ministry's observations that further action must be taken to increase access to justice but we believe the Intentions Paper fails to recognize the many steps the Law Society has taken to address access needs. Among other things, this includes the work being done through the Law Society's Innovation Sandbox, support for pro bono initiatives and the work done in association with the Federation of Law Societies to expand recognition of foreign-earned credentials at levels few other professions have been able to achieve. We also agree that the regulator's duty to protect the public interest is paramount; that the independence of the bar is essential to the functioning of a free and democratic society; and that effective regulation should be the continuing goal of a single legal regulator.

The Intentions Paper articulates a number of concrete steps with which we also agree: 1.1 (single statute), 1.2 (single regulator), 2.1 (broad authority to regulate), 3.2 (government appointees being a minority of the board), 3.5 (staggered elections and appointments), 5.1 (modern and flexible discipline framework), and 6.1 (licensees, not members).

However, we do have comments with respect to several of the Ministry's stated intentions.

An independent bar requires self-governance by a regulatory board on which lawyers constitute a majority

The Intentions Paper states *"The directors appointed by government should constitute a minority of the board, and the Attorney General should not sit as a member of the board."*

We agree with the intention. However, what is left unstated is the composition of the remainder of the board. It is our view that a majority of any board that governs lawyers must themselves be lawyers in order to preserve and protect the independence of the bar.

The public has the right to representation by an independent bar.

As the Intentions Paper states:

> *"The importance of an independent bar to the functioning of a free and democratic society cannot be overstated. The Ministry is not proposing, and has no intention of implementing, changes that would interfere with the ability of a lawyer (or other*

> *legal service provider) to fearlessly advocate for their client and provide independent legal advice to their client, even, and especially, when their client is at odds with government."*

In so stating, the Ministry acknowledges what the Supreme Court of Canada has repeatedly stated about the fundamental importance of an independent bar in a free and democratic society:

> *"An independent bar composed of lawyers who are free of influence by public authorities is an important component of the fundamental legal framework of Canadian society."*[1]

> *"Stress was rightly laid on the high value that free societies have placed historically on an independent judiciary, free of political interference and influence on its decisions, and an independent bar, free to represent citizens without fear or favour in the protection of individual rights and civil liberties against incursions from any source, including the state."*[2]

An Independent bar can only exist when there is an independent profession of lawyers

Some have argued that references to an *"independent bar"* refer to the independence of individual lawyers that comprise the bar, as opposed to the independence of the profession. However, the independence of an individual lawyer cannot exist in isolation from the independence of the bar. This is because the activities of each lawyer, including the activities that are constitutionally protected (such as maintaining their client's privilege, or fulfilling their duty of commitment to their client's cause), are regulated in accordance with collective standards that apply to the profession as a whole.

The Supreme Court of Canada has commented on the "*...particular importance of an autonomous legal profession"*[3] and has stated:

> *"The independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law."*[4]

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[1] *Finney v. Barreau du Québec*, 2004 SCC 36 at para 1.
[2] *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 887, citing the Ministry of the Attorney General of Ontario, *"The Report of the Professional Organizations Committee"* (1980) at p. 26.
[3] *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 887, emphasis added.
[4] *A.G. Can. v. Law Society of B.C.*, [1982] 2 SCR 307 at 335-336.

In our view, independent lawyers can only exist if there is an independent profession of lawyers.

We should be clear that an independent profession of lawyers is not unaccountable. Rather, independence co-exists with accountability in the self-governance of lawyers through a broader ecosystem of regulatory oversight and public accountability. Currently, this includes the appointment of six public board members, the appointment of the Attorney General as a board member, oversight by the provincial Office of the Ombudsperson, and the ability to appeal Law Society decisions to the courts. Like all regulators, the Law Society is subject to administrative law principles and the rule of law. Like everyone, the Law Society and lawyers remain subject to constitutionally-compliant laws and regulations.

An independent profession requires that a majority of the board that governs lawyers are themselves lawyers.

The Ministry has acknowledged in the Intentions Paper that it *"... has no intention of implementing changes that would see a shift away from what is commonly referred to as "self-regulation".*

In our view, self-regulation of the legal profession requires that a majority of the board that governs lawyers are themselves lawyers and a majority of the lawyer directors are elected. It is important that government appointees not only constitute a minority as the Ministry intends, but that lawyers constitute a majority. The whole of our board, both elected lawyers and Order-in-Council appointees, are in unanimous agreement on this point.

There are two reasons for this: (i) the public interest in the independence of lawyers places lawyers in a unique position in relation to government involvement, and (ii) lawyers are best qualified to ensure that proper standards of competence and ethics are set and enforced in the practice of law, which requires a thorough understanding and commitment to the constitutional elements attached to a lawyer's practice.

On the first point, the Supreme Court of Canada has observed:

> *"The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community."*[5]
>
> *"An independent bar composed of lawyers who are free of influence by public authorities is an important component of the fundamental legal framework of*

[5] *A.G. Can. v. Law Society of B.C.*, [1982] 2 SCR 307 at 336.

> *Canadian society. In Canada, our tradition of allowing the legal profession to regulate itself can largely be attributed to a concern for protecting that independence and to lawyers' own staunch defence of their autonomy."*[6]

Although it is not yet settled law, we are confident that self-regulation of the legal profession would be held to be a principle of fundamental justice and that a majority of lawyers on the board is essential to self-regulation.[7]

On the second point, the Supreme Court of Canada noted lawyers' unique position in being able to set standards in relation to, and enforce against, lawyer misconduct. The Court has also noted that some aspects of the practice of law may be challenging for the public to evaluate:

> *"No one is better qualified to say what constitutes professional misconduct than a group of practising barristers who are themselves subject to the rules established by their governing body."*[8]

> *"Current members of the Law Society may be more intimately acquainted with the ways that these standards [of professional practice] play out in the everyday practice of law than judges who no longer take part in the solicitor-client relationship. Practising lawyers are uniquely positioned to identify professional misconduct and to appreciate its severity."*[9]

The assertion that an independent profession requires a regulatory board on which lawyers constitute a majority should not be taken to minimize the valuable contributions of board members who are not lawyers, and who bring important skillsets and diverse perspectives to bear. The contributions of public board members have enriched discussions at the Law Society. However, the setting and enforcement of professional standards for lawyers engaged in the practice of law, as broadly defined, must be carried out by those who are engaged and experienced in the full practice of law.

Based on our experience with the *Federation* case, we believe that it is in the public interest for the government and the legal professions to pursue a mutually agreeable governance structure to avoid litigation. Working together best allows all parties to proceed with the important work that must be done in accelerating access to justice. However, no compromise can come at the expense of the fundamental principles upon which our free and democratic society is based, such as the public right to an independent bar.

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[6] *Finney v. Barreau du Québec*, 2004 SCC 36 at para 1.
[7] We acknowledge the Supreme Court of Canada expressly left open this question in *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para 86.
[8] *Law Society of Manitoba v. Savino*, (1983) 1 D.L.R. (4th) 285, 1983 CanLII 2995 (MB CA,) at para 18; cited with approval in *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 880.
[9] *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 SCR 247 at para 31.

Any substantial change in the size of the board would undermine diversity on the board

We understand that it is government's intention that the single legal regulator will be governed by a comparatively smaller board.

In discussing board size, the Intentions Paper identifies the tension that exists between the *"dual objectives of diversity and functionality"* as follows:

> *"On the one hand, the board would be large enough to ensure that all regulated legal service providers and the public are reflected in its composition, and to ensure a diversity of skills, perspectives, regions, and backgrounds are represented in its deliberations. On the other hand, the board would be small enough to be nimble and cohesive."*[10]

In order to properly weigh the objectives of nimbleness and cohesiveness on one hand, and of diversity on the other, it is important to consider the public interest benefits of diversity in governance from both a principled and practical perspective.

The Honourable Mahmud Jamal, the first racialized person to be appointed to the Supreme Court of Canada, recently articulated the principled rationale for diversity on the bench.[11] When translated to the context of a professional regulator, his remarks apply equally well to the critical importance of diversity on the board.

First, diversity on the board enhances public confidence in the regulator as an institution and in the profession. Representativeness ensures that the public sees themselves represented in the institution and thereby builds trust that the institution will be fair and impartial in serving the public interest. In the regulatory context, when diverse members of the profession can see themselves reflected in their regulator, this also fosters respect for the legitimacy and authority of the institution in setting and enforcing standards, thereby encouraging compliance and increasing public protection.

Second, diversity on a board leads to better decision-making by including the views and values of an increasingly pluralistic society. As Justice Jamal notes, lived experience is a "*unique reservoir of knowledge that brings depth and understanding."* As such, diversity of lived experience among board members allows the board as a whole to better regulate in the public interest by improving the board's ability to consider issues from the perspectives of others.

[10] Intentions Paper, p. 12.
[11] Honourable Mahmud Jamal, Federation of Asian Canadian Lawyers BC 2021 Gala, Opening Keynote, November 26, 2021.

Third, diversity on the board ensures that the professional regulator, and by extension the legal professions, are open, and seen to be open, to all people. The public interest is served when all who aspire to join the legal professions can see themselves reflected in all aspects of it, including in its regulator.

The Law Society has long recognized the critical importance of board diversity in serving the public interest. Over the past decades, we have taken steps to increase diversity on our board, including the encouragement of diverse lawyers to stand for election, requesting the appointment of diverse board members by the government, creating resources to inform the profession as a whole about important equity issues, and implementing recommendations on policy and governance reforms from the Law Society's Truth and Reconciliation Advisory Committee and Equity, Diversity and Inclusion Advisory Committee. These and other steps, together with increasing diversity and inclusion in the legal profession and in society overall, have allowed the Law Society board to gradually and organically achieve a high degree of diversity.

Today, the board represents a diverse range of communities and backgrounds, including socially, racially, culturally, geographically, politically, and in relation to gender and sexual orientation. Among board members elected by the profession, over half (52%) are women, one in five (20%) are Indigenous, another one in four (24%) are people-of-colour. We strive for a board culture that not only includes but empowers diverse voices, and this is reflected in our board leadership. Our current board chair is a woman. Following her will be the first openly-gay board chair in the regulator's history, who would then be followed by the organization's first South-Asian board chair.

From our own experiences in striving for board diversity, and from listening to and learning from others, we know that the benefits of diversity in governance can only be meaningfully achieved if practical considerations are in place. One of those practical considerations relates to the size of the board.

First, it must be understood that achieving diversity at the board table is substantively different, and preferable, to simply having diversity "*represented in [the board's] deliberations.*"[12] It is not sufficient for diverse views to be presented to the board through consultation efforts or the appointment of diverse people to advisory committees. Rather, we recognize that the board represents the highest level of our organization's governance, strategic planning, and regulatory decision making and, as such, true diversity in governance is only achieved when diverse peoples have a seat at the board table itself. Often, the reality is that this is only achieved when there are enough seats available to be filled.

Second, as articulated by members of the Law Society's Truth and Reconciliation Advisory Committee, a statutory requirement for Indigenous representation could lead to tokenism,

[12] Intentions Paper, p. 12.

especially if there is a smaller board. Appointing a small number of people from underrepresented groups in order to give the *appearance* of equity on a board may not achieve the benefits of diversity. Rather, such appointments may unintentionally create an isolated class of board member who may feel, or be made to feel, unequal to those not appointed to fill "diversity quotas."

Third, having a single person from any underrepresented group is insufficient to ensure diverse input on the board, or to support change. For example, no single Indigenous person, or person-of-colour can be expected to convey the diversity of views on behalf of all others. Rather, having only one person from an underrepresented group on a board can place a disproportionate and unfair burden on that person. Based on our experiences working on equity issues, we also know that diverse perspectives (and calls for change) are best heard when they are amplified, and this often requires more than a token number of those diverse voices to be present at the table. Furthermore, a substantial reduction in the size of the board is also likely to limit participation across a range of practice areas which could also limit the responsiveness and relevance of the regulator.

In summary, taking into consideration the benefits of board diversity to the public interest, and the practical considerations of what meaningful diversity requires, it is our view that diversity in governance would be undermined if the board size were to be substantially reduced. The loss of such diversity would harm the public interest, and be inconsistent with the government's aims of dismantling institutional and systemic racism.[13] In coming to this assessment, we draw not only from on our own experiences in fostering diversity on our board, but also place significant weight on the perspectives of Indigenous, racialized, and 2SLGBTQ+ colleagues who guide our understanding of these issues. We accept that the future board is likely to be smaller than the existing Bencher table but substantial care must be taken to get the balance right. A substantial reduction in the size of the board risks undermining diversity for all the reasons outlined above.

Defining the regulated scope of practice for paralegals will create an unnecessary barrier to entry and reduce access to justice

The Intentions Paper expresses the intention that a new regulatory statute for the legal professions should authorize the delivery of legal services through licensed paralegals by setting a minimum scope or scopes of practice or requiring the regulator to do so within a prescribed period of time and enabling the regulator to grant licensed paralegals and notaries a license on a case-by-case basis.

In our view, the intention to establish a minimum scope of practice for licensed paralegals by legislation or by requiring the regulator to do so will not permit the government to achieve its goal of

[13] Intentions Paper, p. 6.

rapidly expanding access to justice. Rather, doing so is likely to cause the opposite effect by creating an unnecessary barrier to entry that may hinder access to justice instead.

The rationale for our view is based on the purposes for which the "practice of law" is defined in the *Legal Profession Act*, and the exclusionary effect that such definition has on who may provide legal services.

Under the *Act*, the Legislature chose to protect the public by restricting who may engage in the specific activities that are contained within the definition of the "practice of law" and to require the people who engage in those specific activities to be licensed and regulated. Generally speaking, the definition for the "practice of law" is not enabling in the sense that it does not grant lawyers the right to engage in specific activities. Rather it is restricting, by defining the services that others may not provide unless the government permits them to do so under the *Act* or other legislation (such as the *Notaries Act*, or the *Court Agent Act*).

Protecting the public by restricting who may provide legal services in order to ensure the quality of the services provided is an important objective, but it must also be balanced against the objective of increasing access to legal services. If the new legislation defines a scope of practice for licensed paralegals, then doing so may have the consequence of likewise creating an exclusionary barrier to entry affecting both (i) anyone that wishes to become a licensed paralegal, and (ii) anyone wishing to engage in the activities that fall within that defined scope (to the extent these are not already restricted under the definition for the "practice of law").

The effect of creating an exclusionary barrier to entry, as may arise from a defined scope of practice for licensed paralegals under legislation, would include reduced competition and increased prices due to restricted supply of services – not the intended outcome of increased access to justice. This is not only a theoretical concern, but an outcome that has been witnessed in other jurisdictions As Bencher and paralegal Michèle Ross articulated at the Law Society's September 23, 2022 board meeting:

> *"If the scope is too prescriptive, I would be concerned that the door would be closed on some paralegals, which potentially would eliminate a group from being licensed. That would reduce the options available to access to justice, which, in my view, is not in the public's best interest. …*
>
> *We saw what happened with the [Limited Licensed Legal Technicians] in Washington [State] when the Washington Supreme Court decided to sunset the project in June of 2020. So we know that recently that model did not work, and I would say that that model was very prescriptive. My concern is that when it comes to paralegals, it's not a one size fits all model."*

Instead of entrenching a defined scope of practice for licensed paralegals in the legislation, we are of the view that a more flexible, modular, and competency-based approach to licensing would better achieve the goal of increasing access to justice, while also ensuring protection of the public. Under such an approach, paralegals who demonstrate competency in providing one or more legal services could become licensed to provide those specific services without the need to acquire additional training for other activities that they may have no interest in offering.

Such a case-by-case approach as recognized in the Intentions Paper also takes into consideration the practical realities of paralegal practice, which for many is not a "general practice" but rather often involves the development of great skill and experience in respect of particular legal services. Indeed there appears to be significant variation among the skillsets of paralegal practitioners based on their areas of practice and experiences and we agree with our colleague Michèle Ross that a one-size-fits-all approach, inherent in applying a defined scope of practice, should be avoided.

We acknowledge the government's urgency for paralegal regulation, and the desire for scalability. The flexible licensing approach described above lowers the barrier to entry by offering "right touch" regulation. It is anticipated that it will permit more paralegals to be licensed in a shorter amount of time, by allowing each paralegal to apply for a license suitable to the skills and experiences they currently possess. It could also allow licensed paralegals (and notaries) to gradually expand the number and types of legal services for which they are licensed.

The public interest is best protected through legislation that enables the regulator, and that does not fetter it

The Intentions Paper proposes that the new statute should assign the regulator the broad authority to regulate the competence and integrity of legal service providers in B.C. and to promote the rule of law. As we noted earlier in our submission, the Supreme Court of Canada has observed that

> *"… regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law."*

The current *Act*, which provides a framework for regulation that is filled in with Rules passed by the Law Society, is an effective example. As such, it is imperative that the new statute be designed to empower the regulator and not to fetter it:

> *"Government ought not to prescribe in detail the structures, processes, and policies of professional bodies. The initiative in such matters must rest with the professions*

> *themselves, recognizing their particular expertise and sensitivity to the conditions of practice."*[14]

In particular, we take to heart the advice of the Law Society's Truth and Reconciliation Advisory Committee, and the Indigenous Engagement in Regulatory Matters Task Force, in recognizing that a great degree of flexibility and change will be required in order to make meaningful progress on reconciliation. To truly grapple with the historical and ongoing harms that the legal system has caused to Indigenous Peoples, and to reform the Law Society's structures, processes and policies in ways that make space for Indigenous world views and laws, the regulator's authority to do so must be preserved.

Conclusion

The Intentions Paper noted a number of guiding principles that the new statute could advance, such as promoting and protecting the public interest; facilitating access to legal services; supporting reconciliation with Indigenous Peoples; and encouraging diverse and effective legal professions, all within the broad authority to regulate the competence and integrity of legal service providers in B.C. and to promote the rule of law. The Law Society looks forward to working with the Ministry to ensure that these goals are achieved within a framework that recognizes the importance of an independent bar, an independent profession and an independent regulator reflecting the diversity of the British Columbia public and ensuring a variety of legal service providers meeting the legal needs of the citizens of British Columbia.

[14] Ministry of the Attorney General of Ontario, *"The Report of the Professional Organizations Committee"* (1980) at p. 25, as cited with approval in *Pearlman v Manitoba Law Society Judicial Committee,* [1991] 2 S.C.R. 869 at 887.

THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

LEGAL PROFESSIONS REGULATORY MODERNIZATION

Response to Legal Professions Regulatory Modernization Intentions Paper

November 18, 2022

Contents

Canadian Bar Association, BC Branch

The Canadian Bar Association (CBABC) represents over 7,600 lawyers, students, and judges in BC as a branch of the Canadian Bar Association (CBA), the largest national, legal professional association. Members of CBABC are dedicated to protecting the rule of law, the independence of the judiciary and the Bar, and improving laws, justice and legal systems and access to justice. We believe in equality, diversity and inclusiveness in the profession and in justice and legal systems and are committed to the process of reconciliation with Indigenous peoples.

CBABC members have unique insight into the BC justice system and the impact laws have on people. We are committed to the steady progress of our legal and justice systems and improved access for all British Columbians. Strategic and efficient operations in those systems can be achieved through careful analysis and innovation. Fair access to justice can be achieved by acting with sensitivity and courage to meet the needs of those who suffer most under those systems today.

Through a Board of Directors, 65 Sections, 20 committees and working groups, and member service programs, CBABC:

- Improves and promotes the knowledge, skills, ethical standards and well-being of members of the legal profession.
- Provides opportunities for members to connect and contribute to the legal community.
- Advocates on behalf of the profession based on members' professional, front-line experience.

The development of this submission was led by the Professional Issues Committee whose mandate is to monitor, develop policy and lead submissions on legal profession issues including the regulation of the legal profession, the licensing of alternative legal services providers, and the protection of solicitor-client privilege in British Columbia.

