



Agenda

Benchers

Date: Friday, March 10, 2023
Time: **9:00 am – Call to Order**

Location: Virtual Meeting: Zoom

Recording: *Benchers, staff and guests should be aware that the audio and video of the public portion of this Benchers meeting will be recorded 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 virtual meeting. If you would like to attend the meeting, please email BencherRelations@lsbc.org

CONSENT AGENDA:

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

1	Minutes of February 3, 2023 meeting (regular session)
2	Minutes of February 3, 2023 meeting (<i>in camera</i> session)
3	External Appointment: Vancouver Airport Authority

REPORTS

4	President's Report	Jeevyn Dhaliwal, KC
5	CEO's Report	Don Avison, KC



Agenda

DISCUSSION/DECISION		
6	Rule Amendments: Public Notification of Disciplinary Action	Michael Lucas, KC
7	Barristers' and Solicitors' Oath Revisions	Don Avison, KC
8	Single Legal Regulator Update	Jeevyn Dhaliwal, KC Don Avison, KC
9	Licensing Paralegals	Don Avison, KC
UPDATES		
10	National Discipline Standards Report	Natasha Dookie Tara McPhail
<i>IN CAMERA</i>		
11	Other Business	



Minutes

Benchers

Date: Friday, February 03, 2023

Present: Christopher A. McPherson, KC, President
 Jeevyn Dhaliwal, KC, 1st Vice-President
 Brook Greenberg, KC, 2nd Vice-President
 Paul Barnett
 Kim Carter
 Tanya Chamberlain
 Jennifer Chow, KC
 Cheryl S. D'Sa
 Tim Delaney
 Lisa Dumbrell
 Brian Dybwad
 Katrina Harry
 Sasha Hobbs
 Lindsay R. LeBlanc
 Dr. Jan Lindsay

Geoffrey McDonald
 Steven McKoen, KC
 Jacqueline McQueen, KC
 Paul Pearson
 Georges Rivard
 Michèle Ross
 Gurminder Sandhu
 Thomas L. Spraggs
 Barbara Stanley, KC
 Natasha Tony
 Michael Welsh, KC
 Kevin B. Westell
 Sarah Westwood
 Guangbin Yan
 Gaynor C. Yeung

Unable to Attend: Kelly H. Russ

Staff: Don Avison, KC
 Avalon Bourne
 Barbara Buchanan, KC
 Jennifer Chan
 Natasha Dookie
 Su Forbes, KC
 Kerry Holt
 Jeffrey Hoskins, KC
 Alison Kirby
 Michael Lucas, KC

Alison Luke
 Claire Marchant
 Fiona McFarlane
 Jeanette McPhee
 Cary Ann Moore
 Lesley Small
 Christine Tam
 Bill Thiessen
 Adam Whitcombe, KC

Guests:	The Honourable Chief Justice Robert J. Bauman	Chief Justice of BC, Court of Appeal for BC & Court of Appeal for Yukon
	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Barbara Carmichael, KC	A/Deputy Attorney General
	Christina Cook	Vice-Chair, Aboriginal Lawyers Forum
	Indira Dhaliwal	Bencher Guest
	Chief Janice George	Chief, Squamish Nation
	Elizabeth Kollias	President, BC Paralegal Association
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Scott Morishita	First Vice President, CBABC
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean of Law, Thompson Rivers University

1. Administer Oath of Office

The Honourable Chief Justice Robert J. Bauman administered the oath of office (in the form set out in Rule 1-3) to President Christopher A. McPherson, KC, First Vice-President Jeevyn Dhaliwal, KC, and Second Vice-President Brook Greenberg, KC, and to newly elected Bencher Tim Delaney, whose terms began on January 1, 2023.

Chief Justice Bauman spoke about the collaborative relationship between the Law Society and the judiciary, and the importance of working together during these challenging times. He also spoke about the importance of truth and reconciliation and working collaboratively with Indigenous people to interweave Indigenous legal traditions within the current legal system.

2. Indigenous Welcome

Chief Janice George, member of the Squamish Nation, introduced herself to Benchers and welcomed them to the meeting and to the ancestral lands of the Squamish people. She spoke about the importance of mentorship and supporting future generations, as well as the value in weaving together different traditions and working together.

3. Presentation of Law Society Indigenous Scholarship Co-Recipient

President Christopher A. McPherson, KC introduced and congratulated the co-recipient of the 2022 Law Society Indigenous Scholarship, Mercediese Dawson. By pre-recorded video, Ms. Dawson gave her thanks to Benchers.

CONSENT AGENDA

4. Minutes of December 2, 2022, meeting (regular session)

The minutes of the meeting held on December 2, 2022 were approved unanimously and by consent as circulated.