Members of this Committee from around British Columbia include:

Clare Jennings, Chair
Graeme Keirstead, KC
Jacob Kojfman
Allen Soltan
John Vamplew
Patricia Blair, Board of Directors Liaison
Odette Dempsey-Caputo
Jennifer Khor
Eric Ledding
Ann Tuck
Chelsea Wilson
Sybila Valdivieso

CBABC Staff: Kerry Simmons, KC, Executive Director
Rachel Barsky, Policy Lawyer
Jess Furney, Manager, Policy & Advocacy
Rai Friedman, Policy Advisor

Executive Summary

In March 2022, the Ministry of Attorney General announced its plans to modernize the regulatory framework for legal services providers in British Columbia, with legislation to be introduced in Fall 2023. Following dialogue with the staff of existing regulators, the Law Society of British Columbia (Law Society), the Society of Notaries Public in British Columbia (Notaries), and a representative of the BC Paralegal Association (Paralegal Association), the Ministry presented an Intentions Paper on September 14, 2022.

The Intentions Paper asserted that reforms to the regulation of lawyers and notaries and the introduction of regulation of paralegals are required "to help make it easier for British Columbians to access legal services and advice". The Ministry identified that as its first objective. Its second objective was that the governance framework for regulation would ensure that the public interest is paramount. The Ministry sought input from the public and the professionals who are subject to regulation now and in the future.

In October 2022, CBABC hosted a series of virtual and in-person Roundtables for lawyers, including CBABC members and non-members, to provide their views on the proposed reforms. CBABC also engaged its Provincial Council, a 75-member body of lawyers in all practice areas throughout British Columbia. Several of CBABC's committees and working groups, including the Access to Justice Committee, discussed the Intentions Paper and provided input. CBABC's submission is also informed by the engagement it undertook with lawyers in Spring 2022 on the Report of a Governance Review of the Law Society of British Columbia, November 2021 to explore what governance changes could be made.

The Professional Issues Committee, which has a mandate to monitor and develop recommendations regarding regulation of lawyers, has been studying and discussing these principles for 18 months, and has been referring to the previous work of CBABC on these issues from the past 10 years. Most recently, the Committee met with the representatives of the BC Paralegals Association and BC Notaries Association. All of this study and engagement informs this submission.

CBABC has been a long-time supporter of a single regulator model to ensure efficiency and congruence in the regulation of lawyers, notaries and paralegals. However, that support is contingent on lawyers:

- maintaining independence and self-regulation; and
- setting strong parameters for:
    - the scope of practice
    - criteria for education and competencies
    - an effective investigation and discipline framework, and
    - the provision of satisfactory insurance coverage.

CBABC does not accept the premise that changes to regulation of lawyers, notaries and paralegals will impact access to legal services significantly, or in the magnitude that the Ministry asserts. We agree this is an opportunity to introduce some changes that will contribute to increasing access to legal services, but to assert that this "broad, more holistic approach to reform" will achieve a greater result than, for example, funding the family law legal aid system, or increasing funding for court services and technology, is an overstatement and an unrealistic assertion.

It is paramount that any reforms to the regulation of lawyers, notaries and paralegals preserve the independence of lawyers from regulation by government. The principle of self-regulation of lawyers must ensure that it is lawyers who make the governing decisions. The regulator (alongside associations and individuals) must retain the responsibility to protect the rule of law.

Throughout CBABC's engagement regarding the Intentions Paper, lawyers repeatedly emphasized that details and specifics matter. While CBABC shares some recommendations in response to the six broad categories for reform, to make meaningful, concrete contributions, CBABC should be included in continued development of the legislation, regulation and rules as more specific ideas emerge. Such engagement is essential to the self-regulation of lawyers.

Background

The Ministry's initiative comes at a time when the Law Society is maintaining and improving its regulatory framework. These include:

- Responding to the Report of a Governance Review of the Law Society of British Columbia, November 2021
- Establishing the Indigenous Framework to guide the Law Society's work in reconciliation
- Administering an Innovation Sandbox to explore possible alternative service provider models
- Maintaining public confidence in its well-regarded Anti-Money Laundering system
- Establishing the LSBC Tribunal
- Moving towards a Competency-based System for Lawyer Licensing

CBABC's engagement on these recent developments includes its Submission on Self-Regulation and LSBC during the course of the governance review, and its participation in the Cullen Commission on Anti-Money Laundering in British Columbia. CBABC is revising its Reconciliation Action Plan for release in January 2023 and has been developing its future submissions on law school curriculum, the licensing procedure and working conditions for articling students, and the Innovation Sandbox.

On the matter of the regulation of lawyers, notaries and paralegals, an issue that has been discussed at least over the past three decades, CBABC's submissions include:

- The Future of Legal Services, Legal Practices, and the Legal Profession in British Columbia, provided to the Law Society on March 31, 2020
- Family Law Legal Services Providers: Consultation Paper provided to the Law Society on December 21, 2018 by the Access to Justice Committee and Family Law Working Group
- External Review of Legal Aid Service Delivery in British Columbia provided to Jamie McLaren, KC on November 23, 2018
- *The Civil Resolution Tribunal Amendment Act*, 2018 (Bill 22), provided to the Provincial Government of BC on May 8, 2018
- Submissions to the Law Society's Legal Services Providers Task Force in 2013 and 2014
- Letter to the Honourable Shirley Bond regarding notaries' proposed changes to scope of practice in 2012 which includes the submission in 2010

CBA's Mission Statement includes the goal of improving access to justice. As outlined in CBABC's Agenda for Justice 2021, improving access to justice is at the core of CBABC's advocacy initiatives. CBABC's access to justice advocacy is anchored by the authoritative report produced by CBA, Reaching Equal Justice: An Invitation to Envision and Act (2013).

Discussion

General Principles

Self-regulation

It is paramount that any reforms to the regulation of lawyers preserve the independence of lawyers from regulation by government. Without an independent profession, there can be no access to justice. Undue government interference in the regulation of the legal profession would hamper the ability of lawyers to advocate for their clients zealously and serve their clients effectively. More broadly, an independent legal profession is crucial because it allows lawyers to contribute to law reform, ensures a functional justice system, and allows the judiciary to maintain their independence; all of these roles are critical for a free and democratic society governed by the rule of law. The principle of self-regulation of lawyers must ensure that it is lawyers who make all governing decisions. As Justice Estey held in *AG Can v Law Society of BC,* [1982] 2 SCR 307 at 335-336, 1982 CanLII 29:

> *…the independence of the bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally.*

The regulator (alongside associations and individuals) must retain the responsibility to protect the rule of law. These principles, fundamental to our democracy and essential to protecting citizens from government over-reach, are under threat throughout the world, including in British Columbia. One only needs to review the commentary of politicians and candidates for public service at all levels of government throughout the past year to see that the rule of law is not understood, and not protected by some of those individuals.

The Intentions Paper contains the assertion that the government is not proposing, and has no intention of proposing, changes that would interfere with the independence of lawyers or self-regulation. However, as the intentions are subsequently detailed, ideas such as removing the licensees' opportunity to bring resolutions to an annual general meeting, or a Board composition that does not contain a majority of lawyers, suggest that there is a difference in understanding of what independence and self-regulation mean with respect to the regulation of lawyers.

Access to Justice

Improving access to justice is a core part of CBABC's mandate. Both CBABC and its parent organization, CBA, have been involved in significant studies and made recommendations to address this complex issue such as *Foundation for Change* and *Reaching Equal Justice*. CBABC is a member of Access to Justice BC and endorses the Triple Aim approach to addressing the issue.

As a professional association, CBABC has a number of ongoing and recent programs to improve access to justice, including:

- Rural Education and Access to Lawyers (REAL) – an initiative to place 2nd year law students for a summer in communities where there is a demand for legal services and few lawyers to provide those services, with the goal of having those students return to establish law practices
- A2J Tech Drive – an initiative to provide rural and Indigenous communities with pre-owned computer hardware from lawyers and law firms upgrading theirs, so that individuals in those communities are assisted to appear in courts and tribunals virtually, and access legal advice
- A2J Week BC – an annual program, now in its fifth year, to provide lawyers and other legal service providers with inspiration and guidance to change day-to-day legal systems to improve access to justice
- Continual advocacy to the courts and the Ministry's Court Services Branch to modernize and simplify rules, procedures and processes to cut down on the steps required to access courts and tribunals, thereby reducing time and expense for clients
- *Agenda for Justice 2021* - our series of recommendations to the provincial government on legislative reform and policy funding. The recommendations include the request for government to restore legal aid funding in order to establish family law legal aid representation for low-income families

Since the implementation of the 7% provincial sales tax on legal services provided by lawyers, which was introduced with the rationale that the taxes collected would fund the legal aid system, CBABC has repeatedly called on the government to make good on the promise to use the funds collected to support the legal aid system. Government continues to refuse to do so, yet that step would provide thousands of British Columbians with access to legal advice and representation they otherwise cannot afford, enabling them to resolve child support and parenting disputes which form most of the family law matters in our courts.

CBABC does not accept the premise that changes to regulation of lawyers, notaries and paralegals will impact access to legal services significantly, or in the magnitude that the Ministry asserts in the Intentions Paper. We agree this is an opportunity to introduce some changes that will contribute to increasing access to legal services, but it is unrealistic and a significant overstatement to assert that this is the "broad, more holistic approach to reform" which will achieve greater results than, for example, funding the family law legal aid system.

Any professional providing legal services incurs the costs of running their business and contributing to British Columbia's economy. These costs, including facility rental, information technology, employment of support staff and systems to comply with regulatory requirements, are by necessity covered by fees charged to clients. Should paralegals or others become regulated as independent legal professionals, they too will have these costs.

Furthermore, it seems that when discussing access to legal services and access to justice (terms which have multiple potential definitions and should be defined in the statute if they are going to be relied upon), it is asserted that the greatest need is in the areas of employment, tenancy, and family disputes. Family law disputes are acknowledged as the most challenging of those three areas because of the personal and immediate impact on individuals who are forced to make significant decisions when they are experiencing heightened emotions. It is an area of practice with a greater number of complaints about service. While the overwhelming majority of these are unfounded, this clearly demonstrates that

practitioners in this area must be properly qualified. It is also an area of the law which is more complex than is perhaps recognised by government or those who do not practice in the area.

CBABC has made previous submissions about the important role of lawyers in the area of family law and strongly cautioned against permitting other professionals, such as notaries, to engage in this area. Without repeating those submissions, which are noted in the Appendix, we point out that increasing the supply of professionals in family law is not a solution that will assist those individuals who are waiting for a lawyer or cannot afford a lawyer, unless those professionals have the education and appropriate apprenticeship/supervision to properly assist those clients. This inevitably means that they will also be charging fees to cover the costs of their training, their regulation, and their overhead, and passing those on to clients. There is no data indicating those costs will be less than what lawyers charge. Accordingly, there is no guarantee that increasing the supply of assistance from say, paralegals, will enable those who cannot afford services to access them from a new category of professionals. Further, there does not seem to be a supply of paralegals wishing to start family law service practices (see discussion under Flexible Licensing Framework).

In summary, access to legal services and access to justice and resolution of disputes are important issues to be addressed. Government, legal professionals, the regulator, educational institutions, not-for-profit organizations, courts and tribunals must keep working on this issue and make more progress together. Regulation of a new category of legal professionals who do not yet have the desire, education, or experience to step into a complex and demanding area of client service will not meaningfully address this concern and is not in the public interest.

Risk

Every time a member of the public places their trust in legal advice they have received from a lawyer or notary, there is a risk that their trust is wrongly placed, which can result in significant loss to the client. Lawyers and notaries are self-insuring, meaning they take on the collective risk that members of their professions might fall below practice standards, regardless of their shared education, articling training, and admissions exams. That self-insurance ought to continue.

However, the Intentions Paper does not address how the risk posed by paralegals or other professionals will be addressed. This is a very important consideration in regulation to protect the public.

The cost of premiums for insurance coverage is determined in part by a defined scope of practice and a predictable number of insureds in a category. Without certainty in those areas, it is very difficult to assess risk from an underwriting point of view. While information is limited, it appears that the number of paralegals seeking to have an independent scope of practice will be low to begin with, and it is therefore very unlikely that paralegals would be able to be self-insured. The same is true for “other” legal professionals. Accordingly, paralegals and others would need to secure private insurance (with potentially unpredictable coverage and premiums, given the limited information known about risk, and those costs passed on to their clients). Alternatively, all lawyers, notaries, paralegals and any others would need to be covered in one self-insured insurance program.

If all legal service providers are covered under the same insurance program or pool, the cost of insuring (and indemnifying) non-lawyer service providers will effectively be borne by lawyers, as our numbers are overwhelmingly greater than notaries and paralegals. Allowing non-lawyers to provide unsupervised legal

services to the public may increase access to legal services, but it also brings with it a potentially significant increase in risk to the public, and a corresponding increase in risk of professional liability claims. Lawyers, and by extension their clients, should not be forced to take on the cost of insuring other professionals.

The issue of risk and insurance is one which must be carefully considered in the development of the single regulator and before legislation is introduced. As noted throughout this submission, CBABC expects to be engaged in those conversations on behalf of lawyers.

Reconciliation

Pursuant to the *Declaration on the Rights of Indigenous Peoples Act*, the government should take all measures necessary to ensure that the proposed regulatory framework—in all respects—is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*. This duty has heightened importance in the present context given the justice system's colonial history and the harms it has caused, and continues to cause, to Indigenous peoples. In addition, the proposed regulatory framework should assign the regulator a mandate to support reconciliation with Indigenous peoples, who have experienced, and continue to experience, heightened barriers to accessing justice.

CBABC expects that the Law Society's Indigenous Framework will be considered in drafting the single statute and that the obligation for cultural competency training in Indigenous matters will continue.

Single Statute, Single Regulator

CBABC has long been a supporter of a single regulator model to ensure efficiency and congruence in the regulation of lawyers, notaries and paralegals. However, that support is contingent on lawyers:

- maintaining independence and self-regulation; and
- setting strong parameters for:
    - the scope of practice
    - criteria for education and competencies
    - an effective investigation and discipline framework, and
    - the provision of satisfactory insurance coverage.

Please refer to the documents listed in the Background section above.

Throughout the Intentions Paper, the Ministry refers to the obligation of the single regulator to regulate "legal services" and to ensure that there are sufficient available legal services for the public. CBABC does not agree that the single regulator should have a role in regulating legal services if that role goes beyond regulating the individuals and legal entities providing the legal services. For example, the regulator should not have a role in prescribing fees for legal services or limiting the number of legal service providers in an area.

Given that such major change was not readily apparent or specified in the Intentions Paper, CBABC's submission does not address that concept. If the Ministry's intention is to regulate services rather than

the professionals providing them, the Ministry should specify its intentions and CBABC will provide a separate submission on that issue.

In listing the benefits of a single statute and single regulator model, the Ministry says that "if the regulator has a clear mandate to facilitate access to legal services, [it] will be well positioned to identify gaps in underserved areas and to regulate in a manner that addresses those gaps". To the extent that this suggests the government is walking away from its responsibility to provide publicly funded legal aid in high-needs areas (such as family disputes experienced by low-income people), or to consider how to encourage lawyers, notaries, and paralegals to work in small and rural communities, CBABC disagrees. It is not the role of the regulator, nor is it the responsibility of the lawyers, notaries, and other providers who fund the regulatory system to solve the broad, multi-faceted access to justice problem. As noted above, that responsibility falls on many shoulders.

Clear Mandate

In principle, CBABC agrees with Intentions 2.1 – 2.3. These core responsibilities should be narrowly interpreted and prioritized to avoid the regulator losing focus. For example, the core responsibility of setting standards for registration, also known as admission to practice, is a responsibility requiring immediate attention in light of reports of wide variance in articling conditions, identified gaps in knowledge and competencies upon entering articles, and the mental health challenges faced by new lawyers.

In reviewing this section of the Intentions Paper, lawyers had questions about the definition of "public interest", "access to legal services", and "effective legal professions", and whether "guiding principles" should be in a statute. These terms have different meanings to different audiences and to the extent that they are to form part of the clear mandate, further explanation than that offered in the Intentions Paper is required.

Modernized Governance Framework

The composition of the single regulator's Board depends on its responsibilities and the data available to the Board.

Lawyers have differing views of what the Board responsibilities should be. Most support the idea of a Board that sets strategic direction, ensures necessary resources, and provides oversight of the operations of the entity. If these were the roles of the Board, the individuals on it would not have a role in the regulatory operations such as program creation, regulatory compliance advice, or assessments or problem-solving during the licensing or admission to practice period (e.g., articling student interviews). Given that the single regulator will regulate over 17,000 professionals, it seems that the Board itself should not be involved in operational matters, in the way that it is to a limited extent now.

At present, many lawyers believe that, absent a Bencher who has personal experience with a specific issue or community, there is insufficient information available to the governing Board to inform its decisions. Therefore, the Board composition must reflect the make-up of the lawyers in the profession. This is evidenced by the call for candidates from among solicitors (who are under-represented on the current Law Society Board), by the campaign to elect more Indigenous Benchers, and by the vocal support for continued election by geography. If there was data about the nature of practice for small firms, large

firms, Indigenous, Black and other racialized[1] lawyers, small communities, large urban centres, different areas of practice, and different stages of career, then perhaps lawyers would be more supportive of a self-regulated governance model that did not adhere to the current framework. This data should be collected and available.

CBABC agrees that a smaller, more agile Board composition is required, to be consistent with effective and modern regulatory operations. A smaller Board would allow for meaningful discussion and debate when carrying out the Board's responsibilities. The regulator should establish a data gathering and disclosure methodology, including engagement with licensees through their respective professional associations, to bring information to the Board to guide its decision-making.

The majority of lawyers wish to retain a geographic model of representation. The geography and population distribution in British Columbia means that what legal services are delivered, to whom, and how, varies by geography. Since the regulation of legal professionals is at its core about the standards legal professionals must meet in delivering legal services, CBABC recommends that elections and appointments be distributed based on geography.

In considering the composition of the Board, CBABC notes that at the Law Society Board, there has been great progress to achieve inclusion of Indigenous, Black and other racialized lawyers and public appointees without having reserved seats for individuals from those communities. As noted in the Intentions Paper, women, who have historically been under-represented, are no longer under-represented. It is critical that the Board of the single regulator reflects the society it will protect and accordingly, through a combination of elections and appointments, care should be taken to achieve balance of those models.

The matter of Indigenous representation on the Board is significant and distinct in British Columbia from discussions of representation by other historically marginalized groups. Indigenous representation on the Board ensures that lawyers and the communities they serve benefit from a regulator that is cognizant of Indigenous cultural competencies. Indigenous lawyers, and the Indigenous communities that they serve, face unique issues directly stemming from systemic and historic racism and ongoing experiences of colonization. The incorporation of meaningful representation is an opportunity to set a new trajectory of reconciliation in the legal profession in BC.

CBABC has acknowledged with regret the role that the legal profession in BC has played in the perpetuation and application of laws that have had harmful impacts on Indigenous peoples. Indigenous peoples are entitled to access to justice and the implementation of the inherent rights set out in the *United Nation Declaration on the Rights of Indigenous Peoples*. British Columbia has specifically endorsed this trajectory in the *Declaration on the Rights of Indigenous Peoples Act*.

It is critically important for the regulator's Board to incorporate Indigenous perspectives in the regulation of a growing professional body. This cannot be achieved by education and data alone. A Board comprised of Indigenous and non-Indigenous lawyers, notaries, and paralegals can directly impact the perpetuation

[1] We acknowledge that there are different words that can be used to describe people's ethnic or cultural background and not everyone agrees what language should be used. Accordingly, we have adopted language of the BC Human Rights Commission, "Indigenous, Black and other racialized groups".

and application of reconciliation and access to justice. Indigenous representatives on the Board will be in a position to increase awareness about the application of Indigenous cultural competency initiatives.

In light of a smaller Board composition, as suggested in this case, it would benefit the Board to have at least one seat reserved for an Indigenous person. It is important to remember that the Indigenous population includes First Nations, Métis, and Inuit Peoples and that one Indigenous member cannot be expected to reflect the diversity in those populations. One need only refer to the *National Report on Truth and Reconciliation* to realize the necessary and life-changing impact the Board may have on Indigenous communities if it takes the opportunity to invite to the table, and meaningfully engage, Indigenous perspectives.

Another consideration for the Board composition is the inclusion of public and licensee involvement, and the distribution of licensee seats among the regulated professionals.

In order to ensure self-regulation, the majority of the Board must be licensees subject to regulation. Public appointees bring additional and important perspectives to Board discussions, and those public appointees can help "fill the gap" in areas such as the skill set, geographic regions, or identified underrepresented groups such as Indigenous, Black or other racialized individuals.

In particular, the majority of licensees on the Board must be lawyers. CBABC makes this submission for three reasons. First, lawyers have a fundamental obligation to uphold the rule of law. To meet this obligation, lawyers must remain independent and self-governing. To truly maintain self-regulation and the independence of the profession, a Board comprised of a majority of lawyers is required. Second, lawyers are trained and authorized to engage in the full scope of the practice of law. Notaries, paralegals, and others will be given a limited scope of that primary scope of practice. The limited training and experience of other practitioners will necessarily inhibit their ability to understand and properly regulate lawyers engaged in the full practice.

Finally, the distribution of professionals currently regulated is approximately 16,000 lawyers to 400 notaries. The number of paralegals to become regulated is unknown but is expected to be fewer than 500. Based on numbers alone, it can reasonably be anticipated that the issues for the Board's determination will most often be about lawyers.

Accordingly, CBABC suggests the following distribution of Board positions of the single regulator as an example, notwithstanding its reflections about the regulation of paralegals noted in the next section:

Composition: 19 members

- 4 public members
- 2 notaries, with one from outside of Vancouver
- 2 paralegals, with one from outside of Vancouver
- 11 lawyers
    - 5 from Vancouver County
    - 2 from New Westminster County

- 1 from Victoria County
- 1 from Nanaimo County
- 1 from Thompson-Okanagan
- 1 from Northern and Eastern BC (from the current Prince Rupert, Cariboo and Kootenay Counties).

Flexible Licensing Framework

As noted above, CBABC understands it is the position of the Ministry that the new statute is intended to regulate the professionals who provide legal services, not the legal services themselves. Should the Ministry have a different intention, it should be transparent with the professionals, the current regulators and the public. This would then be an entirely different conversation and would require more time than is currently contemplated.

CBABC agrees that the "practice of law" should be defined in statute and is not aware of any problem that needs to be addressed by changing the current definition, other than to modernize the language. We also agree that notaries' core scope of practice should continue to be defined, with a mechanism to potentially expand that scope without legislation. Any change, however, must only come after the regulator's review of education, competencies, risk, increased insurance coverage, continuing professional development and the protection of the public.

Since March 2022, CBABC has inquired what proposed scope of practice is desired by paralegals, and whether they wish to be able to act independently without lawyer supervision (as in the case in Ontario). It is also unclear what education, competencies, standards, ethics, insurance, and fees are envisioned. We have not been able to obtain answers to these questions, which significantly hampers CBABC's ability to make meaningful submissions on these issues. As stated in CBABC's previous submissions in 2010, 2012, 2013 and 2014 with respect to the expanded scope of practice for notaries, all of these must be considered in order to provide appropriate public protection.

We have inquired as to the areas of practice in which independent paralegal work might be undertaken. There is little publicly available information about the use, effectiveness, and evaluation of the "designated paralegal" regulation through the Law Society. Anecdotal information indicates that there is a wide range of those who use the title "paralegal", why, and what benefit that has brought to the public. There is also a wide range of views from paralegals on whether they want to be able to take on more responsibilities through direct client engagement and advocacy for clients in meetings, negotiations, mediations, tribunals or court. The informal collection of information suggests that the desire for such increased scope is limited.

Until it is clarified what proposal the BC Paralegal Association or others see for paralegals, CBABC does not recommend including such scope in a statute; rather, that the regulator make this issue a priority for examination. This is not intended as a criticism of the BC Paralegals Association; it is acknowledged that the BCPA is a voluntary membership association without staff and is entirely dependent on the goodwill and leadership of a small group of individuals, which is appreciated. Having the regulator undertake engagement, assessment and bring forward a proposal would likely assist with achieving clarity on the scope of practice, if any.

Notwithstanding this view that the scope of practice for paralegals should not be in the forthcoming statute, CBABC acknowledges that having a limited number (no more than 2) seats on the Board could assist in expanding and regulating the classes of professionals.

The Intentions Paper refers to a model of "case by case" granting of licenses proposed in the Intentions Paper. It is unclear what is meant by this. While the licensing framework should be sufficiently flexible to accommodate innovative ways of delivering affordable, high-quality legal services to the public, this must not mean regulation of legal professionals on an individualized basis. Members of the public and other legal professionals must be able to know, from the title of a regulated legal service provider, what qualifications they have been required to achieve and what services they are authorized to offer. Individuals, whether they be members of the public seeking assistance, or a professional determining who is on the other side of a file, should not have to individually look up each person to understand what it is they are allowed to do.

A new regulator of lawyers, notaries, paralegals, and others should also simplify the regulatory requirements required of those professionals to reduce the costs of compliance. The current system of regulation of lawyers is burdensome, whether evaluated by time taken to understand pages of regulations on a single topic, the technology used, or the personnel required to maintain the systems. Reducing the costs of *providing* legal services should in turn reduce the costs of *accessing* legal services.

Many of the Law Society's regulations meet the public interest. For example, the regulations to combat anti-money laundering have recently been praised in the Cullen Commission's Report on Anti-Money Laundering in British Columbia. This is not to say that there is not room for improvement. It would be beneficial for the Regulations to be reviewed, modernized, and simplified in order to manage actual and typical risks. That would reduce the financial burden on lawyers and law firms and thus reduce the overhead costs they may need to meet through client revenue. Where appropriate, based on a risk-benefit analysis, the provision of legal information and law-related assistance by certain individuals should be exempted from the framework or made subject to reduced requirements. Examples include Native Courtworkers, non-lawyer mediators, and community advocates. Finally, neither this flexible licensing framework nor any other aspect of the regulatory framework should deny or impede an individual's ability to access a lawyer.

Effective Discipline Framework

CBABC notes that the Law Society has been making incremental, positive changes to its disciplinary framework, which was noted by Harry Cayton in the Report on the Governance Review. This progress towards modernization should continue and be adopted for all the professionals under the single regulator.

CBABC encourages all mechanisms that will allow the Law Society to address the licensees who have frequent encounters with the disciplinary process of the Law Society and create the highest risk. The profession, as well as the public, will have greater confidence in the Law Society disciplinary procedure when those individuals either correct their conduct or are removed from practice.

As further changes are contemplated, CBABC expects that lawyers will remain the majority on disciplinary panels involving lawyers. This is a core element of self-regulation, that the conduct of lawyers is evaluated and disciplined as appropriate by other lawyers.

Enhanced Focus on Public Interest

CBABC agrees that the responsibilities of a regulator should be separate from those of a professional association and that a regulator should act in an advocacy role in alignment with its legislation. We note that in the case of the proposed single regulator, this will include advocacy to protect and promote the rule of law.

CBABC is puzzled by the assertion that licensees should not be able to propose directions to the regulator. As one lawyer put it, the resolutions advanced by those new to the profession have drawn attention to critical issues such as diversity and inclusion, as well as the experiences of those recently admitted to practice. Without those resolutions, would the regulator have addressed those issues in a timely manner?

CBABC recommends that the Annual General Meeting should be retained as a mechanism to hear from the general public and the regulated licensees. There should, however, be a publicized methodology to screen proposed resolutions to ensure they address matters within the regulator's authority and that the public interest in the resolution is identified. This screening mechanism could be included in a form to be completed by licensees or the public wishing to bring forward a resolution.

Similarly, if there are public concerns with regulation, as opposed to a complaint about an individual legal service provider, there should be a publicized methodology to allow members of the public to bring forward such concerns to the regulator.

Next Steps

Throughout CBABC's engagement regarding the Intentions Paper, lawyers repeatedly emphasized that details and specifics matter. While CBABC shares some recommendations in response to the six broad categories for reform, to make meaningful, concrete contributions, CBABC should be included in continued development of the legislation, regulation and rules as more specific ideas emerge. Such engagement is essential to the self-regulation of lawyers. Continued engagement with the professional associations and their regulators will assist in avoiding unintended negative consequences, particularly when new concepts are introduced.

CBABC appreciated engaging directly with notaries and paralegals in preparing this submission. The more frequently that discussions can bring lawyers, notaries and paralegals together, the more likely it is that the hoped-for outcomes will be achieved.

Recommendations

CBABC makes the following specific recommendations and/or comments:

General Principles

Self-regulation

1. Any reforms to the regulation of lawyers should preserve the independence of lawyers from regulation by government.

Access to Justice

2. Changes to regulation of lawyers, notaries and paralegals will not impact access to legal services significantly, or in the magnitude that the Ministry asserts. Funding the family law legal aid system, for example, would achieve a greater result.

3. "Access to legal services" and "access to justice", as terms with multiple definitions, should be defined in the statute if they are to be relied upon.

4. Increasing the supply of professionals in family law by permitting other professionals, such as notaries, to engage in this area is strongly cautioned against. Regulation of a new category of legal professionals who do not yet have the desire, education or experience to step into a complex and demanding area of client service will not meaningfully address access issues and is not in the public interest.

Risk

5. The issue of risk and insurance must be carefully considered in the development of the single regulator and before legislation is introduced.

6. Lawyers, and by extension their clients, should not be required to take on the cost of insuring other legal professionals.

Reconciliation

7. Pursuant to the *Declaration on the Rights of Indigenous Peoples Act*, the proposed regulatory framework should be consistent – in all respects – with the *United Nations Declaration on the Rights of Indigenous Peoples*.

8. The proposed regulatory framework should assign the regulator a mandate to support reconciliation with Indigenous peoples, who have experienced, and continue to experience,

heightened barriers to accessing justice. The Law Society's Indigenous Framework should be considered in drafting the single statute and the obligation for cultural competency training in Indigenous matters should continue.

Single Statute, Single Regulator

9. CBABC's support of the single regulator model is contingent on lawyers:
   - maintaining independence and self-regulation, and
   - setting strong parameters for:
     - the scope of practice,
     - criteria for education and competencies,
     - an effective investigation and discipline framework, and
     - the provision of satisfactory insurance coverage.

10. The single regulator should not have a role in regulating legal services if that role goes beyond regulating the individuals and legal entities providing the legal services.

Clear Mandate

11. The core responsibilities set out under Intentions 2.1-2.3 should be narrowly interpreted and prioritized to avoid the regulator losing focus.

12. Further clarity regarding the terms, "public interest", "access to legal services", "effective legal professions", and "guiding principles" is required.

Modernized Governance Framework

13. Data on the nature of practice for small firms, large firms, Indigenous, Black and other racialized lawyers, small communities, large urban centres, different areas of practice, and different stages of career should be collected and available. This would help ensure that there is sufficient information available to the Board to inform its decisions.

14. A smaller, more agile Board composition is needed, to be consistent with effective and modern regulatory operations, and should comprise a mix of appointed and elected members.

15. Geographic diversity on the Board should be maintained.

16. The representation of Indigenous, Black and other racialized individuals on the Board should continue to be prioritized.

17. In order to ensure self-regulation, the majority of the Board must be licensees subject to regulation, the majority of which should be lawyers.

18. The distribution of Board positions of the single regulator could, for example, comprise 19 members as follows:
    - 4 public members
    - 2 notaries, with one from outside of Vancouver
    - 2 paralegals, with one from outside of Vancouver
    - 11 lawyers
        - 5 from Vancouver County
        - 2 from New Westminster County
        - 1 from Victoria County
        - 1 from Nanaimo County
        - 1 from Thompson-Okanagan
        - 1 from Northern and Eastern BC (from the current Prince Rupert, Cariboo and Kootenay Counties).

Flexible Licensing Framework

19. The "practice of law" should be defined in statute, and the notaries' core scope of practice should also continue to be defined, with a mechanism to potentially expand that scope without legislation. Any change, however, must only come after the regulator's review of education, competencies, risk, increased insurance coverage, continuing professional development, and the protection of the public.

20. The paralegals' scope of practice should be prioritized for examination by the regulator. Until further clarification, paralegals' scope of practice should not be included in a statute.

21. The model of "case by case" granting of licenses should be clarified. While the licensing framework should be sufficiently flexible to accommodate innovative ways of delivering affordable, high-quality legal services to the public, this must not mean regulation of legal professionals on an individualized basis.

22. The regulatory requirements of lawyers, notaries, paralegals and others should be simplified, to reduce the costs of compliance. Where appropriate, based on a risk-benefit analysis, the provision

of legal information and law-related assistance by certain individuals should continue to be exempted from the framework or made subject to reduced requirements.

23. Neither this flexible licensing framework nor any other aspect of the regulatory framework should deny or impede an individual's ability to access a lawyer.

Effective Discipline Framework

24. The modernization of the Law Society's disciplinary framework should continue and be adopted for all professionals regulated under the single regulator.

25. All mechanisms that will allow the Law Society to address licensees who have frequent encounters with the Law Society disciplinary process, and thus create the highest risk, are encouraged.

26. Lawyers should remain the majority on disciplinary panels involving lawyers.

Enhanced Focus on Public Interest

27. The responsibilities of a regulator should be separate from those of a professional association, and a regulator should act in an advocacy role in alignment with its legislation.

28. The Annual General Meeting should be retained as a mechanism to hear from the general public and regulated licensees. There should, however, be a publicized methodology to screen proposed resolutions to ensure that they address matters within the regulator's authority and that the public interest in the resolution is identified.

29. If there are public concerns with regulation, as opposed to a complaint about an individual legal service provider, there should be a publicized methodology to allow members of the public to bring forward such concerns to the regulator.

Next steps

30. CBABC should be included in continued development of the legislation, regulation and rules as more specific ideas emerge. Such engagement is essential to the self-regulation of lawyers.

Reference Material

1. Action Committee on Access to Justice in Civil and Family Matters, "*Access to Civil & Family Justice: A Roadmap for Change*" (Ottawa: October 2013).
2. Deirdre Ahern, "Regulators Nurturing Fintech Innovation: Global Evolution of the Regulatory Sandbox as Opportunity-Based Regulation" (European Banking Institute, Working Paper Series No. 60, 2020).
3. CBABC, "Agenda for Justice 2021" (2021).
4. CBABC, Submission on Self-Regulation and LSBC, provided to Harry Cayton on October 25, 2021.
5. CBABC, Submission on The Future of Legal Services, Legal Practices, and the Legal Profession in British Columbia, provided to the LSBC on March 31, 2020.
6. CBABC, Submission regarding the Family Law Legal Service Providers: Consultation Paper provided to the LSBC on December 21, 2018.
7. CBABC, Submission regarding the External Review of Legal Aid Service Delivery in British Columbia provided to Jamie McLaren, KC on November 23, 2018.
8. CBABC, Submission on The Civil Resolution Tribunal Amendment Act, 2018 (Bill 22), provided to the Provincial Government of BC on May 8, 2018.
9. CBABC, Letter to Art Vertlieb, QC, Life Bencher (October 31, 2014).
10. CBABC, Submission to LSBC's Legal Services Providers Task Force, provided on October 18, 2013
11. CBABC, Letter to the Honourable Shirley Bond (April 3, 2012).
12. CBA National, Reaching Equal Justice: An Invitation to Envision and Act (2013).
13. Harry Cayton, Report of a Governance Review of the Law Society of British Columbia (November, 2021).
14. The Honourable Thomas A. Cromwell, "A Review of the Current Legal Landscape Keynote: Questions and Answers about Access to Justice", 40 Man. L.J.1 (2017).
15. Yvon Dandurand & Jessica Jahn for A2JBC, Access to Justice Triple Aim Measurement Framework (2017).
16. Leonard T. Doust, KC, Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia (March, 2011).
17. Cristie Ford & Quinn Ashkenazy, "The Legal Innovation Sandbox" (forthcoming in the *American Journal of Comparative Law,* 2023).
18. The Law Society, "Professional indemnity insurance overview" (November 8, 2019).
19. The Law Society of British Columbia (Truth and Reconciliation Advisory Committee), Indigenous Framework Report, (September 12, 2022).

20. The Law Society of British Columbia, "Anti-Money Laundering" (2022).

21. The Law Society of British Columbia, "LSBC Tribunal" (2022).

22. The Law Society of British Columbia, "Innovation Sandbox" (2022).

23. The Law Society of British Columbia (Lawyer Development Task Force), Recommendation to Develop a Competence Based System for Lawyer Licensing (September 9, 2022).

24. Brea Lowenberger et al.," Measuring Improvements in Access to Justice: Utilizing an A2J Measurement Framework for Comparative Justice Data Collection and Program Evaluation Across Canada" *Windsor Yearbook Access of Justice* (2021).

25. Clair McCashin, Alex Santos & Desiree Steele, "Civil and Family Justice Metrics: Towards a Framework for Saskatchewan" (The Sixth Annual Dean's Forum on Access to Justice and Dispute Resolution delivered at the College of Law, University of Saskatchewan, 6 March 2018).

26. Lisa Trabucco, "The Regulation of Paralegals in Ontario: Increased Access to Justice?" (Osgoode Hall Law School, 2021).

27. *AG Can v Law Society of BC,* [1982] 2 SCR 307 at 335-336, 1982 CanLII 29.

28. *Legal Profession Act* [SBC 1998] CHAPTER 9.

29. Université de Sherbrooke, National Study on the Psychological Health Determinants of Legal Professionals in Canada (October 2022).

SOCIETY OF
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November 18, 2022

Ministry of the Attorney General
Victoria BC

Via email pld@gov.bc.ca

Dear Minister,

Re: Society of Notaries Public of British Columbia response to Legal Professions Regulatory Modernization

This is the written response to the Legal Professions Regulatory Modernization Initiative and the Ministry of the Attorney General's Intentions Paper. We thank the Ministry for the opportunity to comment on the initiative and the paper.

The Society of Notaries Public of BC (SNPBC) was registered as a society under the *Society Act* in British Columbia in 1926. Not unlike other professional societies, the scope of activities of the SNPBC has changed over time. Historically, government granted certain rights to professional associations that included activities such as disciplining a member of the profession. Throughout the mid 20th century, common law governments expanded and clarified the scope, responsibilities, and mandates of regulators under the auspices of professional self-regulation. This progression and model describe the genesis of the Society of Notaries Public of BC from an advocacy organization into the public interest regulator it is today.

Notaries Public have a long and storied history in this province. In fact, the first document registered in the provincial land title registry was submitted and registered by a Notary Public. Notaries Public in BC represent a 100-year experiment in access to legal services.

BC remains one of only two provinces[1] in which persons other than lawyers have the express statutory right to provide legal services and give legal advice directly to the public. By almost every measure, the provision of legal services by Notaries Public has been a highly successful experiment that has, within the limited scope of practice as set out in the *Notaries Act*, increased access, provided high quality legal services including the giving of legal advice, and protected parties' rights in real property transactions, personal planning, and a wide range of other services.

Within that 100-year history is a concerted effort by the legal profession to eliminate, and as that proved increasingly unlikely, marginalize Notaries Public. That marginalization extends to the Courts which, in our submission, have over-reached to limit the scope of practice despite clear language and intent in the *Notaries Act*.

It is only in recent years that the Law Society of BC has embraced, through an evaluation of harm to the public, and the implementation of the regulatory sandbox, a perspective that appears to indicate a willingness to address some of the challenges inherent in long standing structural barriers within the legal profession to "allowing" the provision of legal services by anyone other than a lawyer. Notwithstanding the recent developments undertaken by the Law Society, the legal profession has time and again demonstrated its unwillingness to embrace expanding access to justice and legal services.

It is our contention that this history is critically important to understand in the context of modernizing the regulation of the legal professions in British Columbia. A failure to appreciate and address the structural barriers to increase access to justice and legal services will likely result in the status quo of lawyers exerting control over the legal professions.