5. Minutes of December 2, 2022, meeting (*in camera* session)

The minutes of the *in camera* meeting held on December 2, 2022 were approved unanimously and by consent as circulated.

6. Rule Amendments: Tribunal Chair Role

This item was removed from the Consent Agenda for discussion.

7. External Appointment: Legal Aid BC

The Benchers reappointed Allan P. Seckel, KC to the Legal Aid BC Board of Directors for a three-year term commencing February 12, 2023 and concluding February 11, 2026.

REPORTS

8. President's Welcome and Report

Mr. McPherson welcomed Benchers, staff, and guests to the first Bencher meeting of 2023.

He confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report by speaking about his dedication to the profession and to the people of BC and the honour of serving as the Law Society's President for the 2023 term. He then spoke about the challenges facing the Law Society, as well as his priorities for the year, in particular continued engagement and discussion regarding the Ministry's intention to establish a single legal regulator. Mr. McPherson spoke about the importance of engaging with the profession and the public on this initiative, and then provided an overview of his recent and upcoming meetings and engagement activities, including a dinner held by the Westminster Bar Association, meetings with the Chief Justices and Chief Judge, and a meeting with the Attorney General. He then spoke about an upcoming webinar hosted by the Canadian Bar Association BC Branch (CBABC), in which he would be taking part, entitled *Access to Justice: Whose Job Is It Anyway?*. He provided an overview of the other participants, including representatives from government, CBABC, the BC Paralegal Association, the Federation of Asian Canadian Lawyers, and the BC Notaries Association. Mr. McPherson indicated that his intention was to conduct a great deal of engagement over the course of the year, including attending the Prince George Law Talks in May and other regional engagement sessions.

Mr. McPherson then spoke about a number of important considerations regarding the Ministry's intention to establish a single legal regulator, including the importance of ensuring the continued independence of the profession and of the regulator; the importance of ensuring that board composition remains diverse and avoids tokenism; and taking a bottom-up approach to regulation and not restricting scopes of practice. He also spoke about the importance of truth and reconciliation and addressing the injustices facing Indigenous people within the justice system. Mr. McPherson highlighted the work of the Truth and Reconciliation Advisory Committee and the Indigenous Engagement in Regulatory Matters Task Force, and the importance of weaving in Indigenous laws and traditions with the common law.

Mr. McPherson spoke about the efforts of the Law Society to address barriers to access to justice, including the implementation of the Innovation Sandbox, the development of a framework for legal aid in BC, and considering different pathways to licensure for lawyers. He

indicated that one of his priorities for the year would be to continue with these efforts and to take further steps to address these issues.

Mr. McPherson concluded his report by thanking Benchers for their dedication to the Law Society's strategic priorities. He indicated that he was looking forward to working with Benchers on these important matters over the course of the year.

9. CEO's Report

Don Avison, KC began his report with an update on the recent meeting of Law Society CEOs and Deputy CEOs from BC, Alberta, Saskatchewan, and Manitoba, which was the first in-person meeting of this group since before the COVID-19 pandemic. He indicated that there was general agreement to work together on areas of common interest, to learn from each other, and to share best practices.

Mr. Avison then spoke about the upcoming meetings of the Federation of Canadian Law Societies, which would be taking place in Quebec City in March. He indicated that the discussions would likely be focused on further consideration of the National Study on the Health and Wellness Determinants of Legal Professionals in Canada, and that representatives from the Law Society would be in attendance, including himself, First Vice-President Jeevyn Dhaliwal, KC, the Law Society's Federation Council member Brook Greenberg, KC, and Adam Whitcombe, KC.

Mr. Avison spoke about the upcoming meeting with the Attorney General, Deputy Attorney General, and other Ministry staff. He indicated that while the key focus of the meeting would be the Ministry's intention to establish a single legal regulator, he was also planning on speaking about the contributions the Law Society has already made to address barriers to access to justice. He also provided an overview of upcoming engagement sessions taking place with the profession regarding the single legal regulator initiative, including CBABC's Access to Justice webinar, the Law Talks in Prince George, and the Kootenay Bar Association's winter meeting.

Mr. Avison then updated Benchers on the work of the Access to Justice BC Steering Committee. He commended Chief Justice Robert J. Bauman and Tina Parbhakar for leading the Committee in its work.

Mr. Avison informed Benchers that a series of sessions have taken place regarding the findings of the Cullen Commission. He referenced some of the discussions from the most recent session, which had focused on the use of the notwithstanding clause in relation to trust account reporting. He expressed his concerns regarding this viewpoint, and he indicated that a formal response from the Law Society might be needed on this matter.

Mr. Avison concluded his report with an overview of recent additions to the Law Society staff.

DISCUSSION/DECISION

6. Rule Amendments: Tribunal Chair Role

This item was removed from the Consent Agenda for discussion.

Benchers discussed the role of the Tribunal Chair, in particular the dual responsibilities of adjudication and administration, and whether this could present an issue in terms of public perception.

Mr. McPherson provided some background information on the shift to an independent Tribunal model, which was approved by Benchers at the July 2022 Bencher meeting. Mr. McPherson spoke about the rationale for the change, which was to ensure the independence of the Tribunal and the Tribunal Chair, and to move away from a model in which the Law Society was both prosecutor and adjudicator. He noted that the intention would be for the Chair to not just oversee administrative matters, but to also serve as an adjudicator, similar to the role of the Associate Chief Justice, who also acts as both an administrator and adjudicator.

Benchers discussed the role of the Tribunal Chair and agreed that the dual role would help ensure the smooth facilitation of the Tribunal process, as well as preserve the independence of the Tribunal. Mr. Avison advised that the Law Society's Tribunal model was quite similar to those of other law societies.

The following resolution was passed unanimously:

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

1. ***In Rule 1, the definition of “motions adjudicator” is rescinded and the following substituted:***

“motions adjudicator” means the Tribunal Chair or a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

2. ***Rule 5-2 (3) (a) is rescinded and the following substituted:***

(3) A panel must
 (a) be chaired by the Tribunal Chair or by another lawyer, and

3. ***Rule 5-16 (2) is rescinded and the following substituted:***

(2) A review board must be chaired by a Bencher who is a lawyer or by the Tribunal Chair.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

10. Fourth Recommendation Report of the Mental Health Task Force

Brook Greenberg, KC introduced the item and provided some background to the recommendations included in the Report of the Mental Health Task Force. He indicated that the Task Force had been working on the recommendations for quite some time, but had held off on bringing them forward for Benchers to review, so as to include recommendations in response to the findings of the National Study on the Health and Wellness Determinants of Legal Professionals in Canada. As the National Study recommendations were not released until December 2022, and the Task Force required further time to review the findings before putting forward its own recommendations, it was agreed to bring forward the three recommendations included in the Report, rather than holding off until the review of the National Study was complete. Mr. Greenberg then provided an overview of each of Task Force's recommendations, as well as how the recommendations would support the public interest.

Benchers discussed the proposed recommendations, as well as the importance of removing stigma from mental illness and taking an intersectional approach in supporting mental, cultural, and social health.

Benchers discussed the recommendation regarding the creation of a roster of pro bono support counsel to assist with the resolution of "failure to respond" matters and the role of those support counsel beyond the initial call. Mr. Greenberg advised that the role would be dependent on the preferences of the support counsel and the lawyer facing the discipline matter. He added that the usual restrictions on Benchers' involvement with discipline matters would apply, but former Benchers could participate as support counsel. Benchers also discussed confidentiality in terms of the discussions between the support counsel and the lawyer facing the discipline matter. Mr. Greenberg advised that solicitor/client privilege would still apply and the only information disclosed to the Law Society would be whether the lawyer facing a discipline matter had responded to the support counsel.

Mr. Avison spoke about the existing resources the Law Society had available to support those encountering mental health challenges, and that the proposed recommendations would add additional resources to assist individuals who have found themselves in significant difficulty.

A motion to adopt the recommendations as presented within the report from the Mental Health Task Force was unanimously approved.

IERM Report

Mr. McPherson informed Benchers that while the intention was to have the Report of the Indigenous Engagement in Regulatory Matters Task Force on the Bencher meeting agenda for discussion, in order to allow the opportunity to consult with the Tsilhqot'in Nation, the Report would now be on the April Bencher meeting agenda for discussion.

FOR INFORMATION**11. 2024 Bencher and Executive Committee Meeting Dates**

There was no discussion on this item.

12. Minute of Approval for Appointment of Tribunal Chair

There was no discussion on this item.

13. External Appointment: Law Foundation of BC

There was no discussion on this item.

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

AB
2023-03-01



CEO Report

March 10, 2023

Prepared for: Benchers

Prepared by: Don Avison, KC

1. Meeting with New Attorney General Niki Sharma, KC

Law Society President Christopher McPherson, KC, First Vice-President Jeevyn Dhaliwal, KC, Bencher Katrina Harry and I met with AG Sharma and her senior staff at the Legislative Assembly in Victoria.

The primary focus of that discussion was on progress related to the single regulator initiative. Government indicates that it remains their intention to develop and publish a “What We Heard” document summarizing commentary received in response to their Intentions Paper which will then be followed by legislation to be tabled in the fall of 2023.

We have asked the Attorney General to attend an upcoming Bencher meeting and are hopeful that may take place at the June meeting.