Prior to addressing the issue of board composition, it is necessary to address the issue of independence. In the context of modernization of the regulation of the legal professions,

[1] Quebec is the other province with independent Notaries Public.

there is firstly, independence of lawyers. We are of the opinion that the nature of independence should logically extend to all regulated legal professionals. Secondly is the matter of independence of the regulator. The intentions paper captures and we agree fully with respect to the importance of an independent bar.

With respect to the independence of the regulator, it is Government's discretion to extend the privilege of self regulation to any profession. By virtue of this discretion, the independence as it applies to a statutory regulator is qualified. Currently, the Attorney General sits as a Bencher of the Law Society. It is the intention of Government to remove the Attorney General on the new entity's governing board. The elimination of an elected government official from the regulatory entity significantly addresses a critical issue related to the independence of the new regulator.

The intentions paper further provides that the potential for government interference and influence will not be a factor by:

- establishing a board of directors on which the government-appointed members constitute a minority;
- giving the regulator the power to make rules for the regulation of legal service providers that would not need to be approved by or filed with government;
- maintaining the regulator's jurisdiction to adjudicate discipline matters involving regulated legal service providers; and
- establishing a regulator that continues to be self-funded.

The intention to establish a board of directors on which the government-appointed members constitute a minority does not fully address the issue of board composition. There will need to be consideration of and a balanced approach to the issue of the legal professionals who will comprise the majority of directors. A further issue will be the nature of appointment of the professionals.

With respect to the number of professionals we acknowledge the significant difference in the size of the licensee base as well as the complexity of practice and regulation in areas of law. There are convincing arguments that the model adopted under the *Health Professions Act* is not suitable for the regulation of the legal professions. That model being equal representation from each profession on the governing Board. However, we are strongly of the opinion that care must be taken to ensure that no one profession has an outright majority and can use that majority to limit the ability of other professions to increase access to justice and to provide legal services. A majority with the ability to limit the intent of the initiative is inconsistent with the public interest.

The other perplexing issue to be dealt with is the matter of electing versus appointing directors. We are strongly of the opinion that electing a majority of any profession would be maintaining the member model inherent in the *Societies Act*. Whereas we acknowledge that a fully appointed board of directors raises other issues of concern including who appoints and on what basis, the electoral model is an artifact of historical regulatory frameworks with a questionable record of success when considering the public interest.

It is in this context that we agree with and support the following intentions with a suggestion underlined in 3.6:

3.1 The regulator should be governed by a board composed of a statutory maximum number of directors, some of whom are elected by licensees, some of whom are appointed by the other members of the board, and some of whom are appointed by government.

3.2 The directors appointed by government should constitute a minority of the board, and the Attorney General should not sit as a member of the board.

3.3 Consideration should be given to a statutory requirement for Indigenous representation on the board.

3.4 The board and government should be required to follow nomination procedures that are fair, transparent, accountable, and independent.

3.5 Director elections and appointments should be staggered, so that gaps on the board (with respect to, for example, diversity, skills, type of legal service provider) can be identified and filled.

3.6 The board's role must be focused on strategic oversight.

For clarity and completeness, the SNPBC supports the following intentions believing that these intentions support an independent, forward looking regulatory organization (with underlined suggestions for consideration):

6.1 The statute should refer to regulated individuals as licensees and not members.

6.2 The statute should include public accountability mechanisms suitable to that of a regulator that regulates in the public interest and not that of a membership-driven association.

6.3 Licensees must not have the authority to bring forward resolutions that purport to direct the actions of the regulator's board.

6.4 Licensees must not have the authority to approve or reject the regulator's rules as determined by the board mandate to act in the public interest.

Finally, is the matter of size of the Board of directors. It is our opinion that the number of directors needs to be sufficient for good governance and oversight. The SNPBC reduced the size of its board from 16 to 12 in 2019. We note that regulators with a similar number of licensees to those anticipated under the new legal regulatory entity have boards with 12[2] to 15[3] directors. Given the complexities of regulating the legal professions we are of the opinion that the number of directors should not exceed 19 and would advocate for the number of directors to be 15 with a statutory requirement for indigenous representation.

[2] College of Oral Health Care Professionals of BC
[3] College of Physicians and Surgeons of BC

The issue of scope of practice including the definition of the practice of law will be critical to the regulator achieving the goal of increased access to justice. It is our position that to protect the public the provision of legal services must be grounded in competence to practice. Government has the opportunity to develop a statute that creates a responsive and effective regulatory organization with the tools to be nimble and active.

Given the historical context of Notaries Public in this province, we agree with the following intentions (suggestions underlined):

4.1 The statute should continue to include a definition of the practice of law, which will also constitute the scope of practice for lawyer licensees.

4.2 A modernized and reasonable scope of practice for notaries must be set out in statute. Consideration be given for the statute to include mechanisms to allow for the scope of practice for non-lawyers to be expanded without the need for legislative change.

4.3 The statute must authorize the delivery of legal services through licensed paralegals and the regulator be required to prescribe a reasonable scope or scopes of practice within a defined period of time.

4.4 The statute should enable the regulator to grant licensed paralegals and notaries a certified practice on a case-by-case, competency basis.

4.5 The statute should enable the creation of additional future categories of legal service providers that can be authorized to deliver specific legal services.

4.6 The statute should include a requirement for a future independent review of legal service provider regulation and its impact on access to legal services.

SOCIETY OF NOTARIES PUBLIC OF BC

The Society of Notaries Public of BC recognizes the advantages to modernizing the regulatory framework for legal professionals in British Columbia. Creating a new, public interest focused regulator of legal professionals will require focus, leadership, and commitment by government and stakeholders. There will be opposition to the initiative as change can be difficult. This initiative is not change for change's sake, but a response to a failure to respond and act to address issues of access to justice.

We look forward to continuing to collaborate with the stakeholders in this initiative with the view to create a responsive, public interest focused regulator of legal professionals in British Columbia.

On behalf of the Board of Directors of the SNPBC

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Executive Director

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Position Paper on the Ministry of the Attorney General's Proposed Legal Professionals Regulatory Modernization

Overview

The Federation of Asian Canadian Lawyers (British Columbia) Society ("**FACL BC**") is a diverse coalition of Asian Canadian lawyers in British Columbia ("**BC**"). FACL BC is pleased to share its position on the recent proposal of the Ministry of the Attorney General (the "**Ministry**") to change the way legal professionals are regulated.

In general terms, the Ministry proposes to amalgamate the Law Society of British Columbia (the "**Law Society**")) and the Society of Notaries Public of British Columbia (the "**Notaries Society**") into a single regulator, which would govern lawyers, notaries public, and paralegals in British Columbia. In September 2022, the Ministry released an Intentions Paper[1] that outlines the proposed reforms to the regulatory regime to solicit engagement from the public and key partners.

FACL BC has prepared this Position Paper summarizing our position on the Ministry's proposed reforms as they relate to our mandate to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community.

In our view, although the underlying goals of the proposal are laudable, it is generally unclear how the proposed reforms will further those goals, as the Intentions Paper is bereft of detail that would allow FACL BC to provide an informed opinion. For example, as explained below, FACL BC is, in principle, in favour of a licensing program for paralegals that would lower the cost of legal services for the public and offer a route to foreign-trained lawyers who have trouble becoming licensed in BC. However, the Intentions Paper fails to describe the specifics of that proposal in any detail. We are also concerned that some of the proposals are likely to undermine the Ministry's stated goals. In particular, reducing the number of elected Benchers would undoubtedly reduce diversity and stifle representation on the new regulator's board.

The Ministry's Rationale

As we understand the Ministry's rationale, it has proposed this modernization primarily to make it easier for the public to access legal services and advice. The proposed changes are aimed at prioritizing the public interest, improving access to justice, furthering reconciliation, and improving the overall efficiency, effectiveness, and flexibility of the regulatory framework. According to the Ministry, regulating all legal services under a single

[1] Ministry of Attorney General, "Legal Professions Regulatory Modernization" (September 2022), link: https://engage.gov.bc.ca/app/uploads/sites/121/2022/09/MAG-Intentions-Paper-September-2022-1.pdf [Intentions Paper].

statute and appointing a single regulator would contribute to achieving these goals. The proposed single regulator would have a mandate to protect the public interest and improve access to legal services. Its goal is to accomplish the above by modernizing the governance framework for all legal service providers.

Many people in BC cannot afford a lawyer.[2] Moreover, the gap in accessing justice and legal services seems to exist despite an increase in legal clinics and *pro-bono* work. The Ministry is of the view that the proposed changes are necessary because accessing legal services can become a regulatory issue where rules prevent certain legal professionals from providing services leading to a decrease in the overall availability of services and an increase in cost of those services being provided.

In the Ministry's view, it is the appropriate entity to address this issue because access to justice requires a governance framework that allows the legal field to prioritize the public interest as opposed to simply the interests of its professional members, including lawyers, notaries public, and paralegals. However, the Ministry intends for legal professionals in BC to remain self-regulating without government interference.

The new governance framework is also aimed at furthering reconciliation. The Ministry intends for the proposed changes to be consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* and to address institutional and systemic racism.

FACL BC's Mandate

Given FACL BC's mission to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community, issues of representation, access to justice, and independence of the bar are of primary concern to us.

In particular, FACL BC is most concerned with ensuring that recent and historical advancements in bringing a diversity of voices to decision-making positions in both the Law Society and the Notaries Society are not undone. FACL BC strongly advocates for the inclusion of pan-Asian members, as well as those from a broad diversity of backgrounds and experiences, on any body purporting to regulate legal professionals in British Columbia. It is incumbent on the Ministry to demonstrate that it is both committed to and has a structural plan to ensure that these perspectives are afforded an equitable position at the table and the opportunity to actively and materially engage in decision-making.

Furthermore, if access to justice is the primary rationale behind the proposed regulatory regime change, it must be focused on providing increased access to justice for those most vulnerable such as immigrants, Indigenous peoples, and others who have traditionally been marginalized by the legal system, including those for whom English is a second language.

Finally, FACL BC reiterates that any body that regulates legal professionals must be independent from the government. Anything less would provide opportunity for political considerations to unduly and inappropriately influence regulatory decision-making. A regulatory regime that is representative, accessible, and independent is the minimum standard and FACL BC is committed to holding the Ministry accountable on these issues.

[2] A survey conducted for the Law Society in 2020 found that 60% of people with a legal problem in British Columbia got no advice about their situation and more than half of those who did got advice from a non-lawyer (Intentions Paper at p. 4).

FACL BC's position on each of the proposals put forward by the Intentions Paper, as set out below, is informed by these considerations and our overarching mission.

Other Jurisdictions

To provide context to the proposed regulatory change, we reviewed how lawyers, notaries public, and paralegals are regulated in other jurisdictions across Canada.

There are no noteworthy differences with respect to the regulation of **lawyers** across jurisdictions. As in British Columbia, lawyers in other jurisdictions are regulated by a Law Society, which is enabled through legislation like the *Legal Professions Act*, S.B.C. 1998, c. 9. For the purpose of this Position Paper, we did not review whether there were any differences in the governance structure of other Law Societies compared to BC.

Notaries in every Canadian jurisdiction except British Columbia and Québec may only provide the following services:

- Administer/take/attest oaths, affidavits, affirmations or declarations;
- Certify and attest true copies of documents; and
- Witness or certify and attest the execution of documents.

As in BC, members of the provincial Law Societies in those jurisdictions are considered notaries by default. Non-members are appointed as notaries by a Minister or Attorney General, depending on the jurisdiction.

In Québec, similar to BC notaries are permitted to perform a wider range of services, such as:

- Providing legal advice in all areas of law;
- Acting in matters that are not contested in court (e.g., residential real estate transactions); and
- Representing individuals in certain non-contentious proceedings.

Québec notaries act as public officers and provide services with a focus on prevention, conciliation, and alternative conflict resolution rather than litigation. The Chambre des notaires du Québec regulates and governs notaries in Québec.

Paralegals in most provinces are unlicensed and only indirectly regulated through their supervising lawyer. In other words, generally speaking, paralegals in almost all jurisdictions are not permitted to provide any legal services on their own, but rather perform legal services under the supervision of lawyers (or notaries in Québec).

In Ontario, however, paralegals must be licensed through the Law Society of Ontario to provide legal services, including representation in small claims court, traffic court, some criminal matters and before tribunals. Paralegals can also perform some notary services. Paralegals in Ontario are regulated by a 13-member Paralegal Standing Committee (which comprises elected paralegals and members of the Law Society of Ontario's governing board) and have their own Rules of Conduct and Professional Conduct Guidelines.

Modernized Governance Framework

The Intentions Paper states that the governance frameworks for lawyers and notaries are both in need of revitalization. It proposes a new structure under a single statute, single regulator framework in the form of "a competent, nimble, and skill-based board, composed of a diverse group of legal service providers and others who individually and collectively have a deep understanding of the regulator's public interest mandate." While FACL BC supports these criteria in principle, the specifics of the board actually proposed by the Ministry are cause for serious concern insofar as representation and independence are concerned. Furthermore, while the Intentions Paper does provide some intentions that have the potential to mitigate some of FACL BC's concerns, they are light on details and clear actionable plans upon which we and other organizations could form a full position.

FACL BC accepts that the governance frameworks for the regulatory bodies of both lawyers and notaries may require modernization to better serve the public interest, to increase public confidence in the regulatory regime, and to protect and further support recent achievements in the diversity of decision-makers. These improvements are also called for in the Canadian Bar Association British Columbia Branch's ("**CBABC**") Submission on Self-Regulation[3] and the Cayton Report.[4] It may be appropriate for the Law Society's focus on serving the public interest and regulating legal professions to be enhanced and representing its members' interests to be de-emphasized or entirely eschewed.

Moreover, FACL BC supports the Ministry's proposal to maintain the current policy of government-appointed directors constituting a minority on the board and the new decision to remove the Attorney General's membership on the board. This would contribute to the independence of the legal professions. It is not clear from the Intentions Paper how many lawyers would be on this proposed board, and so FACL BC cannot provide its views on that question. If lawyers were to be outnumbered by government-appointed directors, that would be a serious concern.

Finally, FACL BC approves of the Ministry's proposal to support initiatives to focus the board's role on strategic oversight and to leave regulatory and operational matters primarily to other committees or arms of the larger regulatory body. However, the Intentions Paper lacks specificity and detail as to how these proposals would be achieved structurally and, perhaps more importantly, there continue to be significant concerns related to representation and diversity on the board that the proposals either do not address or will likely exacerbate.

While the Intentions Paper repeatedly emphasizes that its proposed changes would build on recent improvements in the diversity of regulatory decision-makers and would "ensure the regulator's board is reflective of all British Columbians" in balancing "the dual objectives of diversity and functionality", the proposed changes to the governance framework clearly prioritize "functionality" over diversity. Although not directly committed to in the Intentions Paper, the reference to the CBABC's recommendation to reduce the number of Law Society Benchers in their Submission on Self-Regulation and other recently modernized regulators reveal that the current intention is to create a board consisting of between 12-15 directors to

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[3] Canadian Bar Association British Columbia Branch, "Submission on Self-Regulation and LSBC" (October 25, 2021), link: https://www.cbabc.org/CBAMediaLibrary/cba_bc/pdf/Elections/Bencher/2021/CBABC_Submission_to_LSBC_Governance_Review.pdf [CBABC Submission on Self-Regulation].

[4] Harry Cayton, "Report of a Governance Review of the Law Society of British Columbia" (November 2021), link: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/GovernanceReview-2021.pdf [Cayton Report].

oversee the entire regulatory framework for all legal professionals.[5] The rationale behind this substantial reduction in size is to achieve nimbleness and cohesion while being "large enough to ensure that all regulated legal service providers and the public are reflected in [the board's] composition, and to ensure a diversity of skills, perspectives, regions, and backgrounds are represented in its deliberations." Yet, FACL BC cannot conceive how such significant reductions of seats at the decision-making table can maintain, much less enhance, a diversity of perspectives.

The Intentions Paper contemplates a board composed of elected directors, government-appointed directors, and directors appointed by other members of the board. Given a size of 15 directors total and a relative balance between the different classes of directors, the proposed board would consist of, at most 5-7 elected directors. Of the current elected Law Society Benchers, almost half are racialized. Five are Indigenous. A reduction from 25 elected Benchers to 5 elected directors would reduce the number of racialized elected directors from 10-12 to 1-2. The current composition of the Benchers is not an accident. It is the result of decades of racialized lawyers working toward progress in the profession.

Understood in this context, the Ministry's proposal cannot be reasonably construed as progress in increasing representation. Moreover, the requirement that elected directors come from all regulated legal professions and geographic regions will likely create further obstacles to electing a diverse board. To address this, the Ministry proposes to reform the Electoral College model, to legislate a guaranteed Indigenous appointee, and to use the appointment of directors by other members of the board to fill any identified or anticipated "gaps" in representation. However, none of these measures is sufficient to adequately and equitably address the real representation problems caused by such a drastic reduction in board size.

Firstly, FACL BC supports the reform of the Electoral College model which favours geographic diversity over other forms of diversity. However, without any details as to what the actual reforms would look like, it is impossible to comment on whether they would be effective in increasing diversity in elections. Secondly, introducing a statutory minimum requirement for a single guaranteed Indigenous appointee creates the real danger of tokenizing that appointee and creating a barrier for any additional Indigenous (and other racialized) representation. While the Intentions Paper acknowledges that such a statutory minimum "would not and could not account for all the diverse perspectives of Indigenous peoples", it fails to provide solutions to this problem. Finally, the gap-filling appointment of directors by members of the board has the potential to address some of the concerns raised about representation, particularly in enabling an intentional approach to ensuring a diversity of voices at the decision-making table. However, beyond the proposal that these appointments be made in accordance with "a fair, transparent, accountable and independent nomination process", the Intentions Paper is alarmingly scant on details. Without any indication of what kind of criteria and principles would inform this process beyond vague references to diversity, FACL BC is simply unable to comment on whether this proposal adequately addresses concerns about representation on the board.

Single Statute, Single Regulator

Some perceive the Law Society as a professional association that acts as an advocacy body for lawyers by engaging in "turf protection" and lobbying efforts.[6] Of course, as a regulator of legal professionals, the Law Society must serve the public interest. The Law Society's mandate to serve the public interest includes

[5] The CBABC Submission on Self-Regulation suggests a board of 15. The new British Columbia College of Oral Health Professionals has a board of 12 (link: https://oralhealthbc.ca/about/board/).
[6] CBABC Report at pp. 17-20; Cayton Report at p. 4.

promoting access to legal services. This may involve expanding the regulation of legal services provided by non-lawyers, as seen in past efforts to regulate paralegals.[7]

In this context, a single regulator model may provide an effective centralized mechanism to protect the interests of the public. Whereas having separate regulators can increase potential competition and the need for coordination, the stated benefits of a single regulator include improved clarity of mandate and operational efficiency. The Ministry's single statute, single regulator proposal may present an opportunity for different legal professions and services to be clearly defined, categorized, and regulated under a single system that is accessible and accountable to the public.

Even so, a single statute, single regulator model is not necessarily the best solution to existing problems. The most significant change under this model seems to be the merging of the Law Society and the Notaries Society. In terms of expanding access to legal services, there is a lack of clarity on the role and abilities of paralegals in contrast with lawyers and notaries. Authorizing paralegals to provide an extended range of legal services may increase access to less costly legal services.

But in practice, the Law Society has also demonstrated a commitment to the regulation of paralegals, such as the Innovation Sandbox and existing regulatory schemes over designated and licensed paralegals. In this regard, it is unclear how a single statute, single regulator model can provide anything definitive to overcome challenges in existing regulatory initiatives, in comparison to any endeavor by the Law Society itself.

Furthermore, questions remain as to whether the overhaul of the current regime with the establishment of a single statute, single regulator regime would be more effective or less difficult than introducing separate targeted reforms and statutory amendments to the Law Society and the Notaries Society, especially considering that a total overhaul of existing governance structures may attract considerable resistance. The proposal of a single regulator model seems to rule out any confidence in the Law Society and Notaries Society's capability and willingness to move toward better governance practices, despite the Law Society's adoption of the majority of the recommendations from the Cayton Report. Moreover, a single statute, single regulator model may in theory give coherence to the different legal professions, but whether this is actually the case warrants further study, given the disparities between these professions in number and substance.