Benchers can expect a more detailed summary of the AG meeting at the March 10, 2023 Bencher meeting.

2. 2023/24 Provincial Budget

Finance Minister Katrine Conroy delivered her first budget in the BC Legislative Assembly on February 28, 2023.

The province has made significant funding commitments in a number of areas including health care, education, emergency preparedness, and in public safety. This follows on additional substantial funding commitments the government has announced as a result of a substantial year-end surplus for fiscal year 2022-23.

Fiscal projections for the next three-year budget cycle are not optimistic, resulting in a deficit budget for the upcoming fiscal years and for the subsequent two budget years.

Government has confirmed a commitment to fund 15 Indigenous Justice Centres, which is an important and encouraging development. However, funding levels for Legal Aid remain as an important issue.

In a news release following the tabling of the budget, President Aleem Bharmal, KC of the CBABC observed that the “BC government must expand its investment in legal aid to better protect and uphold the rights of citizens, especially the most vulnerable, in times of distress”.

3. Federation Spring Meetings

The Federation of Law Societies of Canada will meet in Quebec City from March 12-14, 2023. The LSBC delegation for these meetings will consist of Acting President Jeevyn Dhaliwal, KC, the LSBC's Council representative Brook Greenberg, KC, Deputy Executive Director Adam Whitcombe, KC and myself.

The primary focus of the Quebec City meetings will be on follow-up to the National Wellness Study with a number of jurisdiction, including British Columbia, speaking about their respective initiatives.

We have also been asked to provide an update regarding the status of the single legal regulator discussion in British Columbia.

The CEO/Senior Staff session scheduled for the Monday afternoon will cover a number of areas including the current state of cultural competency training, the NCA program review, alternative licensing options, emerging issues with trust audits and ancillary issues.

4. Regional Sessions – Attendance at February 25, 2023 Kootenay Bar Association

Together with Acting President Jeevyn Dhaliwal, KC, Bencher Barbara Stanley, KC and CBABC President Aleem Bharmal, KC, we attended the KBA meetings held in Kimberley this year.

I found the sessions very useful. It was helpful to get a Kootenay perspective on the return to in-person Chambers matters which is seen as having an adverse impact on access to justice and associated costs. We also heard about the need to check in on those new to practice, particularly if they are practicing on their own early in their legal careers.

Barbara Stanley, KC used her time to talk about mental health issues in the profession, the National Wellness Study and the important work of the Law Society's Mental Health Task Force.

Further regional sessions are being planned for Prince George and for Vancouver Island.

5. Session with Federal Justice Minister

Following a request from the Federal Department of Justice, the Law Society hosted a session on the Supreme Court appointment process and on initiatives that could be undertaken with a view towards increasing the number of applicants in British Columbia.

Federal Justice Minister, the Honourable David Lametti attended the meeting together with his judicial affairs advisor François Giroux. The session, chaired by Jeevyn Dhaliwal, KC, was also attended by representatives from the BC Court of Appeal, the Supreme Court of BC, the CBABC, the Advocate's Society and the Trial Lawyers Association. Adam Whitcombe, KC and I were also there for the Law Society as was Second Vice-President Brook Greenberg, KC.

The discussion was a productive one with one key outcome being a commitment by the Law Society to develop a short video about the importance of increasing the pool of applicants, how to apply, the selection process, and what the judicial experience is actually like. Minister Lametti has agreed to participate directly in the video and we are working on identifying others who we will ask to be interviewed for the video. Our hope is to have the material available to members of the profession in the coming months.

6. The Indigenous Engagement in Regulatory Matters Task Force and the April 28 Meeting of Benchers

As Benchers know, the IERM Report will now be presented for discussion at the April meeting.

Given the significance of that report and the recommendations the Task Force members have invited the Benchers to consider, I believe it will be important to have an in-person component to that meeting. As a result, the meeting that had been scheduled as a virtual session will now be conducted as a hybrid meeting.

Don Avison, KC
Chief Executive Officer



Amendments to Rule 4-47: Public Notice of suspension or disbarment

Date: February 27, 2023

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: Decision

DM3927143

I. Purpose

1. This report recommends amendments, in principle, be made to Rule 4-47 to better reflect current communication norms and permit staff to adapt our communications about these lawyers to the changing ways the public consumes information.

II. Proposed Resolution

2. The following resolution is proposed:

BE IT RESOLVED that the Benchers recommend, in principle, that Rule 4-47 be amended to remove the specific directions set out in the Rule and instead provide the Executive Director with the discretion to determine how to give immediate effective public notice of the suspension, disbarment or resignation.