Clear Mandate

FACL BC supports the Ministry's intention that the proposed regulator's mandate reflect the powers and responsibilities delegated to it by the BC Legislature clearly and transparently. Overall, having a clear mandate which lays out the regulator's broad purpose and authority, core responsibilities, and guidance on how to carry out these duties will likely increase public confidence in the proposed regulator and provide for better accountability. FACL BC would like to see these priorities set out not just in the enabling statute, but also in the mission statement of the proposed regulator. This will increase public transparency and, therefore, confidence and accountability.

FACL BC lauds the Ministry's specific proposals to include education on Indigenous cultural competence and the maintenance of a public register of licensees as core responsibilities of the proposed regulator. However, FACL BC notes a lack of details on other elements of the "clear mandate" delegated to the proposed regulator. Furthermore, FACL BC maintains that the Ministry has failed to adequately prioritize important issues in its

[7] CBABC Report at p. 22.

proposal for a clear mandate. For example, FACL BC would like to see the values of representation, access to justice for traditionally marginalized groups, and acting in the public interest enshrined by codifying them into the proposed regulator's core responsibilities. While some of these concerns are addressed in the Intentions Paper as potential guiding principles, these values should be given higher priority by elevating them to core responsibilities. As it stands, the proposal appears to create a hierarchy of priorities by providing for three "levels" of a clear mandate. It may be favourable to use a structure that recognizes the equal importance of defined responsibilities and guiding principles.

Flexible Licensing Framework

FACL BC is generally supportive of the Ministry's efforts to license paralegals in a revised statute, along with granting the regulator the authority to expand the scope or scopes of practice of paralegals and other legal professionals in specific areas, or on a case-by-case basis. FACL BC notes, however, that these reforms must be done in a way that actually broadens access to justice.

It is FACL BC's position that the proposed regulation of paralegals and other legal service providers has the potential to improve access to and the quality of legal services, which aligns with FACL BC's mission to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community. In Canada, an alarming proportion of self-represented litigants identify as South or East Asian. Recent reports suggest that as much as 14.8% of self-represented litigants identify as Asian.[8] In British Columbia, the most consistently cited reason for self-representation is the inability to afford to retain, or to continue to retain, legal counsel.[9] Accordingly, since the cost of legal services is a barrier to access to justice for pan-Asian members of our communities, FACL BC supports expanding regulation to other legal service providers to the extent it will reduce fees and thereby broaden access to justice.

Should the Ministry implement paralegal licensing, FACL BC encourages the Ministry to take the necessary steps, such as conservative licensing fees, to ensure that the regulation of paralegals actually has the effect of increased legal services. Furthermore, FACL BC recommends that the Ministry introduce mandatory cultural competency training as a part of any paralegal licensing process.

It is not clear, however, whether licensing paralegals or other legal service providers would actually reduce the cost of legal services.[10] Factors such as training requirements and premiums for liability insurance could lead to higher fees than the unregulated market. We note that in Ontario, where paralegals are licensed and regulated, the median billing rate of a paralegal is $144 per hour, and the top quartile of paralegals working for law firms billed at $250 or more per hour.[11] Other factors, such as increased supply and competitive price setting, could

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[8] Julie Macfarlane and Charlotte Sullivan, "Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2019-2021", link: https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1010&context=lawnsrlppubs.

[9] Julie Macfarlane, The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants - Final Report at 39, link: https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf.

[10] Lisa Trabucco, "What Are We Waiting For? It's Time to Regulate Paralegals in Canada" at p. 155, link: https://canlii.ca/t/2bf2.

[11] Law Society of Ontario, "Paralegal Business Models and Billing Practices" (April 2021), link: https://lawsocietyontario.azureedge.net/media/lso/media/about/initiatives/flsp-paralegals-en-aoda.pdf.

lead to lower fees. In British Columbia, the results from the designated paralegal pilot project suggest a general consensus that using paralegals will have a positive effect on providing services at a lower cost.[12]

In British Columbia, given the lack of regulation, the term "paralegal" is unclear and confusing. The current framework allows anyone to market themselves as a paralegal, though only those who pay a fee to the BC Paralegal Association may use the trademarked title of a "BCPA Registered Paralegal". The obvious concern is that those who are unfamiliar with the legal system in BC may be at risk of being duped or taken advantage of, especially if English is not their first language. Licensing will necessarily provide quality assurance at the outset. Having a minimum standard of ethics, practice requirements, and assurances can assist in ensuring all levels of legal services will serve our community.

In determining the scope of practice for paralegals, the focus must be on the community's needs for quality legal services. In Ontario, a legal clinic for low-income Chinese and Southeast Asian people commented that the majority of the clinic's clients face challenges with immigration or employment.[13] FACL BC is not aware of a formal study of the pan-Asian community's need for legal services and encourages the Ministry to conduct this research, along with research into the needs of other racialized groups, prior to implementing any legislation.

The foregoing points are just some of the ways that regulating paralegals could benefit the pan-Asian community in British Columbia. Of course, while regulating paralegals seems positive in theory, implementing the regulations is another story. An example is the paralegals-in-court pilot project, which ran from 2013 to 2015 and allowed paralegals to independently make procedural appearances in court. During this time, only three members of British Columbia's 1,300-strong bar sent paralegals to court in their stead, possibly because the profession "didn't know what they could do with paralegals".[14]

FACL BC therefore recommends that, should legislation be passed to license paralegals, such regulation must provide a clear and detailed framework on the paralegal's scope of authority. Promoting greater public awareness is also important. The Ministry has not provided any detail on the manner in which paralegals would be regulated. FACL BC is not, at this time, in a position to comment with any specificity on the scheme that should be adopted to license paralegals.

FACL BC is most interested in and optimistic about the proposed prospect of enabling the proposed regulator to license paralegals and notaries on a case-by-case basis. FACL BC supports decreasing barriers to entry to providing legal services as this will facilitate a broader range of participating in professional legal services and increase access to justice. FACL BC is particularly hopeful that this proposal may facilitate foreign-trained legal service providers (including lawyers seeking certification to practice in BC) accessing the market and leveraging their expertise and diverse perspectives for the benefit of the BC public. But this will only be possible if barriers to entry are sufficiently decreased.

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[12] Law Society of British Columbia, "Designated Paralegal Survey 2016", link: https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/DesignatedParalegalSurvey.pdf.
[13] Lucas Powers, "New legal hotline a lifeline for Ontario's low-income Chinese and Southeast Asians", link: https://www.cbc.ca/news/canada/toronto/chinese-southeast-asian-legal-hotline-1.4168196.
[14] Elizabeth Raymer, "LSBC Discontinues 'Paralegals in Court' Pilot" (January 12, 2017), in *Canadian Lawyer Mag*, link: https://www.canadianlawyermag.com/news/general/lsbc-discontinues-paralegals-in-court-pilot/274110.

Efficient Discipline Framework

The Intentions Paper describes a number of best practices with respect to the regulation of legal professional practice and conduct. It acknowledges that many of those practices are already in place at the Notaries Society and the Law Society. The Ministry notes that the Law Society is reviewing its regulatory processes to ensure that it accommodates Indigenous complainants and witnesses who may be experiencing marginalization and vulnerability. The Ministry hopes to incorporate the findings of that review into the future regulator's processes.

FACL BC believes that the Law Society and Notaries Society can always improve their processes, particularly with respect to racialized complainants, witnesses, and respondents. Racialized individuals are historically underrepresented in both societies. They experience marginalization and are more likely to face bias.

That said, FACL BC does not believe that it is necessary for a new regulator to be formed in order to conduct this review or achieve any of the objectives set out in the Intentions Paper. A single regulator would not necessarily be better equipped to improve disciplinary processes for marginalized groups, nor is there any guarantee of any marked improvement for racialized individuals participating in the disciplinary framework.

The Intentions Paper fails to address what in particular would change from the Law Society and Notaries Society's disciplinary processes. Rather, it acknowledges that both Societies already have many of the best practices for regulatory discipline in place. Other than relying on an unfinished review conducted by the Law Society, it does not appear as though the Ministry has any actual suggestions for what would change in the new disciplinary framework. At best, the recommendations in the Intentions Paper regarding the proposed discipline framework are vague.

FACL BC is concerned that changing the established disciplinary processes, which the Law Society and Notaries Society have consistently worked to improve, without a clear plan or reason could undermine progress and erode public confidence in the new regulator.

Enhanced Focus on Public Interest

Self-regulation has historically and traditionally been the subject of criticism. From a legal perspective, it is seen as the acquisition of power, influence and control by selected groups that are not accountable to the body politic. By contrast, proponents of professional self-regulation regard it as necessary to set high standards and to protect the public from the unscrupulous or incompetent. The question is whether the public interest can be effectively safeguarded by self-regulatory regimes.

From FACL BC's perspective, the public interest is best protected by independent and self-regulating legal professionals. There must be a clear separation of powers between the legal profession and the government. A regulatory system that reduces the independence of the legal profession by subjecting it to the state's control would seriously impede the role of lawyers in a democratic society, particularly their role in advancing legal challenges to government legislation and action. The Law Society conducts its regulatory and governance responsibilities with a predominant mandate of public protection.

While FACL BC's priority is to ensure that the Law Society remains self-regulating to maintain the independence of the legal profession, it agrees that there may be some aspects of its governance structure that could be improved. In part of its recommendations in its submission on the Law Society's self-regulation, the

CBABC endorsed that the Law Society cease providing education programming to its members, cease acting as an advocate beyond its core mandate, and cease granting awards to its membership. These practices run the risk of displaying conflicts between serving the public's interest and Law Society members' interest and creating bias in decision-making functions. Currently, the Law Society has a dual mandate in that it acts as an "association" of professionals as well as a "regulator" of professionals. As such, they potentially promote two conflicting roles, to promote the interests of the profession and the interests of legal services users. If the regulator gives precedence to the interests of the profession over the public, it will erode public confidence in its regulatory role.

In addition, FACL BC endorses the recommendations in furtherance of the public's interest as laid out in the Cayton Report. In particular, the Law Society should open the membership of its advisory committee to suitably knowledgeable, experienced and diverse members of the public; the Law Society should extend its commitment to equality and diversity in the legal profession to understanding the diverse requirements and choices of the multicultural community members of BC, including Indigenous people, and provide them with a respectful voice in its deliberations; and before implementing any policy change affecting legal services or the public's interest, the Law Society should carry out and publish a Regulatory Impact Assessment, covering economic impact (including cost to legal providers and the Law Society), equity, diversity and inclusion impact and public benefit.

The Cayton Report concluded that the Law Society met four of the nine Standards of Good Governance, partially met three others, and failed to meet the remaining two. One of the two standards in which the Law Society failed to meet and an area of concern was that it was weak in engagement with the public and lack of consideration of their interests. Notably, the Cayton Report concluded that the Law Society does not engage effectively with legal clients and the public. The Law Society conducted surveys in BC in 2009 and 2020, yet it is not evident how these surveys have influenced policy development. Moreover, it is not apparent that the Law Society attempts to understand from the complaints from members of the public or to engage directly with those who struggle to get access to justice. The five-year Strategic Plan aims to increase engagement with the profession and the public but it is not clear how this is being done.

Conclusion

FACL BC is encouraged that the Ministry has committed to modernizing the regulatory framework for legal service providers in BC. The Intentions Paper contains some laudable proposals which have the potential to increase access to justice and shape the regulatory framework to better serve the public interest. However, FACL BC notes there are some serious gaps in some of the proposals and insufficient details to draw practical conclusions about others. In particular, FACL BC is concerned some proposals will not adequately address key issues of ensuring the legal services profession continues to foster diversity, maintain its independence, and provide access to justice for all British Columbians. For many proposals, the likely impact does not clearly meet the espoused goals of the modernization and it is not obvious how they will improve the current framework. Additionally, and especially concerning for FACL BC, some proposals will in all likelihood materially and adversely impact representation by reducing the diversity of voices at the decision-making table. FACL BC calls upon the Ministry to more seriously consider the impact of its proposals on the representation of those who have traditionally been left out — and are only now starting to be let in.

FACL BC thanks the Ministry for considering our Position Paper and looks forward to continuing to work with the Ministry to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community.

The Law Society of British Columbia

Unmet and Underserved Legal Needs

Access to Justice Advisory Committee
Lisa H. Dumbrell, Chair
Kevin B. Westell, Vice-Chair
Tanya Chamberlain
Jennifer Chow, KC
The Hon. Thomas Cromwell
Brian B. Dybwad
Mark K. Gervin
Guangbin Yan

Date: December 2, 2022

Prepared for: Benchers

Prepared by: Policy and Planning Department

Purpose: For Decision

I. Purpose and Problem

1. The policy problem that the Committee was asked to consider is set out in the President's mandate letter for 2022:

> *[c]onsider whether there is sufficient evidence in respect of the scope and nature of unmet needs for legal services in British Columbia, including the extent that unmet needs may undermine the goals of facilitating both truth and reconciliation and equity, diversity and inclusion and if the Committee concludes there is not sufficient evidence, and make recommendations to the board on obtaining the necessary information.*

2. This report sets out the Committee's consideration, findings and recommendations on the steps the Law Society should take to address key issues relating to unmet and underserved legal needs.

II. Process, Findings and Recommendation

3. In order to complete its work, the Committee reviewed a number of memoranda, studies, articles, presentations and reports in order to understand the problems that led to unmet and underserved legal need and barriers to access to justice. Its review included consideration as to the sufficiency of available data. Over the course of its meetings, the Committee narrowed its focus to the topics of triage and data collection and analysis, and sought additional input from staff that included feedback on the elements of the referral relating to Reconciliation with Indigenous Peoples ("Reconciliation") and Equity, Diversity and Inclusion ("EDI").

4. It is obvious to the Committee (and to other observers) that there are unmet needs for legal services in BC. However, the true scope and nature of those needs is difficult to ascertain through existing evidence. Some method of providing a way to improve access to unmet and underserved needs that also enables evidence on the needs to be gathered must be developed.

5. The Committee concluded that access to justice relating to unmet and underserved needs can be improved by giving effect to the recommendation in the Legal Aid Task Force report[1] that a universal legal needs diagnostic model be established in British Columbia, which the Committee also believes will assist in better collecting data about the extent and nature of those needs. This will in turn assist in developing further initiatives through which they can be addressed. It therefore recommends that the Law Society reach out to

[1] Law Society of British Columbia, Legal Aid Task Force, "A Vision for Publicly Funded Legal Aid in British Columbia" (March 2017) at p. 21.

other stakeholder groups and the government with the intention of encouraging the creation of "triage hubs" through which access to and delivery of legal services can be improved.

III. Proposed Resolution

6. The Task Force proposes the following resolution:

   BE IT RESOLVED that in order to

   - improve the collection of data about the extent and nature of the needs of individuals relating to the access to legal services,

   - improve the take-up of existing low (or lower)-cost legal services and improve timely and appropriate referrals to needed services, and

   - gather information about legal needs that will inform decisions on other initiatives to improve access to the delivery of legal services,

   the Law Society will, through consultation with other justice-system stakeholders and the government, explore how to establish "triage hubs" through which people facing a problem that may include a legal element can obtain information, guidance and preliminary advice.

IV. Underlying Observations

7. Data from an extensive body of research and writing on the incidence of problems people experience that have the potential to be classified as "legal problems" provides a sufficient basis on which to conclude that the majority of Canadians will experience at least one difficult to resolve legal problem in their lifetime; and that a sizeable portion of the public will experience multiple problems, including serial problems that perpetuate over a long period. Approximately 15% people who experience legal problems will secure the help of a lawyer to resolve or manage the problem, about 26% will seek help from someone other than a lawyer and about 59% will seek no help at all.[2] These problems are often intertwined with other problems that can be classified as matters other than "legal" (e.g. health, social welfare and stability, necessities of life, etc.).

8. Less understood, and for which there is a scarcity of data, is the long term outcomes for people based on the paths chosen to address legal problems. In addition, we lack adequate data on how much people can afford to pay to resolve problems and when they do have

[2] See the Law Society of British Columbia, "Legal Services in BC 2020 Survey" (IPSOS Reid).

some money to pay how they determine the value of the services relative to the potential cost. Our ability to respond to the justice gap regarding cost is compounded by the lack of certainty at the front end of many legal retainers what the total cost of the service will be. We know, for example, from research regarding self-represented litigants that many start out with a lawyer and only become self-represented once their money is exhausted and they cannot longer afford to retain a lawyer.

9. Another knowledge gap relates to why some people who might benefit from existing low cost services are not taking advantage of them. When reviewing the topic of unbundled legal services the Committee learned from consulting with stakeholders that a major barrier to the uptake of unbundled services is "discoverability". Some people don't know what unbundling is or that some lawyers offer it, and some who have heard of it can't find the lawyers who offer the services.

10. The justice system has not developed a means to collect data to analyze how well lawyers and the justice system are serving the people who utilize the system of access those legal services. The justice system tends to measure inputs and outputs, not outcomes.

11. Over the years the Committee has considered numerous materials leading the Committee to understand:

    a. A legal problem can have a legal element and a non-legal element. Sometimes the best solution is to address the non-legal need (either first, in parallel, or as the preferred solution).

    b. Not all legal needs manifest in demands for legal services. The unmet demand for legal services, as we categorize it, refers to incidences where people seek out legal help but are unable to secure it (also, for a range or reasons). This is important so the Law Society does not develop responses to legal need for which there is no demand (or a realistic potential for demand in the case of novel responses).[3]

    c. Having data about unmet legal needs does not necessarily answer the question of what services are required to best address the need, although such data might support the rationale for a new policy or initiative.

    d. Access to legal services is important to ensure access to justice but it is not the only way of achieving access to justice. The need for legal services has to be connected to the outcomes that are important to the people experiencing the problem.

[3] Some people may decide the problem being experienced is not important enough to pursue a legal remedy or seek legal help to plan for future legal contingencies. Care should be taken not to categorize this as an unmet need for legal services. Simply put, people in this situation have made a decision that they do not need legal services.

e. There are many barriers to accessing legal services that are manifested in unmet or underserved legal needs. They include:

   i. Lack of understanding that a problem has a legal element with legal solutions.

   ii. Lack of knowledge about what services are available, their cost, and the benefit of using the services relative to the risks of not using the services.

   iii. Lack of capacity to access and understand the available services.

   iv. Cost of legal services.

   v. Perception of the value of the legal services relative to the cost (this is linked to knowledge but is also linked to the importance the person experiencing the problem places on resolving or avoiding the problem).

   vi. Geographical, demographic and supply-side barriers to accessing legal services.

   vii. Barriers related to systemic inequality, as well as the lack of available services that are delivered in a culturally appropriate fashion.

   viii. Lack of trust in legal service providers and the overall justice system.

12. When analyzing its mandate relating to access needs, the Committee assessed the adequacy of data and evidence regarding unmet and underserved legal need. Then it considered the extent to which the current state of unmet and underserved need might frustrate the Law Society's efforts regarding Reconciliation and EDI. Lastly, the Committee considered what might be done to address knowledge gaps.

13. Several challenges are associated with analyzing the issue and are important to keep in mind. Primarily, as noted, data does not tend to demonstrate whether legal services or the justice system provide enduring outcomes, or how well the various paths to justice work. The direction to base recommendations, in part, on empirical data therefore creates problems as the existence of reliable empirical data is, the Committee believes, lacking. The Committee may be able to obtain some data on unmet legal need, but it will be more difficult to identify empirical data related to a specific solution, particularly in circumstances where the Law Society wishes to position itself as a leader. The Law Society has a created a number of initiatives where it was the first out of the gate and could not, therefore, look to empirical data from another jurisdiction.

14. The Committee makes these observations to provide clarity regarding its process, but also to stress that while empirical data is important, empirical data does not always provide answers to important questions relating to social values.

V. Discussion

15. The fact that many people lack knowledge regarding the nature of life's problems (including their legal aspect), lack of knowledge of how best to proceed when faced with a problem, and lack knowledge regarding how to reduce the chance of such problems occurring creates significant access to justice issues. Finding ways to address these problems, while collecting data that will help improve initiatives in this regard, is the goal of this exercise.