III. Issue

3. Rule 4-47 currently provides that, when a person is suspended, disbarred or, as a result of disciplinary proceedings, resigns or otherwise ceases to be a member as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to:
 - a. publishing a notice in the British Columbia Gazette, a newspaper of general circulation in each municipality and the electoral district in which the person maintained a law office, and on the Law Society website; and
 - b. notifying the Registrar of the Supreme Court and the Public Guardian and Trustee.
4. Rule 4-47(1) has not been substantively reviewed since at least 1998, and the last amendment to the rule was in 2007 before the widespread use of websites and social media as tools to share information to the public, including prospective clients.
5. Publication of our notices in the British Columbia Gazette may have served a purpose at one time. Today it seems unlikely that the public subscribes to, or otherwise searches, the online version of British Columbia Gazette Part 1 where Rule 4-47 notices are published in the “Barristers and Solicitors” subsection of the “Attorney General” section.
6. Publication of our notices in the prescribed newspapers may have been at one time a useful means for communicating public notices but newspaper circulation has been dropping for many years. Fewer people subscribe to newspapers and many smaller municipalities do not have a newspaper of general circulation.

7. As a result, time and effort is spent on providing notification in accordance with the requirements of Rule 4-47(1)(a)(i) and (ii) when the information published on the Law Society website and the Tribunal website is likely to be the best and most effective way of notifying the public and the profession when a person is suspended, disbarred or, as a result of disciplinary proceedings, resigns or otherwise ceases to be a member as a result of disciplinary proceedings.

IV. Discussion

8. Currently under Rule 4-47, staff prepare letters for the Executive Director's signature, which are then emailed to a distribution list that includes the other Canadian law societies, the Public Guardian and Trustee, Access Pro Bono, the Office of Legislative Counsel, the Land Title Office, The Advocate, and the Provincial Court, the Court of Appeal and Court Services Online. A letter is also prepared and mailed to the Registrar of the Supreme Court but not, as we understand it, to the Court of Appeal or Provincial Court.
9. In accordance with the current Rule, staff also prepare a notice for publication in the British Columbia Gazette and request a notice be placed in the Sun and Province newspapers for one day, with publication generally taking place before the effective date of disbarment or suspension. The costs for the former is \$63.83 per notice, and \$977.55 for the latter.
10. Amending the rule to provide discretion to the Executive Director about who or how notification is to be accomplished would not necessarily change who is currently notified. It would simply remove the prescriptive approach in the current Rules. If the Public Guardian and Trustee or the Registrar of the Supreme Court consider it important that they continue to receive notification, that can still be done. We understand that in the recent past the Supreme Court Registrar has not done much with the notices, although there is now a new register who has not yet been consulted on the matter.
11. The requirements in Rule 4-47 differ from other regulators in British Columbia. For example, the notice requirements when a professional governed by the *Health Professions Act* is disciplined are less prescriptive than Rule 4-47. Section 39.3(7) of that *Act* provides only that "*notification required under this section may be made by posting a notice on the college website.*" The requirements at other Canadian law societies, while including some specific notification requirements, also leave more discretion to the Executive Director about how and where to publish information.

V. Cost and Organizational Implications

12. There are few costs or organizational implications associated with amending this rule. Some resources will be necessary to create operational guidelines relating to the discretion proposed in the rule. Long-term cost implications are not expected to increase since the process of providing public notice will continue. In fact, costs associated with publication in the British

Columbia Gazette and in the Sun and Province will decrease if changes to the rules are approved.

VI. Recommendation

13. Rule 4-47 should continue to require mandatory notification of disbarments, suspensions and resignations in the face of discipline. However, the rule should be less prescriptive as to how notification is to be effected. The recommendation is to permit the Executive Director to review operational practices regularly and respond to changing communication norms and the changing ways the public acquires information to ensure effective communication to the public and the profession about a person who is suspended, disbarred or, as a result of disciplinary proceedings, resigns or otherwise ceases to be a member as a result of disciplinary proceedings.

VII. Subsequent Steps

14. Assuming the resolution is approved by the Benchers, the matter can be returned to staff who will prepare amendments to the Rules to reflect the Benchers' decision made in principle, which will be returned to the Benchers at a later date.



Memo

To: Benchers
From: Executive Committee
Date: February 27, 2023
Subject: **Barristers and Solicitors' Oath Amendment**

Background

1. At its meeting on February 9, the Truth and Reconciliation Advisory Committee endorsed a recommendation from the Executive Director that the Barristers and Solicitors' Oath be amended to better incorporate and reflect the Constitution's recognition and affirmation of the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.
2. The recommended amendment mirrors the language and recent amendment to Canada's Oath of Citizenship.
3. The matter was also discussed by the Executive Committee at its meeting on February 23.
4. Rule 2-84(2)(a) requires changes to the Oath be approved by the Benchers. This matter is being referred by the Executive Committee to the Benchers for approval.
5. The intent of the amendment is to bring attention to the recognition of Aboriginal and treaty rights as part of the law in British Columbia. Every incoming lawyer will, as a consequence of the amendment, swear or affirm to uphold those rights as guaranteed by the Constitution.