16. After discussing the subject and having regard to the frailties in the available data, the Committee concluded that the Law Society could take a more proactive role in developing ways to address known problems in the access to justice realm while using the processes developed to collect better data on unmet and underserved legal needs.

17. The Committee concluded that this could be accomplished by working to bring about the legal needs triage model recommended in the 2017 Report of the Legal Aid Task Force. The Benchers have already endorsed the need for establishing a universal diagnostic service when they adopted the findings in the Legal Aid Task Force's report.[4]

18. The way a problem is classified is an important aspect necessary to ensure that people are aware of what options exist for resolving it, including which options (legal, non-legal, or a hybrid approach) are preferable. The Committee believes that triage can help ensure what follows leads to better outcomes, while permitting the collection of reliable data on outcomes. A triage model provides an identifiable means of access that people can engage in to help identify the nature of their problems, and get guidance as to the best avenue for resolution. Where the problem has a legal aspect, general advice may ameliorate or solve the issue, and (or) a referral can be made where more complex issues arise. This addresses need and, if properly constructed, can assist in the collection of data to understand where needs arise that are not currently being addressed.

19. The Committee considered a number of approaches from a narrow triage to a broad model. The Committee favours, as an initial step, exploring the model set out in **Appendix 1**. If such a model can be developed that generates reliable data, the Law Society and those

[4] "All people, regardless of their means and without discrimination, should have access to legal information and publicly funded professional legal advice to assist them in understanding whether their situation attracts rights and remedies or subjects them to obligations or responsibilities." (At page 21).

stakeholders involved in bringing about the triage model might explore a broader model at a later date.

20. Consultations regarding establishing a triage model for BC will involve various government ministries, the courts, administrative tribunals, Legal Aid BC, Access Pro Bono and other stakeholders, and should include a discussion about how to collect and share better data about legal needs and how solutions are working in order to ensure that outcomes (and not simply outputs) are measured.

21. The Committee discussed the element of the referral related to Reconciliation and EDI, and obtained input from staff. Any conversation about developing triage services requires consideration of Reconciliation and EDI. The Committee imagines that various communities will tailor triage to meet their needs, and as such it is important to consult with those communities and build the systems with appropriate input at the design stage.

22. Legal needs studies suggest that Indigenous Peoples and equity-seeking groups experience "legal" issues at a greater rate than average, have a greater likelihood to have problems cluster, and face a range of barriers to accessing legal services and justice. Enough data exists, in other words, to justify developing policy responses towards individuals in these groups to promote access to justice. We know enough to realize that a generic policy response that does not consider discrete data relevant to these groups is unlikely to meet needs that may be either particular to the group or require additional nuance. In many cases we will be missing important data (and information) in the form of input from people in these groups.

23. The Committee was able to conclude, therefore, that the development of a triage initiative must include the objective of improving access to legal services and justice for Indigenous Peoples and members of equity-seeking groups. With this in mind it will be necessary to liaise with the Law Society's Truth and Reconciliation Advisory Committee and Equity, Diversity and Inclusion Advisory Committee to ensure any proposal adequately takes into account the needs of Indigenous People and members of equity-seeking groups, and is not simply based on data extracted from surveys and studies on legal need that did not engage those groups.

VI. Evaluation Criteria

24. The recommendation is to explore the development of the proposed initiative to determine the appetite of other groups and the costs and benefits that may be incurred and realized. But it is also helpful at this stage to give some consideration to the evaluation criteria with regard to the proposed triage model itself, because if it would not meet those criteria, assessing the appetite of others to work to develop it would be moot.

Public Interest

25. The proposed initiative is designed to provide greater access to people whose legal needs are not being served at present by providing a simple method for people – particularly unsophisticated users of legal services – to obtain advice about the nature of a problem they might face, and if it is a legal one, to be able to get advice or a referral for advice. Currently, it is understood that many people simply do not bother to seek advice because they do not know how to do so, or they believe the advice will be too expensive. The proposal provides a way to address those issues. At the same time, it will allow evidence to be gathered about what needs might otherwise be unmet or underserved, and this will allow the development of other initiatives to address findings. There is a public interest in exploring the development of a model that will assist in this way.

Government Relations

26. The initiative should demonstrate to government the willingness of the profession to address access to justice and access to legal service initiatives. Government would likely have to be asked to provide at least partial funding for the proposed model, which will necessitate discussions and advocacy.

Licensee Relations

27. Many lawyers are generally concerned about access to justice. Creating a model that will help improve an entry "into the system" for people facing a problem but do not know how to go about obtaining advice should be perceived favourably by lawyers, and may even result in greater business for lawyers and firms, including small and rural firms, who serve individuals or smaller corporations. The model may, however, require some funding through the profession. Whether that would require greater practice fees is not at this time known.

Reconciliation with Indigenous Peoples

28. The initiative is targeted at the entire population. However, because there is evidence that Indigenous peoples experience legal issues at a greater rate than average, have a greater likelihood to have problems cluster, and face a range of barriers to accessing legal services and justice, it is possible that the initiative will have a particular benefit of advancing opportunities for Indigenous people to access advice and legal services.

Equity, Diversity and Inclusion

29. Again, the initiative is not created as an initiative that is designed solely to address equity, diversity and inclusion in the legal profession. However, because, like Indigenous peoples, members of equity seeking communities experience legal issues at a greater rate than

average, have a greater likelihood to have problems cluster, and face a range of barriers to accessing legal services and justice, it is expected that the initiative would particularly improve access to justice for these groups. But it is worth repeating that the initiative is meant to apply to and benefit the entire population. However, it is anticipated that the initiative may have a greater benefit for less affluent and more marginalized groups.

VII. Cost and Organizational Implications

30. As the Law Society cannot create a triage model, the cost of exploring the concept is dependent on several factors. The main costs relate to the potential need to engage in outreach, and possibly host one or more consultation workshops with key stakeholders. These costs will be influenced by a range of factors. Without knowing the best path forward at this point, the Committee estimates costs would be similar to past Law Society consultation efforts on other initiatives.

31. The organizational implications involve the need to have staff in the Policy and Planning department, and likely Communications and Engagement staff, dedicate some of their time to support consultation and data gathering. While this does not necessarily create new costs, it does create opportunity costs in the sense these staff have limited bandwidth to do work, and work dedicated to such outreach means other work might be delayed, subject to other organizational priorities.

VIII. Subsequent Steps

32. If the Benchers endorse the concept, then the Committee recommends that staff develop a work plan, including determining how best to start engagement with the stakeholders who would ultimately be required to bring about triage hubs. From that, one or more consultation sessions would be explored to obtain input from stakeholders and the public to further refine and define what is possible in creating legal needs triage services in BC.

VIII. Supporting reforms with data

33. Although the referral to the Committee was outward looking in terms of what data is available about unmet legal needs, the Committee believes it is important for the Law Society to also consider what it can do to support better data analytics in-house. The Committee is one of several that is asked to base policy recommendations, in part, on empirical evidence. It would be helpful, therefore, if the Law Society developed means to analyze initiatives to see if they are achieving the desired result.

34. Consequently, it is important to ensure that methods are developed to collect data and to assess whether any initiative (such as that recommended in this report) that is being implemented is having the desired effect. This will serve two purposes: 1) develop in-

house data that could provide the empirical basis to support future policy development, and 2) allow the Law Society to better assess whether initiatives and reforms are making a positive difference.

35. The Committee believes that such an approach will become all the more important when the shift to a single legal regulator occurs, particularly if part of the object of such regulation is to improve access to legal services. Some means of understanding the base-line data and data resulting from policy reform would be necessary to measure outcomes.

/DM&ML

Appendix 1

Proposed Triage Model to Address Unmet and Underserved Needs

1. Legal Service Provider triage would aim to provide people with a funded "in" to the legal system.

2. Ideally, the model would create hubs staffed by legal service providers (lawyers for now, but possibly licensed paralegals or other providers in the future), who could meet with people who need advice with respect to a problem that they are facing. The benefit of the triage hub would be to take the mystery out of how to go about seeking advice if you are not a sophisticated user of legal services. It would allow people to know with better ease than is now the case whether they have a real legal problem for which legal advice is necessary, or whether their problem is primarily something else that can be solved in other ways.

3. A model of this option would permit simple legal matters to be addressed on site, if possible, much as legal aid clinics do. The conflicts rules could be relaxed as they have been for clinics to permit providers to provide advice. Referrals could be made for more complicated matters. The assessment of the problem by a trained legal service provider would also likely be able to give the "client" a better estimate of what the cost and benefit of addressing the legal problem might be.

4. In this way, the model attempts at some level to replicate the "family doctor" model that enables patients to consult their family physician for a diagnosis of a health issue. The family doctor may be able to address the problem in his or her office, or may need to send the patient for tests or referrals. The triage hub would try to emulate the process so that a client can get a "diagnosis" of the legal problem (even as to whether it *is* a legal problem), have it addressed if it is amenable to a simple solution, or get a referral if it is more complicated, with an assessment of the pros and cons of doing so.

5. While triage hub service providers might be able to recommend where a client might go to address a problem that is not a legal problem, the Legal Service Provider model would not incorporate other agencies into the model.

6. The model would likely benefit from a number of physical locations in major centres around the province, but could incorporate virtual technology. How this would work to its best advantage would need to be addressed.

7. Funding would also need consideration. Government funding is a possibility, although funding from the profession might be contemplated as a demonstration of the commitment of the profession to ensuring access to informed legal services. A user-pay contribution model could be used to supplement funding.

The Law Society of British Columbia

Memo

To: Benchers
From: Finance and Audit Committee
Date: November 2, 2022
Subject: Enterprise Risk Management Plan - 2022 Update

Background

The Law Society's Enterprise Risk Management (ERM) Plan is a governance tool to accomplish the following objectives:

- Identify the enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate.
- Determine the relative priority of those risks based on the likelihood they would occur and the extent of the impact on the organization.
- Manage the risks through mitigation strategies that are either in place or in progress, which assist in reducing, avoiding or transferring the risks.

The Finance and Audit Committee reviews the ERM Plan in order to understand and monitor the organization's strategic risks, and the ERM Plan is provided as information to the Benchers. Management maintains a robust process of risk identification and management through its day-to-day operating processes.

2022 ERM Plan

In 2022, management conducted their annual review of the ERM Plan and modified the plan accordingly. In addition to considering existing and emerging risks, management also reviewed existing and planned mitigation activities, and re-evaluated the resulting residual risks.

The updated 2022 ERM Plan was reviewed by the Finance and Audit Committee at their November 2022 meeting, and the ERM Plan is now being presented to the Benchers for information.

Attached is the 2022 ERM Plan and Executive Summary, along with the Risk Heat Map and the Strategic Risk Register.

The following are the major changes that have been made to the ERM Plan:

One new risk was added: Risk #2 - Operational challenges and risks associated with the transition to a Single Legal Regulator.

One risk was deleted: Risk #15 - Significant non-compliance with applicable laws and regulations, as we only carry 15 risks in the plan, and this was the lowest risk.

Risk #10 - Admission to the profession - This risk was moved slightly higher on the risk register to recognize the risks associated with the admission of lawyers into the profession.

The Law Society of British Columbia

Law Society of British Columbia Enterprise Risk Management Plan 2022 Annual Update

Presented to FAC: November 2, 2022

Presented to Benchers: December 2, 2022

Law Society of British Columbia
Enterprise Risk Management - Updated November 2022
Executive Summary

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

The Enterprise Risk Management (ERM) Plan is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, reducing, avoiding or transferring the risks

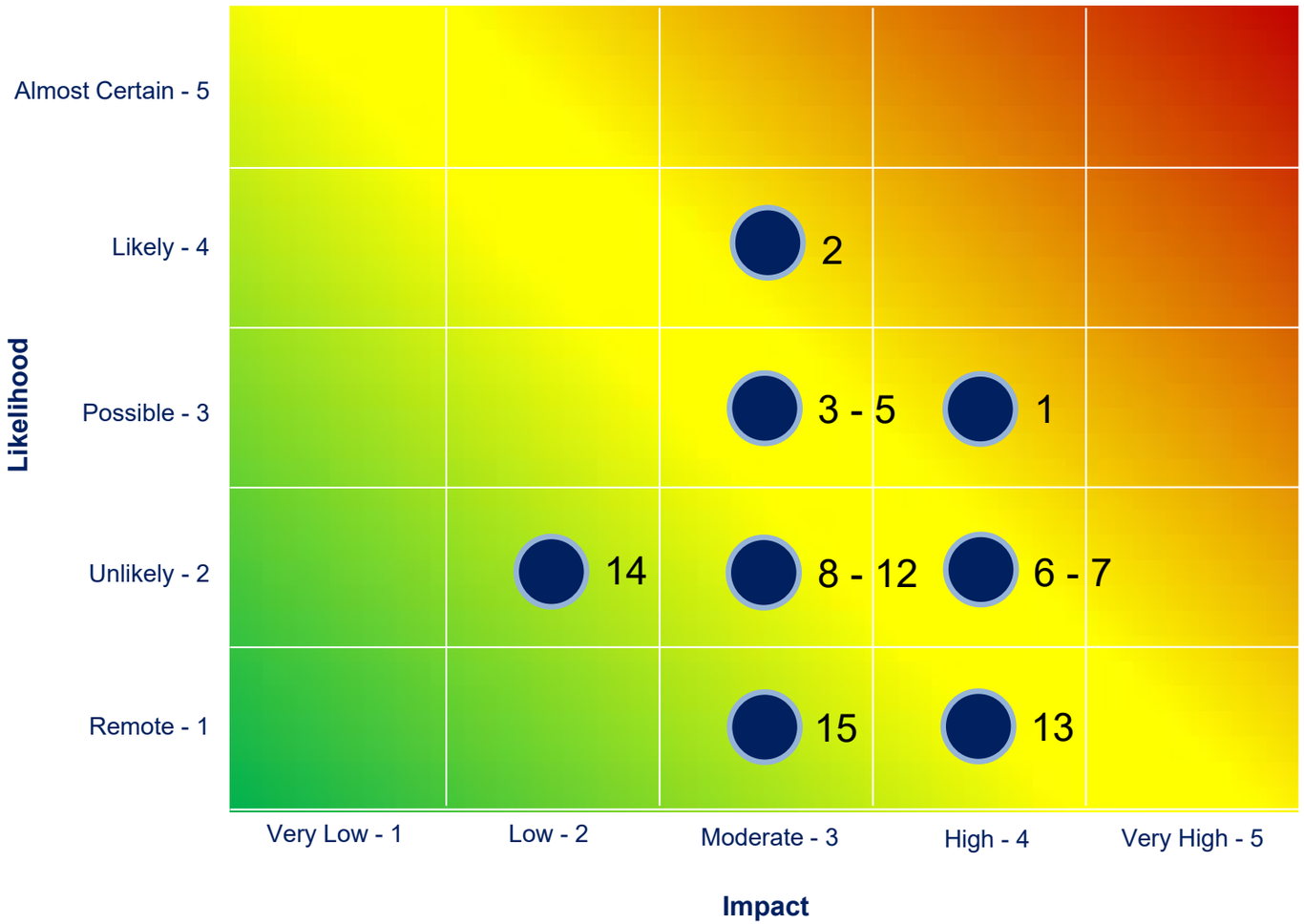
To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed and is reported to the Finance and Audit Committee (and the Benchers) on a regular basis.

The strategic risks are summarized in the table "Summary of Major Strategic Risks".

Summary of Major Strategic Risks

Number	Risk description	SLT Lead
1	Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner	CLO
2	Operational challenges and risks associated with the transition to a Single Legal Regulator	ED / CEO
3	Perceived or actual failure to accommodate access to a wider array of legal service providers	ED / CEO
4	Impact of significant economic downturn leads to insufficient revenues	CFO
5	Bencher or staff intentionally or negligently discloses personal or confidential information	DED
6	Natural or human-induced disaster	CFO
7	Cybersecurity breach	DED
8	Members' option to override Bencher decisions	ED / CEO
9	Reconciliation and EDI policies and actions are not adequate	ED / CEO
10	Lawyers not having minimum level of competence and experience, and good character requirements, for admission to the profession	Sr. Dir. Cred, PLTC, & PS
11	Failure to fulfill duties under the Legal Profession Act or Law Society Rules	ED / CEO
12	Loss of key personnel or inability to recruit skilled personnel	ED / CEO
13	Catastrophic losses under the LPL or Cyber policies	COO - LIF
14	Conflict of interest not adequately addressed	DED
15	Bencher or staff fraud that results in financial loss to the Law Society	CFO

ERM Heat Map



#	Risk Name
1	Failure to Address Lawyer Misconduct
2	Transition to Single Legal Regulator
3	Access to Legal Service Providers
4	Significant Economic Downturn
5	Personal or Confidential Information
6	Natural or Human-Induced Disaster
7	Cybersecurity Breach
8	Members' Option to Override Bencher Decisions
9	Reconciliation & EDI Policies & Actions
10	Admission to the Profession
11	Failure to Fulfill Duties
12	Loss of Key Personnel
13	Catastrophic Losses Under the LPL or Cyber Policies
14	Conflict of Interest
15	Bencher or Staff Fraud

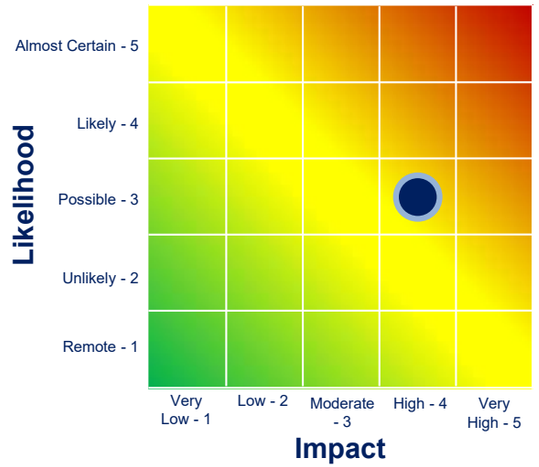
Risk #1: Failure to Address Lawyer Misconduct

Risk Context Overview

Name: Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner

Mitigating Factor(s)

1. Appropriate procedures for investigation and prosecution of legal matters
2. Appropriate conduct and trust rules/Trust Assurance program
3. Ensure appropriate deployment of staff and resources
4. S.86 Legal Profession Act (statutory protection against liability)
5. Ability to seek review and/or appeal to the BC Court of Appeal
6. Enhanced role of Tribunal Counsel/Tribunal Case Management/hearing panel composition and training
7. National Discipline standards
8. AML Strategic Plan
9. Education and risk management advice to lawyers and students
10. Administrative suspensions for failures to respond
11. Increased use of consent agreements
12. Alternative Discipline Processes (ADP)
13. Administrative penalties
14. D & O insurance policy



Risk Owner

CLO

Potential Impact(s) if Occur

1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Financial: Costs and damages and possible litigation

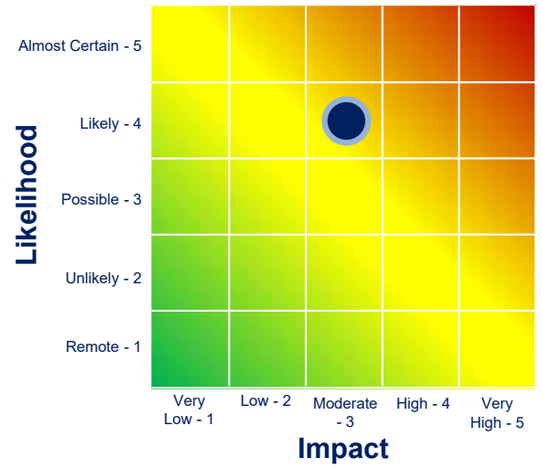
Risk Action Plan(s)

1. Review and revise complaint triaging process
2. Increase fines and charge investigative costs
3. Diversion pilot program – pilot in progress
4. Ongoing consideration of new regulatory tools and processes to address matters more efficiently and effectively
5. Disclosure and Privacy review