Drafting Notes

6. Redlined and clean versions of the proposed amendments are attached.

Decision

7. The following resolution is proposed for approval by the Benchers.

BE IT RESOLVED that the Benchers rescind the Barristers and Solicitors' Oath and substitute the following:

Do you sincerely promise and swear (or affirm) that you will diligently, faithfully and to the best of your ability execute the offices of Barrister and Solicitor; that you will not promote suits upon frivolous pretences; that you will not pervert the law to favour or prejudice anyone; but in all things conduct yourself truly and with integrity; and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.

BARRISTERS AND SOLICITORS' OATH

Do you sincerely promise and swear (or affirm) that you will diligently, faithfully and to the best of your ability execute the offices of Barrister and Solicitor; that you will not promote suits upon frivolous pretences; that you will not pervert the law to favour or prejudice anyone; but in all things conduct yourself truly and with integrity; and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.

BARRISTERS AND SOLICITORS' OATH

Do you sincerely promise and swear (or affirm) that you will diligently, faithfully and to the best of your ability execute the offices of Barrister and Solicitor; that you will not promote suits upon frivolous pretences; that you will not pervert the law to favour or prejudice anyone; but in all things conduct yourself truly and with integrity; and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.



Memo

To: Benchers
From: Don Avison, KC
CEO/Executive Director
Date: February 28, 2023
Subject: Licensing Paralegals

Purpose

At the February 23, 2023 meeting, the Executive Committee determined that the Benchers should consider and decide whether the Law Society should ask the government to permit the Law Society to license paralegals by bringing into force the amendments to the *Legal Profession Act* in Bill 57 - 2018 *Attorney General Statutes Amendment Act, 2018*.

Proposed Resolution

Be It Resolved That:

1. the Law Society request that the licensed paralegal amendments to the *Legal Profession Act* and the related transitional provisions in Bill 57 – 2018 *Attorney General Statutes Amendment Act, 2018* be brought into force; and
2. in anticipation of the amendments being brought into force, the Executive Director is directed to take the necessary steps to provide for the licensing of paralegals, including the development of processes and procedures and proposing to the Benchers any required changes to the Law Society Rules consistent with the authority provided in the amendments once granted.

Background

The Law Society has a long history, starting as far back as the 1980s, of entertaining the idea of credentialing or licensing paralegals to provide legal advice and assistance to the public.

In December 2014, the Benchers adopted a recommendation from the Legal Services Regulatory Framework Task Force that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal

practice. The implementation of that recommendation came to fruition with the Royal Assent to Bill 57 – 2018 *Attorney General Statutes Amendment Act* on November 27, 2018, to come into force by regulation of the Lieutenant Governor in Council. However, the relevant provisions of the Bill have not been proclaimed in force.

Observations

While questions have been raised about how the reforms suggested in the Intentions Paper will enhance access to legal services, from the government’s perspective access to legal services is to a large degree a regulatory issue because rules around who is allowed to provide what services have an impact on the availability and cost of those services to the public. For government, the *specific* regulatory issue is the failure of the Law Society to seek to have the amendments in Bill 57 proclaimed and to make progress on licensing paralegals and to improve access to legal services by doing so. While our Innovation Sandbox has provided an avenue for paralegals to provide independent legal advice and assistance, as stated in the Intentions Paper, *“Although the innovation sandbox has had some limited uptake, there are limits to a “no action” regulatory model for both proponents and the public.”*

Opportunity

By calling upon the government to proclaim the amendments in Bill 57, the opportunity exists for the Law Society to advance, through our existing organization, the licensing of paralegals to assist in improving the delivery of legal services. While the government’s Intentions Paper clearly contemplates that the proposed new legislation will also provide for the licensing of paralegals, the single legal regulator legislation is not expected to be tabled in the Legislature until Fall 2023 and the actual implementation of a single legal regulator, and hence the licensing of paralegals, would likely be at least a number of months later. If the amendments in Bill 57 were proclaimed in force now, we could move up the timetable for licensing paralegals by at least a year or more and begin to see the change that licensed paralegals can make in the delivery of legal services that much sooner.