Risk #2: Transition to Single Legal Regulator

Risk Context Overview

Name: Operational challenges and risks associated with the transition to a Single Legal Regulator



Mitigating Factor(s)

1. Discussion with government, Notaries and paralegal representatives
2. Single Legal Regulator project plan
3. Identify and fund staff and other resources required to implement the plan
4. Communication plan
5. Outreach to the professions

Risk Owner

ED/CEO

Potential Impact(s) if Occur

1. Financial: unexpected costs, large resource commitment
2. Operational: service disruption
3. Reputational: diminished public confidence and/or loss of reputation with the profession
4. Potential adverse implications for independence of the legal profession

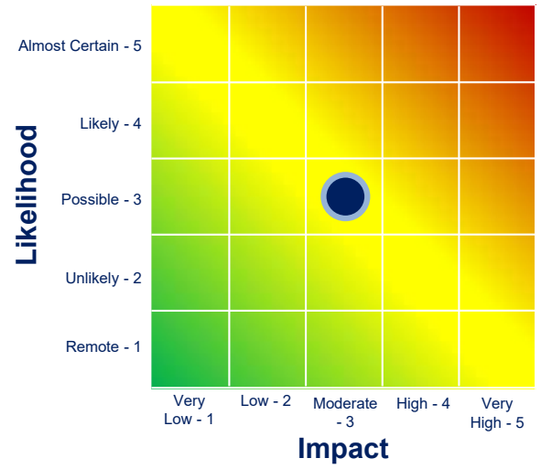
Risk Action Plan(s)

1. Complete Single Legal Regulator project plan
2. Independence of the legal profession mandate

Risk #3: Access to Legal Service Providers

Risk Context Overview

Name: Perceived or actual failure to accommodate access to a wider array of legal service providers



Mitigating Factor(s)

1. Supporting and funding pro bono services and access to legal services
2. Continued engagement and collaboration with governments, courts and other stakeholders to increase the provision of legal aid, and improve the availability of cost-effective legal services
3. Committees: Access to Legal Services
4. Appropriate use of unauthorized practice authority
5. Unbundling of legal services
6. Innovation Sandbox initiatives

Risk Owner

ED/CEO

Potential Impact(s) if Occur

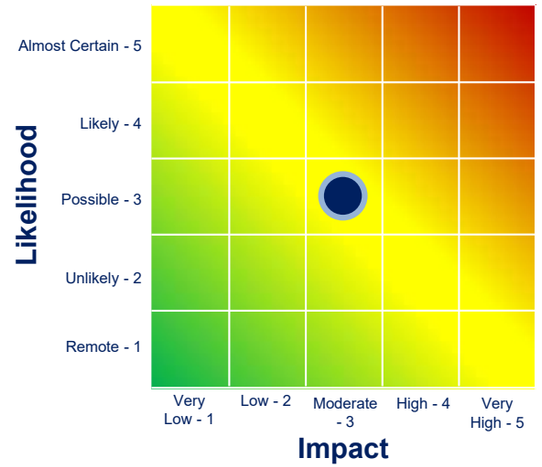
1. Reputational: diminished public confidence
2. Political: intervention in the Law Society authority and structures

Risk Action Plan(s)

Risk #4: Significant Economic Downturn

Risk Context Overview

Name: Impact of significant economic downturn leads to insufficient revenues



Mitigating Factor(s)

1. Annual operating and capital budgets and fees
2. Monthly and quarterly financial forecasting
3. Appropriate reserve level policies
4. Investment policies and procedures, diversified asset mix, external investment managers
5. Monitoring of trends in the legal profession
6. External review of investment markets and economic conditions

Risk Owner

CFO

Potential Impact(s) if Occur

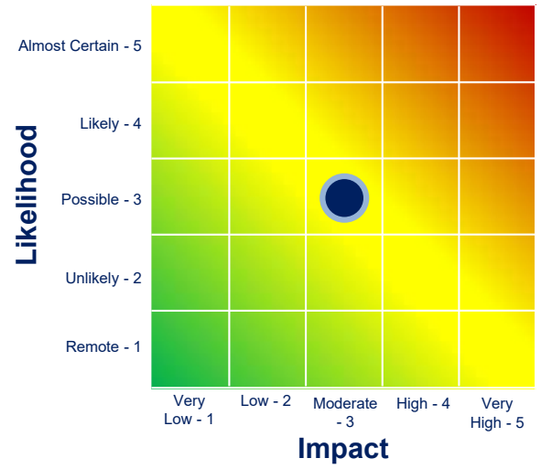
1. Operational: disruption to operational plan and cannot perform regulatory functions and other initiatives
2. Financial: reduced or deficit reserves
3. Reputational: Significant increase in practice fees

Risk Action Plan(s)

Risk #5: Personal or Confidential Information

Risk Context Overview

Name: Bencher or staff intentionally or negligently discloses personal or confidential information



Mitigating Factor(s)

1. Privacy Policy, Breach Protocol and Privacy Impact Assessment process
2. Information technology security policy, process and procedures
3. Records management procedures and LEO security profiles, confidential shredding service
4. Staff confidentiality agreements
5. Information technology, privacy and security training of staff
6. Member portal security
7. Encryption of Bencher and Committee agendas
8. Building security system and procedures, external property manager
9. Offsite storage of records and data

Risk Owner

DED

Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Financial: unexpected costs and/or litigation

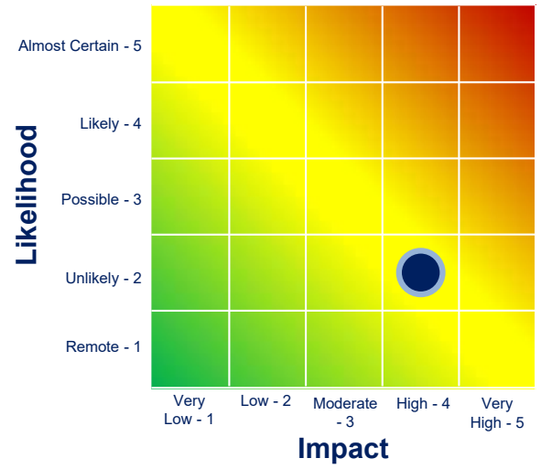
Risk Action Plan(s)

1. Disclosure and Privacy review

Risk #6: Natural or Human-Induced Disaster

Risk Context Overview

Name: Natural or human-induced disaster



Mitigating Factor(s)

1. Fire and earthquake safety plan and training
2. Crisis communication plan and team
3. Safety and security plans
4. Building, human resources, and operational procedures and training
5. Health & Safety Committee
6. First Aid attendants
7. Remote and hybrid work policies
8. Information technology backup plan
9. Building due diligence review
10. Insurance coverage and Work Safe coverage
11. Off-site storage/Off-site server location

Risk Owner

CFO

Potential Impact(s) if Occur

1. Operational and Financial: injury of staff and/or building damage
2. Operational: service disruption
3. Financial: unexpected costs
4. Reputational: diminished public confidence and loss of reputation with the profession

Risk Action Plan(s)

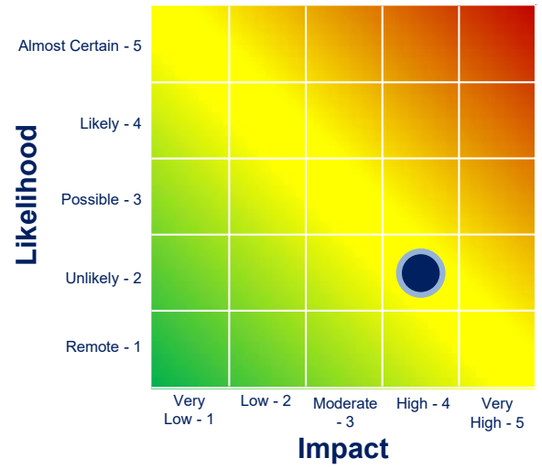
Risk #7: Cybersecurity Breach

Risk Context Overview

Name: Cybersecurity breach

Mitigating Factor(s)

1. Information technology security policy, process and procedures
2. Information technology, privacy and security training of new staff
3. Cyber security review completed annually and cyber security contract with regular testing
4. Member portal security
5. Encryption of Bencher and Committee agendas
6. Cyber insurance
7. Information technology backup plan
8. Building security system and procedures, external property manager
9. On-site and off-site server locations



Risk Owner

DED

Potential Impact(s) if Occur

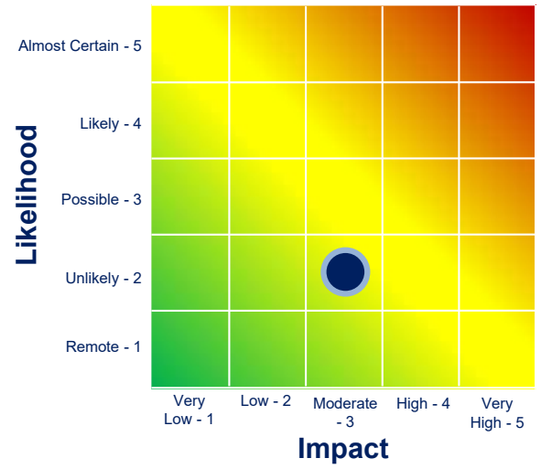
1. Reputational: diminished public confidence and loss of reputation with the profession
2. Operational: service disruption
3. Financial: unexpected costs or ransom paid

Risk Action Plan(s)

Risk #8: Members' Option to Override Bencher Decisions

Risk Context Overview

Name: Members' option to override Bencher decisions



Mitigating Factor(s)

1. Communication strategies
2. Law Society initiated consultation or member referenda
3. Policy analysis
4. AGM structure and process

Risk Owner

ED/CEO

Potential Impact(s) if Occur

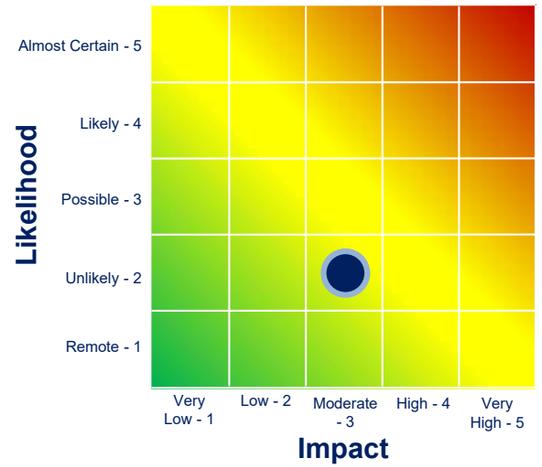
1. Operational: disruptive to day-to-day operations
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Political: intervention in the Law Society authority and structures
4. Financial: large resource commitment

Risk Action Plan(s)

Risk #9: Reconciliation & EDI Policies & Actions

Risk Context Overview

Name: Reconciliation and EDI policies and actions are not adequate



Mitigating Factor(s)

1. EDI Advisory Committee
2. TRC Advisory Committee
3. On-going review of rules and regulatory processes
4. Policy Analysis
5. Human Resources policies and processes
6. Indigenous Intercultural program
7. Indigenous Framework principles

Risk Owner

ED/CEO

Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Financial: human rights lawsuit, unexpected costs

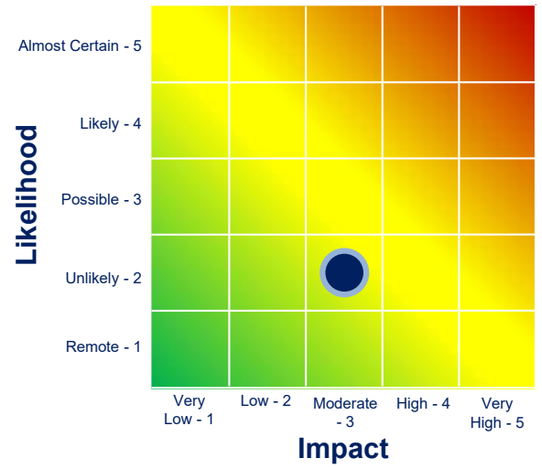
Risk Action Plan(s)

1. Update demographic data of BC legal providers to inform policy initiatives
2. Review of operational EDI principles and processes

Risk #10: Admission to the Profession

Risk Context Overview

Name: Lawyers not having minimum level of competence and experience, and good character requirements, for admission to the profession



Mitigating Factor(s)

1. Law Society Admission Program
2. Credentialing standards and procedures
3. Continuous updating & enhancement of PLTC student assessment and training
4. Hearing panel composition and training
5. Enhanced role of Tribunal Counsel
6. Legislative amendment to allow Law Society appeals of prior decisions
7. National Committee on Accreditation
8. Federation law degree approval process

Risk Owner

Senior Director of PLTC, Practice Support and Credentials

Potential Impact(s) if Occur

1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Financial: costs and damages, possible litigation

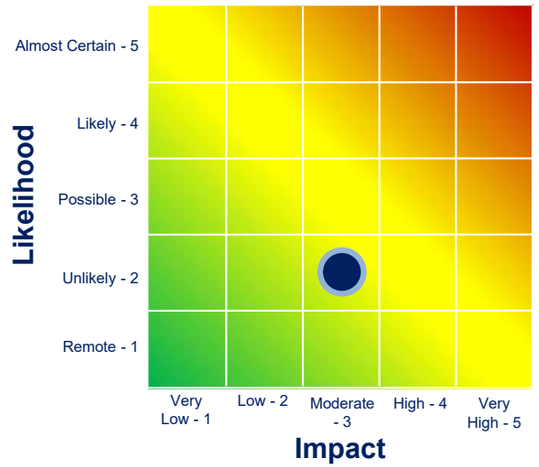
Risk Action Plan(s)

1. Lawyer Development Review, including moving to a competency-based model
2. FLSC - National Committee on Accreditation review

Risk #11: Failure to Fulfill Duties

Risk Context Overview

Name: Failure to fulfill duties under the Legal Profession Act, other statutory duties, or Law Society Rules



Mitigating Factor(s)

1. Bencher governance policies and training
2. Strategic Plan
3. Appropriate procedures for investigation and prosecution of legal matters
4. Hearing panel composition and training
5. Tribunal counsel and case management
6. Independent Tribunal
7. National Discipline Standards
8. S. 86 *Legal Profession Act* statutory protection against liability
9. D&O policy

Risk Owner

ED/CEO

Potential Impact(s) if Occur

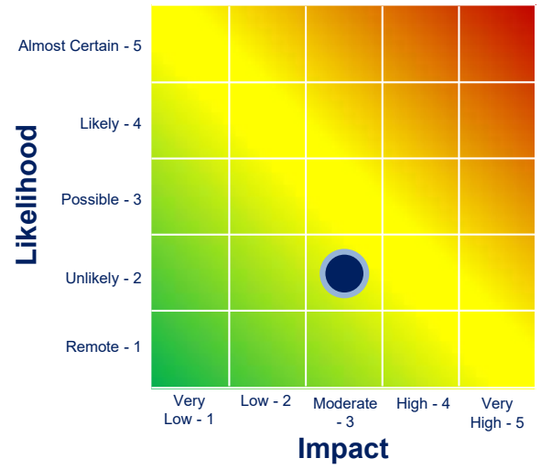
1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Financial: costs and damages, possible litigation

Risk Action Plan(s)

Risk #12: Loss of Key Personnel

Risk Context Overview

Name: Loss of key personnel or inability to recruit skilled personnel



Mitigating Factor(s)

1. Succession planning and cross-training
2. Compensation and benefit philosophy and program
3. Compensation benchmarking practices with external compensation experts
4. Professional, leadership and skills development program and human resource policies
5. Performance management and coaching process
6. Hiring practices and recruiting firms
7. Ad-hoc telecommuting policy
8. Employee surveys
9. Work life balance and flexibility
10. Remote and Hybrid Work Schedules

Risk Owner

ED/CEO

Potential Impact(s) if Occur

1. Operational: service disruption as well as loss of corporate knowledge
2. Reputational: diminished public confidence and loss of reputation with the profession

Risk Action Plan(s)

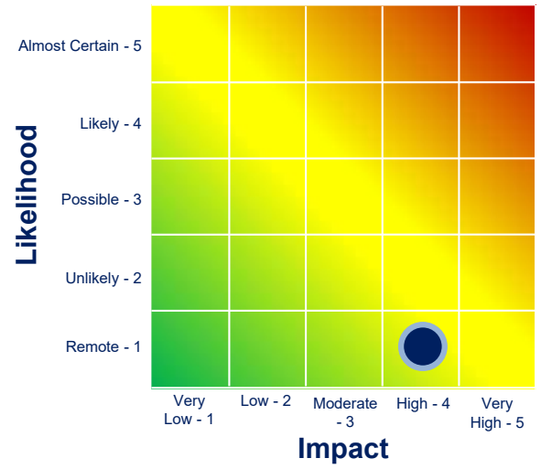
Risk #13: Catastrophic Losses Under the LPL or Cyber Policies

Risk Context Overview

Name: Catastrophic losses under the LPL or Cyber policies

Mitigating Factor(s)

1. Policy wording on limits and “related errors”
2. Proactive claims and risk management practices
3. Monitoring of LPL insurance trends and risks
4. Education and risk management advice to lawyers
5. On-going notices and risk management videos to the profession
6. Appropriate reserve levels
7. Stop-loss reinsurance treaty
8. Part B Reinsurance



Risk Owner

COO - LIF

Potential Impact(s) if Occur

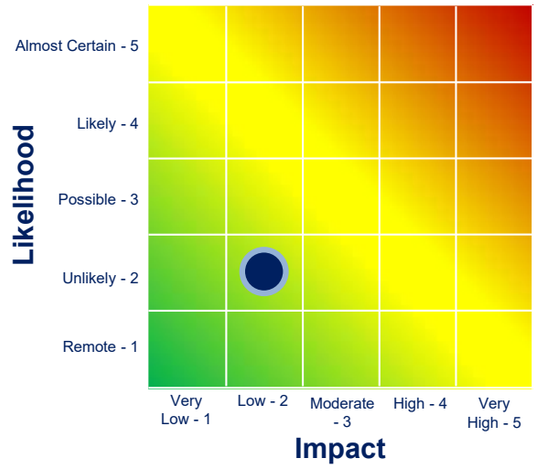
1. Financial and Operational: costs and damages through litigation, significant investigation expense and settlement payments
2. Reputational: Significant increase in indemnity fees

Risk Action Plan(s)

Risk #14: Conflict of Interest

Risk Context Overview

Name: Conflict of interest by Benchers or staff not adequately addressed



Mitigating Factor(s)

1. Bencher and staff policies, procedures, and training
2. Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law, including investigations conducted by independent, external counsel where appropriate
3. Tribunal Counsel and Tribunal Case Management
4. Independent tribunal
5. Hearing panel composition and training
6. Bencher Code of Conduct
7. D&O insurance policy

Risk Owner

ED/CEO

Potential Impact(s) if Occur

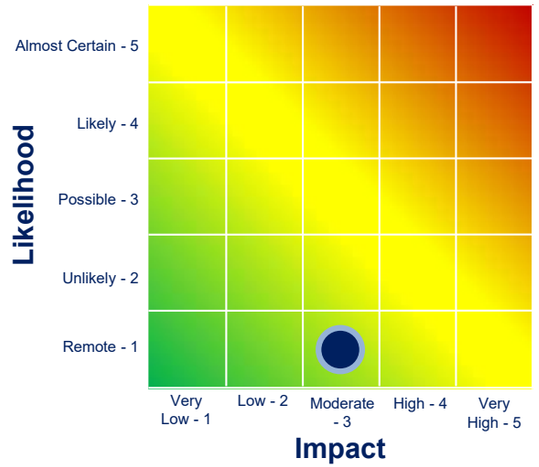
1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession

Risk Action Plan(s)

Risk #15: Bencher or Staff Fraud

Risk Context Overview

Name: Bencher or staff fraud that results in financial loss to the Law Society



Mitigating Factor(s)

1. Internal controls
2. Schedule of authorizations
3. External audit
4. Monthly and quarterly financial review process
5. Crime insurance and cyber insurance

Risk Owner

CFO

Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Financial: costs and damages, possible litigation

Risk Action Plan(s)

Strategic Priority Mapping

	Risks	Innovative Regulator	Reconciliation	Access to Justice	Diversity	Confidence
1	Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner	✓				✓
2	Transition to Single Legal Regulator	✓		✓		✓
3	Perceived or actual failure to accommodate access to a wider array of legal service providers			✓		✓
4	Impact of significant economic downturn leads to insufficient revenues					✓
5	Bencher or staff intentionally or negligently discloses personal or confidential information					✓
6	Natural or human-induced disaster					✓
7	Cybersecurity breach					✓
8	Members' option to override Bencher decisions					✓
9	Reconciliation and EDI policies and actions are not adequate		✓	✓	✓	✓

Strategic Priority Mapping

	Risks	Innovative Regulator	Reconciliation	Access to Justice	Diversity	Confidence
10	Lawyers not having minimum level of competence and experience, and good character requirements, for admission to the profession	✓				✓
11	Failure to fulfill duties under the Legal Profession Act, other statutory duties or Law Society Rules	✓				✓
12	Loss of key personnel or inability to recruit skilled personnel					✓
13	Catastrophic losses under the LPL or Cyber policies					✓
14	Conflict of interest of Benchers or staff not adequately addressed	✓				✓
15	Bencher or staff fraud that results in financial loss to the Law Society					✓

The Law Society of British Columbia

2022 Year-End Reports

Access to Justice Advisory Committee
Ethics and Lawyer Independence Advisory Committee
Equity, Diversity and Inclusion Advisory Committee
Mental Health Task Force
Truth and Reconciliation Advisory Committee

December 2, 2022

Prepared for: Benchers

Prepared by: Policy and Planning Staff

Purpose: For information

Introduction

1. This report is a compilation of the year-end reports of the four Advisory Committees as well as of the Mental Health Task Force, and summarizes their work over the second half of the year. Work from the first half of the year can be found in the Mid-Year Updates reported on at the July 8, 2022 Bencher meeting.