Memo

To: Benchers
From: Natasha Dookie, Chief Legal Officer
Tara McPhail, Director of Discipline & External Litigation
Alison Kirby, Tribunal Counsel
Date: February 28, 2023
Subject: National Discipline Standards Report

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada (the “Federation”) initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards (“NDS”) at their meeting on June 13, 2014. The standards were officially implemented across all Canadian law societies as of January 2, 2015.
2. The standards address many aspects of our regulatory processes including: timeliness, public participation, transparency, accessibility and training of adjudicators and investigators. They are aspirational.
3. Standard 24¹ requires us to report to you annually. This memorandum constitutes that report.

2021 Implementation Report

4. The LSBC’s 2021 NDS progress report was provided to the Benchers at their meeting in March 2022. We also reported our progress to the Federation’s Discipline Standards Standing Committee, which we do on an annual basis. The Federation then collates, into an Implementation Report, the annual NDS data that it receives from all of the Canadian law societies. The Implementation Report provides a high-level comparison and analysis of all of the Canadian law societies’ performance on the NDS in the previous year.

¹ The standards are routinely revised. The standards currently in effect were approved by the Council of the Federation of Law Societies of Canada on June 7, 2021.

5. The 2021 Implementation Report was prepared and distributed to the law societies in October 2022. As the report is prepared for internal law society use only, we have summarized the notable points herein.
6. In 2021, the national average for meeting the standards was 83%, which was the same as in 2020. This is consistent with an overall upward trajectory in meeting the standards since the standards were implemented. No law society has ever met all the standards applicable to it.
7. Our performance in 2021 as against the standards remained the same as the year before, and exceeded the national average by a rather significant percentage:

	2019	2020	2021
LSBC	84%	92%	92%
Average of all Law Societies	80%	83%	83%

8. In 2021, law societies were also invited to identify challenges and changes related to the ongoing COVID-19 pandemic. While a few law societies reported some impacts largely related to administrative backlog, most appear to have been able to successfully adjust and adapt to the circumstances that commenced in 2020.

Report on LSBC Progress in 2022

9. The LSBC's 2022 progress on each of the standards is set out at **Attachment 1**. A new standard related to "Qualification of Staff and Volunteers" (Standard 23) was approved on June 7, 2021 and came into effect on January 1, 2022.
10. We met 24 of 26² standards, which is similar to our performance for the two years prior even with the addition of the new standard.
11. As was the case in 2021, we did not meet standards 9 and 10 in 2022.
12. Standard 9 requires 75% of hearings to be commenced within 9 months of the citation being authorized and 90% of hearings be commenced within 12 months of the citation being authorized.

² While there are 24 standards in total, Standard 4 is divided into three parts (a, b, and c) which means we provide 26 separate responses.

In 2022 our performance on this standard was as follows:

Year	75% of hearings commenced within 9 months	90% of hearings commenced within 12 months
2022	27%	42%

The reasons we did not meet Standard 9 in 2022 include:

- The department had its second highest ever number of hearings³;
- For approximately half of 2022, the Discipline department was operating with half the usual number of in-house Discipline Counsel;
- We continue to experience record levels of section 47 reviews and appeals to the Court of Appeal (8 combined, in 2022);
- We do not include “consent agreements” when calculating our compliance with the Standard, which now count for a significant portion of our work;
- There were a number of adjournment applications by respondents which were outside of our control;
- There were scheduling challenges with respondents; and,
- The files continue to increase in size and complexity.

It is also useful to compare our hearing numbers with those of the jurisdictions that typically meet Standard 9. In 2021, for example, four jurisdictions met the standard. Excluding Quebec, which counted for two of these jurisdictions, the law societies that met the standard were Nova Scotia, with two conduct hearings⁴, and Newfoundland, with four conduct hearings. None of Prince Edward Island or the three territories held hearings in 2021.

The other jurisdictions that did not attain Standard 9 in 2021 include Alberta (18 conduct hearings), Saskatchewan (5 conduct hearings), Manitoba (11 conduct hearings), Ontario (127 conduct hearings) and New Brunswick (eight conduct hearings). This compares to

³ This refers to 58 hearings in total, which includes facts & determination hearings, joint submissions under Rule 5-6.5, consent agreements, Rule 4-29 resolutions, disciplinary action hearings, section 47 reviews, appeals to the Court of Appeal and judicial reviews.

⁴ A “conduct hearing” is equivalent to our Facts & Determination hearing or joint submission under Rule 5-6.5.

24 conduct hearings in British Columbia in 2021. With the exception of Quebec, the jurisdictions with more hearings do not meet Standard 9.

We have taken a number of steps to better enable us to commence hearings within the timeframes set out in Standard 9, including:

- We have streamlined the disclosure process;
- We utilize written hearings whenever we can;
- We utilize Rule 4-29 and joint submissions to expedite the hearing process;
- We have negotiated 18 consent agreements since 2021, (8 in 2021 and 10 in 2022) which have reduced the number of hearings on the roster. If we included in NDS #9(a) & (b), the consent agreements concluded in 2022, our percentages would be 42% & 53% respectively; and,
- We have begun 2023 fully staffed with Discipline Counsel and look forward to making gains in terms of the number of hearings commenced this year.

13. Standard 10 requires 90% of hearing panel decisions to be rendered within 90 days of the last submissions. In 2022, our performance on this standard was at 61% of hearing decisions (compared to 58% in 2021).

Year	Percentage of decisions rendered within 90 days
2022	61%
2021	58%
2020	67%

Of the 21/54 decisions that were late:

- 76% of the first drafts of the decisions were received by the Tribunal Office (or were received back from the Panel) after the 90 days had already expired.
- 24% of the first drafts of the decisions were received within 60-90 days but were not returned by Tribunal staff to Panel for final approval until after the deadline.

In an effort to address late decisions, the Tribunal Office has instituted the following processes:

- (a) the hearing clerk sends out an email to the panel members at the conclusion of every hearing setting out the 60 and 90 day deadlines;
- (b) the Tribunal Office sends an automatic reminder of the decision deadlines to panel at 30, 60, 75 and 90 days;
- (c) the Tribunal Chair personally contacts the panel at the 60 day mark if a draft decision has not been received by the Tribunal Office and
- (d) if the decision is outstanding, it is added to a monthly report to all adjudicators.

Additional staff has also been hired to ensure that draft decisions are reviewed in a timely way.

Finally, an annual survey will be sent to panel members to solicit explanations about why decisions are not submitted to the Tribunal Office by the deadline.

ATTACHMENT 1

NATIONAL DISCIPLINE STANDARDS

ANNUAL REPORT ON LSBC STATUS FOR 2022

STANDARD		CURRENT STATUS
Timeliness		
1.	<p><i>Telephone inquiries:</i></p> <p>75% of telephone inquiries are acknowledged within one business day and 100% within two business days.</p>	<p>MET</p> <p>99.75% of telephone inquiries were acknowledged within one business day; 100% were acknowledged within two business days.</p>
2.	<p><i>Written complaints:</i></p> <p>95% of written complaints are acknowledged in writing within three business days.</p>	<p>MET</p> <p>99.6% of written complaints were acknowledged in writing within three business day.</p>
3.	<p><i>Early Resolution:</i></p> <p>There is a system in place for early resolution of appropriate complaints.</p>	<p>MET</p> <p>The Intake & Early Resolution Group within Professional Conduct implements early resolution of appropriate complaints.</p>
4.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	<p>MET</p> <p>91% of all complaints were resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>96% of all complaints were resolved or referred for a disciplinary or remedial response within 18 months.</p>

	STANDARD	CURRENT STATUS
	<p>(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:</p> <p>80% of all internal reviews or internal appeals are decided within 90 days.</p> <p>90% of all internal reviews of internal appeals are decided within 120 days.</p>	<p>MET</p> <p>100% of all internal reviews were decided within 90 days.</p>
	<p>(c) Where a complainant has been referred back to the investigation stage from an internal review or internal appeal process:</p> <p>80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.</p> <p>90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.</p>	<p>MET</p>
5.	<p><i>Contact with complainant:</i></p> <p>For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 93% of open complaints there was contact with the complainant at least once every 90 days during the investigation stage.</p>
6.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 97% of open complaints there was contact with the lawyer at least once every 90 days during the investigation stage.</p>

STANDARD		CURRENT STATUS
7.	<p><i>Interim Measures:</i></p> <p>There is authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.</p>	<p>MET</p> <p>Rule 3-10 or voluntary undertakings.</p>
Hearings		
8.	<p>75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.</p> <p>95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.</p>	<p>MET</p>
9.	<p>75% of all hearings commence within 9 months of authorization.</p> <p>90% of all hearings commence within 12 months of authorization.</p>	<p>NOT MET</p> <p>27% of hearings commenced within 9 months of authorization.</p> <p>42% of hearings commenced within 12 months of authorization.</p>
10.	<p>Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.</p>	<p>NOT MET</p> <p>61% of decisions were issued within 90 days.</p>

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

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

22.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.
23.	There is ongoing training available for all staff and volunteers (where applicable) involved in law society complaint and discipline processes to ensure they are equipped with the relevant skills, knowledge, awareness and understanding of issues that can materially impact a lawyer or Quebec notary's conduct and/or competency.	MET Staff in the complaints and discipline process have access to training as appropriate, including in: relevant substantive areas of law, trauma informed practice, lawyer wellness, human rights, equity, diversion & inclusion, and Indigenous Cultural Competence.
Qualification of Adjudicators and Volunteers		
24.	Each law society will report annually to its governing body on the status of the standards.	MET