I. Access to Justice Advisory Committee

2. The Access to Justice Advisory Committee continued to explore ways to promote, improve and increase access to unbundled services (and make recommendations to the board) and considered whether there is sufficient evidence in respect of the scope and nature of unmet needs for legal services in British Columbia, and recommendations to the board on obtaining the necessary information. Each of these tasks were ones identified from the President's mandate letter earlier in the year.

Unbundled (limited scope) legal services

3. In November, the Committee met with Digby Leigh, Kari Boyle and Matt Sims to discuss alternative approaches to practice aimed at improving access to legal services, and to continue discussions from earlier in the year about limited scope legal services. In particular, flat-fee billing models were discussed, and the committee learned about a model used by Mr. Leigh that appears to have resulted in high degrees of client satisfaction, billing realization, employee satisfaction, without a reduction in law firm profits. Unbundled legal services at a reasonable rate are also available to help develop client relations and build trust. The Committee concluded that the experience Mr. Leigh's outlined is one that might usefully be shared with the profession to encourage the profession to consider the benefits of unbundled or alternate legal services. If the message simply comes from the regulator, without more, it is doubtful we will see a meaningful increase in the uptake of such services.

4. The Committee's also discussed the "Family Law Unbundled Legal Services Research Project" (funded by the Legal Aid BC /Law Foundation Research Fund for the purpose of providing methods of measuring, monitoring, and delivering client feedback data to legal professionals) being undertaken by Ms. Boyle and Mr. Simms and highlighted for the Benchers in a prior report. Specifically noted was noting the expressed need for more funding and increased lawyer participation. At present, the data demonstrates that the difficulty for the public is in discovering who provides unbundled services and for what issues, and how to connect to those services is a pressing issue.

5. If the Benchers decide to adopt the recommendations in the Committee' report on Unmet and Underserved Legal Needs, it will be desirable to explore what role this data project might play to support the objects of triage. It might also support a better method of evaluating – for both service providers and clients – how the triage model(s) are working and what can be improved.

Unmet and underserved legal needs

6. The Committee started its review of this topic on May 25, and continued its review through its November meeting. The Committee's report to the Benchers is on the December 2022 agenda (along with this report), so those considerations are not replicated here.

Other matters

7. Other matters occupying the Committee were of a monitoring nature and for which the Committee received status updates from staff. Possible changes to the Lawyer Directory are being reviewed by staff, and that discussion has the capacity to include "Access to Justice"-type modifications to the Directory to support better information about the type of services provided (such as pro bono or unbundled); staff are finalizing the implementation of a CPD credit for pro bono legal services, approved by the Benchers earlier this year); Lisa Hamilton, KC, Tanya Chamberlain, Brian Dybwad, Brook Greenberg, KC, Lisa Dumbrell and Doug Munro have participated in a number of the ongoing joint sessions between the Doctors of BC and the Law Society and consultations sessions hosted by Access to Justice BC, (which work is ongoing). The Committee has been advised that Ms. Hamilton has also spearheaded talks with the Supreme Court about the potential for a pilot project to support non-adversarial resolution processes for family law disputes (which would advance a recommendation adopted by the Benchers in 2021). Other recommendations from the Committee's 2021 report on access to justice during COVID have been incorporated into the terms of reference of the Trust Review Task Force and will be considered by that group.

II. Ethics and Lawyer Independence Advisory Committee

8. The Ethics and Lawyer Independence Advisory Committee focused on the following issues in the second half of this year.

Amendments to the conflict provisions (McKercher)

9. A key item on the Committee's work plan for 2022 was the review of the general conflict provisions of rules 3.4-1, 3.4-2 and related commentaries in the Code of Professional

Conduct for British Columbia (BC Code). The Committee reviewed the BC Code provisions in order to make recommendations that would more accurately reflect relevant jurisprudence from the Supreme Court of Canada's decisions in R v. Neil, 2002 SCC 70 and CNR v. McKercher LLP, 2013 SCC 39. The Committee also reviewed the provisions in light of the Federation of Law Societies of Canada's Model Code, to bring the BC Code provisions into closer alignment with the Model Code.

10. After a thorough review, the Committee prepared a recommendation to amend the conflict provisions' commentaries for the Benchers' consideration. The Benchers approved the recommended amendments to the BC Code at the September 2022 meeting.

Review of Ethics Committee opinions in the BC Code

11. The Committee has been reviewing and revising previous Ethics Committee opinions published in the annotations to the BC Code. The Committee considered a number of opinions in relation to the first three chapters of the BC Code and developed updated annotations and opinions to replace the existing versions in relation to eleven topics.

12. The BC Code annotations will be updated with any finalized opinions at the end of 2022. It is anticipated that in 2023 the Committee will continue this work, in finalizing any opinions requiring additional attention and in considering and revising the remaining Ethics Committee opinions, to complete the annotations review.

Cullen Commission Report on Money Laundering

13. In June 2022 the Cullen Commission released its Report on Money Laundering, which included a concern with BC Code rule 3.2-7 commentary [3.1](a). To date, the Committee has reviewed the provision and its context in the BC Code and discussed the Commission's concern in light of a subsequent amendment to the provision. The Committee is continuing its work toward a further amendment of the current provision and anticipates forwarding an amendment recommendation to the Benchers in 2023.

Rule of Law and Lawyer Independence

14. The Committee oversaw the High School Essay contest and has identified a new topic for the 2022 -2023 contest, which has been posted and distributed. The committee also oversaw the presentation of a second Rule of Law Lecture in August, 2022, delivered by Judge Kimberly Prost of the International Criminal Court. Over the course of the year, the Committee monitored what was happening in places where the rule of law was under pressure, or non-existent, including Russia, China and Iran, and discussed circumstances where, despite the prevalence of democratic institutions, concerns about the rule of law and the independence of the legal profession were from time-to-time raised. The

Committee has discussed a draft article on the link between the independent regulation of lawyers and the rule of law that it will look to finalize.

III. Equity, Diversity and Inclusion Advisory Committee

Summary of Work Undertaken

15. The Committee has been guided by its mandate letter, which identified eight areas in which the Committee was to make substantial progress this year, as well as its Terms of reference, the Law Society's Diversity Action Plan and the Law Society Strategic Plan.

16. In the latter portion of the year, the Committee's focus expanded to include other matters relevant to its mandate including gender pay equity, the Law Society's regulatory responses to sexual harassment and discrimination within the profession and the impact of the return to practice rules on the retention and advancement of women lawyers. The Committee also continued to participate in a number of outreach activities and to monitor issues affecting equity, diversity inclusion in the legal profession through the review of numerous reports. Each of these initiatives are discussed in more detail, below.

Gender Pay Equity

17. Following the provincial government's announcement that it intends to introduce pay transparency legislation to address wage disparity between men and women, the Committee explored the topic of gender pay equity through a review of the government's discussion paper on the proposed legislation and the CBA's report on pay equity in as it relates to the practice of law. The Committee continues to monitor this issue and its potential impact on the legal profession as the legislation is developed.

Discrimination and Harassment

18. The Committee undertook an examination of the Law Society's current approaches to addressing issues of discrimination and harassment. Assisted by presentations from senior staff, the Committee reviewed how complaints, investigations and disciplinary action involving allegations of sexual discrimination and harassment are handled by the Professional Regulation department and the frequency with which these issues arise in the course of the Law Society's processes, and familiarized itself with conduct reviews and hearing panel decisions involving these issues. The Committee also received updates on the Law Society's educational and advisory efforts to address discrimination and harassment within the profession and, in particular, to reduce the barriers that some lawyers and articled students experience in making complaints.

Law Society's Return to Practice Rules

19. The Committee reviewed options for addressing systemic barriers created by the Law Society Rules for lawyers and, in particular, women lawyers seeking to return to practice after a period of parental leave or other caretaking-related absences. This work is anticipated to continue into next year.

Outreach and Monitoring Functions

20. EDI Committee members continued to participate in a variety of outreach activities throughout the year, and commenced discussions with the CBA's Equality and Diversity Committee regarding potential collaboration on EDI-related issues. The Committee also reviewed reports and studies relevant to its mandate, including: regulatory responses to bullying, harassment and anti-discrimination; survey data related to rates of gender-based discrimination and harassment and pay equity issues within the profession, and the impact of pandemic-triggered changes to the practice of law and the impact on equity-seeking lawyers.

IV. Mental Health Task Force

Purpose

21. The Mental Health Task Force (the "Task Force") was established in 2018 to address the prevalence of mental health and substance use issues in the profession as they relate to the Law Society's public interest mandate. The Task Force's primary objective is to identify ways to reduce stigma and to develop an integrated review of regulatory approaches to discipline and admissions in relation to mental health in order to support lawyers in fulfilling their professional responsibilities, including duties to their clients.

22. The Task Force's terms of reference require it to provide status reports to the Benchers twice a year. Following a brief recap of work that occurred in the first half of 2022, the primary focus of this report is to summarize the work that has been undertaken to advance the Law Society's priorities in relation to mental health in the latter half of this year, and to look forward to the year ahead.

Summary of work undertaken by the Mental Health Task Force in 2022

23. Over the course of 2022, the Task Force's work has been guided by its mandate letter, which identified five areas in which the Task Force was to make substantial progress this year, as well as its Terms of Reference, the Law Society's Strategic Plan and the Task Force's previous 21 recommendations.

Alternative Discipline Process

24. Earlier this year, the Task Force provided input on the development of the rules required to support the implementation of the Alternative Discipline Process ("ADP"), which diverts lawyers who are under investigation from the regular disciplinary process to an alternative, confidential, consent-based process focused on the support and management of underlying health issues. Following the approval of the ADP rules under Division 1.01, the Law Society's alternative discipline process became operational and has since resulted in a number of referrals. The ADP will be subject to an interim evaluation in 2023, mid-way through the pilot project.

Implementation of previous Task Force Recommendations and New Recommendations

25. The Task Force recently issued a report on the implementation status of its 21 previous recommendations. In addition to charting progress on the operationalization of these initiatives, the report also provides context for forthcoming recommendations regarding the Law Society's future engagement with mental health issues.

26. The Task Force has also developed several additional recommendations, which are expected to be presented to the Benchers in early 2023. The Task Force has deferred finalizing further recommendations in order to ensure they are informed by the results of the National Well-Being study, which were only very recently published and, as a result, the Task Force requires additional time to complete its review of the researchers' findings and recommendations.

Outreach and Monitoring

27. Task Force members have participated in a variety of outreach activities, including attending events, meetings and conferences, as well as presenting to various institutions and organizations with an interest in mental health and the legal profession. Over the course of the year, the Task Force has also monitored developments in other jurisdictions as they relate to mental health and the practice of law. Additionally, the Chair of the Task Force continues to serve on the Standing Committee for the National Well-Being study, referenced below.

Ongoing Work

28. Pursuant to its mandate, it was anticipated that the Task Force would undertake a thorough review of the results and recommendations of the Phase 1 Report of the National Study on the Psychological Health Determinants of Legal Professionals in

Canada (the "National Report") this year. The Report includes an analysis of the data collected from over 7,300 legal professionals that participated in the National Well-Being study that was conducted through a partnership between the Université de Sherbrooke, the Federation of Law Societies and the Canadian Bar Association.

29. The release of the National Report was unfortunately delayed by several months and an additional, supplemental publication containing the researchers' recommendations is not yet available. As a result, the Task Force has just commenced its review of the Report's comprehensive findings,[1] which reveal concerning levels of mental health issues across the profession and that these issues are particularly significant for those in the early stages of their legal careers and for individuals from equity-seeking groups. Based on this preliminary review, the Task Force anticipates that additional recommendations to the Benchers, informed by the Report's findings and recommendations, and in accordance with any further direction provided to the Task Force in a future mandate letter, will be advisable.

30. Relatedly, the Task Force has devoted considerable attention to developing a recommendation regarding a transition plan that will facilitate the Law Society's continued engagement with mental health issues within the profession once the Task Force's tenure is over. Completion of this work, which was identified as a priority in the Task Force's mandate letter, would greatly benefit from a comprehensive review of the findings and recommendations of the National Report and, for this reason, has not yet been completed.

Looking Forward

31. Over the past five years, the Task Force has developed over 20 recommendations that address the high rates of mental health and substance use issues within the legal profession, and that have positioned the Law Society as a leader in this evolving area of policy development. However, as the tenure of a Law Society task force is designed to be time-limited, and as the Task Force has made recommendations in relation to the majority of the items in its guiding documents, its term is likely nearing completion.

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[1] The National Report, which is over 370 pages in length, contains a large body of data on the prevalence of a variety of mental health indicators among legal professionals, including depression, anxiety, psychological distress, burnout and suicidal ideation (Part1); analyses risk factors that contribute to poor mental health and protective factors that can prevent or mitigate the development of health problems (Part 2), and; makes findings with respect to prolonged absences due to illness and return to work (Part 3). Part 4, containing recommendations for supporting wellness for legal professionals, is forthcoming.

32. Nevertheless, the National Report has provided all law societies, including the Law Society of BC, with the first set of Canadian-specific data pertaining to these issues and, in doing so, has placed renewed focus on the relevance of lawyer wellness to legal regulators and the protection of the public interest. These findings indicate that legal professionals across Canada experience high levels of mental health and substance use issues and that many of these issues have a disproportionate impact on particular individuals and groups within the profession. This observation invites further consideration of how mental health matters are addressed in the context of intersectionality and the Law Society's commitment to equity, diversity and inclusion.

33. In the coming year, the Task Force has an opportunity to fulfill the outstanding aspects of its current mandate through the development of evidence-based recommendations that respond to the National Report's findings. With this in mind, the Task Force has identified the following priorities for 2023:

    i. Review the results and recommendations of the National Study on the Psychological Health Determinants of Legal Professionals in Canada Report and consider whether further recommendations to address the Report's findings are advisable and, if so, to make any necessary recommendations to the Benchers.

    ii. Finalize a recommended transition plan for the work of the Mental Health Task Force, informed by the results and recommendations of the National Study on the Psychological Health Determinants of Legal Professionals in Canada Report, that identifies how best to continue the Law Society of BC's engagement with mental health issues within the profession.

    iii. Finalize draft recommendations pertaining to enhancing the support available to lawyers that do not respond to Law Society communications for reasons that may be related to mental health issues, and expanding the set of health-related support resources available to the profession through the use of expert systems.

    iv. Host a forum for legal professionals, in conjunction with CLE-BC, to encourage information-sharing and discussion about the results of the National Study on the Psychological Health Determinants of Legal Professionals in Canada.

    v. Explore the feasibility of creating informational video vignettes designed to address the barriers many legal professionals face in seeking and obtaining support, as identified in the National Study on the Psychological Health Determinants of Legal Professionals in Canada.

34. The Task Force should also continue to seek out opportunities to develop and strengthen relationships with individuals and organizations working to address mental health issues within the legal profession, and to learn from, and work with, other Canadian law societies, as appropriate, in responding to the findings of the National Report. Collaboration with the Law Society's Equity, Diversity and Inclusion Advisory Committee to address the National Report's findings as they relate to intersectionality, and equity, diversity and inclusion more broadly, is also advisable.

V. Truth and Reconciliation Advisory Committee

35. This report summarizes the Committee's work from July to November of 2022:

Indigenous Framework

36. The Committee distilled principles from the Law Society's Strategic Plan and the Truth and Reconciliation Action Plan into an Indigenous framework that to guide the application of the *Act*, Rules, and Code in a way that alleviates systemic barriers for Indigenous Peoples, and promotes values from the *Declaration on the Rights of Indigenous Peoples Act* (*DRIPA*), BC First Nations Justice Strategy, and Truth and Reconciliation Commission. The Indigenous Framework was unanimously endorsed at the September 2022 Bencher meeting.

Supporting Indigenous Lawyers and Law Students

37. In furtherance of the Law Society's commitment to support Indigenous law students, the Committee is proposing to create a summer employment opportunity for an Indigenous law student for the summer of 2023. The proposal will be presented to the Benchers for consideration in early 2023.

38. The Indigenous Scholarship was awarded to two Indigenous law students in 2022.

Single Legal Regulator Intentions Paper

39. The Committee contributed to the Law Society's response to the province's Intentions Paper regarding the legal professions regulatory modernization.

Indigenous Engagement in Regulatory Matters Report

40. The Committee provided feedback on the Indigenous Engagement in Regulatory Matters Task Force Report, and assisted the Task Force's efforts to engage with the Tsilhqot'in Nation's Chief.

Pulling Together Canoe Journey

41. In furtherance of improving engagement with Indigenous communities, the Law Society participated in the Pulling Together Canoe Journey which brings together Indigenous, police, government and public service agencies to foster reconciliation by learning and understanding each other's cultures. The Canoe Journey took place from July 11-20, 2022.

The Law Society of British Columbia

November 18, 2022

Sent via email

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

Lisa Hamilton, KC
President

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Office Email
president@lsbc.org

Dear Josh Paterson:

Re: Appointments 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 R. Max Collett (Vancouver County) and Brandon L. Veenstra (Kootenay County) to the Law Foundation's Board of Governors for three-year terms, effective January 1, 2023.

The Executive Committee has also re-appointed Mary Childs (Westminster County) for a second three-year term, effective January 1, 2023, and agreed to defer filling the vacancy in Victoria County.

I am confident that the Law Foundation and its important work will be well-served by the contributions of these leading members of the BC bar.

Yours truly,

Lisa Hamilton, KC
President, Law Society of BC

c. Lindsay LeBlanc
Chair, Law Foundation of BC

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

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The Law Society of British Columbia

November 18, 2022

Sent via email

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Lisa Hamilton, KC
President

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Dear Aleem Bharmal, KC:

Re: Reappointment of Kevin Westell as the Law Society's Representative to the CBABC Provincial Council

I am pleased to confirm that I have reappointed Kevin Westell as the Law Society's representative to the CBABC Provincial Council to serve a further one-year term effective January 1, 2023.

I am confident Kevin Westell will continue to make positive contributions to the CBABC Provincial Council.

Yours truly,

Lisa Hamilton, KC
President, Law Society of BC

c. Kerry L. Simmons, KC
Executive Director, Canadian Bar Association BC Branch

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

Christopher McPherson, KC
1st Vice-President, Law Society of BC

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